Liability Claims

TAKEAWAYS

NOVEMBER,2025

Welcome to the 58th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

CONTENT:

1 Multimodal Transport Operators (MTO) Liability Insurance

Event Chronology

The insured was a road freight company responsible for transporting a sugar consignment, imported to the customer's warehouse within India. After the customs clearance, the sugar had to be transported in a temperature-controlled container, with a maximum allowable temperature of 10 degrees Celsius, to ensure the quality and safety of the product. However, upon arrival at the warehouse, the container's temperature was found to be significantly higher than the specified temperature limit, leading to lumping of the product. As a result, the customer claimed compensation from the insured for the cost of the goods, including clearing and forwarding expenses with all related duties and taxes, alleging that the temperature deviation compromised the consignment during transit.

Key Intent of the Claim

Case Study

As per the policy exclusion, the policy did not cover 'Perishables, Frozen and/or Chilled Good, Seedlings and Bulbs.' According to the surveyor, the claim was classified under the category of frozen and/or chilled goods as it was raised on account of a temperature-related issue.

Scope of the Policy

The MTO Policy covers a multimodal operator's legal liability arising from a claim for any physical loss or damage to cargo, consequential losses, breach of professional duty owing to negligent error or omission, unintentional breach of the law leading to fines, customs duty or similar charges, or accidental third-party bodily injury or property damage. In the case at hand, the surveyor initially precluded coverage for the claim, relying on the policy exclusion mentioned above.

Prudent: The Part Well Played

Prudent interpreted and clarified that the sugar consignment was not a frozen or chilled good, but only required transportation in a temperature-controlled environment. We emphasised that the MTO policy exclusion applied specifically to refrigerated or frozen goods, needing preservation of their composition, such as fresh produce and seafood. Prudent's detailed explanation led the surveyor to agree with this interpretation, leading to the successful conclusion of the claim.

Highlight

Through a sound interpretation of the policy exclusions, Prudent ensured that temperature-controlled goods were correctly differentiated from frozen or chilled cargo, resulting in successful claim resolution.

2 Comprehensive General Liability (CGL) Insurance

Event Chronology

The insured supplied outdoor units of room heaters to their customer in Europe. The customer reported field failures of these units, which caused the boiler systems to stop functioning, ultimately resulting in the cessation of the heating system. To address this, the insured conducted various design experiments to identify the specific components responsible for the failures. After pinpointing the faulty parts, the insured supplied spare components to repair the existing inventory and replaced the units that were already deployed at the end customer's site. Additionally, costs were incurred for utilising a technical laboratory to perform root cause identification tests.

Key Intent of the Claim

Case Study

The insured's room heater units failed in the field, causing the heating systems to stop working. Product Guarantee coverage was triggered to cover the costs of repairing and replacing faulty components, while Financial Loss coverage was applied to compensate for the direct losses suffered by the customer due to the product malfunction.

Scope of the Policy

Product Guarantee: This cover helps businesses manage costs if one of their products fail to perform as intended. It includes expenses for repair, replacement, removal, treatment, or disposal of the defective product.

Financial Loss: This protection covers direct monetary losses suffered by customers or third parties due to a defective product. It applies when the insured receives a written demand or when legal or administrative proceedings are initiated seeking compensation for damages arising from the product's failure.

Prudent: The Part Well Played

The insurance policy imposed a two-year limit, covering costs incurred within two years after the products leave the insured's control. This restriction could have affected the claim. We interpreted the clause on series of costs, under which all costs arising from the same source or defect are considered incurred at the time the first cost arises. Additionally, we supported the insured in segregating various costs to ensure adequate coverage under the product guarantee and financial loss categories. Prudent also assisted the insured extensively in compiling and submitting detailed documentation regarding supplies, resupplies, and cost-related particulars.

Highlight

This case demonstrates how a clear distinction between product guarantee and financial loss claims, coupled with thorough documentation, can be critical in successfully resolving claims involving technical product failures.

3 Errors or Omissions (E&O) Liability Insurance

Event Chronology

The insured is a technology solutions provider, catering primarily to the BFSI sector. One of the insured's customers made the insured aware of various challenges prevalent in their ongoing business relationship. Through the same communication, the customer also provided 60 days' notice for termination of the agreement between the parties.

The customer alleged that the insured lacked adequate support for high priority issues such as service lags and incomplete module deployment- all pointing to the inherent deficiencies in the insured's services.

The customer, therefore, refused to honour the outstanding fees of the insured. The parties reached a settlement; however, the customer paid only 10% the fees they owed to the insured.

Key Intent of the Claim

Case Study

The insured faced non-payment when a customer cited service delays and terminated the agreement, paying only 10% of the outstanding fees. Outstanding Fee Cover, under the E&O Policy, was triggered to reimburse the fees the insured was contractually entitled to recover, while accounting for potential claims that could arise from pursuing full payment. This highlights how the cover safeguards service providers against client non-payment.

Scope of the Policy

What is the 'Outstanding Fee Cover' under the E&O Policy?

To trigger this cover, the following conditions must be met:

The insurer will pay for the outstanding fees and expenses for which an insured, but for any 'wrongful act', would be entitled to recover from the customer if such a claim is made in connection with the insured's business and is notified to the insurer during the policy period.

Indemnity will only be granted if the insured can demonstrate (to the insurer's satisfaction) that the institution of proceedings for recovery of fees or expenses (by insured) would provoke a potentially valid claim for a greater amount from a customer for which indemnity would be provided under the E&O Policy.

Highlight

This case study highlights a common challenge faced by technology solution providers where allegations of delayed or deficient service delivery often led to disputes over outstanding fees. Many tech firms encounter situations where customers withhold payments citing delay or deficiency in their services.

Prudent: The Part Well Played

Although the policy originally included exclusions for delay in performance and delay in delivery, Prudent successfully negotiated a carve-back to ensure coverage for allegations arising from such delays. Furthermore, we secured outstanding fee coverage for the insured. Upon becoming aware of the dispute, we promptly notified the insurer despite the insured's position that no monetary claim had yet been made. Anticipating the potential for payment withholding, we proactively advised the insured, notified the matter in a timely manner, and positioned the claim appropriately under the E&O policy.

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 consists of members with underwriting experience and the largest number of lawyers who can assist 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 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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