



Volume V, No. 3

Journal

FEBRUARY 2007



Bailing out of Liability

बीमा विनियामक और विकास प्राधिकरण

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Printed by Alapati Bapanna and
published by C.S.Rao on behalf of
Insurance Regulatory and Development Authority.

Editor: U. Jawaharlal

Printed at Kalajyothi Process Ltd.
(with design inputs from Wide Reach)
1-1-60/5, RTC Cross Roads
Musheerabad, Hyderabad - 500 020
and published from
Parisrama Bhavanam, III Floor
5-9-58/B, Basheer Bagh
Hyderabad - 500 004
Phone: +91-40-66820964, 66789768
Fax: +91-40-66823334
e-mail: irdajournal@irdaonline.org

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From the Publisher

Liability is a responsibility that one owes to others, by virtue of being the owner of an asset – either movable or immovable. This responsibility is hard to fathom, leave alone defining it. A guest on your premises, whether invited or not, could sue you for damages arising out of a fracture sustained by a mere skid or slip, while on your premises. Liability itself is a very dynamic domain; and what could be covered under its purview knows no bounds. It would not be an exaggeration to mention that liability is a responsibility that one bears by virtue of being a member of a civil society.

Liability insurance has not been very well-known in the Indian insurance domain. The Public Liability Insurance Act, 1991 is a great milestone in this direction. Although it covers only environmental liability, it has triggered the responsibilities that a corporate entity has to put in place in order that civil life, in general, is not adversely

affected. Further, liability insurance has widened in its role in light of the various corporate scandals that occurred worldwide in the recent years. The opening up of the insurance industry itself led to the growth of liability insurance although the Indian insurance industry is still at a low level as compared to several of its counterparts elsewhere. Liability insurance is the focus of this issue of the Journal.

An insurance contract is heavily dependent on the interpretation of clauses, as has been repeated quite often. However, controversies keep raging about ambiguities in the contractual obligations and a proper interpretation thereof. The importance of clauses in an insurance contract and their interpretation forms the focus of the next issue of the Journal.



C.S. Rao



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The Enigma Called Liability

The Role of Liability Insurance

To what extent one is liable to another is a very tricky issue. Even before that, why should one necessarily be liable to others or to the entire society? The very fact that we all belong to a civilized society makes us liable; and this liability is so very dynamic that what was not a liability not-very-long ago can paralyze the interests of an individual, a corporate entity, a society or an entire nation itself; if found guilty or deficient. In quantitative terms also, what was possible earlier to escape with an admonition or a mild punishment can seriously cripple the functioning of the guilty. Further, society itself is turning increasingly litigious from an earlier benign environment and in this scenario, liability assumes monumental proportions.

The fact that the consequences of an act could not be foreseen does not absolve any party from the responsibility. The classic case of a world renowned television anchor would put it in better light. While interviewing an eminent personality, she is believed to have made an off-the-cuff remark that she would refrain from eating beef, if that is likely to be a causative factor for the mad-cow disease. She had to fight a long-drawn legal battle to prove that she did not intend to hurt the interests of the beef lobby.

The extent of one's appreciation of this enigmatic phenomenon is directly in relation to the level of the development of the society that one lives in. Naturally, the success of Liability Insurance also follows the same course; and as a result, it was not very well known in the Indian insurance industry for a long time. Although it has seen an increased incidence in the liberalized regime; when compared to its success in the more developed markets, it is far from anywhere near the desirable level. With its increasing role as a major economic force in the world, one can be certain that Liability Insurance is going to be a major component of the non-life portfolio of Indian insurance market.

Liability Insurance is the focus of this issue of the **Journal**. Ms. Uttara Vaid sets the ball rolling with her article 'The Indian Liability Insurance Kaleidoscope' wherein she discusses the evolution and growth of this niche domain over a period of time; and what it has in store. 'Insurance Exposures of Global Technology Businesses' is the next article in which Mr. C.B. Murali explains all those legal liabilities that can accrue to corporate entities. Mr. D.K.M.S. Raju, in his article titled 'Clinical Trials Insurance' talks about the various liabilities that can come up as a result of the research and trials undertaken by pharma and related industries.

Directors' and Officers' Liabilities have been hogging the limelight in view of the various corporate debacles in more recent times. We have two articles in this domain discussing in depth the nuances of D & O Liability Insurance - by Mr. P. Umesh and Ms. Aruno Rajaratnam. The Indian corporate scene is undergoing a sea-change in its operations and stakeholders are becoming increasingly demanding which necessitates specialist insurance protection for issuers of securities as also the facilitators. Ms. Sai Ranjani discusses threadbare the intricacies of the domain. Finally, Mr. G. Gopalakrishna goes exhaustively into the nitty-gritty of Liability Insurance in his article 'The World of Liability Insurance'.

The success of insurance business depends upon the quality of information furnished by the proponents. An underwriter analyses the information furnished and takes a decision with regard to the acceptance of the risk; and during this process, he might impose conditions and clauses which decide the extent of acceptance of the risk. Interpretation of clauses and the reciprocal obligations of the two parties form the focus of the next issue of the **Journal**.

U. Jawaharlal



Report Card:LIFE

December, 2006 industry records 145.70% growth over December, 2005

First Year Premium of Life Insurers for the Period Ended December, 2006

Sl	No.	Insurer	Premium u/w (Rs. In Lakhs)				No. of Policies / Schemes				No. of lives covered under Group									
			1	2	3	4	5	6	7	8	9	10	11	12						
		Bajaj Allianz	9942.84	25621.17	79922.02	78267.24	23607	160162	848617	79074	63634	315729	109	135	6746	1502	528295	218391	442	218391
		Group Non-Single Premium	23.04	137.51	137.51	1302.32	1	1	159	1517	648	73799	0	0	0	517	12006	2055	21874	2055
		Group Single Premium	37.59	4231.69	2520.40	12870.31	20710	134361	134361	1517	648	73799	0	0	0	517	12006	2055	21874	2055
		Individual Non-Single Premium	9942.84	25621.17	79922.02	78267.24	23607	160162	848617	79074	63634	315729	109	135	6746	1502	528295	218391	442	218391
		Individual Single Premium	25621.17	4231.69	2520.40	12870.31	20710	134361	134361	1517	648	73799	0	0	0	517	12006	2055	21874	2055
		Group Non-Single Premium	37.59	4231.69	2520.40	12870.31	20710	134361	134361	1517	648	73799	0	0	0	517	12006	2055	21874	2055
		Group Single Premium	40.79	4231.69	2520.40	12870.31	20710	134361	134361	1517	648	73799	0	0	0	517	12006	2055	21874	2055
		Individual Single Premium	705.19	705.19	7515.04	8441.52	1306	11985	11985	12634	12634	28775	0	0	0	79	7502	13486	105432	0
		Group Non-Single Premium	7275.33	7275.33	32388.96	2425.13	37223	207683	207683	12634	12634	28775	0	0	0	79	7502	13486	105432	0
		Group Single Premium	137.49	137.49	943.77	487.38	10	121	121	12634	12634	28775	0	0	0	79	7502	13486	105432	0
		Individual Non-Single Premium	5201.14	5201.14	28657.77	4929.99	7586	42434	42434	7214	7214	121416	1366	11722	69231	89590	789411	150486	517103	150486
		Group Non-Single Premium	2068.41	2068.41	14685.43	3516.88	0	2	2	7214	7214	121416	1366	11722	69231	89590	789411	150486	517103	150486
		Group Single Premium	823.68	823.68	18450.85	3516.88	7	268	268	7214	7214	121416	1366	11722	69231	89590	789411	150486	517103	150486
		Individual Non-Single Premium	14622.79	14622.79	57277.41	9473.49	39239	250314	250314	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Individual Single Premium	261.76	261.76	1212.61	376.99	323	1308	1308	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Group Non-Single Premium	3168.56	3168.56	35681.05	26728.71	29713	281319	281319	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Individual Non-Single Premium	523.09	523.09	3800.51	1684.78	1	6	6	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Group Single Premium	139.41	139.41	2907.46	4843.80	2	62	62	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Individual Single Premium	1212.61	1212.61	35681.05	26728.71	29713	281319	281319	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Group Non-Single Premium	261.76	261.76	1212.61	376.99	323	1308	1308	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Individual Non-Single Premium	3168.56	3168.56	35681.05	26728.71	29713	281319	281319	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Group Single Premium	523.09	523.09	3800.51	1684.78	1	6	6	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Individual Single Premium	139.41	139.41	2907.46	4843.80	2	62	62	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Group Non-Single Premium	139.41	139.41	2907.46	4843.80	2	62	62	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Individual Non-Single Premium	139.41	139.41	2907.46	4843.80	2	62	62	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
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		Individual Single Premium	139.41	139.41	2907.46	4843.80	2	62	62	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
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		Individual Non-Single Premium	139.41	139.41	2907.46	4843.80	2	62	62	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
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		Individual Non-Single Premium	139.41	139.41	2907.46	4843.80	2	62	62	42434	42434	7214	1366	11722	69231	89590	789411	150486	517103	150486
		Group Single Premium	139.41	139.41	2907.46	4843.80	2	62	62	42434	42									

6	HDFC Standard									
	Individual Single Premium	1019.13	8814.26	7610.14	12453	78309	64656			
	Individual Non-Single Premium	15165.18	74565.58	46311.30	42040	205591	157196			
	Group Single Premium	532.34	9946.82	3765.14	6	71	73	4291	132971	86224
	Group Non-Single Premium	832.53	5167.98	2183.39	4	22	18	535	39187	14140
7	ICICI Prudential									
	Individual Single Premium	4967.49	25346.42	5386.19	7826	38163	22989			
	Individual Non-Single Premium	36900.26	227635.54	123622.70	185625	1106798	469233			
	Group Single Premium	4954.87	15095.09	2422.37	9	123	96	4987	110373	193438
	Group Non-Single Premium	1887.27	26900.32	11523.94	18	233	105	32455	244173	95891
8	Birla Sunlife									
	Individual Single Premium	350.66	2334.86	1438.78	9733	38516	45423			
	Individual Non-Single Premium	5839.28	41746.04	32744.40	29925	169668	104744			
	Group Single Premium	35.47	639.09	659.48	0	0	0	140	3638	4607
	Group Non-Single Premium	743.74	6501.52	1446.13	9	117	32	5185	48129	7328
9	Aviva									
	Individual Single Premium	292.59	2151.60	636.00	413	2218	2203			
	Individual Non-Single Premium	5401.30	41846.13	20589.03	26204	186105	85964			
	Group Single Premium	38.71	246.08	95.18	0	1	0	221	1330	612
	Group Non-Single Premium	63.55	1854.47	170.16	2	48	12	27663	239138	134002
10	Kotak Mahindra Old Mutual									
	Individual Single Premium	225.44	2426.86	1711.79	296	2704	2331			
	Individual Non-Single Premium	4945.72	27015.58	12462.45	15940	83168	51451			
	Group Single Premium	211.32	766.28	149.00	2	9	2	12810	42660	9650
	Group Non-Single Premium	204.24	2581.53	546.48	20	121	59	28385	184609	69662
11	Max New York									
	Individual Single Premium	2710.87	6051.15	134.19	2124	4503	194			
	Individual Non-Single Premium	11881.27	52232.86	28104.18	72677	381207	298032			
	Group Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Group Non-Single Premium	142.63	399.23	93.06	2	43	63	4175	51613	30125
12	Met Life									
	Individual Single Premium	77.12	452.10	398.69	177	1010	948			
	Individual Non-Single Premium	2859.92	15202.00	7252.20	10399	62994	63295			
	Group Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Group Non-Single Premium	117.76	1228.37	606.64	15	178	142	17567	335179	222650
13	Sahara Life									
	Individual Single Premium	145.45	1009.98	834.66	390	2637	2120			
	Individual Non-Single Premium	146.46	467.97	344.92	3061	11527	14367			
	Group Single Premium	0.00	0.00	0.68	0	0	10	0	0	729
	Group Non-Single Premium	0.04	93.80	0.00	1	3	0	60	103191	0
14	Shriram Life									
	Individual Single Premium	2068.67	5602.55		4479	12030				
	Individual Non-Single Premium	1221.55	4802.66		9353	47494				
	Group Single Premium	0.00	0.00		0	0		0	0	
	Group Non-Single Premium	0.00	0.00		0	0		0	0	
15	Bharti Axa Life									
	Individual Single Premium	0.00	0.00		0	0				
	Individual Non-Single Premium	55.62	190.28		625	1289				
	Group Single Premium	0.00	0.00		0	0		0	0	
	Group Non-Single Premium	0.00	0.00		0	0		0	0	
	Private Total									
Individual Single Premium	28120.90	173587.38	110616.43	70845	316408	224994				
Individual Non-Single Premium	135426.10	773367.96	379931.38	683596	3978135	1995304				
Group Single Premium	8393.81	46732.05	24388.84	18	228	186	69354	598377	560375	
Group Non-Single Premium	5170.73	68814.45	27474.19	104	1415	2241	217036	2887579	1796029	
16	LIC									
	Individual Single Premium	118100.00	1521045.63	525706.24	615826	4281480	1410304			
	Individual Non-Single Premium	83740.00	1670675.47	680895.31	2344402	13130576	14188072			
	Group Single Premium	101592.37	633658.10	240326.34	2129	13573	11128	1097101	9913512	9061053
	Group Non-Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Grand Total									
	Individual Single Premium	146220.90	1694633.01	636322.67	686671	4597888	1635298			
	Individual Non-Single Premium	219166.10	2444043.43	1060826.69	3027998	17108711	16183376			
Group Single Premium	109986.18	680390.15	264715.18	2147	13801	11314	1166455	10511889	9621428	
Group Non-Single Premium	5170.73	68814.45	27474.19	104	1415	2241	217036	2887579	1796029	

Note: Cumulative premium upto the month is net of cancellations which may occur during the free look period.



The Complexities of an Insurance Contract

“INSURANCE IS A COMPLEX RELATIONSHIP IN THE SENSE THAT THE NUANCES ARE NOT EASILY UNDERSTOOD BY THE POLICYHOLDER; WHEREAS THE INSURER DEPENDS ON THE INFORMATION FURNISHED BY THE PROPONENT FOR TAKING A PROPER DECISION AND IMPOSING PRECONDITIONS’ WRITES U. JAWAHARLAL.

In an insurance contract, it is very important that the premium that is charged from a prospective client is appropriate and equitable. In order to arrive at the reasonable premium, the insurer calls for a host of details which provide the basis for the assessment of the risk. Accordingly, the information provided by the proponent should be wholesome and accurate.

It may not be possible for the insurer to accept the risk without any preconditions; or at the face value. He may insist on making the contract subject to limitations, applicability of clauses etc. The validity of the contract is heavily dependent on the operation of these clauses; and both the parties to the contract must be very clear as to the applicability of the conditions and the admissibility of the claims. In an ideal situation, if the information furnished by the proponent is absolutely complete and true; if the insurer’s interpretation of the statements made by the proponent is proper; the terms of the risk coverage are exhaustively explained; and the insured

reads and comprehends the terms - there is no place for a misunderstanding.

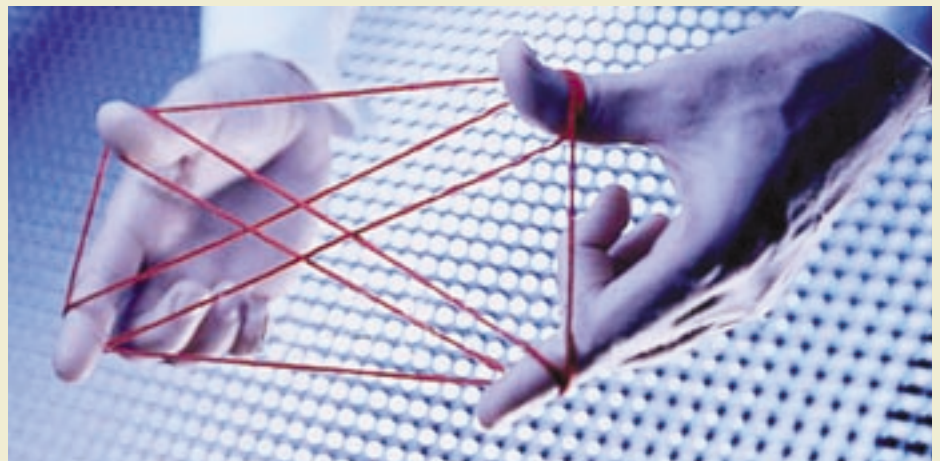
In such a scenario, the foremost prerequisite for a valid contract - *consensus ad idem* - is totally fulfilled. But alas! It does not happen quite often in a real life situation. These problems are more pronounced in a nascent market where the concept of insurance itself is not properly understood by the buyer. Hence it is all the more necessary that the insurance companies make the clauses very explicit and simple. On the other hand, the insured should understand that insurance is strictly a tool for indemnification and not a deal to make a profit out of. In order to obviate the problems concerned with the extent of coverage, exclusions etc, a free look period was introduced in the liberalized regime. Whatever be free about it, the best take-away is that the policyholder would be motivated to go through the policy conditions before it is too late.

The importance of the policy wordings, clauses etc. is more emphatic in non-life contracts. In life insurance, which is a contract of assurance, there are hardly any

restrictive clauses. It is still very essential for the policyholders to peruse the policy document to satisfy themselves of the terms of coverage. However, in view of the contract being based on the statements made in the proposal form aided by a conclusive declaration, care should be taken to ensure that whatever information is furnished is absolutely true. Insurers, on their part, should take care to ask the right questions and explain the importance of the need for the right answers.

When it comes to non-life insurance, where the concept of indemnity is applicable, there are bound to be various factors associated with the admissibility of claims. There is need for the insurer to be very transparent about the applicability; and in view of the low levels of insurance awareness, take extra precaution to ensure that the terms of the contract are easily understood by the policyholder. To expect that an absolutely friction-free environment is possible would be too ambitious; but if both the parties to the contract walk that extra mile, the amount of controversies can certainly be brought down.

Making Insurance Contracts Simpler



in the next issue...

CIRCULAR - Non-Life Insurers

November 8, 2006

No. 025/IRDA/R&D/Oct-06

Sub: Data Collection by TAC Post Detariffing

To
All General Insurers,

Attention of insurers is invited to Section 64 UC of the Insurance Act, 1938, which authorizes TAC to control and regulate “any risk” or “class or category of risks”... “Which, in its opinion, it is proper to control and regulate”. Attention is also invited to Section 14 (2) (i) of the IRDA Act, 1999 which authorizes the IRDA to control and regulate general insurance business “not so controlled and regulated by the Tariff Advisory Committee”.

In the context of the proposed detariffing of the general insurance products, the need for data for both the insurer and the Regulator has become more pronounced than ever. Authentic and error free data has to flow consistently to a national data repository. The varied requirements of data by the Regulator, the insurer and industry and the consumers have to emanate from this repository with due aggregations. The confidentiality of the data has to be protected and the sensitivities associated with a competitive market are to be respected.

(C.S. Rao) Chairman

CIRCULAR

8th January, 2007

Circular No. IRDA/ 042/ For Office/ 06-07

Re: Guidelines for opening of representative/ liaison offices overseas by an Indian insurance company registered with the IRDA

To
CEOs of all Insurers,

Dear Sir/Madam,

The Authority has been receiving requests from Indian insurers seeking permission to open representative/ liaison offices overseas. Upon examination of the requests received, the Authority issues the following guidelines:

1. A “Representative/ Liaison Office” would mean a place of business to act as a channel of communication between the Principal place of business or Head Office by whatever name called and entities in India but which does not undertake any commercial/ trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.
 2. All Indian insurance companies registered with IRDA shall seek prior approval of the Authority for opening offices abroad.
 3. Indian insurance companies desirous of opening offices overseas shall apply to the Insurance Regulatory and Development Authority in Form IRDA-FO-1 attached as Annexure “1”.
 4. The opening of representative/ liaison offices would be subject to the following requirements:
 - a. The representative office would function as an extended arm of Indian insurance company and no underwriting will be done outside India or other than in Indian rupees.
 - b. Though it may be permissible to identify the overseas prospects who could be non-resident Indian through the offices abroad, the completion of the underwriting contracts should be done only in India.
 - c. No payment of fees by whatever name called would be permitted
 5. IRDA may consider permitting Indian insurance companies to set-up representative offices overseas so long as
 - a. Insurer has a good financial strength (as exhibited in the accounts) and maintains the prescribed solvency requirement of 1.5.
 - b. Track record on market conduct, regulatory compliances, redressal of complaints, etc. indicates that there are no serious adverse features on the functioning of the company on the record of IRDA.
 6. The insurance companies would be required to furnish information to IRDA on the business mobilized through the representative office and a certificate that the expenditure incurred at the overseas centre together with the Indian operation is well within the limits specified.
 7. The Indian insurance company shall be required to comply with the Foreign Exchange Management Act, 1999 and any other law in force.
 8. The permission for opening of representative/ liaison office overseas by an Indian insurance company registered with IRDA shall be subject to the terms and conditions as may be stipulated by the Authority from time to time.
- The above guidelines are issued by the Insurance Regulatory and Development Authority (IRDA) under the powers granted to it under Section 114 (zd) of the Insurance Act, 1938.

