Liability Claims

TAKEAWAYS

September, 2025

Welcome to the 56th edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

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1 Professional Indemnity Insurance (PI Policy)

Event Chronology

The insured, a medical institute, faced legal complications following a surgical oversight. A patient admitted for an abdominal injury underwent surgery at the insured facility. However, two weeks post-operation, the patient reported severe abdominal pain. Diagnostic imaging revealed that a foreign object had been left inside the body during the surgery. He had to undergo three additional surgeries immediately to completely remove and clean the infected area and subsequently incurred medical expenses. Nearly a year after the surgeries, the patient sent a legal notice demanding compensation for medical negligence.

Key Intent of the Claim

Case Study

A Professional Indemnity (PI) Policy for medical institutions provides financial protection against claims of bodily injury and/or death caused by or alleged to have been caused by negligence, errors, or omissions in the performance of medical services. The PI policy also covers defence costs incurred in defending the hospital or its staff against such claims.

Scope of the Policy

To establish the medical negligence of the insured, the insurer needed the complete set of medical records, patient consent forms, doctor's notes, and treatment protocols showing that the cotton gauze was left behind in the insured's hospital. The insurer refused to support an out-of-court settlement and insisted they would pay only if mandated by a court order. They even dismissed the patient's demand as unjustified, leaving the insured trapped between the possibility of a prolonged legal battle and the urgent need to resolve the matter discreetly since the patient threatened to go public.

Highlight

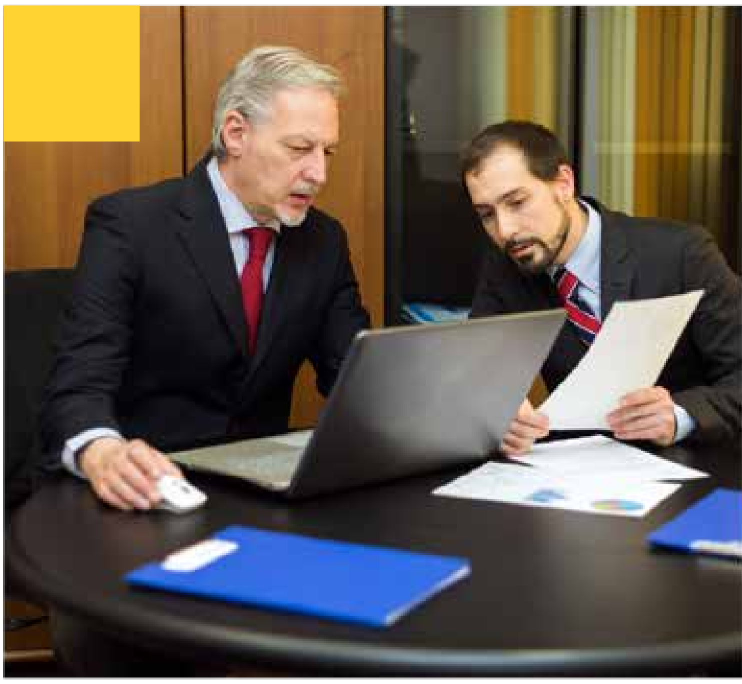
The case highlights the importance of support and guidance to insureds at the time of a claim, to bridge the gap between an insurer's and the insured's requirements. In many cases, we present judicial precedents to the insurer which enables them to justify internally the settlement amount, resulting in timely consent.

Prudent: The Part Well Played

First, by reviewing and scrutinising the medical records shared by the patient, we were able to establish that the cotton gauze was left behind at the time of surgery in the insured hospital. This was done by comparing the CT scan done before and after the surgery. Once the insured's liability was established, the next challenge was to have the insurer agree to an out-of-court settlement. For this, we handheld the insurer in reviewing the policy terms and elaborating on clauses that included settlement. We demonstrated that pursuing an out-of-court settlement, especially when the insured's liability was clearly established, made sense both legally and financially. And lastly, we were able to justify the demand made by the patient with the aid of judicial precedents from the Supreme Court of India and National Consumer Disputes Redressal Commission, where awards made in similar medical negligence cases far exceeded the demand by the patient. This reinforced the insured's case, and gave the insurer the confidence to proceed with a settlement.

2 Directors & Officers Liability Insurance (D&O Policy)

Event Chronology



The insured was a consulting company with multiple offices across the globe. In 2023, a few projects of the insured were discontinued. The insured informed this to the concerned employees and, based on the process laid down by law in the country, terminated their services. In 2024, one of the ex-employees alleged wrongful termination in breach of the country's law. The claim was notified in the D&O policy of the insured, which had an Employment Practices Liability endorsement.

Key Intent of the Claim

Case Study

The case study highlights the importance of understanding the trigger under a liability insurance policy and providing sound advice to insureds regarding the coverages provided under the policy.

