



## Liability Insurance

Expand Insurance Protection to where  
it is Needed - Liability

**EXCLUSIVE!**

presenting New Series

Thoughts from senior insurance leaders

**Atul Sahai**

CMD, The New India Assurance Co. Ltd.

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# WHAT'S COMING IS BETTER THAN WHAT'S GONE

Happy New Year !

I hope you got some year-end quality time with your loved ones and reflect on the year gone by. It was a year that marked the gradual recovery of world economy and human society after the onslaught of an intense second Covid wave. The Government and RBI's measures have held us in good stead so far, and the positive effect of reforms, better than expected corporate earnings, increased pace of business activities all seem to indicate that we may be able to put the Covid related issues behind us in times to come. The year though ended with the news of a new variant, however with increased pace of vaccination and better administrative preparation the country should be able to stay resilient.

The recent announcement by European countries of treating COVID like the FLU and "Live with it" will further open up the economy world over.

For the Benefits of the members our Association holds an Annual Summit every year in the month of January. Due to the sudden surge in the omicron virus the physical Summit had to be postponed and we will mostly likely plan the same in the month of April-2022 in Delhi.

As we close the third quarter of F.Y. 21-22, the GI figures have been steady, with a marginal growth of 9.21% as compared to corresponding quarter ended 31st December 2020. SAHI company's continues their impressive growth of 36.24% over corresponding quarter, which clearly indicates the momentum in the Health segment and the inclination of the customers towards securing their family.

At IBAI our priority continues to be advocating for members interest and concerns as we concentrate on evolving issues facing our Clients, Profession and Industry.

**Sumit Bohra**  
President IBAI





# Thoughts from senior insurance leaders

NEW SERIES



**Atul Sahai**  
**CMD**



in an exclusive interview with IBAI, Mr. Atul Sahai, CMD, The New India Assurance Co. Ltd. shares his candid responses to a range of questions posed to him.



Motor, Health & Agriculture insurance have been the main growth drivers for the non-life insurance industry in the last few years. In a Covid-ravaged world, which line of business, in your opinion, will trigger the next phase of growth in the non-life insurance industry in India?



Health insurance will continue to do well in post COVID era as well. In fact, due to COVID, awareness about health insurance has substantially increased, driving further growth. The mass schemes like Pradhan Mantri Ayushman Bharat Yojana will also play a key role in expanding health insurance awareness and penetration.

Motor insurance will continue to be a major line for non-life insurers in the years to come. It has witnessed a blip of late due to the economic impact of the COVID-19 pandemic. However, with the economy expected to resume its growth, the automobile industry and motor insurance are also expected to do well.

Home insurance is another line that has the potential to do well. Liability lines like cyber liability can also witness good growth.



In the current financial year till November, New India has shown an impressive top-line growth of 20% with an accretion of Rs. 3700 crores. When we slice and dice the numbers a little, we find that Rs.3400 crores have come from Health out of this accretion. Again Group Health forms a substantial portion of your portfolio compared to retail health. New India is way ahead of others in Group Health with Rs.6811 crores, while all specialised Health insurers contribute only Rs.2830 crores. Is this a clearly defined strategy to make New India a Health insurance company?



Health and personal accident segment witnessed good growth driven by growth in group health and government business. We have been witnessing good traction in other lines like property, marine, and engineering as well. Motor line of business has been, however, a bit challenging not only for New India but for the whole industry. New India is the insurer of choice for many leading corporate and Group Health is a significant part of the overall insurance bouquet of a corporate. So, NIA does not have any defined strategy to become a health insurance company. But since the segment has proliferated in the aftermath of the pandemic, the company also witnessed growth in the Health line of business. The company is coming out with some interesting products in the retail health space, which should be launched next year.



Profitability of all insurers have been badly hit due to Covid claims, and with the pandemic showing signs of weakening, claims from deferred hospitalisation treatment for non-Covid claims seem to have picked up. New India's PAT for the half-year ended 30th September 2021 stood at Rs.216 crores as compared to the previous half-year figure of Rs.762 crores. Do you see the tide turning and improved profitability in the second half of this fiscal?



Like other insurers, our results are also impacted by COVID claims. While the COVID-19 claims did hurt our profitability, with the company settling more than 4000 Cr worth of claims in the current financial year, it also gives me immense satisfaction that the company was able to provide financial support to so many policyholders during this challenging phase. With the 3rd wave rampant in Q4FY22, we are getting ready for more COVID claims. But we hope that the pandemic subsides soon and look forward to profitability returning in FY23.