(C. R. Muralidharan) Member



PRESS RELEASE

5th January, 2007

PRESS NOTE

There is an erroneous impression that though the Fire, Engineering and Motor Own Damage stand detariffed, the insurers are constrained to charge only 20% less than the erstwhile tariff rate in respect of Fire and engineering and 10% less than the rate obtaining for Motor Own Damage. This impression is presumably based on the two circulars issued by the IRDA dated 29 th November, 2006 and 15 th December, 2006 . These circulars have to be viewed in their proper perspective. These circulars were issued before the insurers filed their revised rates under the "File and Use" procedure under which the Insurers are expected to file their new rates with IRDA giving justification for adopting those rates.

The Insurers indicated that pending approval of rates by IRDA, they have to issue renewal notices to their clients and desired to know what premium should be indicated in those renewal notices. The IRDA indicated that they could reduce rates upto 20% in the case of Fire and Engineering and 10% in the case of motor and if they wanted to adopt any rate

lower than these ceilings they have to file the rates and await their consideration by the Authority.

It may thus be seen that reduction of 20% and 10% was only indicative for the limited purpose of sending renewal notices for the month of January, 2007.

The rates filed by the Insurers were reviewed by the IRDA and the approved rates communicated to the Insurers on 30 th December, 2006 . Hence the revised rates along with discount factors are now available to the Insurers and they are free to apply those rates for new business as well as for renewals in the month of January 2007. The interim dispensation of 20% and 10% stands withdrawn with the approval of the rates filed by the Insurers under the "File and Use" system.

Sd/-
(C.S. Rao) Chairman

CIRCULAR

28th December, 2006

Circular No. 041/IRDA/BOO/Dec-06

Re: Closure/Relocation of places of business

To
All the Insurers,

Dear Sir/Madam,

1. It has come to the notice of the Authority that places of business of the insurers are being closed /relocated without proper notices to the policyholders causing them a lot of inconvenience. The Authority is also in receipt of complaints from the affected policyholders.
2. Insurance companies are therefore advised that the decision for closure/relocation of their places of business (regardless of their nomenclature and/or the type of services provided thereat) should be after due consideration of all the factors including the possible inconveniences to its clientele. It is essential that such a decision is appropriately apprised to the Board for information with the reasons therefor, since the proposal for opening the branches/offices were initially approved by the Board. Adequate notice of a minimum of 2 months on the proposed relocation/closure should be given to

policyholders serviced by that branch along with the alternate arrangements being made to service them.

3. Such closures should also be reported to the Authority within one month from the date of such closure.
4. It has also been decided to standardize the classification of places of business adopted by various insurers and to compile a database of the offices of insurers. To achieve this objective, insurers are advised to classify their existing branch offices into Metro/Urban and Rural branches based on the classification provided by the latest decennial population census (Census of India). They are further advised that the classification details along with the postal address of the branch should be filed with the Authority in hard/soft forms not later than February 28, 2007. While seeking fresh approvals details of proposed places of business along with the classification should also be furnished.

Yours faithfully,

(C. R. Muralidharan) Member

CIRCULAR - Non-Life Insurers

January 23, 2007

043/IRDA/De-Tariff/Jan-07

Sub: Motor Insurance Premium Rates for Third Party Liability Only Cover

To
All General Insurers

In supercession of the Authority's Circular Ref: 034/IRDA/De-Tariff/Dec-06, dated 4th December 2006 the Authority hereby prescribes the revised rates of premium as shown in the attached Schedule* to this Circular for motor third party liability insurance.

These rates shall come into force with effect from 1st January 2007.

This Circular as well as the enclosed schedule of premium rates shall be prominently displayed on the Notice Board of every underwriting office of the Insurer where it can be viewed by the public.

(C.S. Rao) Chairman

* Schedule on page 9

Schedule of Premium Rates for Motor Third Party Liability Only Cover

(Effective from 1st January 2007 for fresh insurances and renewals of motor insurance policies)

Class of vehicle	1 Premium (Rs)	2
Private Car		
Cubic Capacity of the vehicle		
Not exceeding 1000 cc	670	
Exceeding 1000 cc but not exceeding 1500 cc	800	
Exceeding 1500 cc	2500	
Two Wheeler		
Cubic Capacity of the vehicle		
Not exceeding 75 cc	300	
Exceeding 75 cc but not exceeding 150 cc	300	
Exceeding 150 cc but not exceeding 350 cc	300	
Exceeding 350 cc	620	
A1 Goods Carrying Vehicles- Public Carriers (other than 3 wheelers)		
Gross Vehicle Weight (GVW)		
Not exceeding 7500 Kg	5580	
Exceeding 7500 Kgs but not exceeding 12000 Kgs	5920	
Exceeding 12000 Kgs but not exceeding 20000 Kgs	6090	
Exceeding 20000 Kgs but not exceeding 40000 Kgs	6260	
Exceeding 40000 Kgs	6770	
A2 Goods Carrying Vehicles- Private Carriers (other than 3 wheelers)		
Gross Vehicle Weight (GVW)		
Not exceeding 7500 Kg	5000	
Exceeding 7500 Kgs but not exceeding 12000 Kgs	5300	
Exceeding 12000 Kgs but not exceeding 20000 Kgs	5440	
Exceeding 20000 Kgs but not exceeding 40000 Kgs	5610	
Exceeding 40000 Kgs	6050	
A3 Goods Carrying Motorized Three Wheelers and Motorized Pedal Cycles - Public Carriers	1530	
A4 Goods Carrying Motorized Three Wheelers and Motorized Pedal Cycles - Private Carriers	1450	
B Trailers	Agricultural Tractors upto 6 HP	Other vehicles incl Miscellaneous & Special Type of vehicles (Class D)
	350	550
For each trailer (For more than one trailer, please multiply by the number of trailers)		
C1a Four wheeled vehicles used for carrying passengers for hire or reward with carrying capacity not exceeding 6 (six) passengers		
	Premium Passenger Capacity)	Premium (Per licensed (B)* (Rs)
Cubic Capacity of the vehicle	(A)	
Not exceeding 1000 cc	1650	350
Exceeding 1000 cc but not exceeding 1500 cc	2330	350
Exceeding 1500 cc	2840	350
<i>*TP Premium is the total of a basic amount (A) plus an amount derived by multiplying the licensed carrying capacity by an amount B</i>		

Class of vehicle	1 Premium (Rs)	2
C2 Four or more wheeled vehicles with carrying capacity exceeding 6 passengers for hire or reward	3160	235
C1b Three wheeled vehicles used for carrying passengers for hire or reward with carrying capacity not exceeding 6 (six) passengers	510	315
<i>*TP Premium is the total of a basic amount (A) plus an amount derived by multiplying the licensed carrying capacity by an amount B</i>		
C3 Motorized three wheeled passenger carrying vehicles for hire or reward with carrying capacity exceeding 6 but not exceeding 17 passengers	1560	315
<i>*TP Premium is the total of a basic amount (A) plus an amount derived by multiplying the licensed carrying capacity by an amount B</i>		
C2 Three wheelers with carrying capacity exceeding 17 passengers.	3160	235
<i>*TP Premium is the total of a basic amount (A) plus an amount derived by multiplying the licensed carrying capacity by an amount B</i>		
C 4 Motorized Two Wheelers used for carrying passengers for hire or reward		
Cubic Capacity of the vehicle		
Not exceeding 75 cc	300	
Exceeding 75 cc but not exceeding 150 cc	300	
Exceeding 150 cc but not exceeding 350 cc	300	
Exceeding 350 cc	680	
D Special Types of Vehicles		
i) Pedestrian controlled Agricultural Tractors with Horse Power rating not exceeding 6 HP; Hearses and Plane Loaders	400	
ii) Other Misc & Spl types of vehicles	800	
E Motor Trade (Road Transit Risk)		
i) Distance not exceeding 2400 Kms	500	
ii) Distance exceeding 2400 Kms	600	
F Motor Trade (Road Risk) (Excluding Motorized Two Wheelers)		
Named Driver or Trade Certificates		
1st named driver or certificate	550	
For additional Drivers/Certificates upto 5	265/- per Driver/Certificate	
For additional Drivers/Certificates exceeding 5 but not exceeding 10	175/- per Driver/Certificate	
For additional Drivers/Certificates exceeding 10 but not exceeding 15		
Motor Trade (Road Risk) (For Motorized Two Wheelers)		
Named Driver or Trade Certificates		
1st named driver or certificate	300	
For each additional Drivers/Certificate	150	

The Indian Liability Insurance Kaleidoscope

PAST, PRESENT AND FUTURE

UTTARA VAID SAYS

'LIABILITY LINE OF BUSINESS IS ONE AREA WHERE COVERAGE, INTERPRETATION, PREMIUM AND GETTING THE BEST DEAL DEPEND LARGELY ON PRODUCT KNOWLEDGE AND NEGOTIATION SKILLS. HERE THE INPUTS OF A PROFESSIONAL BROKER HAVE NOT BEEN QUESTIONED IN THE MARKET BY SERIOUS BUYERS OF LIABILITY INSURANCE'.

The low legal awareness coupled with low insurance awareness affected the growth and development of this line of business.

markets to see where we stand. In US, 50% of the Non-life General Insurance premium comes from Liability Line of Business. In Europe, the share of liability insurance in the entire non-life premium could be between 25% and 40%. In India, however, pure liability insurance accounts for approximately only 3% of the Non-Life insurance premium.

As a keen observer of Liability Insurance in India, some of the reasons which quickly come to my mind are as follows:

The Indian Mindset pertaining to Liability Insurance - The fatalistic Indian attitude "whatever has to happen will happen anyway!" and the Karmic theory of past sins being responsible for any misfortunes visiting us; prevent us from being a redressal/compensation seeking society. The low legal awareness coupled with low insurance awareness affected the growth and development of this line of business.

Liability Insurance has been mostly bought (but not sold) in the pre-liberalization era - Thus where the

customer demanded Liability Insurance, the demand was met but the insurance industry prior to liberalization did not impart any sales focus to this line.

Lack of indigenous underwriting authority and capacity for large proposals - Prior to the advent of private insurance companies in India, the insurance industry was dependent on foreign underwriting and reinsurance for specific lines of Liability Insurance such as Directors & Officers; and Professional Indemnity. Lack of autonomous authority also stunted the growth of this product.

Inappropriate policy wording for locally accepted/ underwritten liability risks - Casualty lines of business namely Product and Public liability had decent local capacity available in the market through the market agreement structure but the wording which catered only to low litigation Indian market did not find acceptance in the international market. Therefore buyers of insurance found it easier to wriggle out of insurance mandates rather than incept locally

The past

In India, in the pre-liberalization days, Liability Insurance remained in the realm of the unknown, un-demanded and unsold. The advent of private companies eager to bring different products into the market changed that - but only a bit. Why "only a bit"? Let us examine the statistics of Liability insurance in developed insurance

Duty to defend claims handling also makes a compulsive case for buying Liability Insurance. Some of the claims provisions in Liability Insurance almost make it possible for the insured to effectively outsource adverse litigation management.

admitted covers granting worldwide coverage.

Lack of Liability claims handling infrastructure of the Indian insurance industry - A resultant effect of lack of focus led to inadequate infrastructure for claims handling. Even to-date it is recognized that Indian Liability Insurance market is fuelled by global exposures which in turn demand global claims handling.

It is difficult to pinpoint one single predominant reason for the low demand but together they make a compelling case for the retarded growth of Liability Insurance in India in the past.

The present

Since then Liability Insurance has, like the proverbial chrysalis, emerged from its cocoon to assume the form of an attractive butterfly. This would not have been possible without its charm being appreciated by all the stakeholders in the insurance business - the broker, the insurance buyer and the insurer.

The Insurance Buyer

Liability Insurance keeps pace with his global ambitions. Whether he is contemplating venturing out of domestic boundaries to contemplate exporting his products and services to tough and unknown jurisdictions, or even engaging in Mergers & Acquisitions; Liability Insurance minimizes the downside of every transaction.

Liability Insurance is often the only source of financial recourse in the event of litigation. Compare this with an asset

loss. When an entrepreneur suffers loss of assets even if his insurance is inadequate, based on other parameters; banks and other financial institutions will bail him out of distress by reconstruction/restructured financial packages and soft loans. But an unfortunate entrepreneur when faced with litigation finds no help for expensive legal fees (and God forbid, if damages are awarded against him) from any financial partner other than his liability insurer. It is for this reason alone that insurance buyers faced with global liability exposures must not compromise on either the adequacy or the quality of Liability Insurance.

Duty to defend claims handling also makes a compulsive case for buying Liability Insurance. Some of the claims provisions in Liability Insurance almost make it possible for the insured to effectively outsource adverse litigation management. (The caveat of course is that this is also subject to adequacy of the sum insured). The concomitant advantages are

- giving him un-paralleled claims expertise in the jurisdiction where the claim is filed against him,
- keeping his claims costs down to the minimum (and also his renewal premiums) and
- letting him go about his own business undisturbed.

The Brokers

Intermediation in this line of business is viewed as unquestionable value addition by insurance buyers.

When a market is used to direct relationships with no more than a handful of insurers who provide the same coverage at supposedly the same rates, the bigger challenge for brokers is to be seen providing a definite value addition through their intervention in risk management and insurance buying. However, liability line of business is one area where coverage, interpretation, premium and getting the best deal depend largely on product knowledge and negotiation skills. Here the inputs of a professional broker have not been questioned in the market by serious buyers of Liability Insurance.

Brokers are most suited to structure Liability programmes with large limits of liability. When negotiating for liability policies which obviously go beyond the insuring capacities of most insurers in the market, the broker is aptly poised to structure the deals through their primary and excess layers, thus providing a seamless package to the insurance buyer.

The Insurers

For Insurers in India the low claims experience in this line of business makes it lucrative to develop it further. The claims experience on this for most insurers has been quite favourable encouraging many of them to seek Liability Insurance from their clients in order to accommodate other non-profitable lines of business. Even on a stand-alone basis, Liability Insurance permits the insurer to have a higher risk taking appetite at the same time keeping the overall claims ratio within controllable limits. The only caution is to put in adequate reserves to meet an unexpectedly large claim if ever it arises.

Liability Insurance in India is virtually an untapped market yet and with the current growth of the Indian economy with obvious emphasis on globalization from Indian entrepreneur, there is only one way that demand for liability insurance can go - up!

The future

The pioneering pains are behind us, but how does the future augur for this line of business? Pro-activity to ensure future development for the liability line of business leads me to propound the TEST (Training, Expanding, Self-reliance and Targeting) strategy as follows:

- **Training**

Expertise in this Line of business needs to be felt across the industry and not in some pockets. Insurance players have to appreciate the need for intensive training needs in Liability Insurance because most classes of Liability Insurance demand intensive and sophisticated underwriting.

- **Expanding the Pie**

The key word in marketing Liability Insurance within developing economies is to expand the pie, rather than attack existing liability business in the country; and compete on the same with existing players. This can only serve as a starting point; it cannot sustain long term growth. Long term growth is achieved by analyzing the market, seeing the need for Liability Insurance from the consumer which has not been

catered to by existing players and being the first in the country to provide the same.

- **Self-reliance**

It is a must to develop indigenous underwriting capability and expertise - No insurer of substance can ever hope to grow his liability book, if he is constantly dependent on foreign markets for underwriting support, both technical and in terms of capacity. It is a must therefore, to set up and nurture a liability department, within the company so that strong pillars of future basis of growth, viz. global expertise, local adaptability and quick decision-making are set up. This and only this, can establish the confidence of the ultimate consumer in placing and renewing liability business with the insurer.

- **Targeting**

It makes good sense to align marketing strategies with growth of the industrial sectors and economic trends within the economy. Let me illustrate this further. Five years (not so long) ago, a survey was conducted on the D&O insurance policies sold

within the country - and found that D&O Liability insurance was bought by companies who accessed funds from the stock exchange abroad. Thus Indian companies who had ADR / GDR issues or were listed on foreign stock exchanges were more likely to incept D&O insurance, in keeping with the litigious trends of that country.

Another example can be derived from the fact that Liability Insurance in the country has grown with the growth of the IT sector. As Indian IT service suppliers moved up the value chain from mere body-shopping agencies to executing turnkey IT projects, they had to satisfy mandates of Liability Insurance from their customers located abroad.

From there on, it was constantly remembering the most oft repeated mantra; **“Find the need and fill it”**.

This has been an attempt to lend the past, present and future perspectives on Liability Insurance and to most practitioners of insurance, I will end with one of my favourite quotes on Liability Insurance. For anything human, you have to understand it to be able to love it, but for anything divine you have to love it before you can even begin to understand it; and in that respect Liability Insurance comes closest to divinity!

No insurer of substance can ever hope to grow his liability book, if he is constantly dependent on foreign markets for underwriting support, both technical and in terms of capacity.

The author is National Head - Corporate Accounts Practice, Tata AIG General Insurance Company Ltd.

Insurance Exposures of Global Technology Businesses

CHALLENGES IMPACTING THE INDIAN INSURANCE MARKETPLACE

‘THE MID NINETIES SAW THE RISE OF THE INDIAN TECHNOLOGY COMPANIES; AND THE RISE OF THEIR DOMINANCE ON THE WORLD STAGE’ WRITES C B MURALI. HE FURTHER ADDS THAT WITH INCREASING ORDERS AND CUSTOMERS FROM THE DEVELOPED WORLD, THE MARKET PLACE HAS STRUGGLED TO UNDERSTAND AND APPRECIATE THE EVER INCREASING EXPOSURES OF LEGAL LIABILITY FACING THESE COMPANIES.

economics on its head. No one disputes this or argues with this statement. What also accompanies this capacity is its ability to make legal precepts and principles hugely complex, including the principles of tort and legal liability.

Nowhere is this now more evident than in the technology sector, especially in India, with its rapid strides in the fields of Information Technology R&D and IT related services areas. India has leap-frogged to the top of the heap in the provision of these services to the rest of the world in the last two decades, and has clearly demonstrated that she intends to stay here for a long time to come.

The resultant fall out has been clearly an exponential increase in legal liability for investors and organizations in this sector, given that a clearly large proportion of customers reside in developed markets and societies of the world, especially in Europe and North America. Traditionally these markets have donned the mantle of being some of the most litigious societies and economies in the world.

Increased exposures for Indian businesses

It is no surprise, therefore, that software technology and the internet while making rapid strides, often find support becoming obsolete equally quickly as the development of new technology. With the explosion in internet usage and services together with hardware and software advances, it is not surprising that insurance mechanisms to transfer risk have not been able to match these strides in equal measure. Moreover, the cross border nature of these businesses and investments has quickly and sharply redefined their legal liability exposures. The result has been a sudden quantum spurt in exposure and learnings for these customers; and equally important for their insurance service providers.

While the concept of legal liability always having been strong and sustained in presence in legal systems of developed economies; service providers and in turn insurance carriers have had to work and are still working overtime to grapple with overcoming the complexities presented by these exposures. While legal liability

Introduction

It was exactly a year ago that Larry Summers, then president of Harvard University while presenting at the 2006 World Economic Forum at Davos, Switzerland; referred to increasing globalization and technological change as representing the third great economic wave in human history. The two previous waves occurred during the Renaissance and the Industrial Revolution. This wave, still in its infancy has the capacity to turn global

With the explosion in internet usage and services together with hardware and software advances, it is not surprising that insurance mechanisms to transfer risk have not been able to match these strides in equal measure.

