



Liability Claims Bulletin:

Fifth Edition

August 2023



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Introduction

The Liability Insurance market in India continues to experience unique and large diverse claims. For the second quarter of 2023, Marsh clients saw wide variety of claims, ranging from Crime to Cyber to Professional Indemnity. These companies included multinationals doing business across geographies, and experienced unique and large losses.

In the Fifth Edition of our flagship **Liability Claims Bulletin** we focus on five insightful scenarios, which sheds light on how companies' experienced increased crime claims around the pandemic time, faced ransomware incidents, and managed breach of contract claims from their customers.









This bulletin provides significant insights into the sophisticated claims and how Marsh assisted its clients in managing these claims including some key learnings from these claims.

As a leading global broker, Marsh continues its commitment to achieve the best claims outcomes for its clients, advocating their interests and securing optimal settlements in all the claims managed by us.











Crime Claim

1. Forgery by an Employee









 Insured	An Indian global information technology company
 Background	<ul style="list-style-type: none"> Insured provided Asset Management and Ancillary Services to its customer in the US. Insured's employee while working at the customer site forged the chain of custody documentation for multiple electronics and shipped the said assets to resellers and the said employee's home address. A complaint was filed with the Police Department in the US who investigated the matter and recovered a few devices. Subsequently, the investigation was inactive pending additional leads. The insured received a formal notice to indemnify their customer for the said loss.
 Claim Amount	USD 1.8 million approx. / INR 14.5 Cr. approx.
 Policy Type	Commercial Crime Policy
 Challenges Raised by Insurers	<ul style="list-style-type: none"> The primary challenge was that the insurer cited breach of warranty owing to insured's deviation from the disclosures made in the proposal form in relation to inventory controls and audits. The insurer opined that the value of the assets misappropriated by the erring employee prior to the date of signing of the proposal form shall stand deducted from the loss assessment. The insurer also highlighted certain deviations from the contractually agreed processes between the parties. Insurer engaged a vendor in the US to investigate the matter at ground level.
 Marsh's Contribution	<ul style="list-style-type: none"> Marsh successfully countered the insurer by establishing that the disclosures made by the insured in the proposal form pertained to the controls and processes implemented by the insured at their own premises, and not at their customer's premises. Marsh liaised with the onsite team of the insured to justify to the insurer that the deviation in the processes was on account of the pandemic, and how subsequent to the easing of the pandemic-related restrictions, the erring employee forged entries in the asset management tool and stockroom tracking documentation to orchestrate the theft.
 Claim Outcome	Insurer paid USD 1.4 million approx. / INR 11 Cr. approx. (net of policy deductible)
 Key Learnings	<ul style="list-style-type: none"> Insured must respond to the disclosures requested in the proposal form with utmost caution, remaining wary of the intent of the insurer. Any incorrect disclosures can pose a challenge at the time of the claim. Insured must possess proper records of monthly stock audit reports, snapshots of the asset management tools, serial numbers and inward/outward entries of physical assets etc. For crime claims, insurer should be asked to depute a loss adjuster as soon as a loss is notified by an insured, without deferring the same to a later date.

2. Money fraud by an Employees

 Insured	Life Insurance Company
 Background	<ul style="list-style-type: none"> An employee of the insured made unauthorised access to the payment file and fraudulently transferred the funds from insured bank account resulting into a claim by insured under employee theft coverage under the policy. A complaint was filed with cyber police station against the accused employee. After investigation an amount of USD 1.3 million approx. / INR 10 Cr. approx. out of USD 1.9 million approx. / INR 15 Cr. approx. (total loss amount) was recovered in the form of cash and freeze/lien on bank accounts.
 Claim Amount	USD 600,000 approx. / INR 5 Cr. approx. + investigation costs of USD 90,000 approx. / INR 70 Lakhs approx.
 Policy Type	Commercial Crime Policy
 Challenges Raised by Insurers	The insurer raised concerns in relation to the cover for the investigation costs incurred in relation to this matter.
 Marsh's Contribution	<ul style="list-style-type: none"> Marsh found that the investigation costs endorsement under the policy provided cover for these costs incurred in investigating the matter. Marsh helped the insured collate and submit all the claim related documents on time to the insurer.
 Claim Outcome	Insurer paid full loss amount of USD 600,000 approx. / INR 4.5 Cr. approx. (net of policy deductible and adjustments).
 Key Learnings	<ul style="list-style-type: none"> Timely notification and submission of documents to the insurer is essential. In case of any ambiguity on point of admissibility of costs incurred in relation to a claim under the policy, please consult your broker.

