



BROKER

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EXCLUSIVE INTERVIEW

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IBAI President

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**BROKERS AS
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MESSAGE FROM SECRETARY

Warm Welcome

I hope this message finds you in good health and high spirits. It is with great pleasure that I address you today as your dedicated Secretary, charged with the responsibility of ushering in a new era for our esteemed magazine.

The recently concluded Annual General Meeting (AGM) witnessed a resounding democratic process, reaffirming our commitment to excellence and innovation in the field of insurance intermediary services in India. It is my distinct honour to introduce to you the distinguished individuals who have been elected as the new Directors and Office Bearers for the upcoming term:

Sumit Bohra	President	Globesecure Insurance Brokers
Narendra Bharindwal	Vice President	RMS ARC Insurance Brokers Pvt Ltd
Surendra Kumar Tonk	Vice President	Advance Life Insurance Brokers Pvt Ltd
Sundaram Varadan	Secretary	Abhivridhi Insurance Brokers Pvt Ltd
Ashok Jain	Treasurer	First Policy Insurance Brokers Pvt Ltd

Each member of this accomplished team brings a wealth of experience and expertise, and together, we are poised to take our Association to new heights.

Furthermore, the AGM election results are a testament to the trust and confidence that our members have placed in us. We are committed to ensuring that our operations reflect the highest standards of professionalism, transparency, and integrity.

In terms of the current landscape of the Indian intermediary market, we find ourselves at an exciting juncture. The market has demonstrated resilience and adaptability in the face of dynamic economic conditions. With technology and innovation at the forefront, our industry is evolving to meet the ever-changing demands of our clients and stakeholders.

Our magazine will continue to be a beacon of knowledge and insight, providing you with the latest trends, analysis, and thought leadership in the Indian Insurance intermediary market. We are dedicated to serving as a platform for meaningful discussions, networking, and professional development.

Warm regards

Sundaram Varadan CIP Fellow (ANZIIF)
Secretary, IBAI

MESSAGE

WITH SUMIT BOHRA

IBAI PRESIDENT

Congrats on being re-elected as President of the IBAI. Can you introduce the new team of office-bearers for the benefit of members?

I thank all the members of the association for showing faith in me and allowing the Board to continue and carry out the unfinished agenda. We have been working very hard for last 2 yrs. although the time was not enough as lot of pending issues are yet to be sorted specially the New Brokers Regulations, Education Initiatives Growth of Broking footprint across the country etc.

Following is the new Board including the elected office bearers.



Board Members	Elected as
Sumit Bohra	President
Narendra Bharindwal	Vice President
Surendra Kumar Tonk	Vice President
Sundaram Varadan	Secretary
Ashok Jain	Treasurer
Dr. Sandeep Dadia	Director
Pavanjit Singh Dhingra	Director
Rashmi Iyer	Director
Mohan Sriraman	Director
V.Gurunathan	Director
Ciby Varghese	Director
Sanjeev Gujral	Director
Anuraag Kaul	Director
Rohit Kapur	Director
Venkatesh Naidu	Director
Nirmal Bazaz	Director

As President for the second term, what are your 3 priority items to be taken up by the IBAI? Where do you wish to see IBAI as a body in the next 5 years?

The top three priorities for me in next 3 yrs. would be

- **Education** – We want to start the education campaign at schools and colleges to inculcate the habit of buying insurance at an early stage of life by understanding the pros and cons rather than by force or hearsay. Most people turn to insurance when there is a calamity, unfortunately then the cover is not available. Secondly, Insurance will remain complex how much ever we try to ease it, hence education will help the buyer to understand the basics..

- Renewal of license is a key for any broker's survival, either the license has to be perpetual or renewal should be a mere formality every three years.
- iii) Unity of Brokers is very important to make our role prominent in the market, Brokers should be looked as consultants and not merely a price discovery tool. I want to bring respect to the profession.

Members at times opine that though they receive communication on major happenings from the IBAI headquarters, little activity or communication happens at the zone/state level. How do you intend strengthening the organisation at the grassroot level?

The feedback is important and we will surely allot a budget to each state where there are more than 20 brokers and encourage a state level leader to call regular meetings to update them about the current Industry updates and take their feedback for future course correction. Although, I would appeal to all the brokers that they should participate in each and every event to voice their opinion.

Awareness, Accessibility & Affordability are three areas of importance stressed by the Chairman, IRDAI, if insurance penetration is to increase. How do you see brokers addressing these 3 important areas? Does IBAI have any plans towards creating insurance awareness?

I think there are two concepts education and awareness, education will take time but awareness can be created quickly through various channels specially with social media and TV commercials which should be the focus of the regulator and all the Insurers. I think the accessibility is largely taken care by the online platforms and down the line POSPs who help to execute this phigitally. Affordability is definitely a challenge although our market would be one of the cheapest in the world, but looking at our per capita income and issue faced by the poor for Roti, Kapda and Makan, the retail insurance prices should be made more affordable with a quick and benefit based claim settlement which will encourage the buyers.

How do you see brokers playing a leading role in 'Insurance for all by 2047'?

Currently we have 637 Brokers in India and although the no. looks quite small but the length and breadth they cover through the online reach, POSP's and through their employees and branches is quite humungous, I am sure the profession will gain momentum as more awareness in created where by the youngsters will join this profession. Brokers will definitely play very important role by innovating through technology and connect each and every Indian and make them insurance savvy.

Why does insurance continue to be a 'Push product' especially in the personal insurances space? Do you see this pattern changing in the near future?

I think education is key and we as students were never been taught about risk and how to manage the same. We all learn very late in life either in our working career or through crisis. As the need is not understood hence the same was sold as a push product either for tax saving or intermediaries survival. Yes, the pattern is definitely changing and will change further with education and awareness.



While there is a lot of noise about deteriorating service levels from insurers especially in case of claims, is there a correlation with pricing? Brokers at the behest of clients (who use multiple intermediaries) force insurers/ insurers in their greed for market-share quote unviable prices and when it comes claims, insurers try various interpretations of the fine print to avoid/reduce liability. Is there a need for the industry to move to a more viable pricing of products?

Our biggest problem has been innovation, we still use age old wordings adopted through the British and continue to ride on the same. Unless the wordings are simplified and tailor made to suit our business we will continue to face this problem of claim settlement. I always believe our product is claim and not the policy and not enough has been done to smoothen the claim process. I still feel pity for the retail customer where they have to go through the rigorous process and feels as if he has done some crime by making a claim in the policy. I feel we need more sympathy and empathy while settling the retail claims and as they are our brand ambassadors. Although there should be no correlation between price and claims settlement as the right of acceptance is with the insurers and they should be price adequately to provide good service and pay the claim with grace. Although I would admit that Insurers behave differently with customers basis the price charged to them. It's a tough question on how to price a product but logical pricing based on Actuarial science and past claims experience and behavioural aspect should be considered while pricing the product.



Is there a need for a better reconciliation mechanisms as far as claims go? Ombudsman & Consumer Courts have their limitations and civil litigation is a costly and long process -- facts insurers thrive on to decline or negotiate claims downwards. Any views on this?

First of all, Insurers has to be true to the retail customers and stick to the policy conditions and should not deduct for some small trivial expenses which leads heart burns and unnecessary grievance. Secondly the current system allows retail customer to approach ombudsman for claim and other related expenses upto Rs.30 lakhs. I feel there should be no limit as far as Retail policy is concerned. Every retail customer should be allowed to approach the ombudsman irrespective of the claim amount. Secondly similar concept should be adopted for SME and MSME client where ombudsman should be given powers for claim upto a sum of Rs. 1 crs. Lastly all policies should carry an Arbitration clause which is affordable to the consumers.



Do you think there is a strong case for insurers giving brokers limited underwriting and claim-settling authority after vetting their capabilities & experience?

The Broking profession in India has attained Adulthood and now it is 2 decades old. I am sure Insurers has good insight on how brokers operate along with their strengths and weakness and can start experimenting with some lines of business where Underwriting and Claim Settling authority can be passed on to us.

What will be your advice to young, upcoming brokers for running sustainable, scalable businesses?

I am happy to see lot of Young Professionals joining the Broking Industry, last one year almost 80 plus Broking licenses has been issued and there is huge scope and demand for professionals in this field as Insurance is a complex subject and proper advise to customer is the most sustainable way of long term business. My only advice to young professionals is to be honest to the profession and always think about the customer before making any decision.



Praveen Gupta FCII

Chartered Insurer



BROKERS AS STEWARDS: CLIMATE CHANGE

For nearly 10,000 years, humans have had a stable environment which allowed 'unhindered' progress. We are now in a situation, write Christina Lu and Brawley Benson in Foreign Policy, whereby "countries have spent decades building critical infrastructure that is now buckling under extreme heat, wildfires, and floods, laying bare just how unprepared the world's energy and transportation systems are to withstand the volatility of climate change". Like the recent pandemic - which was a preview to the unfolding Climate Crisis - it has begun to adversely touch every life. Rich or poor, in every part of the world. Some more adversely than others. All that we have built thus far, is for a climate that no longer exists. No form of insurance can protect anyone fully and forever. There is a thin line between insurable and uninsurable. Insurance intermediaries and brokers have an important role to play in ensuring that the needle does not move towards the latter.

Results from a study by AXA in late 2021 show that 60% of risk managers feared that certain geographies or activities will become uninsurable in future due to the impact of climate change. That future has arrived too soon. Today we are seeing many vulnerable locations (particularly the US states of California, Texas, Louisiana, Florida) in the world's largest insurance market. Arising from devastating wildfires, severe floods and windstorms - availability of homeowners' insurance, in these locations, is getting near impossible.

As global temperatures keep rising above the pre-industrial times, the stability that we took for granted is in a state of flux and may head for irreversible consequences. This is thanks to the over-exploitation of Nature - resulting in Climate Change together with biodiversity loss and pollution. Munich Re sees climate change and La Niña as two of the drivers for a US \$120 billion annual disaster insured loss for 2022. US \$100 billion or more is the "new normal" for the global insurance industry's annual natural disaster loss total.

