iBROKER

JANUARY 2024 | VOLUME 2.0 | ISSUE 12

IBAI

EXCLUSIVE INTERVIEW

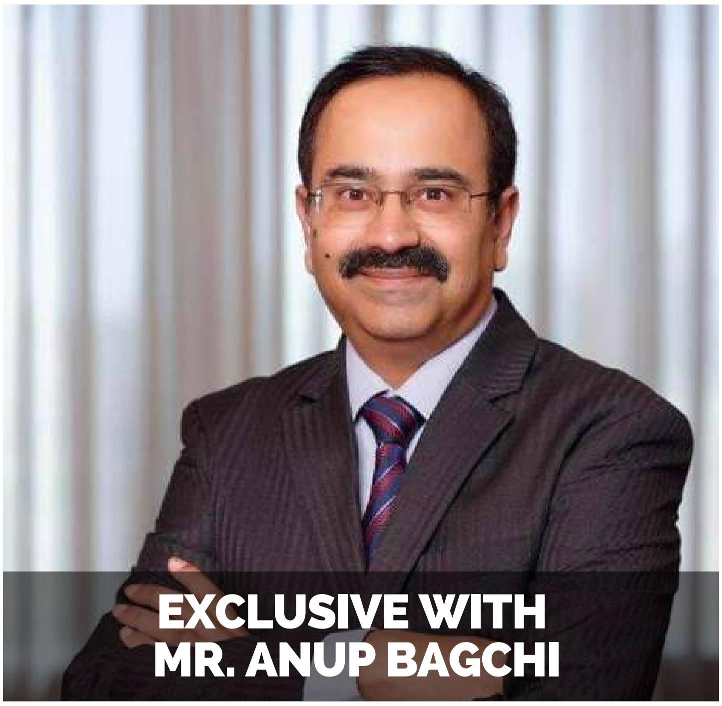
Mr. Anup Bagchi
MD & CEO, ICICI Prudential

INSURING ROADS FOR NATIONAL GROWTH - RISK EXPOSURES, IDENTIFICATION AND MITIGATION

Tauraiz A Khan
ACE Insurance Brokers

IBROKER

THIS ISSUE



EXCLUSIVE WITH MR. ANUP BAGCHI

UNMASKING THE SHADOWS - A JOURNEY INTO THE WORLD OF SOCIAL ENGINEERING

NAVIGATING MICHAUNG WITH CARE - CUSTOMER-CENTRICITY LIGHTS PATH TO RECOVERY

THE FUTURE OF THE LIFE INSURANCE INDUSTRY

INSURANCE OF SURETY BONDS

President's Message

In the midst of Chaos lies the opportunity (Bruce Lee)

Greetings to all of you, and I trust this message finds you in good health and spirits. It is an honour to address you as the President of our esteemed association, particularly during these dynamic times in the insurance industry.

The IRDAI significantly influences our sector's regulations. Staying abreast of frequent changes is crucial, demonstrating our resilience as insurance brokers. The IRDAI's proposed changes aim to boost transparency, customer protection, and market efficiency. Despite challenges, they offer opportunities to refine strategies, enhance efficiency, and elevate service standards..

In the face of competitive market conditions, it is imperative for us to remain vigilant and innovative. The insurance landscape is evolving rapidly, with new entrants and emerging technologies reshaping the industry. By embracing these changes and leveraging technology, we can position ourselves strategically to meet the evolving needs of our clients.

The continuity of business and investor confidence are paramount in these times of change. Our ability to navigate regulatory shifts seamlessly, coupled with a steadfast commitment to professional ethics, will not only ensure the trust of our clients but also attract investors seeking stability in an ever-changing market.

As of the latest numbers, the insurance market has shown commendable performance, with notable growth in various segments. SAHI companies continues with a robust performance with a growth of 25.46% as compared to previous 9 months of 22-23 where as GI industries continues to grow at 15.43%. It is heartening to see that insurance brokers continue to play a significant role, capturing a substantial share of the market. However, this calls for a collective effort to maintain this momentum and further enhance our market presence.

In the midst of this regulatory review chaos, let us not lose sight of the vision we collectively share for our industry. Our vision should encompass not just survival, but thriving in an environment of change. Let us view these challenges as opportunities to innovate, diversify, and strengthen our position as key players in the insurance ecosystem.

In conclusion, let us remain united as an association, fostering collaboration and knowledge-sharing among members. Together, we can navigate the complexities of the regulatory landscape, capitalize on emerging opportunities, and lead the way in shaping the future of insurance brokerage in India.

Thank you for your dedication and commitment to our noble profession.

Sumit Bohra
President IBAI

MR. ANUP BAGCHI

Managing Director & Chief Executive Officer

ICICI PRUDENTIAL LIFE INSURANCE

At the outset, hearty congratulations, although belated, on taking over as the MD & CEO of ICICI Prudential Life Insurance Company. Being a hard-core banker, in your first assignment outside of banking, what are your instant/initial observations about the life insurance industry?

The life insurance sector plays a crucial role in addressing key societal needs through its array of health, life, long-term savings and retirement products. Life insurance is unique, it consolidates various forms of risk mitigation into its offerings. For instance, ICICI Prudential Life Insurance has settled death claims amounting to over Rs. 20,500 crore and paid out over Rs. 25,000 crore as maturity benefits since inception. This is a testimony to the financial security we provide to families.

Notably, the protection and annuity category of products don't have any substitutes in the BFSI sector. Protection

EXCLUSIVE INTERVIEW

products serve as income replacement for the family while annuity products ensure life-long guaranteed income devoid of market fluctuations

With India's economic growth and the emergence of varied demographic groups, the demand for life insurance is anticipated to become increasingly more pronounced. Also, the life insurance industry plays a pivotal role in nation building by channeling funds into crucial infrastructure and housing projects, fostering economic growth, stability and societal development. For instance, as on March 31, 2022, the Indian life insurance industry has investments in infrastructure projects exceeding Rs. 4.50 lakh crore.

When compared with the banking industry, what are the specific areas where the life insurance industry has a lot of catching-up to do and the areas where it is way ahead of the banking sector?

The banking industry has excelled in communicating their product propositions to customers in a very simple manner. Technology has enabled easy accessibility and increased personalisation of products to customers.

Simplification is the only way any industry can expand and life insurance is no exception. The industry has made significant investments over the last decade in leveraging new-age technologies such as Artificial Intelligence, Machine Learning, Data Analytics, Optical Character Reader to simplify products and processes to enhance the overall customer experience.

At ICICI Prudential Life Insurance, we have leveraged the country's digital ecosystem to offer customers a seamless and paperless experience during the tenure of their policies.

The importance of life insurance is underscored by the safety net it provides to customers and their families. For instance, the Company has provided cover (in-force) to over 7.5 crore lives as on March 31, 2023. While the sum assured or life cover taken by customers was Rs. 31.67 lakh crore at September 30, 2023. This represents the amount that will be paid out in case of an eventuality ensuring the financial well-being of the policyholders' families/dependents. Our strong ability to settle claims is reflected in the solvency ratio of over 199%, against the regulatory requirement of 150%.

For the first two quarters of fiscal 2024 our claim settlement ratio was 97.9% and 98.14%, placing us on the top, among private players. Also, technology solutions deployed have enabled us to settle claims speedily. Our average turnaround time to settle a genuine death claim was just 1.2 days in FY2023.

Long-term savings products offered by us enable customers to build wealth and achieve financial goals. Customers make regular premium payments towards building the desired savings pool to realise their financial goals. It is akin to paying EMIs on the home loan and eventually owning the house. Our Assets under Management o have grown at a CAGR of 14% over the last decade and stand at Rs.2.71 lakh crore at September 30, 2023, signifies the trust placed in us by customers to provide financial security to their families while achieving financial goals.

What is your vision for ICICI Pru Life? Topline and market share or profitability? What will be the immediate priority?

The Company's focus is to increase the absolute Value of New Business (VNB), which represents the profitability of a life insurance company.

To achieve this, we have put in place the 4D framework which comprises data analytics, diversified propositions, digitalisation, and depth in partnerships. We believe this will enable us to get the right product to the right customer at the right price and through the right channel. The objective is to unlock the 'latent need' for life insurance to a 'felt need' through product simplification, better customer engagement and experience by using technology.

As per Swiss Re estimates the protection gap in the country stands at USD 16.5 trillion, which offers significantly untapped potential for a customer-friendly brand such as ours. Also, the growing trend of nuclear families has brought the need for retirement planning front and centre. Our suite of innovative products caters to both the protection and annuity or retirement income requirements of customers.

Distribution reach or rather lack of it is seen as one reason for the low insurance penetration. Technology is mentioned as a possible answer. Do you feel that Technology alone can give the desired penetration or insurance being a relationship-based business, the way forward should be 'phygital' rather than totally 'digital'?

Life insurance, inherently a relationship-based business, demands achieving a delicate balance between digital efficiency and personal connection. While technology streamlines processes, the distributors provide the last mile connectivity.

Embracing a 'phygital' approach ensures the best of both worlds. Distributors can leverage digital tools for efficient administration, but the core lies in nurturing durable relationships. Complex decisions, emotional nuances and tailored advice thrive in face-to-face interactions.

Phygital not only enhances accessibility but also upholds trust which is essential for any industry to grow. Striking this balance guarantees a resilient future, where technology complements, rather than replaces, the human element. It is worth mentioning here that in H1-FY2024 for ICICI Prudential Life, self-service transactions accounted for 92.6% of all service requests.

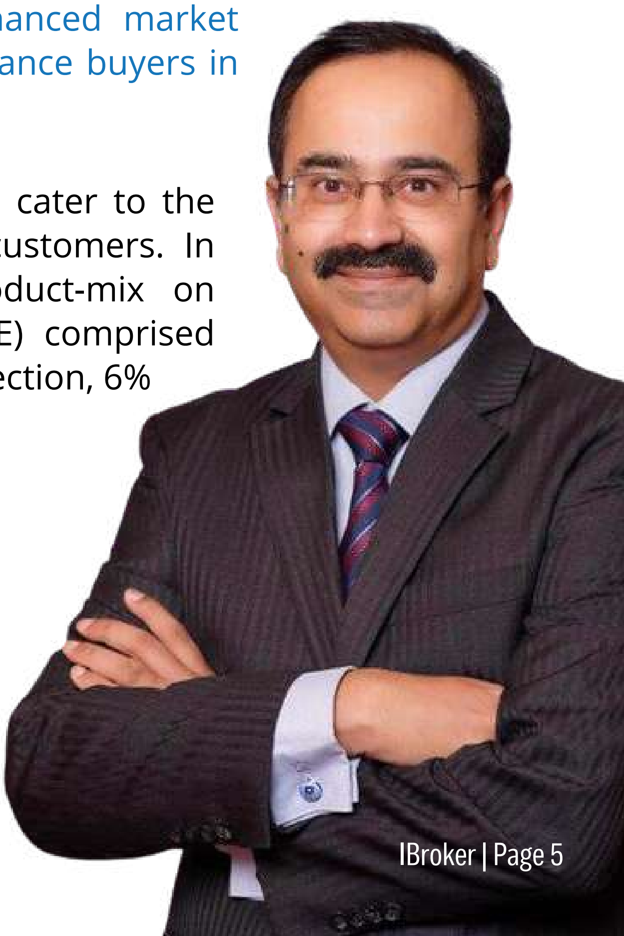
Notably, we have developed the 'ICICI Pru Stack', an industry-first initiative encompassing digital tools and analytical capabilities that ensures the right product to the right customer through the right channel and at the right price. This enables our distribution network to build capacity, unlock opportunities with various customer segments and sell life insurance in a non-invasive manner. It enables deep and sharp customer segmentation opening cross and upsell opportunities, enabling distributors to increase market share.

Importantly, leveraging the capabilities of the stack we have been able to extend Term by Invite (term insurance products) to approx. 6.5 million customers and Insurance by Invite (long-term savings products) to over 10 million customers. Such offers extended provide customers with a straight-through-processing experience.

Distributors can leverage the digital tools integrated in the ICICI Pru Stack for training purposes. For instance, if a distributor largely caters to individuals nearing retirement, the sales teams can be trained to appropriately pitch annuity products to ensure better conversion and customer experience.