As an institution of systemic importance, New India commands respect, represents solidity and invokes trust. Any broker, big or small, wherever in India, will have a substantial portion of his portfolio with New India. Do you think the deteriorating solvency margins of the three other government-owned insurers has helped New India considerably in growing the top-line?



New India has maintained its leadership over the last so many decades. This is due to the trust that New India enjoys among all the stakeholders. The channel mix of New India's business is a healthy mix of business procured from brokers, agents, and direct business. The financial condition of other public and private insurers had little role to play in what New India has achieved.



A corollary to the above – New India stands for solidity & trust, no doubt, but how do you attract the new generation of insureds, (be it in retail or on the corporate side) who are tech-savvy and look at organisations which are nimble-footed, technologically advanced and who are willing to work as Risk management partners, rather than mere carriers of risk?



Over the years, New India has invested a lot in technology. We have invested both in the front end and in the backend. The moment of truth was the pandemic driven disruption when the company could continue the business seamlessly despite the effects of lockdown. Today, the company procures a very large part of its premium through its portals. The company has a significant presence in the policies sold through web aggregators. The direct to customer business is growing at a healthy pace, albeit on a small base. The company has rolled out claim automation in a couple of regions, and this is going to be rolled out on a Pan-India basis soon. Products tailor-made for the digital platform are on the anvil.



It is in the news that government-owned insurers have been asked to optimise the number of offices by this year-end. How do you manage to keep your staff motivated during these challenging times so that service to the customer does not suffer?



As I said, New India has invested a lot in IT infrastructure over the years. For example, the agents have been provided with agent portals, and they can do the business by not even visiting the offices. The digital capabilities developed over the years means that the extent of physical infrastructure needed is coming down. The company is also facing a lot of retirements in the coming years and ensuring optimal utilisation of the manpower physical infrastructure needs to be rationalised. So, the company is assessing the viability of the offices and taking a decision based on the viability analysis.



After 50 years of nationalisation & 21 years after the opening-up, there is still a lack of trust between insurers and insureds. Insureds always have the feeling that getting a claim approved is a mammoth task in itself. No doubt, every insurer has the statistics to show that the number of claims settled exceed 85-90% of the claims lodged. Essentially the dissatisfaction and doubt stem from the whole process of claim settlement. What is New India doing to make the whole process of claim management a better experience for the clients?



New India has always ensured that claims are getting settled quickly and efficiently. There may be a few claims here and there that probably get delayed due to the non-submission of adequate documents. There may be some grievances, too, if there is a difference in interpretation of terms and conditions. But the majority of the claims get settled quickly. There is also a separate department to handle the grievances. We have a claim monitoring Department headed by General Manager. The Department continuously monitors the turnaround time to ensure speedy claim settlement. However, there is always a scope for improvement in any process. Automation for small claims is one option we are looking at.





Do you think there is a severe shortage of good insurance talent in the industry, or is it that the highly talented people in PSUs hesitate to take decisions for fear of audits or unnecessary apprehensions which may be cast on them? How do you support, grow and make full use of talented resources in New India?

If you look at the number of candidates appearing for the recruitment tests of PSUs versus the number of candidates who get recruited, it is amply evident that PSUs are probably getting some of the best brains in the country today. There is no dearth of talent in New India, and we have a well-defined succession plan for the people's replacements.



The internal audit, statutory audits, CAG, Vigilance mechanism etc., ensure that adequate systems and processes are in place that helps the employees take the right decision.

The company has been recruiting new officers. But the retirees outpace the recruitments, and hence the employee strength is coming down. The GWP/employee has more than doubled in the last five years. The young employees are aware that they have a chance to progress in their career quickly as there is quite a lot of vacancies in the middle management that will arise over the next few years. We have a fast-track promotions policy in place to reward promising and talented young employees.



What are your expectations from brokers in terms of shouldering additional responsibilities on your behalf (apart from bringing in premium), be it in the claims process, risk management activities or generally educating the public on insurance awareness and nuances?



Brokers interact with many insurers and hence are in a position to share the best practices with all the players in the industry. This will improve the quality of all the insurers and make the industry better. With IFRS and Solvency II on the anvil, all the players will focus more and more on the risk management aspects, and the brokers can share their knowledge and resources with the insurers to ensure that they are adequately protected against the many risks that they face.