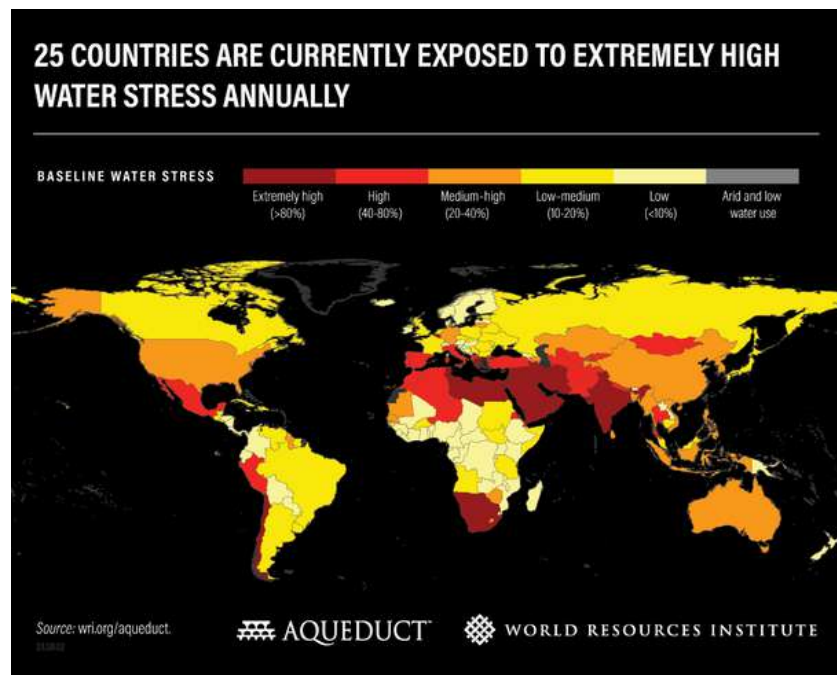
What causes a significant problem?

Carbon dioxide (at 420 ppm) and methane released due to fossil fuel usage cause greenhouse gas effect (GHG). Since the time of industrial revolution, the average temperature of our planet has gone up by 1.5C. Some parts including the Arctic, are warming by multiples. Together with pollution and biodiversity loss, this is causing havoc in the form of floods, droughts, forest fires, thawing permafrost, sea level rise, ocean acidification, glaciers melting, heat waves, et al. Some of the resultant changes according to scientists could be of irreversible nature.

As a frontline of the insurance industry brokers ought to be mindful of these developments. Since brokers are a very diverse lot, the attempt is to keep this paper as simple as possible. Nevertheless, the gravity of the existential crisis on hand should not be underestimated. Climate is a systemic risk. It cuts across all silos. The following are select few issues, but they are all inter-related.

Water

One of the most contentious drivers of climate crisis. Most industries are water intensive. 25 countries and 25% of world population face extremely high-water stress. Likewise, marine transits passing through say the Panama Canal ought to be watched. The lack of proper rainfall and the resultant drought is causing serious delays in the crossing of the ships. It has turned into a huge maritime traffic jam, with more than 200 ships stranded on both sides of the waterway.



Heat

'I believe that the Indo-Gangetic belt and the Sundarbans will be among the most affected parts of the country since multiple climate change impacts are playing out in those regions. The Indo-Gangetic plains are hot and humid. Humid heat is much more dangerous than dry heat, and a simultaneous spike in 'humid heat waves' there can significantly raise the risk of cardiovascular and neurological conditions', warns Dr. Chirag Dhara, eminent Climate expert.



'Will India get too hot to work?' A study by McKinsey red flags India could become one of the first places in the world to experience heat waves that cross the survivability limit for a healthy human being resting in the shade, and this could occur as early as next decade. Moreover, rising heat and humidity levels will impact labour productivity and economic growth in an economy that relies substantially on outdoor work. Lost labor hours due to extreme heat could put approximately 2.5-4.5 percent of GDP at risk by 2030, equivalent to roughly US \$150-250 billion. The study estimates the number of daylight hours during which outdoor work is unsafe will increase approximately 15 per cent by 2030, compared with today's levels.

This will have implications for outdoor work, agriculture, transportation, well-being of infrastructure and lifestyles in general.

Supply chains

McKinsey warns that "as climate change makes extreme weather more frequent and/or severe, it increases the annual probability of events that are more intense than manufacturing assets are constructed to withstand, increasing the likelihood of supply-chain disruptions". Jacques Leslie writing for Yale Environment 360 explains how "extreme weather, from floods to wildfires is increasingly hammering ports, highways, and factories worldwide, and experts warn these climate-induced disruptions will only get worse".

Credit risk

Moody's believes the credit impact of "a delayed and disorderly carbon transition" is the greatest threat to financial firms, as the increasing frequency of catastrophic weather events will lead to loan defaults and rising insurance claims.

Political risk

Africa is at the receiving end of Climate change for no fault of its own. The implications of climate change on the politics in Africa ought to be watched when trading with it. For instance: "The fact that few are acknowledging is that Niger's coup, like those in neighbouring countries, is a "climate coup" - a crisis born of climate impacts largely ignored by the international community", writes Abdoulie Ceesay in the Newsweek.

India

As the third-largest emitter of carbon dioxide, India's fossil fuel driven growth trajectory is bound to have adverse climate implications. It is, therefore, critical to make a rapid transition towards renewable energy. Needless to mention that this process will risk fossil fuel assets turning stranded. Any delays in corrective actions will see more heatwaves, droughts, erratic rainfall, flooding and sea level rise. Rising storm activity on the west coast must be watched and factored into risk management protocols. All these are bound to impact the supply, pricing and availability of insurance.

Siloed mindset

Conventional risk silos demand urgent revisit. Climate risks manifest as physical, transition and liability risks. Physical risk arises from physical impacts of climate-induced extreme weather events, transition risk relates to changes in regulatory and market expectations arising from the transition to a low-carbon economy. Liability risk emanates from mismanagement of physical and transition risk. Also, a new highly complex and destabilised domain of risk is emerging. It includes the risk of collapse of key social and economic systems at local and global levels.

Greenwashing, climate litigation and management liability

"Rather than making legitimate changes to their products and processes, some businesses have relied on exaggerated, misleading or false claims about their environmental, social and governance (ESG) credentials. But how many of these can withstand scrutiny from regulators, activist groups or opportunistic customers?", questions Reuters. Fashion, travel and finance industries are turning out to be most vulnerable.

Climate litigation started sporadically in the US in the mid-1980s. It has seen an exponential growth since 2015, when the Paris Agreement on climate change was signed. While just over 800 cases were filed in 28 years between 1986 and 2014, more than 1,200 cases commenced in the last eight years. Out of those 1,200 climate cases, roughly a quarter originated in the past two years. Increasingly, cases are being filed against a wide range of corporate actors, expanding the class of defendants beyond the usual suspects of oil and gas companies. Food and agriculture, transport as well as finance sectors have all seen an increase in strategic climate cases since 2020. Cases against private and public financial institutions indicate litigants' increasing focus on system-wide change. The logic is simple - if financial institutions start factoring climate risk into their decisions, this will inevitably increase the cost of capital for high emitters.



“As climate change litigation evolves, it is becoming a bigger drain on company resources. Litigation is now more targeted, while the arguments used by claimants are more diverse and include themes from disclosure and greenwashing to fiduciary duty, consumer protection and human rights”, say Lisa Williams and Steve Bauer of Zurich Insurance. “Companies need to take a holistic approach to climate change liability, and incorporate it into their controls and procedures, including risk and corporate governance frameworks, supply chain due diligence, health and safety, and quality control procedures.”

Climate Modeling

It is very important that insurers proactively build climate capabilities with forward-looking climate risk modeling instead of historic data. Weather-related losses are becoming a growing component of Natural Catastrophe. With return periods shortening, the 100 to 200-year cycles are generally redundant. Uttarakhand being a shining example.

There are powerful arguments why financial institutions should pay closer attention to the physical risks of climate change. Doing so might reduce the chance of sudden shocks and reinforce the case for mitigation.

Moreover, it would improve the allocation of resources, deter building in flood zones and incentivise spending on climate-resilient infrastructure.

There is growing unease that existing climate models may be providing a false sense of security. The UK Pensions Regulator recently raised concerns over scenario impacts that “seem relatively benign and appears to be at odds with established science”. Last November, the Financial Stability Board warned that the scenarios used to assess risks to the financial system may understate climate vulnerability.

Europe: CBAM

The European Commission has adopted detailed reporting rules for the Carbon Border Adjustment Mechanism (CBAM). Since the beginning of the reporting period starts on 1st October 2023, importers and indirect customs representatives have limited time available to ensure compliance with the reporting obligations. Any form of commercial exchange with Europe will entail this added risk.

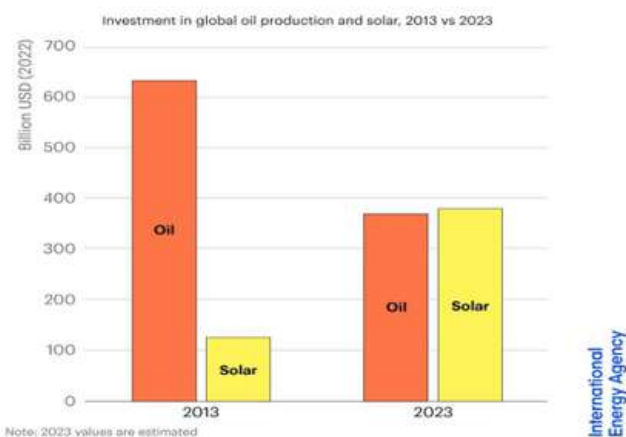
Opportunities

McKinsey expects voluntary carbon markets (VCM) to reach up to US \$30 billion by 2030. Needless to mention, VCMs are currently mired in serious controversy and trust deficit.

Annual global investments in decarbonisation technologies and renewables could account for US \$800 billion by 2030 corresponding to US \$10 billion to 15 billion in insurance premiums. Rise in extreme weather will render indemnity coverage less affordable and lead to greater demand for parametric offerings; income loss on renewable assets as well as the impacts of chronic weather shifts on climate-exposed sectors are expected to be the other growth drivers. However, the highest potential near-term target markets for insurers are likely in proven renewable-power assets and established green technologies including solar, on- and off-shore wind, electric-vehicle (EV) batteries, and EV charging infrastructure (EVCI).