Are you happy with the current product mix at ICICI Pru? Which products you feel would lead the way in enhanced market penetration especially among first-time life insurance buyers in rural areas?

We have an array of products which cater to the various life stage requirements of customers. In H1-FY2024, our well-diversified product-mix on Annualised Premium Equivalent (APE) comprised 42% linked, 27% non-linked, 21% protection, 6% annuity and 4% group. Our approach is to conduct a need analysis for customers and present products which are relevant to their life stage needs. Our product mix is the outcome of customer preference.



The key to market penetration is in understanding the 'need' and 'affordability' of customers

Presenting products which enable customers to meet their needs as well as being wallet friendly will ensure building long-term relationships across customer segments including first-time buyers. The proliferation of mobile connectivity and smartphones provides an excellent platform to reach out to underserved customer segments across geographies.

In FY2023, ICICI Prudential Life Insurance positively impacted 61.8 million lives through its micro-insurance products. Additionally, incorporating flexible premium payment options aligned with rural income cycles will ensure affordability. Educational initiatives on the importance of life insurance and a simplified delivery mechanism will play a pivotal role in enhancing insurance penetration.

Embracing vernacular languages and leveraging local distribution channels like self-help groups etc. can aid in communicating the importance of life insurance and how it provides financial security to the family. We believe a blend of simplicity, affordability and targeted outreach is critical for successful market penetration and will aid in achieving the regulators vision of 'Insurance for All.'

To enhance insurance penetration, the regulator is working towards implementing Bima Sugam, Bima Vahak and the Bima Vistaar initiatives.
While these initiatives are intended to encourage the low-income section to get insured, it will have a much wider impact of increasing awareness about insurance across customer segments.

Your views on life insurers offering health insurance products? Do you see the idea of composite insurers selling life, non-life and health products becoming a reality soon?

Health is an integral part of life; it fits very well with life. Health insurance is something that we would certainly be interested in.

The penetration of health insurance is low and there is room for more players to step in. The massive distribution network of the life insurance industry can be leveraged to significantly bolster penetration. Besides, it will provide insurance companies to develop holistic insurance solutions to offer both health and life insurance to customers.

Sometime back we launched ICICI Pru iShield, a product offering customers health insurance and life insurance. This product enables customers to meet expenses required for medical treatments. It also provides a lump sum amount to the nominee in case of the unfortunate demise of the policyholder.

Life insurance companies are perceived as being more inclined to Agency & Bancassurance channels as they produce a larger volume of business. What is your view on brokers being encouraged to push life insurance products in a big way, especially Group Term life products? At present, again a widespread perception in the broking community is that brokers are not welcome in life insurance companies or the process of getting to work with a life insurer is far more cumbersome than with that of a non-life insurer?

We believe distribution is the key to making life insurance easily accessible to customers across the country.

In H1-FY2024 our distribution mix on APE stood at 26% Agency, 14% Direct, 29% Bancassurance, 13% Partnership Distribution and 18% Group. With 105 partnerships added in this period we now have a solid base of over 1,000 partners. We will continue to look for and forge durable distribution partnerships.

Our multi-channel distribution strategy ensures we are present on platforms and touchpoints preferred by customers besides mitigating any concentration risk. Building depth in partnerships is one of the key elements of our 4D framework. We are achieving this by deep mining partner specific customer opportunities, focusing on quality metrics to enhance the customer proposition and experience. Importantly, the ICICI Pru Stack ensures hassle-free integration and onboarding of partners.

Post the COVID-19 pandemic, organisations are increasingly ensuring the financial and emotional well-being of their employees. We believe this segment offers significant growth potential and will be one of the focus areas for us.

What are the steps initiated by your company to create insurance awareness among the public?

We leverage various routes to simplify insurance concepts to customers.

The Company has implemented a multifaceted approach to enhance awareness about life insurance. Engaging marketing campaigns like the recent digital-first campaign in collaboration with the cricketer Suryakumar Yadav highlights the importance of being financially prepared in case life throws a curve ball.

Our 'Listen to your body' campaign educates customers to pay attention to the early symptoms of critical health issues, go for regular health check-ups, take necessary action and be financially prepared for any eventuality.

Educational initiatives include workshops, webinars and digital content explaining the importance of life insurance. Collaborations with financial services and health influencers broaden our outreach.The Company also employs regional language communication to ensure accessibility. We are leveraging technology to offer online tools for self-assessment and to build product understanding. Through these concerted efforts, we aim to simplify life insurance, fostering more informed customers.

High levels of attrition and lack of right talent is an industry-level phenomenon. Your take on how to draw the best talent to the industry and more importantly, how do you retain them?

Meeting the demand for talent in the insurance sector is critical since it enables rapid scale-up to meet business opportunities. It also enables organisational capability in specific domains and emerging skills.

A focus on creating talent pipelines through our campus and structured recruitment programmes ensure that we get people with the right attitude and fit and then train for skills. Over time, effective communication has helped us attract candidates whose career aspirations are aligned with our vision and values. The Company strives to deliver its core employee value proposition of a long-term career underpinned on our Cornerstones of providing a Supportive Environment, Learning & Growth and Fairness & Meritocracy and our employee policies and initiatives are aligned to these.Learning is enabled through job rotation and challenging role assignments, apart from learning programmes at career crossroads and leadership development interventions at leadership levels. All of these foster a culture of reimagination and experimentation, which cultivates talent for the future and builds emerging skills.

This has enabled the Company to have leadership stability, with 82% of the senior management team having served the Company for more than ten years, leadership depth with 96% of senior management having done more than 3 job rotations and leadership cover with 97% of key positions at leadership levels having leadership cover.

Do you feel that there is a strong case for reduction of GST on insurance products to make it more affordable/attractive to the public? Any other 'wish-list' from the Government for the life insurance industry?

Term insurance plans act as an income replacement tool and enable the family to continue with their lives and

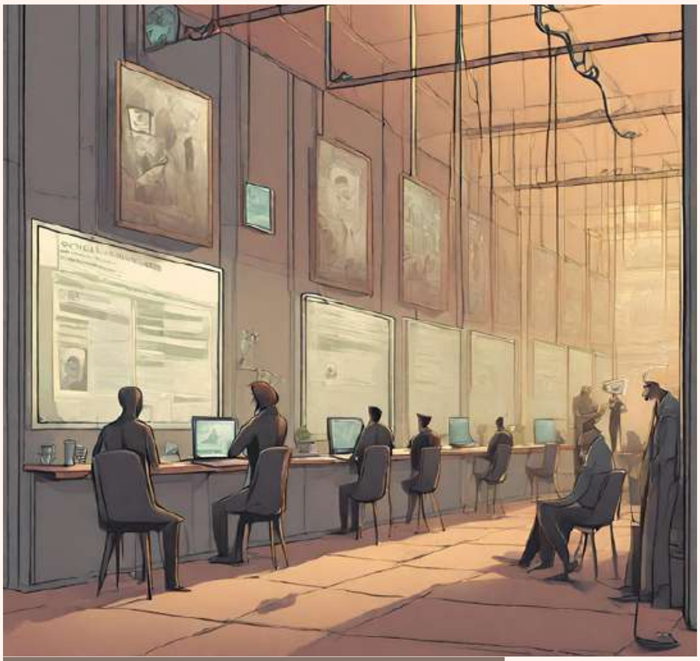
There is also a need to have a dedicated deduction from taxable income specifically for premiums paid towards term life insurance policies. Though it is the Government's intent to move towards the new tax regime without deductions/exemptions, there are a substantial number of taxpayers who prefer the old tax regime to claim benefits of tax deductions.

Also, to reduce the tax burden on retired individuals, we believe there is a case for doing away with the double taxation of the principal component of the annuity/pension income in the hands of retirees.

UNMASKING THE SHADOWS

A JOURNEY INTO THE WORLD OF SOCIAL ENGINEERING

Sundaram Venkatavaradan
CEO, Abhivridhi Insurance Brokers
Secretary, IBAI



In a world dominated by digital interactions, where our lives are intricately woven into the fabric of the internet, there exists a threat that is more elusive than any virus – social engineering. This article embark on a journey to unravel the intricacies of social engineering, exposing the vulnerabilities that lie within the human psyche.

What is Social Engineering?

Social engineering, often referred to as "human hacking," is a deceptive psychological manipulation aimed at exploiting the human element to gain unauthorized access to sensitive information. In this documentary, we shed light on the 12 most common types of social engineering attacks that could compromise your digital fortress.

The 12 Most Common Types of Social Engineering Attacks:

1.Phishing Attacks:

Phishing is the most common type of social engineering tactic and has increased more than tenfold in the past three years, according to the Cyber Cell. Phishing attacks occur when scammers use any form of communication (usually emails) to “fish” for information. These messages look identical to ones from trusted sources like organizations and people you know.

For example, a scammer might send you an email claiming to be from your bank, stating that your account’s password has been compromised. Because the email looks legitimate and the message feels urgent, you will quickly click on the included link or scan the QR Code and enter your account information (which then goes straight to the scammer).

- Do's: Verify the sender's email address, scrutinize emails for grammatical errors.
- Don't's: Click on suspicious links or download attachments from unknown sources.

2. Spear Phishing

Normal phishing attacks have no specific target. But spear phishing attacks occur when hackers target a specific individual or organization. Nearly 60% of IT decision-makers believe targeted phishing attacks are their top security threat

During 2015, hackers completed a $1 billion heist spanning 40 countries with spear phishing. The scammers sent bank employees phishing emails with an attachment to deploy Carbanak malware. Once clicked, the hackers could control the employees' workstations and were able to infect ATM servers remotely. A new take on spear phishing is called angler phishing. This occurs when scammers impersonate customer service accounts on social media with the goal of getting you to send them your login information.

Do's: Confirm the legitimacy of unexpected emails, use multi-factor authentication.
Don't's: Share personal or financial information via email without proper verification.

3. Whaling

Whaling is a term used to describe phishing attacks that target a specific, high-profile person. Usually, an executive, government official, or celebrity.

The victims of whaling attacks are considered "big fish" to cybercriminals.

These targets offer great potential to scammers with either large financial payouts or access to valuable data. In the case of hacked celebrities, scammers hope to find compromising photos that they can use to extort exorbitant ransoms.

In another example, hackers send spoof emails to C-level employees that appear to come from within the victim's organization. The sender claims to know confidential information about a coworker — but is afraid to report the situation in person. Instead, they all share their evidence as a spreadsheet, PDF, or slide deck. But when victims click the link, they are taken to a malicious website. And if they try to open the attachment, malware infects their system and spreads to their network.

Do's: Be cautious with requests from high-profile individuals, validate unusual requests independently.
Don't's: Disclose sensitive information without proper authorization.

4. Smishing and Vishing

Phishing is not always limited to emails and fraudulent websites.

Smishing is the term used to describe phishing via the use of SMS text messages. Scammers purchase spoofed phone numbers and blast out messages containing malicious links.

There's also vishing, which is the same as phishing but done over the phone.

Vishing is especially widespread in businesses. Scammers will contact a company's front desk, customer service, HR, or IT and claim to need personal information about an employee. Lies range from mortgage lenders trying to "verify" email addresses to executive assistants requesting password changes on their boss's behalf.

All these forms of phishing can lead to identify theft, malware, and financial devastation.

Do's: Verify unexpected messages or calls, use secure communication channels.

Don't's: Respond to unsolicited messages or calls with personal information.

5**. Baiting**

Baiting is a type of social engineering attack in which scammers lure victims into providing sensitive information by promising them something valuable in return.

For example, scammers will create pop-up ads that offer free games, music, or movie downloads. If you click on the link, your device will be infected with malware.

Baiting scams also exist in the physical world.

One common example is a strategically placed USB stick with an enticing label like "Payroll Q3" or "Master client database."

A curious employee will pick up the drive and insert it into their workstation, which then infects their entire network.

Do's: Exercise caution with free offers, use reputable sources for downloads.

Don't's: Insert unknown USB drives into your device, fall for enticing freebies.