Every insurer uses multiple distribution channels. This is in its wake, brings in channel conflicts at times. How does New India resolve channel conflicts and ensure that all distribution channels are treated fairly in all respects?



Every channel has an important role to play, and mostly, each channel addresses the needs of a different set of clients. However, sometimes some channel conflicts do arise. New India treats all channel partners in a fair manner. The company has separate verticals to deal with different intermediaries. We have a broker vertical, agency vertical, bancassurance vertical etc., who work in tandem to ensure that the channels work seamlessly. We also have specific large corporate offices in major cities which primarily engages with brokers.

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IBAI thanks for your valuable time and views and also wishing a wonderful New Year to the the entire The New India Assurance team on behalf the all Insurance brokers

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# DIGITAL TRANSFORMATION - THE CORE OF INSURTECH EVOLUTION IN INDIA **OR** THE DIGITAL OUTLOOK FOR INSURTECH TRANSFORMATION IN INDIA

**YASHISH DAHIYA,**  
CEO, POLICY BAZZAR

In a constantly evolving digital world, technology has been the market-defining bedrock of every industry. Taking a leaf out of the industry playbook, the insurance sector has also been evolving to integrate higher digital adoption. Conventionally, the journey of the insurance industry in India had been punctuated by challenges with respect to adoption, awareness and penetration. These challenges gradually reverberated in the journey of InsurTech as well. However, now that digitisation is transforming the landscape of the insurance industry, this is propelling optimism for InsurTech across the country. But more than that, the customer's outlook towards availing of financial services is the key factor driving this change.

Further, the last two years of the pandemic have emphasized the need for insurance and digitisation like never before and this reflects in the industry's growth trajectory as well. As per the latest Invest India data, in FY21, non-life insurers recorded a 5.19% growth in gross direct premiums. The market share of private sector companies in the general and health insurance market has increased from 47.97% in FY19 to 48.03% in FY20. Also, according to a recent BCG report, the sector attracted deals worth over \$7.5 billion globally in 2020, thereby becoming one of the fastest-growing sub-sectors in FinTech.

## Data driving the journey of InsurTech in India

Sectors like FinTech or InsurTech have historically been one of the most heavily regulated ones. For good reason, they need to be governed by guidelines because of the high possibility of fraud risks. It takes years to formulate the framework to prevent such risks and they cannot be undone in a flash. Even with relatively delayed adoption, the sector has been incorporating digitisation gradually in all aspects. Besides that, consumer behaviour is also undergoing a massive transformation with more research and data being at their disposal. Digital marketplaces enabled them to exercise their choices by comparing online and being informed about exactly what they are signing up for.

Technology is picking up signals in tandem with this trend and helping make meaningful and scientific database predictions about the future. The longer the data legacy, the better it is. Also, with insurance being a price-sensitive product, basis data there's a lot of dynamism basis what is being displayed or conveyed in the market.



We are now standing a technological thoroughfare where digitisation will further transform the industry with tools like artificial intelligence, data science and machine learning. The biggest potential trends driving the key strategies for the sector would be - consumer engagement, large-scale digitisation and leveraging data to understand the pulse of the consumer. Data and technology will be the key facilitators to fulfil end-to-end insurance needs

The automation will not only aim to augment the overall customer experience but also help insurers with improving their margins due to the reduced involvement of manual efforts. AI-powered chatbots are a great example of this innovation. They help answer customer queries without the need for any human intervention. Another major example of this innovation is underwriting and risk assessment. Insurers are introducing additional parameters to assess the risk profiles of customers. Data points here act as differentiators and are efficiently put to use for product innovation. Similarly, insurers are also effectively employing telemedicine for health check-ups to keep up with digitisation. The inclusion of telemedicine under health insurance policies is a welcome move from the regulatory body to support digital healthcare via InsurTech.

Technology has to replicate the culture as well as the science to see higher adoption and integration.

Albeit in nascent stages, India is witnessing consistent growth in InsurTech, especially with the recurrent and unwavering pandemic waves acting as a tailwind. This has also led to insurance offerings being seen as pull products instead of the long-standing impression of them being push products.

