

LIABILITY CLAIMS **TAKEAWAYS**

JANUARY 2021

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Wish you a Happy & Prosperous 2021!

With the onset of the new year, we bring to you a new monthly series, '**Liability Claims Takeaways**'. The series has been conceived to update you on the various kinds of claims reported and provide insights from different industry professionals who deal with such claims.

Liability Claims are on the rise, more so during the pandemic. From small organisations to industrial giants, risk of business operations and regulations & compliance continues to be a plague.

Our primary aim is to spread awareness about do's and don'ts while handling liability claims. We hope you find this series useful.

Directors & Officers Insurance

WHAT WAS THE CLAIM?

A leading accountancy firm received a notice from one of the regulators, instructing some of their directors to submit documents. A claim was intimated under their Directors & Officers Insurance Policy.

KEY ASPECTS TO CONSIDER:

1. **Timing of claim intimation:** The Insured did not have strong procedures in place to ensure timely intimation of claim to the Insurer. In the meantime, cost was incurred on defense and for replying to the notice without the Insurer's consent. This would usually allow an Insurer to not pay any costs when their consent had not been taken. In this scenario, given the severity of the case, the Insurer agreed to pay all reasonable costs. However, it is important to have a mechanism for timely claim intimation and consent-seeking from the Insurer before costs are incurred.
2. **Claims-made policy:** The notice was in relation to a few previous notices received from the same regulator. A question arose – whether a claim under the current year's policy could be made, since the policy was a claims-made policy i.e., claims received and reported in the policy period alone would be considered for cover. In this matter, the previous letters were in the nature of usual correspondence without any hint of any investigation or inquiry. Therefore, the Insurer was aligned that the notice received in the current year that mentioned an investigation, would constitute a claim and therefore, be considered under the current year's policy.



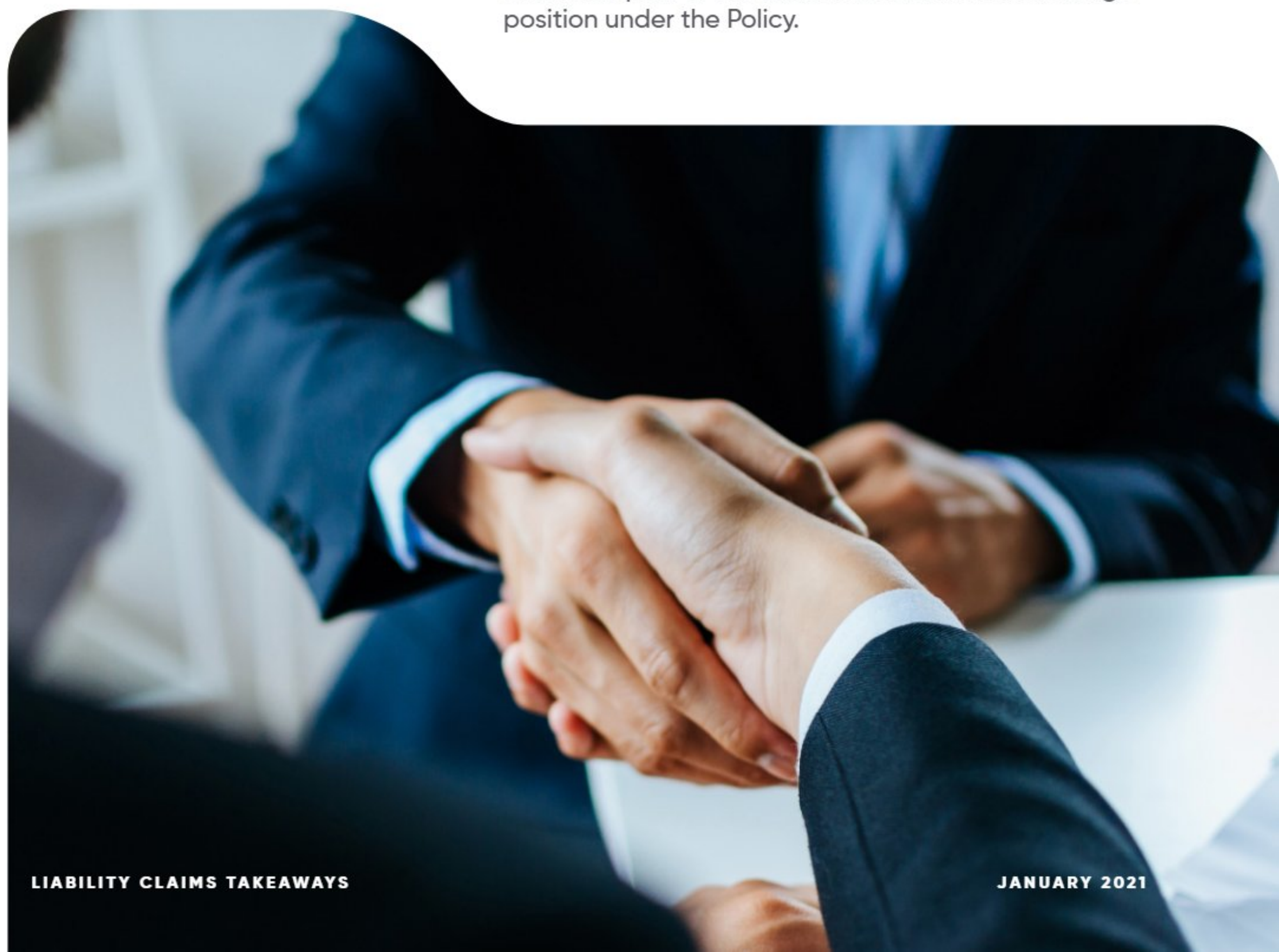
Employment Practices Liability Insurance

