



LIABILITY CLAIMS *TAKEAWAYS*

CONTENT

- Commercial General Liability Insurance
- Directors' and Officers' Liability Insurance
- Public Liability (Act) Insurance

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

A Commercial General Liability Insurance:

WHAT WAS THE CLAIM?

The Insured is one of the country's largest fast-food chains with multiple retail outlets globally. One of the Insured's customers filed a complaint against them under the Consumer Protection Act 2019, before the State Consumer Disputes Redressal Commission on the ground that the Insured was charging their customers for a carry bag at the time of sale of the product. The customer claimed that the Insured had caused mental agony and distress to the customer by unlawfully charging the customer for the carry bag. The Insured notified the claim under their Commercial General Liability Insurance Policy (CGL Policy).

KEY ASPECTS TO CONSIDER:

1. Appropriate definition of Insured's Product:

In CGL Policies, wherein coverage for Product Liability is availed by the Insured, the Insured is protected from legal liability arising from bodily injury or property damage related to the manufacture and sale of its products. The ambit and definition of the word 'Product' become extremely critical to ensure adequate coverage under the policy. Therefore, it is advised that at the time of policy placement, the definition of Product be reviewed, and if it is a specific definition or list of products, then the definition must either be wide enough to cover all products manufactured or supplied by Insured to their customers in the course of their business or the list of Insured products must be exhaustive. That will ensure that claims of the current nature get picked up by the policy.

In this particular instance, we, as insurance brokers, were able to ensure that the definition of Product under the policy was wide enough and included 'carry bags' and accordingly there was adequate coverage for the Insured.

2. Bodily Injury to include 'mental agony and anguish suffered by third parties':

Typically, the definition of bodily injury in a CGL policy only covers physical injury, sickness, or disease sustained and resultant death. However, given the nature of the Insured's business and the claims trend noticed, our team recommended that the definition of Bodily Injury in the Insured's CGL policy be modified to include mental agony and anguish so that claims of the instant nature are also covered under the CGL Policy. Therefore, by way of issuing an endorsement, the definition of bodily injury was amended to include 'mental agony and anguish suffered by third parties'.

3. Recent rulings on the subjects that impact the Insured's business:

In the recent past, we have witnessed a growing awareness around consumer protection laws in India. Several judgments have also been issued by relevant authorities against larger corporations in consumer disputes. On multiple occasions, courts and consumer redressal forums have awarded compensation in cases where a consumer has alleged deficiency of service against retail outlets and an order has been passed against such organisations for damages, for charging



their customers for carry bags. According to the judicial precedent on the subject, retail stores such as the Insured entity, get significant exposure by way of advertising their brand on the printed carry bags supplied to the customers. Therefore, charging customers for the same constitutes an unfair practice and, therefore, must not be continued.

Given the overall increase in similar orders, it is in the Insured's interest to be apprised of the recent rulings and developments in the applicable law, such that the risk of incurring high defence costs and paying damages can be minimised to a significant extent. As insurance brokers, our team of lawyers also ensures that such rulings are brought to the Insurer's attention to ensure adequate coverage for the Insured as well as reasonable assessment in case of a claim.



B Directors' and Officers' Liability Insurance

WHAT WAS THE CLAIM?

The Insured was in the business of renting automobiles and operated by way of an online portal to provide the said service. As a part of the Insured's business, the Insured rented a portion of the claimant's premises and utilised the same as a parking lot for its vehicles. The claimant (who was the owner of the rented premises) lodged an FIR against the Insured entity and its directors for allegedly causing a man-made fire, damaging the claimant's premises and causing intentional hurt to its employees. The Insured notified the claim under their Directors' & Officers' Liability Insurance Policy (D&O Policy).

KEY ASPECTS TO CONSIDER:

1. **No direct nexus between the alleged wrongful act and the accused persons' official duties:**

The FIR lodged against Insured's directors & officers and the Insured entity was in the form of a retaliation by the claimant, wherein it merely alleged that the accused persons were employees of the Insured and that they created a ruckus at the claimant's premises. The said allegation had no connection with the accused persons' official duties. Typically, a D&O Policy covers losses suffered by the Insured that arise out of wrongful acts committed or alleged to be committed by directors & officers of the Insured in their official capacity. Therefore, the present allegation did not find cover under the Insured's D&O Policy.