“This reflects the major shift taking place in energy systems around the world. And it's another sign that clean energy is moving faster than many people think”, to quote Fatih Birol the head of International Energy Agency (IEA):

Solar is set to attract more capital than oil production for the first time ever in 2023



In conclusion

At say US \$150 carbon tax per ton of CO2 discharged, most profitable businesses around the world would be loss making. Whether or not this charge is levied, the problem is far more serious. Beyond a certain threshold, with temperature moving up a couple of notches, nothing would be insurable. For that matter, most businesses would not be able to survive. Earth’s carrying capacity would be under severe pressure. Businesses, therefore, must not only look at defending their balance sheets against climate change, but also ensure they do not aggravate the climate crisis. Brokers including the insurers have a critical role in mitigation, adaptation and resilience. Mitigate what is unmanageable and manage what is unavoidable.

Forest fires in North America have demonstrated how anything can quickly become uninsurable. A 1.5C rise in temperature has unleashed forces defying insurance’s ability to protect. On the other hand, a decarbonized environment could create humongous opportunities, like never before. "The climate emergency can seem daunting, but we must not forget that we have the solutions to avoid the very worst of this crisis", Antonio Guterres, UN Secretary-General, recently said. With their unique link with the insured on one side and insurer on the other, brokers can surely be stewards in realigning insurance in sustainable ways.

SPORTS INSURANCE

and its growing need in the changing sports landscape

Over the years, while sports have been widely considered as a leisure activity or a way to maintain physical fitness for most people, there has been an increasing trend of interest and inclination seen amongst young talent in the country to pursue a particular sport professionally. As a nation, historically, cricket has always been one of the favorite sports and very popular amongst all age groups. However, other sports are picking up momentum and witnessing a massive change in the sporting landscape wherein India is put on the global map with participation in events like Olympics, Asian Games, Commonwealth Games, where we are making a remarkable contribution.

With different levels of adrenaline and excitement involved in various sports, there is always an element of "Risk" with varying degrees of "severity" and "frequency" exposures. For instance, a cricket game being washed out due to unexpected rains or wet-outfields, football matches being cancelled due to death of a ruler, any sporting game being impacted due to an epidemic break-out, technical disturbances on TV or streaming platforms, riot, strike, civil commotion situation, act/threat of terrorism, injuries/illnesses to the athletes resulting in emergency medical expenses out of pocket, to name a few which have a real financial impact on the game. These risks can be addressed and managed by way of Sports or Contingency Insurance. This unique and customized insurance is bought by various stakeholders engaged in putting up an event and having a financial interest involved.



it is vital that sports organizations protect their assets with adequate insurance that is designed to cover various aspects of the event, amateur and professional athletes, clubs, groups and associations, and varied organizations in the sports industry.

In the recent years, increasing number of corporates whether established organizations or start-ups, global or domestic entities, corporates from varied sectors – FMCG, Automobiles, Financial institutions, luxury brands, tech companies, to name a few, most of them have exclusive marketing budgets for advertising and sponsoring sporting events, which provides the brands the right reach, access, and positioning in the market. With the growing involvement of large investments from across, the commercial aspect of the unknown factors related to sports can be well shielded by way of Sports insurance.

A single sports event, for e.g. a cricket match, being impacted by adverse weather conditions could result in undulating losses arising from multiple entities – organizer, broadcaster, sponsors, teams, other associate vendors, etc. India, as a country, has evolved over the years in terms of insurance buying for sports events and gradually is picking momentum amongst all the stakeholders. Almost a decade back, sporting ventures weren't much aware of Sports insurance, however, today, entities ensure that the cost for insurance is well budgeted, and this demonstrates the growing importance of sports insurance being availed in the country.

Insurance solutions for the sporting entities can be broadly categorized into:

- **Event cancellation insurance:** it typically protects the financial loss to a stakeholder engaged in the event, arising out of any disruption to the event due to contingencies.



it is vital that sports organizations protect their assets with adequate insurance that is designed to cover various aspects of the event, amateur and professional athletes, clubs, groups and associations, and varied organizations in the sports industry. In the recent years, increasing number of corporates whether established organizations or start-ups, global or domestic entities, corporates from varied sectors – FMCG, Automobiles, Financial institutions, luxury brands, tech companies, to name a few, most of them have exclusive marketing budgets for advertising and sponsoring sporting events, which provides the brands the right reach, access, and positioning in the market. With the growing involvement of large investments from across, the commercial aspect of the unknown factors related to sports can be well shielded by way of Sports insurance.

- **Athlete related insurance:** Athlete related solutions are more to protect the professional athlete from injuries or illnesses, while playing the sport towards their loss of remuneration, emergency medical/accidental expenses incurred.
- **General insurance** like third party liability, physical damage to property pertaining to the event, etc.

As for the “Sports Insurance Risk Carriers” are concerned, Indian public sector insurers and a few private insurers actively underwrite the contingency class of business. One could say this with immense pride that Indian insurers have demonstrated the truest mantra of “Made in India” and have stepped up their game in extending substantial capacities and expertise for Sports Insurance to ensure that the end user is adequately equipped to deal with a contingent situation. Having said this, one cannot forget the stellar support provided by domestic reinsurers and overseas reinsurers particularly the Lloyds of London who have demonstrated continuity and consistency in capacity provision and imparting technical expertise to underwrite huge and complex risks, such as IPL, ICC World Cup to name a few.

The Sports Insurance market landscape is constantly changing with the increasing financial stakes associated with the varied sports properties in the country. The market is seeing a steep increase in the values to the extent of almost 2.5 to 3 times more than the former values. For e.g., IPL value in terms of media rights itself has increased by almost 195% for 2023-2027 as compared to 2018-2022. This huge transition translates into higher values of insurance buying which also demands larger insurable capacities to be deployed from the insurance and reinsurance markets.



The impact is not just quantitative but also qualitative in terms of the nature of the risk which could be frequent and severe that can be described through changing weather patterns, newer risks like communicable disease - Covid 19 Pandemic, civil disturbances across regions to name a few.

India, being the proud and honored host for the ongoing ICC Cricket ODI World Cup 2023 which hosts several nations from across the globe and provides a real thrill of exhilarating and breathtaking cricket matches, an enjoyable and scintillating experience for the cricket enthusiasts and a wholesome fan experience, the organizers of the event along with other stakeholders are equally stress-free as most would have sought for adequate insurance protection for any unknown eventuality. Alliance Insurance Brokers take a lot of joy and honor in being the Insurance Broker of choice for many sporting interests of the ICC World Cup 2023 in creating measurable value for structuring insurance solutions for their open risk exposures.

Alliance Insurance Brokers Pvt. Ltd. has a specialized team with long-standing experience and expertise in structuring and designing sports and related insurance covers for the several stakeholders associated with the game to protect their financial interests. Alliance's Sports Insurance Team has unparalleled expertise in the market with 16+ years of experience, having covered 3500+ cricket matches across the globe and insuring 200+ Clients for various sporting events.



About the Author

Shaista Valji,
Associate Director – Sports
Alliance Insurance Brokers





CYBER LIABILITY INSURANCE

Overview

Regular cyber-attacks aimed at well-known institutions have captured the attention of risk managers. The use of online and IT technology is rising and pervasive. As a result cyber risks/liability is identified as among the top risks likely to have the biggest financial impact on global organisations. As exposures have evolved, insurance policies and preventive and indemnity provisions also need to meet them.



What is Cyber Insurance?

It is a type of insurance designed to cover consumers of technology services or products. More specifically, the policies are intended to cover a variety of both liability and property losses that may result when a business engages in various electronic activities, such as selling on the Internet or doing any transactions on the electronic network. This type of a policy found its origins in the 1990s, when the business perspective of information security became more prominent, and visions of cyber-insurance as risk management tool were formulated.

Cyber Liability addresses the first and third-party risks associated with e-business, the Internet, networks and informational assets. The risk category includes privacy issues, the infringement of intellectual property, virus transmission, or any other serious trouble that may be passed from first to third parties via the Web.

Currently cyber insurance is among the fastest growing sectors in the insurance business. Owing to the increased competition with respect to cyber insurers, many mid- and small-companies can afford to buy a policy. Cyber insurance policies nowadays cater mostly to business needs only, slowly insurers are offering covers for individuals also. The way it is growing it is expected to become a standard purchase by most businesses and individuals.

The cyber risks for a business are almost endless. As data breaches occur more frequently, there are additional pressures for business to step up efforts to protect the personal information in their possession. Cyber-attacks may come from nation

states, terrorists, criminals, activists, external opportunists and company insiders (both intentional and unintentional). Cyber criminals attack to gain some type of political, military or economic advantage. They usually steal money or information that can eventually be monetized, such as credit card numbers, health records, personal identification information and tax returns.

Why does one need Cyber Liability Insurance?

- Cyber risk is increasingly prevalent and costly, and it cannot be eliminated through available security measures
- Growth in the cyber-attack activities, increased awareness of the risk, and heightened regulatory enforcement and oversight activities — which typically involve costly notification and remediation obligations as well as the potential for increased oversight in the event of cyber breach
- A traditional Commercial General Liability (CGL) policy is unlikely to cover the expenses related to a cyber-attack and breaches on a company's data.
- Companies should negotiate a policy to include provisions that address their particular cyber threats and data sets and avoid exclusions that could limit coverage.

Insurer and Insured in a Cyber Policy

Insurer must give a contemporary coverage taking into consideration the latest in cyber perils that needs to be tracked by them and their experts. Cyber policies need to be updated to cover perils that are coming into vogue.

A good insurer can help the insured in analysing the risks the company could face and helping set policies and procedures to protect against them. An insurer might work with a small company to make sure a firewall is in place to protect the company's network, and make sure that the risk is reduced. It needs to introduce cyber specialists to the insured to do audits and upgrade their protection systems and prevent attacks and losses. An insurer also needs to analyse the indemnity levels that may be needed by the insured and advise them appropriately.

Typical Coverage Found in cyber Policies

Loss of Personal Information

The Insurer will pay to or on behalf of any insured all Damages and Defence Costs which arise out of a Claim by a Data Subject against the Insured in respect of an actual or alleged Qualifying Breach of Personal Information.

Loss of Corporate Information

The Insurer will pay to or on behalf of any insured all Damages and Defense Costs which arise out of a Claim by a Third Party against the Insured in respect of an actual or alleged Qualifying Breach of Corporate Information.

Outsourcing

The Insurer will pay to or on behalf of any Company all Damages and Defense Costs which arise out of a Claim by a Third Party against an Outsourcer (where the Company has a contractual duty to indemnify) and which arises from any actual or alleged breach of duty by the Outsourcer in regardsto the processing of Personal Information and/or Corporate Information on behalf of the Company (for which the Company is liable).