### **Embracing the new-age tech innovation in InsurTech**

Even as consumers were warming up to the advent of InsurTech, the COVID-19 outbreak gave way to a huge digital push. It made digital processes a norm - right from contactless onboarding to digital claim settlement - everything can be facilitated at the fingertips.

### **Key integrations driving the change in InsurTech**

The insurance sector further has the potential to grow by leaps and bounds to further digitise the process. Moreover, the insurers pioneering these areas will, in fact, even have an early mover advantage. Speeding up operations in customer pain point areas like claim processing will go a long way in setting them apart. The digital claim process not only makes it more efficient and time-saving but eradicates any room for manual error in assessing fraud risks. The aim here is to reinvent the traditional claims process and adopt the automated model of claim handling purely driven by data analytics. For instance, one of the most sensitive areas in insurance is collusion or the absence of full disclosure. Tech integration completely rules out any possibility of data collusion. However, besides the digital process, human assistance is also available to address any issues if needed.

Conclusively, COVID-19 has triggered rapid digitisation and completely transformed the industry. A few global players have already adapted their platforms to offer product innovation to their customers, like remote fulfilment including inspection, claims, check-ups, etc. Irrespective of how long we battle this pandemic, it is critical for the insurance industry to justify this moment of need by being the forerunners and leading this transformation from the front.



## EXPAND INSURANCE PROTECTION TO WHERE IT IS NEEDED - LIABILITY



### Insurance has two significant sections – First Party and Third Party - because losses can happen in two ways.

One is first party loss or damage that is, loss caused by accidental means and the other is third party damage, that is loss caused by anyone to the person or property of another person (third party loss). The rapid growth of service industries, knowledge-based activities and the mushrooming of media channels, the barrier-less flourishing of technology, communication and finance sectors is leading to risks emanating from liabilities for claims filed against an insured by third parties. The array of third-party liability situations is almost unlimited. It is time that the Broking industry takes the lead to enlighten companies and high net worth individuals against the great risk they face from liability threats arising from third parties, employees, shareholders and so on.

The reasons for the rapid spread of liability situations are many. We live in an increasingly litigious society, where victims and people who perceive themselves as having an economic loss rush to courts to obtain relief for losses sustained as third parties. This group can include all types persons and organisations such as employees, shareholders, other types of investors, those facing losses because of intellectual property theft or reputation loss which have monetary value, organisations engaged in merger and acquisitions, the ever-increasing spectre of losses from cyber risks and so on. This is apart from the traditional claims under property or product liability cases.

## There is a new urgency for the promotion of liability insurance as the world is now seeing widespread usage of technology with their increasing security challenges

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Liability insurance keeps responding and reshaping the old products and creates new coverages that try to meet the new needs and threats that organisations and individuals face. Some of the third-party risks such as cyber risks now act as all risks as they also cover property damage risks. The trend seen is that third party risks are slowly dominating the mind space of the Board and the top management. This is because threats may arise from anywhere in the world, and in any manner or form.



However, liability insurance challenges both insurers and Brokers because such products are not easy to underwrite and price. There are other aspects as well such as the threat of long-tail liabilities (liability arising much later, even years, after the occurrence). In addition, there is a continuous expansion of liability concepts, widening of compensation concepts and amounts as also the large legal fees involved. In liability insurance, the law of the land adds to the policy requirements. For instance, in the US, the duty to defend the insured in court is considered the basic duty of the insurer.

There is a new urgency for the promotion of liability insurance as the world is now seeing widespread usage of mobile devices and apps with their increasing security challenges. Homes and even the human body is getting increasingly connected, the emergence of mobile payments, the continuous churn in financial markets, corporate restructuring and so on.

### Management Liability

Management liability itself is booming and can be offered in many varieties such as entity liability, Directors and Officers Liability, Employee Practices Liability, Trustees Liability, Statutory Liability, Internet Liability, Entity Crisis Cover and so on. Extensions are now a regular feature in liability insurance such as Advancement of Defence Costs, attendance at official investigations or inquiries, Continuity of cover, Criminal defence costs, Dishonesty of Others, Extended Claim and Reporting Period, Insured versus Insured cover and so on. Given the nature of liabilities, extensions can include protection in areas such as joint ventures, having Directorships in non-profit organisations, personal injury covers, retirement cover for the insured persons and spousal liability cover.

