MARSH

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Liability Claims Bulletin: 11th Edition

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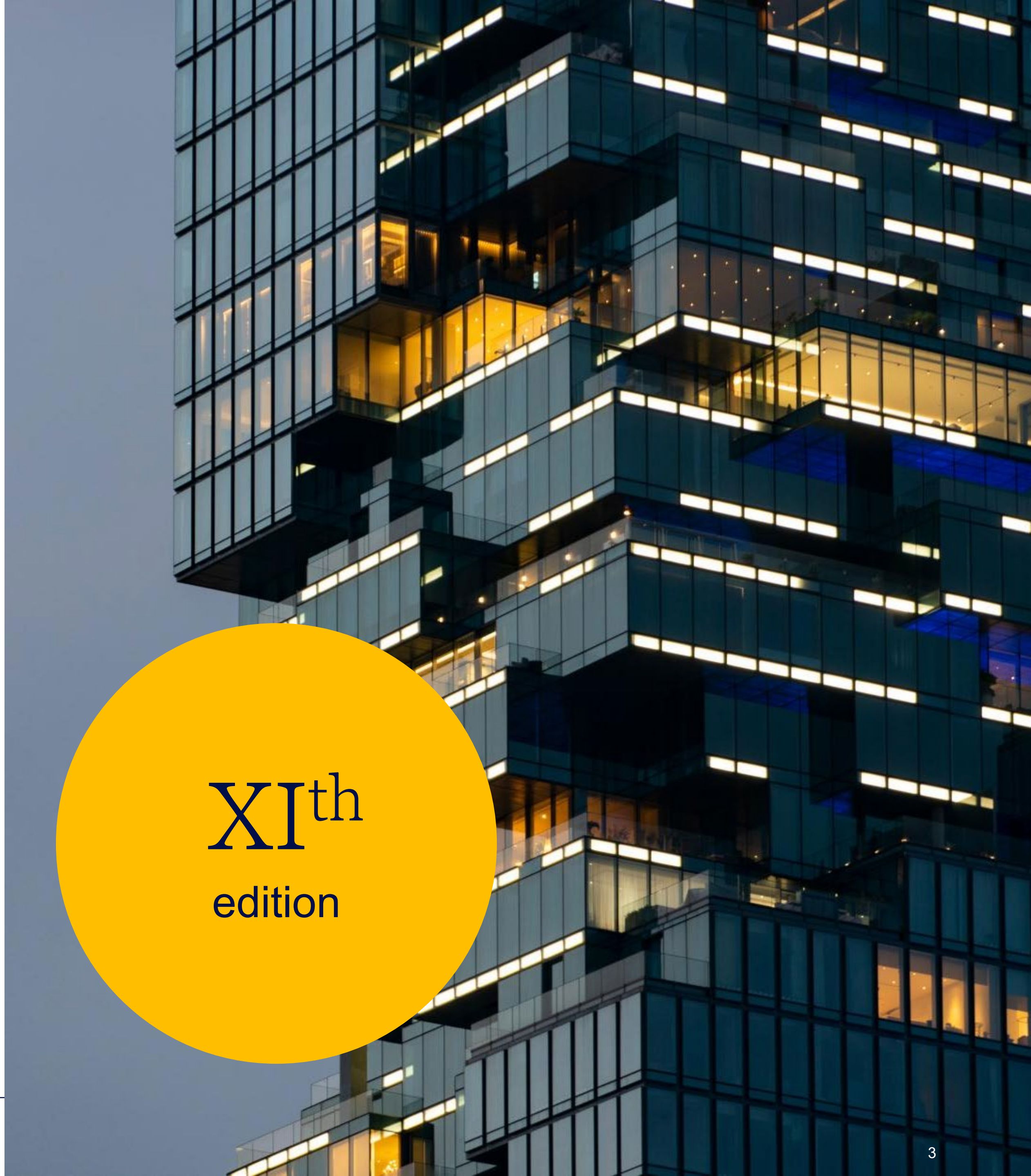
Introduction

The liability insurance market is experiencing significant growth and transformation due to rising legal risks, increased litigation costs, evolving regulations and emerging threats. These factors are re-shaping the liability insurance landscape.

- Third party frauds and employee frauds remain common causes of Commercial Crime Insurance Claims across industries highlighting the importance of effective risk management practices.
- Cyber Insurance Claims continue to rise due to data breaches that affect large volumes of sensitive information and result in significant legal, financial and network interruption.
- Wrongful employee termination related disputes and alleged breach of employment agreements are some causes of recent Employment Practices Liability (EPL) Insurance Claims.
- Product Recall and Guarantee claims (under Commercial General Liability policy “CGL Policy”) arising out of product defects creating substantial legal and financial liabilities for businesses are also on the rise.

We are pleased to present the 11th edition of our Liability Claims Bulletin, that captures the challenges encountered while handling claims and how our claims advocates supported insureds in managing and resolving these matters.



Commercial crime claims

02

Crime: Fraudulent alteration of instrument- Third party fraud

Settlement of crime claim

Industry:	Country/ Region:	Insured event:
Aviation	US	Loss due to fraudulent alteration of instruction/instrument

Coverage categories: (Loss and professional experts' costs)

$2 Mn (Loss) + $200,000 (Professional experts' cost) approx.