Network Security

The Insurer will pay to or on behalf of any insured all -

- 1.The introduction of any unauthorized software, computer code or virus to Third Party Data on the Company's Computer System which is specifically designed to disrupt the operation of or corrupt or damage any software or data recorded on the Company's Computer System;
- 2.The denial of access to an authorized Third Party to its Data;
- 3.The wrongful appropriation of a network access code from the Company;
- 4.The destruction, modification, corruption, damage or deletion of Third Party Data stored on any Computer System;
- 5.The physical theft of the Company's Assets by a Third Party, or its physical loss; or
- 6.The disclosure of Third Party Data by an employee of the Company.

Pro-active Forensic Services

The Insurer will pay to or on behalf of any Company all Professional Fees of forensic cyber risk specialists for the purpose of substantiating whether a Qualifying Breach of Data Security has occurred/is occurring and identifying the cause of the breach and for making recommendations as to how this may be prevented or mitigated. Such Professional Fees can only be incurred from the date of notification to the Insurer.

Repair of the Company's Reputation

The Insurer will pay to or on behalf of any Company all Professional Fees of independent advisors (including, but not limited to, legal advice concerning media strategy, crisis consulting and independent public relations services) for the

management of any action reasonably required to prevent or mitigate the potential adverse effect of a Newsworthy Event including the design and management of a communications strategy. Repair of the Individual Reputation

Makes efforts to prevent damage to their individual (personal and professional) reputation due to an actual or alleged Qualifying Breach of Data Security or breach of Data Protection Legislation.

Exclusions

Government Entity or Public Authority

This Extension shall not cover any Network Loss arising out of, based upon or attributable to any seizure, confiscation, nationalisation, or destruction of a Computer System by order of any government entity or public authority.

Specific Network Interruption Conditions

This Extension shall not cover any Network Loss arising out of, based upon or attributable to any:

1. Network or systems interruption caused by loss of communications with a Third Party computer system, resulting in the inability of the Company to communicate with those systems;
2. Legal costs or legal expenses of any type;
3. Updating, upgrading, enhancing or replacing any Computer System to a level beyond that which existed prior to sustaining Network Loss;
4. Unfavourable business conditions; or
5. The removal of software program errors or vulnerabilities.



Add-ons generally offered:

Optional Extensions are subject to the terms, conditions, definitions and exclusions of this policy and the additional terms, conditions, definitions and exclusions in this section.

Endorsement capability for:

- Premier privacy injury, including coverage for claims alleging actual or potential unauthorized access to the private information of natural persons, as well as the non-public information of third-party organizations.
- Regulatory defence costs and fines, penalties and consumer redress associated with actual or potential unauthorized access to private information.
- Multimedia Liability - In consideration of the additional premium paid, the Insurer will pay to or on behalf of any Company all Damages and Defence Costs which arise out of a Claim by a Third Party against the Company solely in the performance of or failure to perform Multimedia Activities arising from alleged or actual wrongful acts, where, Multimedia Activities means the publication or broadcast of any digital media content.
- Cyber/Privacy Extortion Liability - In consideration of the additional premium paid, the Insurer will pay to or on behalf of the Insured all Extortion Loss that an Insured incurs solely as a result of an Extortion Threat, where, Extortion Threat means any threat or connected series of threats, for the purpose of demanding monies, communicated to the Insured to prevent or end a Security Threat.

- Network Interruption Insurance - In consideration of the additional premium paid, the Insurer will pay to the Company any Network Loss in respect of a Material Interruption that an Insured incurs after the Waiting Hours Period has expired and solely as a result of a Security

Challenges facing the Insurers

- There is a stunning gap between the nature of new threats and the capabilities available to detect attacks, monitor (and stop) unauthorized infiltration, and secure information.
- Few insurers have direct insights into the cyber liabilities surrounding intangible digital assets.
- Many do not have the tools to provide the direct real-time awareness necessary to calculate risks to insured digital assets stored by cloud service providers or enterprise networks.
- There is increased awareness that companies should be accountable for private records and the security of data collected from their customers.
- Insurers should make the fundamental assumption that any insured infrastructure will at some point be compromised, if not already. The more important and valuable the intangible (data) assets are (IP, customer and supplier base, etc), the more likely a compromise.



COMPARISON

Cyber Insurance v. Crime Insurance

Crime insurance is designed to protect businesses against financial losses resulting from criminal acts committed by employees or third parties. It typically covers the following:

Employee dishonesty	Employee dishonesty: Losses due to theft, embezzlement, or fraudulent activities by employees.
Forgery or alteration	Losses resulting from forged or altered financial instruments.
Computer fraud	Losses caused by fraudulent computer-related activities, such as hacking or funds transfer fraud.
Funds transfer fraud	Losses arising from unauthorized electronic funds transfers.
Counterfeit money	Losses due to the acceptance of counterfeit currency.

The terms as given in an actual policy reads as follows:

1.1 Any loss which is first discovered during the policy period or the discovery period, if applicable, and notified to the insurer in accordance with this policy's provisions, provided such loss was sustained by the insured after the Retroactive Date by reason of:

- a. Internal Crime or
 - b. External Crime
- and

1.2 Defence Costs

Cyber insurance is designed to protect businesses against losses resulting from cyber threats and data breaches. It typically covers the following:

Data breaches	Costs associated with data breaches, including forensic investigations, customer notification, credit monitoring, and potential legal liabilities.
Cyber extortion	Coverage for expenses related to ransomware attacks or other forms of cyber extortion.
Business interruption	Losses resulting from system disruptions or downtime caused by cyber incidents.
Privacy liability	Legal costs and damages resulting from violations of privacy regulations or laws.
Network security liability	Coverage for legal costs and damages arising from third-party claims related to network security failures.

Overlap and Differences

While there can be some overlap between crime insurance and cyber insurance, they primarily cover different types of risks. Crime insurance focuses on financial losses resulting from criminal acts, both by employees and external parties. It includes coverage for employee dishonesty, fraud, forgery, and other forms of traditional criminal activities. On the other hand, cyber insurance specifically addresses risks related to cyber threats, data breaches, and other cyber incidents. It covers costs associated with data breaches, cyber extortion, business interruption, and liabilities arising from privacy or network security failures.

However, there can be situations where the two types of insurance overlap. For example, if a cyber incident involves employee fraud or embezzlement, both crime insurance and cyber insurance may come into play to cover different aspects of the loss. In such cases, it's essential for businesses to carefully review their insurance policies and consult with their insurance providers to understand the extent of coverage and any potential gaps. Some experts cite the differences under various heads:

Cyber	Crime
Intangible	Tangible
Cyber insurance covers intangible losses. Losses relate to data files or personal information. Those items are more abstract and fall under cyber liability policies.	Crime is a tangible loss - Crime insurance covers physical losses, such as theft of money or material/stocks etc. Even securities can fall into the "tangible" category, though these tradable assets are not considered inventory.
Direct and Indirect	Direct
Can damage tangible assets like disabling computers, but majority of the losses are indirect like liabilities. Data breaches are an example of cyber loss because these attacks usually compromise a client's personal information. Many unfortunate events can happen when personal information is in the wrong hands.	Money is considered tangible even if it is received electronically. When a service is performed or a product is sold, but the transaction is false, then the payment is not received. Such losses make for financial losses.

First party and Third party	First party only
Cyber liability insurance normally applies to losses that occur to another person or entity. This could be a first party loss coverable under the policy or a third party loss that has to be recovered under the liability head.	Crime insurance covers losses that happen to the company and is known as first-party loss.

Examples of losses

Cyber	Crime
Malware (i.e., ransomware, spyware, worms, viruses, etc.)	Employee theft
Loss of Income due to network interruption	Forgery
Regulatory Investigation	Fraudulent fund transfers or electronic fraud
Legal liability & Defence cost	Theft, destruction, disappearance, wrongful abstraction of Money, Securities or Property belonging to the Insured whilst in premises or in transit.
Data Breach Management Expenses	
Denial of Service (DoS)	

Businesses Need Both Kinds of Coverage

Even though both these two types of covers have overlaps as both of them can involve criminal activity having direct losses as also through the cyberspace. Hence both types of coverage are essential. Only when both policies are in place with least overlaps as also gaps, can an organization have the widest protection.

It's worth noting that the specific coverage and terms of insurance policies can vary widely depending on the insurer and the policy itself. Therefore, it's crucial to review the policy documents and consult with the Broker to understand the precise coverage offered by each type of insurance and any potential areas of overlap/gap.

Cyber v crime: The social engineering aspect

Social engineering fraud happens using human psychology, rather than hacking via technological methods, so as to trick, deceive or manipulate unsuspecting persons into transferring money or key confidential information, usually for financial gain. Such schemes have become increasingly sophisticated and are often easily mistaken as genuine. Although the fraud can be perpetrated through a number of different communication methods, such as telephone, fax and messaging platforms, e-mail is generally the most common conduit. Hackers usually monitor email traffic for months to familiarize themselves with the style and tone of communications. Targeted and well-constructed communications are then sent to individuals within a business, supposedly from people they know and would trust.

Traditional computer fraud policies generally limit coverage to direct loss resulting from "theft" through the use of any computer system." Many claims involving social engineering do not involve the fraudulent withdrawal of funds from the insured's account, but instead involve an authorized withdrawal induced by fraud. Courts have held that such a loss is outside the scope of coverage typically afforded by the computer fraud insuring agreement because it does not arise "directly" from the use of any computer to fraudulently cause a transfer of property. Rather the loss arises from an authorized transfer of funds. The mere fact that the insured received a fraudulent email inducing it to take action does not establish the use of any computer to fraudulently cause a transfer of that property. The insured when receiving such instructions, still has the choice to take immediate action, or conduct an analysis of the instruction, or even decline the instruction. That decision-making process breaks any causal nexus and thus, the loss arose from an authorized (and therefore uncovered) transfer of funds.



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DISASTERS AND SOLIDARITY

This year Himachal Pradesh and Uttarakhand faced record breaking rains after two weather systems, a strong western disturbance and the monsoon clashed. Disasters, when they happen, do not spare anyone. The result was devastating. Chennai floods in December 2015 did not spare the ground floors of any building or factory in the metropolis, and affected even the most modern and planned areas of the city. India had similar such catastrophes in Mumbai in 2005, Kolkata in 1978. Many smaller cities also faced such unexpected ordeals. Disasters strike and devastate economies in unexpected ways and show how everyone is unprepared. It is a matter of great distress that the burden of disasters falls disproportionately on the poor, again bringing to the fore the need for governmental support in insuring the poor against disasters, with the active support of the IRDAI and the insurance industry.