From an insurance services provider's view point, it is imperative to classify the risk areas and identify and formulate new products and programs where necessary.

led a rather blithe and low-level existence in insurers' minds and consciousness in the form of compulsory third party motor insurance and workmen's compensation mandated by law, it took the Bhopal gas tragedy to shake lawmakers and introduce the watershed legislation of the Public Liability Insurance Act, 1991. This, in turn, resulted in legal liability offerings in the Indian insurance marketplace for premises, products and environmental pollution coverage, as a consequence of development tort and judicial reform.

However, more was to follow. The mid nineties saw the rise of the Indian technology companies and the rise of their dominance on the world stage. With increasing order books and customers from Europe and North America, the market place has struggled to understand and appreciate the ever increasing exposures of legal liability facing these companies. The rise of internet usage, has in turn again taken these exposures to another level.

A snapshot of the exposures affecting technology companies

It is no longer appropriate to classify exposures of technology companies in a traditional manner, i.e., classifying their needs as traditional Property, Fire and perils, Motor, Public and Product Liability, Motor Insurance, Personal Accident and medical expenses; and the

like. The very fact that Indian companies operate more as transnational, multinational, or simply as cross-border entities; organizations now demand that their insurance advisors and carriers take a clear and objective view of their risks and design appropriate insurance mechanisms which will mitigate and transfer these. Also, traditional risk management systems and techniques, relevant for manufacturing activities face a new paradigm in terms of redefining the building blocks of an effective RM program.

From an insurance services provider's view point, it is imperative to classify the risk areas and identify and formulate new products and programs where necessary. Such a service provider will adopt a holistic approach to the business of a technology provider while identifying and classifying risk exposures. This means that the service provider increasingly dons the mantle of an outsourced risk manager for the technology customer, given the increasing complexity of products and solutions which are required by and made available to the customer.

Broad risk areas impacting the technology customer

- Physical Assets
- Human Assets
- Liabilities
- Employee Dishonesty & Crime

A detailed look at each of these classes will reveal the extent of exposures:

- **Physical Assets**
 - Property assets including building, contents, machinery
 - Electronic Equipment
 - Data reinstatement
 - Business Interruption and Increased Cost of Working
 - Automobiles
 - Catastrophe
 - Terrorism
- **Human Assets**
 - Employee Accident Death and Disability
 - Sickness and Long term disability
 - Employee business travel death and disability
 - Employee life
 - Workmen's Compensation and Employer's Liability
 - Key Man death and disability
 - Kidnap and Ransom
- **Liabilities**
 - Premises Liability
 - Professional and management liability including
 - Directors and Officers Liability
 - Employment Practices Liability arising from complaints of discrimination, harassment
 - Fiduciary Liability
 - Professional Errors and Omissions
 - Intellectual Property
 - Internet Liability
 - Cyber crime
- **Dishonesty & Crime**
 - First Party (Employee) Crime
 - Third Party Crime
 - Financial Fidelity

In addition, given the cross-border

As the magnitude of torts increases, the number of claims and their associated defense expenses will continue to rise exponentially.

nature characteristics of this segment, which is the norm, critical exposures arise in the following areas:

- Country Political Risk arising out of confiscation, expropriation, currency inconvertibility
- Mergers and Acquisitions Risk
- Tax Liability risk
- Investor Management and Professional Liability risk
- Outside Directorship Liability
- Need for admitted insurance placements in different countries

A brief comment on Cyber Insurance

All companies face a breadth of liability exposures they have never faced before due to increased reliance and use of the internet. While these may arise out of use of technology and the internet in different ways, they are broadly classified as “Cyber Liability”.

Primary exposure is due to the vulnerability of loss arising out of use of the net. According to the AIG’s eBusiness Risk Solutions Group, computer viruses and hackers together caused an estimated US\$ 16 billion in damages in the year 2003 alone. Recent surveys indicate that computer crime threats originate from both inside and outside an organization’s network of systems and equipments, as well as employees. Other loss exposures can arise due to loss of data from power outages, improper storage and protection of sensitive customer and website visitor data (i.e., dates of birth, PIN, credit cards, drivers’

license numbers, Social security numbers, etc). In fact, recent experiences of Indian companies have proven these exposures are no longer the exclusive preserve of developed countries, but have reared their heads in India too, going by the recent cyber thefts of customer data at several high profile BPO companies, as well as internet airline booking frauds which have hit several Indian airline carriers in the past couple of months. The exposure also includes the business loss incurred in restoring business confidence among customers following such contingencies.

Any quality conscious company now prioritizes installation of formal security systems and internet usage protocol to prevent attacks by hackers as well as disgruntled employees. Ernst & Young’s “Global Information Security Survey 2003” revealed that 90% of 1,400 organizations they surveyed recognize that information security is of the highest priority and 78% identified risk reduction as their major influence on security spending. Despite this priority, a significant portion of these organizations still could not guarantee that their systems were foolproof and were vulnerable.

However, while security systems could help prevent/mitigate losses from loss of data, use of internet has thrown up a whole host of new exposures. The following are of interest and significance:

- New legal risks/exposures that fall outside traditional insurance policy coverage
- Increasing value of intellectual

property that companies look to protect and/or exploit

- International and local laws, multi-jurisdictional disputes
- Many local and international laws are invoking laws geared towards protecting an individual’s identity, requiring full compliance
- Greater difficulty in assessing damages

A Swiss Re study on eBusiness in 2000, divided e-commerce risks into two main categories: technical and liability.

- Technical exposures include mechanical faults, including software errors, performance efficacy, programming errors. It could also include security issues, including unauthorized access, data theft, computer viruses and “denial of service” attacks.
- Liability includes exposures arising from errors, omissions, libel and trademark violations arising from the use of internet for a huge volume of transactions, which could be laid waste by theft or virus attacks.

Cyber liability torts will differ from traditional predecessors in several ways, including the types of intellectual property claims, their complexity and multi jurisdictional issues, all of which serve to increase defense expenses. As the magnitude of torts increases, the number of claims and their associated defense expenses will continue to rise exponentially.

Consequently, it has been realized that traditional insurance coverage is now inadequate to cater to cyber related risks. Recognition of new e-commerce risk exposures have led to development of new coverages in the form of “e-commerce” and “cyber liability” insurance forms. Insurance carriers originally offered modified traditional property, CGL, media liability or E&O coverage. With rising familiarity of these risks, carriers have developed standalone

products that evolved into “network computer liability” and later into specific cyber liability covers of today. Driving this metamorphosis was the increasing use of the internet as a commercial tool. Companies began to contractually require their vendors to obtain some form of insurance to protect them from accidental or criminal losses which demand broader coverage. The USA market continues to lead the rest of the world in this capability.

Conclusion

Technology continues to change businesses, and thereby their risk exposures and the consequent need for proper protection. Regardless of activity, it has become imperative for

companies to clearly identify their cyber and network-related risks and avail the right form of insurance mechanism to protect themselves. Identifying the appropriate risk management priorities, use of competent brokers and risk advisors are automatic necessities in order for this imperative to be addressed and put to bed.

The resultant need for new products and services produce a set of serious challenges for the Indian insurance market, which includes all stakeholders like the insuring customer, the regulator, the carriers and intermediaries; all of whom need to work overtime to cope with these new challenges, in the face of a decontrolled but tightly regulated market place. The marketplace is well

advised to invest posthaste in researching this area and developing the appropriate cutting-edge capabilities, given the country’s steady economic progress over the coming decades.

Acknowledgements:

- “Mapping the Markets”
by Deborah Owen and Robin Griffiths,
The Economist Publications
- “Studies on Cyber Risk”
by RG O’Shea, Jr.

The author is an expert in the insurance domain; and is presently based at Mumbai.

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Clinical Trials Insurance

NEED FOR CLINICAL PRECISION

'CLINICAL TRIALS INSURANCE IS BASICALLY A LEGAL LIABILITY INSURANCE THAT PROVIDES FINANCIAL PROTECTION TO THE INSURED - THE SPONSOR ORGANIZATION, THE RESEARCH ORGANIZATION ETC. - AGAINST LEGAL LIABILITY ARISING OUT OF CONDUCTING THE CLINICAL TRIALS' WRITES DATLA KMS RAJU.

Introduction

India has been reckoned the favourable outsourcing destination of the world be it IT & ITES, automobile, engineering goods, contract research etc. The latest to join the bandwagon is the clinical trial industry. Conceding to the escalating pressure from the WTO participation and vociferous demands from multinational drug companies and clinical research organizations; the Government of India, in January 2005, made amendments to the Drugs and Cosmetics rules. Prior to the amendments there was the requirement of a phase-lag for conducting clinical trials in India, e.g. if a global company wanted to undertake a phase II study in India; phase III study should have already been completed

elsewhere in the world. With the introduction of the new rule, foreign drug companies and others are allowed to conduct trials of new drugs in India at the same time that trials of the same phase are being conducted elsewhere.

The opportunity

This change in the regulations is expected to fuel the growth of the clinical trial industry in the country. The critical factors that influence the expected growth of the industry can be summarized as follows:

Testing drugs in US and the other Western countries is increasingly becoming economically unviable with their strict regulations, elaborate safety and compensation requirements, and small populations. This situation also makes the recruitment of research subjects slow and expensive. These factors have been putting pressures on cost containment and economy in the R&D activities of global Drug and Pharmaceutical companies. Consequently, many research-based companies are now looking at outsourcing opportunities of their clinical trials to developing economies such as China, Indonesia, Thailand, and India. In 2006, the global clinical trials

market was estimated to be about USD10 billion while it was only about USD 30 million in India. This gap indicates the potential for exponential growth over the next few years considering India specific favourable factors.

With a huge patient population base, therapeutic diversity, excellent and growing hospital and clinical facilities, well-trained, English-speaking physicians and support professionals, established generic drug makers, developed bioinformatics data processing infrastructure, etc. India offers a very attractive opportunity for outsourcing several drug development process activities including clinical trials. 'The Country Attractiveness Index for Clinical Trials' prepared by A. T. Kearney considers five key areas - patient availability, cost efficiency, relevant expertise, regulatory conditions and national infrastructure - and puts China, India and Russia as the most favourable destinations.

Understanding clinical trials

A clinical trial or clinical research is a research study in human volunteers that attempts to answer specific health question / questions. Clinical trials are the fastest and safest way to find

Testing drugs in US and the other Western countries is increasingly becoming economically unviable with their strict regulations, elaborate safety and compensation requirements, and small populations.

treatments that work in human beings; and ways to improve their health. 'Interventional trials' determine whether experimental treatments or new ways of using known therapies are safe and effective under controlled environments. 'Observational trials' address health issues in large groups of people in natural settings.

Clinical trials can be **Treatment trials** that test experimental treatments, new combinations of drugs, or new approaches to surgery or radiation therapy etc; or **Prevention Trials** that look for better ways to prevent a disease in people who have never had the disease or to prevent a disease from returning; or **Diagnostic trials** that are conducted to find better tests or procedures for diagnosing particular disease or conditions; or **Screening trials** that test the best way to detect certain diseases or health conditions; or **Quality of life trials / Supportive Care trials** that explore ways to improve comfort and the quality of life for people with a chronic illness.

Clinical trials are conducted in phases. Trials at each phase have a different purpose and help answer different questions:

In Phase I trials, researchers test an experimental drug or treatment in a small group of people for the first time to evaluate its safety, determine a safe dosage range, and identify side effects etc. In Phase II, the experimental drug or treatment is given to a larger group of people to see if it is effective and to further evaluate its safety. In Phase III, the drug or treatment is given to a larger group of people to confirm its effectiveness, monitor side effects, compare it to commonly used treatments, and collect information that will allow the drug or treatment to be used safely.

Sponsor companies should, through proactive measures and risk management practices, ensure that the clinical trials they sponsor are above suspicion and guard against conflicts of interest.

There are also Phase IV trials that are post-marketing studies aimed at delineating additional information including the drug's risks, benefits, and optimal use etc.

Clinical trials liability

In the recent past, litigation against the clinical trials industry has increased manifold. The allegations are as wide as submission of false statements and claims to receive funding for a study, defective informed consent forms, regulatory non-compliance, ethical violations, conflict of interests etc.

While in most cases the target of litigation are the clinical investigators and research institutions involved in the trials, companies that sponsor trials are also exposed to the risk of litigations particularly for improper disclosures, conflicts of interest, violations of Good clinical practices etc. Sponsor companies should, through proactive measures and risk management practices, ensure that the clinical trials they sponsor are above suspicion and guard against conflicts of interest.

Unless compliance of regulatory standards including World Medical Association's Helsinki protocol and international good clinical practices etc. is ensured, sponsors and investigators are exposed to risks of costly litigation. While clinical trials insurance can offer

protection against some of the liabilities, companies with inadequate risk management practices may experience difficulty in obtaining insurance or may have to pay up more premiums for less indemnity.

Clinical trials insurance

Clinical trials insurance is basically a legal liability insurance that provides financial protection to the insured - the sponsor organization, the research organization etc. - against legal liability arising out of conducting the clinical trials. Liabilities may arise from death or injury to the subjects, any property damage, allegations of lack of care, insufficient or improper disclosures, conflicts of interest etc. Claimants may include the research subjects / volunteers, dependents of subjects in case of death of subjects, guardians of child-subjects, sponsor organizations and Researchers on each other, the government, regulators etc.

Clinical trials insurance is a specialized subject and only specified underwriters in insurance companies are authorised to deal with this insurance. The underwriters approach this line of business in a systematic manner. Understanding the approach of the underwriters helps policy seekers to appreciating the demands of information and disclosures that an underwriter seeks and balance that with the

insurance requirements of the Research Organization or the Sponsor.

Risk evaluation

Like in all insurances, information is the key for the underwriter. Underwriters would like to evaluate the relevant critical information before taking a decision on the proposal. The information an underwriter considers critical and relevant includes the objectives and the purpose of the trial; background and experience of the sponsor and monitor (if other than the sponsor) as well as that of the investigators who are responsible for conducting the trial; details of the clinical laboratories and other medical / technical institutions involved in the trial; details of the investigational products, findings from non-clinical studies that potentially have clinical significance and from clinical trials that are relevant to the trial; known and potential benefits and risks to trial participants, population to be studied; literature and data that are relevant to the trial, details of trial design, subject inclusion exclusion and withdrawal criteria; treatment to be administered - names of all the products, doses, dosing schedules, route/modes of administration, treatment periods, follow-up periods etc.; medication / treatment permitted (including rescue medication) and not permitted before and during the trial; procedures for monitoring subject compliance; methods and timing for assessing, recording, and analyzing of efficacy and safety parameters; type and duration of the

follow-up of subjects after adverse events; patient informed consent and other information documents; documentation of financial agreements between the sponsor and investigators etc.

This information helps underwriters analyse the risks involved and optimise the insurance requirements of the sponsor / investigator. Much of the information is usually found in the research protocols, ethics committee submissions, informed consent documents and agreements / contracts etc. In several cases research protocols also provide for minimum indemnity/ insurance requirements. Underwriters require all these documents before they take a decision on the proposal.

Clinical trials insurance policy

Clinical trial insurance policies are usually on claims made basis. Occurrence based policies are rare in the market these days. Insurance policy can be obtained for a specific clinical trial (Single trial policies) or several trials of the policyholder can be covered under a single policy (multi trial policies).

At the request of the insured, any or all of the following persons or entities may be included under the policy.

- Directors, partners whilst acting in their respective capacities for the insured.
- Employees of the insured including medical persons
- Sub-contractors, doctors, consultants, physicians, hospitals or

research organisation or nurses who will be performing the work for the insured in respect of the trial covered.

- Ethics committee or its members that has approved the trial in respect of claims arising out of a trial covered by this policy.

Insurance coverage

The policy offers coverage in the event that, during the insured clinical trial/s carried out by the insured or on its behalf, any trial subjects involved are killed, physically injured, or suffer harm to their health. Some policies also offer coverage for material damage that trial subjects suffer in relation to the clinical trial. Coverage also exists for damages suffered from breaches of data protection in relation to the insured clinical trial.

The insurance covers clinical trials that are carried out in India within the duration of the contract. The territorial limits can be extended beyond India on specific request. The coverage may be extended for the post-trial liabilities as well. In some countries coverage is also available (or mandatorily required) for damages that occur up to 60 months following the expiry of the contract (post-trial insurance coverage).

The policy provides cover for damages or compensation awarded against the insured and claimants' costs, fees and expenses etc. However, the maximum liability under the policy is limited to the indemnity chosen by the insured and stated in the policy. There is a compulsory deductible that should be first borne by the insured.

Exclusions to the coverage

The insurance does not respond to claims by trial subjects of the following nature:

- Deterioration of the existing state of health which would have occurred or persisted even without participation in the clinical trial;

The policy offers coverage in the event that, during the insured clinical trial/s carried out by the insured or on its behalf, any trial subjects involved are killed, physically injured, or suffer harm to their health.

- Damages that occurred because of the deliberate contravention by the trial subject of the express instructions of the investigators;
 - Fines, penalties, punitive / exemplary damages;
 - Damages arising from substances/ formulations or preparations listed by the insurer;
 - Damages that do not exceed a certain degree of adverse reactions that are to be expected from the trial drug according to the current state of medical knowledge;
 - Failure of a drug or product under trial to perform its intended purpose.
- The insurance also does not cover claims arising out of:
- War, ionizing radiation, radioactive contamination etc.;
 - Hepatitis, Acquired Immune Deficiency Syndrome;
 - Non-compliance of statutory provisions, regulations;
 - Deliberate, intentional disregard of the need to take reasonable steps to prevent claims;
 - Damages to persons under contract of employment with the insured, their contractors / subcontractors.
- Obligations of the insured**
- a. to comply with the statutes, legislation and official regulations;
 - b. to inform the trial subjects about the existence of the obligations incumbent upon them;
 - c. Where the insured appoints a third party to conduct the clinical trial, it must ensure that the third party adheres to all these obligations;
 - d. If any event occurs that may affect this insurance, the insured must report it to the insurer without delay. Any death occurrence must be notified to the insurer early enough so that it can, if necessary, arrange for a post-mortem;
 - e. To help the insurance company to ascertain the facts and reduce the damages;
 - f. To ensure that proper records about the trial subjects are kept in such a way that; should any damage occur, the events of the trial can be reconstructed for individual cases;
 - g. Not to admit, offer, promise or pay any compensation etc. to any claimant without the written consent of the insurer.

Breach of obligations

If the insured, the third party appointed to conduct the clinical trial, or the trial subject breach the obligations imposed upon them, it is usual that the insurance coverage will cease unless they can prove that the violation under the circumstances is accidental or that the

damage would have occurred despite the obligations have been fulfilled.

In certain jurisdictions breach of the obligations imposed on the insured or on the third party appointed to conduct the clinical trial only entails the right of recourse by the insurer against the insured, but not cancellation of the insurance coverage of the trial subject. In such cases, the trial subject has a right to claim directly from the insurance company and the insurance company can seek reimbursement from the insured.

Conclusion

India is poised for an exponential growth in the clinical trial industry. This presents a great opportunity for the discerning insurers to develop and offer innovative insurance solutions to the clinical trials risks. The key lies in the comprehensive understanding of the whole process of clinical trials; national and international legislations; statutes, regulations and conventions etc.; chemical, medical and biomedical technologies; global good clinical practices et al. After all, the art of successful underwriting is in asking the right questions and we can ask right questions when we have the right knowledge - knowledge, not information alone. Armed with the right knowledge, underwriters initiate meaningful deliberations with the clinical trials industry to bring about innovative insurance solutions and be active partners in promoting human health and well being in India and the world.

In certain jurisdictions breach of the obligations imposed on the insured or on the third party appointed to conduct the clinical trial only entails the right of recourse by the insurer against the insured, but not cancellation of the insurance coverage of the trial subject.



Directors & Officers

ARE YOU COVERED?

