

ANNUAL ISSUE

# BROKER

11 January - 11 February 2023



Event Alert

## BROKING 2.0

Pioneering Future Horizons  
June 16, 2023

## THOUGHTS FROM SENIOR INSURANCE LEADERS

Meet The Leader

### Shri. Anand Pejawar

Dy. Managing Director  
SBI General Insurance Company Ltd

Swami Bimananda Musings

### Intermediary

The role of intermediaries in the economy, the importance of connecting people, and the significance of promoting solidarity between diverse groups.

The insurance industry has spawned an ancillary industry i.e. 'Awarding industry'. Multiple organisations providing multiple category awards



# BROKING 2.0

## PIONEERING FUTURE HORIZONS

On behalf of **IBAI 2023**

We have the pleasure in inviting you to join us for the Annual Brokers meet on

**Jun 16, 2023**

at **09:30 AM**

at **The Taj Mahal Hotel, Mumbai**

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# President's Message

## Sea Change !



Dear Members of the Insurance Brokers Association of India (IBAI),

I am delighted to address you in the upcoming 10th edition of the iBroker magazine. As we celebrate this milestone, I want to acknowledge and appreciate the contribution of every member towards the growth and success of the insurance brokerage industry in India.

As we enter the third decade of broking, our roles and responsibilities have increased, and we should be more pragmatic in our approach and show true professionalism by advocating for the policyholders' cause.

We are witnessing a surge of reforms from the regulator where the emphasis has shifted from regulating to development. Every step is being taken to increase market penetration. It is time to celebrate as we are being embraced by the regulator, providing the necessary impetus for growth.

Following are the new initiatives currently in progress that will further aid our growth:

**Regulation Review Committee:** A committee has been formed to look into the Intermediaries Regulations, identify and remove bottlenecks. I have been given the opportunity to lead the group and suggest necessary changes to enhance ease of doing business.

**Bima Sugam:** The much-awaited unified platform is currently in progress. It will provide tech tools to all intermediaries for smooth transactions, quick sales, and efficient service.

**EOM (Expenses and Overrides Matrix):** Introduced recently, EOM grants freedom to both intermediaries and insurers to decide remunerations based on the efforts required for sales and policy servicing.


Since the regulator has already announced the detariffing of the market and upcoming flexible wordings, as a broking community, we should focus on shifting from a transactional approach to consulting. Strengthening our back office and underwriting capabilities will allow us to provide tailor-made and bespoke solutions to clients.

Members are aware that states have been allotted to different insurers to work with local governments and increase penetration through awareness and education. I have requested

the regulator to allow broker members to participate in this project, further strengthening the hands of insurers.

In conclusion, I urge all members of IBAI to continue upholding the highest standards of professionalism and ethics in their business practices. Let us work together to create a more robust and sustainable insurance brokerage industry in India.

Thank you, and best wishes for a successful decade ahead.







**Sumit Bohra**  
President IBAI



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# SWAMI BIMANANDA MUSINGS

From R.Balasundaram  
Secretary General, IBAI

Swami Bimananda slowly opened his eyes, ending his meditation. He looked up at the crowd and beckoned me close.

'Have you been to an insurer or broker's office', was his question. Of, course, I have- I said indignantly.

'What do you see there?', was the next question.

'Oh, number of young and middle-aged people, extremely busy, either tapping away at their laptops, huddled in meetings or speaking on their mobiles, I said.

Swami Bimananda shook his head slowly. 'You do not see the surroundings, son'. The large showcase at the reception, displaying a number of awards of varying shapes, sizes, brightness & longevity. Another showcase in the meeting room with awards, in the room of the senior official, they are almost like God, omnipresent..... and yet to missed them?

"Oh, since they are everywhere, we take them for granted' - This was me.

Bimananda gave a sad smile. 'True, son. The insurance industry has spawned an ancillary industry i.e. 'Awarding industry'. Multiple organisations providing multiple category awards, month after month has taken the sheen off these awards or recognitions. So much so, that even the earlier coveted awards do not carry much value. Most awards depend on your presentation skills - how you showcase something you have done that impresses a select jury, that may even create newer and newer categories to award more and more people.'

'With due respect, Swamiji, I would like to point out that IBAI too accords recognition and awards non-life insurers, but **not on the basis of what they present, but what our members have to say about the insurers, based on their overall experience during the year.** The parameters are standardised and made known in a transparent manner, along with the results. Most important, we ensure that if a member does not have reasonable experience of an insurer's performance, he should not promote or detract the insurer. We are happy to say that insurers take serious note of the findings and many approach us subsequently for more granular details, so that their performance can be improved'.

Bimananda nodded in appreciation, leaned over and whispered in my ear 'Notwithstanding my Gnana Drishti, I too go through the **Broker's Voice** very carefully'.



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settlement  
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# THOUGHTS FROM SENIOR INSURANCE LEADERS

## An interview with Shri. Anand Pejawar Dy. Managing Director SBI General Insurance Company Ltd



**ANAND PEJAWAR**

**At the outset, hearty congratulations to the SBI General team for crossing the magic milestone of INR 10,000 crores in GDPI, in possibly the shortest possible time. What next? Accelerated top-line growth or well-calibrated, sustainable growth?**

Our strategy will continue to be two-pronged – Profitable topline & sustainable growth aided by innovation and technological advancement. We will continue to focus on launching innovative products for the non – life insurance industry thereby enabling our customers to have a more seamless experience with us. Along with that, we intend to have a sharp focus on semi-urban / rural markets for business growth.

India's insurance market shows strong growth prospects and expected to grow @ 18% to 20%. As one of the key players in the industry, we closely monitor the emerging trends to further strengthen our position.

**Distribution reach or rather lack of it is seen as one reason for the low insurance penetration. Technology is touted as a possible answer. With the massive SBI branch network at your disposal, do you think that with added technological support, your organisation is best equipped to meet the lofty penetration targets set by the regulator?**

With our large presence of bancassurance partners combined with digitization, it will always be an added advantage in helping us achieve higher insurance penetration. As a part of our strategy, we have created a dedicated digital vertical, which is focused on offering digital products and digital distribution in not just urban but semi-rural and rural segments too.

With the advent of 4G, 5G spectrum, India's population, in every corner of the country today has access to data. With our focus on easing the customer journey, especially digitally, we are perfectly poised to play a significant role in achieving IRDAI's commendable vision of "Insurance for all by 2047".

Over the next decade, the insurance industry is expected to undergo a significant transformation due to the emergence of modern technologies and the advancement of digital tools like Artificial intelligence (AI), Machine Learning (ML) & Robotics (RPA), which will further provide the necessary impetus in increasing the insurance penetration in the country.

### **Which are the lines of business you opine would lead the enhanced penetration drive?**

India's insurance market has undergone numerous changes and is one of the fastest-growing markets today in India. All the products under various business lines such as health, motor, property (home), crop, cyber and personal accident, are underpenetrated, which provides a massive opportunity for the industry and business lines to grow. The current non-life insurance penetration still stands at ar. 1.00%.

With the government's flagship initiative for crop insurance, Pradhan Mantri Fasal Bima Yojana, (PMFBY), it has led to a significant growth in the premium income for crop insurance.



At SBI General, we have observed growth across all the business lines, especially health vertical. We have recorded growth of over 50% in Health Insurance business last year. This growth is driven by the increasing healthcare awareness amongst consumers.

Our approach to strengthening insurance penetration across verticals is via strategic tie-ups and banca partnerships and that has enabled us to provide "Suraksha aur Bharosa dono" to a wider customer base.

**Your distribution backbone of the SBI branch network does create an impression that you are largely a 'Banca -driven' company. What are the steps SBI General has taken to win greater confidence among other intermediaries such as brokers and agents?**



At SBI General Insurance, we are proud torch bearers of the legacy of trust and security. Till date, we have served over 10 crore customers.

We have a unique position in the industry, as we are backed with the country's largest & most trusted banking system - SBI. With this strong parentage and the deep relationship, the vision is to become the non-life insurer of choice and increase insurance penetration. Just as SBI is the Banker to every Indian, we at SBIG would want to be the Non - Life Insurer to every Indian.



Though we are a Bank promoted and backed insurance company, we currently have a robust multi-distribution model encompassing Bancassurance, (SBI and Non SBI Banks), Tied Agency, Broking, Retail, Health, OEMs, Direct Channels and Digital tie-ups. However, the strength and last mile connect offered by SBI is a great advantage and unparalleled for us. However, the larger Broker and Corporate Agent / Tied Agency community is also a strong pillar of support for our growth and for driving customer acquisition in various markets. The widespread network of distributors like 28,000 plus Bank branches network, Agents, other financial alliances, OEMs, and multiple digital partners enable us to extend our reach to the remote areas of India. We engage with them on a regular basis and consider them a part of the 'SBIG family'.

**The recent notifications on a single limit on Expenses of Management for insurers with no limits specified for commissions on each line of business, has been welcomed by all. However, when it comes to implementation, there appears to be some doubts in everyone's mind. Do you see this as causing some disruption or will it be business as usual?**

According to me (personally), this is one of best moves that the Regulator has initiated in recent time. Moving from a Rule based to Principle based regulations is something which is welcomed by the industry. This EoM regulations will streamline the entire system and will immensely help the industry to do business in a more structured and orderly manner. I would like to commend the action of the Regulator in doing this.

This is the perfect example of "Walking the Talk" whereby the authority is moving towards Developmental role of the Regulator and also bringing in the much-desired transparent environment and encouraging flexibility. It will facilitate greater product innovation, cost-effective offerings, customer centric approach, which will further help in the increase insurance penetration in India.