The grip that negligence, error and omission have on the legal landscape makes it necessary for liability insurance covers to grow and flourish to protect people and organisations. Brokers help those at risk so as to identify their potential liabilities that may lie anywhere - in facilities, in machinery, from employee actions, from policies and procedures that may cause crime, discrimination and other losses etc. Trademarks, patents and other intellectual property disputes are rising and claim both in defence and in pursuit can be made back by insurance covers.

### The new spectre of Environment Liability

Environment Impairment is now a serious matter and the liability issues in this area can be (a) Bodily injury; (including sickness and disease), (b) Property damage; (c) Interference with or reduction of any environmental right or amenity protected by law; (d) Liability to "Clean Up" outside the premises of the insured, arising out of any and all emissions, discharges, dispersals, disposals, seepages, releases or escapes of any liquids, solids, gaseous, or thermal irritants or the generation of smells, noises, vibrations, light, electricity, radiation, changes in temperature or any other sensory phenomena.

The emerging risks can include such items as Bio-contaminants, Facility-borne infectious diseases, viruses and other bacterial based contamination, Bio-Terrorism; Products Liability; contaminated drinking water, Construction Products, Regulatory re-openers and evolving legislation, Off-site remediation and so on.

There is a string of such innovations in the liability coverage area that a rising country like India needs to adapt to ensure that business risks are taken, but the downside is protected so that entrepreneurship and risk-taking can flourish.





# SUPREME COURT ON PROPOSAL FORMS

The Supreme Court in a recent (2021) case, *Manmohan Nanda vs. United India Assurance Co. Ltd. & Another* (2021), examined the issue concerning the existence of the pre-existing disease in the insured's claim concerning an Overseas Mediclaim policy. A Division Bench of Justice Dr. D.Y. Chandrachud and Justice B.V. Nagarathna (both possible future Chief Justices of SC) observed that if there is any suppression or falsity in the statements in the proposal form, then same would result in a breach of duty of good faith and would render the policy voidable and consequently repudiable.

In this case, the insured needed hospitalisation in the USA, but the insurer repudiated the claim due to non-disclosure in the proposal form. In its judgement the SC said that insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk involved.

"The law seeks higher standard of good faith relating to insurance policies. Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognized".

The basic factor in insurance is that an insurer has to use the disclosures offered by the insured in deciding whether to take the risk at all and if accepted in fixing the premium.

Therefore, the fact must be one affecting the risk. The SC stated: "what is necessary to be disclosed are "material facts" which phrase is not definable as such, as the same would depend upon the nature and extent of coverage of risk under a particular type of policy. In simple terms, it could be understood that any fact that has a bearing on the very foundation of the insurance contract and the risk to be covered under the policy would be a "material fact". The IRDAI Regulations also defines the word "material" to mean and include all "important", "essential" and "relevant" information in the context of guiding the insurer in deciding whether to undertake the risk or not."

The court further stated that "In relation to the duty of disclosure on the insured, any fact which would influence the judgment of a prudent insurer and not a particular insurer is a material fact."

In para 42 of the Judgement the SC put forth the basic rules to be observed in making a proposal form:

(a) A fair and reasonable construction must be put upon the language of the question which is asked, and the answer given will be similarly construed. This involves close attention to the language used in either case, as the question may be so framed that an unqualified answer amounts to an assertion by the proposer that he has knowledge of the facts and that the knowledge is being imparted. However, provided these canons are observed, accuracy in all matters of substance will suffice and misstatements or omissions in trifling and insubstantial respects will be ignored.

(b) Carelessness is no excuse, unless the error is so obvious that no one could be regarded as misled. If the proposer puts 'no' when he means 'yes' it will not avail him to say it was a slip of the pen; the answer is plainly the reverse of the truth.

(c) An answer which is literally accurate, so far as it extends, will not suffice if it is misleading by reason of what is not stated. It may be quite accurate for the proposer to state that he has made a claim previously on an insurance company, but the answer is untrue if he has made more than one.

(d) Where the space for an answer is left blank, leaving the question unanswered, the reasonable inference may be that there is nothing to enter as an answer. If there is something to enter as an answer, the insurers are misled in that their reasonable inference is belied. It will then be a matter of construction whether this is a mere nondisclosure, the proposer having made no positive statement at all, or whether in substance he is to be regarded as having asserted that there is, in fact, nothing to state.



