

Liability Claims Takeaways

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Welcome to the 36th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

C O N T E N T :

Commercial General
Liability Insurance

Multimedia
Liability Insurance

Medical
Malpractice Insurance



Commercial General Liability Insurance Policy



What was the claim?

The insured manufactures tyres, distributed through retail partners in multiple cities across India. As part of their operations, the insured installs and maintains hoardings on the outlets of these retailers.

One of the hoardings, situated on the premises of a retail partner, caught fire due to faulty electric wiring. This incident resulted in significant damage to the property on the floor above the retailer's premises, prompting third-party occupants to file a substantial claim against the retailer. The retailer, in turn, demanded compensation from the insured, who then reported it under their Commercial General Liability Insurance policy (CGL policy).

Key aspects to remember:

1. Coverage is limited to claims arising from the business operations of the insured at the 'designated premises' only:

As the claim stemmed directly from the hoarding installed as part of the insured's business operations, it was filed under the CGL policy. However, the insurer had imposed a 'designated premises' condition, limiting coverage to third-party bodily injury or property damage claims arising solely from the insured's business operations at the specified premises – locations owned, used, or operated by the insured in the course of their business.

During the claim assessment, the surveyor construed the condition to mean that coverage extended solely to premises owned by the insured. Given that the hoarding was placed on the retailer's premises, the surveyor concluded that the policy wouldn't cover third-party claims arising from the hoarding as it fell outside the scope of the 'designated premises', leading to the repudiation of the claim.

In this case, the 'designated premises' condition was interpreted to encompass locations that were both 'used' and 'operated' by the insured, including the retailer's premises. Consequently, a representation was submitted to the surveyor, contending that restricting coverage solely to locations owned by the insured would contradict the spirit and intent of the policy.

Due to compelling representations backed by factual evidence, the surveyor concurred with this perspective, leading to the acceptance of the claim under the insured's CGL policy.

2. The absence of a contract for the use of premises added complexity to the claim:

Though there was an informal understanding between the insured and the retailer regarding the use of the premises, the absence of a written formal contract significantly complicated the claim. Establishing a legal relationship for the use, set up, and maintenance of the hoarding between the insured and the retailer posed a challenge, as there was no contract between them that the premises were being 'used' and 'operated' by the insured in the course of their business operations.





The surveyor was briefed and shown alternate evidence that all expenses related to setting up and maintaining the hoarding were covered by the insured. Invoices supporting these costs, along with email communications, were provided to the surveyor. Additionally, the electricity costs for running the hoarding were compensated by the insured to the retailer through discounts on the retailer's invoices. Given these details, it was clarified to the surveyor that there existed an implied contract between the insured and the retailer for the 'use' of the retailer's premises.

3. Arranging documentation from third-party for assessment:

As the claim originated from a third-party with whom the insured lacked a legal relationship, significant resistance was encountered from the claimant in terms of sharing information. This not only caused delays in the assessment of the claim but also led to the surveyor disallowing costs that lacked substantiating documents.

Diligent efforts were undertaken to engage with the third-party claimants, resulting in the collection and submission of relevant purchase invoices to the surveyor to substantiate their incurred losses. In cases where invoices were unavailable, alternative documentation, such as freight-related documents and custom clearance documentation, was negotiated and deemed acceptable for assessment by the surveyor.

Additionally, the insured was informed that not all costs asserted by the third-party claimant would fall under the coverage of the CGL policy. A clear distinction between covered and excluded costs, accompanied by explanations, was presented to the insured. For instance, the third-party claim encompassed a significant amount related to third party's loss of income. The insured was clarified that the CGL policy is designed to cover claims for property damage and bodily injury, and pure financial losses may not trigger the policy.

It is imperative for the broker to conduct a comprehensive review of the insured's business operations during the placement process, gaining a thorough understanding of the nature of various operations and incorporating essential covers into the policy. The insured should openly communicate all aspects of their business operations, allowing the broker to arrange the broadest possible coverage. Ideally, pertinent sections of contracts with vendors, distributors, retailers, etc. should be shared with insurance brokers for advice on necessary additional covers for the insured and potential modifications to contracts.

A deep understanding of the business also equips the broker to navigate delicate relationships for the insured, mitigating adverse reactions from crucial business partners in the event of a claim.



What was the claim?

The insured, a prominent media company producing films and programs for popular OTT platforms, faced a crisis just three days before launching a high-budget program. They received 17 legal notices from various locations across the country, all alleging defamation of certain castes/communities. The complainants also sought injunctions against the program's release. Urgently needing to address all 17 matters simultaneously, the insured promptly appointed multiple defence counsels. The situation was swiftly communicated to their broker, who immediately initiated the claim process under their multimedia policy.