Adjusting to any change, specially something which was practised for a long time takes time, and this situation is no exception. The industry is seeking clarity in certain areas, but I'm confident that a clear implementation plan will be developed soon. I do not see too many road blocks in implementation of the same.

---

**Are you happy with the product-mix at SBI General that you currently have, between corporate and retail? Is there any change in the mix contemplated, keeping in view the ambitious top-line targets set by the regulator? More specifically, is crop insurance, Government health insurance schemes and rural insurance such as livestock in your agenda?**

We have a good mix of Group and Retail individual products in our suit. We do not see too much change in this mix as of now. We try and participate in most of the Government schemes like Crop Insurance, Health insurance segment of business.

Introducing new products would now be a continuous process. We are looking at a healthy growth rate for FY'23 by expanding our distribution network and introducing innovative products under health, home, motor, and cyber insurance. We introduced a new health vertical in June 2022 in Pune with a strong focus on health vertical. We are in the process of developing several new and noteworthy products within this category. Furthermore, we have recently launched Cyber VaultEdge, a new product in our cyber insurance line. On April 20, 2023, we have launched our First Digital Only product – SBIG - Health Vault

We will continue to concentrate on innovation in product specifications as well as in terms of our processes and more importantly servicing. We will ensure our products cater to the “needs” of individuals across every segment of the society.

**Now, with the proposal to allow non-life insurers to sell other insurance - related products close to becoming a reality, do you see this as a big opportunity or as an infringement on your core competencies?**

Internationally this is happening in many countries. Along with allowing insurance company to offer related products & services, there is also the discussion of allowing composite license thereby allowing insurance companies to offer both life and non-life insurance products under a single license. I personally feel this will be a great thing. Many countries internationally do have composite license system and are doing well.

Both these initiatives will give the necessary boost to the insurers who can then diversify their product line, boost their market share, and offer customers more comprehensive financial products & services. So yes, so far, we see this as a benefit for the overall insurance industry, including the customer at large.

**Decades after nationalisation and then opening -up, there is still a lack of trust between insurers and insureds. The general feeling among insureds is that getting a claim approved is the most difficult task in the world. No doubt, every insurer has the statistics to show that the number of claims settled exceed 85-90% of the claims lodged. Essentially the dissatisfaction and doubt stems from the whole process of claim settlement. What has SBI General done to change the narrative or make the whole claims process a smooth experience for its clients?**

Yes, this is true to some extent. Majority of the time it is seen that such issues arise out of misinterpretation of the terms & conditions or not understanding the contours of the policy taken. However, over the years, almost all insurance companies,



be it in Life or Non-Life segment, have taken enough and more initiatives to try and ease the process for the customer. Be it through a separate Portal, or a dedicated App, etc.

SBIG has also taken several initiatives to enhance the customer experience and streamline the claims process. Our claim settlement ratio is quite good and in line with the industry standards.

Health being the focus now SBIG has now instituted our own in-house claims settlement process and have tied up with over 12,500 hospitals (PAN India), which as of now, is the largest empanelment of hospitals in the country. This move is aimed at providing a superior and hassle-free customer experience.

Moreover, we implemented advanced technologies such as AI to improve the efficiency of support functions like claims, underwriting, and operations, especially in Motor claims. We have also launched the "Fast Track" claims settlement process in Motor claims which has picked up quite well and smaller claims are settled almost immediately. This is a fine combination of technology and human intervention. The Company is also working towards improving its core systems to be more agile and efficient in all its processes.

Furthermore, we are increasingly leveraging automation to achieve more robust operations, create or maintain digital momentum, and provide improved customer experiences. Intelligent automation can help insurance companies to improve customer satisfaction with rapid claims handling, increase employee productivity by reducing the need for manual work, and decrease fraud-related costs with AI-driven fraud detection.

**What are the steps initiated by you to create insurance awareness among the public? Especially in the state(s) where SBI General**

**is the lead insurer, do you see a role for associations such as the IBAI for collaborating on creating insurance awareness?**

As a responsible corporate, we take steps to increase overall insurance awareness across the country. SBIF has been given the states of Haryana & Meghalaya to develop under the State Insurance plans. Some of these initiatives include:

- Insurance Awareness/Literacy camps: These are conducted in coordination with Schools, Gram Panchayats, Sarpanch, SBI Branches and other local bodies. During the sessions, our teams educate attendees about Insurance solutions that offer financial security to individuals against unforeseen circumstances.
- Student Outreach - We organise awareness camps in various colleges with the aim of familiarising the general public at an early age itself on insurance and its benefits.
- We also conduct awareness drive amongst SHGs, through State Livelihood Missions.
- We also hold training programmes with the Common Service Centres (CSC's) for educating the rural population on the importance of insurance and also marketing of the select products which they are allowed to sell.
- We have also conducted sessions for farmers to educate them about Pradhan Mantri Fasal Bima Yojana (PMFBY) scheme. We also carried out various activities across states to assert the significance of PMFBY such as bus branding, digital wall painting, leaflet distribution, farmer meets, van activation, workshops, Nukkad Natak, etc.

Meri Policy Mere Haath: We undertook a massive Policy Distribution Drive - "Meri Policy Mere Hath" under "Azaadi Ka Amrit Mahotsav" campaign to the support farmer

communities. The campaign's goal is to reach out to every farmer in the country who is covered by the PMFBY scheme and hand over physical copies of crop insurance policies, as well as educate them on the terms and conditions, benefits of the scheme, and their rights and obligations to the insured under the Pradhan Mantri Fasal Bima Yojana (PMFBY) scheme, which will provide financial assistance in the event of crop loss or damage due to natural disasters.

All or any of these can also be done jointly with the Brokers Association of India, in case the Association would like to collaborate with us

**Do you think there is severe shortage of good insurance talent in the industry? How do you attract and retain the best talent and what will be your suggestions for promoting better quality insurance education?**

Attracting and retaining the good talent is crucial for any organization, including insurance companies. At SBIG, we are guided by our core values and believe certain caveats are essential to build a holistic, nurturing environment.

- Creating a positive work environment: We provide a conducive work environment that promotes employee engagement, collaboration, and growth opportunities can help attract and retain the best talent
- Opportunities for professional development: We invest in training and development programs that enhance our employees' skills and knowledge which helps them grow professionally

- Fostering a culture of innovation: We encourage employees to bring new ideas to the table and foster an environment of innovation. Probably, we may be the first company in non-Life industry who have started an in-house innovation hub called "Digi Lab". Here we allow our employees to experiment with latest technology and see how the same can be put into use for the for creating a better environment either through products, services or improving the existing offerings.

We at, SBIG are taking multiple steps to promote better quality insurance education. We are collaborating with educational institutions to drive insurance awareness session, highlighting the benefits of a career in insurance, such as job stability, growth opportunities, and the potential to make a difference in people's lives, can help attract more talent to the industry.

**With regulations being eased and made more practical and simpler, do you see a larger role for brokers in terms of limited underwriting authority, small claims management, risk management, etc.?**





Brokers do play a very important role in advising their clients on risk management/mitigation methods through Insurance as well as helping them in identifying the most appropriate insurance solutions best suited for them as per their requirement. They are tasked with the critical responsibility of securing people's financial safety/security during adverse times. They also have a very important role in advising the client during the entire claims process.

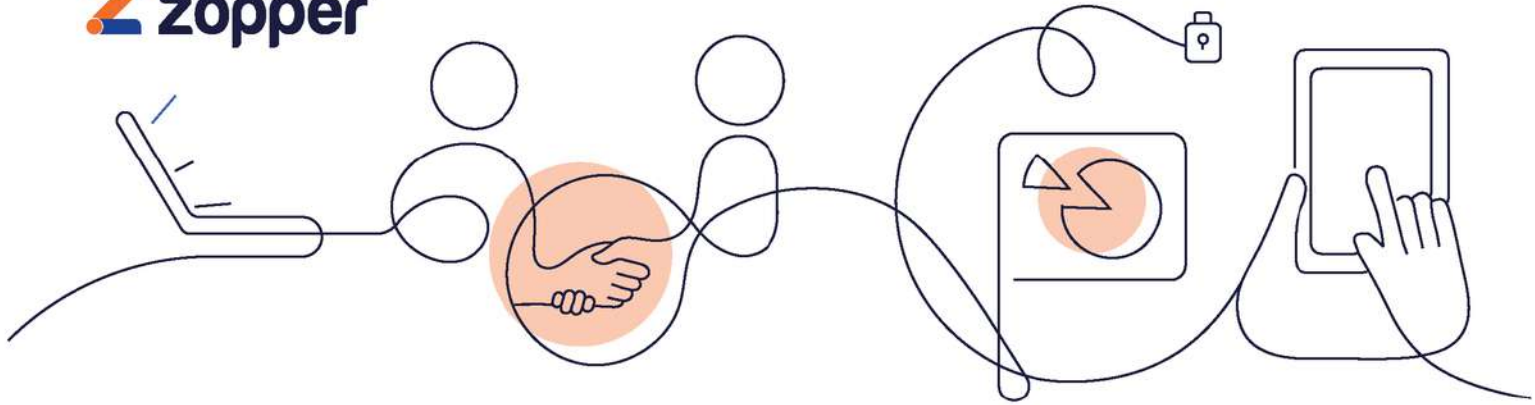
Under the current outsourcing regulations Underwriting is not allowed to be outsourced as it is a core function in insurance. However, according to me, Brokers are the first front line Underwriters as they are in touch with the client, represent them and have also seen the asset that needs to be insured. Giving the correct information to the insurer, recommending the right product that will take care of the financial safety and security is the main responsibility of the Broker.