‘A DIRECTOR’S PERSONAL LIABILITY IS UNLIMITED. ALONG WITH THE TITLE COME HEAVY AND ONEROUS RESPONSIBILITIES’ EMPHASIZES P. UMESH.

Any breach or non-performance in the duties can result in claims against the companies and/or the directors of the company by reason of any wrongful act in their respective capacity.

The need for good corporate governance is getting increasingly emphasized these days on account of changes taking place in the business, social and legal environment. There is pressure from all stake holders; regulators are getting tougher with every passing day; customer awareness is increasing; and judicial activism is clearly visible. All these are bringing under close scrutiny the role of Directors and Officers of an enterprise in managing its affairs. With the economy getting globalised in terms of foot print, revenues and financing, passage of laws such as Sarbanes Oxley (SOX) laws and implementation of Clause 49 of the listing agreement with SEBI in the Indian context; it has become necessary to formalise and implement good corporate governance practices. What is heartening is that the society is accepting good corporate governance practices not as a necessary evil but as a healthy means to shape the growth and the future of the economy.

A company is an inanimate body and it does not make decisions. It appoints a Board of Directors, Officers and Managers to make decisions on its behalf. In making these decisions the Directors and Officers not only place the company at risk from actions by an aggrieved party, they also place themselves *personally at risk*. A Director’s personal liability is unlimited. All his assets are at risk. Unlike the company, he cannot hide behind limited liability. Directors are jointly and severally liable. It is the Directors who manage the assets and control the company’s day to day affairs. Directors are liable *personally* to pay losses suffered by the company following an act which is wrong, negligent, outside the company’s authority, beyond their power, or which evidences insufficient skill and care in managing the company’s affairs.

Directors and Officers are bound by duty towards the company itself, shareholders, employees, creditors, customers, competitors, members of the public, government and other regulatory bodies. Any breach or non-performance in the duties can result in claims against the companies and/or the directors of the company by reason of any wrongful act in their respective capacity.

Who can sue the Directors and Officers?

- 1) *Shareholders* - they may bring an action in their own names if their rights have been injured and they suffer losses.
- 2) *Employees* - for wrongful employment practices like discrimination, harassment and wrongful termination etc.
- 3) *Governmental or Regulatory Authorities* - for breach of laws and regulations.
- 4) *The Official Receiver/Liquidator* - in all types of winding up actions he may apply for permission to examine the conduct of Directors and Officers, both past and present, and pursue litigation against them.
- 5) *Creditors* - in the event of a company going into liquidation and/or failing to pay its creditors, they may bring an action against any or all of the Directors, both past and present.
- 6) *Others* - Anyone suffering a loss as a result of a breach of warranty of authority to contract on the company’s behalf.

It is interesting to note that in the claimant distribution, it is the

While a company is legally permitted to cover the personal liability costs resulting from activities performed on behalf of the company; this ability, called indemnification, may not apply to every situation.

shareholders who contribute as high as about 42% of the claims followed by employees at 32%; whereas in India/ Asia Pacific region, regulatory agencies contribute the maximum number of the claims approximately in the region of 40% followed by employees at 20%.

The protection available

First and foremost is the realization that the fundamental responsibility of Directors and Officers is to represent prudently the interests of the shareholders as a group and other corporate constituencies in directing the business of the company within the law. They are serving to protect the stockholders and other stakeholders, not to protect management.

Adhering to strict corporate governance standards and tighter disclosure standards would certainly make the Indian corporate sector more transparent. However, it will not necessarily guarantee protection against litigation by shareholders, employees and consumers and environmental activists etc., in view of the increasingly complex set of laws that govern the business environment in India and the world over. While a company is legally permitted to cover the personal liability costs resulting from activities performed on behalf of the company; this ability, called indemnification, may not apply to

every situation. In some cases, the financial burden of the liability is the sole responsibility of the director or officer or other insured person. Attention is invited to Sec 201 of The Indian Companies Act 1956 which reads as under:

SEC 201: AVOIDANCE OF PROVISIONS RELIEVING LIABILITY OF OFFICERS AND AUDITORS OF COMPANY.

(1) Save as provided in this section, any provision, whether contained in the articles of a company or in an agreement with a company or in any other instrument, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, misfeasance, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void :

Provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favor or in which he is acquitted or discharged or in connection with any application under

section 633 in which relief is granted to him by the court.

This is where the D&O liability policy may come to their rescue. The primary purpose of D&O liability insurance cover is to endeavour to fill in these gaps, protecting the personal assets of the individual director or officer.

The D&O Liability Insurance policy protects the Directors and Officers against:-

1. Legal costs in defending allegations or suits brought against them *alleging wrongful acts*.
2. Any damage awarded to the claimants against the Directors and Officers.

A policy is normally arranged in the name of the Parent/Holding Company and provides protection to the Directors and Officers of that Company and also the Directors and Officers of all subsidiary companies. The policy may also be extended (optional) to provide what is termed as 'Outside Board' protection. This extension protects the Directors and Officers of the Parent Company, or of any subsidiary, whilst appointed to act as Directors of a Company outside the main group, so long as the appointment is at the request of a group company. Dependent upon the profile and needs of the company, various types of coverage are available in the market today. That makes it necessary for a D&O liability insurance policy buyer to be careful in selecting the coverage and not look it as a commoditized insurance purchase.

As in the case of other liability insurances, criminal, intentional and malicious acts are outside the scope of the policy. Fines and penalties also are generally not covered.



It would not be a surprise if people insist on adequate insurance protection as a pre-requisite to taking over as directors.

the global markets for capital as well as acquiring and setting up companies in other countries. A Directors and Officers liability policy assumes greater importance if an Indian company is planning to access the US or other foreign markets for capital or to acquire or set up a subsidiary to consolidate its operations overseas.

A good D&O liability insurance cover helps to:

1. Improve the company's ability to attract qualified directors and officers. Directors designated are beginning to insist on a good D&O policy before assuming duties. With the sweeping changes in the profile and the responsibilities of the directors, it is becoming increasingly necessary for the persons intending to become directors to seek protection in some form or the other. It would not be a surprise if people insist on adequate insurance

protection as a pre-requisite to taking over as directors.

2. Avoid time consuming, distracting and potentially embarrassing claims and litigation.
3. Enhance the defense of claims and reduce the potential recovery by a claimant.
4. Appreciate the need for good corporate governance practices and incentivize their implementation.

Globalization has also resulted in Indian companies; particularly from the IT/ITES/ Pharma sectors, increasingly accessing

A D&O liability insurance policy is not meant to be a replacement for sound management & good corporate governance. But, an appropriate policy helps in as much as it reduces the apprehensions and addresses the concerns of the Directors & Officers so that they can focus on their work to take the company on growth path ensuring satisfaction of all stake holders and society.

The author is Regional Head – South, Howden India, Bangalore. The views expressed in the article are his personal views.

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The Evolving Environment

D & O LIABILITY INSURANCE

ARUNO RAJARATNAM SAYS
 ‘DIRECTORS AND OFFICERS OF FINANCIAL INSTITUTIONS CAN BE VULNERABLE TO LIABILITIES THAT ARISE FROM ANY PERCEIVED MANAGEMENT FAILURE FOLLOWING A ROGUE TRADE’. SHE FURTHER ADDS THAT ACTIONS FOR FAILURE TO SUPERVISE CAN BE BROUGHT BY SHAREHOLDERS AND REGULATORS.

Insureds are now slowly looking beyond “price” (which is still a concern) and asking “How will my D&O policy respond to this crisis? Am I sufficiently protected?”

regulatory, criminal or internal probes into whether they improperly manipulated the timing of stock options grants to their executives. These allegations are made against the Boards for improperly inflated executives’ pay and bonuses.

would have great impact on their balance sheets and income statements.

(b) Tax Liability

There could be an impact on the tax reporting resulting in unpaid tax liability.

(c) Class Action Lawsuits

Several companies are now being faced with shareholder class actions alleging inadequate or misleading disclosures in the SEC filings.

(d) Employees’ Breach of Contract Suits

In the case of McAfee, several employees are alleging that they lost a few million dollars when the company did not permit them to exercise their options during the period that it was investigating options backdating issues. The company had imposed a blackout to prevent stock transactions to avoid possible insider trading allegations. These employees’ shares had expired during this blackout period and McAfee had apparently declined to extend the employee’ options expiration date.

A series of major debacles have hit the D&O insurers and directors and officers themselves across the world since 2001. New D&O coverage issues seem to crop up ever so often now and has posed challenging and critical issues for the insurers (and the insureds) in managing their D&O portfolio. Insureds are now slowly looking beyond “price” (which is still a concern) and asking “How will my D&O policy respond to this crisis? Am I sufficiently protected?”

This article aims to highlight some of the recent trends / events affecting the D&O coverage in today’s environment.

Stock options scandal

More than 100 companies are facing

This practice (which was not considered wrong before) has now raised several problems for the D&O insurers, such as:

(a) Financial Restatements

Companies that have admitted to this practice have to carry out financial restatements for several years. This



Company directors and officers being served with extradition proceedings under bilateral extradition treaties are on the rise in recent times.

(e) Derivative Actions

Shareholders' derivative actions are being filed against the Boards for breach of fiduciary duties and wastage of corporate funds.

The D&O insurers are undoubtedly troubled by the plethora of future additional lawsuits in the horizon. They are responding with additional underwriting queries about whether the company has any exposure to options backdating. Renewal placements could be very challenging with higher premium or restrictive terms especially for companies that have admitted to this practice.

Brokers and the insureds need to pay attention to a number of key policy terms in the event of a claim on options backdating. These would be:

- Definitions for "Loss" and "Claim"
- Severability provisions in the proposal forms and exclusions
- Conduct exclusions for "personal profit" and dishonesty
- Prior acts and retroactive dates
- Can the policy be rescinded?

Extradition proceedings

Company directors and officers being served with extradition proceedings under bilateral extradition treaties are on the rise in recent times. The majority of these proceedings relate to white collar crime like insider trading, fraud, tax liabilities/ tax evasion or corporate manslaughter issues like the breach of health and safety offences statutes.

In many countries, especially in Asia, the authority applying for the extradition do

not have to produce any *prima facie* evidence of wrongdoing.

At the moment, this heightened risk for directors has been highlighted in the UK with the recent press coverage of the high profile "NatWest Three" case. The 2003 Extradition Act which has established a treaty between USA and the UK has affected UK directors if they are or were a director of a US subsidiary or if they have undertaken business in the USA.

A number of major D&O insurers have responded with a view that costs incurred in fighting extradition would be covered under "defence costs". The D&O policy does not specifically exclude the extradition risk. However it would be prudent to extend the definition of "defence costs" language to include "extradition costs". It is also important to have a definite statement that there are defence costs covers in the same vein as the cover for formal investigation expenses without a "Wrongful Act" having to be proven.

An example of a typical coverage wording is as follows:-

Extradition Proceedings

- (i) Costs of defending extradition proceedings
 - (a) The insurer shall pay the reasonable fees, costs and expenses of each insured person (except remuneration of any insured person, cost of their time or costs or overheads of any company) incurred with the insurer's prior written consent, by or on behalf of such insured person acting in their capacity as

such, in connection with challenging, resisting and/ or defending extradition proceedings brought against such insured person following:

- (A) receipt by such insured person of an official notice in writing from the responsible governmental authority advising of a request for extradition being made against them; or
- (B) the executive of a warranty for arrest of such insured person, during the policy period or whichever is the earlier.

- (b) Extradition proceedings include any appeal relating thereto, judicial review applications challenging the designation of any territory for the purposes of the Extradition Act 2003 (including for the avoidance of doubt the selection of the USA as a designated category2 territory), any extradition decision by the Secretary of State or applications to the European Court of Human Rights or similar court with respect to extradition proceedings.

- (ii) Extradition crisis costs and extradition media expenses

- (a) the insurer will pay, as part of the limit of liability, at the election of the policyholder:

- (A) up to [insert sub-limit up to _____ ("the extradition sub-limit")] for extradition media expenses; and
- (B) up to 10% of the extradition sub-limit for extradition crisis costs.

Judicial Order

- (i) an interim or interlocutory judicial order; or
- (ii) with respect to any proceeding concerning the deportation of any insured person, any judicial order;

entered against an insured person in connection with a claim against such insured person that is covered under any insurance cover of this policy. Judicial order shall not include a final order made in the disposition or adjudication of such claim.

The following definitions are added to the policy:

(i) *Extradition crisis costs*

Reasonable fees, costs and expenses of any accredited:

(A) counselor; and

(B) tax advisor

retained by the insured person, with the insurer's prior written consent, directly in connection with extradition proceedings brought against such insured person.

(ii) *Extradition media expenses*

Reasonable fee, costs and expenses

of public relations consultants retained by an insured person, with the insurer's prior written consent, directly in connection with extradition proceedings brought against such insured person.

Corporate manslaughter

With the implementation of statutes similar to the Occupational Safety and Health Act in various countries, the term "gross negligence manslaughter" or "Corporate Manslaughter" is now being applied in the corporate environment. The criminal law concept of "blame" or culpability will now be applied to a civil law or corporate entity.

In UK, the Corporate Manslaughter Bill is in the process of being passed as law soon. Under this Bill, the senior management of a company can be held accountable for the injury and/or death of third parties due to their actions or "failings by senior managers".

Apart from the issue of senior management accountability, there are two other critical issues, namely corporate reputation and branding. An allegation of corporate manslaughter can destroy both in a matter of hours or days. Share values and market confidence can plummet and incur shareholders wrath.

Current D&O policies carry a bodily injury and property damage exclusion which does exclude cover for a direct claim alleging bodily injury. However, allegations of financial loss against the directors and officers as a result of the bodily injury or property damage may be covered depending on the proper construction of the policy language.

The following examples of high profile safety disasters show that these disasters are clear evidence that the safety, health and environment regimes have failed in their corporate governance and risk management systems.

Organisation	Year/ Period	Disaster Example
Union Carbide	1984	<ul style="list-style-type: none"> • Bhopal chemicals plant, India: toxic release • 2,000 immediate deaths • 30,000 – 40,000 seriously injured • 200,000 others affected • \$470m settlement plus incalculable consequential and collateral losses to many parties • Union Carbide's reputation permanently damaged, eventually taken over by Dow
Occidental Petroleum	1988	<ul style="list-style-type: none"> • Piper Alpha offshore installation, North Sea: explosion and fire • 167 deaths • Destruction of installation • UK government loss of £2.84bn in revenues and £2.06bn in balance of payments • Cash flow losses to Occidental and other operators exceed £800m • Occidental quits North Sea and sells local assets to Elf
Railtrack, Great Western Trains, Network Rail, Jarvis, Balfour Beatty and others	1990s – 2005	<ul style="list-style-type: none"> • Southall train crash 1997; seven dead, 160 injured; Great Western Trains fined £1.5m • Ladbroke Grove train crash 1999; 31 dead, 259 injured; Thames Trains fined £2m; Railtrack heavily censured • Hatfield train derailment 2000; four dead, 102 injured; Railtrack forced into liquidation by cumulative effects on share values of several rail disasters and poor management; Balfour Beatty fined £10m, Network Rail £3.5m • Potters Bar train derailment 2002; seven dead, 76 injured; Network Rail and Jarvis heavily censured; Jarvis share values crash, company quits rail business
BP Amoco	1980s – 2005	<ul style="list-style-type: none"> • Fires at Grangemouth refinery, Scotland, in 1998; three dead, £750,000 fine • Three major accidents, including large fire at Grangemouth in May – June 2000; £1m fine • Pipeline rupture at Texas City, Texas refinery, September 2004; two dead, one seriously injured • Explosion at Texas City Refinery, March 2005; 15 dead, 170+ injured; BP Amoco fined \$21.4m • Explosion at Texas City refinery, July 2005; damage only



Organisation	Year/ Period	Disaster Example
Nishimatsu - Lum Chang Joint Venture	2004	<ul style="list-style-type: none"> • Nicoll Highway collapse, Singapore • Four dead, others injured • Massive structural damage • Mass transit railway (MTR) Circle Line project delayed by two years • Nishimatsu and others heavily censured with possible prosecutions
State and privately owned mines, People's Republic of China	Perennial	<ul style="list-style-type: none"> • Fuxin, Liaoning coal mine; gas explosion, February 2005; 214 dead • Shenlong Coal Mine Ltd, Xinjiang, coal mine; gas explosion, July 2005; 83 dead • Longmei Group, Dongfen mine, Heilongjiang, coal mine; gas explosion, November 2005; 134 dead • Daxing mine, Meizhou, Guangdong; flooding, January 2006; 102 dead
PetroChina	2005	<ul style="list-style-type: none"> • Jilin chemical plant; explosions • Five dead, 70 injured • 100 tonnes of toxic chemicals contaminate Songhua River affecting water supply of entire Harbin area and downstream into Russia • US major pension funds dump PetroChina stock and threaten legal action

Table compiled by Dr. Alan Waring (Chief Executive, Asia Risk Limited) in a paper presented at the 2005 Asia Pacific Conference on Risk Management & Safety in Hong Kong, December 2005.

Rogue Traders

Directors and Officers of financial institutions can be vulnerable to liabilities that arise from any perceived management failure following a rogue trade. Actions for failure to supervise can be brought by shareholders and regulators.

The Nick Leeson/ Barings Bank collapse is not a “one-off” event. The following examples below illustrate that risks posed by rogue traders are very real and catastrophic.

2004 National Australia Bank USD 266m

The former head of NAB’s foreign currency options desk, Luke Duffy, colluded with three other traders to falsely claim that his desk had made a profit and hence generate personal performance bonuses. In fact the team had been able to capitalise on weaknesses in the in-house trading system ‘Horizon’ to manipulate results, cover up illegal trades and hide losses.

2004 China Aviation Oil USD 500m

This state controlled entity breached its

mandates when taking large unauthorized positions in oil derivatives. The trades which proved to be loss making resulted in a spectacular collapse in China Aviation Oil’s share price.

2002 Allied Irish Bank USD 691m

AIB revealed that John Rusnak, a trader within their Allfirst subsidiary, had incurred losses by taking directional bets on currency movements and then concealed the losses by claiming to have hedged his deals with fictitious counterparties.

2005 Mizuho Securities USD 340m

A ‘fat finger’ error in Mizuho Securities resulted in a sell order for 620,000 J-Com shares (more than 40 times the number of shares in existence) at Y1, instead of 1 share at Y620,000. Despite recognising the error, the Tokyo Stock Exchange compounded the problem by blocking attempts to cancel the trade.

The D&O policy is one of the insurance solutions for this risk. Insureds should always buy Crime Insurance, Unauthorised Trade Insurance and

Professional Liability Insurance as well for significant protection.

Conclusion

The issues raised above are just a few of the more recent events affecting the D&O policy coverage.

Such circumstances highlight the fact that directors and officers should take a personal interest in the D&O policy and work with knowledgeable insurance brokers who understand the potential insurance consequences.

I wish to reiterate yet again that the D&O policy is a very dynamic and evolving policy. Companies that conduct “price tenders” annually are not obtaining the best advice or cover for their Board and should reconsider this practice.

Aruno Rajaratnam is currently the Managing Director of FINEX, Asia for Willis Insurance Brokers.

IPOs in the Indian Corporate Scene

POSSIBLE EXPOSURES AND NEED FOR PROTECTION

'STAKEHOLDERS WANT TO KNOW HOW WELL THEIR MONEY HAS BEEN INVESTED AND ARE BECOMING MORE KNOWLEDGEABLE AND DEMANDING' AVERS **B. SAI RANJANI**. SHE FURTHER ADDS THAT SPECIALIST INSURANCE PROTECTION FOR ISSUERS OF SECURITIES AS WELL AS THE FACILITATORS WOULD BECOME A MUST IN THE DAYS TO COME.

The failure to prevent the manipulation of allotment under the retail quota could be either due to negligence or ignorance by those in managerial position in the institutions concerned.

operators, brokerages, financiers and depository participants is increasing.

