

MARSH

Liability Claims Bulletin: Tenth Edition



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Introduction

The liability insurance market is growing steadily. Increased litigation, technological integration, regulatory changes and greater business awareness are driving the increase in demand for liability insurance.

Breach of contract claims are emerging as a significant risk driver for insured businesses and firms resulting in the rise in Professional Indemnity Insurance Claims. Employee fraud, theft exposes the companies to financial losses that go undetected for months, this has led to an increase in the number of commercial crime insurance claims. Wrongful dismissal and workplace discrimination have become two of the most significant causes of employment-related insurance claims. Ransomware attacks represent a common and evolving cyber risk scenario, driving both the volume and complexity of cyber insurance claims.

We are pleased to present the tenth edition of our Liability Claims Bulletin, that captures the challenges encountered while handling claims and how our claims specialists supported insureds in managing and resolving these matters.



Professional Indemnity (PI) Insurance Claims

02



Cyber Induced PI - Security Breach

Settlement of Major PI Claim

Industry:
Technology

Country/ Region:
US

Insured Event:
Allegation of breach of security
– failure to protect sensitive
information

Claim categories:

~ USD 7 Mn / INR 60 Cr. +

approx. settlement with claimant

~ USD 1 Mn / INR 9 Cr. +

approx. defense costs

Covered Quantum:

~ USD 6 Mn+ / INR 50 Cr. +

approx.

Incident Details

Background

A class action was filed against insured's customer in the US for alleged negligence which led to breach of end customer's PII. Insured was responsible for maintaining the data security but failed to do so by marking as safe certain malicious activity at the customer system which led to the security breach.

Claim Challenges

The insurer raised challenges: (i) related to coverage where they believed that the security breach/ unauthorized access exclusion under the policy applies; (ii) breach of other terms and conditions - the defense counsel being pre-decided and the costs of the firm being expensive, (iii) lack of information – documents being privileged.

Outcome

Marsh assisted the insured in representing why the exclusion does not apply and that costs incurred were reasonable. As far as the sharing of privileged documents was concerned, only relevant documents were shared as per agreed protocols. The insurer agreed to pay the claim by applying some allocation.

PI: E&O Claim

Settlement of Claim under IMI Policy

Industry:
Financial Services

Country/ Region:
India

Insured Event:
Investment Loss due to
manual input error

Claim categories:

~ USD 600^K / INR 5.5 Cr.

approx. voluntary compensation to the
investors of the scheme

Covered Quantum:

~ USD 400^K / INR 3.5 Cr.

approx.

Incident Details

Background

The claim is in relation to a manual input error during bidding on treasury bills that led to an incorrect yield calculation, causing a financial loss to investors. Upon discovery, the insured sought annulment from the regulator, which was denied, and voluntarily compensated the investors to comply with regulatory requirements. The compensation was recorded and subsequently paid to the fund to cover the loss.

Claim Challenges

The insurer objected on the grounds that (i) the claim is a first-party loss and not arising from a third party claim thereby not satisfying the policy's professional liability clause. (ii) the insured assumed liability and made payment without prior written consent of insurer, potentially breaching policy conditions, (iii) reliance on policy exclusions.

Outcome

Marsh and the Insured successfully established that the loss falls within the scope of the policy, with the Fund recognized as the insured party. Marsh argued inapplicability of certain exclusions and helped establish that the loss attributed to a covered wrongful professional act. Consequently, the insurer agreed to provide indemnity subject to policy terms and allocation.

Commercial Crime Claim

03



Crime: Employee Infidelity

Settlement of Major Commercial Crime Claim

Industry:
E-commerce

Country/ Region:
India

Insured Event:
Embezzlement of company funds through fraudulent bank accounts

Claim categories:

~ USD 3.2 Mn / INR 30 Cr.

approx. direct financial loss

~ USD 200 K / INR 2 Cr.

approx. defense costs

Covered Quantum:

~ USD 3.2 Mn / INR 30 Cr.

approx.

Incident Details

Background

The Suspect orchestrated fraudulent payments totaling INR 30 Cr. approx. to 10 unauthorized bank accounts by manipulating payment input files before uploading them to the bank portal.

Claim Challenges

Insurer challenged the suspect's role, authority and independence in payment processing, highlighted insured company's absence of formal SOPs and internal controls, and challenged material non-disclosures. Further, there was dispute regarding engagement of an investigating agency and a top tier law firm.

Outcome

In this matter, Marsh presented arguments to the insurer and, after negotiations, the insurer agreed to provide indemnity (subject to allocation).

Employment
Practices
Liability (EPL)
Insurance
Claims

04



EPL: Discrimination/Sexual harassment

Settlement of Major EPL Claim

Industry:
Hospitality

Country/ Region:
USA

Insured Event:
Allegations of discrimination based on sex, sexual harassment, retaliation and constructive discharge

Claim categories:

~ USD 600^K / INR 5.5^{Cr.}

approx. settlement with claimant

~ USD 300^K / INR 3^{Cr.}

approx. defense costs

Covered Quantum:

~ USD 900^K / INR 8^{Cr.}

approx.