Claims can be given to Brokers based on their past experience and up to a certain limit.

**A large number of 'Healthcare providers', who are neither insurers nor intermediaries, but displaying qualities of both are seen in operation. Their core offering is however a hospitalisation insurance product with bells and whistles of other benefits. How do you view the long-term sustainability of these entities? Should they be brought under the IRDAI regulations?**

Sustainability of any venture something which time will only tell. What is the business model, what is their target audience, who are their competitors and what is the overall scope for the same needs to be looked at. How innovative is the offering and what is the value-add to the customer is something one has to evaluate. Also, if the same is backed by Technology, which I presume will happen, then how fast the same would become obsolete is something one has to evaluate.

I am of the opinion that all such services which are related or closely attached with insurance products must be under some regulator to be better monitored and regulated. We are sure the regulator is monitoring the broader situation in the industry keenly and have full faith in the IRDAI to decide the best course of action.



## INDIA'S LEADING EMBEDDED INSURTECH PLATFORM

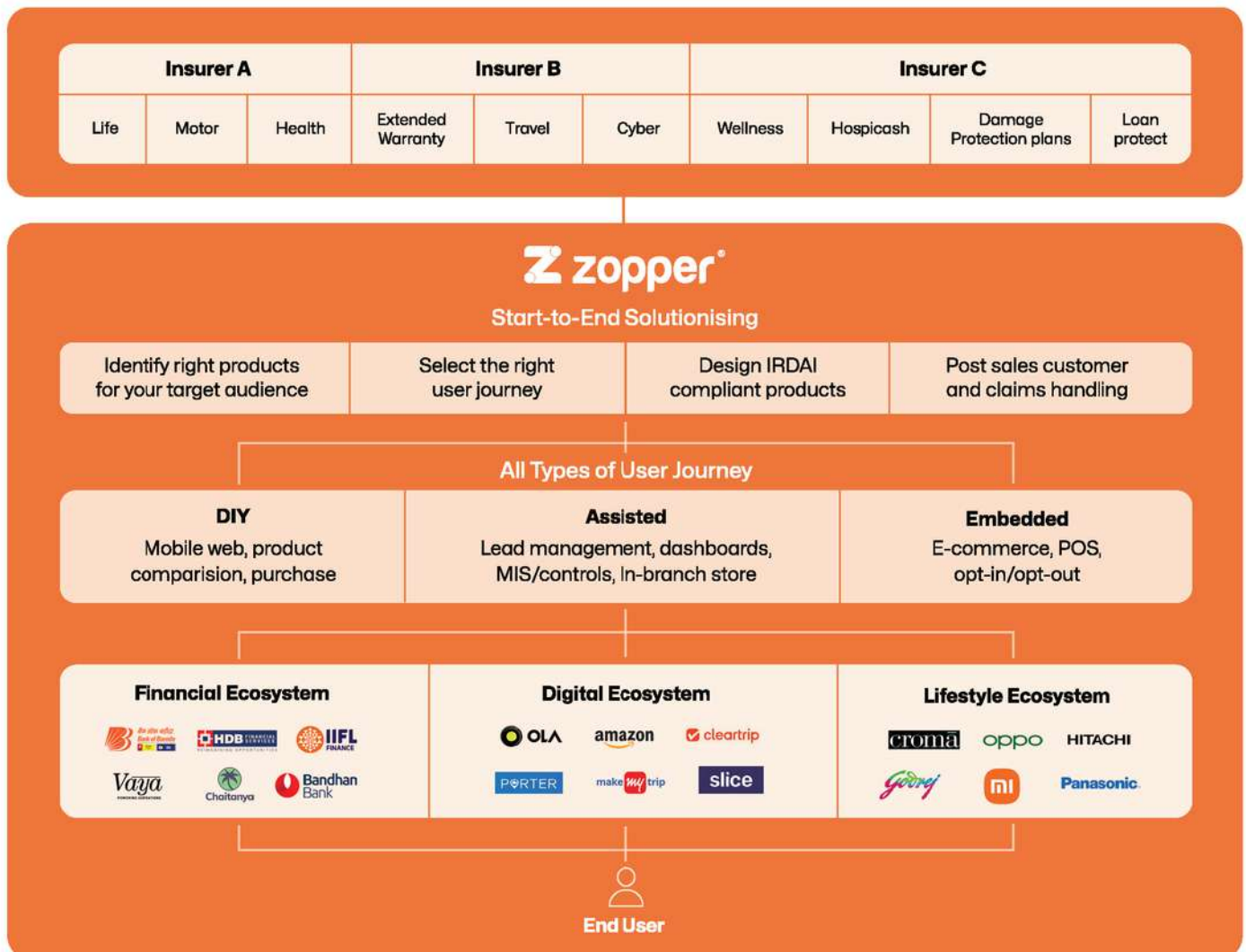
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Zopper has been making waves in the insurance industry by transforming the way insurance products have been distributed in the past via traditional channels. Zopper's innovative platform offers a range of services and modules enabling businesses to seamlessly integrate insurance products into their existing services.

Zopper works hand-in-hand with its partners to drive successful outcomes in providing efficient and cost-effective insurance services to their customers. The aim is to provide partners with custom insurance plans to help drive mass

adoption, offer larger ticket products and plans to provide better and comprehensive coverage.

Zopper's platform has helped to bridge the gap between traditional insurance channels and the digital world, democratizing the insurance industry and making it more accessible to a wider range of customers. Zopper is looking to enable insurance distribution with the help of technology for their partners and aiming to help them create an additional revenue channel and encourage insurance penetration across masses for a better planned future.





# DILEMMAS/COMPLEXITIES FACED BY INSURERS IN DISASTER CLAIMS

The Great San Francisco Earthquake of 1906 offer a clear case study on this. The great dilemma faced was that if insurance claims were not paid the city would be lost. If paid, many insurers could become insolvent. It was found that around 28,000 buildings were destroyed, and out of the total population of 4 lakhs, more than 225,000 people became homeless. Giving a powerful signal to insurers, the City's Real Estate Board passed a resolution that the calamity should be spoken of as 'the great fire' and not as 'the great earthquake.' (San Francisco Chronicle, April 25, 1906). Hence the citizens took great care to refer to the "fire," not the "earthquake" because most of those insured had only fire cover. This was owing to the fear that there could be fine print excluding damage by earthquake hidden in the policy. Some insured were reported to have deliberately put fire during the chaos to their own quake-damaged houses, in an effort to perfect their insurance claims.





So, the question was whether the 137 insurers and 17 reinsurers that had underwritten over \$250 million of San Francisco property risks escape liability on the ground that the city's devastation had been caused by an excluded peril? The earthquake had struck shortly after 5 am on April 18. The tremors caused stoves and chimneys to topple, gas lines to break, fuel and chemical tanks to rupture and electric wires to fall. Some reports, may be wrongly, had concluded that no more than 10% of the damage was caused by the quake and the immediate fires. However, there were "fires" in the plural, across the city – 35 to 40 of them. It was possible that many of the fires involved the intervention of some human agency—arson, dynamiting, back-firing, or plain inadvertence and negligence. In 1906 most homes were made of wood, and had wood/ coal stoves, brick chimneys and "shake roofs".

The earthquake happened at about 5:15 a.m., so people shocked at the tremor could not go back to sleep and put on their stoves to prepare breakfast. The fire so started spread it all over the house as the chimneys were blocked/ knocked off. It was thus even called "Ham and Eggs Fire." It eventually burned over a very large area of the city. Many of these fires joined into a mega fire that became a wall of flame over a mile-and-a-half wide, with smoke up to five miles high, visible across the entire San Francisco Bay. The water mains had broken in about 300 places, leaving the city without the resources to quench the fire. The fire largely burned itself out on April 21.

### Behaviour of Insurers

- Legends were made because of some insurers such as Cuthbert Heath of Lloyd's had sent a cable to his office in San Francisco to the effect that they offer to pay all policyholders in full irrespective of the terms of their policies, and paid in full

"dollar for dollar" against adjusted losses. It is said to have paid \$100 million, a staggering sum in those days. It created a massive goodwill for Lloyds

- Some other insurers, particularly European firms, "infamously" offered 75% compromises, or denied coverage, or abandoned the California market altogether.
- Thirty-five insurers deferred to a selected group of adjusters called the "Committee of Five" to take call on the liability to be paid, if at all.
- Fireman's Fund, the main California-based insurer, lost its Head Office along with the records and other assets it contained. The Fund paid all its reserves to the affected insureds, then solicited new subscriptions from its shareholders, formed a new corporation, and caused the corporation to issue stock to claimants for their remaining losses. Observers hailed the company's reorganizing for the benefit of its policyholders, rather than "folding [its] tent for good."



All these were after intense pressure put by politicians and vocal policyholder groups, backed by the media. Ultimately it appears that around some 90% of the sum insured was paid. The Insurance Information Institute states that insurers settled approximately 100,000 claims. At least 12 US insurers and one Austrian and one German insurer went bankrupt. The amount paid in claims was roughly 100 times the amount paid for fire insurance policies that year. The earthquake effectively wiped out the industry profit earned over the preceding 47 years. However, it may be noted that such earthquakes happen once in 100 years. In fact, there has been no repeat of it in San Francisco. Given the nature of fire surpluses made in normal years (if proper risk premiums were charged), it would have possible to have evened out the losses after a few decades.