It is clear that disasters are insurable, especially if the insurable pool is made universal or near universal. Therefore attention should be focused on to the essential need of getting all citizens and assets insured against losses of lives and livelihoods. Insurance is a foresightful contract, a masterful risk management tool, which everyone in society should promote for universal adoption by all citizens. This can be tangibly facilitated by employers, governments, and most of all by insurers and intermediaries.

Insurance is fundamentally a solidarity product that works with certainty in times of calamity, but insurance is also paradoxically not bought but sold. The value chain of insurance is not understood by the public in less penetrated countries. In countries like India, where calamities are sure to happen somewhat frequently in any one part of the country, owing to the fact that it has multiple climatic zones. The challenge for insurers is that under penetration is a curse that needs to be overcome with purposeful action. One of the most important features of this would be speedy and exemplary claim settlement using technology including drones, satellite images, weather report analysis etc. (It is possible to obtain the depth of the flood water from satellite images.) If such modern techniques are used it may be possible to exempt insureds from sending claim intimation in situations where they are cut off or their insurance documents are lost or missing. Quick settlement of claims needs to be celebrated by the industry led by the IRDAI and the various Associations.

Insurance inclusion is a key path for achieving prosperity because risk taking is essential in the economy. Insurers must push the boundaries of uninsurability using their well tested tools of risk reduction and risk discipline. Risks and losses in the economy will fall when insurance has to be spread both in width and depth across geographies and activities.



Today everyone is connected in many ways and so insurers can use the tools of connection for ensuring protection for everyone. Organisations connected to people in any manner must help insurers and intermediaries to facilitate insurance for all, so that losses are kept at bay, society risks are reduced and public aid is not required for any citizen. Risks, as proved time and again, have multiple ripple effects across the economy and private losses have public setbacks. Disaster and other insurances make sure that neither public nor private losses set the country back in any manner.

What is the role of intermediaries in all this? They have to craft a value chain involving all stakeholders in the risk-chain, and offer ease of insurance services and benefits that can convince the public to insure and all stakeholders to push insurance. The electronic world of today offers the value of reach and transparency, information and advice for everyone. Using platforms of ease for citizens, they can seek to recraft products that are simpler and offer speed and effective indemnity at the many loss points that cause wealth destruction namely earnings, livelihood assets, liability and other loss costs. The credence that is in the core of insurance must be made validated across pain chains – denial of effective cover, denial of claim and delay of service.

Insurance must take a leap forward because the future promises to be an insurance economy. Future wealth creation will happen from rapid change and venturing in unknown areas and new knowledge and technology. Everyone in the insurance ecosystem must chip in – starting from regulators who must facilitate greater trust for insurance in the economy, rather than burden the system with further risk through mazes of regulation. That insurance gives mastery to the tragedies of risk is a conviction that the Regulator and all those in the industry must take protection to the last person in the economy. The duty of insurance is to bring risks down in the economy, encourage entrepreneurial risk taking and make insurance universal through affordability for all. As everyone at risk eventually pays the cost of risk, whether by uninsured loss or by insured indemnity, insurers will help to reduce the cost of risk in a consistent and beneficial manner. Insurance thus helps the resilience quotient in the economy, reducing anxieties of the government and those taking risks. Insurers need to grow their convictions and meet the highest standards of insurance, and then the economy will begin to hum because insurance is the engine for protection and risk management.

Intermediary vs Insuretech

Most insurance services are very complex experience and credence goods. While insurance is a solidarity product, but still it is paradoxically not bought but sold. Therefore, insurance forte lies in communicating the desirability of insurance protection and offering many different options to achieve optimal coverage. This requires specialized knowledge and relational capabilities. Insurance has high information asymmetries and high search costs. There are technicalities everywhere and starts from disclosing material information, time changes in the policy based on risk profile changes and so on. This makes the role of intermediaries important for value adding and mediating between the insured and insurer. When they do this on large scale, intermediaries reap economies of scale and reduce transaction costs and information asymmetries. Besides they offer guidance (information and advice) at the time of taking insurance and personalised service at the time of unfortunate claims.

The decision to buy a particular insurance product not only requires information about one's preferences, needs, and the risks to be covered but also about the insurance types available. At a higher level the intermediary can choose their knowledge to select the best insurer who will offer the best package of products and services. Thus to appreciate the different insurance options one has to know their costs as also about the insurance companies to choose from based on their past performance and services.

A special feature of advice is that it has to be both objective and subjective. The objective information provides the features of a product given the situational requirement of the customer. The subjective quality is about meeting individual preferences and expectations as to the manner of marketing the information advice. There is also the empathy factor to fit the expectations of the customer.

Customers prefer to choose from a range of products based on what serves them best and at least cost. Intermediaries also benefit from the learning effects of interacting with the customer. Insurance intermediaries thus help to reduce the many uncertainties which face a customer when buying insurance – a complex product needing continuous handholding.

To the insured there are no visible costs for the intermediary services, as these acquisition costs are part of the insurance premium. Even if a customer contracts directly the insurance company without using an intermediary, he or she has no cost advantage, as the insurance companies prorate the acquisition costs to all contracts. The difference between insurance agents and brokers is, however, that the latter are free to negotiate the terms of an insurance policy with different insurance companies. By cooperating with other brokers they can further improve their bargaining position and negotiate for better terms for their clients.

The Challenge of Insurtechs

New, technology savvy players are entering the insurance sector, bringing the full force of their innovative, disruptive, opportunity-laden power. They will alter the terrain on which incumbents compete, bringing changes. Traditional intermediaries and Insurtechs need to become partners so that the end customer is holistically benefitted. In this the Insurtech will help to improve the user experience. Insurtechs naturally gravitate to retail insureds where advice needs to be minimum. Online and mobile channels and digital technologies offer many quick wins in as millennials and more youthful age segments need to take insurance covers. They value convenience and like to execute transactions remotely—if possible, without direct interaction with the institution. The use of 24/7 digital channels to receive an insurance quote or submit a claim is infinitely preferable to a branch or office visit.

The rise of digital platforms in the insurance industry has brokers and agents anxious about their future. As digital technologies continue to transform insurance, the role of insurance intermediaries can get questioned. This will need to be studied by the industry and the brokers and advisors are trying to adapt to the new digital landscape. However this can be a daunting task. For one thing, based on their experiences in industries like retail, many customers believe that everything insurance related can be handled in an entirely digital manner. However, insurance is not a visual or even an experience product. It is complex and needs understanding and finesse in choosing. Even the simple motor insurance has many varieties and addons when one wishes to insure damage to the vehicle.

Hence, it is the duty of the IRDAI and the industry to provide appropriate communication to the public on the right use of Insuretech and not get carried away. It is also necessary for the Regulator to go with Insuretech in a manner that promotes the insurance industry and not Insuretech. In insurance there are no shortcuts as we are seeing and many experiments have been tried to spectacularly reach coverage across populations and geographies, only for them to fail. Take the case of bancassurance. It was supposed to be a magic wand, but the magic has not happened.

Intermediaries themselves must up their Insuretech offerings and also temper the often unrealistic expectations of their clients. It is true that customers think that they are armed with wealth of information about policy options and competitors' rates, but they also need to show that the online information can contain falsity and misinformation. It is true that there is a threat of disintermediation. However, all have to strive to take the consumer and insurance forward and not get wedded to their own notions of what is good for the consumer.



INSURING AGRICULTURE

Agriculture is the principal occupation of this country with about half the population dependent directly on agriculture for their livelihood. Risk in the crop or agriculture sector is essentially a livelihood risk and hence is of critical importance for those at risk. Insurance covers in future will focus more and more on risks of livelihood and balance sheet. Therefore, emphasis on agriculture insurance will be critical to give relevance to insurance inclusion of the highest order because 100 million farmer families are to be protected against loss of their livelihood in case of an unforeseen crop disaster.

Given the evolution of insurance as we know it, agriculture insurance was not in the purview of insurers till in the recent past owing to the complexities of agriculture risk, as well as the traditional focus on commercial insurances in the secondary and tertiary sector. Agriculture risk is not a random risk but is in the nature of a systemic risk, and this kind of risk is not a familiar territory for insurers. A peril like drought can be pervasive across the country. Even more importantly, climate at the local level will not affect farmers differently. Hence climatic zones in the micro sense will have the same weather effect for all farmers. However, crop wise there could be difference, as some crops, for instance, need more water but others less. Similarly, loss levels between irrigated and non-irrigated will be different. Such insights brought out useful innovations in agriculture insurance.

Agriculture Insurance is Area Based

The most important insight for effective agriculture insurance was that ideally agriculture insurance should be 'area based' insurance instead of individual farm level insurance. Individual underwriting, the common way in all insurance

underwriting, is a very difficult task in rural based crop insurance. It is much easier to cover risks on an area basis as the risk of loss arising from climate risks and their secondary risks owing to pests and diseases will be equal for all in the same climatic area for a given crop. In this model all farmers will receive the same amount of claim per hectare for the specific crop insured. This however is not always a boon to the farmer, arising from a problem known as basis risk, in which it is possible that the area may not be having a claim as per parameters adopted, but an individual farmer who may be having a loss, but due to the area claim factor will not be receiving a claim. The opposite also can happen. Therefore, care has to be taken to remove or reduce basis risk for effective implementation of crop insurance.

Crop Insurance is best if it is a parametric insurance

The second factor to promote easy insurance is to make crop insurance a parametric insurance. It is necessary to ensure that farmers do not defeat the system by adopting adverse selection and moral hazard approaches to gain advantage,



which will ultimately drive insurance away from the agriculture sector. Therefore, insurers enforce seasonality discipline, which means that insurance has to be taken before the sowing begins and not after getting an idea that possible losses can loom. Even more important is the moral hazard factor. It is possible for individual farmers not to manage the farm optimally as per best farming practices, fertilise or irrigate it properly, or plant sub-standard seeds and so on and then stage manage them as insured losses. Insurers will find it impossible to monitor such activities given the constraints in the vast number of farms in the country and their geographical inaccessibility.

