

Employment Practices Liability Insurance: Key Trends and Insights

2022-23



Introduction

Events of the recent past such as the Covid-19 pandemic, economic uncertainties, changing geo-politics, emergence of new regions as business hubs and more have completely transformed the traditional employer-employee relationship.

Indian Companies, especially ones who are specialists in Communication, Media, and Technology (CMT) are exposed to newer challenges and risks related to their workforce and find themselves at a critical juncture where they must strive to strike a balance between a productive workforce and employee's personal well-being & growth.

In this release, we discuss the current pivotal trends in the Employment Practices Liability Insurance (EPLI) claims, and the market pricing trends seen till March 2023.

EPLI Policy

EPLI Policy, provides cover for costs relating to damages arising from allegations made by employee against employers including claims related to discrimination (E.g. age, race, gender, disability, sex, and religion); wrongful termination, retaliation, harassment (sexual harassment, hostile work environment); wrongful discipline and other employment issues that could be considered a violation.

EPLI Pricing Trends

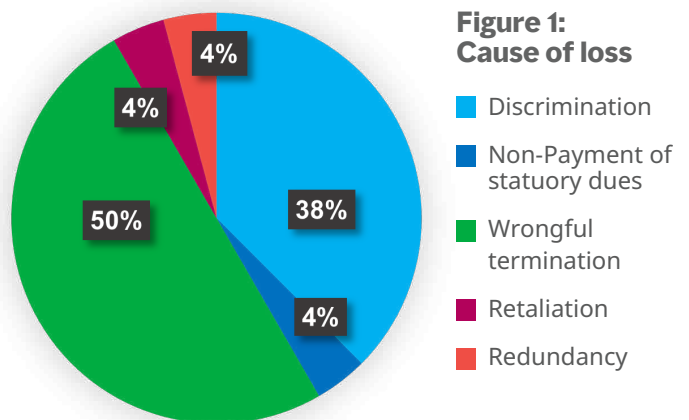
In 2022-23, EPLI premiums increased by 12.28% (14.82% in 2021-22). Large and small companies experienced average rate changes, while mid-sized companies saw a significant 26.7% rise in their overall premium, primarily due to higher primary layer premiums driven by complex EPLI claims. Large companies with claims faced a substantial 42.5% premium increase. In 2022-23 the deductibles increased marginally as compared to 2021-22.

Policy	ROL 2021-22 (Primary and Excess)	ROL 2022-23 (Primary and Excess)	Change in Average ROL (%)
EPLI	11,007	12,359	12.28

Please Note: The outcomes and observations are basis the calculation of the primary and excess Rate On-Line (ROL) which is the premium charged for a policy limit of \$1M. For our observations, we filtered these by revenue sizes categorized as large (>\$1B), mid-size (\$200M to \$1B) and small (<\$200M) and the number of claims per policy, client or revenue segment.

