



LIABILITY CLAIMS *TAKEAWAYS*

CONTENT

- Employment Practices Liability Insurance
- Product Guarantee and Product Recall
- Commercial General Liability Insurance – Lift Liability Extension

AUGUST 2022

Welcome to the August edition of 'Liability Claims Takeaways' – our monthly insights from industry stalwarts.

A Employment Practices Liability Insurance

WHAT WAS THE CLAIM?

The Insured is a sales company providing end-to-end sales solutions and strategies. The Insured hired an employee, however, the employee's performance was not satisfactory, and the employee was mostly absent from their duties. A few months after joining the organisation, the employee sent an email to the Insured's human resources department alleging that the employee had been assaulted in the office by some senior employees. She filed an FIR against the concerned employees and demanded compensation from them. A court case was also initiated against the Insured and the concerned employees. The Insured filed a claim under the Directors' & Officers' Liability Insurance (D&O Policy) with an Employment Practices Liability Insurance cover (EPLI) for reimbursement of the defence cost incurred in defending the case instituted against the entity as well as the officers of the Insured organisation.

KEY ASPECTS TO CONSIDER:

1. Advancement of defence cost:

Typically, as per the policy terms and conditions, the Insurers may have the right (but not an obligation) to advance some part of the defence cost. The maximum value of such costs is usually sub-limited to a percentage of the policy limit of liability. In this case, the said condition was extremely helpful.

2. Exclusion of criminal conduct by the Insured:

The EPLI Policy usually excludes criminal fines and penalties. Further, it also excludes any claim against the Insured organisation or other insured person wherein, by virtue of any court order it has been established that the acts of the Insured were criminal in nature and the Insured persons, or the Insured organisation has been held liable for such criminal actions. In such cases, the Insurers are not liable to pay/reimburse any cost to the Insured including the defence cost incurred by the Insured or the damages that may be directed against them.

3. Insurer's right to recover the advance defence cost paid:

In cases where the final order of the court has been passed against the Insured with an observation that the Insured Person was involved in any criminal act or dishonest and fraudulent conduct, such claims stand excluded from the EPLI Policy. Accordingly, the Insurers are entitled to claim, by way of a refund, any costs that have been already paid to the Insured in connection with claims where the dishonest and fraudulent conduct of the Insured is established through a final order. This is to ensure that the Insurer is not required to reimburse or remain out-of-pocket, for an otherwise excluded claim.

4. Not to incur any cost without the consent of the Insurer:

As is the case with any liability policy, it is a primary condition that no cost in respect of any claim should be incurred by the Insured without the prior approval of the Insurer. The Insurer has the right to avoid their liability in cases where such costs are incurred without their consent and approval, save and except, when such costs fall within emergency costs and are payable in accordance with the policy terms and conditions.

5. Emergency cost extension:

Many policies also have the provision of emergency cost i.e., cost that may be incurred by the Insured without the Insurer's prior consent, provided it is established that there was an emergency to incur these costs and the consent from the Insurer could not have been obtained in view of the strict timelines that prevailed at the relevant time. This provision is usually freely available to be added to most liability policies.

B Product Guarantee and Product Recall

WHAT WAS THE CLAIM?

The Insured was a manufacturer and supplier of air cooler hose to their clients who further assembled all the parts to manufacture trucks. One of the customers of the Insured received complaints from their end users that hose fitted in the trucks, manufactured during a certain period, were bursting and can be fatal to the truck drivers. The customer of the Insured conducted investigation at their end and established that the fault in the product was due to manufacturing defect in the hose manufactured by the Insured. The customer of the Insured requested the insured to recall their products which were lying in the customer's premises and also compensate the customer for additional costs incurred by them in repairing the products already installed in the trucks. The Insured filed a claim under the Commercial General Liability Policy (CGL Policy) for the cost of Product Recall and Product Guarantee.

KEY ASPECTS TO CONSIDER:

1. What constitutes Product Guarantee and Product Recall?

Product Guarantee covers the costs of removal, recovery, repair, alteration, treatment, replacement, or destruction of the Insured's product or work (or any part of it) which fails to perform the function for which it was manufactured, designed, sold, supplied, installed, repaired, altered, treated, dispatched, or delivered by or on behalf of the Insured in the normal course of the Insured's business activity as described in the policy.

Product Recall covers the reasonable and necessary costs incurred by the Insured/third-party during the agreed period, exclusively for the recall, recovery, withdrawal, disposal, or destruction of the Insured product, provided the recall is a result of the Insured's product having resulted in or eminently likely to result in a bodily injury or property damage. Typically, these involve two types of costs:

1. The first party costs that are incurred directly by the Insured in recalling the product, which is the subject matter of the claim
2. The third-party costs, which any third party incurs due to the defective product of the insured having to be recalled which the insured becomes legally obligated to pay

Product Guarantee and Product Recall are typically excluded under a standard/base CGL Policy unless availed by way of an extension by paying additional premium.

In this claim, the cost incurred by the Insured would be the first party cost which fall within the ambit of Product Recall and the additional costs incurred by the Insured in repairing the trucks fell within the ambit of Product Guarantee.

2. Essential to establish root cause of the defect:

Typically, Product Recall expenses are connected to the actual/likely bodily injury/property damage. Therefore, to claim under this section, it is essential to establish that a bodily injury or the property damage has occurred or is highly probable to occur on account of the defect in the Insured's product. The root cause analysis plays a significant role in establishing the connection between the defect and its likely impact vis-à-vis bodily injury or property damage that may be caused to others on account of the defect. Therefore, the internal investigation report/root cause analysis report is a significant document which is relied upon by the Insurers and surveyors alike to further ascertain their view on a claim.