Key aspects to remember:

1. Importance of adding crucial covers in the policy:

A stay on the program's release could have resulted in substantial financial losses for the insured. Thus, it was imperative for the insured to take swift legal action to ensure the program's timely release. With no time to wait for the insurer's prior consent to appoint lawyers, the emergency defence cost coverage within their policy proved to be invaluable. This clause allowed them to proceed with defending matters without delay, easing the stress for the insured during a critical situation.

2. Reasonability of defence costs:

The insurance policy covers reasonable costs incurred by the insured to defend a matter, with the term 'reasonable' not explicitly defined. The insurer typically considers factors such as sensitivity, subject matter expertise, required experience, and surrounding circumstances when approving lawyers. In this case, objections were raised on the reasonability of emergency defence costs. While the insurer generally allows the appointment of one defence lawyer and appearing counsel, the unique circumstances here necessitated the urgent appointment of 17 different defence counsels. The broker effectively argued that reasonability should be interpreted in the context of each claim, emphasising the potential for larger financial losses if even one adverse court order occurred. Given the cases arising in 17 different courts, simultaneous appointment of 17 lawyers was crucial for a successful defence.

Moreover, as the insured promptly notified the broker, who then communicated the matter to the insurer, the legal costs post the initial emergent hearing were in alignment with and approved by the insurer.

3. Application of deductible:

The insurer treated matters filed by different communities as distinct incidents, leading to the claim being subject to 8 deductibles. However, the broker on behalf of the insured argued that these matters should be treated as a single event since they stemmed from the same OTT program, all involving allegations of defamation against the insured. The concept of 'multiple related actions resulting in multiple claims deemed as a single claim' was invoked.

Following extensive discussion and thorough submissions by the broker, the insurer accepted the notices as a single event and applied only one deductible.



Medical Malpractices Insurance Policy (Med-mal Policy)



What was the claim?

The insured, a prominent multispecialty hospital, received a legal notice from a patient's relative, alleging negligence during a Medical Termination of Pregnancy (MTP) procedure that resulted in post-surgical sepsis. According to the complainant, the patient had to undergo multiple surgeries post the MTP procedure, experiencing severe mental, emotional, and physical trauma. Notably, the hospital received this notice a day before the policy renewal, and the insured was able to inform their broker only after the policy had been renewed.

Key aspects to remember:

1. Timely intimation of the claim:

As the policy in question operates on a claims-made basis, it covers only those claims reported within the policy period. Any claim that should have been reported under the expiring policy would not activate coverage under the renewal policy. In this specific claim, the insured had knowledge of the matter before the renewal, obligating them to disclose it to the insurer – an obligation inadvertently overlooked.

These oversights could result in the insurer rejecting the claim due to non-disclosure, potentially rendering the renewed insurance contract voidable at the insurer's discretion. Hence it is of utmost importance for the insured to diligently confirm with relevant stakeholders the reporting of all such matters, particularly during the renewal process.

Moreover, it is essential to train relevant company employees to promptly report such matters upon receipt to the risk manager, general counsel, or their equivalent in the hospital for timely reporting to the insurer.

2. Comprehensive Coverage:

The hospital's coverage was adeptly negotiated by the broker, who included a 'continuous cover' clause in the policy. This clause allowed the insured to report any matter that might have been inadvertently missed in the prior policy period. Thanks to this provision, the insurer did not allege non-disclosure, and coverage was not denied to the insured.





The landscape in India is evolving rapidly, and consumers are increasingly aware of their rights, not hesitating to seek compensation for alleged negligence by service providers. With the growing complexity and the elevated risk of negative publicity, it's crucial to align policy covers with dynamic risk exposure. As insurance brokers, Prudent assesses these evolving risks and ensures customised solutions for the insured.

3. Insurer's prior consent required for out-of-court settlement:

The policy covers only those defence costs and compensation that are incurred by the insured with the prior consent of the insurer.

In this particular case, the broker maintained constant coordination between the insurer and

the insured, ensuring timely approval for defence costs. The insured received regular reminders about policy's terms and conditions and was advised to operate within these boundaries to prevent any adverse impact on the claim.

Due to publicity surrounding the matter, the insured desired an early out-of-court settlement. Recognising the sensitivity of the situation, the broker advocated with the insurer to permit an out-of-court resolution. The presentation emphasised the cost-benefit of settling, enabling the insured to be fully discharged of liability without incurring exorbitant defence costs due to prolonged legal proceedings. The insurer considered this argument and granted approval for the out-of-court settlement.

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 one of the largest claims teams 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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