

LIABILITY CLAIMS TAKEAWAYS

Welcome to the 30th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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Commercial General Liability Insurance

What was the claim?

The insured had multiple tourist hostels across the world providing accommodation to the guests on a shared basis. In this incident, in one of the hostels operating in France, a complaint was raised by one of the guests accusing the staff member of being impolite to her and not giving her a proper room. The insured immediately initiated an investigation into the matter and suspended the accused staff member. The insured also refunded the room rent to the guest at the time of checkout. A week later, the insured received an e-mail from the guest alleging physical assault and mental trauma, demanding compensation of 60,000 Euros (approximately INR 53,00,000) from the insured. The insured replied to the guest that the complaint made by her in the hostel did not talk about any kind of physical assault. Further, an internal investigation was still ongoing, and the report was awaited post which they would take the necessary actions. However, the guest filed a complaint in the local court against the insured and demanded compensation. The insured immediately notified the claim under the Commercial General Liability Insurance (CGL Policy).

Key aspects to remember

1. Sexual Assault and Molestation Exclusion

While a CGL Policy provides coverage for bodily injury occurring on the premises; however, in this case, the policy explicitly excluded any claim arising out of sexual assault and molestation.

Since the claim pertained to alleged physical abuse by the staff of the insured, the insurer was of the opinion that the claim was not admissible under the policy on account of the exclusion. However, it was explained to the insurer and a representation was made to them that the complainant had initially made a complaint for not being provided proper accommodation and a foul behavior towards her. To gain an undue monetary benefit, she filed a complaint for physical assault and was demanding an exorbitant amount from the insured.

The insurers agreed with our viewpoint, and it was decided that unless it is established by the final order of the court that there was indeed physical abuse done against the complainant, the insurer would not repudiate the claim solely on the basis of the above-mentioned exclusion.

2. Concept of Self-insured Retention (SIR) under the Policy

The concept of self-insured retention in a liability policy is that the insured accepts responsibility for retaining a part of the risk before the liability of the insurer begins. There is no minimum or maximum statutory limit assigned to SIR and the amount usually depends on the mutual agreement between the insured and the insurer in the policy.

In such cases, once the claim is notified to the insurer, they register and acknowledge the claim. However, their liability begins only after the SIR is crossed. Even though the insurer starts paying for defense and compensation only after the SIR is crossed, the insured needs to keep the insurers updated with the developments from the beginning. Consent must also be taken from the insurer prior to incurring any costs.





What was the claim?

The insured had a business that manufactured lifts and provided installation services. Additionally, they would also provide consultancy services to their clients on upgrading the features in already installed lifts. The insured had various subcontractors who would carry out tasks on their behalf. As part of their business, the insured would sign a contract with their clients establishing their roles and responsibilities and would further assign work to their subcontractors. On one occasion, the insured was contacted by a hotel owner who wished to upgrade the lifts in all their hotels having the latest technologies and features. He appointed the insured to carry out an inspection of the installed lifts and advise him on how the lifts can be upgraded. During the inspection, the insured's subcontractor caused damage to one of the lifts and a claim was made against the insured by their client. The insured filed a claim under the Professional Indemnity Policy (PI Policy).

Professional Indemnity Insurance

1. Coverage under the PI Policy vs CGL Policy

In this claim, the business of the insured was of two types:

- Manufacturing and installing lifts
- Advising the clients on how their existing lifts can be upgraded

To understand under which policy the claim is to be notified, it is essential to understand the facts of the claim and the role of the insured in the incident.

For a claim arising out of manufacturing and installing new lifts for a client, that results in bodily injury/property damage, the claim needs to be notified under the CGL Policy, since a CGL Policy provides coverage for claims arising out of the use of the insured's manufactured product.

However, for claims arising out of alleged breach/failure by the insured in providing consultancy to the clients, the claim would be notified under the PI Policy. This is because there was professional service being provided by the insured, in which the insured was negligent or erroneous, and it resulted in monetary loss to the client.

In this claim, one of the insured's client's lifts was damaged by the insured's subcontractor while inspecting it. The insured was hired to provide their expert services in upgrading the lifts, and therefore the claim was notified under the PI Policy on account of a breach of professional services, under the extension which covers the insured for breach of professional service by their subcontractors.