Commercial General Liability Insurance – Lift Liability Extension

WHAT WAS THE CLAIM?

The Insured is a manufacturer of auto parts and operates their business out of a multi-storied building. The building has multiple lifts and escalators for the convenience of the persons working there as well as for any guests and third parties visiting the premises. One such escalator, while coming down, suddenly stopped in between with a jerk which resulted in bodily injury to the persons who were using it. The injured persons, who were third parties visiting the business premises under authorisation, filed a claim with the Insured company for compensating them for the medical expenses incurred by them and the trauma suffered by them due to the incident. The Insured filed a claim under the Commercial General Liability Policy (CGL Policy) to reimburse any damage that the Insured may need to pay to the claimants in connection with the injuries suffered by them as well as any medical expenses that may be required to attend to the injured persons.

KEY ASPECTS TO CONSIDER:

1. What constitutes a claim for bodily injury under the Lift Liability Extension:

There is a cover available with the CGL policy called Lift Liability Extension which covers the legal liability of the Insured arising out of some defect in the operation of any lift being installed in their business premises, which results in death, bodily injury, or property damage to a third party.

2. Conditions mandatory for claiming under this section:

The lift liability clause specifically provides that the Insured must comply with three conditions, which are as below:

- The premises are kept in a state of good repair/maintenance
- The operation of such facilities is taken care by properly trained personnel
- The materials used are proper and free of any defects

At the time of filing a claim, the Insured needs to establish that the above-mentioned three conditions were being met and provide supporting documents for these, such as a monthly maintenance report of the lift & its surroundings duly filed and signed by a trained and authorised person.

3. Costs covered under this section:

This section is a part of the CGL Policy, and the claims being covered here include:

1. Damages for bodily injury or property damage
2. Defence cost in such claims
3. Settlement agreed with the claimant, with the consent of the Insurer

The Insured is required to submit all medical invoices, details of the damages, and their respective payment proofs to the Insurer. In the absence of these, the Insurer can refuse to consider the cost. Further, the Insurer has a right to get the medical bills investigated and in case of any discrepancy, they can ask for further documentation or refuse to take into consideration the disputed amount.

There is usually no separate sum insured for the lift liability clause and the costs are covered under the limit of indemnity taken under the policy and subject to the deductible mentioned under the policy.

4. Subrogation right of the Insurer:

Once any payment is made under the policy, the Insurer has a subrogation right against the lift manufacturer i.e., the right to recover the amount paid to the Insured under the Lift Liability Extension clause under the Insured's policy from the manufacturer of the lift. It must be established beyond reasonable doubt that the incident that occurred was due to some default on the part of the lift manufacturer. One way to prove this is by way of investigation/analysis report done post the incident, establishing the cause of the defect. The Insurer cannot recover an amount more than what they have paid to the Insured. The Insured must fully cooperate with the Insurer in recovering the amount and transfer all rights to the insurance company.



We are sure you found the anecdotes interesting and got some key points to take away.

Stay tuned for the next edition!

About Prudent Insurance Brokers

We, at Prudent Insurance Brokers, provide industry-leading expertise in designing and managing insurance programs to address unique requirements of your organisation. We have a client-centric service infrastructure that delivers proactively & passionately in a highly systematic manner. Our liability team comprises ex-underwriters and the largest number of qualified lawyers and legal professionals who can help you across different areas:

- 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 the largest claims team 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.





www.prudentbrokers.com

FOR MORE QUERIES, PLEASE REACH OUT TO:

Tanuj Gulani
tanuj.gulani@prudentbrokers.com

Neha Anand
neha.anand@prudentbrokers.com

Richa Dhasmana
richa.dhasmana@prudentbrokers.com

Jyoti Krishnan
jyoti.krishnan@prudentbrokers.com

Nishant Kashyap
nishant.kashyap@prudentbrokers.com

Mayank Sharma
mayank.sharma@prudentbrokers.com

Arun Prasadh
arun.prasadh@prudentbrokers.com

Hemangi Jhaveri
hemangi.jhaveri@prudentbrokers.com

PRUDENT INSURANCE BROKERS PVT. LTD.

Mumbai | Bengaluru | Chennai | Gurugram | Hyderabad | Ludhiana | Pune | Ahmedabad

CIN No.: U70100MH1982PTC027681 | License No. 291 (February 18, 2020 to February 17, 2023)

Insurance is a subject matter of solicitation

This report and any recommendations, analysis or advice provided herein, are based on our experience as insurance and reinsurance brokers or as consultants, as applicable, are not intended to be taken as advice or recommendations regarding any individual situation. The opinions expressed herein are valid only for the purpose stated herein and as of the date hereof. We are not responsible for the consequences of any unauthorized use of this report. We have used what we believe are reliable, up-to-date and comprehensive information and analysis, but all information is provided without warranty of any kind, express or implied, and we disclaim any responsibility for such information or analysis or to update the information or analysis in this report. We accept no liability for any loss arising from any action taken or refrained from, or any decision made, as a result of or reliance upon anything contained in this report or any reports or sources of information referred to herein, or for actual results or future events or any damages of any kind, including without limitation direct, indirect, consequential, exemplary, special, or other damages, even if advised of the possibility of such damages. Please know the associated risks and the applicable charges, from your policy document issued by the insurance company. For more details on benefits, exclusions, limitations, terms and conditions, please read sales brochure/policy wording carefully before concluding a sale. Commencement of risk cover under the Policy is subject to receipt of payable premium to desired Insurance Company only. Prudent Insurance Brokers Pvt. Ltd. is the registered Broker with IRDAI and does not underwrite the risk or act as an Insurer.