



LIABILITY CLAIMS *TAKEAWAYS*

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Welcome to the December edition of 'Liability Claims Takeaways' – our monthly insights from industry stalwarts.

A Cyber and Data Security Insurance:

WHAT WAS THE CLAIM?

The Insured was in the business of manufacturing, monitoring, and controlling instruments, with a significantly large global presence. The Insured suffered a ransomware attack, which brought down its systems across three of its plants. The Insured notified the claim under its Cyber and Data Security Insurance Policy (Cyber Policy).

KEY ASPECTS TO CONSIDER:

1. Timely consultation with the Insurer:

As soon as the Insured identified that it had been under a ransomware attack, the Insured informed us as their insurance brokers, and we intimated the Insurer on the same day. In addition, the Insurer's inputs were taken on appointment of consultant as well as related matters. The Insured, along with the Insurer and the third-party consultants appointed were able to immediately implement rectification measures to protect the Insured's system from further damage. The Insured's promptness to proactively consult with the Insurer right from the identification of the issue, ensured that the Insurer provided consent to incur costs, appoint the required consultants, and implemented a forensic analysis without any delay. This paved the way for a smooth process during an otherwise stressful situation.

2. Cyber-attack preparedness:

Cyber Insurance in India has only now begun to get the recognition it deserves. However, our team of experts, who have been involved in the cyber insurance space, were able to handhold the Insured through the entire process which lasted several months. While the ransomware attack lasted five business days, the entire process to redevelop the Insured's systems and bring the Insured back to functionality spanned over months.

Given our experience in the field, our team of cyber claim experts prepared the Insured beforehand, such that any queries from the Insurer were resolved in a minimum time and there were no lags, breach of policy terms and conditions, or errors that could have impacted the Insured's claim under the policy.

The Insured was able to recover the entire loss incurred on account of business interruption that it suffered due to the cyber-attack, under the policy which exceeded the deductible. It is also important to highlight here that the Insured's promptness and preparedness resulted in the Insurer receiving significant comfort in the manner in which the claim was managed which resulted in all parties staying aligned towards a common objective.



3. Costs incurred to strengthen the Insured's systems not covered under the policy:

Post the cyber - attack, the Insured intended to implement vulnerability assessment, penetration testing, and ensure end to end systems and data protection. The Insured incurred a cost of INR 30,00,000 which they wanted to claim under the Cyber Policy.

Typically, a Cyber Policy does not cover those costs that the Insured incurs as a measure to improve its own systems. Therefore, even though the genesis of incurring such costs was a result of the cyber-attack suffered by the Insured, such costs incurred by the Insured are not payable under the policy.



B Directors and Officers Liability Insurance

WHAT WAS THE CLAIM?

The Insured is an independent power producer, developer, and an operator of utility and commercial scale solar PV power plants. The Insured provides energy to government sectors and private players. A series of anonymous whistle blower complaints were made against a few directors and officers of the Insured. The complaints claimed manipulation of the Insured's accounts to make a profit on the sales.

KEY ASPECTS TO CONSIDER:

1. All circumstances should be reported to Insurers:

The whistleblower complaints in this instance did not, result in a claim against the Insured, however, the Insured notified the Insurer of the same as a circumstance, as soon as the same was discovered. This was a significant step as the Insurer was able to offer continued support to the Insured when a formal investigation commenced against the Insured and its directors and officers, after six months. At such time, the Insured's policy with the then Insurer had already lapsed, and the new policy would not respond to claims that ought to have been ordinarily reported in a preceding policy period. Therefore, given that the Insured had notified the issue as a circumstance and the claim was open with the erstwhile Insurer, the Insured apprised the erstwhile Insurer of the developments and the claim continued under the previous policy. There was no breach of policy condition or delay in reporting or non-disclosure on the part of the Insured.

2. Importance of availing an adequate cover:

Policyholders are encouraged to review their D&O policies and consider whether the policies provide adequate insurance coverage in the event of a regulatory investigation or judgment involving a whistleblower. There is a likelihood of these claims resulting in employment practices liability claims as well. It is pertinent to review the policy with a fine toothcomb and avail necessary extensions as required. In the instant case, the employees of the Insured filed a claim against the Insured as a consequence of the findings of the internal investigation reports. The new matter was notified under the EPLI cover.

C Transport Operators Legal Liability Insurance:

WHAT WAS THE CLAIM?

The Insured was in the business of transporting and warehousing. The Insured was in the process of transporting its client's goods from the warehouse to the shipping port. At the time of unloading the same, the Insured's employees identified a discrepancy in the quantity of the goods stored. The Insured's client made a claim against the Insured for the value of the goods missing. The Insured notified the claim with its Insurer.

KEY ASPECTS TO CONSIDER:

1. Coverage under the Transport Operators Legal Liability Policy:

The policy seeks to indemnify the Insured, for their legal liability as prescribed under the Multimodal Transportation of Goods Act, 1993. The policy covers claims arising out of physical loss or damage to cargo while in the care, custody, and control of the Insured. The policy will also indemnify the Insured, for their legal liability arising out of their operations following a negligent act, error, or omission by the Insured, his employees, agents, or sub-contractors. A third-party liability extension covers physical loss or damage to property, bodily injury, death or illness, arising due to the negligence, error, or omission of Insured, in the course of their business operations.

2. Mysterious Loss exclusion:

The policy excludes those claims which arise out of **mysterious disappearance or unexplained loss or shortage upon taking a stock-take or similar inventory check**. In the instant case, the Insured only discovered the loss at the time of taking stock while unloading at the dock. The Insured was not able to substantiate the cause of loss of goods and therefore, the Insurer applied the exclusion to the claim. It is recommended that the Insured who operate in similar businesses must implement sufficient measures to ensure that before change of hands, the goods in their care, custody, or control are inspected such that they can limit their liability and risk exposure.

3. Non-disclosure of known circumstances:

The first instance when the claimant had sought recovery of loss from the Insured was more than a year before the claim was intimated to the Insurer. While the claim was lodged against the Insured in the current policy period, however, the Insured failed to notify the instance to the Insurer at the time they first received the claim, and during the respective policy period. These were also not disclosed at the time of renewal of the policy. This could allow the Insurer to raise a concern regarding non-disclosure and misrepresentation, which is likely to prejudice the rights of the claim. It is therefore recommended to disclose all known circumstances that may result in a claim, at the time of renewal or placement of the insurance policy.



We are sure you found the anecdotes interesting and got some key points to take away.

Stay tuned for the next edition!

About Prudent Insurance Brokers

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- Identifying and addressing gaps in your current insurance programs
- Arranging the most cost-effective cover from Indian and international markets
- Ensuring contract compliance for your insurable indemnities
- Offering 360° claims management by the largest claims team across any broker in India
- Providing global solutions through the strongest international alliances

Our Claim-Handling Expertise

Our team members come from varied areas of expertise, thereby enabling us to ensure that our clients are assisted thoroughly, through every step of the claims-handling process. We take pride in our professional competency and diligence, and our team is always willing to walk the extra mile in client service.



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