Scope of the Policy

A D&O policy with Employment Practices Liability coverage provides financial protection to companies in case of claims arising on account of wrongful acts, such as unfair or wrongful dismissal, discrimination, wrongful deprivation of career opportunity, etc. The policy also covers reasonable legal expenses and costs incurred by the insured to defend such claims.

The insurer had alleged a delay in the notification of the claim. Further, the defence costs being claimed by the insured was below the policy deductible.

Highlight

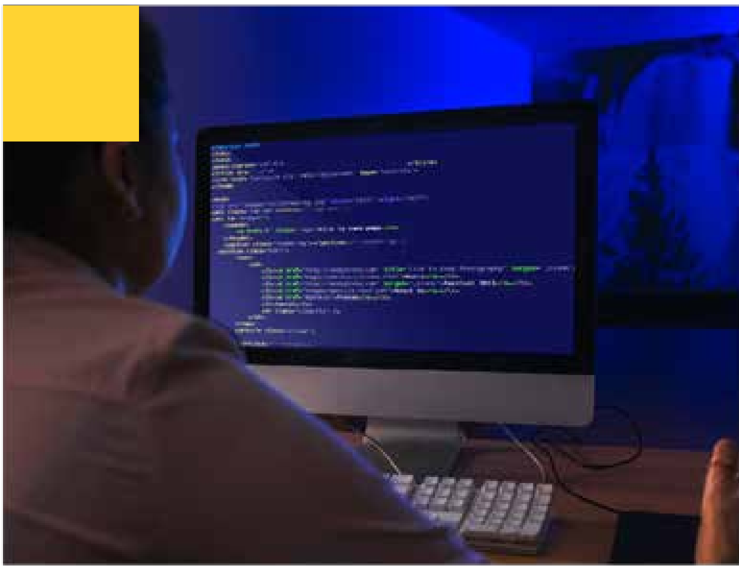
An intermediary's understanding of the policy triggers and coverages plays a crucial role for insureds since we guide them through the complexities of the claim and the policy conditions.

Prudent: The Part Well Played

We reviewed the timeline related to the incident. We were able to establish that the claim was notified as soon as the matter came to the knowledge of the control group (as defined under the policy) within the policy period. We supported this with relevant internal communication of the insured. Concerning the defence costs, we highlighted to the insured the requirement of prior written consent of the insurer for such appointment, which was informed to the team handling the litigation. Further, we reviewed the policy, which provided a clause wherein no retention would apply to defence costs where the claim is dismissed without payment of any monetary consideration by the insured. Hence, the insured was able to receive the defence costs incurred in the present matter since the case by the ex-employee was dismissed in favour of the insured.

3 Error & Omission Liability Insurance (E&O Policy)

Event Chronology



The insured was a software development company that provided tailored solutions to clients based on their requirements and had a contract to develop a vendor management software for a manufacturing company. It was acquired by a leading global IT company and decided to discontinue their insurance policies, which they had sourced directly. This is because the company would now be covered under the acquiring company's global insurance program. Post the acquisition date, the insured received a claim from the manufacturing client on account of issues with the software provided by them, which led to a loss to the client. The insured notified the matter in the Error and Omissions Policy, which was in force before the acquisition and in the global policy of the acquiring company.

Key Intent of the Claim Case Study

With regard to insurances such as Error and Omissions, claims may arise much after the services are performed and accepted. In the present case as well, the claim arose post the software being accepted and used by the client for a certain duration. This showcases the importance of a run-off endorsement in cases where there is a transaction such as acquisition, merger, etc.

Scope of the Policy

An E&O policy provides coverage for loss suffered by a third-party on account of the insured's product or services due to an error, omission, or negligence by the insured. In case of a claims-made policy, the claim has to be notified under the active policy when it is first known or received by the insured.

In the present matter, on account of the transaction, the insured did not renew the policy covering the acts done prior to the acquisition date. The new policy of the acquiring company only provided coverage for acts done post the acquisition date.

Highlight

For claims-made policies, when a policy is not renewed or when the new policy changes the retroactive date post a transaction, it becomes necessary to evaluate the requirement of a run-off endorsement. Such endorsement would protect the insured against claims arising from incidents that took place during the previous policy period but were notified for the first time after the policy period ended.

Prudent: The Part Well Played

The insured reached out to Prudent for advice on this matter. We informed the insured that in such cases of transactions where a new policy would be in effect with a new retroactive date for the insured, the run-off endorsement, provides coverage for claims made post the expiry of the policy for acts that were done during the policy period. This run-off endorsement is for a specific period and provides coverage for claims that the insured receives for the first time post expiry of the previous policy. While the insured had taken the run-off endorsement, they did not know the relevance of the same. Our pro-active questioning and information gathering allowed us to receive this information and take necessary steps towards claim settlement.

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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