Cyber Claims

3. Ransomware Attack



 Insured	A Multinational textile company
 Background	<ul style="list-style-type: none"> A ransomware attack on the insured's cloud infrastructure led to a business interruption loss exposure. The insured was unable to sign into their ERP system, which led to disruption in the insured's warehousing, billing and dispatching activities.
 Claim Amount	USD 130,000 approx. / INR 1 Cr. approx.
 Policy Type	Cyber Policy
 Challenges Raised by Insurers	<ul style="list-style-type: none"> The insurer raised concerns regarding whether 'Insured's system', as defined in the insurance policy, would extend to include software operated / administered by insured even if hosted on the cloud server. With regards to the Business Interruption loss assessment, the surveyor applied adjustment on account of festivals in the same month as the cyber incident. The surveyor contended that during the festival/holiday season, a dip in sales was apparent as per the insured's historical sales data.
 Marsh's Contribution	<ul style="list-style-type: none"> Marsh successfully convinced the insurer that the definition of 'insured system' in the present insurance policy extended to include any cloud servers operated by the insured for its business purposes. Marsh worked extensively with the insured and surveyor to understand the complex operating model of the insured, to arrive at the short sales by taking into account historic data of the insured, and to finally arrive at a mutually agreeable net profit loss calculation.
 Claim Outcome	USD 90,000 approx. / INR 60 Lakhs approx. (net of policy deductible and minor adjustments)
 Key Learnings	<ul style="list-style-type: none"> Thorough understanding of the provisions of the insurance contract in order to yield the best outcome for the insured is essential. Timely involvement of Cyber & Business Interruption Loss experts is important in order to liaise with the insured and the loss adjuster to align on the methodology of computation of net profit. Please consult your broker for the same.

Professional Indemnity Claims

4. Failure to meet contractual obligations- Scenario 1

 Insured	An Indian global information technology company
 Background	<ul style="list-style-type: none"> This matter concerns a complaint filed in the US by the insured's client alleging failure to meet the contractual obligations it made under the Business Process Outsourcing Agreement. The parties mediated and settled after 5 years of the initial complaint.
 Claim Amount	Settlement: USD 6 million approx. / INR 50 Cr. approx. + Defence costs: USD 4 million approx. / 30 Cr. approx.
 Policy Type	Professional Indemnity Policy
 Challenges Raised by Insurers	<ul style="list-style-type: none"> Insurer declined the claim as there was a Breach of Condition Precedents under the policy including insurer's right to associate/participate in the defence of the claim and insurer's consent Clause. Insurer's concern was while the information was provided, it wasn't provided on time or reasonable time was not provided for them to participate in the defence. Insurer was not given enough time to consent to the settled. In the absence of insurer's consent, insured settled with their client as a prudent uninsured.
 Marsh's Contribution	<ul style="list-style-type: none"> Marsh was able to convince the insurer that the claim cannot be declined solely on the basis of information not been provided as the information critical for the insurer to conclude coverage assessment was shared; and that insured had shared the information that was available with them. Every jurisdiction is different and in the US there are certain documents which are kept under attorney-client privilege and therefore cannot be shared.
 Claim Outcome	USD 3 million approx. / INR 27 Cr. approx. (net of policy deductible)
 Key Learnings	<ul style="list-style-type: none"> Keep the insurer updated of all developments. Share information as and when available. Seek prior written consent of the insurer before settling the matter. Reasonable opportunity needs to be provided to the insurer to associate in the defence of the claim, if they have elected to do so. If certain documents cannot be shared because of attorney-client privilege, then the same needs to be brought to insurer's attention early on in the discussion. A call with the insured's counsel helps to move the discussion.