The majority of fire policies, it was seen, did not have exclusions for fire caused by earthquake. However, it was feared that insurers could invoke the “fallen building” clause: “If a building, or any part thereof, fall except as a result of fire, all insurance by this policy on such building or its contents shall immediately cease.” Almost every policy had notification and proof of loss clauses, which was proving to be a difficult if not impossible to comply with because when the building burnt, all records were also lost. It was noteworthy that none of the insurers appear to have used express earthquake exclusions, if any, they had in their policies, for damages caused by fire.



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# HISTORY OF INSURANCE

## **SUMMARY UPTO 1956 BY COURT**

The Madras High Court in the case All India General Insurance Co. ... vs S.P. Maheswari (1959) made an attempt to summarise the history of insurance across the world. It is worthwhile reading it.

“(3) The origin of insurance and insurance law in England, United States of America and India is interesting and deserves more than a passing mention.

(4) This history can be gathered from the leading American treatise, Richards on Insurance, 5th Edn., Vol. 1, pp. 36 to 38. (A). The origin of insurance is obscure. Loans on bottomry are of ancient date, and from this maritime usage the earliest form of insurance may have developed. The practice of marine underwriting probably started in connection with the revival of commerce in the twelfth or thirteenth century.

{(A) See also the very brief "Historical Reference" Vol. 12 of the Encyclopaedia Britannica 1951 Edn., p. 453.} At that time the ocean commerce of Christendom was largely undertaken by the Lombards, merchants of the north of Italy, who had established trading companies generally throughout Europe, and who appear to have carried the practice of marine insurance wherever they had mercantile dealings. There is ample evidence of its use in the Middle Ages. The word "policy" is of Italian derivation. At its initial stage, the contract of insurance was underwritten by individuals and was regulated by mercantile custom, which became the foundation of all the laws and codes subsequently enacted upon the subject.

(5) A recorded mention of insurance in England in 1548 indicates that the practice of insuring had been in vogue there for some time, and somewhat later, on the opening of Queen Elizabeth's first Parliament Lord Bacon said: "Doth not the wise merchant in every adventure of danger give part to have the rest assured?" A chamber of insurance was established in London under patent granted by Queen Elizabeth in 1574. But for many years after its introduction into that country, the law of insurance was unknown to the Common Law Courts, and insurance disputes were as a rule settled by the arbitration of mercantile men. The first reported insurance case belongs to the year 1589, and is mentioned by Sir Edward Coke, in which it was held: "where as well the contract as the performance of it is wholly made or to be done beyond sea, it is not triable by our law, but, if the promise be made in England it shall be tried."

In 1601 a special tribunal for the trial of marine insurance cases was established in England. This Court, which consisted of the Judge of the Admiralty, the recorder of London, two doctors of the civil law, two common lawyers, and eight grave and discreet merchants, or any five of them, fell into disuse within a century after its organisation, and by degrees insurance disputes began to come within the jurisdiction of the common law Courts of England. In 1756 Lord Mansfield was appointed Chief Justice of the Court of King's Bench, and during his long and illustrious career as a judge he was conspicuous in making the policy of insurance the subject of careful study. From foreign ordinances, writings of jurists, and usages of trade, he drew and shaped the principles of insurance law.

(6) Turning to the United States of America, Richards points out, in colonial days in the United States insurance was mainly conducted by individual underwriters

The first marine insurance office was opened in Philadelphia in 1721 and fourteen years later a South Carolina gentleman established the earliest fire insurance office. Probably the only incorporation of an insurance organisation prior to the Revolution was "The Philadelphia Contributionship for Insuring Houses from Loss by Fire", a mutual company incorporated by a special Act of the Pennsylvania colonial legislature in 1752. The absence of corporate insurers can be ascribed to an Act of Parliament in 1715, which incorporated two English companies with monopolistic privileges and prohibited any other stock insurance companies in His Majesty's dominions. After the Revolution, incorporation by special Legislative enactment became common, and today, in nearly all states, insurance organisations are incorporated under the general corporation laws as administered by the department of Insurance.

(7) In regard to India (B), as in England so in India mutual aid associations and those formed to amass and to operate Provident funds appeared fairly early and still survived as rivals of the more purely commercial types of enterprise. So, too, the private insurer or mere partnership firm has been obliged to give way before the joint stock company. Of the early pioneers from overseas the pride of place must be given to the Sun Insurance which was founded in 1710. Meanwhile, however, Insurance in India had come into existence independently.

{(B) See Barwell's, *The Law of Insurance in British India* (Butterworth) p. 8 and foll. "Beginnings of Insurance in India.} The Madras Equitable was established as far back as 1829. Lamentably it went into liquidation in 1921, thus just failing to complete its centenary. From the very start indigenous insurance enterprise followed the two distinct channels, that is to say, the mutual Associations once early

established continued to maintain their popularity, while commercial insurance was gradually being built up in competition with the foreign controlled interest. It is interesting to note that the Oriental Government Security Life Insurance Company, Bombay, came into existence in 1874.

By 1935 no fewer than 383 insurance companies and societies were doing regular business in India of whom 231 were Indian and 152 non-Indian. It will be noticed at once that the preponderating business continued to be in the nature of Life Assurance in all its forms, in which has to be included endowment policies and the provision of amenities. Just prior to the Great European War of 1914-18 some attempt was made by domestic legislation in India to deal with the control of insurance undertakings. In England the statutes of 1870-72 relating to companies engaged in the business of insurance had been repealed by the Insurance Companies Act 1909. Three years later the Indian Life Assurance Companies Act (VI of 1912) was passed following in large measure the model of the last-named English statute.

Earlier in the same year the Provident Insurance Societies Act (V of 1912) had become law. Sixteen years later was passed the Indian Insurance Societies Act (XX of 1928). That Act effected certain amendments in Act VI of 1912 but was more largely concerned in providing machinery for the collection of statistical information as to class of insurance business other than life insurance, carried on in India by external companies.

In 1935 the Government of India decided to proceed with the reform of Insurance Law without waiting for the enactment of further legislation in England--which legislation had been expected ever since the Committee

presided over by Mr. A. C. Clauson, K. C. had reported in 1927. By 1938 the Government of India had enacted the Insurance Act, 1938. (C). Subsequently, the Insurance Amendment Act 47 of 1950 (C) introducing changes of far-reaching character in the insurance law came to be passed. See Statement of Objects and Reasons printed at p. 4675 of Vol. 5 AIR Manual of which valuable commentary an up-to-date edition will soon be forthcoming. Insurance has always been one of the spheres in which the conflict of principles of freedom of commerce and welfare of the State have contended for recognition and supremacy and affords an interesting study if only for the reason that it involves a fascinating enquiry as to the methods by which various countries in different parts of the world have attempted to resolve this conflict.

{(C) T. Dutt's Commentaries on the Insurance Act No. IV of 1938 (Edn. 1953) and K. B. Venkoba Rao's. The Law of Insurance of India (1950) (Tripathi and Co.). The latter contains a good summary of the provision of the Insurance Amendment Act XLVII of 1950.} Minimum interference by the State with the maximum publicity was one method and direct State control was another. The authors of the 1950 amendment short of nationalisation went as far as it was possible in making stringent provisions relating to control of investment, limitation of expenses of management, prohibition of payment of excessive remuneration etc. But by 1956 for reasons of State policy the Life Insurance Corporation Act, 1956 (Act 31 of 1956) was enacted to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and the matters connected therewith or incidental thereto.



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## ON POLICY LANGUAGE – COURTS CLARIFY

Q. My building under construction has a construction policy, and there was a fire and the materials stored in the premises including in the building being constructed were lost due to the fire. When a claim was lodged the insurer stated that only the building under construction is covered and not the building materials stored in the premises.

A. This was an issue even in the old days. In the case *Ira S. Bushey & Sons v. American Insurance*, 237 N.Y. 24 (1923) the New York Court of Appeals stated “2. In construing the builder’s risk covered by an insurance policy which covered the interest of the assured on vessels completed or uncompleted notice must be taken that before the timbers are united so as to begin the erection of the structure within the strict meaning of the words, they are brought to the site with the intention in due course of putting the component parts together and are shaped before they are erected in place. When this work has begun, in a fair sense the construction of the building has begun and the builder’s risk has attached. (*People ex reí. N. Y. C. & H. B. É. B. Co. v. Purdy*, 216 N. Y. 704, distinguished.)”

Q. I am not understanding the concept of “exception to exclusions”.

A. In the case *Progressive Homes Ltd. v. Lombard General Insurance Co.*, 2010, S.C.C. 33, the Supreme Court of Canada stated: “The alleged “property damage” at the root of this case requires an application of sometimes confusing concepts of an exclusion to coverage, and exceptions to exclusions to coverage. The common exclusion to coverage is a “work performed”, or “own work” exclusion. A common exception to such an exclusion is a “subcontractor exception”. Exclusions do not create coverage and neither do exceptions to exclusions. Exceptions bring an otherwise excluded claim back within coverage where the claim fell within the initial grant of coverage in the first place.”