6.Piggybacking/Tailgating

Piggybacking and tailgating both refer to a type of attack in which an authorized person allows an unauthorized person access to a restricted area. This form of social engineering may happen at your place of work if you let someone follow you into the building. Or, it could happen at your apartment building as you're leaving for the day.

Scammers may be dressed as delivery drivers, say they forgot their IDs, or pretend that they are "new." Once inside, they can spy on people, access workstations, check the names on mailboxes, and more.

Tailgating also includes giving unauthorized users (like a coworker or child) access to your company devices. They may put your device at risk and spread malicious code throughout the rest of your company.

Do's: Challenge unknown individuals entering restricted areas, adhere to company security policies.
Don't's: Allow unauthorized access, neglect security protocols.

7. Pretexting

Pretexting occurs when someone creates a fake persona or misuses their actual role. It is what most often happens with data breaches from the inside.

Edward Snowden infamously told his coworkers that he needed their passwords as their system administrator. Victims, respecting his title, willingly complied without giving it a second thought.

These scammers establish trust using their title, then convince victims to give them sensitive data. They know people will be hesitant to question them or be too scared to push back on these impersonators, even if something seems off.

Do's: Be sceptical of unsolicited requests, verify identities before sharing information.
Don't's: Disclose sensitive data based on false pretences.

8.Business Email Compromise (BEC)

There are three main types of BEC social engineering attacks:

a. Impersonation. This occurs when scammers use spoof emails to pose as employees or trusted vendors and clients. They all ask their target to send fraudulent payments, change payroll and direct deposit information, or share sensitive information.

b. Account compromise. This occurs when hackers gain access to a legitimate employee email address. Scammers can reply to and send emails company-wide (to clients, vendors, etc.), containing malicious code.

c. Thread hijacking. This is an advanced take on an account compromise attack.

Thread hijacking occurs when hackers scan compromised inboxes for subject lines containing “Re:”, “Fw:” etc. They then automatically reply with malware-laced messages. Recipients open the hacked email not thinking twice because they “know” the sender.

Do's: Confirm financial requests through multiple channels, employ email verification tools.
Don't's: Transfer funds solely based on email instructions.

9. Quid Pro Quo (Tech Support Scams)

Quid pro quo translates to “a favour for a favour.”

The most common version of a quid pro quo attack occurs when scammers pretend to be from an IT department or other technical service provider. They will call or message you with an offer to speed up your internet, extend a free trial, or even “give you a free gift cards” in return for trying out software.

The only thing that victims need to do is create a free account or give out/verify their login credentials. When scammers receive this sensitive information, they will use it against the victim or sell it on the Dark Web

Do's: Validate support calls independently, use official customer service contacts.
Don't's: Provide remote access to your device, share personal information over the phone.

10. Honeytraps (Romance Scams)

Honeytraps are a type of romance scam in which scammers create fake online dating and social media profiles using attractive stolen photos. For example, in a “military romance scam” , “social media connects “ the fraudster will pose as an active service member stationed far away and unable to meet in person.

Once they identify a target, they will start sending flirty and provocative messages, and quickly tell their victims they are in love with them. But they need the victims to prove they feel the same way by sending gifts, cash, or cryptocurrency.

Honeytraps are especially rampant on social media sites dating apps like Tinder et al. Make sure you are always staying safe and are aware of the dangers of online dating

Do's: Be cautious with online relationships, avoid sending money to unknown individuals.
Don't's: Share intimate details or financial assistance without verification.

11.Scareware

Scareware — also known as fraud ware, deception software, and rogue scanner software — frightens victims into believing they are under imminent threat. For example, you could receive a message saying that your device has been infected with a virus.

Scareware often appears as pop-ups in your browser. It can also appear in spam emails
Victims are supposed to click on a button to either remove the virus or download software that will uninstall the malicious code. But doing so is what causes the actual malicious software to get in.

Do's: Use reliable antivirus software, verify security alerts independently.
Don't's: Click on pop-up warnings, download software prompted by scare tactics.

12.Watering Hole Attacks

A watering hole attack occurs when hackers infect a site that they know you regularly visit.

When you visit the site, you automatically download malware (known as a_“Drive -by-download”). Or, you will be taken to a fake version of the site that is designed to steal your credentials.

For example, scammers could divert you away from a normal login page to one designed to steal your account name and password. It will look the same. But anything you enter will go straight to the scammer.

This is where having a password manager becomes so important. Even if a phishing site looks exactly like the real one, a password manager won’t automatically enter your credentials.

Do's: Be cautious of suspicious website changes, use a password manager.
Don't's: Enter credentials without verification, visit unfamiliar websites.

Conclusion

Armed with knowledge, we empower ourselves against the lurking shadows of social engineering. By understanding the tactics and adopting simple precautionary measures, we fortify our digital presence and create a safer cyber landscape for all.

In the age of technology, vigilance is our greatest defense against those who seek to exploit the human element. Let this journey into the realm of social engineering serve as a beacon, illuminating the path towards a more secure digital future.

Cyber Jagrookta is a programme initiated by IRDAI to create awareness to our employees as brokers. IBAI has developed 12 videos on various subjects of Cyber awareness by ethical cyber hacker and a cyber lawyer over a period of 12 months which is available on our website : www.ibai.org.
Members are requested to play this video and create awareness to our employees. Speak to IBAI office for any support.

NAVIGATING MICHAUNG WITH CARE

Customer-Centricity Lights Path To Recovery

In the first week of December’23, Chennai and surrounding areas experienced severe flooding due to the widespread inundation of streets, neighbourhoods, and low-lying areas in the aftermath of Michaung Cyclone.

The flooding resulted in the loss of lives and extensive damage to property. Many residents lost their homes, and businesses suffered significant losses.

Chennai, being the metropolitan hub, is densely populated with one of the highest vehicle penetrations thus increasing the extent of the damage manyfold.

The major effect on the vehicles has been because of submersion of the vehicles; stalled engines due to water ingression; Corrosion of electrical components, wiring and metal parts; damage to breaks and transmissions and other major mechanical components. This has left a huge financial dent on the pockets of the already strained customers.

Being a responsible participant of insurance industry, the primary objective of Maruti Suzuki Insurance Broking Private Limited has been to provide hassle-free claim experience, epitomizing customer satisfaction and delight in the face of this adversity. To achieve this, a series of counter measures and support services were implemented.

Communication with Affected Customers:
We believe that clear and informative communication is crucial in ensuring that our customers are well-informed and empowered to navigate challenging situations. We triggered messages to customers in all affected areas that provided detailed guidance on the steps they could take in the aftermath of the cyclone.

Expert Assistance at the Contact Centre:
Understanding the need for immediate and expert assistance, we deployed a team of Subject Matter

Experts (SME) at our Contact Centre. These experts provide the necessary support and guidance required by our impacted customers. The presence of SMEs ensures that our customers receive accurate information and assistance when they need it the most

SPOC Alignment with Insurers:
For seamless coordination and swift closure of all reported cases, we aligned Single Points of Contact (SPOCs) from all insurers with our Motor Insurance Service Providers (MISPs). This collaborative approach enhances efficiency in the claims process and ensures that our customers' needs are addressed promptly.

On-Ground Support:
To provide on-ground support, we stationed dedicated manpower at major MISPs. This proactive measure aims to assist customers in navigating the claims process seamlessly and expeditiously.

Mobilization of Outlets in Chennai:
Recognizing the significance of local presence, we mobilized outlets in Chennai and defined Standard Operating Procedures (SOPs) for handling impacted customers. This ensures that customers have accessible points of contact and reliable assistance during the aftermath of the cyclone.

24x7 Towing Facility:
Understanding the challenges our customers may face in moving their vehicles, especially in the aftermath of a cyclone, dealer assisted towing services have been made available. This ensured that our customers can transport their vehicles to the required service points without additional hurdles.

Setting up right processes, close monitoring, and the zeal to support the customers in every way possible, is something that goes long way in dealing with a situation like this.

We assure our customers that these steps are not the culmination but merely the beginning of our efforts. We will continue to innovate, leaving no stone unturned to assist and support our customers during these testing times. We stand steadfast, ready to face challenges and provide the unwavering support that our customers deserve.

Rohit Sachdev, CEO & PO,
Maruti Suzuki Insurance Broking

Special Assistance for Vulnerable Groups:
Recognizing the unique needs of senior citizens and female customers, we have arranged for onsite inspections through our insurance partners. This additional support is designed to cater to the specific requirements of these groups during the claims process.

Flexible Survey Timings:
To accommodate the convenience of our customers, we have facilitated surveys on all days. This flexibility allows customers to bring their vehicles to workshops at timings that suit their comfort, ensuring a smoother claims process.

Digital Verification and Document Waiver:
In acknowledgment of the challenges posed by natural disasters, waiver of physical verification of original documents has been arranged in consultation with partner Insurance Companies. This digital verification process expedites the claims process, reducing the burden on our customers during difficult times.

Organization of Claim Settlement Camps:
To expedite the settlement process, our panel insurers are organizing various camps. These camps specifically cater to customers with vehicles categorized as "Total Loss" due to being totally submerged. The aim is to ensure prompt and efficient settlement of such claims.

Close Monitoring of Cyclone-Related Claims:
Claims arising due to damage during the cyclone are being tracked

separately. These cases are prioritized for inspection and subsequent settlement by our panel insurers. This focused approach ensures that the specific needs of customers impacted by the cyclone are addressed promptly.

All efforts are in vain if the customers on ground do not realise their impact. Fortunately, the efforts in this case have yielded some good results. Of thousands of the cases intimated, many have already been settled and others are in various stages of closure.

Mr J. Jeyerajha, one of the impacted customers, was completely aghast when his new Ignis, brought two weeks back and just 150 km on odometer got severely damaged in this cyclone and torrential rains that followed.

Despite the huge load on workshops, with SOPs in place and close monitoring of all the cases, his vehicle was fully repaired and delivered back to him in just two weeks. Mr J. Jeyerajha took some time to drop in a word of encouragement and this is what he has to say.

You were super helpful and guided each process with care throughout the claim settlement process. I left my car in MSM workshop on 06th Dec and got my car delivered in two weeks. Service advisor confirmed my Car was first to be delivered back to Customer from the batch of flood affected vehicles.

I appreciate your Leadership team, Senior Management for setting the right culture on the ground which shows up in valuing Customer relationship and dealing customers with empathy