2. Extending the Safety Net: The Power of Vicarious Liability Coverage

Typically, a PI Policy provides coverage for any breach of professional services by reason of any negligent act, error, or omission, whenever and wherever committed or alleged to be committed by the insured. Additionally, the policy also aims to indemnify the insured for vicarious liability i.e., liability imposed upon the insured on account of any negligent act, error, or omission of any person employed by the insured or a person acting on their behalf. Subcontractors may not be covered under the policy automatically and in such cases, an endorsement would need to be added specifically covering the alleged breach, negligence, or error of the insured's subcontractors. In this particular case, the damage occurred due to the acts of the insured's subcontractor and not by the insured itself.



However, the policy in this instance had an endorsement to extend cover for the vicarious liability of the insured due to the acts of their contractors, subcontractors, and design consultants. Since the claim was notified under the endorsement of vicarious liability, coverage was provided.

3. Rights of Subrogation

Even though the claim was made against the insured by the client and was also notified under their PI Policy, the insurers have a right to recover any sum paid by them under the policy to the insured from the insured's subcontractor. Subrogation gives a legal right to the insurer to recover from a third party due to whose acts the loss was suffered by an insured, which is paid by the insurer under the policy.

Accordingly, the insurer stepped into the shoes of the insured and reserved their right to recover the amount from the subcontractor once the claim is paid.



What was the claim?

The insured is a prominent player in the hospitality sector with a significant global presence. The instant matter occurred on one of their construction sites, whereby, two large cement blocks fell off the 52 floor of the building. This accident resulted in significant third-party damage and the unfortunate demise of two people who were standing at a nearby tea stall outside the building. The incident also damaged the local tea stall and two private vehicles parked adjacent to the building. The insured notified the claim under the policy.

Construction All Risk Third Party Liability Insurance

Key aspects to remember:

1. Sensitivity and providing the necessary support to the policyholder and claimants are critical:

While protecting the insured from the various risks they were being exposed to was our key concern, the matter had to be handled with a lot of sensitivity given that two lives were lost and this incident had a community-wide impact, which all stakeholders had to be sensitised of.

The family members of the deceased persons claimed INR 25,00,000, respectively, from the insured as compensation. Given the multiple parties involved, and the political escalation the matter was receiving, it was extremely crucial and important that the situation was controlled, and the claim was settled with the deceased's families amicably and efficiently.

Our team worked very closely with the insurance company and the insured to collate all the relevant information, draft the required documents, and ensure that all queries raised by the insurance company were addressed promptly. The value of the settlement was significant, which was only a partial settlement under the policy for the bodily injury-related third-party liability cover, therefore, our team had to negotiate the timelines to process this claim in part and ensure that the insured's rights for later claiming the property damage and other costs under the policy are not prejudiced. All of this was to be carried out while ensuring that the process was dealt with within the fastest possible timelines.

2. Stepping into the shoes of the insurer helps in claim preparation and expediting the settlement process:

In this instance, given our experience in handling claims of this nature, we were able to pre-empt the insurer's requirements and prepare the insured in advance for the requisite information.

It's important to remember that insurance policies are contracts, and policyholders have a duty to disclose all relevant information to the insurer.

Failure to disclose relevant information can be considered a breach of contract and can result in the repudiation of the claim or even the cancellation of the insured's policy.

In this matter, all updates from the status of the FIR to the intention to settle the matter were communicated to the insurance company well within time not only to allow them to review the information but also to maintain a window to resolve any queries that may arise without impacting the broader timelines.



3. Importance of transparency of information between all stakeholders:

The insurer received frequent and pertinent updates, enabling the insurer to stay informed about the situation in real-time. As a result, discussions with the insurer about a potential settlement were easier and more palatable. This simplified the process for the insured and avoided any unnecessary delay, which is typically seen in settlement cases if the insurer is not kept informed.

As a result of the mutual trust between us as the insurance broker vis-à-vis the policyholder and vis-à-vis the insurance company, across all levels, the settlement amount claimed was paid by the insurance company within the shortest possible period and payments were made to the deceased's families immediately. Not only did this contain the situation from getting further aggravation but it also left all parties involved with a sense of a seamless claims process.



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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