To avoid such insurance problems and cut through difficult subjective approaches, crop cutting experiments are conducted by competent government agencies under supervision on a statistically sound basis and farmers are indemnified if crop loss (yield) is below the threshold guaranteed. In the weather insurance model, weather parameters are set in such a manner that beyond the upper band of normal rainfall, claim will begin to trigger on partial loss basis, and reach an upper end, when the crop will be declared total loss, based on scientifically proven data and studies done by reputed agencies and checked by crop scientists. Similarly at the lower end of the normal rainfall, claims will trigger based on deficit rainfall peril metrics.

Weather Insurance – a Proxy Insurance

Weather insurance has brought in a further innovation by adopting the concept of proxy insurance, where weather is taken as a proxy for crop losses as it is the dominating risk, whether in the form of needed rain, or temperature, frost, wind-speed and so on. The significance of this innovation is that weather cannot be influenced by the farmer or for that matter by the insurance company and hence there will be no moral hazard if weather is used as proxy. Modern technology has facilitated the availability of automatic weather stations (AWS) which can be moved from place to place and hired for the season and which can send reports to servers used by insurers and other agencies. Due to this it is possible to monitor weather reports so that at the end of the crop season claims can be settled on the basis of weather reports, without delay and further formalities. Today proxy insurance is further strengthened by multiple approaches such as 'ground-truthing' by way of crop cutting experiments and the use of satellite based crop data to cross-validate claims.

All these innovations have great spin-offs in the area of ensuring ease of managing the cover given to farmers. Apart from the proposal form and ownership details to be given before the crop season begins, no further documents are normally required from

the farmers, who more than usual customers are weak in paper work as well as dislike and distrust them. Unlike the standard claim processes in individual insurance like motor or fire, in weather insurance at the time of claim there is no need for claim intimation, claim form, estimates, survey reports, bills and so on. The area which is eligible for claim will be identified from weather reports and all farmers in that area will receive claim payment credited directly to their bank accounts.

Agriculture insurance is a complex insurance

Agriculture insurance is very complex and there can be no standard product across India like in usual insurances such as personal accident insurance, fire or motor insurance. Complexities arise because of the differential created in each climatic zone based on weather, season, soil and crop, and hence the term-sheets for insurance will vary from one climate geography to another. This will again vary from crop season to another. The principal crop season in India is the Kharif season, i.e. the monsoon period, where the principal crop risk factor is rainfall, and its deficiency or excess is the critical factor. In the Rabi (winter) crop season, the principal climate factors for the success or failure of the crop are temperature, frost etc. It is said for instance that wheat crop is a gamble on night temperature in the Rabi season.



Normally agriculture is dependent on credit financing and hence both governments and banking organisations make it compulsory for farmers who take loans to insure. However it is incumbent on insurers to insure non-loanee farmers also for ensuring protection to the farm sector. Insurance of all farmers whether loanee or not, is facilitated by banks and other intermediaries who are well distributed in rural areas to propagate this insurance. Since agriculture insurance is a high risk insurance, governments all over the world are inclined to subsidise agriculture insurance premiums and/or claim payouts generously. In India both the Central and State Governments are deeply involved in crop insurance and promote it in various ways, using the government machinery, banks and insurers to ensure that all farmers are able to avail of crop insurance. Substantial subsidy is made available to the farmers by both central and state governments.

Given the risky nature of crop insurance, where the claims are high, the premium rates are high and hence unaffordable to farmers. Hence apart from subsidy by governments it is incumbent on insurers to ensure that their management expenses are kept very low, and that most of the premium is paid out as losses to farmers.

RATING & PRICING OF NON-LIFE INSURANCE PRODUCTS

Pricing aspect in insurance is of utmost importance. With the money obtained from charging for risk coverage, an insurer must pay claims, make reserves as per regulations, take care of management expenses, pay commission etc. They also need to make a profit to maintain solvency and to reward their shareholders. Without proper pricing there is no survival for insurers or the insurance industry.

Earlier the insurers were bound by a tariff, which was a schedule of premium rates and policy terms and conditions applicable to risk in a particular class of business.



The insurance business in India governed by Insurance Act of 1938, had section 64 U which allowed a Tariff Advisory Committee (TAC) to control and regulate the rates, advantages, terms, and conditions to be offered by insurers of general insurance business. So legally speaking, it meant that any violation of the rates, terms, and conditions as prescribed by TAC in the tariff meant violation of Insurance Act 1938.

When liberalization and deregulations were implemented after the Malhotra Committee (1993) report the government opened-up the insurance sector by passing the IRDA Act in 1999.

Many private players entered the industry and this created a competitive environment where both public and private insurers were to compete. The liberalization was expected to bring about:

- Product and price innovation
- Market expansion
- Rapid insurance penetration
- Improved customer service
- Upgradation of technology and skills.

However, it was seen that liberalization and the tariff regime could not go together. Hence the IRDAI issued a road map, at the end of which there was to be a de-tariffed market w.e.f. 1.1.2007.

Owing to the ill effects of the tariff, the General Insurers were not used to pricing discipline or actuarial approaches. They were used to a kind of judgmental rating. No serious effort was made in the public sector days to create a proper data bank or train and develop necessary manpower and skill to create underwriters in the real sense. A beginning was expected to be made as per the road map for de-tariffing issued by IRDA. Briefly the road map envisaged discontinuation of all tariff w.e.f. 31.12.2006 and preparation of interim internal tariff (based on available U/W information with the company) by 31.3.2006. The companies were required to modify their IT system to capture data relating to U/W and claim w.e.f. 1.4.2006. After the detariffing insurers were expected to pay greater attention to developing skills in underwriting and create a data base for the purpose of working out competitive pricing based on proper evaluation of the risk.

However, most insurers went into a rate cutting overdrive and all followed to ensure that can keep their market share. This continued in some form or other and may be seen even now with adverse consequences for the balance sheets of many insurers.

In the context of insurance, pricing refers to the cost of an insurance product and the terms and conditions that goes with it. In view of uncertainties of claims, the pricing of insurance product is unique and differs from pricing of tangible products and services, where input-costs are known. Pricing, obviously, is very important. For the insured it is a major differentiating factor while purchasing insurance. For the insurer, price adequacy is important for its long-term financial health and performance.

To understand how insurance products are priced, it is necessary first to identify the elements that go into the making of the price. These elements are:

1. Claims cost – this includes claims paid along with settlement expense, estimate for outstanding claim, and provision for reserves for IBNR & IBNER.
2. Business acquisition cost – this includes commission, brokerage, and business development cost, etc.
3. Management expenses – which include salaries, rent and such other expenses essential for running an organization.
4. Profit – return on the cost of capital.

Insurance companies must do the balancing act between offering competitive price and its adequacy.

In order to arrive at claims cost, the insurers depend upon statistical principles relating to the law of large numbers. As per this principle the accuracy of projection of future losses will increase, if the number of exposure units increase. However, the exposure unit must be similar and independent of each other. In other words, the uncertainty associated with an insurance pool can be minimized if the number of observations are increased. This calls for proper classification of risks and collection of data for each risk. Naturally this will vary geographically as also from one class of risk to another and even from one segment to the other within the same class. Therefore, there is no need to have strictly uniform all India rate structure. If the risks are of new types for which no past experience is available, or for which data base is inadequate, then insurers individually evaluate the risks and a risk-perception based rate is quoted.

Insurers being, commercial organizations, need to earn a profit. This means that premium earned over a period should be more than all outgoes during that period. The difference between the premium earned and the outgoes constitute what is called "Underwriting Profits." The insurers as they generate premium revenues, they also need to invest their surplus funds which will generate investment income.

In case a pricing war starts, insurers have to examine each element of pricing to ascertain as to the extent to which they can manoeuvre them to bring down the price to the level at which they are competitive and also fulfil the premium adequacy criteria. On the claims cost front insurers must build up a data base to accurately predict the occurrence of claims and their frequency and severity. Proper IT support is essential with actuarial capability. Efficient and effective claims management, prevention of leakages and frauds in claim will also result in reduction in claims outgo.

There are certain pricing constraints which insurers cannot ignore arising from regulatory requirements such as that when pricing, the same cannot be excessive or unfairly discriminatory. As a general principle the rate should be stable, encourage loss control measures and should also consider social sensibilities. However, it may be seen that across insurers the rates of similar products may vary. This is because each company has different budgeted level of income, targeted market share, targeted return on capital as also different investment performance. Marketing strategies also vary from company to company.

IS THE DETARIFFING OF POLICY WORDINGS APPROPRIATE

THE BENEFITS STANDARD WORDINGS

In the case *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016, the Supreme Court of Canada, observed that standard form contracts are common among service providers like a bank. These wordings may be common for the entire industry. The Supreme Court then stated that: "Either way, the interpretation of the standard form contract could affect many people, because "precedent is more likely to be controlling" in the interpretation of such contracts: Hall, at p. 131. It would be undesirable for courts to interpret identical or very similar standard form provisions inconsistently, without good reason. The mandate of appellate courts — "ensuring the consistency of the law" (Sattva, at para. 51) — is advanced by permitting appellate courts to review the interpretation of standard form contracts for correctness."



The Supreme Court quoted Author Billingsley to state that "Parties to an insurance contract may negotiate over matters like the cost of premiums, but the actual conditions of the insurance coverage are generally determined by the standard form contract." Courts state that these types of policies help "both insurance companies and customers benefit from "[c]ertainty and predictability".

Insurance experts find standard-form contracts are a common feature of commercial relationships because they offer the advantage of lower transaction costs. Prof. Mark Patterson wrote that "Trade associations and similar entities often effect standardization of this kind through collective agreement on a standard contract, sometimes under the aegis of state actors." They also state that "standard-form contracts also increased competition among firms, because a standard contract makes comparison among firms' offerings easier."

A uniform standard contract makes it easier for insureds to compare policies/contracts and to switch from one insurer to another, because they need not familiarize themselves with a variety of confusing contracts. One of the criticisms against standard wording is that there could be variety of differences among consumers and hence differences in contractual preferences, which would make it difficult to achieve uniformity without denying some consumers their preferences.

But this need not be true because standard contracts can offer menus of choices rather than single terms, but that can also lessen the value of the standardization.