(e) Where an answer is unsatisfactory, as being on the face of it incomplete or inconsistent, the insurers may, as reasonable men, be regarded as put on inquiry, so that if they issue a policy without any further enquiry, they are assumed to have waived any further information. However, regarding the inference mentioned in the head above, the mere leaving of blank space will not commonly be regarded as sufficient to put the insurers on inquiry.

(f) A proposer may find it convenient to bracket together two or more questions and give a composite answer. There is no objection to his doing so, provided the insurers have adequate and accurate information on all points covered by the questions.

(g) Any answer given, however accurate and honest at the time it was written down, must be corrected if, up to the time of acceptance of the proposal, any event or circumstance supervenes to make it inaccurate or misleading.

[Source: Halsbury's Laws of England, Fourth Edition, Para 375, Vol.25: Insurance]

The court then stated: "Sometimes the standard of duty of disclosure imposed on the insured could make the insured vulnerable as the statements in the proposal form could be held against the insured. Conversely, certain clauses in the insurance policy could be interpreted in light of the contra proferentem rule as against the insurer. To seek specific information from the insured, the proposal form must have specific questions. Hence, obtain clarity as to the underlying risks in the policy, which are greater than the normal risks."

# THE REAL SCOPE AND SENSE OF POLICY EXCLUSIONS

Courts have since long tried to settle the significance of exclusions in insurance policies. The following references may make this clear:

In the case of *State Farm Mut. Auto. Ins. Co. v. Partridge* - 10 Cal.3d 94 (1973), California Supreme Court stated: "Whereas coverage clauses are interpreted broadly to afford the greatest possible protection to the insured, exclusionary clauses are interpreted narrowly against the insurer." The court also stated that: "whenever possible, the courts will apply an interpretation which gives, but never takes away". In the UK, in the case, *Crowden & Anor v QBE Insurance (Europe) Ltd* [2017] EWHC 2597 (Comm) (2017), the England and Wales High Court said (para 60): "The position in respect of insurance contracts is wholly distinguishable in that an exclusion clause in an insurance policy is not designed to exclude, restrict or limit a primary liability on the part of the insurer; instead, it is intended to define the risk which the insurer is prepared to accept by way of the insurance contract. Further, the exclusion clause in an insurance policy does not ordinarily operate to deprive the insured of rights which existed before or but for the cover afforded by the Policy."

In a later part of the Judgement, the court said insurance exclusions are designed to define the scope of cover that the insurance policy is intended to afford.





## Interpretation of Policies

Courts have well-settled canons for the interpretation of policies. In the case, *The Coast Mutual Building Loan Association v. Augusta Corum*, the Court of Appeal of California stated: "In the decision of this question, we are to be guided by well-established rules relating to the construction of insurance policies. The provisions of the policy as a whole and the exceptions to the insurer's liability must be construed to give the insured the protection which he reasonably had a right to expect. To that end, doubts, ambiguities, and uncertainties arising out of the language used in the policy must be resolved in his favour."

Concerning Liability Policies, courts are even more specific. In the case, *Breland v. Schilling*, 550 So. 2d 609 (1989), the Supreme Court of Louisiana stated: "The purpose of liability insurance, on the other hand, is to afford the insured protection from damage claims. Policies should be construed to effect, not deny, coverage. And exclusion from coverage should be narrowly construed."

Even recently, US courts have been clear about the scope of the exclusions. In the case, *Lantheus v Zurich American Insurance* 2015, the US District Court of New York stated: "When insurance contracts contain an exclusion provision, "[t]he insurer generally bears the burden of proving that the claim falls within the scope of an exclusion ... [by] establish[ing] that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular case."

### India

The Supreme Court of India in the case *B.V. Nagaraju vs M/S. Oriental Insurance Co.* (1996) laid down some principles in the case where the driver of the truck

carried six persons, and the SC wondered how they could have increased the risk of accident, especially when an oncoming vehicle collided with the insured vehicle head-on.

Accordingly, the SC stated: "Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification....." The court added, "In *Sikand's* case, this Court paved the way towards reading down the contractual Clause by observing as follows: ".....When the option is between opting for a view that will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obedience to the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' highlighted earlier. The effort must harmonise the two instead of allowing the exclusion clause to snipe successfully at the main purpose. Carter's "Breach of Contract supports the theory which needs no support" vide paragraph: "Notwithstanding the general ability to contract parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wise exclusion clauses defining a promisor's contractual obligations."