**Q. Can the insurer escape liability by pleading that they did not know some part of a construction contract between the contractor and subcontractor?**

In the case *Madawick Contr. Co. v. Travelers Ins. Co.* 307 N.Y. 111 (1954), Court of Appeals of the State of New York stated: "The insurance company cannot escape liability under such circumstances by claiming that it was ignorant of some other part of the contract which conditioned the meaning or operation of the indemnity clause. Each portion of an agreement is qualified by other portions that are relevant thereto, and has no separate existence apart from them. Even without the testimony that this contract was read by the insurance agent, when an insurance company contracts to indemnify under such circumstances as to protect the insured against a particular liability imposed upon it by a construction contract, the insurer should be construed to have promised to do so in accordance with the requirements, terms and conditions of the agreement. The contract of a surety on a building or construction contract is to be construed together with other instruments to which it refers (72 C. J. S., Principal and Surety, § 100, p. 580). The same rule should be applied to a policy of insurance indemnifying a surety in respect to the performance of such an obligation."

**Q. What is the difference between all risk v named peril policies?**

In the case *Parks Real Estate Purchasing Group v. St. Paul Fire & Marine Insurance*, 472 F.3d 33 (2d Cir. 2006), the United States Court of Appeals, Second Circuit stated:

"Commercial property insurance generally is offered in the form of either an "all-risk" policy or a "named perils" policy. Under an all-risk policy, "losses caused by any fortuitous peril not specifically excluded under the policy will be covered." ...see also *Murray v. State Farm Fire and Cas. Co.*, 203 W.Va. 477, 509 S.E.2d 1, 7 (1998) ("Under an all[-]risk policy, recovery is allowed for all



losses arising from any fortuitous cause, unless the policy contains an express provision excluding loss from coverage."...."By contrast a `named perils' policy covers only losses suffered from an enumerated peril." Id. (citing *Opera Boats, Inc. v. La Reunion Francaise*, 893 F.2d 103, 105 (5th Cir.1990)).

**Q. In a claim who has the onus when proving that an exclusion applies and the claim is not payable?**

In the case *Parks Real Estate Purchasing Group v. St. Paul Fire & Marine Insurance*, 472 F.3d 33 (2d Cir. 2006), the United States Court of Appeals, Second Circuit stated:

a) Exclusion is to be stated in clear and unmistakable language

Moreover, to "negate coverage by virtue of an exclusion, an insurer must establish that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular case and that its interpretation of the exclusion is the only construction that [could] fairly be placed thereon." *Throgs Neck Bagels, Inc.*, 241 A.D.2d at 71, 671 N.Y.S.2d at 69.

b) the burden is a heavy one to be accorded a strict and narrow construction

Under New York insurance law, "[t]he burden, a heavy one, is on the insurer, and [i]f the language of the policy is doubtful or uncertain in its meaning, any ambiguity must be resolved in favour of the insured and against the insurer." *Pepsico, Inc.*, 788 N.Y.S.2d at 144 (internal citations and quotations omitted; second alternation in original); see *Seaboard Sur. Co. v. Gillette Co.*, 64 N.Y.2d 304, 486 N.Y.S.2d 873, 876, 476 N.E.2d 272 (1984) (holding that policy exclusions "are not to be extended by interpretation or implication but are to be accorded a strict and narrow construction" and that any ambiguity will be resolved against the insurer).

**Q. Courts state that coverage is to be interpreted widely and exclusions narrowly. What is the reason for this?**

The Supreme Court of India in the case *Canara Bank vs M/S United India Insurance Co. Ltd* (2020) stated: "It is also well settled that coverage provisions should be interpreted broadly and if there is any ambiguity, the same should be resolved in favour of the insured. On the other hand, the exclusion clauses must be read narrowly."

US courts have explained why. The Supreme Court of Louisiana in the case *Borden, Inc. v. Howard Trucking Co., Inc.* 454 So. 2d 1081 (La. 1984) stated: "The primary object of all insurance is to insure, and exclusionary clauses are strictly construed against the insurer." Further in the case *Breland v. Schilling*, 550 So. 2d 609 (1989), the Supreme Court of Louisiana reiterated: "Policies should be construed to effect, not deny, coverage.... And an exclusion from coverage should be narrowly construed."

It is clear that an insurance policy is for coverage and not a tool for denial by the insurer.





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Courts are often compelled to remind the insurers of their duties. The Supreme Court of India in the case United India Insurance Co. Ltd vs M.K.J. Corporation (1996) firmly asserted: "It is a fundamental principle of Insurance Law that utmost good faith must be observed by the contracting parties.

Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, "similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured. The duty of good faith is of a continuing nature. After the completion of the contract, no material alteration can be made in its terms except by mutual consent."

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In the case *Bowler v. Fidelity & Casualty Co. of NY*, 53 N.J. 313 (1969) 250 A.2d 580, The Supreme Court of New Jersey stated: “In all insurance contracts, particularly where the language expressing the extent of the coverage may be deceptive to the ordinary layman, there is an implied covenant of good faith and fair dealing that the insurer will not do anything to injure the right of its policyholder to receive the benefits of his contract. This covenant goes deeper than the mere surface of the writing. When a loss occurs which because of its expertise the insurer knows or should know is within the coverage, and the dealings between the parties reasonably put the company on notice that the insured relies upon its integrity, fairness and honesty of purpose, and expects his right to payment to be considered, the obligation to deal with him takes on the highest burden of good faith.”

In underwriting areas also the insurer has onerous duties. In the case *Manor Park Homebuilders Ltd -v- AIG Europe [Ireland] Ltd* [2008] IEHC 174, High Court of Ireland, stated: “The insured’s duty (of disclosure) is balanced by a reciprocal duty on the insurer to make its own reasonable inquiries, to carry out all prudent investigations and to act at all times in a professional manner. In fact, the onus to do this, because of its experience and expertise, lies primarily on the insurer.”

In underwriting and claims, the duty of fair treatment hangs over the insurer. The Supreme Court of India in the case *Canara*

*Bank vs M/S United India Insurance Co. Ltd* (2020) “35. The contention of Shri Malhotra is that the insurance company was not informed by the Bank, the cold store or the farmers that the farm produce or the insured goods belong to the farmers and therefore the policy is voidable. At the outset, we may note that misrepresentation or misdescription only makes the policy voidable. The insurance company never chose to declare the policy void for 3 long years when it was in existence and, at this stage, cannot be permitted to wriggle out of its liability by taking this objection. Even otherwise, we are of the view that the submission made on behalf of the insurance company is without any substance. The policies of insurance clearly show that the premises was separately insured for Rs.5 crores and the stock in trade were insured for Rs.30 crores. This insurance was taken not only for the year when the fire took place but was renewed for 3 long years.”

The Supreme Court of India in the case *Oriental Insurance Co. Ltd vs M/S. Ozma Shipping Company & Anr* (2009) made scathing remarks on the insurer’s conduct: “17. Before parting with this case, we would like to observe that the insurance companies in genuine and bona fide claims of the insurers should not adopt the attitude of avoiding payments on one pretext or the other. This attitude puts a serious question mark on their credibility and trustworthiness of the insurance companies. Incidentally by adopting honest approach and attitude the insurance companies would be able to save enormous litigation costs and the interest liability.”



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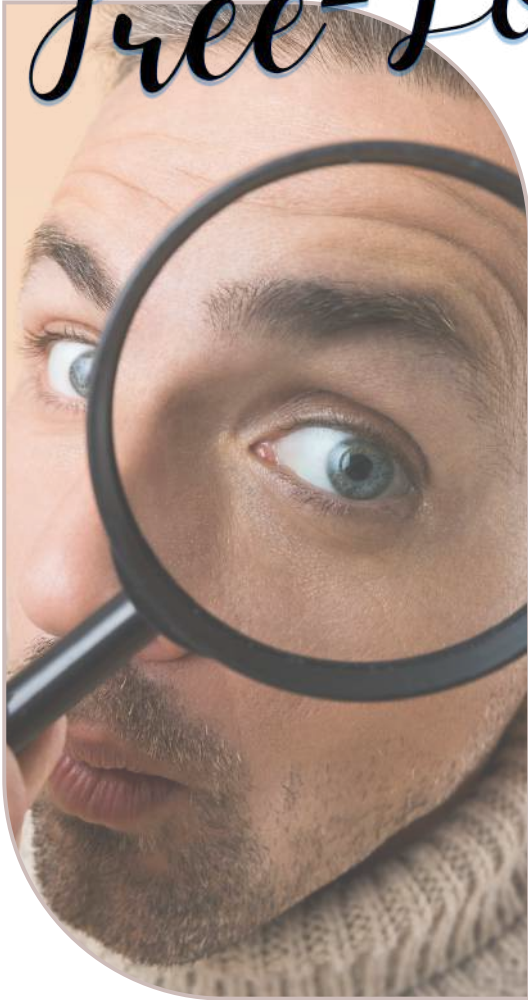
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# 'Free-Look Option'



“Free-look period” provisions in insurance policies give to the insured an important right to withdraw from the insurance contract already concluded. These provisions also give an insured some time for thought to make a conscious decision about ending the insurance contract. Free-look period provisions are mandatory in life insurance policies and health insurance policies with a term of one year or more. This right is distinct from the right of an insured to cancel the policy.

### **Mandatory free-look provisions**

Mandatory free-look provisions were introduced in life insurance policies in 2002, and in health insurance policies in 2009. Statutory instruments that impose these provisions are discussed below.

The IRDA (Protection of Policyholders Interest) Regulation 2002 provide:

- The insured has the option to return the policy;
- He can do so within 15 days from the date he receives the policy document;
- The time of 15 days provide him time to review the terms and conditions of the policy;
- He can return the policy where he disagrees to any of those terms and conditions;
- He must state the reasons for his objection;
- If he does so, he is entitled to a refund of the premium paid;
- The insurer can deduct from the premium:
  - (a) the proportionate risk premium for the period on cover,
  - (b) expenses incurred by the insurer on medical examination of the proposer,
  - (c) stamp duty charges;
- In case of unit-linked policy, the insurer will repurchase units at the price on the date of cancellation.
- The insurer must inform the insured about this option;
- The insurer must inform in a letter forwarding the policy.