Earlier last year, SEBI had found that 24 key operators had cornered large chunks of the retail portion of 21 IPOs between 2003 and 2005 by using allegedly 58,938 benami or fictitious accounts. The disgorgement order imposed by SEBI in Nov 2006 asking the intermediaries to pay Rs.1.16 Billion, is an indication of the market watchdog becoming more vigilant in order to control fraud in these times of unprecedented market boom. This fraud could have also led to a D&O claim against the officers of the country's two securities depository institutions. The failure to prevent the manipulation of allotment under the retail quota could be either due to negligence or ignorance by those in managerial position in the institutions concerned.

Under such circumstances, it is important that the risk exposures faced by the organisation as well as its representatives be understood and managed effectively.

A corporate entity, when raising capital through the capital markets by inviting investors and by publication of a

prospectus and sale of unlisted securities; renders itself to the scrutiny of the regulators, new shareholders, customers and competitors. The Directors and Officers of that entity; the entity itself; shareholders and / or their advisors; lead managers; registrars; sponsors, if applicable can face potential liabilities arising from the public act of issuing shares. The liabilities can be due to misrepresentations, misstatements, wrongful disclosures, false revenue recognition and improper accounting practices, assumptions and forward looking statements.

The potential liabilities arising out of the issue of a prospectus can be very large. Under Section 15 HB of the SEBI Act, 1992, if the depositories and the depository participants were remiss in performing their duties, SEBI can impose a penalty upto Rs.10 Million. In the recent past, several instances (a few illustrated below) have surfaced leading to punitive action by SEBI. These situations could have led to a potential claim under the POSI (Public Offering of Securities Insurance) policy.

1. Jan 2007 - Nissan Copper went in for an IPO in Dec 2006 with the first day

IPOs likely to net around Rs.35,000 crore in 2006-07

Corporates are likely to raise around Rs.35,000 crore from the IPOs in the primary market during the current fiscal. Money raised through the IPOs during the period April- November 2006 was Rs.15,189 crore through 37 IPOs as compared to Rs.10, 936 crore netted via 79 IPOs in the financial year 2005-06...."

Courtesy:

The Financial Express, 6th Jan 2007

While Corporate India is leveraging IPOs in a big way - the figures mentioned above are an indication - SEBI's scrutiny on companies and their directors, market

of trading on 29th Dec 2006. Compared to 6.41 Million shares offered in its maiden offer, over 130 Million shares were traded on the first day itself. SEBI has started investigation and has asked exchanges to withhold payment of funds and shares in the settlement of Nissan Copper. In its interim report, SEBI has banned transfer of funds and shares to about 40 entities.

2. Dec 2006 - SEBI banned Gammon India Ltd. from accessing the capital markets for a year. SEBI has accused Gammon India and its promoters of misusing company funds during Gammon's rights issue in 2001 and also failing to make mandatory disclosures.
3. Nov 2006 - Wealth Sea Pte Ltd. was asked to make an open offer to shareholders of Dunlop India Ltd and Falcon Tyres Ltd for 20 per cent stake, plus pay interest at 10 per cent per annum, to the shareholders for a period between June 2, 2006 and the date of actual payment for the tendered shares. No public announcement for the acquisition of shares had been made (Indirect acquisition).
4. Aug 2006 - SEBI imposed a penalty of Rs 250 Million on Holcim (India) Pvt Ltd., for not making an open offer to shareholders of Everest Industries Ltd (EIL), a subsidiary of Associated Cement Company (ACC). Holcim had acquired 34.71 per cent stake in ACC, while ACC held 76.01 per cent stake in EIL - amounting to an indirect acquisition.

The need for specialist insurance protection for issuers of securities has never been greater. The Public Offering of Security Insurance or the POSI policy is an insurance cover for actual or alleged wrongful acts of a company and its directors arising from the issue of a prospectus. The cover may also include claims by the underwriter or sponsor of the floatation arising from warranties and indemnities given by the company or the directors personally in the agreement with the underwriter and sponsor.

Salient features of a POSI policy

1. Claims made form
2. Right to defend clause
3. Normally purchased for a period of 3 to 6 years on payment of single premium
4. It can provide cover for introductory offerings (IPO), secondary offerings and can also cover private placements
5. Scope of Cover (The scope provided below is indicative only. Actual terms may vary from underwriter to underwriter).
 - a. Defence Costs and expenses form part of the Limit of Liability.
 - b. Some underwriters insure expenses incurred in order to prevent or minimise, adverse effects of negative publicity resulting from disclosures / statements resulting in the fall of share prices by 10% or more.
 - c. Legal Liability arising on the Directors and Officers of an organization due to their

managerial action w.r.t the public issue. Policy to also protect spouses, estates and legal representatives of the Directors and Officers.

- d. Legal Liability on the organization itself, arising from negotiations, discussions and decisions in connection with the offering.
 - e. Cover includes punitive and exemplary damages.
 - f. Fraud exclusion does not deprive innocent insured of defence costs cover.
 - g. Insured person definition is extended to include natural persons and family holding companies selling their shares in the public offering.
6. Exclusions
- a. Fines or penalties
 - b. Fraudulent act or acts leading to personal profits
 - c. Claim arising from any actual or proposed payment by the organization due to allegedly inadequate or excessive consideration in connection with the purchase of its own securities.

The amount of cover required is generally less than the amount of issue proceeds and often in the range of Rs.250 Million to Rs.500 Million, and sometimes more. Where exposures arise under US Securities Laws, higher limits are desirable.

The difference between a D&O policy and a POSI policy lies in the risks being addressed by them. A D&O policy is not designed to address all the risks arising from a prospectus and listing process. Typically, they do not cover claim against the company. Prospectus policies are long term in nature whereas D&O are annual policies. Premium may be increased or extension for prospectus risk may be withheld on renewal in a D&O if a potential prospectus claim is known.

The focus so far was on the risk exposure

The need for specialist insurance protection for issuers of securities has never been greater. The Public Offering of Security Insurance or the POSI policy is an insurance cover for actual or alleged wrongful acts of a company and its directors arising from the issue of a prospectus.

of the organisation and its employees. The Registrar and Transfer agents also have a significant exposure since they are the custodians of the securities related to the equity shares / bonds issued and proposed by the primary organisation. Instances in the recent past include:

1. Dec 2006 - SEBI imposed a penalty of Rs.1 Million on Kotak Securities for not maintaining proper margin as per requirement and other irregularities during the period 2001-2003. The irregularities include giving terminals at places other than specified by the regulator, improper maintenance of client documentation and not maintaining proper segregation between NSE and BSE client accounts.
2. Dec 2006 - SEBI fined HSBC Investment Services (Netherlands) NV, a foreign institutional investor; an amount of Rs. 1 million for non-reporting of issuance of Participatory Notes (PNs).

The insurance policy for Registrar and Transfer agents covers mainly the following exposures:

1. Loss of securities while in their custody or in transit due to fire and allied perils and burglary.
2. Direct financial loss arising due to the dishonesty of an employee. It also

includes legal liability to third party as a result of the dishonest act.

3. Direct financial loss sustained due to forgery.
4. Legal liability to pay compensatory damages as a direct result of negligent acts, omissions or breach of professional duty.
5. Direct financial loss suffered due to destruction of electronic data with a malicious intent or due to fire / burglary/ strike.
6. Payment / delivery of funds relying on fraudulent input of electronic data directly into the insured's computer system.

The exact scope of cover varies from one underwriter to another. The Insurance companies may at times insert a warranty to control the risk. Eg: "Charges of more than Rs.10,000 should be signed by two authorised signatories and not be in pre-printed stationery" or "maintaining record of daily file and paper movements in and out of office premises".

Fines, Penalties and damages resulting from the multiplication of compensatory damages are generally excluded. This policy can be IPO specific i.e. policy taken by the registrar with respect to a single IPO or it could be taken on an annual basis.

In summary, POSI covers the wrongful acts of a company and its directors arising from the issue of a prospectus. If a company or its directors provide wrong information in the offer documents, or even the road shows - the shareholders can file legal suits. Insurance would cover the legal costs incurred in defending civil and criminal proceedings relating to prospectus liability. IPO insurance can ring-fence the IPO related liability outside any D&O programme.

The policy meant for the registrar and transfer agent aims to identify and protect the entity rendering services for the public offer. Exposures could range from fund transfer arrangements going wrong to loss of shares while in custody to wrongful allotment of shares. The responsibilities, and as a consequence the risk exposure faced by these entities; are huge.

Investors and analysts have always scrutinized the prospectuses of companies raising capital for Stock exchange listings, mergers, expansions, etc. The scrutiny does not stop once the transaction has been completed. Stakeholders want to know how well their money has been invested and are becoming more knowledgeable and demanding. Hence specialist insurance protection for issuers of securities as well as the facilitators would become a must in the days to come.

Insurance would cover the legal costs incurred in defending civil and criminal proceedings relating to prospectus liability. IPO insurance can ring-fence the IPO related liability outside any D&O programme.

The author is Branch Head – Kolkata, Howden Insurance Brokers India Pvt. Ltd. She can be reached at sai.ranjani@howdenindia.com. The views expressed in the article are purely her personal views.



The World of Liability Insurance

AN INTRODUCTION

‘LIABILITY MAY ARISE OUT OF THE OWNERSHIP OF A HOUSE, A PET, OUT OF SPORTING ACTIVITIES OR JUST IN THE SIMPLE ACT OF CROSSING THE ROAD WITHOUT LOOKING’ OPINES G. GOPALAKRISHNA.

Liability insurance is different from a conventional insurance contract in the sense that while the insurer pays the claim, if admissible, to the insured in an ordinary contract; liability insurance is designed to offer specific protection against third party claims. It is sometimes termed ‘general liability’, which comprises employers’ liability, public liability, directors’ and officers’ liability, products liability covers and professional indemnity insurance.

A person in liability insurance has insurable interest to the extent of any potential liability, which may be incurred by way of damages and other costs. To that extent, liability insurance is very different from property or life assurance. It is not possible to predetermine the extent of the interest because there is no way of knowing how often one may incur liability and what would be the

monetary value of liability. In a way, the interest in liability insurance is without monetary limit but in practice, it is possible to make a realistic judgment as to the maximum liability that may be incurred. In a liability insurance policy, there is a limit of liability, chosen by the insured as the maximum figure that in his estimation is ever likely to be required to settle liability claims and there is no sum insured as in the case of property and life assurance policies.

Employers’ Liability/Workmen’s Compensation Insurance

When an employer is held legally liable to pay damages to an injured employee or the dependent of someone who is fatally injured, he can claim against his employers’ liability insurance policy, which will provide him with the required cover. In addition, the policy will also pay certain expenses by way of lawyers’ fees or doctors’ charges where an injured man has been medically examined. The intention is to ensure that the employer does not suffer financially but is compensated for any money he may have to pay in respect of a claim. The policy is restricted to damages payable in respect of injury and does

not apply where property of an employee is damaged.

Insurance is compulsory for all employers so that the injured employee is ensured of compensation in the event of injury in course of his employment. In India, Employees State Insurance Scheme has taken over the bulk of the cover so that need for Workmen’s Compensation Insurance remains for any workers / employees who are not covered by the scheme. As such, this type of business, which should have formed a large portion of an insurance company’s liability insurance portfolio, is limited to only certain residual cover requirements of the employer.

Public Liability Insurance

For individuals - Personal Liability: Each individual owes a duty to his neighbour or any other person not to cause them injury or damage to their property. Liability may arise out of the ownership of a house, a pet, out of sporting activities or just in the simple act of crossing the road without looking. Public liability policies have been designed to provide compensation for those who may have to pay damages and legal costs for such injuries or for damage to property.

In a way, the interest in liability insurance is without monetary limit but in practice, it is possible to make a realistic judgment as to the maximum liability that may be incurred.

Lift (Third Party) Insurance: The policy is designed for owners of passenger lifts in buildings to cover third party liability for personal injuries or property damage arising out of the use and operation of lifts, including their machinery, plant, doors, safety devices or other appliances. The cover applies to (a) Death or bodily injury of any person (not being a member of the insured's family or an employee of the insured); (b) Loss or damage to property (not being the property of the insured or of his family members or of his employees); (c) Direct damage to personal effects of any person (not being a member of the insured's family or an employee of the insured);

For Business Risks: Every business organisation is exposed to the risk of incurring liability due to its operations. The public may be in contact with the firm in its office or on various sites where manufacturing process is being carried on. The policy indemnifies the insured for its liabilities thus incurred.

Directors' and Officers' Liability

The Directors' and Officers' Liability policy provides cover for defense costs as well as the amount of compensation for which a director or an officer may be liable for his negligence. Directors are held responsible for the behaviour of a company and in this way; shareholders, creditors, customers, employees and others can take action against the directors as individuals.

Products liability insurance

An exception on most business public liability policies is one relating to liability arising out of defects in the goods sold. This can be a very onerous liability and one that insurers would prefer to deal with separately. If a person is injured by any product he purchases, foodstuffs or

A lawyer may give advice wrongly or even carelessly with the result that the person who was relying on the advice loses money.

medicines for example, and can show that the seller or in some cases the manufacturer, was to blame; he could succeed in a claim for damages.

Professional indemnity insurance

Another exception to the basic public liability policy is one relating to liability arising out of professional negligence or more particularly a genuine error of judgment. This can arise where lawyers, accountants, doctors, architects, insurance brokers, actuaries and a whole range of professional people do or say things, which result in others suffering in some sense. A lawyer may give advice wrongly or even carelessly with the result that the person who was relying on the advice loses money. That person would be able to sue the lawyer for an amount equal to what he had lost. The lawyer can effect professional liability insurance, often known as Professional Indemnity Insurance, to meet the cost of an award against him.

Insurance products differ from industrial products

There is a fundamental difference between the activities of a producing industry and those of the insurance industry. In the former, the customer can see the product before he buys, can measure and test it too to ensure that it will do what he requires it to do

when he wants it done; whereas insurers sell an entirely different product which the customers can neither see nor measure nor test before they buy it for not only it is intangible, but also is invisible. In fact, what insurers sell is only a promise - a promise to help the customers out of certain specified sorts of trouble. It is only when the promise has worked that the customer gets his cheque in settlement of a claim.

Nature and characteristics of Liability Insurance

Insurers must keep themselves abreast of the many drastic changes that the law of both tort and contract witness constantly. The more first hand knowledge the liability insurer can obtain, the better. A personal survey or a meeting with those responsible for running the risk can make all the difference to rating, to the cover, or indeed to consideration of whether the risk is acceptable at all. A further advantage will be that by meeting the proposer, the foundations can be laid for building mutual good faith; and understanding for good faith is the absolute essence of liability insurance.

Liability to third parties may be by litigation, arbitration, or agreement. The risk of liability is defined as "the possibility that a person, either on his personal behalf, or on behalf of all those

The growing consciousness among the members of the public of their legal rights and remedies has led to recourse to litigation to fix liability on the negligent person and claim damages.

for whom he is responsible, will be called upon to pay (certain sums of money) to certain other persons in discharge of an obligation imposed by law”.

The term ‘loss’ refers to the sums finally determined by a Court of Law while the term ‘law’ means both statutory as well as Common Law. As considerable uncertainty exists about the extent of liability that will befall on the insured, the potential liability is an ‘open-end’ unlike property insurance where the maximum loss amount payable can never exceed the sum insured or value of property, whichever is less.

Liability which may either be public liability or employers’ liability arises out of Statutes or Common Law. Statutory Law refers to legal enactments such as Companies’ Act. Common Law, on the other hand, refers to judge-made Law originating from customs partly and also judicial decisions. Common Law is thus an uncertain law.

Every person in the conduct of his affairs owes to every other person a duty of reasonable care and prudence. If he fails in his duty resulting in loss, the person failing in his duty is answerable in damages. In India, claims are founded both under Statutes or under ‘torts’.

‘Tort’ is a civil wrong independent of Contract - for which remedy lies in a legal action for damages. To put it otherwise, it is a breach of some duty independent of a contract - giving rise to a civil cause of action. Liability insurance policies cover these torts of

negligence, error or omission or lack of care etc.

The Law of Torts defines ‘negligence’ as ‘the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.’

This definition of ‘negligence’ is a classic one. But the principle has further been stated that (i) there must be a duty owed to the person damaged; (ii) there must be a breach of that duty; and (iii) the damage must be caused by that breach.

One of the features of Liability Insurance is that the claimant is not the insured, but a Third Party. The payment is also made to a person other than the insured. Claims processing is somewhat cumbersome often involving intricate legalities. Another feature common to all legal liability insurances is that in the event of a claim, two stages of liability are to be considered. When a claim is made upon any insurance policy, it is to be decided whether the policy covers that claim or not. Once a valid claim is found to exist whether or not the insured is legally liable to pay, compensation to the claimant merits further examination. Insurers will handle the claim made upon the insured if the policy operates even if the latter is not liable to compensate. Whether the policy operates or not depends upon (i) whether the claim falls within the

operative clause - the onus of proof being on the insured and (ii) whether the claim is excluded by any provision contained in the policy for which onus of proof rests on insurers. A further feature is that there is no Tariff rate governing the insurance. The Tariff rate is the reverse of the maximum retail price and is a base rate. The ‘Tariff’s aim is to discourage rate-war and to ensure healthy competition in the market place’.

Origin and development of liability insurance in India

In India, the passing of Workmen’s Compensation Act, 1923, and the Motor Vehicles Act, 1939, had decisive effect on the origin and growth of employer’s liability and the public liability insurances respectively. Particularly, the latter act, which introduced Motor Third Party Insurance on a compulsory basis, helped to emphasize the need for protection for public liability risks in other areas of economic activities.

In the increasingly complex conditions of modern life, accidents resulting in bodily injuries or damage to property have become almost inevitable. The growing consciousness among the members of the public of their legal rights and remedies has led to recourse to litigation to fix liability on the negligent person and claim damages. Court decisions, too, from time to time, have identified new areas of legal liabilities. All these developments have influenced the growth of Public Liability Insurance in a variety of forms to provide the necessary protection.

The Bhopal Tragedy in 1984, suddenly brought into focus new hazards to life and property; and generated a demand for Public Liability Insurance. Other contributory factors for the demand are increasing public awareness of legal rights and remedies, Public Interest Litigation and judicial activism.

Another factor responsible for the growth of Public Liability Insurance is the enactment of several laws e.g., the Environment Protection Act, 1986, Public Liability Insurance Act, 1991 etc. The Consumer Protection Act, 1986, which includes medical services in its scope, has influenced the growth of professional indemnities for doctors and medical establishments.

The development of Workmen's Compensation was partially affected by the passing of the Employees' State Insurance Act, 1948. The Act set up the Employees' State Insurance Corporation to provide benefits to industrial employees for employment injury, sickness, maternity etc. The Workmen's Compensation Act does not apply in areas where the ESI Act applies. Nevertheless, there is need for employers' liability policy to cover common law liability towards employees, for work-related injuries, irrespective of whether they fall within the ESI Act or not.

The Supreme Court in a landmark judgment in the case of Shriram Foods & Fertilizer Industries (vide MC Mehta Vs Union of India, 1986) ruled that the civil liability of the Corporation for torts also attached to Directors and other

Officers of the Corporation, who are subject to personal civil liability for corporate torts. This has resulted in the need for Directors and Civil Liability Policy.

Directors and Officers (D&O) Liability Insurance in India

India has not had a history of litigation against the directors and officers. The case law for this type of claim is thus non-existent though the position may change in future. The law is based on UK system where exists potential for this type of claims. India is a dynamic environment and a major market. Increasing globalization of the world economy and investment of foreign capital here via equity or via joint ventures coupled with the fact that number of Indian companies raise money from the global equity markets in the form of American Depository Receipts (ADRs) are likely to lead to a heightened awareness of the use of litigation and the dire need to protect against it. Also American directors serve as directors in Indian companies in which their employers who have made investments will insist on D&O insurance to be in place as a condition to accepting assignment.

D&O is essentially an errors and omissions (e&o) insurance for managers/officers of a company. But it is not a corporate e&o insurance. As on date, D&O has not had a high profile in India. The market is rather circumscribed. The exposure to D&O claims in India is akin to U.K. except for the principal difference of awareness. With awareness creation the plaintiffs are more likely to press for recourse, which will make the directors realize the need for protection.

The worldwide trend towards consumerism and accountability is leading to greater concern amongst Indian Directors and Officers.

