

LIABILITY CLAIMS TAKEAWAYS

Welcome to the October 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 is a multinational chain of hotels and resorts with a presence across India and globally. In one of the hotels of the Insured, a guest got intoxicated and fell down the stairs, resulting in severe injury to his shoulder. He was immediately taken by the on-ground team to a nearby hospital where he had to undergo a surgery to insert a rod in his shoulder and was admitted in the hospital for a day. On being discharged, he was taken back to the hotel. However, the next day he complained of severe pain and was advised by the doctor to undergo another surgery as his rod had shifted. The guest was again hospitalised for two days post the second surgery. The guest made a claim on the hotel for reimbursing his medical expenses. The hotel filed a claim under their Commercial General Liability Policy (CGL Policy) seeking the amount claimed by the guest.

Key aspects to remember:

1. Designated premises endorsement

The Insured had operations across various locations in the country and abroad. In such cases, the Insured, instead of taking a separate policy for each of the locations, takes coverage for all its locations under one single policy in the name of the Insured. Under the Designated Premises Endorsement, the CGL policy provides a list of premises and their addresses to which the policy offers coverage. The endorsement states that the coverage under the policy applies only to bodily injury, property damage, personal and advertising injury, and medical expenses arising out of the ownership, maintenance, or use of the premises mentioned in the policy.

Therefore, for the claim to be triggered under the CGL policy of the Insured, the concerned hotel in which the incident has taken place must be specifically listed under the designated premises endorsement or mentioned in the policy schedule, in the absence of which, the policy would not trigger for that hotel and the claim would be repudiated.

2. Medical expenses incurred on a no-fault basis

The claim by the guest consisted of the cost incurred by him on medical expenses due to his fall. This can be claimed by the Insured under the medical expenses coverage of the policy. This clause provides that the policy shall pay the necessary medical expenses due to any bodily injury which has been claimed on the Insured even if the Insured was not negligent in their actions and/or operations. However, the policy provides a limitation on the time period post the accident, the costs incurred within which shall only be covered under the policy. To claim under this section, it must be established that the accident has occurred on the Insured's premises or due to the Insured's operations.

The coverage under Coverage C of the Policy i.e., Medical Expenses differs from the coverage provided under Coverage A, i.e., Bodily Injury and Property Damage Liability.

- i. Costs covered: Coverage A provides coverage for costs that the Insured would pay as monetary compensation to the claimant for the loss suffered by him due to any bodily injury or property damage and not the medical costs which the Insured has incurred due to the accident.
- ii. Liability of the Insured: To claim under Coverage A, the Insured must be legally liable towards the claimant, meaning that the Insured must be responsible for the incident and is under the obligation to compensate the claimant unlike under Coverage C, which would apply even in the absence of any fault of the Insured.

The medical expenses cover reimburses/pays for expenses such as surgical costs, hospitalisation expenses, and X-ray costs provided the guest/claimant can produce the documentary evidence for incurring these costs by way of bills and payment receipts.

3. Liquor Liability Extension

Typically, CGL policies have a liquor liability exclusion. However, a Liquor Liability Extension may be added to the policy, which states that the exclusion of liquor liability does not apply to bodily injury or property damage arising out of the selling, serving, or furnishing of alcoholic beverages at the specific activity(ies) described under the policy, which in case of a hotel is, providing hospitality services. For a hotel, hospitality services, in general, means taking care of the guest and anticipating their needs and maintaining a good relationship with them. Therefore, the selling/serving of liquor to the guest on their demand is part of the hospitality services that the hotel provides.

Further, for the exclusion to be applicable, the Insured must be held liable for causing or contributing to the intoxication of the person, meaning that the person consumed alcohol because of the Insured's actions or persuasion. In our case, the guest himself got intoxicated and any amount of alcohol consumed by the guest was not imposed upon him by the hotel.

Thus, in the present scenario, the exclusion of liquor liability did not apply to the Insured and the claim triggered the CGL policy.



Commercial Crime Insurance

What was the claim?

The Insured is a manufacturing company and has agreements with various vendors from whom the Insured procures raw material. The Insured received an email from one of the vendors requesting for payment and informing the Insured about changes in their bank account details. The Insured verified these details by seeking a copy of the Bank mandate letter and made payment to the Vendor in the new bank account given by them. They requested the vendor to dispatch the raw materials since the payment was received by them. However, a few days later, the Vendor emailed the Insured requesting for the due payment again. The Insured informed the Vendor that they had already made payment and attached the payment receipt on the email. The Vendor replied that they had not sent any email prior to this and that the new bank account did not belong to them. On investigation by the Insured, it was found that some perpetrator had impersonated their vendor and committed a fraud by using an email ID deceptively similar to the email of the Vendor. The Insured claimed the loss under their Commercial Crime Insurance Policy (Crime Policy).