EPLI Claims Snapshot

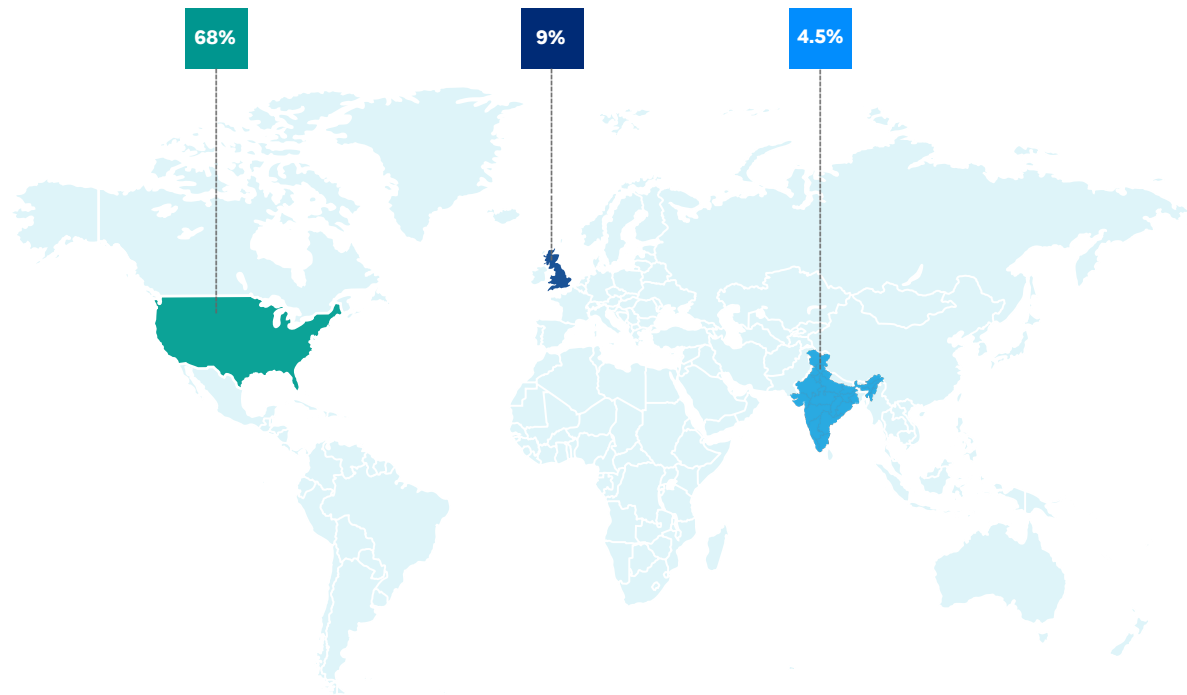
As against 2021-22, 2022-23 saw lesser number of EPLI claims. The allegations made in these employment practices disputes against Marsh’s CMT clients in 2022-23 largely remained the same as 2021-22. Primary allegations were of wrongful termination, and discrimination besides others.



Jurisdiction

In 2022-23, almost 68% of the EPLI claims arose out of USA which is where the CMT companies have large work force. This is followed by the United Kingdom, from where 9% of the claims were reported. In addition to India, claims were also reported from Canada Taiwan, Philippines and Germany.

Figure 2: Top jurisdictions for reported claims

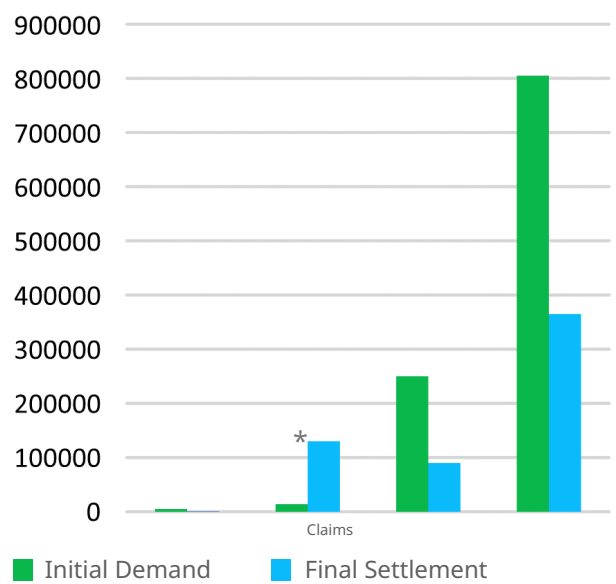


Damages claimed in EPLI disputes

2022-23 saw exposures in terms of notified EPLI claims where the initial demands made by the claimants ranged between USD 10,000 to almost USD 1M. However, the settlements between parties were much lower than the initial demands and ranged between USD 100,000 to USD 400,000. The quantum was much larger for class action disputes, sometimes upwards of USD 4M.

Parties chose to settle the matters during mediations than defending and challenging in trial, as the costs of litigation especially in US and UK are very high. The defence costs can be anywhere between USD 20,000 to USD 700,000, and this may be higher for disputes which don't get settled early and go to trial.

Figure 3: Initial Demand vs Final Settlement



* In some cases, the initial complaints do not quantify the damages claimed. However, the final settlement in all cases are much lesser than the demand made by the claimant.