IRDA Circular of 2 September 2009 mandated for the first time free-look provisions into health insurance policies and IRDA Health Insurance Regulations (consolidated as on 12.05.202) states in sec. 14:

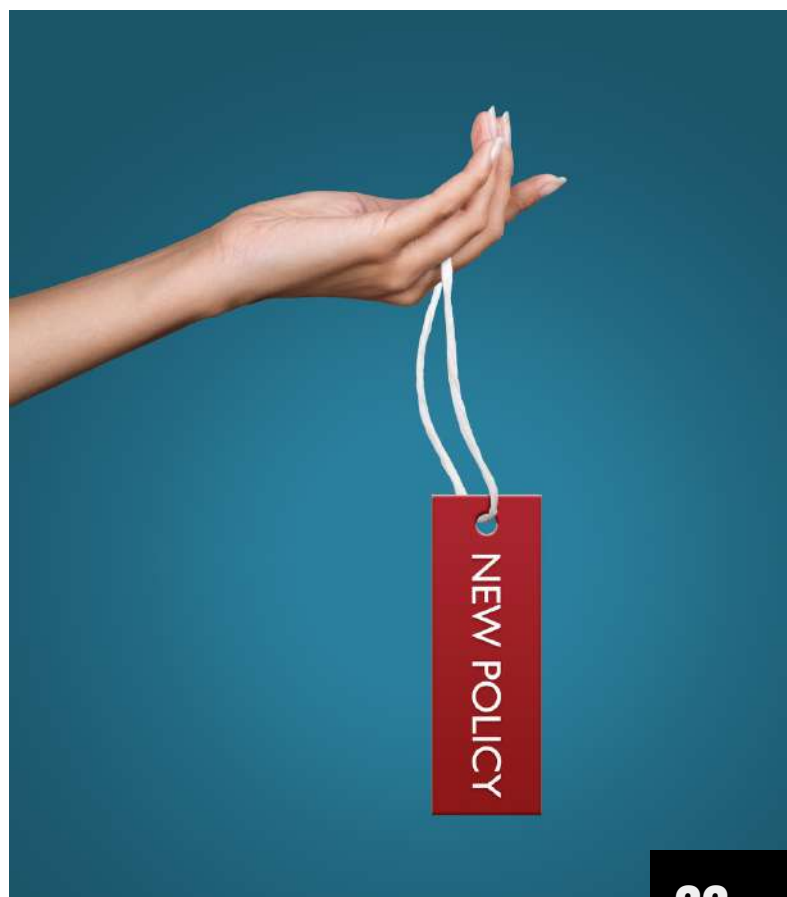
1. All new individual health insurance policies issued by Life Insurers, General Insurers and Health Insurers, except those with tenure of less than a year shall have a free look period.
2. The insured will be allowed a period of at least 15 days from the date of receipt of the policy to review the terms and conditions of the policy and to return the same if not acceptable.
3. If the insured has not made any claim during the free look period, the insured shall be entitled to—(a) A refund of the premium paid less any expenses incurred by the insurer on medical examination of the insured persons and the stamp duty charges or; (b) where the risk has already commenced and the option of return of the policy is exercised by the policyholder, a deduction towards the proportionate risk premium for period on cover or; (c) Where only a part of the insurance coverage has commenced, such proportionate premium commensurate with the insurance coverage during such period;
4. In respect of unit linked policy, in addition to the above deductions, the insurer shall also be entitled to repurchase the unit at the price of the units as on the date of the return of the policy.

#### **Commencement of free-look period**

The regulations mentioned above and all brochures and policies of insurers uniformly state that the free-look provision commences on the date of receiving the policy. Differences about the commencement date can arise where the original policy is received by the insurance

agent and not the insured. The free-look provision expects that the insured would have read the terms of the policy before deciding to end the policy. This implies that the free-look period shall begin only after the insured has received the policy document, and not when the agent has received it.

In case of dispute, the date the insured received the policy must be proved. The burden of proving the date of receipt of the policy lies on the insured. This is a difficult burden to discharge, because in most cases, evidence to support receipt of the policy will merely be the insured's statement. On the other hand, the fact that a letter has been delivered is capable of objective evidence, viz a signed acknowledgment, which will be in custody of the insurer. The insurer is in a better position to prove delivery than the insured. The insurer should not be absolved of the task of proving delivery of the policy to the insured if the insurer has documents that will prove delivery.



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### **Effective date of cancellation**

None of the statutory instruments have a provision stating the effective date of cancellation of policy. This date is important because (i) risk until such date is covered, (ii) proportionate premium applicable to such period shall be deducted before returning the premium to the insured and (iii) the price at which units in a unit-linked policy will be repurchased should be reckoned with reference to such date. As regards unit-linked policies, the Regulations require that the price of units repurchased by insurer shall be calculated as on the date of cancellation, while the Health Regulation refers to the date of return of policy.

### **Procedure after intimation of cancellation**

The statutory instruments above provide that after the insurer has received a notice of cancellation from the insured, they shall return the amount calculated as indicated. A study of free-look cancellation forms indicates that almost all insurers require the original policy, and require its submission with the cancellation form. Some insurers also require the insured to return the first premium receipt, or the Health Card.

### **Effect of cancellation**

Since the free-look provision is an option to an insured, its mere exercise ends the policy if its conditions are met. The request addressed to the insurer does not need acceptance, consent or approval of the insurer. By exercise of the option, the policy terminates. All rights and obligations under the policy will be discharged. Neither can the insured claim or enforce the policy, nor the insurer. The insurer's obligations are discharged automatically.

This option is an additional right conferred on the insured by law. It does not and cannot take away his other rights under law. A question arises whether exercise of this option will end the other rights which the insured may have under law. Insurers cannot use the free-look provisions in defence of allegations of mis-selling, misrepresentation and non-disclosure made by insured against them, as such allegations are serious and beyond the free-look benefit.



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# IMT CARE: EMPOWERING INSURANCE BROKERS IN THE NEW WORLD OF EMPLOYEE BENEFITS

The future of employee benefits is changing rapidly, with the average age of Indian employees falling to just 29 and retirement ages rising to 65. This shift in demographics means that employers need to be more flexible than ever before to meet the needs of a workforce that spans four generations. Employees want benefits that matter to them, such as wellness programs and mental health support. They also want the freedom to manage their benefits from their phone, just as they would shop for clothes, groceries or other items online. In short, they want a benefits program that's tailored to their unique needs.

Enter IMT Care, a new-age platform that empowers insurance brokers to manage employee insurance, healthcare, and wellness benefits in one place. Our technology-driven approach streamlines coordination with stakeholders such as insurers, TPAs, employers, and employees. Features like paperless endorsement and digital enrollment optimise the whole process, saving efforts while simultaneously increasing output. Additionally, our engaging dashboard, policy awareness email series, and WhatsApp bot, help to increase employee engagement along with increasing client retention.

But what sets IMT Care apart from the competition is our commitment to wellness. We offer a comprehensive Wellness Suite that includes free doctor consultations including dental care, discounted medicines and tests, onsite health camps, mental wellness benefits as well as free wellness events. By focusing on wellness, insurance brokers can help their clients to reduce healthcare costs and improve employee productivity, which is a win-win situation for everyone involved.

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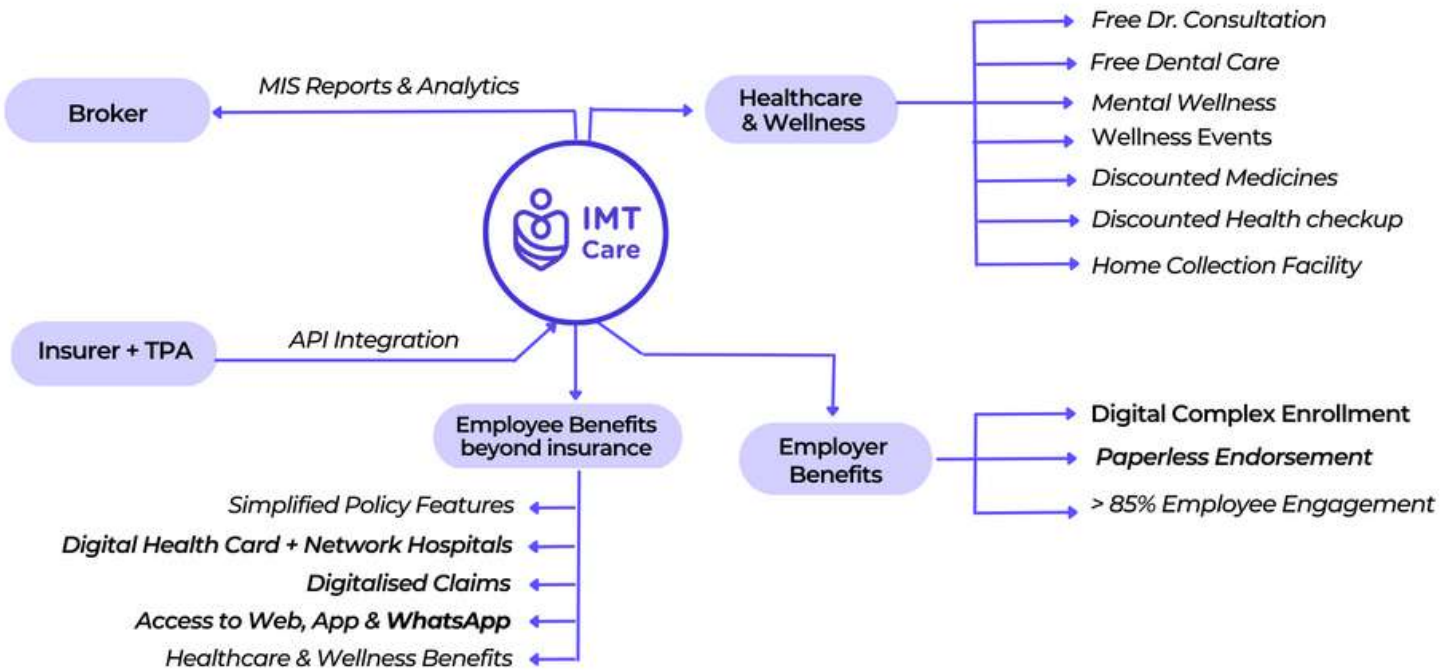




At IMT Care, we understand that the future of employee benefits is all about flexibility and individualisation. That's why our platform is designed to provide employees with the tools they need to manage their benefits at their fingertips, including digitised claims and home health checkups. By embracing technology and wellness, insurance brokers can stay ahead of the curve and thrive in the years to come.