Total ₹20 Cr. approx.

Quantum paid:

~ $1.5 Mn+ / ₹14 Cr. approx.
(net of deductible)

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Incident Details

Background

An authorized sales agent committed fraud by underreporting ticket sales and manually altering ticket prices on the reporting instrument shared with the insured. The agent charged end customers the full fare but reported lower amounts to insured, retaining the difference. The insured uncovered the scheme during a monthly audit when agent's reported sales did not match published fares.

Insuring clause

The claim was covered under "fraudulent act committed by any other person through fraudulent alteration of an instrument".

Claim challenges/ outcome

- The insurer initially denied the claim, but Marsh successfully persuaded them by clarifying relevant policy wordings as they apply to the insured's business.
- Since tickets covered multiple jurisdictions, calculation of loss was complex. Marsh also produced detailed narratives and calculations by showing how the multiple components of an airline ticket qualified as a loss under the policy.
- Considering the technicalities involved in understanding insured's business model, numerous discussions were scheduled with surveyor which were facilitated by Marsh.

Crime: Theft of raw material- Employee fraud

Settlement of crime claim

Industry:	Country/ Region:	Insured event:
Pharmaceutical	India	Theft of Raw Material by an Employee

Coverage categories: (Loss and professional experts' costs)

~ $300,000 / ₹3 Cr. approx.

Quantum paid:

~ $250,000 / ₹2.5 Cr. approx. (net of deductible)

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Incident Details

Background

An employee of the insured stole 64,000 kgs of raw materials by accessing insured's system to fraudulently record the transfer of raw materials from one department to another. The employee along with external parties disabled the security feeds and stole the raw materials from storage, transporting them via truck out of the storage complex. The incident came to light when inventory reconciliation was carried out by the insured.

Insuring clause

The claim was covered under "theft committed by employee in collusion with third parties".

Claim challenges/ outcome

- Surveyor raised concerns regarding the approval matrix and lapses in the process in relation to employee accessing the system.
- Multiple stakeholders were involved in survey of the incident and documents. Marsh liaised with each stakeholder to achieve a successful assessment.

Cyber claim

03

Cyber: Breach of Data

Settlement of cyber claim

Industry:	**Country/ Region:**	**Insured event:**
Financial Institution	India	Data leak on the dark web

Coverage categories: (IT forensics & professional experts' costs)

~ $300,000 / ₹2.5 Cr. approx.

Quantum paid:

~ $250,000 / ₹2 Cr. approx. (net of deductible)

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Incident Details

Background

The insured had migrated to a safer method of accessing the AWS environment. As a part of this change, AWS keys were to be rotated periodically. Threat Actor had gained access to some of the keys a year prior to the incident and used the exposed keys to extract Personally Identifiable Information (PII) data from AWS account a year later. This PII was posted on dark web. Insured was made aware of the data leak through their dark web monitoring partner.

Insuring clause

Since multiple experts were appointed, multiple insuring clauses triggered such as "pro-active forensics costs, crisis expenses, professional fees for advice and representation for regulatory investigation".

Claim challenges/ outcome

- Leaked data included PII of insured's customers along with certain company sensitive data. Considering the severity of leak, insured had to engage multiple experts such as forensics firm, PR firm, law firm, etc.
- Since regulations required forensics report from a Cert-In empaneled partner, insured had to engage multiple forensics experts for re-validation of forensics report.
- Insurer initially raised queries regarding the simultaneous appointment of multiple independent experts. Marsh successfully presented comprehensive representations detailing the distinct, specialized scope of each partner, ensuring maximum coverage alignment under the policy terms and conditions. As a result, insurer applied a reduced allocation.

Employment Practices Liability (EPL) insurance claims

04

EPL: Wrongful termination- Claim for re-instatement

Settlement of EPL claim

Industry:	**Country/ Region:**	**Insured event:**
Tech	India	Allegations of wrongful dismissal-claim for re-instatement

Coverage categories: (Settlement + defense costs)

~ $40,000 / ₹40 Lacs approx.

Quantum paid:

~ $30,000 / ₹30 Lacs approx. (full costs net of deductible)

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Incident Details

Background

The insured's ex-employee (claimant) filed a complaint against the insured organization before the Commissioner of Labor for wrongful dismissal and re-instatement.

Insuring clause

This was a claim for alleged employment wrongful act under the policy from ex-employee. The defense costs of the insured entity were picked under the policy. Settlement amount was covered and paid as loss under the policy.

Claim challenges/ outcome

- While the cover under the policy was confirmed, the insurer raised challenges pertaining to:
  - The defense costs - different rates have been billed for the hearings.
  - Tax deductions are not covered under the purview of the policy.
  - Also, itemized transaction numbers were provided to validate the payment made against the initial invoices raised by the counsels.
- The insured provided justification that the rates were pre-agreed for the different tasks to be done by the counsel till conclusion of the matter and the same were billed accordingly. On the basis of explanation provided by the insured, insurer agreed to cover the tax deduction. Insured was able to arrange and provided Bank Statement as payment proofs. Insurer paid full settlement amount plus defense costs.

