

Liability Claims Takeaways

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Welcome to the 38th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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Directors and Officers Liability Insurance



What was the matter?

The insured is in the media and entertainment business. A few years ago, one of their foreign subsidiaries became the subject of an investigation by a revenue agency in another country. The investigation spanned several years, during which no allegations were raised against the company. The investigation primarily required the company to present documents, and this matter was notified in their D&O policy.

After almost 7 years, the investigation concluded, and the prosecution submitted a report. Based on this report, summons were issued to the entity, as well as its directors and officers. Each director engaged a different lawyer due to the potential conflict of interest. The matter was again notified to the erstwhile D&O insurer.

Key aspects to remember:

1. Timely notification ensures continued coverage for long-tail claims

In this case, when the initial notice was received, no allegations were made against the entity or its D&O. However, our team, who were asked to advise on the policy obligations, encouraged the insured to inform the insurer. This allowed for timely notification of the matter and enabled the insured and their D&O to make use of the policy even seven years after the initial investigation. The defense cost was incurred only after receiving the summons, which was almost seven years after the initial 'notification'. This ensured that the insured could use the continuity of cover under the policy.

2. Consent from insurer for costs

In this case, as the insured had obtained prior consent from the insurer for the lawyers engaged at the time of initial notification, the engagement remained smooth as long as the same lawyers continued to advise them on the summons. This also ensures adherence to policy terms, preventing sub-standard deduction from the costs incurred in the defense of D&O.

3. Advancement of defense cost provision

Unfortunately, due to the circumstances surrounding the insured entity, they were unable to pay the lawyers' fee upfront and were dependent on the insurer making the payment, which would then be remitted to the respective lawyers.

As their advisors, we ensured that the policy included an advancement of defense cost provision, allowing the insurer to pay the insured entity upfront, and enabling them to pay the lawyers for the defense of the D&O.



Issuance of Duplicate Securities – Liability for listed entities



What was the matter?

In May 2022, the Securities and Exchange Board of India (SEBI) simplified the procedure and requirements for the **issuance of duplicate securities**, aiming to make the process more efficient and investor-friendly through a Circular. The provisions of the Circular came into force with immediate effect.

SEBI directed all listed companies to obtain a Special Contingency Insurance Policy to cover the risks arising from the requirements related to the issuance of duplicate securities, ensuring the safeguarding and protection of the interests of the listed company.

What is Special Contingency Insurance (Policy)?

The special contingency policy is designed to protect the listed company from losses arising from the issuance of duplicate securities.

Key aspects to remember:

1. Third-party claim for damages

- The issuance of duplicate securities inherently involves the risk of a third party fraudulently seeking such duplicates. This situation can expose the listed company to significant financial claims from the true owner of the securities or any subsequent transferee who purchased them from the fraudulent person.
- While there are significant checks and balances in place, such as the completion of KYC and the submission of an FIR copy, there remains a risk of forgery or fabrication of securities or transfer receipts. This risk may impact the registration of these securities and also prejudice the rights of the legitimate holder.

2. Regulatory fines and penalties

- Any lapse in the proper procedure for the issuance of duplicate securities may lead to regulatory fines and penalties imposed on the insured entity.
- Failure to adhere to the specific requirements outlined by the SEBI may result in regulatory proceedings against the issuing company.

This Special Contingency Policy is a one-of-a-kind product that entered the insurance market due to regulatory mandates. Insurers will need to underwrite such a product and ensure that the policy wording is not restrictive and provides optimised coverage.

Therefore, when an opportunity arises to customise an insurance program to address each entity's exposed threats while conforming to regulatory requirements, these prospects should be optimised under the guidance of qualified advisors.





Cyber Insurance & Data Protection Laws



What was the matter?

In August 2023, the Indian Digital Personal Data Protection Law (DPDPA) was officially notified. Although the law is not yet in effect, the risks it imposes on businesses necessitate thorough consideration and measures for mitigation and transfer.

In this context, the cyber insurance policy serves as an intriguing solution in addressing some of the risks arising from the provisions of the DPDPA.

Key aspects to remember:

1. Cyber Insurance as a saviour

The DPDPA allows authorities to impose fines of up to INR 250 crore on companies, among other things, for failure to maintain adequate data security and systems. In the event of a cyber attack, in addition to the risk of penetration that the insured would face, this regulatory fine could potentially erode the balance sheet of the insured entity. In such a situation, cyber insurance would act as a saviour for the entity under attack.

2. Defense costs and legal advice

Separately, the policy will also cover any defense costs that the insured entity needs to incur (with the insurer's prior consent) to defend against any legal proceedings by a third party pursuant to the DPDPA or otherwise, on account of any alleged loss a third party faces due to the attack on the insured system and resulting data breach. The policy also covers the cost of legal advice in relation to the notifications required to be made post and pursuant to the cyber breach.

3. Comprehensive coverage

Similarly, other associated costs such as investigation expenses, forensics costs, any ransom demands, etc., which also constitute part of the monetary outlays for the insured, are covered under the cyber insurance policy.

Cyber insurance provides a broad base of protection for any entity facing a cyber attack, requiring simultaneous steps to protect its interests while mitigating losses and liabilities.



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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