The Best Part? Our co-founders, Rachit and Kunal, bring a wealth of expertise. Rachit has over 13 years of experience building tech products, while Kunal has over 16 years of experience in the insurance industry. Together, they have curated a platform that combines the best of both worlds, offering a solution that is both technologically advanced and grounded in insurance industry expertise.

## Building Ecosystems: *The Future of Employee Benefits*







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# Insurance has a fundamental role to play in the Economy

Insurance must develop itself so as to achieve the foundational position in the economy that is a necessity today. As it is known, an insurance protection is a necessary pre-condition for many activities that would not otherwise take place, unless the insurance cover is in place. This is owing to its centrality in the area of public protection. Courts have upheld the notion that insurance is a public good and in the area of liability especially they have worked in tandem with legislatures and the government to make injuries to third parties a win-win for both the victim and the person or organisation that was accidentally negligent. All these establishes the truth that the core of insurance is built on the solidarity concept. This idea then uses the law of large numbers to collect contributions from the many who face a similar but non-systemic risk and accumulates financial assets that can be used to pay potential misfortunes that will necessarily arise in a random manner in the economy.

As the custodian of this solidarity fund, called policyholder fund, the insurer is obliged to pay out for claims that arise from promises made in the policy. In fact, the insurer has a double duty - one, to pay claims that arise owing to the coverages contained in the policy; two, to conserve and deploy the premium in such a manner that all who participate in the insurance scheme, will be protected, that is the promise to pay future claims by the insureds will be honoured. In this context, refusal to pay a non allowable claim is not done merely for the self interest of the insurer but also for the benefit of the insured community.



In the exercise of proper insurance orthodoxy, the basis of success lies in enhancing the insurability quotient of risks that are covered. This is in fact one of the main functions of a dedicated underwriter, who when examining a risk, may place demands on the insured to remove the possible uninsurable features of the risks as a first step, and then suggest ways to reduce the frequency and severity of the risks to be insured, so as to charge a more affordable premium. Reducing risks is thus a key function of insurance and this pays off for everyone in the economy. This continuous raising of the standards of risk management and containment of risks reduces losses in the economy.

Insurance mirrors the safety net and social consciousness of society. Social insurance, pension, many types of health insurances, compulsory third party cover, credit mandated insurances etc. all reflect the underlying philosophy of protection against unforeseen and unaffordable risks through the mechanism of pooling and sharing risks to keep the society and its components and especially the economy that underlies society's prosperity moving forward.

Apart from indemnifying losses, insurance plays a central part in the capitalisation process of the modern economy. It helps to create huge capital assets. Insurance investments can have long time horizons and creates stable environment for long term investment.

The existence of insurance allows planning for the future with more certainty, avoiding or mitigating risks which are clearly beyond the carrying capacity of the risk taker. Thus, the economic processes are well ordered if an insurance due diligence is allowed in all risk taking activities as this will help to reduce and even avoid sudden upheavals and losses. Insurance thus reduces vulnerabilities and increases resilience.

Insurance is a rare mechanism that allows the spreading of risks over time. Thus, a life insurance policy can protect over a lifetime. A liability policy could have a similar effect. In the area of savings, insurance provides a double bonus. It helps in building up savings through various savings linked policies, and at the same time it eliminates the need for precautionary savings meant for disaster mitigation, and it provides working capital because insurance offsets the need for huge savings to take care of personal or organisational losses when insured indemnity will be released.

Insurance helps to take the leap into the opportunity arena. Insurance plays a more fundamental role than that can be visualized by its contribution to the GDP or the assets under management or the employment it creates. Insurance shapes and determines risk taking and risk protection and hence it has become a necessary precondition for most economic activities and livelihoods. When risks are taken care, people tend to behave more positively and proactively. This thus gives a dimension to insurance that is more than mere financial. This, however, should not be allowed to be turned into a moral hazard, where people abandon care and caution to the winds and try to take disproportionate advantage of insurance.

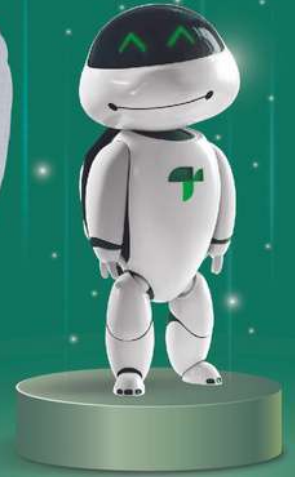
Insurers provide foundational information, knowledge and support to new risk ventures with both financial and non-financial knowledge and expertise. Every insurance line has frontier knowledge on its area of coverage – the fire insurer on building codes and materials, the weather insurer on geographic features and meteorological conditions, the marine insurer on port and shipping conditions, packing and other risks, the health insurer on morbidity and medical treatments and so on. This infuses more risk management into the economy and is a great positive for the sound development of the general economy.

It would be appropriate if all insurance professionals internalise the diverse good that insurance brings to the economy and this knowledge can help to deepen insurance convictions of those needing insurance.

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# Making Sense of

## All Risk Insurance



Many new age policies such as Industrial All Risk Policy, Mega Property Policies, Project Insurance policies such as MCE/EAR are all risk policies. More such all-risk policies will become common in future. However, the underlying concepts of 'all-risk' are missed by many, especially as most of the traditional insurance policies have been named peril risks. The standard wording of the coverage clause in all risk policies are:

1. Industrial All Risk Policy – “any of the property insured be accidentally physically lost destroyed or damaged other than by an excluded cause”
2. Mega Policy – “covering the interest of the Insured in the property at the Premises described in the Schedule for the purpose of the business is accidentally physically lost or destroyed or damaged.”
3. EAR (Erection All Risk) - will indemnify the Insured against sudden and unforeseen physical loss of or damage to the property insured in the manner and to the extent hereinafter provided. In Section I - Material damage, the terms are: the property ...be lost, damaged or destroyed by any cause, other than those specifically excluded hereunder, in a manner necessitating replacement or repair ...
4. CAR (Contractors All Risk) - the Company will indemnify the Insured in the manner and to the extent hereinafter provided. The policy then goes on to exclusions. In section I - Material damage, the terms are: be lost, damaged or destroyed by any cause, other than those specifically excluded hereunder, in a manner necessitating replacement or repair...

Courts have tried to analyse the meaning and scope of the 'all risk' policies. In the UK case Leeds Beckett University (formerly Leeds Metropolitan University) v. Travelers Insurance Company Ltd. (2017) decided by the England and Wales High Court (Technology and Construction Court) the following analysis was made:

“Accidental damage, which was the term relevant in the case, is referred to as ‘a fortuity’, something that happened by chance. Definitions beyond that appears to be able to mislead. For example, the court stated that suggestion made that to be accidental, damage cannot be caused by an inherent vice of the subject matter, or by ordinary wear and tear. The court is clear that this is not correct: in some situations, damage can occur due to an inherent vice and yet still be a fortuitous occurrence. In the view of the judge, ‘accidental’ simply means an event that occurs by chance, which is non-deliberate (wilful or deliberate damage is always excluded: see Patrick v Royal London Mutual Insurance Society Ltd [2006] EWCA Civ 421). The judge further stated this view also is one taken by Paul Reed QC, the author of Construction All Risks Insurance, Thompson Reuters, Second Edition (October 2016), at paragraph 10-002.

The Judge concerned (Mr Justice Coulson) summarised the essential principles as under:

- a) The claimant must prove that the loss was caused by some event covered by the general policy wording, but does not have to prove the exact nature of the accident or casualty;
- (b) Accidental damage means damage that was not wilful or deliberate;
- (c) Accidental damage means damage that was caused by a chance event, against the risk of which the insurance was taken out;
- (d) Accidental damage does not mean damage that was inevitable;
- (e) Inevitability will be assessed prospectively, from the time that the cover was taken out - Foreseeability is irrelevant;
- (f) Accidental damage does not mean damage to the property due to the inherent characteristics of that property;
- (g) There is a critical distinction between those cases where the damage was caused by an inherent weakness and those where it was caused by an external fortuitous event;
- (h) The policy should be construed in accordance with the ordinary rules of construction.