INSURING ROADS FOR NATIONAL GROWTH

RISK EXPOSURES, IDENTIFICATION AND MITIGATION

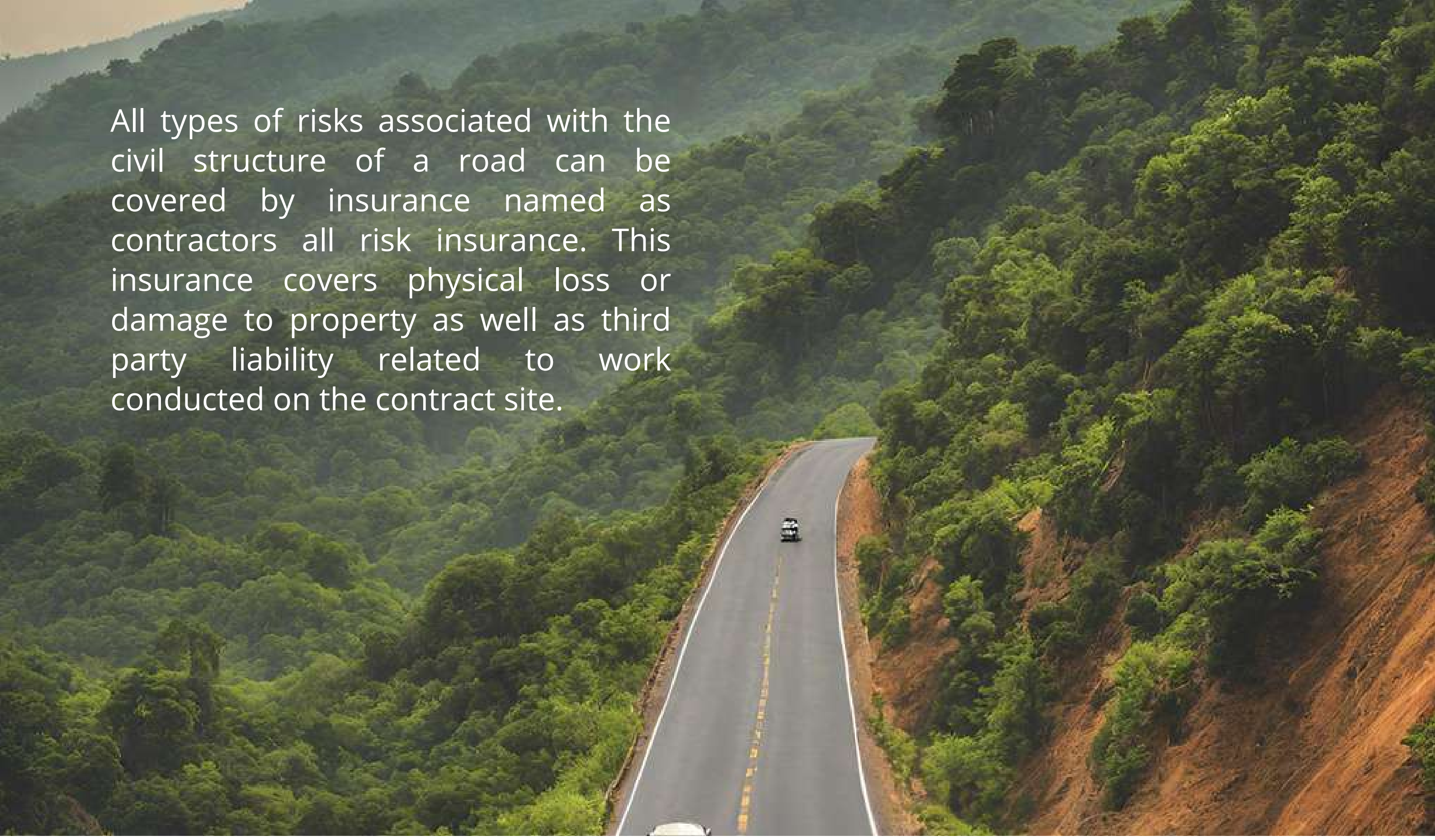
Tauraiz A Khan, FIII, ACII (Chartered Insurer), ANZIIF, AINS
General Manager- ACE Insurance Brokers Pvt Ltd.

India has the second-largest road network in the world, spanning a total of 6.3 million kilometers (kms). This road network transports 64.5% of all goods in the country and 90% of India's total passenger traffic uses road network to commute. Highway construction in India increased at 17.00% CAGR between FY16-FY21. Despite pandemic and lockdown, India has constructed 10,457 km of highways in FY22.

Road construction projects have become more and more complex, and this complexity arises from the large number of parties involved in it. Insurance works as an efficient risk management tool, especially when the chance of loss is low, but the severity of potential loss is very high.

Road construction projects have become more and more complex, and this complexity arises from the large number of parties involved in it. Insurance works as an efficient risk management tool, especially when the chance of loss is low, but the severity of potential loss is very high.

Risk Management determines the likelihood of a risk occurring (risk frequency) and judges the impact of the risk should it occur (consequence severity). The risk assessment phase has as its primary objective the systematic consideration of risk events, their likelihood of occurrence, and the consequences of such occurrences.



All types of risks associated with the civil structure of a road can be covered by insurance named as contractors all risk insurance. This insurance covers physical loss or damage to property as well as third party liability related to work conducted on the contract site.

ROBUST DEMAND

As of March 2023, the total length of National Highways in the country was 145, 155 Km

ATTRACTIVE OPPORTUNITIES

The Govt. aims to construct 65,000 Kms national highways at a cost of Rs 5.35 lakh Crs by 2023-24

A Network of 35 Multimodal Logistic Parks are planned to be developed as part of Bharat-Mala Pariyojana with total investment of Rs 46,000 Crs

HIGHER INVESTMENTS

Transfer from National Investment Fund was estimated at Rs 20,000 Crs as on March 2023

Under Union Budget 2023-24, the Govt. Of India has allocated Rs 2.70 Lacs Crs to the Ministry of Road, Transports and Highways.

POLICY SUPPORT

100% FDI is allowed under the automatic route in the Road and Highway sector.

The Govt. aims to construct 65,000 Kms national highways at a cost of Rs 5.35 lakh Crs by 2023-24

Technical Aspects- Road Structure

A road body is built up of several layers of different materials which fulfill various functions.

Wearing course (surface)

- Impervious to the ingress of water
- Comfort and Durability
- Made of Asphalt.

Base course (binder)

- Load Bearing and spreading layers.
- Usually around 100mm Thick
- Made of Bituminous Materials

Sub-Base

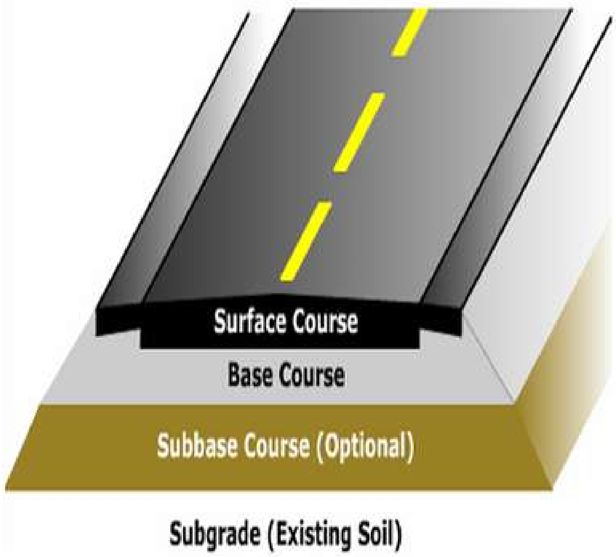
- Load spreading layers.
- Often used as Drainage Layer.
- Made of graded granular materials
- Thickness depends on Traffic load and quality of subsoil (20 – 40 cm)
- Often used during construction of temporarily carry heavy site equipment’s.

Sub-Grade (Existing Soil)

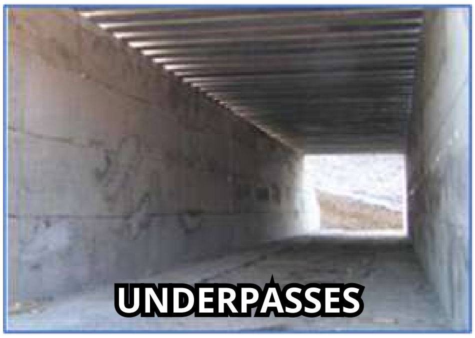
- Layer of naturally occurring material the road is built upon.
- The strength of the subgrade is an important factor, influencing the thickness of the road pavement design.
- Sometimes the soil conditions have to be improved e.g. through soil replacement, by embankments, sand-drains, adding lime or various other methods.

Design Elements- Road

- Road body (subsoil and layers)
- Vertical and horizontal alignment
- Required structures (bridges, tunnels)
- Road width/number of lanes



ROAD STRUCTURES



Risk Exposures in Road's Construction

Road Infrastructure 's major areas of exposures include:

- NAT Cat Perils: Act of God Perils i.e., Landslide, Flood, Earthquake, Lightning, Inundation due to heavy rain etc.
- Topographical Exposures: like Roads through hills and/or mountains can generally suffer from landslides while Roads in flat areas are more prone to inundation, sandstorms.
- Riots, Strike in a project area may lead to possible destruction of already built roads and delay in the project.
- Faulty Design for road construction leading to caving in and other damage.
- Impact Damage due to moving objects and Blockage of Access to materials due to transit risks and losses.
- In the majority of the cases, the consequences (deformations or even collapse of road structure) show only at a later stage, i.e. after some months of operation under traffic loads (e.g. during the maintenance period)
- Burglary and Theft of construction materials
- Damage to Construction machinery- Contractor's Plants and Machinery.
- Open trenches and the laid pipes are exposed to flooding.
- Ground drainage, Surface drainage and Temporary Drainage systems- Pipes, ducts and sewers close to surface.
- Third Party Liability –Bodily Injury or Property Damage

Typical Loss Scenarios- Road Projects

- **Soil conditions, exposure to natural perils:**

  A contractor in Rajasthan was assigned to the construction of a road through the desert.To take advantage of a relatively flat and easily accessible construction area, the road was built in and along a “wadi” (dry riverbed). The project was almost completed when a flash flood caused by heavy rainfall destroyed several kilometers of the road. This major loss happened because the local circumstances were totally neglected in planning as well as in execution of the road.

- **Topography- Road collapse after heavy rains.**

  The cause of loss was Faulty design combined with extraordinarily heavy rainfall and inadequate drainage. For two days a local rainstorm occurred with 274 mm precipitation over a three-day period causing landslide 100 m downhill of south lane highway: 20 m depth, 100 m width and 200 m length. Cracks occurred on the road surface.

- **Landslides washes away Char-Dham Road stretch in Uttarakhand**

  A 100-metre stretch of Char Dham road on the Badrinath national highway between Gauchar and Rudraprayag near Kameda village in Chamoli district was washed away on 25th July due to heavy rains leaving pilgrims stranded on both sides.

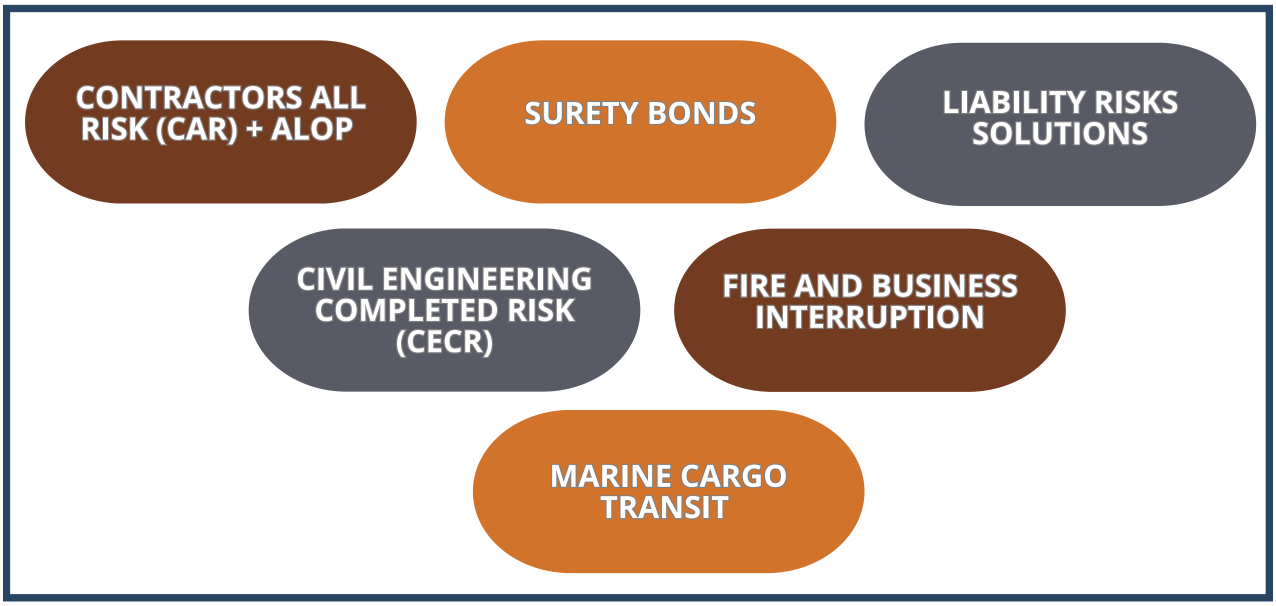
Risk Identification and Mitigation:

- Design Parameter: The amount and extent of surveys to gather data needs to be in line with the complexity of the project and should be carried out by technical specialists (e.g. a geologist) who are familiar with the local conditions.
- Engineers and other specialists involved must be familiar with the local particularities and should have experience of similar projects in the same location.
- Availability of Meteorological and hydrological data incl. nearby water bodies.
- Consider Time schedule (seasonal aspects)
- A quality assurance program for suppliers and on the site needs to be in place for testing of the materials (grading, strength) as well as for workmanship (e.g. compacting). The design specifications/tolerances must be met.
- Adequate slope angles and slope protection measures against surface erosion
- Ensuring adequate drainage Systems
- Continuous monitoring of movements and deformations if required before start of construction works.
- Adequate Provision of Removal of debris from Landslides clause (MR endt. 111) including foreign debris to be made.
- Open trenches and the laid pipes are exposed to flooding. Therefore, the trenches must be backfilled, and the length of open trenches limited (MR endt. 117)
- Provision of Phased Manner handover.
- Consider TPL exposure due to potential landslides.
- Check earthquake exposure and loss history.