2. **Exclusion for claims arising out of Bodily Injury and Property Damage (BI/PD):**

A D&O Policy typically excludes all claims arising out of bodily injury and property damage. The reason for the exclusion is that BI/PD risks arising from the Insured's business are typically covered by commercial general liability insurance. Based on the proceedings and the FIR lodged against the Insured and its directors & officers, the genesis of the instant claim was based on compensation demanded by the claimant for the damage to its property and the alleged bodily injury suffered by its staff. Therefore, the exclusion was applicable in this matter and the D&O policy did not trigger.

We, as insurance brokers, were able to explain to the Insured the scope of the policy and the decision of the Insurer.



Public Liability Insurance (Act) Policy

WHAT WAS THE CLAIM?

The Insured largely operated in manufacturing pesticides and insecticides. While transporting the Insured's raw materials from its warehouse to its plant, the Insured's vehicle met with an accident wherein the truck fell off a bridge resulting in contamination of a lake on account of the spill. While no claims were lodged against the Insured at the time of the incident, the Insured proceeded to notify the incident under its Public Liability Insurance (Act) Policy (PLI Act Policy).

KEY ASPECTS TO CONSIDER:

1. Scope of a PLI Act Policy:

The PLI Act Policy is a statutorily mandated insurance to be availed by organisations that handle hazardous substances. The PLI Act Policy would reimburse the Insured for any compensation that the Insured becomes liable to pay under the Public Liability Insurance Act, 1991 (**PLI Act**). Such an order results only from a claim for relief which should have been made under the PLI Act before the Collector who has jurisdiction over the area in which the accident occurred, and such Collector, after their due course of inquiry, passes an award for relief under the PLI Act.

2. Minimal compensation under the PLI Act:

The value of compensation payable under the PLI Act was stipulated nearly two decades ago. Consequently, the compensation under the PLI Act is very meager and restricted to the following heads:

- in the case of death or total permanent disability - up to INR 25,000 per person
- in case of bodily injuries, medical expenses incurred - up to sum of INR 12,500 per injured person
- In case of any damage to private property - up to INR 6,000, depending on the actual damage

In the event of a higher actual loss, an Insured is compelled to go out of pocket to bear the uncovered loss suffered on account of the claim.

Therefore, is it advisable to seek appropriate insurance advice and avail additional liability insurance policies which will provide for a higher and wider coverage.

3. All relevant incidents should be reported to Insurers in a timely manner:

It is pertinent to ensure that all incidents that may trigger the relevant insurance policy, whether or not they result in a claim instantly, are notified to the Insurer in a timely manner. Such notifications ensure continuous protection to the Insured under their Policy, with respect to any future claims arising from the notified incidents. The PLI Act allows a claimant to file a claim within 5 (five) years from the incident. Therefore, intimating the Insurer at the time of accident ensures that a subsequent claim gets picked up under the 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

We, at Prudent Insurance Brokers, provide industry-leading expertise in designing and managing insurance programs to address unique requirements of your organization. We have a client-centric service infrastructure that delivers proactively & passionately in a highly systematic manner. Our Liability Team comprises of ex-underwriters and the largest number of qualified lawyers and legal professionals who can help you across different areas:

- 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.





www.prudentbrokers.com

FOR MORE QUERIES, PLEASE REACH OUT TO:

Tanuj Gulani
tanuj.gulani@prudentbrokers.com

Neha Anand
neha.anand@prudentbrokers.com

Richa Dhasmana
richa.dhasmana@prudentbrokers.com

Jyoti Krishnan
jyoti.krishnan@prudentbrokers.com

Nishant Kashyap
nishant.kashyap@prudentbrokers.com

Mayank Sharma
mayank.sharma@prudentbrokers.com

Arun Prasadh
arun.prasadh@prudentbrokers.com

Hemangi Jhaveri
hemangi.jhaveri@prudentbrokers.com

PRUDENT INSURANCE BROKERS PVT. LTD.

Mumbai | Bengaluru | Chennai | Gurugram | Hyderabad | Ludhiana | Pune

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