The original "All risk" was in the context of marine insurance, and were intended to provide indemnity for all fortuitous losses other than those arising from the insured's fraud or misconduct. When it came to property the boundaries began to become narrower. Today's property all risk policies may not only not cover all losses or all risks. Today's requirements for proving a claim under all risk policy include: 1) the requirement that the loss be fortuitous; 2) the need for the insured to demonstrate that the proximate cause of the loss was a covered risk; and 3) the need for the insured to demonstrate that the cause of the loss was external in nature.

It may be seen that courts are defining the requirement of "fortuity" in a way that favours the insured. This shift has occurred because the test for fortuity is a subjective one. If the insured was actually not aware of the defect or vice inherent in the insured property, or if the damage was actually unanticipated or unforeseen, the loss was fortuitous from the standpoint of the insured and so would be within coverage. It is found across court verdicts that "A fortuitous event is one which occurs accidentally, as a layman, and not as a technician or scientist would understand the term. It is an event `which happens by chance ... unexpectedly or without known cause, one which is unplanned".

In Construction/Contractor's (CAR) or Erection All Risk Policies, it is a requirement given to builders and contractors that they should ensure that in case of any accident, the reinstatement is ensured at the

cost of the contractor. Hence in such policies, all parties desire an assurance that in the event of a loss there will be sufficient funds to rebuild the project. Keeping this in mind it is usually required to obtain insurance for not less than the value of the construction contract. In Canada in the case Commonwealth Construction Company Limited v. Imperial Oil Limited (1976), discussed the role of the Builders' All Risk policy: "Whatever its label, its function is to provide to the owner the promise that the contractors will have the funds to rebuild in case of loss and to the contractors the protection against the crippling costs of starting afresh in such an event, the whole without resort to litigation in case of negligence by anyone connected with the construction, a risk accepted by the insurers at the outset. This purpose recognizes the importance of keeping to a minimum the difficulties that are bound to be created by the large number of participants in a major construction project, the complexity of which needs no demonstration. It also recognizes the realities of industrial life."

The concept of fortuity lies at the heart of "all risks" insurance. The House of Lords in the case British & Foreign Marine Insurance Co. v. Gaunt, [1921] 2 A.C. 41 defined the term: "all risks . . . were intended to cover all losses by any accidental cause of any kind". So, insurers tend to understand that exclusions for inevitable or virtually inevitable loss (e.g., wear and tear, inherent vice and latent defects) would be by definition would not be fortuitous. It is important in all risk policies to have such exclusions specifically stated because courts are now defining "fortuity" more and more in favour of the insured.





# TIME ELEMENT COVERAGE BUSINESS INTERRUPTION LOSSES AND EXPENSES

A standard fire and special perils policy or an "all risks" property insurance policy will cover the cost of reinstating or repairing the property damaged by a covered peril. However, they will not cover any indirect losses that can result. A separate coverage is required for such indirect losses, especially for business interruption losses and expenses that continue during the interruption. Such coverages are referred to as "time element" coverages because the amount of loss is directly related to the period during which the insured's business is interrupted.

Business Interruption Insurance is to indemnify an insured for the loss of profits or additional expenditure caused by an insured peril and thereby protect the balance sheet of the business due to the unforeseen circumstances arising from the covered peril. The terms "physical loss or damage" as being a requirement for triggering business interruption insurance is of importance. The term "physical," thus modifies the terms "loss" or "damage" in property insurance policies, meaning that the loss or damage be of something that is "material". The requirement that the loss or damage be "physical" thus excludes coverage for losses that are owing to intangible losses such as purely economic losses unaccompanied by a distinct physical alteration to property.



There are important questions that trouble insurers and insured in BI insurance. One such is the question of the meaning of the term “interruption”. The UK Supreme Court in 2021 clarified that it need not be a complete cessation of business or activities. In para 158 the SC stated: “The ordinary meaning of “interruption” is quite capable of encompassing interference or disruption which does not bring about a complete cessation of business or activities, and which may even be slight (although it will only be relevant if it has a material effect on the financial performance of the business). Furthermore, the possibility that interruption may be partial is inherent in the policy provisions which deal with the calculation of loss and which envisage that the business may continue operating during a period of interruption but with reduced income or increased costs of working. In addition, as the court below pointed out, the policies contain a number of heads of cover for perils causing “interruption to your activities” which are plainly intended to apply in circumstances where there is only limited interruption and not a complete cessation of activities. Examples given included clauses covering interruption caused by loss of attraction by reason of damage in the vicinity of the premises and interruption caused by damage at the premises of a particular customer or supplier.”

Another issue is the whether the term “business” means the use of the premise. In the case *Aztar Corporation v. U.S. Fire Insurance Co. et al*, 2010 1 CA-CV 08-0562, the Arizona Court of Appeals stated: “Our conclusion that the term “business” has a meaning broader than “use of premise” is consistent with what is widely considered to be the seminal case on business interruption insurance, *Studley Box & Lumber Co. v. National Insurance Co.*, 154 A. 337 (N.H.1931). In *Studley*, the insured operated a “shook factory.”. The factory had several structures including a saw mill and a barn.

The terms of the policy provided coverage based on “damage by fire so as to necessitate a total or partial suspension of business.” The insured's business was partially interrupted after a fire burned the barn and some of the horses inside that were used to operate the insured's saw mill. Although the saw mill was in a different physical location than the barn where the fire occurred, the insured could not produce as much lumber as before the fire because there were fewer horses to aid in the sawing process. In granting business interruption coverage, the court stated: The business being conducted as a whole, a fire loss on any of the units of the plant affects the business in its entirety and not merely the particular part of it carried on in such unit. The units are mutually dependent, and, if one fails, the others ordinarily suffer.” The court added: “Thus, *Studley* announced mutual dependency as a guiding principle in construing a business interruption clause.”



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Time element coverage offers the benefit of extra expense coverage. Most business interruption policies require that the insured take steps to reduce its business interruption loss following property damage. These if taken properly they can reduce or even eliminate the business interruption loss, but at a cost. Examples include expenses to continue or resume operations at the damaged premises, or to equip and operate at re-placement premises or temporary locations. The same types of extra expenses are also covered if, by incurring them, the insured minimizes the suspension of business. Only those extra expenses incurred during the period of restoration will be recoverable.

The distinguishing feature of time element insurance is that the quantum of recovery is directly related to the interval of time during which the insured's business is interrupted. Defining and measuring this length of time is critically important in resolving claims under time element insurance. It is again a matter of dispute as to what is the period of restoration. In the case *Duane Reade Inc. v. St. Paul Fire and Marine Insurance Company*, No. 07-4141 (2d Cir. 2010), which involved the destruction of the World Trade Centre, the US Court of Appeals for the Second Circuit

stated: "The district court rejected as overly restrictive St. Paul's position that the "the period of restoration should last only so long as it would take Duane Reade to build a 'replacement' store somewhere in the vicinity of the former World Trade Center." In the district court's view, "such an interpretation would be unreasonable, [because] it finds no support in the plain language of the Policy and it would render superfluous the other clauses requiring mitigation of damages." *Id.*

But the district court also rejected as "untenable" Duane Reade's expansive reading "that the Restoration Period must be coterminous with the time actually required to rebuild the entire complex that will replace the World Trade Center." Instead, the district court held, the proper reading of the policy fell somewhere in between the parties' views, such that the Restoration Period was to be measured by the "hypothetical or constructive (as opposed to actual) time frame for rebuilding the WTC store itself, not the entire complex that once surrounded it," and that the Restoration Period would end "[o]nce Duane Reade could resume functionally equivalent operations in the location where its WTC store once stood."





John respectfully addressed the old professor, "I am grateful to have you as my Ph.D. thesis advisor. I am committed to ensuring that your time, effort, and reputation are not wasted. My thesis will explore the similarities among the world's wealthiest individuals, the big billionaires."

The old professor, with thick glasses, responded, "Currently, Jeff Bezos is the richest billionaire, with an estimated asset worth of 150 billion USD. Bill Gates ranks second with 95.3 billion USD. Can you identify any similarities between the two?"

John hesitated, "Jeff Bezos is an intermediary who facilitates online sales, whereas Bill Gates owns Microsoft, a software company that sells its own products. I don't see how they are similar."

"Despite their differences, they share a common trait. Both Bezos and Gates have successfully brought their products to a wide audience, whether they sell their own or others' products. As the Vietnamese saying goes, 'No commerce, no wealth'," the professor replied.

John expressed his doubts, "I understand the saying, but I think it's harsh. Those who lack the ability to connect with consumers rely on merchants to determine the value of their products. Merchants often pay producers as little as possible to maximize their own profits."

"I used to share your view," the professor responded. "However, I've come to realize that while producing a product takes a lot of labour, finding the appropriate consumers for that product is even more challenging. The production process requires labour and resources, but trading requires luck. Luck is a significant factor in trading success. All successful merchants are lucky people, and their ability to connect producers with consumers is invaluable. Without them, the economic system would fail."



The professor continued, "Intermediaries play a crucial role in bringing people together, promoting solidarity between ethnic and religious groups, and connecting producers with consumers. Music composers need singers to share their work, and writers require publishers to reach readers. Many noble ideas require messengers to spread their message. Those who volunteer to be intermediaries to bring goodness to others may even receive more blessings than the producers themselves."

John nodded in agreement, "We should endeavour to connect people with love, unite divided groups, match jobs with the unemployed, provide comfort to those in mourning, offer resources to those in need, impart knowledge to those who seek it, and shine light on those in the dark."

In conclusion, the conversation between John and the old professor touched on the role of intermediaries in the economy, the importance of connecting people, and the significance of promoting solidarity between diverse groups.



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