

Liability Claims Takeaways

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Welcome to the 39th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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Commercial General Liability Insurance (CGL Policy)



What was the claim?

The insured has multiple stores across India and abroad where they sell footwear and apparel for men and women. In one of their stores, which was occupied by them on rent, a fire occurred, which resulted in damage to the insured's product and to the glass and shutter fitted in the store. The owner of the store filed a monetary demand on the insured for the cost incurred by them in repairing their glass and shutter fitted in the store. The insured filed a claim under their Commercial General Liability Insurance (CGL Policy).

Key aspects to consider:

1. Exclusion of damage to own property

The CGL policy primarily covers any damages which the insured becomes legally obligated to pay as damages because of bodily injury or property damage to a third party, arising from their business or in their business premises or product. Therefore, the CGL policy does not cover any losses incurred by the insured due to damage to their own product or premises.

Most CGL policies specifically exclude 'damage to property' owned, rented, or occupied by the insured, which also includes any costs or expenses for repair, replacement, enhancement, restoration, or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property, incurred by you or any other party.

This exclusion does not apply to property damage (other than damage by fire) to premises, including the contents of such premises, rented to the insured for a period of seven or fewer consecutive days.

It is important to note that this exclusion does not apply in two scenarios:

1. Loss occurring due to any reason other than fire;
2. The premises should be rented by the insured for less than seven consecutive days

In this case, since the cause of loss was fire and the insured had been renting the owner's

premises for more than seven days, the claim was falling under the exclusion.

However, due to the extensive experience of Prudent's liability team, an endorsement for Tenant Legal Liability was added to cover such scenarios under the CGL Policy.





2. Tenant Legal Liability Endorsement

Indian insurers offer an endorsement for Tenant Legal Liability within the CGL Policy. This endorsement extends policy coverage to the legal liability of the insured as a tenant to indemnify the landlord against any property through the defective or damaged condition of any part of the interior of the said premises or any fittings, fixtures, or wiring therein for the repair of which the insured is responsible or through or in any way owing to the spread of fire or smoke or the overflow of water from the said premises or any part thereof or through the act, default or neglect of the insured, his servants, agents or licensees.

It is essential to note this endorsement is applicable only when the loss occurs due to the spread of fire, smoke, or the overflow of water in the premises. If the loss occurs due to any other cause, the claim would not be covered under this endorsement.

The purpose of this endorsement is to extend coverage to premises rented by the insured, which would ideally not be covered under the base cover of the CGL policy, which focuses to cover third-party losses related to products, property, and premises of the insured. The Tenant Legal Liability Endorsement caters to such claims. However, the key requirement is that the insured must be a tenant occupying the premises on rent.

In this claim, since the loss happened due to a fire on the insured's rented premises, the claim was covered under the Tenant Legal Liability Endorsement.

3. Designated Premises on an unnamed basis

The Designated Premises Endorsement serves to restrict coverage within the CGL Policy to the premises specifically mentioned in the endorsement. Its purpose is to confine the insurer's risk to events occurring solely on the specified primary premises of the insured. If a loss occurs at any premises not mentioned in the endorsement, the claim would not be covered by the CGL policy.

For this particular client, given the nature of their business, they operate multiple outlets across India and frequently open new locations/change locations. Consequently, restricting policy coverage only to certain named outlets was not advisable. Further, taking coverage for each new open outlet would be a complex and lengthy process.

To address concerns in the claim arising from the mentioned reasons, all premises owned or occupied by the insured anywhere in India were covered under the policy on unnamed basis. The designated premises endorsement was taken with broad coverage to avoid any repudiations based on the premises not being covered under the policy.

Errors and Omissions Insurance (E&O Policy)



What was the claim?

The insured is a leading design consulting firm, primarily engaged by governmental authorities to provide advice on infrastructure projects. In one of the projects, the Principal Authority (PA) issued a Show Cause Notice (SCN) to the insured alleging deficiency of services. The insured responded to this notice, denying the allegations. Despite this, the PA deducted INR 20 lac from the payment owed to the insured in the subsequent month. The insured disputed this deduction. However, after almost eight months, the PA issued a recovery notice of approximately INR 60 Cr. This recovery was attributed to the insured's alleged deficiency in professional service, necessitating rework on some parts of the project. In response, the insured invoked the arbitration clause of the agreement and informed the broker, who, in turn, notified the insurer under their Errors and Omissions Insurance (E&O Policy).

Key aspects to consider:

1. Timely intimation to the insurer:

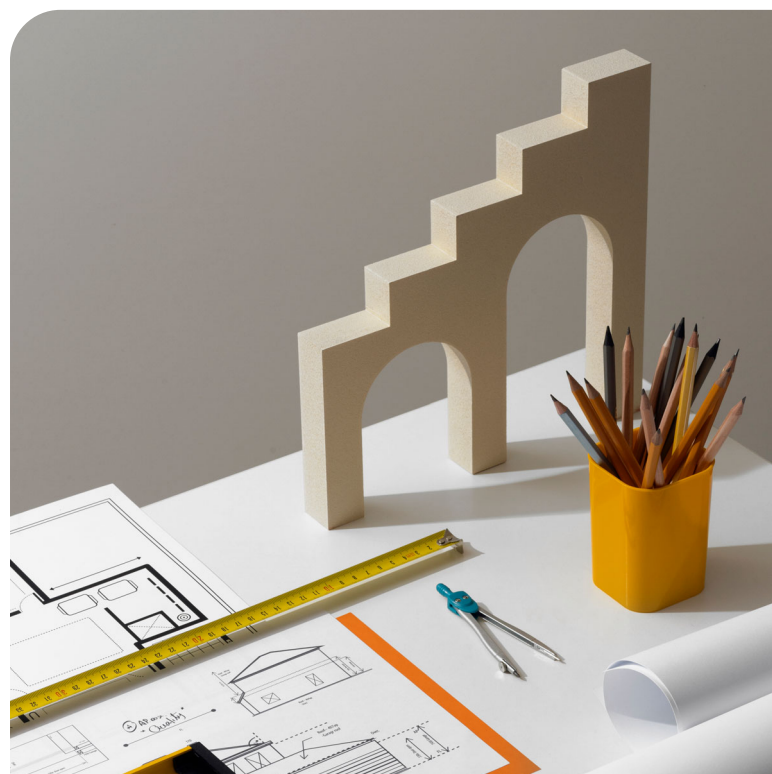
The insured became aware of the matter upon receiving the SCN from the PA. At that time, they did not inform the broker or the insurer, considering it as a routine matter. However, when the PA made a deduction from the insured's payment, the matter transformed into a financial demand and, in the insurer's opinion, obviated immediate intimation to them, which the insured failed to provide. The broker and insurer were apprised only when a further demand notice was issued by the PA after almost eight months, by when the policy had already been renewed.

The insurer rejected the claim due to alleged non-disclosure by the insured.

Thus, it is crucial to report any circumstances that can lead to a claim under the policy to the broker and/or insurer at the earliest opportunity and definitely before the renewal of the policy. Delays that cannot be justified as reasonable can prejudice the rights of the insured under the policy.

Further, if the policy is renewed without notifying the insurer of the circumstances, the insurer may not only refute any claim arising from such circumstance, but also such non-disclosure may render the policy voidable at the option of the insurer.

In the present matter, while the insurer has reserved their rights regarding the delay in intimation, the brokers have represented the insured, explaining that such SCN and unilateral deductions are common in the insured's business dealings, especially while dealing with government entities. Further, the policy was subject to a retention of INR 50 lac, and a deduction of INR 20 lac would not qualify as an indemnifiable claim under the policy. The broker argued that the insured prudently intimated the matter as soon as the claimed amount breached the retention limit.





It was further highlighted that the insured had not accepted any liability or made any offer to pay the PA at any time. In fact, the insured consistently endeavored to protect their rights against the unilateral actions of the PA.

Based on these persuasive representations made by the broker, the insurer reversed their declinature, but they reserved their rights on this issue.

2. Coverage for Defence Costs:

The E&O Policy inter alia covers defence costs incurred by the insured in defending against any claim, subject to the terms and conditions of the policy.

In the present matter, the arbitration was invoked by the insured and not the PA. Thus, the legal costs incurred by the insured did not fall within the definition of defence costs, which is restricted to covering only those costs incurred in 'defending' legal actions initiated against the insured and not initiated by the insured. Consequently, the legal costs with respect to the arbitration did not qualify as defence costs as per the insurer and were not allowed under the policy.

As brokers, we explained these constraints to the insured. Simultaneously, we shared the details of the defence counsel along with their schedule of fees with the insurer for their consent. We also represented to the insurer that since the defence against the demand of INR 60 Cr. from the PA was incorporated in the statement of claim filed by the insured, the legal cost should not be entirely excluded from coverage. Instead, the legal costs should be allocated between recovery of unpaid fees and defence against the demand by the PA. The latter should be considered under the policy. The insurer accepted this and agreed to the allocation of legal costs. The legal counsel was also instructed to raise the fee invoice accordingly.

It is imperative to understand the specific details and requirements of each business so that tailor-made solutions can be provided to the insured, not only at the time of placing the policy but also during claim handling. Given the diverse nature of each business, straitjacket interpretation of the policy at the time of claim may prove to be against the policy's intent.



What was the claim?

The insured, operating in the BFSI sector with a significant national presence, has multiple branches and over a thousand employees. Some employees, in collusion with certain ex-employees, issued fraudulent loans to fictitious customers. This fraud came to light when a few members of the insured entity proceeded with physical KYC verification of these fictitious customers. The insured's loss of INR 10 Cr. was reported to the insurer under their commercial crime insurance policy.

Key aspects to consider:

1. Importance of filing an FIR and timeline around the same:

The first and foremost step, critical to establishing loss, is reporting it to the police authorities. Not only is this a good faith practice, but it is also the first step towards confirmation of loss. To initiate inquiries into theft, the insured should file a police complaint and request that an FIR be registered.

This procedure is relevant from both an insurance and rehabilitation perspective. In this case, the insured failed to file a police complaint immediately after the loss was identified, leading to a delay in the filing of the formal complaint. Further, that also impacts the insurer's rights post-payment of the claim since the insurer subrogates into the position of the Insured once a claim is paid under the policy.

2. Role of insured's advisors in managing complex claims:

The instant claim was divided into traceable and non-traceable accounts. Our role as the insured's advisors primarily involves handling the entire claims process to ensure end-to-end ease in claims management among all stakeholders. This includes reviewing the claim documents, preparing representations/submissions highlighting the key aspects of the matter, and supporting the insured in collating relevant information. Our role goes beyond supporting the policyholder to also assisting the insurers and surveyors in understanding the matter and comprehending the documents.

In the instant matter, the surveyor deputed by the insured was well-versed in managing complex commercial crime claims. Upon submission of the requested information, they streamlined the loss assessment process by adopting the same approach for both traceable and non-traceable accounts. This prevented the claim from being stretched over a longer period and spared the insured from being buried in paperwork to prove the loss for non-traceable accounts.



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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