Conclusion

The year 2022-23 was a dynamic period for EPLI. Post Covid -19, we observed a rapid shift in the mindsets of CMT companies; from moonlighting employees to now eliminating excess talent, thus opening doors for more EPL disputes. 2022-23 followed 2021-22 in terms of number of EPLI disputes, leading to rising premiums, making it difficult for the insurers to underwrite this risk. CMT companies continued to face employment-related lawsuits, which arose from the same allegations as before (wrongful termination, discrimination, retaliation, etc.). However, one of the key trends observed in 2022-23 was of the increase in class actions suits in the USA which has increased the exposures for these CMT companies, especially which have larger presence in the USA. Against this backdrop, Marsh continues to render subject matter expertise and new-age solutions to our clients.

Know your team:

Leadership -

ANUP DHINGRA

Managing Director, FINPRO,
Marsh India, Middle East, Africa (IMEA)

BHISHMA MAHESHWARI

Senior Vice President, FINPRO, Marsh India
bhishma.maheshwari@marsh.com

JAY SHAH

Senior Vice President, FINPRO, Marsh India
jay.shah@marsh.com

NACHIKET SHAH

Senior Vice President, FINPRO, Marsh India
nachiket.shah@marsh.com

INDRANIL ROY

Senior Vice President, FINPRO & PEMA and
Corporate Segment Liability Leader,
Marsh India
indranil.roy@marsh.com

Claims -

SIDHARTHA PATTNAIK

Senior Vice President, Head of Claims, Marsh India
sidhartha.pattnaik@marsh.com

AKSHARA SHARMA

Vice President, FINPRO, Marsh India
akshara.sharma@marsh.com

ARPITA CUDDAPAH

Senior Manager, FINPRO, Marsh India
arpita.cuddapah@marsh.com

RADHIKA NIPHADKAR

Assistant Manager, FINPRO, Marsh India
radhika.niphadkar@marsh.com

AISHWARYA SHETTY

Assistant Manager, FINPRO, Marsh India
aishwarya.shetty@marsh.com

URJA DOSHI

Management Trainee, FINPRO, Marsh India
urja.doshi@marsh.com

Disclaimer: Marsh India Insurance Brokers Pvt. Ltd. is a subsidiary of Marsh McLennan. This document is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. The information contained herein is based on sources we believe reliable, but we make no representation or warranty as to its accuracy.

Marsh shall have no obligation to update this publication and shall have no liability to you or any other party arising out of this publication or any matter contained herein. Any modelling, analytics, or projections are subject to inherent uncertainty, and the Marsh Analysis could be materially affected if any underlying assumptions, conditions, information, or factors are inaccurate or incomplete or should change. Any statements concerning actuarial, tax, accounting, or legal matters are based solely on our experience as insurance brokers and risk consultants and are not to be relied upon as actuarial, accounting, tax, or legal advice, for which you should consult your own professional advisors. The information contained herein is based on sources we believe reliable, but we make no representation or warranty as to its accuracy. Except as may be set forth in an agreement between you and Marsh, Marsh shall have no obligation to update the Marsh Analysis and shall have no liability to you or any other party with regard to the Marsh Analysis or to any services provided by a third party to you or Marsh.

Marsh makes no representation or warranty concerning the application of policy wordings or the financial condition or solvency of insurers or reinsurers. Marsh makes no assurances regarding the availability, cost, or terms of insurance coverage. All decisions regarding the amount, type or terms of coverage shall be your sole responsibility. While Marsh may provide advice and recommendations, you must decide on the specific coverage that is appropriate for your particular circumstances and financial position.

Marsh India Insurance Brokers Pvt. Ltd. having corporate and the registered office at 1201-02, Tower 2, One World Center, Plot-841, Jupiter Textile Compound Mills, Senapati Bapat Marg, Elphinstone Road (W), Mumbai 400 013 is registered as a composite broker with Insurance and Regulatory Development Authority of India (IRDAI). Its license no. is 120 and is valid from 03/03/2021 to 02/03/2024. CIN: U66010MH2002PTC138276.

Copyright 2021 Marsh India Insurance Brokers Pvt Ltd. All rights reserved. Compliance IND-20231019A