Comprehensive Insurance Solutions for Road Infra:

A proactive Risk Manager can help manage Infra Risk Challenges via Insurance Solutions such as:

- Customized Contractor's All Risk Insurance for Road and Bridges including 'Design Defect' and 'Extended Maintenance' coverage during Road Construction phase.
- Delay in Start-up/Advanced Loss of Profits (ALOP)
- Construction Surety Bonds and/or Insurance solution against Performance Risk
- Civil Engineering Completed Risk Insurance (CECR)
- Third Party Liability including Criss-cross Liability also to extend during Extended Maintenance period: to provide seamless insurance protection and financial peace of mind throughout the project phase
- Property and Business Interruption -including Contingent Business Interruption (CBI) once the project is handed over and becomes operational.
- Terrorism and Political Violence
- Professional Indemnity – to mitigate the risk arising out of legal liabilities associated with professional services.
- Construction Plants and Machineries- against equipment deployed at project site.
- Marine Cargo Cover for Plants & equipment in transit while imported or Indigenous purchase from anywhere in the world to Project site.
- Workers' Compensation: to cover bodily injury, fatal accident, occupational disease to workers working at the project site.



References:

- *IMIA – WGP 46 (06) - Engineering Insurance Exposures related to the Construction of Roads*
- *https://trid.trb.org/view/1513384*
- *https://www.ibef.org/industry/roads-india*
- *https://www.imia.com/category/key-categories/claims/*

INSURANCE PENETRATION – THE RIGHT DIRECTION, 5 YEAR PLAN

India, a country with low insurance penetration

Insurance penetration of a country is reckoned in terms of total insurance premium to total GDP of a country and has often been a subject of debate about how truly it reflects real 'penetration'. Insurance pandits would rather look at the number of people covered or the extent of assets covered in a country as more reflective of real penetration. While this debate can go on, it is an established fact that India is a country with low insurance penetration and that the 'protection gap' is huge. 'Protection gap' refers to uninsured losses in a country.

The global average of insurance penetration (life and non-life insurance combined) as it is defined stood at 6.8 % whereas India's stood at 4.2 % in the year 2021-22. The global average for penetration for life insurance in the year 2022 was 2.8 % and that for non-life was 4 %. Life insurance penetration in India for 2022-23 stood at 3 % whereas for non-life it was 1 % (Sigma, Issue No.3/23 published by Swiss Re Institute) making the overall penetration 4%. How can insurance penetration in India be increased? What would be the right direction to go? How well are we geared to achieve 'Insurance for all by 2047', the tagline of the Insurance Regulatory and Development

Authority of India? More particularly, how do we lay down milestones for penetration over the next 5 years and go about achieving them? These are the relevant questions.

Achieving higher insurance penetration

Higher insurance penetration implies greater protection from financial loss for individuals, industries and for the economy as well as society as a whole. There are several factors at play. There is the demand angle and the supply angle. Demand for insurance is driven by the need for insurance and its accessibility, affordability and availability. Demand is also a function of awareness. The supply side involves providing the accessibility, affordability and availability and helping create the required awareness. Efficient supply would mean the right products at the right price and providing the right access to procure them. Where are we today regarding all of this and how can we go about improving efficiencies in supply and create the required

demand? Improving efficiencies in the entire value chain will help create the required trust for insurance to arrive and remain as a protection mechanism.

Ensuring accessibility to and availability of need-based affordable insurance products

There are two perspectives to be discussed here -- offering simple and well-designed products that serve the purpose for which insurance has been purchased and ensuring that these products are priced actuarially which means a price that is fair to both the prospect and the insurer. Also ensuring that these products can be procured easily both physically and online is of paramount importance. The immediate need as far as individuals are concerned is over-the-counter products in plain language that can be easily understood. It is also necessary to enable easy renewability of insurance products and easy premium payment modes such as instalment payments and auto-debit facilities. A word of caution about possible mis-selling and making sure the right steps are taken to ensure that the customer is made adequately aware about the product and the premium payment modes. While there is a lot of encouragement from the Regulator to get innovative, particularly using technology, the industry too has taken several initiatives to design innovative products that cater to the needs of the market.

Authority of India? More particularly, how do we lay down milestones for penetration over the next 5 years and go about achieving them? These are the relevant questions.

Achieving higher insurance penetration

Higher insurance penetration implies greater protection from financial loss for individuals, industries and for the economy as well as society as a whole. There are several factors at play. There is the demand angle and the supply angle. Demand for insurance is driven by the need for insurance and its accessibility, affordability and availability. Demand is also a function of awareness. The supply side involves providing the accessibility, affordability and availability and helping create the required awareness. Efficient supply would mean the right products at the right price and providing the right access to procure them. Where are we today regarding all of this and how can we go about improving efficiencies in supply and create the required

Initiatives, Industry and Regulator motivated

IRDAI's Bima Vistaar, which is expected to be launched shortly is a packaged standard product with elements of life insurance, health insurance, accident insurance and property insurance. The 'State Insurance Plan' that the Regulator intends to roll out provides the ideal platform for introduction of Bima Vistaar and along with it the Bima

Vahak, the distribution network that is women-centric and Bima Sugam, the online platform for transaction of insurance business. The trinity -- Bima Vistaar, Bima Vaahak and Bima Sugam are expected to bring about the change in pace required to bring about greater insurance penetration. The initiatives of the Regulator for ease of business are helping the industry to achieve speed to market their various innovations.

All in all, with regulatory changes keeping pace with innovation and technological advancements and vice versa, the required momentum to ensure that every Indian in India is covered under insurance by the year in 2047 can indeed become a reality and while this is the long-term objective, the self-engineered industry initiatives and the fillip from the regulatory initiatives will certainly help achieve some concrete progress within the next five years.

Achieving the desired objective

When we set about trying to achieve an objective like the one that is being discussed, there is no one single approach or solution. It is always multi-pronged. What is crucial though is whether the direction is right. Every step in the value chain that is involved in insurance should be in the right direction. We are talking of creating the right kind of demand at the right price, ensuring availability in the right channels. The servicing of the product needs to be efficient, be it related to the policy document or at the time a claim arises. Simple and quick procedures with the least documentation is what will create trust in the system. Physical and digital channels and options for customers to choose either is the order of the day. Omni channel solutions are in demand.

Given the penetration of internet in the country and with inroads into semi-urban and rural areas having been made, demand for digital options is there amongst the youth in the semi-urban areas at least. The 'moment of truth' is a phrase oft repeated in insurance. The litmus test for insurance as a product and a service lies at the point a claim arises. A claim that is valid and paid on time indicates that the product has served its purpose and the claim has helped the policyholder in getting financial relief for the loss incurred whether fully or not.

A claim repudiated because it fell under an exclusion or fundamentally was not even in the scope of the insurance cover may imply that it was inappropriate for the purpose bought because of insufficient disclosures or perhaps even deliberate mis-selling.

Formulating and achieving a five-year plan

Having set out the objective the next step is to lay down targets and go ahead with the plans. Planning is an important tool to achieve any objective and warrants laying down of milestones as well. Insurance as a protection tool is desirable for all but how can it be made affordable is the relevant question. Covering a population like ours needs a multi-pronged approach. A mix of social schemes (which are generally partially or fully funded by the Government, Central and/or State – the Pradhan Mantri Jan Arogya Bima and the Pradhan Mantri Jeevan Jyoti Bima are cases in point) targeted at the economically lowest strata in the society and commercial insurance for other segments as a well as a mix of social and commercial (especially meant for the missing middle) would offer the right solution.

Insurance is always spoken of as a push product and this aspect has not really changed. A society that is ideally protected through insurance would be one where demand for it is created implying the presence of the pull factor.

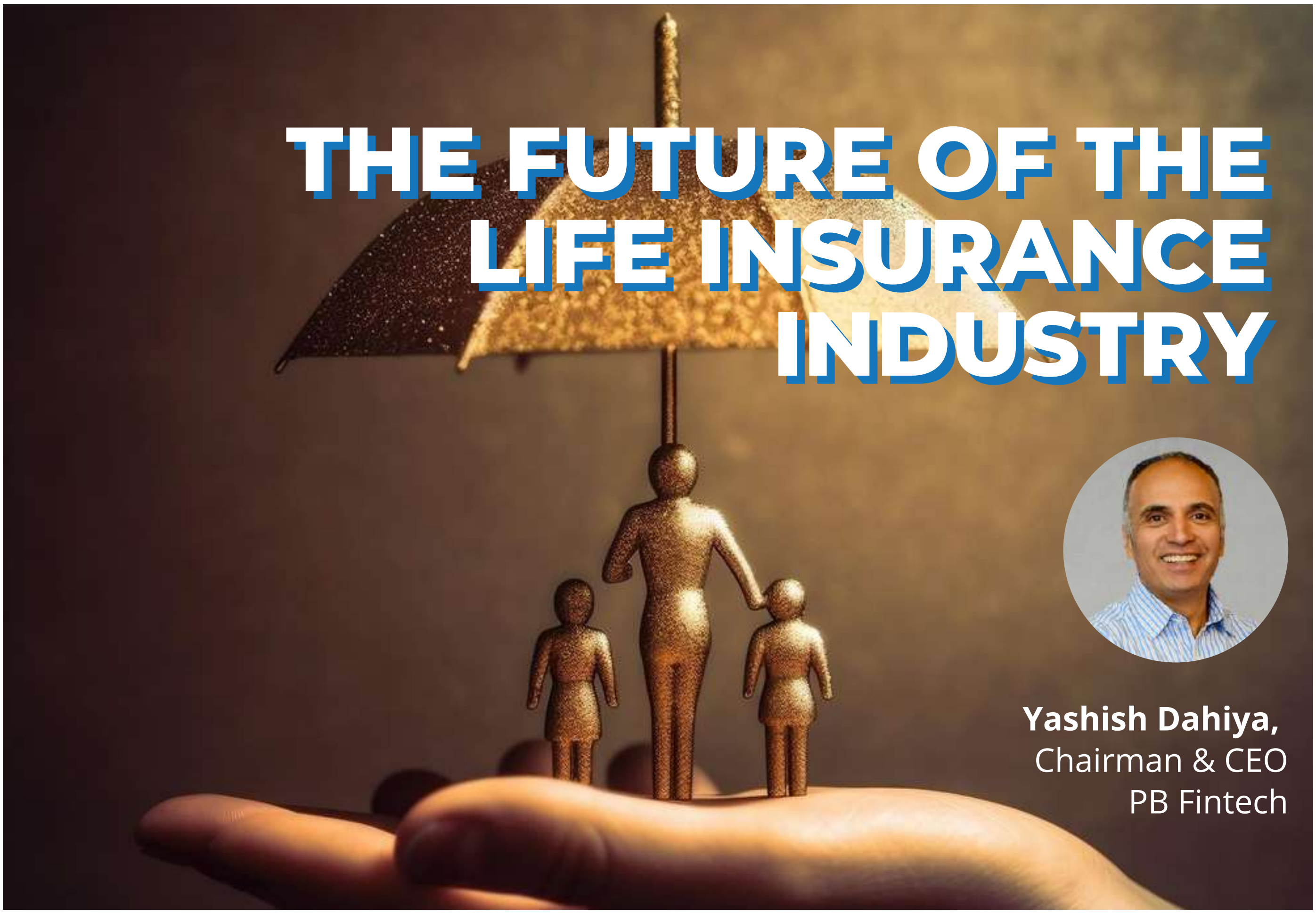
Distribution channels could mean different things for the pull and the push scenarios respectively. When a customer seeks to reach out (pull scenario), how easy it is to approach an insurer either directly or through a distributer is crucial whereas in a push scenario, how an insurer can reach out to a prospect directly or through its distributional channels is the moot point. There is a plethora of distribution channels permitted by the Regulator today. Are all of these being utilized fully? How can we use them in a cost-efficient manner. Answers to these questions will help improve penetration.