It is seen that many countries and markets promote standard wordings. In the USA, ISO (www.iso.com) acts as the provider of products and services that help measure, manage and reduce risk. Provides data, analytics and decision-support solutions to professionals in many fields, including insurance, finance, real estate, health services, government and human resources. In the Engineering Field IMIA (www.imia.com) is a network of experts in Engineering Insurance from around the world who share experiences, investigate and discuss emerging and critical issues and elaborate papers discussing all kinds of topics of Engineering Insurance. Similarly the London Engineering Group, also known as LEG, is a consultative body for insurers of engineering class risks providing a forum for discussion and education. Membership is drawn from the various insurance and re-insurance companies plus Lloyd's syndicates who are actively involved in underwriting risks within the engineering classes. The group among other things drafts coverage clauses and guidance notes which are widely accepted in the insurance industry. Standard Policies are also drafted by many reputed reinsurers, especially for complex risks and used all over the world.

In India, the TAC was the final arbiter in policy wordings and the drafts they

finally decided on were having the force of law. This was considered very retrograde in situations where liberalisation and deregulation were having the momentum and the decision to disband TAC was good. However, it is time for the IRDAI, the GI Council and others to take initiatives to constitute standard policy drafting bodies and create high end research and creative bodies to take the sector forward.

The experiments already done such as allowing the insurers to draft their own "addon" covers was a disaster and there has been efforts to improve and rationalise them. In the UK the Financial Conduct Authority (FCA) stated with regard to 'add-on' covers: In their paper PS15/22 (<http://www.fca.org.uk/news/ps15-22-general-insurance-addons-market-study-remedies>)

stated that they confirmed three initiatives to tackle the issues highlighted by the market study and help customers make more informed decisions: A ban on selling "optional additional products" on an opt-out basis. This occurs when firms use sales methods such as pre-ticked boxes."

There are such instances all over the world where insurers may create unfair situations for the insureds and also for competing insurers and thus ruin the good name of the insurance market. This cannot be allowed and hence there has to be tight control at the regulator level to moderate hasty 'innovations' and blind experiments with wordings as also multiple policy wording that will only confuse the market and make decision making by the customer very difficult.



Deductible v. Sub-limits

Policies can have both deductibles and sub-limits. Deductible can be described as a higher floor and sub limits are lower ceilings. This makes the insured's exposure greater at both ends of the loss. It is therefore important for the insured to examine these limitations and if necessary, negotiate for better terms or choose higher limits, if it can reduce the premium rates.

Court have held that deductible promote worthy social goals

Courts have described the functional purpose of deductible. The District Court of Appeal of Florida, Second District, Lakeland in the case *General Star Indemnity v West Florida Village Inn Inc.* 874 So. 2d 26 (Fla. Dist. Ct. App. 2004) stated: "Generally, the functional purpose of a deductible, which is frequently referred to as self-insurance, is to alter the point at which an insurance company's obligation to pay will ripen." As self-insurance, a deductible requires the insured to share in the risk of loss, and worthy social goals are promoted.

The insured is given a monetary incentive to fulfil his or her duty to protect and to adequately maintain his or her property as well as a monetary disincentive to file relatively trivial claims, thereby contributing to the reduction of administrative costs and overall costs of insurance. Conversely, applying the deductible to noncovered loss does not serve the goals of having the insured share in the risk. Indeed, it threatens to render the deductible a nullity."



The Supreme Court of India in the case Amravati Dist. Central Co-Op Bank ... vs United India Fire & Genl.; ... on 15 April, 2010 explained the term excess (deductible) in insurance policies:

"10. "Excess" clauses are commonly used in Insurance contracts. In insurance parlance, the term "EXCESS" in the Excess clause in the policy refers to "that part of the amount of loss, under each claim, which is not covered by the policy" or the "amount that the policy holder has, by agreement, to bear or contribute to each insurance claim". In other words, it limits the liability of the insurer in regard to each claim, only to the amount of loss, in excess of the sum specified in the Excess clause, which the insured has agreed to bear (either himself or by securing other insurance coverage).

11. Excess clauses in insurance policies have been interpreted in several English decisions. We may refer to one of them. In Philadelphia National Bank v. Price reported in (1938) 2 All ER 199, the Court of Appeal was concerned with a case where a policy of insurance indemnified the bank against loss sustained by reason of making advances against forged or invalid documents subject to an excess of \$25,000 "by each and every loss and occurrence". Credit facilities were granted by the Bank to a trader on the security of invoices assigned to the bank. Each day, the trader assigned a bundle of invoices and the Bank advanced a sum corresponding to the total of the invoices. The invoices turned out to be false and the bank was unable to recover advances of over \$400,000 in the aggregate, although no single daily loss amounted to more than \$25,000. The Court of Appeal held that a separate loss had occurred in respect of each day's advance and the loss cannot be treated as one loss, as each production of documents led to a fresh loss and must be treated as number of losses occasioned by a number of advances. The claim of the Bank was therefore dismissed as loss in each case was below the excess limit of \$25000/-."

Thus, deductible help the insurer achieve certain insurance based objectives such as:

- 1.Reduces moral hazard and encourages loss control. This makes the insurance proposal more attractive to the insurer and reduces premium for the insured.
- 2.Reduced losses and loss adjustment costs. The administrative load on the insurer is higher in percentage terms when claims are small and the demands of time, effort and paperwork can be onerous for both parties. Hence attritional claims are normally reduced/excluded by the use of deductibles.
- 3.Reduced premium cost – the expense load falls dramatically as also a percentage of the loss. The additional loss prevention efforts can also get translated into lower rates.
- 4.It encourages loss reduction, a win-win-win for insurer, insured and society.

Sub-limit

A sublimit is part of, rather than an addition to, the limit that would otherwise apply to the loss. In other words, it places a maximum on the amount available to pay that type of loss, rather than providing additional coverage for that type of loss. In professional liability insurance, sub limits are usually a stated percentage of an aggregate limit of coverage under a policy. For example, under a lawyers' professional liability policy written with a Rs.10,00,000 aggregate limit of coverage, there may be a 10 percent sublimit on coverage (i.e., Rs.100,000) for punitive damages.

In property insurance, however, sub limits may be stated as rupee amounts or as a percentage of the limit that would otherwise apply. For example, under a burglary policy with a Rs.10 million limit applicable to loss from all other causes, there may be a Rs.100,000 sublimit on coverage for loss from cash on counter. The sublimit applicable is the most the insured can receive for the type of loss to which the sublimit applies.

Policy limits in health insurance?

As part of health insurance an insured is offered a number of features such as coverage for hospitalization charges, pre and post hospitalization charges, ambulance costs as well as the costs incurred from consultations etc. Sub-limits may be imposed on each of the expense heads such as bed charge, ICU etc.

It is most common for health insurers to place sub-limits on two aspects of their health insurance plan; the hospital room fees and the coverage offered against certain diseases.

There are two broad types of sub-limits in health insurance

1. The first is a fixed rate, meaning due to the sub-limit, the insurance provider will only offer coverage up to a certain amount that is pre-agreed upon. This means that regardless of the complete value of the medical bill, this sub-limit value remains fixed.

2. The second type of sub-limit in health insurance is based on a percentage of the total amount. For instance, a health insurance sub-limit could cap the hospital room charges to 1% of the total sum insured per day.

Why do Health Insurance companies implement Disease-Wise sub limits?

While the IRDA (Insurance Regulatory and Development Authority) has never specified a disease-wise sub-limit for health insurance plans, insurers impose them as a measure to prevent problems such as:

1. Insurance frauds
2. Inflated and unwarranted medical bill presentations by clients during the claim settlement process.
3. High / Unwarranted Claims Ratio

Issues in Liability Claims

Court – How a “Claim” is made

In the case *Reid Crowther & Partners Ltd. v. Simcoe & Erie General Insurance Co.*, [1993] 1 S.C.R. 252, the Supreme Court of Canada had tried to examine what is a claim. It stated: “The authorities establish that as a general rule, for a “claim” to be made there must be some form of communication of a demand for compensation or other form of reparation by a third party upon the insured, or at least communication by the third party to the insured of a clear intention to hold the insured responsible for the damages in question”.

The Canadian SC further clarified that: “The authorities distinguish between a communication of a demand or assertion of liability sufficient to trigger coverage under a claims-made policy and: (1) mere requests for information; (2) filing of a lawsuit without serving it upon the insured or otherwise advising the insured of the claim embodied in the suit; and (3) expressions of dissatisfaction that are clearly not meant to convey a demand for compensation for the damages. These are sound distinctions.”



What is a Claim?

The California Court of Appeal in the case *Williamson & Vollmer Engineering, Inc. v. Sequoia Ins. Co.* commented: "A "claim" has been defined in ordinary English as "a demand for something due or believed to be due." (Webster's New Collegiate Dict. (7th ed. 1972) p. 152.) Each party refers to the definition of claim set forth in *San Pedro Properties, Inc. v. Sayre & Toso, Inc.* (1962) 203 Cal. App. 2d 750. There the court collated definitions from prior precedents as follows: "The word [claim] is derived from the Latin 'clamor', meaning a call, a demand. In its ordinary sense the term imports the assertion, demand or challenge of something as a right; the assertion of a liability to the party making it to do some service or pay a sum of money ...' A "claim" refers to a debt due the claimant. It is a money demand. 'Claim' means 'To ask for, or seek to obtain, by ... right, or supposed right; to demand as due.' A claim connotes an assertion of a legal right, as distinguished from a recognition of that right."

What is the meaning of "legally obliged to pay"?

The Supreme Court of California in the case *Vandenberg v. Superior Court (Centennial Ins. Co.)* (1999) explained: "Insurance treatises concur with this approach. "[W]hether a particular claim falls within the coverage afforded by a liability policy is not affected by the form of the legal proceeding.

Accordingly, the legal theory asserted by the claimant is immaterial to the determination of whether the risk is covered." (9 Couch, Insurance (3d ed. 1997) § 126:3, p. 126-8.) Insurance commentators explain: "The expression 'legally obligated' connotes legal responsibility that is broad in scope. It is directed at civil liability [which] can arise from either unintentional (negligent) or intentional tort, under common law, statute, or contract." (Malecki & Flitner, *Commercial General Liability* (6th ed. 1997) p. 6, italics added.) "The coverage agreement [which] embraces 'all sums which the insured shall become legally obligated to pay as damages' ... is intentionally broad enough to include the insured's obligation to pay damages for breach of contract as well as for tort, within limitations imposed by other terms of the coverage agreement (e.g. bodily injury and property damage as defined, caused by an occurrence) and by the exclusions" (Tinker, *Comprehensive General Liability Insurance—Perspective and Overview* (1975) 25 Fed. Ins. Coun. Q. 217, 265.)"