D&O (EPL): Breach of employment agreement

Settlement of EPL claim

Industry:	Country/ Region:	Insured event:
Technology	Australia	Allegations of Breach of Employment Agreement

Coverage categories: (Settlement + defense costs)

~ $80,000 / ₹70 Lacs+ approx.

Quantum paid:

~ $6,000 / ₹6 Lacs approx. (net of deductible)

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Incident Details

Background

An employee of the insured filed a claim with the Federal Court of Australia against the insured company and one of its insured person, the Chief Business Officer (CBO) during the relevant period regarding allegations of breach of his Employment Agreement and the Fair Work Act regulations.

Insuring clause

The claim was covered under the EPL section of the D&O policy and reimbursed reasonable legal fees and expenses incurred on behalf of an insured person. Policy covers claims arising from employment wrongful acts committed by the insured company; however, Fair Labor Standards Act (FLSA) related claims are excluded.

Claim challenges/ outcome

- The claim was notified under both D&O and EPL policies. Since the allegations pertained to wage and hour issues, this attracted the FLSA exclusion, hence the EPL policy could not be triggered.
- There was no such exclusion under D&O policy. As the allegations arose directly from the CBO's actions undertaken in his supervisory capacity, while performing his authorized duties for the company, D&O policy triggered.
- The D&O policy paid only the defense costs incurred on behalf of the insured person and not the settlement amount as the settlement was concluded by the insured entity.

Commercial General Liability (CGL) insurance claims

05

CGL: Product defect

Settlement of CGL claim

Industry:	**Country/ Region:**	**Insured event:**
Manufacturing	EU	Product Defect

Coverage categories: (Product guarantee and product recall)

~ $300,000 / ₹3 Cr. approx.

Quantum paid:

~ $150,000 / ₹1.5 Cr. approx. (net of deductible)

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Incident Details

Background

There were defects identified in some of the vital mechanical parts supplied by the insured to their customer in different locations across EU. These parts were used in commercial trucks. Customer claimed for costs of inspection, sorting and recall.

Insuring clause

The Product Recall and Product Guarantee section triggered in the present case which covered recall costs along with costs of inspection and sorting.

Claim challenges/ outcome

- The surveyor raised challenges in relation to some defective parts being supplied prior to the retroactive date and some defective parts being supplied post notification of loss to insurer. Also, certain supporting documents and bifurcation of costs were not available.
- Marsh assisted the insured and they were able to provide substantiation for most of the costs claimed. Insured arranged for line-item wise explanation and documents from their customer. Insurer agreed to pay the claim by deducting the costs towards post notification loss and excluded pre-retroactive date supplies.

Claims reporting dos & don'ts

Dos

- Insured must possess proper records of all claim-related information/documentation.
- Inform the insurer/s as soon as the claim/circumstance comes to the company's notice.
- Take all steps to minimize the loss and act as if you are uninsured. Do not admit liability for any accident or loss or enter into any settlement with a third party without the explicit written consent of the insurer.
- Co-operate with the insurer. Provide timely and regular updates on claims and prompt responses to insurers' queries.
- Take appropriate action to preserve the insurer's right to recovery.

Don'ts

- Avoid engaging legal counsel or incurring any costs without prior written consent of the insurer. It is advisable to engage experts empaneled with the insurer.
- Do not tell claimants that you have insurance. Avoid acknowledging liability or disclosing insurance limits to third-party claimants without prior alignment with Marsh and the insurer.
- Do not engage multiple counsels on a single claim, and ensure that there is no duplication or overlap in the services rendered by your specialists/consultants.

Know your team at Marsh India

Leadership

Anup Dhingra
Managing Director, FINPRO India Middle East & Africa (IMEA)
anup.dhingra@marsh.com

Bhishma Maheshwari
Managing Director, FINPRO, Marsh India
bhishma.maheshwari@marsh.com

Jay Shah
Chief Growth Leader, Senior Vice President, Financial Institution Leader, FINPRO, Marsh India
jay.shah@marsh.com

Nachiket Shah
Senior Vice President, Management Liability Leader, FINPRO, Marsh India
nachiket.shah@marsh.com

Anshu Maheshwari
Senior Vice President, FINPRO, Marsh India
anshu.maheshwari@marsh.com

Indranil Roy
Senior Vice President, Corporate Segment Liability and Construction Leader, Marsh India
indranil.roy@marsh.com

Aanand Mehra
Senior Vice President, FINPRO, Marsh India
Aanand.mehra@marsh.com

Shaina Taneja
Senior Vice President, FINPRO, Marsh India
Shaina.Taneja@marsh.com

Mayank Sikka
Senior Vice President, FINPRO, Marsh India
Mayank.sikka@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

Nanki Arora
Vice President, FINPRO/PEMA, Marsh India
nanki.arora@marsh.com

Debashree Pusti
Assistant Vice President, FINPRO/Cyber, Marsh India
debashree.pusti@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
Relationship Manager, FINPRO, Marsh India
jyotika.aggarwal@marsh.com

MARSH

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