D&O as a Concept

D&O Insurance is designed to protect the personal fortunes of **directors and officers** of a company (public or private) against the consequences of their personal liability for financial losses arising out of 'wrongful acts' and/or omission actually or allegedly attempted or committed in their capacity as such, the insured event under the policy being legal liability to Third Parties for 'wrongful act'. A wrongful act can be defined as 'actual or alleged breach of duty, breach of trust, breach of warranty of authority, omission, negligence, error, misstatement and misleading statement'. It is believed that 'wrongful act' can be committed only by others, but the truth is that misfortune spares none. 'Officer' is a person with authority to commit the company. He may be Manager, Company Secretary etc.

Government/Regulatory Authorities

For mismanagement and breach of regulations, Securities & Exchange Board

The worldwide trend towards consumerism and accountability is leading to greater concern amongst Indian Directors and Officers.

of India (SEBI), Reserve Bank of India (RBI) or Indian Tax authorities may sue directors.

Basic principles of insurance

Liability Insurance contracts, like other insurance contracts, are subject to the provisions of the Indian Contract Act 1872. These contracts are also subject to the special principles developed under Common Law viz., insurable interest, indemnity, subrogation, contribution and utmost good faith.

Briefly stated, **Insurable Interest** must be capable of measurement in terms of money. In Liability Insurance, damages awarded against the insured and the costs and expenses incurred by him in the defence of third party claims are measurable in monetary terms. The **Principle of Indemnity** in these insurances is designed to provide the insured protection against the financial consequences of legal liability. If the insured is legally liable to pay damages to others, the policy will indemnify him subject to the terms, conditions and limitations of the contract. Indemnity is also available in respect of legal costs awarded against the insured; as well as legal costs and expenses incurred by the insured with the written consent of the insurers in the defence or settlement of claims. **Subrogation**, which means the transfer of rights and remedies of the insured to the insurer who has indemnified the insured in respect of the loss, has application in liability under Products Liability policies. That is, if a claim is paid on behalf of a retailer for a defective product, the retailer's rights of recovery against the wholesaler or manufacturer are subrogated (transferred) to the insurers. **Contribution**, meaning right of an insurer

Indemnity is also available in respect of legal costs awarded against the insured; as well as legal costs and expenses incurred by the insured with the written consent of the insurers in the defence or settlement of claims.

who has paid a loss under a policy to recover a proportionate amount of the loss from other insurers, who are also liable for the loss, is modified in liability policies by a policy condition to ensure that each insurer pays his own rateable share of loss. **Utmost Good Faith** is applied by a policy condition which provides that there shall be no liability for any claim if there has been material misstatement or non-disclosure of any material information.

THE PUBLIC LIABILITY INSURANCE ACT, 1991

With the growth of hazardous industries, not only the workers employed in the undertaking but also members of the general public have been exposed to the risks of accidents. The victims generally belong to weaker sections who can not afford to go through prolonged litigation in a Court of Law to recover compensation, unless they are workers of the undertakings. Often, the undertaking does not have enough resources to meet the obligations of compensating the victims. Consequently, the legitimate claims of persons sustaining injury are not met. The purpose of the legislation is to provide for mandatory Public Liability Insurance for installations handling hazardous substances to provide minimum relief to the victims. Such insurance, apart from

safeguarding the interest of the victims of accident, would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents. If the objective of providing immediate relief is to be achieved, the mandatory Public Liability Insurance should be on the principle of 'no fault' liability as it is limited to only relief on a limited scale. However, availability of immediate relief would not prevent the victims to go to courts for claiming larger compensation.

Thus, various kinds of liabilities devolve upon the individuals or corporate bodies associated with or involved in several activities. In more recent times, due to different large-scale catastrophes, corporate governance has been affected much and assumed enormous importance.

In all the above situations, the liabilities that arise on account of being associated directly or indirectly with various societal bands or groups can seriously damage their business activities and other pursuits. Liability Insurance in almost all these domains provides coverage to the insured against any such contingencies or eventualities.

The author is a retired Senior Officer, LIC of India.



“विम्याच्या हक्कासाठीची सर्व कागदपत्रं मी पाठवली त्याला आता तीन आठवडे झाले ... ते पैसे लवकर पाठवतील अशी आशा आहे.”

“होय, पाठवतीलच. सर्व कागदपत्रं व्यवस्थित असतील तर त्यांना ३० दिवसांच्या आत दाव्याची रक्कम द्यायची असते. तसा नियमच आहे !”

विमा नियामक आणि विकास प्राधिकरण (आय आर डी ए), ही भारतातील विमा उद्योगाचे पर्यवेक्षण करणारी संस्था विमाधारकांच्या हिताचे रक्षण करते. आयआरडीएने घालून दिलेले काही नियम खालीलप्रमाणे आहे :

- संबंधित सर्व कागदपत्रे मिळाल्यानंतर विमा कंपनीने ३० दिवसांच्या आत हक्काचे पैसे देणे वा काही वाद असल्यास तसे विमाधारकाला योग्य त्या कारणांसहित कळवणे भाग असते.
- प्रस्ताव स्वीकारल्यापासून ३० दिवसांच्या आत विमा कंपनीने संभवता विमाधारकाना प्रस्ताव पत्राची प्रत मोफत देणे आवश्यक असते.
- प्रस्ताव मिळाल्याची पावती दिल्यानंतर १५ दिवसांच्या आत त्यावर विचार होऊन तसे विमा कंपनीने कळवणे भाग असते.
- आवश्यक ती सर्व कागदपत्रे दिल्यानंतर पैसे चुकते होण्यास विलंब झाला तर विमा कंपनीला तेवढ्या काळासाठीचे व्याज देणे गरजेचे असते.
- जीवन विमा घेणाऱ्या धारकाला (पॉलीसी घेतल्याच्या तारखेपासून) १५ दिवसांचा काळ हा पॉलीसी रद्द करण्यासाठी 'फ्री लुक पिरिअड' (मोफत निरीक्षण काळ) म्हणून मिळतो.
- विमाधारकाने कोणत्याही कारणास्तव संपर्क केल्यास १० दिवसांच्या आत विमा कंपनीने प्रतिसाद देणे आवश्यक असते.



विमा नियामक आणि विकास प्राधिकरण द्वारा
जनहितार्थ प्रकाशित :
इन्शुरन्स रेग्युलेटरी अँड
डेव्हलपमेन्ट ऑथोरिटी
३ रा मजला, परिक्षम भवन,
बशीरबाग, हैदराबाद- ५०० ००४.
वेबसाईट : www.irdaindia.org



प्रकाशक का संदेश

किसी भी चल अथवा अचल संपत्ति के स्वामी होने के परिणामस्वरूप व्यक्ति का एक दायित्व होता है जो दूसरे व्यक्ति के प्रति उसका उत्तरदायित्व बन जाता है। उत्तरदायित्व की थाह लेना कठोर है, और इसको परिभाषित करने का प्रयास तो छोड़ ही देना चाहिये। आपके परिसर में कोई बुलाया या बिन बुलाया मेहमान मात्र फिसलने या गिरने के कारण फ्रैक्चर आने पर आप पर मुकद्दमा ठोक सकता है। दायित्व अपने आप में प्रभावशाली क्षेत्र है और इसके अन्दर आवरण प्रदान करने की कोई सीमा नहीं है। यह कहना अतिशयोक्ति नहीं होगी की सभ्य समाज में मात्र रहने के कारण व्यक्ति के उत्तरदायित्व निहित हो जाते हैं।

भारतीय बीमा क्षेत्र में दायित्व बीमा अधिक प्रचलित नहीं है। सार्वजनिक दायित्व बीमा अधिनियम 1991 इस दिशा में मील का पत्थर है, जैसे यह मात्र पर्यावरण दायित्व को आवरण प्रदान करता है यह निगमित इकाईयों की गतिविधियों के परिणामस्वरूप सामान्यतः सिविल

जीवन में कोई कुप्रभाव न पड़े। हाल के वर्षों में विश्व में विभिन्न निगमित घोटालों के कारण इसकी भूमिका को इसी संदर्भ में देखना चाहिये। बीमा उद्योग को खोला जाना अपने आप में दायित्व बीमा में प्रगति को बताता है। जैसे भारतीय बीमा बाजार अपने प्रतिरूपों से इस क्षेत्र में काफी पीछे है। जर्नल के इस अंक के केन्द्र में दायित्व बीमा है। बीमा संविदा की निर्भरता मुख्य रूप से वाक्यांशों को परिभाषित करने में होती है और इनकी पुनर्वृत्ति होती है। संविदा के दायित्व में अनेकार्थता समुचित परिभाषा की आवश्यकता है।

जर्नल के अगले अंक का केन्द्र बिन्दु बीमा संविदा में वाक्यांशों की परिभाषा का महत्व होगा।

श्री. ए. एस. राव
सी. एस. राव
अध्यक्ष

// दृष्टि कोण //

आस्ट्रेलियन पुडेंशल विनियामक प्राधिकरण (एपीआरए) लेखा परीक्षकों द्वारा दी गई सूचना पर भरोसा करती है तथा लेखा परीक्षा के किसी भी उल्लंघन को गंभीरता से लेती है।

श्री रास जोन्स
एपीआरए के उपाध्यक्ष

जबकि एम.ए.एस. वित्तीय प्रणाली में स्थायित्व को प्रोत्साहित तथा संरक्षित करना चाहती है, लाइसेंस के उच्च मानको, विनियमों तथा पर्यवेक्षण के द्वारा अन्य कई सम्मानित विनियामकों की तरह, इसका लक्ष्य सभी वित्तीय संस्थाओं को नष्ट होने से बचाना नहीं है।

श्री लिम हग कियांग
ट्रेड तथा इंडस्ट्रीज मंत्रालय के मंत्री तथा सिंगपुर की मैनेरटी प्राधिकरण के उपाध्यक्ष

जोखिम-पर्याप्तता मूल्य नियम शर्तों का कोई विकल्प नहीं है, हम यह समझते हैं कि पूँजी स्रोत व जोखिम प्रबन्ध की काफी माँग है तथा निम्न ब्याज दरें बाजार में अनुशासन बनाये रखने में सक्षम होंगी।

टोरस्टेन जेवरोक
म्यूनिख री के सदस्य

वित्तीय निरीक्षण तथा उसको बनाये रखने की क्षमता अब अन्तर्राष्ट्रीय धन शोधन तथा आतंकवाद को वित्तीय सहायता देने के लिए केन्द्र में है।

श्री रिटर्ड वालकर
निदेशक, पालिसी तथा अन्तर्राष्ट्रीय मामले, गुरयंसे वित्तीय सेवा कमिशन

बाह्य अनुषंगी की स्वामित्व कड़ी पूंजी के सम्बन्ध स्थापित करती है जो समूह को हिला सकती है (अथवा द्वि गणांक पूंजी के परिवर्तित हो सकती है)

केथ चैम्पमैन
महा प्रबन्धक, नीति विकास, आस्ट्रेलिया विनियामक पुडेंशल प्राधिकरण
(क्रांस बोर्डर पर्यवेक्षण पर बात करते हुए)

(2006 के वर्ष के दौरान) जोखिम प्रबन्धन अधिक पेशेवर हो गया तथा बीमा रिपोर्ट में पार्दर्शता बढ़ी। ऐसे प्रयास भी किए गए जिससे कुशलता बढ़ सके जिसके पूँजी प्रबन्धन शामिल है।

थोमस हैस
मुख्य इकोनोमिस्ट, तथा स्वीस री इकोनोमिक रिसर्च के प्रमुख तथा परामर्शदाता



सावधानी से उपयोग

जीवन बीमा में ग्राहक सेवा

ग्राहकों की शिकायतों को दूर करना मात्र एक सक्रिय ढंग है ग्राहक को अपेक्षित न्यूनतम ग्राहक सेवा प्रदान करने के लिए। इस समय की माँग है की अधिक सक्रिय योजना जिसका लक्ष्य अतिरिक्त तत्वों के द्वारा ग्राहक को अधिक और अधिक लुभाना है - कहते हैं **संजीव माँगो**।

लोग आकस्मिकता के लिए बीमा क्रय करते हैं। पिछले कुछ सालों में बीमा क्षेत्र में विकास के परिणाम स्वरूप बीमा करने के ढंग में क्रांतिकारी परिवर्तन हुआ है। एक खुले बाजार वातावरण में ग्राहक के पास यह विकल्प है कि वह किससे क्रय करें। वह अपने अनुभव के आधार पर अपने विकल्प को लागू करता है।

फिर भी बड़ी संख्या में उत्पाद तथा उन्हें उपलब्ध करवाने वालों के बाद भी उपभोक्ता शिकायतें वृद्धि पर हैं। अधिकांश शिकायतें संचार तथा प्रशासनिक असफलता की हैं। अधिकांशतः बिक्री का स्थान ही अधिकांश शिकायतों के मूल में होता है क्योंकि ग्राहक को यह ज्ञान नहीं होता की वह क्या खरीद रहा है। कई बार यह उत्पाद की प्रकृति में होता है लेकिन एक से अधिक बार यह बीमा कर्ता द्वारा सूचना की पर्याप्ता के अभाव। जब बीमा कर्ता या उसका प्रतिनिधि किसी भावी ग्राहक से बात करता है उत्पाद

के सम्बन्ध में घोषणा करना एक बड़ी आवश्यकता है। एक शिकायत इस उद्योग से परंपरागत रूप से यह है कि ग्राहक का कभी भी उत्पाद के सम्बन्ध में नहीं बताया जाता, न ही इसे यह मालूम है कि क्या पूछा जाए। इसका परिणाम यह होता है कि ग्राहक के पास वह उत्पाद पहुँच जाता है जिसकी आवश्यकता उसे होती ही नहीं है। अन्य सामान्य शिकायत यह है कि एजेंट ग्राहक का उच्च वापसी का आश्वासन देता है तथा शुल्कों को छुपा लेता है विशेषतः युनिट लिंक पालिसियों को बेचते समय।

बीमा कर्ता अथवा उसके एजेंट को यह सुनिश्चित करना चाहिये सभी भौतिक सूचनाएं जो उत्पाद से सम्बन्धित हैं वह ग्राहकों को दी जाए। जिससे वह निर्णय कर सके कि सबसे बेहतर उसके लिए क्या है। आगे यदि प्रस्ताव पत्र तथा अन्य दस्तावेजों को ग्राहक नहीं भरता है तो एक सर्टिफिकेट प्रस्ताव पत्र के अन्त में शामिल किया जाना चाहिए कि फार्म का विवरण तथा विवरण पत्र जिसमें फार्म तथा दस्तावेज शामिल है, पूरी तरह से ग्राहक को समझाया गया तथा वह प्रस्तावित समझौते के बारे में पूरी तरह जानकारी रखता है। इससे बीमा कंपनियों के विरुद्ध यह आरोप कि उनके ग्राहक को पूरी जानकारी नहीं

दी गई से मुक्ति प्राप्त हो सकेगी। अतः यह जरूरी है कि बीमा ग्राहक सार में स्पष्ट तथा ठीक सूचना उत्पाद के बारे में प्राप्त करे जो बीमा कर्ता द्वारा दी जाती है जो ग्राहक की उत्तरदायित्व तथा कर्तव्यों को भी बतायेगा।

कंपनियों का केन्द्र बिन्दु ग्राहक सेवा बन गई है। यह एक ऐसा क्षेत्र जहाँ नई कंपनियाँ प्रवेश का रहीं हैं। अपनी बेहतर परिपाटियों तथा प्रचालन निपुणता के द्वारा तथा तकनीक की उपर्युक्त प्रयोग द्वारा। ग्राहकों से बर्ताव करने के लिए बड़ी संवेदनाशीलता दिखाई जा रही है। फिर भी बहुत कुछ करने की आवश्यकता है। बीमा कर्ता को इस स्थिति के लिए तीव्रता से तैयार होना चाहिये। वास्तविक जानकारी तथा सेवा को जमीन पर उतारने के लिए समय अवधि का कई क्षेत्रों में कम करने की आवश्यकता है। जैसे पहली पालिसी रसीद जारी करने पालिसी दस्तावेज प्रीमियम नोटिस परिपक्वता भुगतान तथा मृत्यु दावे इत्यादि के लिए।

विशेष रूप से दावे की स्थिति में बीमा कर्ता की स्थिति कठोर होती है जब दावे के सम्बन्ध में उससे कुछ प्रश्न पूछे जाते हैं। बीमा कर्ता से दावा सम्बन्धित सूचनाएं प्राप्त करना हमेशा एक कठिन तथा देरी

बीमा कर्ता को इस स्थिति के लिए तीव्रता से तैयार होना चाहिये। वास्तविक जानकारी तथा सेवा को जमीन पर उतारने के लिए समय अवधि का कई क्षेत्रों में कम करने की आवश्यकता है।

करने वाली प्रक्रिया होती है। बीमा कर्ता इस प्रक्रिया को आलोचना से देखते हैं और समझते हैं कि उससे कोई सूचना प्राप्त करने का अर्थ दावे को उसके विरुद्ध स्थापित करना है। बीमा कर्ताओं से एक सामान्य बात यह हो गई है कि दूसरी तरह से दावा निरीक्षण प्रक्रिया का लाभ उठाया जा रहा है। यह यहाँ तक गया है कि जब दावे का निपटना का प्रश्न होता है तो दोनों में निर्भरता का अभाव दिखता है। बीमा कर्ता की तरफ से देखे तो यह समझा जाता है कि बीमा कर्ता कपटपूर्ण बीमा लेने के लिए नाजूक सूचनाओं को प्रकट नहीं कर रहा।

एक पेशेवर दावा मैनेजर को बीमा कर्ता को इज्जत और नजाकत से पेश आना चाहिये। एक अर्थपूर्ण पेशेवर बीमा संविदा को दोनों पक्षों के लिए साधारण तथा आसानी से समझ सकने वाली भाषा में बनाये जाना चाहिये। दावों को देना एक सेवा है। एक बार जब पेशेवर दावा पेशेवर इस सेवा को देना चाहते हैं तो सहयोग अपने आप साथ-साथ आता है। एक निपूर्ण साक्षात्कार लेने वाला दूसरे के विश्वास को जीत सकता है।

बीमा व्यवसाय है परमविश्वास है। यह समग्र बीमा मैक्स न्यूयार्क लाइफ प्रणाली द्वारा और यह हमारा लक्ष्य है कि हम सबसे चाहत वाली जीवन बीमा कंपनी बनें। हमारी सेवा के स्तर को काफी ऊँचा

आका गया है। हमारा एजेन्सी वितरण आदर्श स्थापित हुआ है विस्तृत प्रशिक्षण तथा निरन्तर परिवेक्षण के द्वारा। एजेंट परामर्श दाता 152 घंटे के प्रशिक्षण के लिए जाते जो निर्धारित प्रशिक्षण से 52 घंटे अधिक है। इस उपभोक्ता के अनुभवों को सुनिश्चित करने के लिए गुणवत्ता की प्रणाली को अपनाते हैं। जिसका उद्देश्य ग्राहक को मूल्य प्रदान करना है। हमारी गुणवत्ता को व्यवसाय योजना के महत्त्वपूर्ण भाग के रूप में देखा जाना चाहिए जिन्हे ग्राहक की आवश्यकता तथा अपेक्षाओं के अनुक्रम ढाला गया है। हम विक्रय विवरणों को अवश्यक रूप से अपने ग्राहकों को देते रहे हैं जो बाद में विनियामक आवश्यकता बन कर सामने आये हैं। एक विश्वास विवरण गलत संचार-संवाद को की संभावनाओं को काफी कम कर देता है जैसे भी हम अपने ग्राहकों तक मित्रता पूर्ण ढंग से पहुँचते हैं। और इसके लिए जादुई शब्द होते हैं - “मैं कैसे आज आपकी मदद कर सकता हूँ।”

‘कैसे’ प्रश्न पूछने में एक लाभ है क्योंकि इससे दूसरी ओर का व्यक्ति ‘हाँ’ या ‘ना’ जवाब देता है। यदि ग्राहक हमारा समाधान पसंद नहीं करता तो हम पूछते हैं उनके पास उचित विकल्प क्या है। यदि हम उनकी आवश्यकताओं को पूरा नहीं कर सकते तो हम उन्हें बताते हैं। लेकिन ऐसा कभी नहीं कहते कि वे गलत

