



LIABILITY CLAIMS *TAKEAWAYS*

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JULY 2022

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

A Commercial General Liability Insurance

WHAT WAS THE CLAIM?

The Insured is a leading movie theatre chain in India. While one of the patrons was exiting the theatre, he slipped and fell, and suffered severe injuries. The said patron was given immediate medical attention. The patron claimed costs for the medical expenses from the Insured. Accordingly, the Insured notified the claim under their Commercial General Liability Policy ("CGL Policy")

KEY ASPECTS TO CONSIDER:

1. Medical Expense Cover

Any expense incurred towards first aid for bodily injury, to a third party resulting from an accident, on the Insured's covered premises is covered under the medical expense cover of a CGL policy. Medical expense coverage is a type of "no-fault" insurance. This coverage will pay reasonable medical bills of third parties who suffer injuries on the Insured's premises or on account of the Insured's operations, regardless of legal liability.

While each policy has its detailed definition of the coverage under this head, typically, medical expenses mean reasonable expenses for necessary first aid administered at the time of an accident, medical, surgical, X-ray and dental services, including prosthetic devices; and ambulance, hospital, professional nursing, and funeral services.

The Insurer may, at their expense, require the injured person to get an examination done by a physician of the Insurer's choice, to carry out a detailed medical investigation.

In this instance, the CGL Policy had a distinct cover for no-fault liability medical expenses and the costs for the medical treatment claimed by the patron were covered under this head of the Policy.

2. Property damage:

When the patron suffered a fall, his hearing aid also got damaged, and replacement of the same was also claimed from the Insured. These hearing aids were worth approximately INR 2,00,000. The claimant sought the value of the hearing aid, as damages from the Insured, and the Insured claimed it under their CGL Policy.

3. Applicability of Policy deductible:

The expenses towards the medical treatment provided to the patron did not have any minimum retention/deductible for the Insurer's liability to reimburse the costs triggered under the Policy. However, the claim for compensation of loss of personal property, suffered by the Insured is subject to the minimum deductible under the Policy. This means that the Insurer's obligation to reimburse any costs payable, only begins once the loss exceeds the deductible value.

B Public Liability Insurance

WHAT WAS THE CLAIM?

The Insured is a global insurance company with a wide presence across India. The Insured, as part of their advertising program, had signages mounted up on various buildings. These buildings ranged from commercial properties to residential buildings. Owing to heavy rains and winds during the monsoon, the Insured's signage fell off one of the buildings, while the parts split and broke, damaging the signboards of two other entities as well, in addition to the damage to the property where the signage landed. The Insured was asked to pay to all affected parties and the Insured lodged the claim under its Public Liability Policy.

KEY ASPECTS TO CONSIDER:

- 1. Add all locations where the Insured's business activities take place:**
The Insured had multiple offices across the country and therefore, to ensure coverage under its policy, it was pertinent that each location was disclosed to the Insurer, at the time of binding the policy cover. The Insurer can only provide cover for risks that are disclosed and known by the Insurer. Since the said building, where the incident took place, was not disclosed to the Insurer, the Insurer withheld coverage for this loss under the Insured's policy.
- 2. All disclosures to be made before policy inception to avail insurance cover:**
Owing to the incident and the consequential costs borne by the Insured, by way of an endorsement, the Insured added all undisclosed locations to its Policy, such that, claims arising therefrom are eligible for cover. However, only those claims, that are notified to the Insurer after the addition of the locations/properties being covered under the Policy will be eligible for reimbursement under the Policy. No past claims for properties now added, shall be considered under the Policy.
- 3. Avail most reasonable costs towards to repairs:**
The Insured was required to reimburse the costs towards the repairs of all damages. However, the Insured cannot commit to incurring costs without availing suitable competitive quotes. An Insurer usually expects that a minimum of 3 quotes must be availed from vendors and one with the most reasonable quotation must be opted for. Of course, this does not mean that the Insured must not avail of quality repairs, however, ensuring reasonability of expenses that are claimed under the Policy is a bare minimum requirement and also the expectation of the Insurers.
- 4. Liability insurance only covers claims for costs towards direct damages and not consequential loss:**
For one of the signages that were impacted due to the accident, one suffered partial loss, however, the claimant demanded complete repair of the signage, which included completely unaffected parts. The Insurer refused to accept costs that were not directly related to the actual incident that took place. Enhancement costs are not covered under the Policy. Availing of insurance intends to put the policyholder/claimant in a position that they were in before they suffered the loss.





Directors and Officers Liability Insurance

WHAT WAS THE CLAIM?

The Insured was in the business of providing software technology services to its customer. Due to Covid -19 outbreak and remote working conditions, the Insured's team missed filing certain returns with the authorities. The Insured and its directors received a show-cause notice for the same and were required to appear before the relevant authority. The Insured enjoyed significant goodwill, and to protect its reputation, the Insured made an application for compounding its offence and also paid the fine levied on the company and its directors for breach of duty. The Insured intended to make good this loss under its Directors' and Officers' Liability Insurance ("D&O Policy").

KEY ASPECTS TO CONSIDER:

1. Cover for fines and penalties:

It is pertinent to note that only fines and penalties insurable in law are considered for coverage under the Policy. The Insured cannot cover losses where it has made an admission for breach of its statutory obligations and has incurred costs towards the same.