Incident Details

Background

The insured's ex-employee, filed a lawsuit in the US District Court, Southern District New York alleging sexual harassment, sex discrimination, hostile work environment, retaliation, and sexual assault and battery. Accordingly, the prayer for relief sought compensatory damages including damages for lost wages, back pay, emotional distress, attorneys' fees and costs, etc.

Claim Challenges

The insurer raised challenges pertaining to the defense counsel being pre-decided and the costs of the firm being on pensive side of the market spectrum. Further, the insurer was not in agreement with the proposed settlement amount.

Outcome

In this instance, the insurer accepted the claim for approximately USD 5 million (with client consent to disclose). Through skilled negotiations, the recognized external counsel was able to reduce the original claim of USD 1.5 Mn to USD 620,000, a notable achievement in mitigating potential financial and reputational exposure which arose from very serious, graphic, and sensitive allegations.

EPL: Claim for wrongful termination of employment

Settlement of Major EPL Claim

Industry:
Technology

Country/ Region:
Germany

Insured Event:
Claim for wrongful dismissal, back wages, bonus and entitlements

Claim categories:

~ USD 600 K / INR 6 Cr. approx. settlement with claimant

~ USD 300 K / INR 3 Cr. approx. defense costs

Covered Quantum:

~ USD 200 K / INR 2 Cr. approx.

Incident Details

▼ Background	▼ Claim Challenges	▼ Outcome
An ex-employee of the insured filed a complaint against it before the Labour Courts in Germany alleging wrongful dismissal seeking reinstatement. The claimant also initiated ancillary proceedings claiming back payment of wages, bonus and entitlements.	The insurer raised challenges in relation to (i) delayed intimation (ii) claim falling outside the policy period (iii) settlement offer being made without the insurer's consent (iv) defense counsel being appointed and defense cost expended without the prior consent of the insurer.	Marsh along with the insured argued that there is no delay in intimation of the claim. Considering that multiple independent legal actions were initiated against the insured - Marsh assisted in drawing a distinction between two different claims where only the latter had financial exposure calling for notification to the insurer as opposed to the former. The insurer agreed to provide indemnity, subject to policy terms and allocation.

Cyber Claim

05



Cyber: Ransomware attack and BI loss

Settlement of Cyber Claim

Industry:

Tire Manufacturer/
Automotive

Country/ Region:

India

Insured Event:

Ransomware attack followed
by significant Business
Interruption (BI) losses.

Claim categories:

~ USD 50^K / INR 50 Lakhs.

approx. I.T Forensics and System
restoration costs

~ USD 2^{Mn} / INR 20 Cr.

approx. Business Interruption loss

Covered Quantum:

~ USD 600^K / INR 5.5 Cr.

approx.

Incident Details

Background

In June 2023, insured suffered a ransomware attack by Akira. 400GB+ data was exfiltrated by threat actors.

Claim Challenges

Marsh's claims team and BI loss experts worked with the insured to analyze and prepare BI loss working statements. Further, Marsh also challenged surveyor's assessment on certain components of BI Loss. Insured did not seek written consent from the insurer prior to appointing forensic experts.

Outcome

Marsh established the necessity of bringing the forensic experts on board in the interest of time and convinced the insurer that they quoted reasonable costs in the present case. INR 5.5 crores approx. was paid by the insurer which was net of deductible and adjustments made on BI loss. Marsh's BI loss experts were able to successfully aid the insured in the entire BI loss working and portray clear loss trends on account of the ransomware attack to the insurer.

Know your team at Marsh India

Leadership

Anup Dhingra

Managing Director, FINPRO India Middle East & Africa (IMEA).

anup.dhingra@marsh.com

Bhishma Maheshwari

Chief Client Officer, Senior Vice President, Communications, Media and Technology Leader, Marsh India.

bhishma.maheshwari@marsh.com

Jay Shah

Chief Growth Leader, Senior Vice President, Financial Institution Leader, FINPRO, Marsh India.

jay.shah@marsh.com

Indranil Roy

Senior Vice President, Corporate Segment Liability and Construction Leader, Marsh India.

indranil.roy@marsh.com

Claims Team

Sidhartha Pattnaik

Claims Advocacy Leader, Marsh India.

sidhartha.pattnaik@marsh.com

Akshara Sharma

Claims Advocacy Leader - FINPRO, Cyber, Casualty Marsh India.

akshara.sharma@marsh.com

Debashree Pusti

Assistant Vice President, FINPRO/Cyber, Marsh India.

debashree.pusti@marsh.com

Nanki Arora

Assistant Vice President, FINPRO/PEMA, Marsh India.

nanki.arora@marsh.com

Aishwarya Shetty

Relationship Manager, FINPRO, Marsh India.

aishwarya.shetty@marsh.com

Urja Doshi

Relationship Manager, FINPRO, Marsh India.

urja.doshi@marsh.com

Jyotika Aggarwal

Assistant Manager, FINPRO, Marsh India.

jyotika.aggarwal@marsh.com

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