हैं और कभी उनसे वाद-विवाद में नहीं फँसते। यह आवश्यक है कि ग्राहक की भावनाओं को समझा जाए और उनसे सदाचार का व्यवहार किया जाए। ग्राहक यही चाहता है कि कोई उन्हें सुने तथा उनके दृष्टिकोण को आदर दे। और हम कुछ समय तक कोशिश करते हैं कि ग्राहक पूर्ण रूप से संतुष्ट हो सके यह सम्बन्ध को मजबूत करता है और अतिरिक्त व्यवसाय एकत्र करने में मदद करता है। ग्राहक की स्वामी भक्ति आपके अंतिम संविदा की सफलता से जुड़ी होती है। हमारे उच्च नेटवर्क व्यक्तियों (एच एन आई) ग्राहकों से हम एक कदम आगे जाकर उन्हें मैडिकल की सुविधा घर पर ही प्रदान कर देते हैं।

हमारी दावा प्रबन्ध प्रक्रिया का लक्ष्य उचित, तीव्रता तथा मित्रवत्ता है। दावा प्रक्रिया में हमारे पास जल्दी के लिए समय होता है। हम यह सुनिश्चित करते हैं कि दावा प्रबन्ध प्रक्रिया सरल तथा हम एक अतिरिक्त मील प्राप्त करते हैं एक एजेंसी की मदद लेकर जो हमारी लागत पर सभी दस्तावेज इक्कठा करती है। हम उनके दुख में शामिल होते हैं उन्हे एक संवेदना संदेश भेज कर यह एक विश्वास का कार्य दावा प्रक्रिया पूर्ण होने से पहले करता है।

आगे सभी प्रणालियां प्रक्रिया बद्ध है हम प्रथम जीवन बीमा कंपनी थे जिन्हें आईएसओ प्रमाण पत्र मिला (अन्य प्रथम जैसे टोल-फ्री नम्बर तथा फ्रि लोकिन अवधि) छह स्तर पर सिगमा अनुपालन के साथ दल जा कार्य रत है उसमे शामिल है विज्ञापन दाता, चैम्पीयन ब्लैक बैल्ट, ग्रीन बैल्ट, हमारी कोशिश है पूर्ण कर्मचारी जनसंख्या का छह सिगमा शक्ति से भर देने की।

हमारे पास पेशेवर लोगों की एक सशक्त टीम है जो शिकायत को गुणवत्ता के आधार पर देखते हैं।

हमारी दावा प्रबन्ध प्रक्रिया का लक्ष्य उचित, तीव्रता तथा मित्रवत्ता है। दावा प्रक्रिया में हमारे पास जल्दी के लिए समय होता है।

शिकायतों को न केवल जल्द दूर किया जाना चाहिये लेकिन परिणाम भी संतोष जनक होने चाहिये इसीलिए हम अपने ग्राहकों की आवाज को महत्त्व देते हैं।

एक प्रणाली सी सी आर पी भी समय मुख्य शिकायतों पर निगरानी रखने के लिए कार्यशाली है। सी सी आर पी का अर्थ है ग्राहक कैयर निवारण कार्यक्रम, जो शिकायतों तथा दावों को तीव्रता से निपटाता है जो वास्तविक है तथा बहुत ही निवेदनशीलता के साथ होता है। दावा निपटान के लिए हम एक मैरिट आधारित प्रक्रिया रखते हैं क्योंकि मात्र यांत्रिक प्रक्रिया द्वारा इस लक्ष्यों को प्राप्त नहीं कर सकते।

हम पहली बीमा कंपनी हैं जिन्होंने फोने सेवा प्रारंभ की, तथा जीता 'बेस्ट सिक्स सिगमा प्रोजेक्ट एवार्ड' अपने प्रोजेक्ट सर्वोत्तम के लिए (जिससे शामिल है सेवा तथा उत्तमता)। पिछले दिनों सकाल 'सिक्स सिगमा एक्सीलेंस एवार्ड 2006' में प्रोजेक्ट सर्वोत्तम कार्यक्रम एक परिवर्तनशील वृद्धि कार्यक्रम था एक एसी पहल जिसमें सेवा के सभी पहलुओं को अपने एजेंट सलाहकारों तथा ग्राहकों को देने के लिए था। सकाल सिक्स सिगमा एवार्ड के अतिरिक्त आया ग्लोबल ग्राहक सम्बन्ध एवार्ड। बीमा वर्ग में हमारा नामांकन अंतिम स्तर तक किया गया। हम फोन पर सात प्रकार की सेवाएं प्रदान करते हैं जो हमारे काल सेंटर से होती है तथा जिसके उत्तर के लिए तीन दिन का समय होता है। काल प्राप्त करने से उत्तर पहुँचाने तक का समय अभी एक दिन भी ही 96% पूरा कर लिया गया है।

हमारी सेवा गुणवत्ता तथा प्रक्रिया गुणवत्ता में अन्तसम्बन्ध है। रुचिदाताओं की आवश्यकता ज्ञान के विभिन्न स्त्रोतों से एकता की जाती है और इस ज्ञान को परिवर्तित किया जाता डीले क्षेत्रों तथा मुख्य बिन्दुओं के लिए। हमने एक आन्तरिक फीडबैक प्रणाली विकसित की है जो आन्तरिक ज्ञाता के रूप में कार्य करती है। हमारी सुनने वाले पदों से शामिल है।

• सी-सैट सर्वे (ग्राहक संतुष्टि सर्वे)

हम फोन पर सात प्रकार की सेवाएं प्रदान करते हैं जो हमारे काल सेंटर से होती है तथा जिसके उत्तर के लिए तीन दिन का समय होता है।

- ए-सैट (एजेंट संतुष्टि)
- सेवा स्कोर कार्ड
- मिस्ट्री खरीदारी
- पालिसी के बाद की प्रश्नावली

सांख्यिकी को तिमाही आधार पर एकत्र किया जाता है। रिक्तियों को चिन्हित किया जाता है:

ग्राहक अपेक्षाएँ - प्रबन्ध का दृष्टिकोण रिक्ति
 प्रबन्ध दृष्टिकोण रिक्ति - सेवा मानक रिक्ति
 सेवा गुणवत्ता मानक - सेवा डिलेवरी रिक्ति
 सेवा डिलेवरी रिक्ति - बाह्य संचार रिक्ति विभिन्न स्तरों पर ग्राहक के अनुभवों को ग्राहक की आवश्यकताओं में परिवर्तित करके ग्राहक सेवा में सुधार किया गया है। परिणामों को लेखा परिक्षा प्रक्रिया पुनः यांगिकी: सिक्स सिगमा प्रोजेक्ट को केन्द्र बिन्दु बनाकर दर्शन आधारित प्रशिक्षण ज्ञान प्रबन्ध उच्च परिपाटी तथा, बाँटना तथा पुनर्वृत्ति। हमने ग्राहक मूल्य कौन्सिल (सी वी सी) का गठन भी किया है। इससे ग्राहक के विकल्पों को एकत्र कर उन पर कार्य किया जा सके तथा रिस्क रिव्यू बोर्ड (आर आर बी) ससत पुनर्वलोकन करने के लिए नये ट्रेंड तथा हमारे मानका की पुनःसमीक्षा साथ ही सतत मानक सेवा के सम्बन्ध में व्यापित करने के लिए बीमा के सम्बन्ध तथा वित्तीय सेवाओं के सम्बन्ध में। जब तकनलोजी का प्रश्न उठता है हम पूरी तरह से अपने दृष्टिकोण में ग्राहक के साथ हैं। हम इस बात में समर्थ हैं कि हमारे संगठन को सुचना प्राद्योगिकी एक प्रतिस्पर्धापूर्ण पहल अपने ग्राहकों के लिए दे सकता है। इंटरनेट की मदद से, हमने सफलतापूर्वक अपना वितरण पोर्टल जारी किया है। हम प्रभावशाली ढंग से सी

आर एम का प्रयोग एक औजार के रूप में ग्राहक की शिकायतों को कम करने के लिए कर रहे हैं।

जीवन बीमा कर्ता के रूप में हमारे सम्पूर्ण आचरण के रूप में इस एक नीति के रूप में स्वयं विनिमयन लागु करते हैं। हम उच्च मानकों को लागु करते हैं उनकी देख रेख करते हैं जिससे उच्च स्तर पर वित्तीय परिपक्वता तथा स्वच्छ आचरण के साथ उचित डील तथा प्रतिस्पर्धा हो सके। उचित, पारदर्शिता तथा वित्तीय बाजारों का साधारण व्यवहार बीमा मदद से एक निर्भरता प्रबन्ध सूचना तंत्र की स्थापना तथा लागु कर सकेगा उच्च मानक तथा वित्तीय परिपक्वता।

यदि यह मानक अपर्याप्त है तो तुरन्त कार्यवाही की आवश्यकता है। हम इस बात में विश्वास रखते हैं कि ग्राहक संतुष्टि एक स्वस्थ वृद्धि न केवल हमारी कंपनी के लिए वरन पूर्ण उद्योग के लिए ले जायेगी तथा हमारी यात्रा सबसे चाहने वाली बीमा कंपनी बने रहने के लिए जारी रहेगी।

लेखक - वरिष्ठ उप अध्यक्ष - ग्राहक परिचालन, सेवा डिलेवरी तथा गुणवत्ता, मैक्स न्यूयार्क लाईफ इंशुरेंस कं लि०

शिकायत निवारण प्रणाली

आर वैद्यनाथन कहते हैं: दोनों ओर कुछ समस्याएँ हैं जिनके कारण ग्राहक की शिकायतें उत्पन्न होती हैं। आगे वह कहते हैं, स्टाफ के साथ सभ्यता से पेश आना चाहिये। ऐसे भी कुछ उपाय होवे चाहिये जिनसे जलत दावा कर्ताओं को दण्ड दिया जा सके ऐसी पद्धति उच्चत बाजारों में भी है।

प्रस्तावना

आई आई आर एम, हैदराबाद, में कुछ समय पहले हुआ शिकायत निवारण सम्मेलन आँखे खोलने वाला था एक कारणों से अधिक। पहले कारण में सम्मेलन बीमा शिकायत के विभिन्न पक्षों को एक छत के नीचे लाने में सफल रहा जिससे मुख्यतः ग्राहक उनके प्रतिनिधि बीमा कर्ता सर्वेपर यहाँ तक कि न्यायपालिका शामिल थी। एक खुला मंच ग्राहक शिकायत के लिए अत्यंत आवश्यक है सभी पक्षों के लिए और इसके लिए अच्छी शुरुवात की गई है तथा इस क्षेत्र में पुराने लोगों द्वारा दिए गए प्रस्तुतीकरण शिकायत तंत्र पर एक नवीन दृष्टिकोण डालने की जरूरत है। ग्राहक नाजुकता को व्यावसायिक रूप से निपटने की आवश्यकता सामने आयी और यह सुझाव दिया गया कि बीमाकर्ता बाह्य विशेषज्ञ की मदद लेकर, अपने तकनिकी प्रतिभा को उदार बनाये। सेवा में सरसता को याद किया गया तथा बीमा उद्योग की दृष्टि से इस पर चर्चा की गई। कुछ समय पूर्व मुझे अपने मोबाईल फोन से शिकायत थी, उसके लिए मैने अभी श्रीमती

एक्स से बात की और यह जानना चाहा की मेरी शिकायत ठीक प्रकार से हैंडिल की गई अथवा नहीं। अनुवर्ती तंत्र की आवश्यकता है जिससे अपेक्षित न्यूनतम सेवा का बनाये रखा जा सके।

शिकायत के लिए साझा आधार

बीमा एक जिंग नहीं है यह एक वादा है। वर्तमान मौद्रिक के लिए भविष्य में मौद्रिक प्रतिफल प्राप्त करने के लिए वादा है और जब कभी भी आवश्यकता उत्पन्न होती है। लेकिन फिर उद्योग की अन्य विशेषताएँ तथा व्यवसाय के नियम जैसे परम सद्भाव के सिद्धान्त, क्षति पूर्ति इत्यादि जिसके लिए बीमा कर्ता अधिक जानकारी रखते हैं ग्राहक के अपेक्षाकृत। बीमा कर्ता के दृष्टिकोण से वर्तमान शिकायत तंत्र का अपेक्षित बर्तायोगा सेब क्षेत्र में ग्राहक की अपेक्षाओं से अधिक बड़ी खाई पायेगा। यह देखा गया है दावे से सम्बन्धित अधिकांश शिकायतें होती हैं तथा जल्द पालिसी जारी करने से सम्बन्धित शिकायतों की दुरुस्त करना काफी सरल होता है। मान लीजिये यदि कोई ग्राहक पालिसी दस्तावेज प्राप्त नहीं कर पाता तो एक और प्रतिलिपि उसे भेजी जा सकती है तथा शिकायत प्राप्त होने से पहले ही इसे पूरा किया जा सकता है। लेकिन अभी भी शिकायतें बीमा नवीकरण नोटिस जारी करने के लिए नया पालिसी के ठीक होने की जाँच करने के लिए बीमा

लेखन की तरफ से कुछ शिकायतें पालिसी ने मिलने की भी होती हैं (बीमाकर्ता द्वारा सार्वजनिक वाहनों के बीमा अथवा अधिक आयु के लोगों को हेल्थ बीमा प्राप्त न होना) लेकिन प्राथुल्क मुक्ति मोटर तृतीय पक्ष पूल बनाने तथा ठीक मूल्य की लोच यह शिकायतें धीरे धीरे स्वयं समाप्त हो जायेगी।

अधिकशतः शिकायतें दावों से उत्पन्न होती हैं। जब ग्राहकों को एक अपेक्षा होती है तथा वास्तविकता उससे अलग होती है यह उत्तर प्राप्ति अथवा मात्रा से सम्बन्धित हो सकती है। प्रथमतः पालिसी के शब्द अस्पष्ट अथवा भ्रामक होते हैं। सबसे बड़ा ग्राहक शिकायत का कारण, पहले से मौजूद बीमारी हेल्थ आवरण के लिए होता है। भारतीय बाजार में हेल्थ बीमा पालिसी आने के दो दशक बाद बीमा को पहले से मौजूद बीमारियों से समस्या है। इसी प्रकार की समस्या सेंधमारी-चोरी बीमा में वायलेंट जोरदार एंटी के भी है जहाँ बीमा की परिभाषा दंड संहिता से अलग है। इसको स्पष्ट करने का एक मात्र ढंग सरल अंग्रेजी पर जाना है। जिसको बीमा कर्ता पालिसी शब्द तथा ग्राहक द्वारा सरलता से समझा जा सके।

शिकायत का दूसरा क्षेत्र ग्राहक के पत्रों को उत्तर देने में देरी है। आईआरडीए ने पहले ही पालिसी वारक संरक्षण विनियमों का प्रकाशन किया है। लेकिन केवल नियम ही मदद नहीं कर सकेंगे दावों तथा अन्य सेवाओं के लिए एक समय सारणी होनी चाहिये

सबसे बड़ा ग्राहक शिकायत का कारण, पहले से मौजूद बीमारी हेल्थ आवरण के लिए होता है।

यदि इस समय सारणी को अपनाया न जाए। ग्राहक को देरी के लिए दंडित नहीं किया जाना चाहिए क्योंकि वह अपनी वजह से स्वयं दंडित हो जाता है।

तथा इसका पूरी तरह अनुपालन किया जाना चाहिये। पालिसीयों में साधरणतः वह समय जीता दी जाती है जिसके अनुसार दावों को निर्धारित किया जाता है। इसी प्रकार पालिसीयों को सेवा के लिए भी समय सारणी बनानी चाहिये। हानि रिपोर्ट होने के 24 घंटे के भीतर एक सर्वेयर की नियुक्ति होनी चाहिये तथा इसके बाद 24 घन्टे के भीतर सर्वेयर हानि के स्थान का दौरा करे तथा इसके तीन दिन के भीतर सर्वेयर आवश्यक दस्तावेजों की माँग करे अगले सात दिनों में सभी चीजें बीमाकृत द्वारा उपलब्ध करवा दी जाए और इसी तरह दंड प्राधान बीमा कर्ता। बीमा मध्यवर्तियों के लिए होने चाहिए यदि इस समय सारणी को अपनाया न जाए। ग्राहक को देरी के लिए दंडित नहीं किया जाना चाहिए क्योंकि वह अपनी वजह से स्वयं दंडित हो जाता है। जब एक दस्तावेजों की सूची दावा कर्ता को दे दी जाती है तो उसमें कोई अन्य दस्तावेज शामिल नहीं किया जाना चाहिये जबकि यह बीमाकृत द्वारा जमा किये गए दस्तावेजों के परिणाम स्वरूप आवश्यक न हो। अच्छा यह होगा ऐसे दस्तावेजों की सूची को पालिसी में ही शामिल कर दिया जाए।

दावों का गलत निस्तीकरण / अस्वीकृति एक ऐसा क्षेत्र है जो शिकायतों को बढ़ाता है। इसमें शामिल है दावों को कम करके स्वीकृत करने की पेशकश। दावों को रख रखाव करने का मेरा अनुभव बताता है कि ज्यादातर मामलों में बीमा कर्ता द्वारा निकाले गए निष्कर्ष ठीक होते हैं। तथा पालिसी के आवरण को सख्ती से संदर्भित करते हैं लेकिन इन निष्कर्षों को गलत ढंग से या बिलकुल ही नहीं ग्राहकों तक पहुँचाया जाता। मान ले कि एक दावा एक लाख

रुपयों का है तथा उसे 55,000 रुपयों के लिए स्वीकृत किया गया है। बीमा कर्ता के लिए आवश्यकता है कि वह राशि के लिए एक सूची तैयार करे कि क्यों यह दावा राशी स्वीकार को जा रही है। एक स्पष्ट संदेश इस सम्बन्ध में भेजा जाना चाहिये। सभी मामलों में पत्र में शिकायत निवारण तंत्र के लिए बताना चाहिये तथा अलग विधिपूर्वक कदम ग्राहक के लिए क्या हो सकता है जैसे बीमा लोकपाल, उपभोक्ता मंच, इत्यादि।

यह असंगत नहीं है कि बीमाकर्ता द्वारा ग्राहक से बढ़ी संख्या में दस्तावेज माँग जाए तथा एक के बाद एक माँग जाए और अंत में दावा निरस्त करने का एक प्यारा सा पत्र भेज दिया जाए एक दृष्टिकोण जिसे उन्हे पहले ही स्पष्ट कर देना चाहिये था। लगातार माँग जाने वाले दस्तावेज ग्राहक की अपेक्षाओं को बढ़ा देते हैं एक जल्द दावा स्वीकृत होने के लिए।

बीमा कर्ता को पहले ही संवाद में ग्राहक को दायित्व सम्बन्धित मामले स्पष्ट कर देने चाहिये जिससे दावा कर्ता किसी भ्रम में नहीं रहे। ऐसे संवाद दावा रिपोर्ट होने के तुरन्त बाद भेजा जाना चाहिये जब यह स्पष्ट हो जाए की दायित्व बनता है जब कि इसके आकलन में कुछ समय अवश्य लगेगा। दूसरा महत्वपूर्ण कदम यह हो सकता है कि किसी भी प्रकार की मत भिन्नता नहीं है तथा बीमा कर्ता दवाखाने के अन्तर्गत दावे का आंशिक भुगतान कर सकता है जिसकी आवश्यकता दावा कर्ता के उत्तराधिकारी को होती है।

अधिक जिज्ञासु मध्यवर्ति कई बार परेशानी के सबब बनते हैं। पैनल डाक्टर से कई बार उनकी सलाह

मैडिकल शब्दावली के अन्तर्गत माँगी जाती है तथा वह दावा निरस्त करने की सलाह दे बैठते हैं। ऐसे मामलों में बीमाकर्ता को एक आसान औजार मिल जाता है दावा निरस्त करने के लिए तथा वह अपनी बुद्धि इसके लिए उपयोग में नहीं लाते। तथा यह भी एक उपयोगी प्रश्न है कि इस प्रकार का निर्णय ग्राहक के लिए उपयोगी है या नहीं।