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*Thus, it may be seen that exclusion to be applied has to be last resort, after it is seen that there has been a fundamental (not technical breach), meaning that the breach has to be material to the loss, and but if the exclusion defeats the primary purpose of the policy, the exclusion has to be read down.*

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## UNDERSTANDING THE TERMS: EJUSDEM GENERIS & NOSCITUR A SOCIIS

The above two legal terms are critical to examine whether insurers have rightly denied a claim.

Ejusdem Generis holds that the interpretation may cover much more similar or like items when a list is given, particularly when the term like 'etc.' is used at the end of the clause. Thus furniture, fixtures, fittings, kitchen utensils etc., will cover the stove, gas cylinder and other kitchen items, but not clothes and the wardrobe.

Noscitur a sociis is used to reduce the meaning of a term in the context of similar terms used in the clause. Thus, it is common to have an in-property policies clause: "normal wear and tear, gradual deterioration due to atmospheric conditions or otherwise, rust, scratching of painted or polished surfaces or breakage of glass;". In such a situation, the term rust would mean wear and tear rust and not sudden accidental rust.

In the recent case: *The Financial Conduct Authority v Arch Insurance (UK) Limited & Ors* [2020] EWHC 2448 (Comm), the England and Wales High Court clarified the principles as under:

"In respect of certain policies, reference was made by the parties to the maxims or canons of construction ejusdem generis (of the same kind) and noscitur a sociis (known by its associates). These are specific applications of the primary principle, which is to read the words of a particular provision in context: see Colinaux's Law of Insurance (12th ed) at §3-055.

For instance, if a clause in an insurance policy covers, or excludes, the risk of damage to several items, the words likely used denote things of the same genus (ejusdem generis), and each word can take its meaning from the words with which it is linked or surrounded (noscitur a sociis). In *Watchorn v Langford* (1813) 170 ER 1432, the insurance policy covered "stock in trade, household furniture, linen, wearing apparel and plate". When the insured's linen drapery goods were destroyed in a fire, the House of Lords held that the policy did not respond because the reference to "linen" must have been to household linen or linen in clothing, rather than drapery.

A more recent illustration can be seen in *Tektrol Ltd (formerly Atto Power Controls Ltd) v International Insurance Co of Hanover Ltd* [2005] EWCA Civ 845, [2006] 1 All ER (Comm) 780 where an insurance policy excluded liability for "erasure loss distortion or corruption of information on computer systems". Sir Martin Nourse (agreeing with Buxton LJ) noted that "loss" in this context was a reference to loss by electronic means, rather than the burglary of a computer, citing the maxim noscitur a sociis (at [29]). That case also involved consideration of the meaning of "malicious person" within another exclusion containing the phrase "rioters strikers locked-out workers persons taking part in labour disturbances or civil commotion or malicious persons". In that context, given the other categories of persons in the list, a malicious person was held not to be a reference to a person who hacked in remotely to the computer systems in question (at [11]-[12]).

The principle of noscitur a sociis is, however, one which only operates if there can be said to be a common characteristic of the surrounding words, and it is a principle which must, in any event, give way if the particular words or other features of the contract so dictate."



**This policy does not require that the names of the persons be mentioned in the policy**

1. Group Health Insurance
2. Employee's Compensation Act
3. Janata Personal accident
4. None of the preceding

**Spot the odd entry in the list**

1. Employee's Compensation Policy
2. Money Insurance policy
3. Burglary Declaration Policy
4. Declaration Policy

**Which of the following risk is covered in a Plate Glass Insurance Policy?**

1. Damage owing to Fire & Special Perils
2. Breakage of glass when not fixed.
3. Actual breakage of fixed glass due to any peril not excluded.
4. Theft and burglary

**The SF&SP policy is**

1. An area-based policy
2. A town-based policy
3. A specific location-based policy
4. None of the earlier answers.

**Which of the following would relate to non-vitiation clause in project insurance**

1. Multiple sites
2. Multiple units
3. Multiple insurers
4. Multiple insureds

**If both the Fire and Marine Policies cover the same stocks, then at the time of claim**

1. Both policies will pay 50:50
2. Marine policy will pay first and balance will be paid by fire policy
3. Fire policy will pay first and balance will be paid by the Marine
4. Will pay as assessed by surveyor.

by Stephanie Potter





## IBroker

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