Key aspects to remember:

1. Claim under the social engineering fraud endorsement

The Crime policy provides an Endorsement for Social Engineering Fraud by payment of additional premium which offers coverage for, inter alia, Vendor Fraud. Any fraudulent or dishonest impersonation of the Insured's vendor by a third party who via electronic communication instructs any employee of the Insured to execute any authorised transfer of funds from the Insured's account to the perpetrators account, is covered under the Vendor Fraud Clause. The Social Engineering Fraud Endorsement provides a condition that only when the communication has occurred through any electronic medium and such communication has been tested or by any tested medium of communication, the policy will trigger. Here, in this case, the Insured had verified the new bank account details through the Bank mandate letter and had then made a payment to the perpetrator. Further, as defined under the vendor clause, the payment was made via bank transfer from the Insured's account to the perpetrator's account. Accordingly, the loss was covered under the Crime Policy.

2. Deductible vs retention

The terms Deductible and Retention are largely used interchangeably across insurance policies. However, they denote very different concepts in the insurance parlance.

Deductibles reduce the amount of insurance available, whereas when a retention is applied, the limit of insurance is fully available above the retention amount. This means that the amount to be paid by the insurer reduces after applying the deductible, whereas in case of retention, the entire limit of liability is available and the Insurer may need to pay the same provided the loss exceeds the retention amount that has been incurred by the Insured.

3. Applicable retention in this case

The Social Engineering Fraud Endorsement is usually sub-limited under the policy, meaning that the maximum amount payable to the Insured under this endorsement would not be higher than the sub-limit of this endorsement, even when the policy otherwise provides a higher limit of liability. In this case, the limit of liability was INR 1 Crore, however the social engineering fraud endorsement was sub-limited to INR 50 Lac and was specifically subject to a deductible of INR 15 Lac.

Therefore, even if the loss exceeded INR 50 Lac, the maximum liability of the Insurer for cover under the social engineering endorsement was INR 50 Lac minus the deductible of INR 15 Lac, i.e., INR 35 Lac.

Another important aspect connected to deductible under the policy was whether this incident triggered the deductible applicable in India or the one that was applicable to the rest of the world. In this matter, the loss was suffered due to the Insured having transferred the vendor's payment to the perpetrator's bank account. While the Insured was in India, the perpetrator's bank account was outside India and the amount was transferred to an entity outside India. Though the transaction originated in India from an Indian Bank, the loss occurred to the Insured when the amount was actually credited in the bank account of the fraudulent vendor. Accordingly, the deductible of Rest of the World was applied.



What was the claim?

The Insured was in the business of carrying out clinical trials and research studies. The Insured was in the midst of conducting a study for a new medication and conducted a clinical trial for the same. During the test, a research subject (RS) suffered a seizure after the drug was administered. The RS was given primary care in the clinical centre and the RS recovered in a few minutes. The RS was referred to a hospital for further investigation and understand the effect of the drug, if any. The RS was subsequently discharged from the hospital after testing, confirming that everything was normal. Subsequently, the RS claimed that he is not able to work now because of this seizure and demanded compensation for the same. The Insured notified the claim under its Clinical Trial Insurance Policy.

Clinical Trial Insurance

Key aspects to remember:

1. What does a Clinical Trial Liability Insurance Policy cover

- i. Clinical trials refer to scientific tests and treatments experimented on people to understand the efficacy of a medicine or medication.
- ii. Depending on the wordings, the policy may provide coverage for the legal liability and/or no-fault liability of the Insured, arising out of a clinical trial, resulting in bodily injury of the research subject ("RS"), including reasonable legal costs including defence cost as per the conditions of compensation of the policy. Coverage under this policy varies as per the policy wordings issued by different insurance companies.

2. No fault liability cover vs legal liability cover

- i. The policy would pay compensation to participants who have suffered harm, whether or not the Insured's fault/negligence has been established. In order for the policy to trigger, there should be a causal link to injury and study participation but the 'who, what, when, and why' is not dwelled on for the benefit of the RS.
- ii. The Legal Liability cover will indemnify the Insured against all sums for which the Insured is held to be legally liable to pay the RS, damages, caused to the RS by the research, arising from death, bodily injury, physical or mental illness, disease or impairment. Under this cover, the Insured can also avail of reimbursement of costs and expenses incurred in connection with the defence or settlement of any claim.

3. Claim settlement process

- i. The compensation payable under the Policy is determined by an independent lawyer experienced in medical litigation who is appointed to act as an Arbitrator. The choice of the lawyer is typically mutually decided between the Insurer, the Insured, and the Claimant.
- ii. The parties select this arbitrator from a list of qualified names provided by the Insurer. In the likelihood of the parties failing to reach an amicable decision, the appointment of the sole arbitrator is made in accordance with the procedure mentioned in the 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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Our Claim-Handling Expertise

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