The next five years will still see insurance as a push product but it should ideally be only a mild push. The insurance product would be a relevant need-based product which can be procured easily and is not cost prohibitive. Critical mass will ensure that costs come down. The plan to penetrate will encompass aspects relating to covering desired geographies (unserved and underserved) that are far flung. Milestones will certainly include numbers but the qualitative aspect of sales/purchase and servicing is, of course apart from cost, key to the whole plan. Creation of trust amongst the policyholders and prospect should be the first objective. That will come with the right product and the right servicing. Trust will bring in the numbers which in turn will help bring down costs.

It is important to remember that insurance cannot succeed by improving efficiencies just within the system. The eco-system within which it works is equally important. Take health insurance for instance – efficiencies of the hospital network, those of the Third-Party Administrator, if any, the applicable legal framework etc., would all be relevant factors. Similar would be the case for other segments of insurance.

While penetration is also a function of the country's GDP, progress in respect of number of people covered under life and/or health insurance and ensuring economic losses in the country are reduced through better coverage of assets is certainly an achievable task and a road-map for the next five years to achieve this will be a great beginning. Ideally the road-map for the industry will factor in geographical areas, different population segments, different insurance protection needs, distribution channels and last but not the least quick turnarounds with the help of automation

Can the insurance industry, facilitated by the Regulator, achieve the first broad milestone, a convincing increase in penetration over the next five years by at least 20% as a first step? While this remains to be seen, efforts by all stakeholders towards the noble goal of increasing insurance penetration in India reflect several rays of hope!



THE FUTURE OF THE LIFE INSURANCE INDUSTRY

Yashish Dahiya,
Chairman & CEO
PB Fintech

Contesting the anticipation of a global slowdown, India's economy continues to surpass expectations, projecting a growth that extends to various sectors. This is also reflected in the insurance sector which is estimated to be the sixth largest insurance market by 2032. The outlook for this rapidly-growing market can be attributed to several factors - boost in disposable income, enabling regulatory developments, and India's young demographic to name a few. The recent IRDAI annual report also affirms the life insurance industry's sustained premium growth over the years. Long-term viability is the cornerstone of the insurance industry, particularly in the context of life insurance, and every stakeholder - right from insurers to brokers to aggregators and distributors - have played a pivotal role in making life insurance more viable.

The growth of the industry, however, has certainly not been without its set of challenges. In India, the decision to purchase life insurance is often fraught with procrastination and reluctance. At a 91% mortality protection gap, the industry does grapple with challenges that can be linked to low awareness, lack of trust and transparency and product complexity. However, the pandemic has indisputably been the inflection point when the industry played well to its strengths and responded with adaptability and resilience.

The industry's response to the challenges has been marked by an increased focus on product customization, quality improvement, and enhancing customer experience. This collective effort across the industry heralds a positive outlook for the future, aligning well with changing consumer expectations and laying the foundation for continued progress.

Addressing the awareness gap with right messaging

India has consistently proven to be a value-conscious market. The biggest challenge that insurance as a category faces, is positioning a product that lacks instant gratification in this market. The challenge gets deeper for life insurance, considering the stigma associated with death. While life insurance forms the foundation of financial planning, the lack of awareness and misconceptions associated with it often create a substantial barrier.

To overcome this perception gap and cultivate a more positive outlook towards life insurance products, the industry needs impactful yet relatable messaging. Much like how 'Mutual Fund Sahi Hai' broke down and simplified the essence of hassle-free investing, life insurance needs its own messaging to demystify safeguarding the future of loved ones.

Also, the industry can benefit from a series of campaigns promoting transparency and trust in the ecosystem. In this area, the broker community can leverage their reach in addressing the awareness gap, which is the first step to addressing the protection gap. They have the potential to enhance the appeal of life insurance, dismantle perceived barriers, and cultivate a deeper understanding of the critical role financial protection plays in individuals' lives.

Empowering distributors for a win-win model

The future of the life insurance industry relies on equalising all barriers and that can only be achieved with the intelligent use of new-age technology. The growth of the industry shares a co-linear relationship with the growth of all its stakeholders, including insurers, brokers, aggregators and the key is to strengthen each of these pillars.
The regulatory framework is already facilitating higher flexibility in the ecosystem with initiatives that reduce the turnaround time for product launches and places greater autonomy in the hands of the industry players.

The future holds a greater potential for the life insurance industry where the scope of the distribution channels needs to be expanded further. For instance, expanding the scope of products and financial services that brokers and intermediaries can distribute holds the potential to optimize operational efficiencies, foster healthy competition, and ultimately benefit consumers through potentially reduced commission margins.

Policybazaar pioneered the term insurance category a decade and a half ago and continues to strive towards increasing life insurance penetration in India with IRDAI's guidance and support

We now need to further enrich the offline capabilities of distribution and make them more transparent and seamless for the consumer. A mix of online and offline channels will help fuel the growth of the industry where online channels eliminate information asymmetry and offline channels facilitate the purchase decision. More enabling initiatives from the regulatory body will further catalyse this growth and in turn, bridge India's protection gap.

Global partnerships for a stronger foundation

Collaboration on a global scale offers a lot of opportunities for the industry in an increasingly interconnected world. Forging global partnerships with reinsurers will enable an exchange of best practices and innovative solutions to achieve cost and operational efficiencies. Additionally, different geographies come with their distinct challenges and opportunities, so this will open up a wealth of experiences and information for the industry at scale. Needless to say, this will also amplify the supply chain significantly.

Globally, the insurance industry is moving from a risk coverage to risk management approach and these collaborations can help with more robust risk-management practices and access to cutting-edge technologies.

The industry can achieve a more balanced and diversified risk portfolio, reducing vulnerability to specific regional economic downturns, natural disasters, or other unforeseen events. By fostering collaboration on an international scale, the industry can build a stronger foundation that is resilient, innovative, and well-positioned to meet the diverse needs of policyholders around the world.

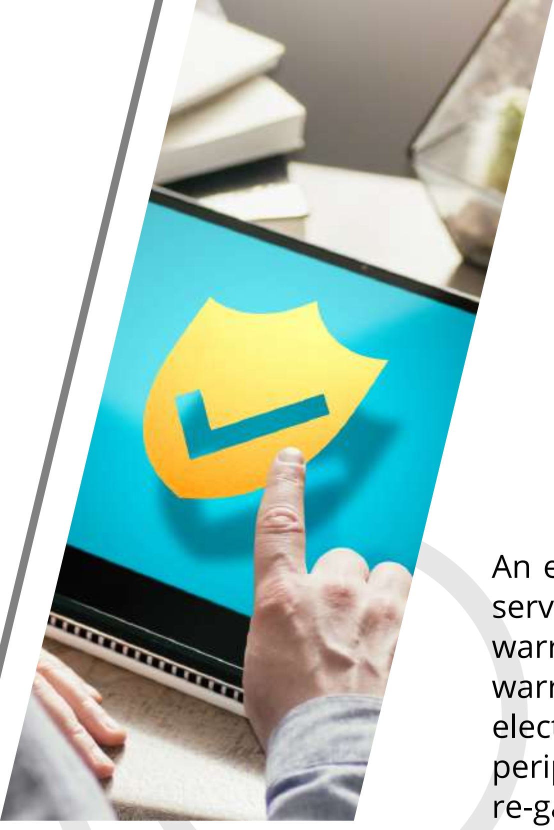
To fortify the Indian life insurance industry, it is also crucial to invite more global reinsurers to participate in the country's growth story. This would not only infuse capital but also bring in international expertise, diversifying risk and enabling the industry to scale up operations efficiently. The future of life insurance is about more than policies; it's about shaping financial security for everyone. By embracing a positive outlook, we build an industry that's strategically prepared to be more inclusive, accessible and innovative.

HARI RADHAKRISHNAN

KNOWLEDGE SERIES

LOSS OF PROFITS INSURANCE

IBAI's exclusive LMS initiative, featuring insights from top industry experts. Elevate your knowledge, stay ahead of the curve!



EXTENDED WARRANTY INSURANCE

An extended warranty, sometimes called a service agreement, a service contract, or a maintenance agreement, is a prolonged warranty offered to consumers in addition to the standard warranty on new items. An extended warranty is coverage for electrical or mechanical breakdown. It may or may not cover peripheral items, wear and tear, damage by computer viruses, re-gassing, normal maintenance, accidental damage, or any consequential loss. An insurance cover for this warranty is called Extended Warranty Insurance. Manufacturers offer extended warranty insurance after tying up with insurers.

A good standard policy covers the risk as under:

What is covered?	It is limited to electrical, mechanical and electronic breakdown of insured items and/or components thereof arising out of any defect in materials and workmanship in respect of all electrical, mechanical and electronic components of the insured items or the items itself as per the warranty offered by the manufacturer, during the period of Insurance. Limit of Liability: - The liability of the insurer will be the sum insured as declared to the insurer by the Insured.
Insurer Not Liable for	1. Any claim where the original identification/serial number is removed, obliterated or altered from the insured assets or item(s). 2. Any claim if the item(s) is/are used for commercial, business, industrial, educational or rental applications or is/are used at a public place or common place where many people gather or assemble together, unless agreed by the insurer to be covered subject to the payment of additional premium
What is not covered?	• Any claim where the original identification/serial number is removed, obliterated or altered from the insured assets or item(s). • Any claim if the item(s) is/are used for commercial, business, industrial, educational or rental applications or is/are used at a public place or common place where many people gather or assemble together, unless agreed by the insurer to be covered subject to the payment of additional premium.

What is not covered?	• Any claim where the original identification/serial number is removed, obliterated or altered from the insured assets or item(s). • Any claim if the item(s) is/are used for commercial, business, industrial, educational or rental applications or is/are used at a public place or common place where many people gather or assemble together, unless agreed by the insurer to be covered subject to the payment of additional premium. • Any incorrect or abnormal electrical or signal connection to the item(s). • Any modification to the item(s) which is not in accordance with the manufacturer's instructions or use of any accessory which has not been approved by the manufacturer. • Any item(s) purchased outside India unless agreed to be covered by the insurer on payment of additional premium for the sum insured of these item(s) based on current exchange rate. • Any defect in external wirings, electrical connections that are not an integral part of the items. • Any corrosion, blockages, denting or scratching on the item(s). • Any routine maintenance or service or inspection of the item(s). • Any cleaning of video/audio heads or any normal replaceable or limited life consumables of the item(s). • Any repair carried out by anyone other than authorised service providers of the item, as approved by the manufacturer. • Any realigning of aerials, receivers or satellite dishes. • Any design fault or damage arising from errors, omissions or defects in any applications or systems software. • Any cost incurred where no breakdown has been found. • Any damage caused by any domestic animal like pets. • Any service item(s), normally replaceable components of item(s) or limited life consumables including but not limited to fuses, remote control, batteries etc. • Any cosmetic item(s) including but not limited to knobs, buttons, paintwork, plastic or metal casing etc. • civil war, rebellion, revolution, insurrection, military or usurped power, nationalization, or loot pillage in connection therewith. • Any damage due to normal wear and tear, moths, insects, vermin, mildew, inherent defect or any other gradually operating cause of the item(s). • Any damage caused by the item(s) being used after any fault becomes apparent. • Any reduction in market value following repair or re instatement of the item(s). • Any repair or replacement of components which were faulty or had suffered a breakdown prior to the start date of this cover. • Any item more specifically insured by any other policy or guarantee (i.e. manufacturer guarantee).