सबसे कठिन शिकायतें गंदे व्यवहार तथा रिश्वत की माँग की होती हैं। बुरे व्यवहार संसाधन का कारण मानव भी है। कर्मचारी पर किसी भी प्रकार का दबाव गंदे बर्ताव की पुष्टि नहीं करते। यह भी सत्य है कि ग्राहक भी दबाव में और जिज्ञास में होता है दावा स्वीकृत न होने के कारण। इस प्रकार की शिकायतों से निपटने की कठिनाई विशेष रूप से सार्वजनिक क्षेत्र में सबूतों के अभाव में कर्मचारी से सख्ती से निपटने नहीं देती। हमें यहाँ एक मानव संसाधन क्रांति की आवश्यकता है। प्रत्येक स्तर पर कर्मचारियों को शिक्षित किया जाना चाहिये नरमी के लिए धन दौलत की आवश्यकता नहीं होती तथा गंदे व्यवहार से समस्याओं का समाधान संभव नहीं है। यह अपने आप में नई समस्या भी है। यह भी तथ्य है कि यह युग एक नाजूक दौर से गुजर रहा है तथा इस समस्या को दूर करने के लिए बड़े समय की आवश्यकता है। जिससे रिश्वत की समस्या को दूर किया जा सके। दूसरी तरह इसे मजबूत हाथों से बीमा कर्ता को अपने आंतरिक तंत्र से ठीक किया जाना चाहिये।

शिकायतों की किस्मों को देखते हुए आये शिकायत निवारण तंत्र को देखते हैं। कोई भी शिकायत निवारण तंत्र सफल नहीं हो सकता जब तक उसमें कांटने के लिए दौँत न हो। एक प्रभावशाली प्रणाली में सामान्य होगा की इस मुद्दे को स्वतन्त्रता से समझ सके अपने निष्कर्षों पर पहुँच सके तथा निर्णयों का अनुपालन कर सके। एक प्रणाली जिसमें उच्च अधिकारी अपने अधिनस्थ अधिकारियों के निर्णयों को प्रतिवाद कर सकें तो यह गलत कार्य के लिए भाई बंदी ही होगी। सार्वजनिक क्षेत्र के बीमा लेखन के सम्बन्ध में यह

प्रवृत्ति कि दावों को निरस्त किया जाए एक कूट योजना के अन्तर्गत लेखा परिक्षा तथा अन्वेषक एजेंसियों से सम्भावित प्रश्नों को एक तरह रखते हुए एक समान निर्णय प्रणाली को मजबूत किया जाना चाहिये जिससे कर्मचारियों में आत्मविश्वास बढ जाए कि उनके निर्णय से उन्हें कठिनाई नहीं होगी।

एक साधारण प्रक्रिया ग्राहक सेवा के मानको को अच्छा कर सकती है साथ ही सेवा स्तर तथा शिकायत रख रखाव तन्त्र को दुरुस्त कर सकती है। संगठन सभी प्रकार के निर्णय जो विभिन्न मंचों जैसे बीमा लोकपाल, उपभोक्ता मंचों तथा विभिन्न न्यायालयों द्वारा दिये जाते हैं जिससे बीमा कर्ताओं का मूल्यांकन किया जाता है कि यह मंच कितने निष्पक्ष है। ऐसी

के बारे में इतना कहने पर इसे आवश्यक रूप से दूसरी तरफ भी देखना होगा। कभी कभी इस अतर्क वाले ग्राहक के सम्पर्क में आते हैं। वह अतर्किक भी हो सकता है कि उसने पालिसी के आवरण को समझा नहीं है अथवा उसने कपट-पूर्ण दावा करने का निर्णय लिया है जहाँ तक आवरण का सम्बन्ध है उसे व्यवस्थित रूप से ग्राहक शिक्षा द्वारा ठीक किया जा सकता है दूसरा जो प्रचलित नहीं है उसके साथ कठोरता से पेश आना चाहिये। बीमा लेखन में ऐसे मामले सामने आते हैं जब ग्राहक पीड़ित होने के बाद बडे उपचार के लिए बीमा आवरण लेते हैं तथा प्रस्ताव पत्र में किसी मैडिकल शर्त की बात नहीं की जाती।

बीमा लेखन में ऐसे मामले सामने आते हैं जब ग्राहक पीड़ित होने के बाद बडे उपचार के लिए बीमा आवरण लेते हैं तथा प्रस्ताव पत्र में किसी मैडिकल शर्त की बात नहीं की जाती।

अध्ययन यह तथ्य सामने लायेगी की बीमा कर्ता का मत प्रकृति के न्याय के सिद्धान्त के अनुसार है। इसकी आकस्मिक लाभ बीमा कर्ता को इस प्रकार होगा की न्यायालय के निर्णयों को कल्पित किया जा सकेगा। सार्वजनिक क्षेत्र के बीमा कर्ताओं के लिए सूचना अधिकार अधिनियम ने नई दिशा जोड़ दी है। बीमा कर्ता ग्राहक से कोई सूचना छिपा नहीं सकता दावों पर निर्णय लेते समय।

किसी भी संगठन द्वारा अच्छी व प्रभावशाली सेवा दी जा सकती है चाहे वह निजी हो या सार्वजनिक यह किसी भी उपक्रम का प्रथम कार्य है। यह प्रवृत्ति की दावों का भुगतान न करके संगठन को बचाया जाए यह बीमा तंत्र को ही साधारण लोगों के मस्तिष्क से नष्ट कर देगी।

प्रभावशाली ग्राहक सेवा तथा शिकायत निवारण तंत्र

कुछ देशों में बीमा कपट से निपटने के लिए कठोर विधि नियम है। भारत मे ऐसे मामलों से निपटने के लिए कोई प्रक्रिया नहीं है। इस सम्बन्ध में विशेष अधिनियम वास्तविकता को सामने रखेंगे। विनियामक तुरन्त ऐसे कदम उठा सकता है कि एक ऐसा प्लेटफार्म बनाया जाए जिसमें सूचना का आदान प्रदान किया जा सके। जिसमें उनके द्वारा झेले गए कपट दावे हो। कपट पूर्ण बीमा के लिए विधि की कभी ने बामा कर्ता तथा ग्राहक के लिए कठिन स्थिति पैदा की है। जिसके कारण दूसरों को प्रभावशाली सेवा नहीं दी जा सकती। ग्राहक बीमा कर्ता के इस व्यवहार से दर्द महसूस करता है जबकि कुछ ही ग्राहक खराब होते हैं।

शिकायत एक अवसर है यह अच्छा होगा कि कोई संगठन बिना ग्राहक शिकायत के कार्य कर सके तब यह किसी भी उद्योग की अप्रसंगिक अपेक्षा होगी

विशेष रूप से किसी सेवा उद्योग के लिए। ऐसी शिकायतों से मधुरता और सरलता से निपटना होगा विषय की पुनः परीक्षा करनी होगी। निर्णय के संवाद के लिए स्पष्ट कारण देते हुए भविष्य में अपील की संभावना को जगृत रखना होगा। अधिकारियों की एक बृहत मानसिकता बनानी होगी जिसमें अधिकारियों अथवा उनके अधिनस्थों द्वारा बनाए गए मुद्दों पर एक राय बने, जिससे शिकायत तंत्र प्रभावशाली हो जाए। शिकायत तंत्र न केवल पारदर्शी हो, वरन पारदर्शी लगना भी चाहिये।

प्राशुल्क मुक्ति जबकि पहले ही एक वास्तविकता है बीमालेखन को यू एस पि (विशेषता) को ढूँढना होगा। जिससे वे ग्राहक तक पहुँच सके एक स्पष्ट संदेश के साथ। यदि एक बीमा कर्ता किसी उत्पाद को एक दर पर उपलब्ध करवाता है आज कोई बीमा कर्ता भी उसी दर पर वह उत्पाद उपलब्ध करवायेगा प्रभावशाली ग्राहक सेवा तथा प्रभावशाली शिकायत निवारण ही कोई परिवर्तन दिखा सकते हैं।

लेखक ओरियेंटल इंशुरेंस कंपनी, नई दिल्ली, में कंपनी सचिव पद पर कार्यरत हैं। यहाँ बताये गये मत उनके अपने हैं।

Report Card: General

G V Rao

December 2006 growth rate is 19.7 percent

December 2006 was the last month of the tariff regime in Fire, Engineering and Motor. A comparative study of the performances of insurers, till now, had an externally imposed measure in terms of the rating structures for the above portfolios. Now, from January 2007, with the tariff regime totally dismantled, and with the motor TP rates prescribed under IRDA's advice, and revised upwards to be shared among insurers in proportion to their gross direct premiums in the year, new elements for comparison of premium performances have come in to the picture.

The industry premium performance growth in December 2006 was 19.7 percent with a total accretion of Rs.328 crore. This growth rate contrasts with the growth rate of 31.3 percent achieved for November 2006. Considering that 65 percent of the market is controlled by the established players, it is their monthly performance that determines how the market as a whole would perform. While they have clocked 17.6 percent growth in November 2006 with an accretion of Rs.189 crore, in December 2006 their accretion was only Rs.50 crore with a growth rate of 4

percent. Though the new players have recorded their usual 65 percent growth rate with an accretion of Rs.278 crore, the overall market growth has stumbled in December 2006 over the previous month.

Major contributors in December 2006

The major contributions among the new players have come in from ICICI-Lombard with an accretion of Rs.120 crore, Reliance with Rs.79 crore and Bajaj-Allianz with Rs. 42 crore. These three players have added Rs.241 crore to the

GROSS PREMIUM UNDERWRITTEN FOR AND UP TO THE MONTH OF DECEMBER, 2006

(Rs.in lakhs)

INSURER	PREMIUM 2006-07		PREMIUM 2005-06		GROWTH OVER THE CORRESPONDING PERIOD OF PREVIOUS YEAR
	FOR THE MONTH	UP TO THE MONTH	FOR THE MONTH	UP TO THE MONTH	
Royal Sundaram	4898.51	43782.46	3511.22	32658.00	34.06
Tata-AIG	4953.59	56965.54	4801.75	43721.06	30.29
Reliance General	9029.29	61113.96	1118.58	11143.69	448.42
IFFCO-Tokio	8061.67	89376.20	6578.11	63019.73	41.82
ICICI-lombard	24785.17	232653.79	12837.33	122233.46	90.34
Bajaj Allianz	14863.38	130749.93	10679.91	96331.66	35.73
HDFC CHUBB	1604.90	14192.90	1706.69	14286.74	-0.66
Cholamandalam	2291.13	22959.58	1599.85	17642.52	30.14
New India	37376.00	371404.00	38174.00	342078.00	8.57
National	31766.00	274620.00	29826.00	260987.00	5.22
United India	27701.23	262876.77	26397.28	235703.97	11.53
Oriental	31985.00	297033.00	29462.00	262468.00	13.17
PRIVATE TOTAL	70487.64	651794.36	42833.44	401036.87	62.53
PUBLIC TOTAL	128828.23	1205933.77	123859.28	1101236.97	9.51
GRAND TOTAL	199315.87	1857728.13	166692.72	1502273.84	23.66
SPECIALISED INSTITUTIONS					
ECGC	5173.24	44340.51	5033.06	41713.91	6.30
Star Health & Allied Insurance	104.53	1448.19			

total accretion of Rs.278 crore by all the new players. They have cumulatively completed Rs.706 crores in December 2006 over Rs.428 crore for last year.

Among the established players, Oriental with Rs.25 crore accretion, National with Rs.20 crore and UIIC with Rs.13 crore make up the list of growth-makers. Cumulatively, they have completed Rs.1289 crore as against Rs.1239 crore last year. New India has dropped its renewal premium by Rs.8 crore.

What is noticeable is the fact that the new players have maintained a consistency of a market share of 35 percent in the premium completion in almost every month with a growth rate hovering around a figure of 60 percent plus. The established players, however, have uneven growth rates from month to month.

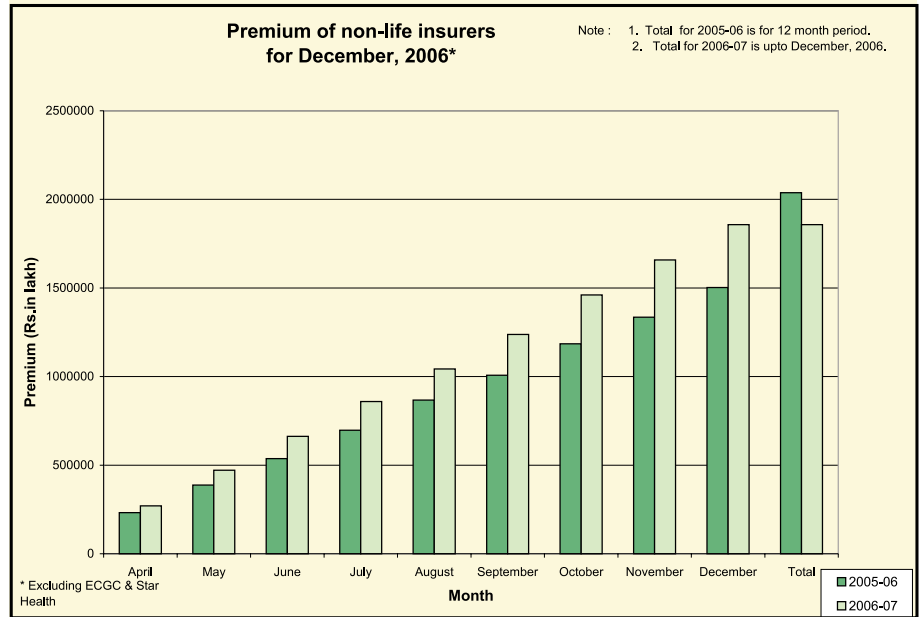
Performance up to December 2006

The industry has completed a premium of Rs.18, 577 crore (Rs 15,022 crores) with a growth rate of 23.7 percent: the new players with Rs.6518 crore (Rs.4009 crore) and the established players with Rs.12, 059 crore (Rs.11,013 crore) at a growth rate of 9.5 percent. (The figures in the bracket are the corresponding numbers for last year).

The accretion achieved by the new players is Rs.2509 crore and that of the established players Rs.1046 crore towards the overall market growth of Rs.3555 crore. 71 percent of the market growth in premium volumes up to December 2006 has come in from the new players.

Major contributors to the market growth

Towards the market accretion of Rs.3555 crore, ICICI-Lombard has contributed Rs.1104 crore, Reliance Rs.500 crore, Oriental Rs.345 crore, Bajaj-Allianz Rs.344 crore, New India Rs.293 core, UIIC Rs.272 crore, and IFFCO-Tokio Rs.264 crore. The market share of the new players continues at 35 percent up from about 26 percent last year.



How will premium develop in a free market?

With three months yet to go for the current fiscal to end, how would the market behaviour change towards premium growth due to the two new initiatives of the market-detariffing and formation of the Motor TP Pool? The premium in the Motor sector should rise quite substantially, as the Motor TP rates have been raised by the IRDA to provide for a relatively higher margin to insurers to compensate for high losses likely in this segment. Also, since the Motor Pool is essentially a reinsurance arrangement, the gross premium volumes of insurers should rise.

Motor business forms about 43 percent of the total market premium; hence the growth in the Motor portfolio should normally rise. Any adjustment in rates in Fire and Engineering downwards may not heavily impact on the overall growth in premium volumes of insurers, as these two portfolios form only about 25 percent of the market. The balance advantage should yet remain with the insurers, as far as total premium volumes are concerned.

The financial impact, if any, on each

insurer would be reflected in their retained and earned premiums, and claims and expenses thereon; and these would be available only when the fiscal 2006/07 ends. As major renewals in the Fire and Engineering segments are usually in April, the current rate skirmishes would serve insurers the purpose of testing the market.

With the Motor TP rating schedules yet to stabilize, the rate competition for Motor business may yet see new dimensions, when they do get fixated suitably. Would a sophisticated underwriting and risk management advice guide insurers' acceptance of business; or would the urge to beat competition at any cost dictate their market approach is the real key, if market premiums would go down or up in the near future. Financial destinies of insurers are now solely in their hands. How would they play? Yet another interesting period is ahead of the market.

Comments may be sent to: gvrao70@gmail.com



National Insurance Academy (NIA) Pune, conducted an annual competition on writing and preparation of case studies in insurance (life/non-life/reinsurance) in their pursuit of encouraging and sustaining academic and research interest in insurance. The competition was open to all persons involved in some way with the academics and management of insurance. From among the several entries received for the competition, the following were declared prize-winners.

First prize: (Cash prize of Rs.25,000) Mr. M.R. Balakrishnan, Faculty member (SDM), LIC of India, ZTC, Bhopal.

Second prize: (Cash prize of Rs.15,000) Ms. B. Padmaja, Asst. Director (F & A), IRDA, Hyderabad.

Third prize: (Cash prize of Rs.10,000) Mr. S.V. Satyanarayana, Administrative Officer (Sales), LIC of India, D.O., Rajahmundry.

IRDA Journal congratulates all the winners and wishes them the best of luck in their future endeavours.



Ms. Padmaja receiving the award from the President of India Dr. A.P.J. Abdul Kalam. Also seen in the picture is Mr. Vilasrao Deshmukh, Chief Minister of Maharashtra.

12 - 13 Feb 2007 Venue: Mumbai	9 th Global Conference of Actuaries By <i>Actuarial Society of India, Mumbai</i>
16th Feb 2007 Venue: FICCI Commission Hall New Delhi	National Conference on 'New Approaches to Insurance Market & Customer's Expectations' By <i>BIMTECH/ FORTE</i>
19 - 21 Feb 2007 Venue: Pune	Workshop on Communication & Presentation Skills By <i>NIA Pune</i>
22 - 24 Feb 2007 Venue: Pune	Scenario Mapping & Business Planning By <i>NIA Pune</i>
26 Feb - 03 Mar 2007 Venue: Pune	Prevention of Insurance Frauds By <i>NIA Pune</i>
05 - 10 Mar 2007 Venue: Pune	Advance Programme on Claims Management By <i>NIA Pune</i>
06 - 08 Mar 2007 Venue: Singapore	7 th Asian CEO Insurance Summit By <i>Asia Insurance Review, Singapore</i>
18 - 21 Mar 2007 Venue: Shanghai	International Underwriting Conference By <i>LOMA</i>
19 - 24 Mar 2007 Venue: Pune	Actuarial Practices in Life Insurance By <i>NIA Pune</i>
25 - 27 Mar 2007 Venue: Beirut	Regional Pension and Social Insurance Conference By <i>Muhanna Foundation</i>
26 - 27 Mar 2007 Venue: Singapore	Takaful Conference By <i>Asia Insurance Review, Singapore</i>

// view point //

Australian Prudential Regulation Authority (APRA) relies on information provided by auditors; and treats breaches by auditors very seriously.

Mr Ross Jones
APRA's Deputy Chairman

While MAS seeks to promote and preserve stability in the financial system through high standards of licensing, regulation and supervision, like many reputable regulators; it does not aim to prevent the failures of all financial institutions.

Mr Lim Hng Kiang
*Minister for Trade & Industry and
Deputy Chairman, Monetary Authority of Singapore.*

There is no alternative to risk-adequate prices, terms and conditions. We believe that higher demands on risk management and capital resources; and continued low interest rate levels will help to maintain market discipline on the whole.

Mr Torsten Jeworrek
Munich Re Board Member

Financial investigation and the ability to conduct it is now the international focus on combating money-laundering and the financing of terrorism.

Mr Richard Walker
*Director, Policy and International Affairs,
Guernsey Financial Services Commission, Guernsey.*

Ownership chain for offshore subsidiaries creates capital linkages which can de-stabilise the group (or result in double counted capital).

Mr Keith Chapman
*General Manager, Policy Development
Australian Prudential Regulation Authority*
- while talking about the importance of cross-border supervision.

(During the year 2006) Risk Management has become more professional and transparency of insurance reporting has improved. There were also considerable efforts to improve efficiency, including the area of capital management.

Thomas Hess
*Chief Economist; and Head of
Swiss Re Economic Research and Consulting.*