Additionally, we have come across regulations specified by certain regulators whereby the concerned company or officers, upon whom an order of penalty or damage is levied, are prohibited from claiming such amount under insurance or any other kind of indemnity. It is, therefore, important to be aware of the regulations governing the Insured entity and officers when dealing with a claim such that there are no unrealistic expectations for cover under the Insured's policy.

2. Adherence to policy conditions is not optional:

As soon as a claim triggers under a policy, policyholders usually restrict themselves to whether or not a claim finds cover under the various insuring clauses- what gets missed as a result is the various policy terms and conditions which are as critical as ensuring a claim is a covered claim under the policy.

Insurance companies expose themselves to risks to protect the balance sheet losses of the Insured. These costs range from meagre expenses to million-dollar claims. The Insurer, therefore, has a right to determine how each claim is approached and dealt with.

As a thumb rule, the Insurer is required to be informed of the Insured's strategy for defending itself. Not only that, but before incurring any costs that are intended to be claimed under the Policy, the Insurer's prior written consent is required. Given that the Insured not only admitted liability but also incurred costs without the Insurer's knowledge or consent, the Insurer repudiated the claim on account of breach of policy conditions and therefore, the costs and penalties borne by the Insured's directors were not covered under the D&O Policy.

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

Stay tuned for the next edition!

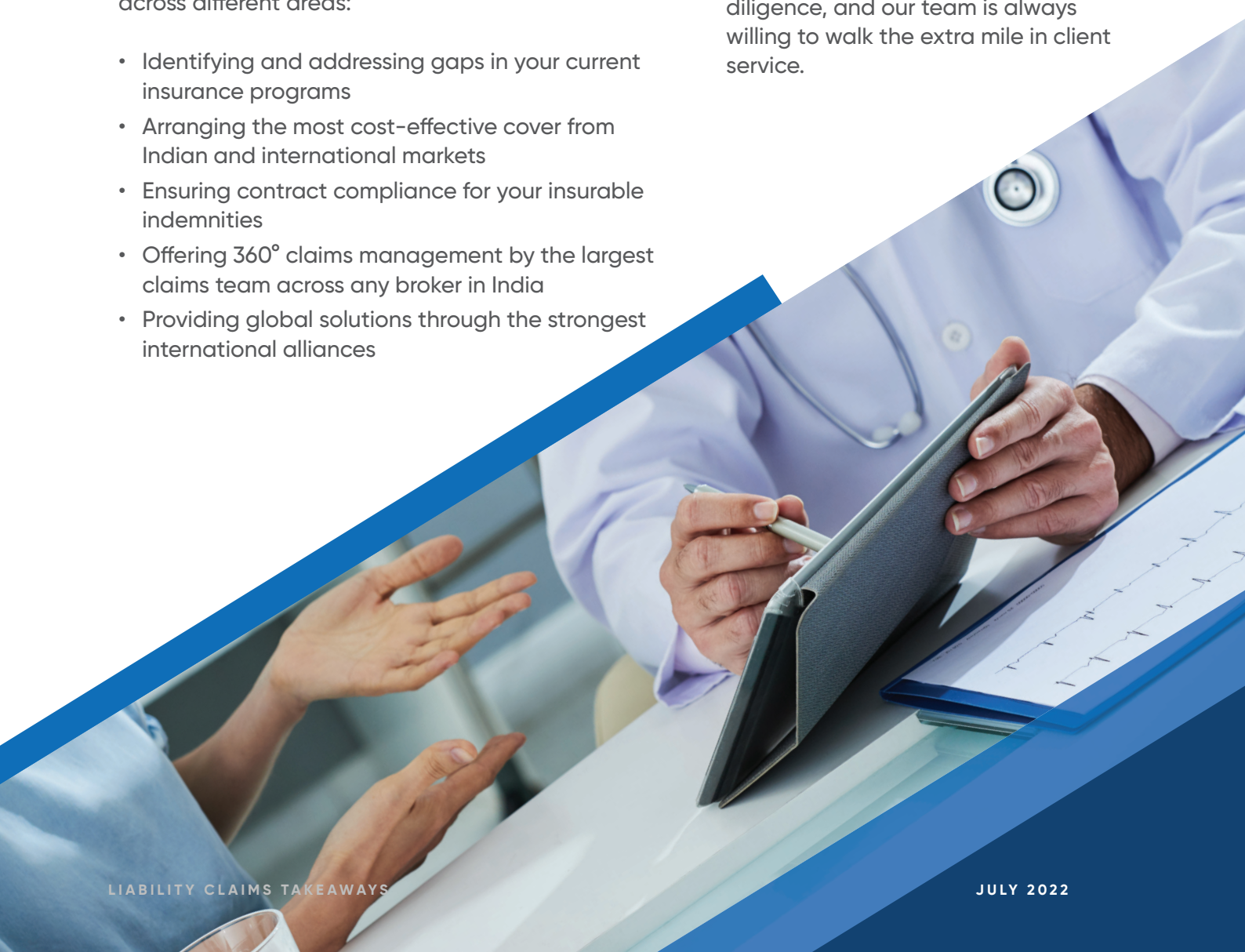
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- Identifying and addressing gaps in your current insurance programs
- Arranging the most cost-effective cover from Indian and international markets
- Ensuring contract compliance for your insurable indemnities
- Offering 360° claims management by 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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