5. Failure to meet contractual obligations- Scenario 2

 Insured	An Indian global information technology company
 Background	<ul style="list-style-type: none"> The insured entered into an agreement with their customer, whereby the insured was appointed as a single service provider to manage the customer's business operations and technology across the customer's various financial services lines. Insured's customer alleged that during the course of the engagement, they faced certain difficulties and delays, in particular, failure to align themselves with the contractually agreed timelines. Subsequently, the customer sent a termination notice to the insured. As a part of the dispute resolution procedure under the agreement, both parties submitted their position to a mediator and customer made a claim for damages.
 Claim Amount	GBP 70 million approx. / INR 800 Cr. approx.
 Policy Type	Professional Indemnity Policy
 Challenges Raised by Insurers	<ul style="list-style-type: none"> The primary challenge was for the insured to furnish substantiation of the amount claimed by its customer. Since the parties had not reached the arbitration stage, the insurer sought the bifurcation of the proposed settlement amount, and proofs to substantiate such a demand from the insured's customer. The insurer also raised concerns regarding involvement of one of the insured's fully owned subsidiaries on the present project, and questioned why the insured had not invoked the local policy of the said subsidiary. The insurer lastly questioned the 'refund of fee' component under the settlement since the return of fee and payment of compensation for the replacement vendor would entail in the claimant receiving services for no cost.
 Marsh's Contribution	<ul style="list-style-type: none"> Marsh assisted the insured at each stage of the settlement negotiations and advised on the various components and nuances of the proposed settlement vis-à-vis the insurance policy. Marsh convinced the insurer as to why the liability was entirely saddled on the insured, and not their subsidiary, by segregating the roles of the respective entities vis-à-vis the allegations levelled by the claimant. Marsh successfully countered the insurer's position regarding the return of fee component (Which was covered under the policy with a sub-limit) and arrived at a mutually acceptable allocation on the said amount.
 Claim Outcome	Upwards of GBP 15 million approx. / INR 150 Cr. approx. (net of policy deductible) towards the settlement and GBP 570,000 approx. / INR 6 Cr. approx. towards defence costs.
 Key Learnings	<ul style="list-style-type: none"> The claim was notified to the insurer as soon as the insured became aware of the matter, and every subsequent action towards the defence of the matter was with the insurer's consonance. A detailed defence counsel advise on the merits/ demerits of the dispute should be sought ahead of the settlement. Prior to the settlement, seek approval from the insurer so as to adhere with the policy condition of consent under the policy.

Summary of Key Learnings

- Proposal form must be filled with utmost caution, in consultation with your broker. Your proposal form becomes the basis on which coverage for a claim is provided under the Insurance Policy. Non-disclosure/ Misrepresentation can great challenges while discussing the claim.
- Insured must possess proper records of all claim-related information/documentation.
- Timely notification and submission of documents to the insurer is essential.
- Thorough understanding of the provisions of the insurance contract in order to yield the best outcome for the insured is essential.
- Timely involvement of Cyber & Business Interruption Loss experts is important in order to liaise with the insured and the loss adjuster to align on the methodology of computation of net profit is required.
- Keep the insurer updated of all developments. Share information as and when available.
- Reasonable opportunity needs to be provided to the insurer to associate in the defence of the claim, if they have elected to do so.
- If certain documents cannot be shared because of attorney client privilege the same needs to be brought to insurer's attention early on in the discussion.

Know Your Team:

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