What Documents are Required?

4.1 Depending on individual circumstance, reliance may be placed on the following documents and information/appropriate:

- (a) Detailed version about the incident / alleged misfeasance
- (b) Details of loss caused/injury/death/property damage including all available information on victims as well as estimated quantum of liability.

- (c) Steps taken by the insured to mitigate the loss.
- (d) Statements from witnesses, sketch plans, photographs, visual records of evidence/circumstance, video, etc.
- (e) Any other evidence in support of claim
- (f) Media/Press reports
- (g) FIR/Investigation report of Police
- (h) Survey/Investigation Report; Survey Report on the damaged property of some other surveyor, if any,
- (i) All notices/summons of the court
- (k) Pollution Control Board Report, if applicable
- (l) Post Mortem Report/Medical Certificate
- (m) Consumer Action Group/Society/Group representation/Report
- (n) Details of other Insurance
- (o) Legal opinion/ Expert's opinion on admission of liability / appeal
- (p) Details of claims, if any, preferred by the affected party / insured for the same loss from any other source.
- (q) Evidence of legal liability of the insured.

Out of Court Settlement Desirable, if Liable

If the legal opinion expresses the likelihood of liability being pinned on the insurer in terms of the policy all possibilities must be explored for out of court/compromised settlement. However, this has to be done only with the consent and support of the insurer. This will ensure expeditious settlement, avoidance of possibly large/huge liability and adverse publicity.

In the event of an Award being passed by the appropriate Court or Forum, a

copy of the Award may be obtained immediately. If the insurer has not received a copy, one copy may be sent to them immediately. A legal opinion may be obtained, if needed, and the merits of the case examined as to whether it is worthwhile going in for appeal.


What Can Determine Liability?

Property Damages:

1. Nature and extent of loss/damage, valuation, depreciation
2. Contributory negligence
3. Loss of use, loss of profits, increased cost of working, etc. as claimed.
4. Recovery Rights Bodily Injury/ Death:

- Age, Occupation, Status, Income, Dependency, Age of the dependents, etc.
- Succession/Legal Heir Certificate as may be applicable
- Percentage of disability supported by Medical Certificate
- Nature and extent of injuries as certified by medical authorities.
- Contributory negligence

Pecuniary Loss: Thorough scrutiny and verification, if necessary, with assistance of independent experts, all the circumstances and factors claimed to be responsible for such pecuniary loss has to be examined. It should be ensured that the experts appointed are fully conversant with the technicalities, professional and trade practices related to the field of examination/investigation.



REINSTATEMENT VALUE CLAUSE NEEDS TO BE BETTER UNDERSTOOD

It appears that in the Indian market, the concept of Reinstatement Value Indemnity is not understood and hence undersold by the Marketing Intermediaries. Insurers on their part try to scuttle RIV settlements and palm off market value indemnities after taking premium for RIV indemnity.

What Courts have recorded in other Jurisdictions

There are apparently no Indian Judgements on the subject and hence foreign judgements of UK and South Africa are used to explain concepts relating to RIV.

The decision as to whether the insurer has to allow RIV depends on the requisite intention of the insured even when no reinstatement has been carried out, owing to special circumstances. The true measure of indemnity is "a matter of fact and degree to be decided on the circumstances of each case" as per the UK case in *Reynolds v Phoenix* ([1978] 2 Lloyd's Rep. 22. Court of Appeal), as again clarified in the *Great Lakes Reinsurance (UK) SE v Western Trading Ltd* (2016, Court of Appeal UK).

What is the Correct Date of Assessment in an RIV Claim?

In the case *Tonkin & Anor v UK Insurance Ltd.* [2006] EWHC 1120 (TCC), the England and Wales High Court quoted *Leppard v Excess Insurance Co Ltd* [1979] 2 Lloyd's LR 91, where the Claimant's cottage was destroyed by fire. The Court of Appeal held that the relevant date for the ascertainment of the amount of the loss was the date of the fire.

Court on the issue of insurer reinstating

In the case (South Africa): *Watson and Another v Renasa Insurance Company Limited* (14664/2012) [2019] ZAWCHC 7; the following paras can be noted:

[22] As alluded to above, the term "reinstatement" may be employed, and operate in consequence, in two quite distinct ways. First, and as in this case, insurance policies frequently give the insurer the option of reinstating the property insured instead of paying a money indemnity to the insured. This "usual reinstatement clause" renders the insurer's obligation in terms of the insurance contract a facultative obligation. The clause is intended to benefit the insurers and to protect them from liability to pay the full pecuniary value of the loss, if the loss can be more cheaply made good otherwise. Hence, the assured cannot take advantage of the clause and insist on reinstatement if the insurers do not elect to reinstate; nor on the other hand, can he prevent them from reinstating if they have

elected to do so'. Their purpose is to protect insurers against excessive demands and fraudulent claims. Should the insurers so elect, they thereby substitute a different mode of discharging their obligation under the policy. Their contract is no longer a contract to pay a sum of money, but a contract to reinstate the property insured.

[23] Once having elected, they cannot withdraw from such election and are obliged to reinstate the property adequately regardless of the cost, and they are further liable for the consequences of a failure to perform such reinstatement adequately.

Replacement value

[25] The other manner in which the term reinstatement is sometimes encountered in indemnity policies is in the context of the basis upon which a claim is to be valued. As stated above, the usual basis of indemnity would be strictly that the actual loss or diminution of value of the property insured at the date of the insured event is covered. However, as noted by Birds, '(p)olicies containing express undertakings to pay replacement value are increasingly common, and there can be no doubt that, subject to the sum insured, the insured is entitled to what it actually costs to replace the lost property by equivalent new property. These "new for old" policies were no doubt a major inroad into the traditional principle of

indemnity, but it goes without saying that insurers demand higher premiums for such cover". Put differently, the insured is entitled to receive the value of the loss based on replacement value of equivalent new property, not the actual value of the property insured at date of the loss, but subject to the maximum of the insured value under the policy.

[26] In the policy under consideration, the basis of valuation of a claim is contained in a "Reinstatement value conditions clause" ("RVC clause"), which provides that, in the event of property other than stock being damaged, the amount payable 'shall be the cost of replacing or reinstating on the same site property of the same kind or type but not superior to nor more extensive than the insured property when new'.

[27] This constitutes provision for the full costs of repair of the property; alternatively, in respect of property not capable of repair, replacement by "like-for-like" property (in the instant matter, machinery) where the same (or closely similar) property exists in the market.

Potential for Abuse by Insurers

[29] Clauses of this (RIV) nature can give rise to difficulty and are open to potential abuse by an insurer who is less than bona fide. If no payment is made by an insurer at all, it places an impecunious (or relatively impecunious) claimant at a severe disadvantage when compared to similarly-placed insured parties,

who are possessed of greater means. Such an impecunious insured would be required not merely to evidence a sincere intention to replace or reinstate the destroyed or damaged property, but would further be required to do so, absent any firm commitment by the insurer that it accepts liability for the resultant costs.

Requirement for reinstatement with reasonable despatch, but only after Insurers accept the RIV Liability

[30] In *McGillivray*, the authors submit: 'It has been held in the United States that these clauses must be interpreted according to their terms but it is rather hard that an insured, who needs the money with which to repair his property, should be expected to incur the cost of reinstatement from his own funds. This is particularly so if the insurers, in breach of the contract, deny liability under the policy or assert that the insured should be compensated on a basis other than that of reinstatement. It is, therefore, submitted that the requirement that the insured should commence and carry out the work of reinstatement with reasonable despatch should only operate if the insurers, in accordance with the contractual obligations, accept that reinstatement is the appropriate measure of indemnity.' [31] The issue came before the English court in *McLean Enterprises v Ecclesiastical Insurance Co.* (1984) 2 *Lloyds Rep* 416, (the Judge) declined to decide the point on the basis that the insured had already formed the intention to sell the damaged property prior to the fire.

Therefore, on the facts, he did not have the necessary intention to reinstate and would not have done so, even had the insurer paid the claim promptly. In so doing, the learned judge stated: 'Counsel for the insurers maintained that the owners' intentions at the time of the fire are irrelevant. They have not in fact incurred any costs of reinstatement... The owners' only answer to this point is that they could not reinstate the property until the insurers had paid their claim, as they did not have the resources; accordingly, to give effect to para. (3) of the reinstatement clause would be to allow the insurers to take advantage of their own breach of contract.'

Insurers Pleading that RIV obligation stays even when they repudiate is wrong

[32] In *Grand Central Airport (Pty) Ltd v* *AIG South Africa Ltd* 2004 (5) SA 284 (WLD), (the Judge) considered an RVC clause... '[12] On the defendant's construction of the clause the insured's obligation to commence and complete the reinstatement with reasonable expedition under the reinstatement clause becomes operative even where the insurer repudiates liability. There is nothing in the language of the policy to support such a construction. The reinstatement clause, on its plain wording presupposes that the insurer is to indemnify or compensate the insured by payment and that the insurer has not elected to replace or reinstate the damaged property.

The manifest purpose of the clause is to determine the extent of the indemnity payable by the insurer to the insured and that question only arises for consideration if the obligation to indemnify is admitted by the insurer or fixed by a court. It does not arise where the insurer repudiates liability

[13] The construction contended for by the (insurer) defendant is an improbable one and in conflict with a businesslike construction of the policy. Where the insurer repudiates liability, the insured is obliged to institute action in order to enforce its claim. If the defendant's construction of the clause is correct, the insured would have the additional burden of commencing and completing the work of replacing or reinstating the damaged property at its own cost without any certainty that it would be indemnified in respect thereof. This is the very eventuality that an insured would seek to avoid by procuring a policy of insurance, that is the risk of itself having to fund the replacement or reinstatement.

[14] ... On the other hand, where the insurer has accepted liability or liability has been fixed by a court, it would not be difficult for an impecunious insured to raise the finance necessary to commence and complete reinstatement of the damaged property as the insurer's liability would amount to a guarantee of payment.'



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Editor : P.C. James

E-mail : Secretary@ibai.org



Insurance Brokers Association of India

A -Z Industrial Premises, 1st Floor, Unit no. 165, G.K. Marg. Lower Parel,



www.ibai.org



Secretary@ibai.org



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