WHAT WAS THE CLAIM?

A leading IT company in India availed an EPLI policy for itself and its worldwide subsidiaries. An ex-employee of its US subsidiary filed a case in the US alleging wrongful termination. A suit was filed for compensation and damages, and was expected to run into hundreds of thousands of dollars in compensation and defense cost. A claim was intimated under their EPLI policy. The Suit was settled and the total settlement and defense cost aggregated to approximately USD 85,000.

KEY ASPECTS TO CONSIDER:

1. **Regular updates to Insurer:** The Insurer was kept informed at every stage of the claim, including various exchanges regarding the settlement. This ensured complete involvement of the Insurer in the claim.
2. **Prior consent of Insurer for settlement:** The Insurer was given sufficient time when seeking consent regarding the settlement agreement. This avoided any surprises and resulted in quick consent from the Insurer for settlement.
3. **Review of settlement vis-à-vis Insurance policy:** While the settlement was being drafted, all aspects of potential benefits that any employee could claim were listed in the agreement as forming part of settlement to ensure no future claims arose on the same subject. Usually, terminal benefits are not covered in any EPLI policy as those are not a part of liability of employer due to a wrongful act, but a contractual entitlement of employee. Accordingly, the settlement agreement was carefully drafted to ensure no part of the same contradicts the coverage position under the Policy.



Commercial General Liability Insurance

WHAT WAS THE CLAIM?

The Insured is a company in India engaged in the manufacturing of specific automobile parts. They have been supplying these to their customers across the globe. In one series of production where the customer had given specifications for manufacturing, when the supplied goods reached the customer, it was observed that there were different defects in different components of the goods supplied. The customer engaged an external agency to correct these defects and claimed the costs from the Insured.

The Insured and the customer entered into a settlement agreement to settle this matter for a specific value less than the total cost of the supplied batch of goods. The Insured claimed the settlement amount from the Insurer.

KEY ASPECTS TO CONSIDER:

1. **Timing of claim intimation:** The claim was intimated much after the incident took place. This could have an adverse impact on the claim and the Insurer could allege breach of policy conditions.
2. **Root cause analysis:** No investigative report was prepared by the Insured for ascertaining the reason for the observed defects. It is recommended that in case of technical defects, a root cause analysis (or similar) report be prepared or obtained from a third party agency to place on record, the official reasons for the defects. This will also allow the Insurer to understand the claim and make an assessment.
3. **Prior consent of Insurer for settlement:** The settlement was entered into with the customer without Insurer's consent. This must be completely avoided as the Policy requires Insurer's prior written consent. While in some cases, if no prejudice is caused to the Insurer, the Insurer may not reject the claim for this reason alone, we advise all Insureds to absolutely avoid settling/admitting any liability without the Insurer's consent.

Professional Indemnity Insurance

WHAT WAS THE CLAIM?

The Insured is an Indian company engaged in the business of providing detailing services to fabricators in relation to several construction projects. In one of the projects, the detailing provided resulted in fabrication that did not match the drawings agreed upon between the parties and resulted in a claim against the Insured from their customer. This was notified as a claim under the Professional Indemnity Policy.

KEY ASPECTS TO CONSIDER:

1. **Timing of claim intimation and disclosure of circumstances:** Life span of a project can range from a few weeks to a few months or even years, whereas, life of a liability insurance policy is usually one year. It is, therefore, important to intimate any claim immediately in the same policy period when the claim is first received. The Insured in this case, would wait till the project is over to consolidate all claims and, in doing so, miss the timeline for claim intimation. This was corrected by putting in place a claim intimation operations manual with formats for reporting, such that a claim could be reported as soon as received from the customer of the Insured.
2. **No settlement without Insurer's consent:** Usually in such businesses, the claim is not in the form of a monetary demand. At times, the customer would simply debit the sum involved. In such cases, it is important to not 'agree' to any debit without Insurer's prior written consent. Even if the debit takes place, a protest should be placed for record so as to not prejudice the subrogation right of the Insurer.



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 organization. We have a client-centric service infrastructure that delivers proactively & passionately in a highly systematic manner. Our Liability Team comprises of 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.



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

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