What is not covered?	• Any loss arising from change in broadcast/reception technology, but not occasioned by any manufacturing or workmanship defect. • Externally Caused Damage not covered (it is covered under Own Damage) • Any loss or damage arising out of external cause, including but not limited to fire, theft, explosion, water damage, act of god perils, riot, strike, malicious damage, terrorism etc or any other peril(s) insurable under other policy. • Any loss or damage to accessories/remote(s) used in connection with the item(s) that were not supplied at the time of purchase of the item(s). • Any loss arising from improper storage, transportation, delivery or installation/re-installation of the item(s). • The cost of installing any optional attachment/accessory to the item(s). • Any loss arising out of mechanical and/or electrical breakdown caused by overloading, strain, overrunning, freezing, excessive pressure, short circuiting, over heating of the item(s). • Any loss or damage due to use of non-genuine parts other than approved and/or supplied by the manufacturer. • Any loss or damage caused by or arising out of the willful acts or omission or gross negligence of the Insured/Insured Person and/or Insured's/Insured Person's family and/or employees of the Insured/Insured Person or employees or anyone one on behalf of the insured. • Any replacement or repair of the entire item(s) arising out of any loss or damage of any part or component which is/are covered under the policy and is unavailable in the market. The liability in such a case will be restricted only to the value of the damaged part(s) or component(s) or the item(s). • Any cost of diagnostic or dismantling nature, unless accepted as part of an authorized claim. • Any loss due to any person obtaining the item(s) by deception. • Any breakdown to a component or components of the item(s) which are either subject to recall by Manufacturer or can be considered as having inherent design faults. • Any claim arising out of any detention, seizure or confiscation by any legal authorities. • Any consequential loss of any kind and/or legal or contractual liability of any kind by or on behalf the Insured, other than the terms & conditions of the manufacturer's warranty. • Any loss arising out of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel. • Any loss directly or indirectly occasioned by or happening through or in consequence of war, invasion act of foreign enemy, hostilities (whether war be declared or not),

REVOLUTIONIZING AGRICULTURAL INSURANCE: PMFBY'S JOURNEY AND SATHI'S VISION FOR TOMORROW

Pradeep Rajendran
Insurance Compliance & Product Analyst
United Nations Development Programme

Paradigm Shift towards Digital Excellence and Comprehensive Rural Protection

In the dynamic landscape of Indian agriculture, the Department of Agriculture and Farmers' Welfare (DA&FW), Government of India, has orchestrated a groundbreaking narrative in insurance. As the Pradhan Mantri Fasal Bima Yojana (PMFBY) completes its eighth year, a new chapter unfolds with the introduction of SATHI—an avant-garde Insurance Digital Platform that extends the horizon of coverage beyond crops.

PMFBY's Journey

Since its inception in 2016-17, the Pradhan Mantri Fasal Bima Yojana (PMFBY) has emerged as a pivotal force in providing agricultural risk insurance coverage to Indian farmers. In its 8th year, the program has witnessed significant milestones, processing over 56 crore farmer applications and settling claims exceeding INR 1.54 lakh crore. PMFBY has become the largest global farmer participation insurance program and the third-largest segment in the General Insurance Industry. Over the years, the DA&FW has implemented crucial technological interventions, such as the National Crop Insurance Portal (NCIP), to streamline the end-to-end process from farmer enrollment to claim payments. The introduction of YES-TECH, WINDS, Digi-Claim-Payment Module, Krishi Rakshak Portal & Helpline (KRPH), and AIDE app has strengthened the program, enhancing transparency and trust in the ecosystem.

Technological interventions in PMFBY

The DA&FW has strategically addressed challenges through the National Crop Insurance Portal (NCIP), creating trust and transparency. Recent technological interventions include YES-TECH for yield estimation, WINDS for hyperlocal weather data, Digi-Claim-Payment Module for swift and automated claims settlements. The AIDE app further facilitates enrollment, taking PMFBY directly to farmers' homes. These innovations have not only facilitated seamless operations but have also contributed to the program's robustness in providing accurate agricultural risk insurance coverage.

Unified Package Insurance Scheme (UPIS)

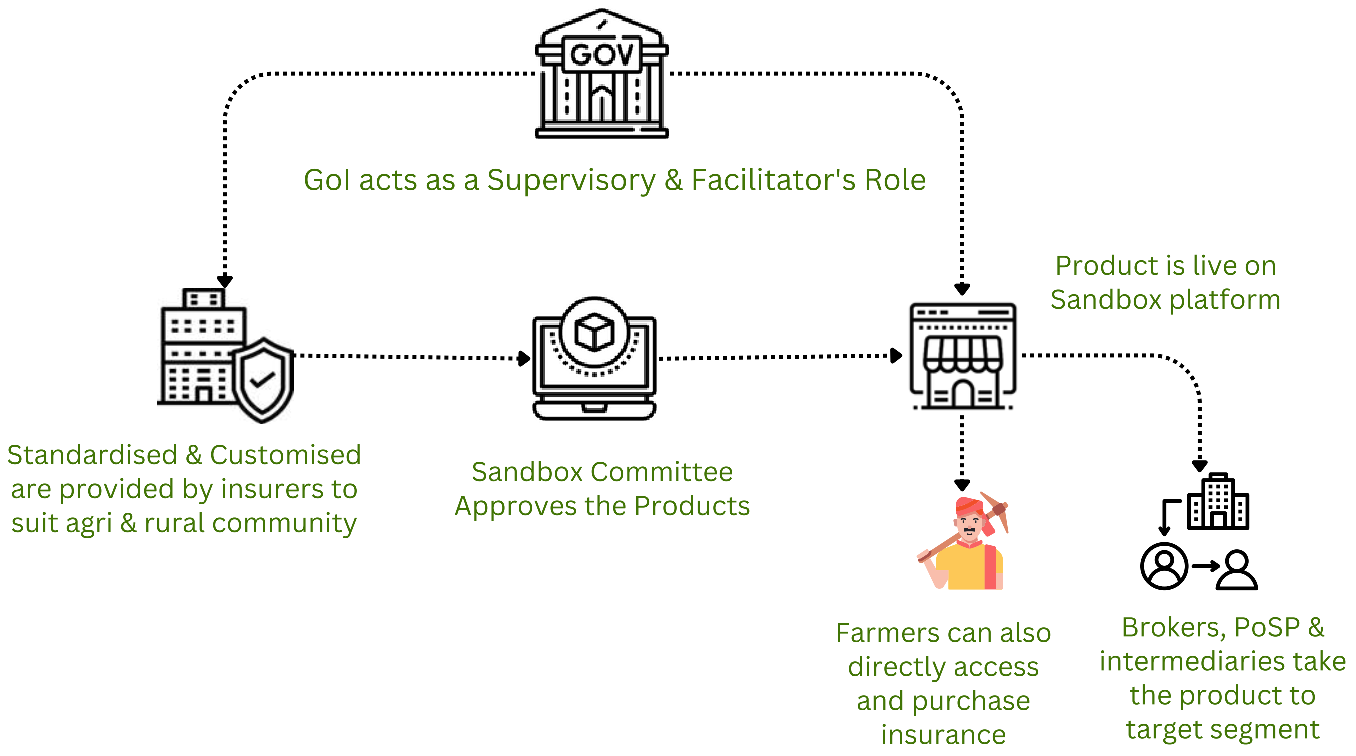
Simultaneously, UPIS was introduced with the vision of offering comprehensive insurance coverage beyond crop insurance. However, UPIS faced systemic challenges, hindering its scalability. The need for redefining UPIS's structure and components became apparent to align it with the evolving needs of farmers.

SATHI (Sandbox for Agriculture Security, Technology, and Insurance): Redefining Insurance Landscape for Rural India

In the pursuit of holistic rural protection, SATHI emerges as the next frontier. Beyond PMFBY Scheme, this Insurance Digital Platform leverages the technological prowess honed by PMFBY to offer comprehensive coverage for crops (Parametric & Indemnity), health, life, livestock and property insurance.

The digitization of the insurance journey under SATHI is a game-changer. It encompasses KYC digitization and automation, providing farmers with a secure ecosystem for entering information and uploading necessary documents. The platform offers a single window for all products and offerings, customized and filtered as per the farmer's profile. Premium collection and remittance are seamlessly integrated with digital payment options, ensuring a smooth transaction process. The platform also facilitates claim request initiation and disbursement, allowing farmers to digitally raise claims, track processing status, and resolve issues.

PMFBY and SATHI showcase India's commitment to revolutionizing agricultural insurance. From PMFBY's inception to SATHI's comprehensive digital platform, these initiatives reflect a progressive approach. They extend beyond crop insurance, offering diverse coverage options for the farming community.



Key Features of SATHI

- **Unified Insurance Hub:** SATHI simplifies complexity, offering health, motor, personal accident, home, and shop insurance through a single, user-friendly interface.
- **Empowered Decision-Making**: Farmers are no longer just beneficiaries; they are informed decision-makers, tailoring insurance choices to their unique requirements.
- **End-to-End Support:** Seamlessly guiding users through policy initiation to claims resolution, SATHI ensures a holistic and hassle-free experience.
- **Regional Language Support**: Accessibility is paramount. SATHI's interface is available in Indian regional languages, ensuring ease of use for all farmers.

The Digital Ecosystem: A Symphony of Innovation

MoA&FW's commitment to excellence extends to the creation of an open-source-based ecosystem for SATHI. This digital marvel integrates various insurance products seamlessly, offering a digitized journey with KYC automation, a single-window for all products, and digital premium collection.

Benefits for Stakeholders - SATHI's Impact

Farmers

- Personalized Journey: SATHI transforms farmers into active participants, offering a personalized and user-friendly interface.
- Informed Decision-Making: Empowered with information, farmers make informed choices from a diverse range of offerings, aligning them with their specific needs.
- Holistic Support System: Beyond policy issuance, SATHI provides comprehensive support throughout the insurance lifecycle, from seamless claims processing to grievance resolution.
- Regional Language Accessibility: SATHI's interface in regional languages ensures that every farmer, regardless of linguistic background, can effortlessly navigate the platform.

Insurers

- Access to Untapped Markets: SATHI opens doors to untapped rural markets, connecting insurers with a vast pool of potential customers.
- Diversified Portfolios: Insurers can broaden their portfolios beyond conventional crop insurance, curating add-ons and complementary offerings for the diverse needs of the rural populace.

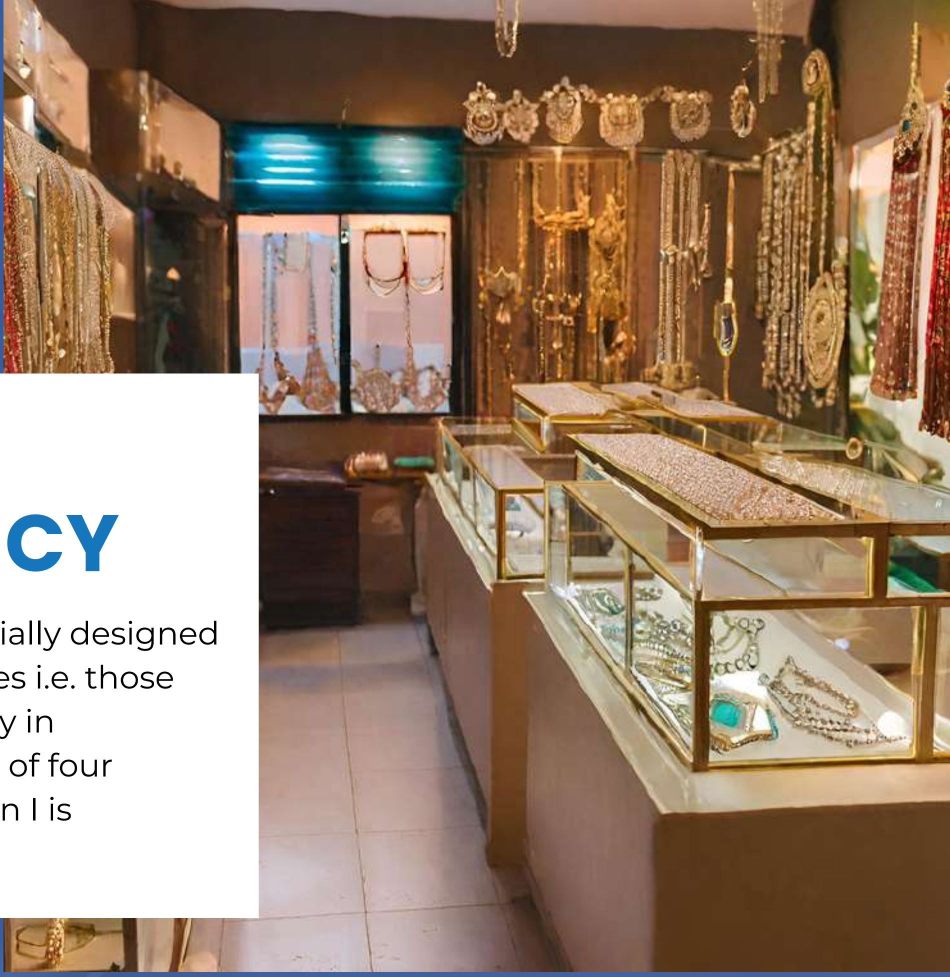
For Brokers and intermediaries

- Comprehensive Offerings: SATHI transforms intermediaries into comprehensive service providers, offering a one-stop solution through the AIDE app which is a fee free platform
- Portfolio Expansion: tap into unexplored rural markets, expanding portfolio and income streams while reducing operational costs for enhanced financial viability.

Learning Management System (LMS): Illuminating the Path Forward

1. Educational Tool: SATHI's LMS goes beyond tech, educating on insurance's transformative impact for farmers and rural communities.
2. Tailored Content Delivery: The advanced LMS efficiently educates stakeholders, especially brokers, on insurance intricacies and rural impact.
3. Awareness through Videos: LMS's explanatory videos highlight insurance's role in economic resilience, community development, fostering positivity in rural areas

The benefits embedded in the PMFBY and SATHI initiatives are not just transactional; but transformative. Every stakeholder, from farmers to insurers and brokers, stands to gain from this holistic approach to agricultural insurance, painting a picture of prosperity, empowerment, and sustainable growth.



JEWELLERS BLOCK POLICY

This is a package policy specially designed for jewellers and diamantaires i.e. those establishments dealing solely in diamonds. It usually consists of four sections of which only section I is compulsory

Sec. I	Covers loss or damage to jewellery, gold and silver ornaments or plates, pearls, precious stones, cash and currency notes whilst contained in the premises insured, by fire, explosion, lightning, burglary, house breaking, theft, hold up, robbery, riot, strike, malicious damage.
Sec. II	Covers loss or damage to jewellery, gold etc. as described in Section I whilst it is in the custody of the insured, his/her partners, employees, directors, sorters of diamonds or whilst such property (excluding cash and currency notes) is in the custody of brokers, agents, cutters and goldsmiths.
Sec. III	Covers loss or damage to property described in Section I whilst in transit by registered parcel post, air freight, professional couriers or through angadia.
Sec. IV	Covers loss or damage to trade and office furniture and fixtures in insured premises due to fire, explosion, lightning, burglary, house breaking, theft, hold up, robbery, riot, strike, malicious damage.
Add on Covers	1. Earthquake (Only for Section 1 & 4) 2. STFI (Only for Section 1 & 4) 3. Terrorism (Only for section 1 & 4) 4. Exhibitions and/ or Trade Fairs 5. Dishonesty of Cutters, goldsmiths, Refinery owners and Jewellery Manufacturer of insured's Property

General Exclusions

There can be numerous exclusions such as:

- Jewellery whilst being actually worked on, including cleaning, repairing etc.
- Found missing whilst stock taking is being done.
- Loss owing to mysterious circumstances, disappearance or for unexplained reasons.
- While being worn by anyone connected with the Jeweller including relatives or friends.
- Public Exhibition, except by the add-on cover as above.
- Depreciation, wear and tear, gradual depreciation etc.
- Theft from road vehicles when left unattended.
- Glass, crockery or any item of brittle nature etc.
- Loss by theft or dishonesty by family members, those in the employment of the insured, property entrusted to customer, broker, angadia, cutters or goldsmiths.
- Transit outside geographical limits, import or export of the Jewllery.
- Detention, confiscation, nationalisation etc. or destruction by the order of any public authority.
- Loss following use of key to the safe, strong room etc.
- Loss or damage while the jewellery is in window display at night or after business hours.
- Consequential loss and also any legal liability.
- War, nuclear etc. exclusions.
- Loss or damage to computer system records.
- Kimberley exclusion clause: This insurance excludes any loss, damage, cost or expense of whatsoever nature directly or indirectly arising from confiscation or seizure as a result of non-compliance with, or any breach of the requirements of the Kimberley Process Certification Scheme. The Kimberley Process Certification Scheme is a joint initiative of the various governments, international diamond industry and civil society to stem the flow of conflict diamonds - rough diamonds that are used by rebel movements to finance wars against legitimate governments.

Strict Clauses and Warranties

The policy will have a strict Record Keeping Clause, Storage at residence clause, CCTV Warranty, and Watchman Warranty.

Basis of Valuation: The basis of valuation for the purpose of this insurance shall be that which is stated in the schedule.

There are certain issues which has been brought before the courts:

Who is a customer?
Interpretation of exclusion 8 (c) “any customer or broker or their customer or angadias or cutters or goldsmiths in respect of the property hereby insured entrusted to them by the insured his or their servants or agents." Supreme Court of India in the case National Insurance Co. Ltd vs M/S Ishar Das Madan Lal (2007) stated “The word 'customer' contained in clause 8 (c) of the Insurance

Policy must be read ejusdem generis. A customer contemplated thereunder must have to be one who would be a man of trust. If a customer is not a man of trust or the property had not been entrusted to him, the exclusion clause would not apply. The customer who committed theft of jewellery was an unknown person. It was so categorically stated in the First Information Report. There was, thus, no occasion for the respondent to entrust the jewellery to him." The High Court from which the appeal went up also said the incident was plain theft.

Who is an employee?

In the case New India Assurance Co. Ltd vs M/S. Abhilash Jewellery (2009) decided by the Supreme Court the insurer repudiated the claim that the loss of gold was occasioned as it was in the custody of an apprentice, who was not an employee. The Court said that "since the word 'employee' has not been defined in the contract of insurance, we have to give it the meaning which it has in common parlance. In common parlance, an apprentice is a trainee and not an employee. Even if he is given a stipend, that does not mean that there is a relationship of master and servant between the firm and the apprentice." The SC overruled the NCDRC which said that "an apprentice is an employee because Section 2 (6) of the Kerala Shops and Commercial Establishments Act defines an employee to include an apprentice. The National Commission has also relied on the definition in the Employees State Insurance Act and some other enactments."

Policy condition issue

In the case United India Insurance Co. Ltd vs M/S. Orient Treasures Pvt. Ltd (2016), the Supreme Court had to rule on the repudiation of the claim on the ground that the stolen gold ornaments and silver articles were found to have been kept on display window and in the sales counters at the time of burglary which took place in the night of 02.06.1995, which according to appellant, was contrary to the terms of the policy and, therefore, not covered in the policy. The SC noted that "It was further stated that the policy was issued subject to the terms, conditions, warranties and exclusion printed in the proposal form which was a part of policy." The insurer relied on clause 12 of the policy that since the burglary in the shop took place during night and stolen articles kept in window display and lying out of safe in the shop were stolen, there was no liability for the insurer.

The SC referred to clauses 4 and 5 of the proposal and clause 12 of the policy. The fact that the insurer had "made it clear in the proposal form itself that "window display of articles at night is not covered". This clearly meant that the insurance coverage was given to the articles kept in "window display during day time in business hours" whereas insurance coverage was not given to the articles when they were kept in "window display at night". Hence the claim was disallowed.

INSURANCE OF SURETY BONDS

Insurance Surety Bonds are instruments where insurers act as 'Surety.' These Bonds provide a financial guarantee that the contractor, in construction or other fields, will fulfil its obligation as per the agreed terms. The Ministry of Finance, Government of India has made e-BG (Bank Guarantee) and Insurance Surety Bonds at par with BGs for all Government contracts and procurements.

Features of a Surety Bond

- A surety bond can be defined in its simplest form as a written agreement to guarantee compliance, payment, or performance of an act.
- It is a unique type of insurance because it involves a three-party agreement. The three parties in a surety agreement are:

  1. Principal – The party that purchases the bond and undertakes an obligation to perform an act as promised. In the case of contract, the principal is the contractor.
  2. Surety – The insurance company or surety company that guarantees the performance of the obligation. If the principal fails to perform the act as promised, the surety is contractually liable for losses sustained
  3. Obligee - The party who requires, and often receives the benefit of the surety bond.

- Surety bond is provided by the insurer on behalf of the contractor to the entity that is awarding the project.
- It will help contractors to have financial closure of their projects without depending upon only bank guarantees.

The aim of Surety bonds is to promote infrastructure development, mainly to reduce the indirect cost entailed by suppliers and work contractors thereby diversifying their options. These bonds act as a substitute for bank guarantee.

1. Surety bonds protect the beneficiary against acts or events that impair the underlying obligations of the principal i.e., contractor.
2. They guarantee the performance of a variety of obligations, from construction or service contracts to licensing and commercial undertakings.

How can it Boost the Infra Project?

- The move to introduce surety contracts by insurers will help address the large liquidity and funding requirements of the infrastructure sector.
- It will create a level-playing field for large, mid and small contractors.
- The Surety insurance business will assist in developing an alternative to bank guarantees for construction projects.
- This will also enable the efficient use of working capital and reduce the requirement of collateral to be provided by construction companies.
- Insurers will work together with financial institutions to share risk information.

Hence, this arrangement will assist in releasing liquidity into the infrastructure space without compromising on risk aspects.

IRDAI (Surety Insurance Contracts) Guidelines, 2022

By circular ref.: IRDAI/NL/GDL/SIC/01/01/2022, dated 3rd January, 2022, guidelines to regulate and develop Surety Insurance business were issued by IRDAI. All insurers are to be comply with these guidelines. The guideline mentions the following:-

Essential Features of Surety Insurance contract

a) It shall be a contract of guarantee under Section 126 of the Indian Contract Act, 1872. It is a contract to perform a promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the “Surety;” the person in respect of whose default the guarantee is given is called the “principal debtor,” and the person to whom the guarantee is given is called the “creditor”.

b) A contract of Surety will be deemed to be an insurance contract only if made by a Surety who or which, is an insurer registered under the Insurance Act, 1938 to transact the business of general insurance.

The IRDAI also listed the Types and Definitions of Surety Contracts. They are:

- Advance Payment Bond: It is a promise by the Surety provider to pay the outstanding balance of the advance payment in case the contractor fails to complete the contract as per specifications or fails to adhere to the scope of the contract.

- Bid Bond: It is an obligation undertaken by a bidder promising that the bidder will, if awarded the contract, furnish the prescribed performance guarantee and enter into contract agreement within a specified period of time. It provides financial protection to an obligee if a bidder is awarded a contract pursuant to the bid documents, but fails to sign the contract and provide any required performance and payment bonds.

- Contract Bond: It provides assurance to the public entity, developers, subcontractors and suppliers that the contractor will fulfil its contractual obligation when undertaking the project. Contract bonds may include: Bid Bonds, Performance Bonds, Advance Payment Bonds and Retention Money.

- Customs and Court Bond: This is a type of guarantee where the obligee is a public office such as tax office, customs administration or the court, and it guarantees the payment of a public receivable incurred from opening a court case, clearing goods from customs or losses due to incorrect customs procedures.

- Performance Bond: It provides assurance that the obligee will be protected if the principal or contractor fails to perform the bonded contract. If the obligee declares the principal or contractor as being in default and terminates the contract, it can call on the Surety to meet the Surety's obligations under the bond

- Retention Money: It is a part of the amount payable to the contractor, which is retained and payable at the end after successful completion of the contract.

Underwriting Guidelines

The important Underwriting Guidelines stipulated by IRDAI are as under:

1. Surety Insurance Contracts may be offered to infrastructure projects of Government/Private Sector in all modes.
2. The Contract Bonds may include Bid Bonds, Performance Bonds, Advance Payment Bonds and Retention Money.
3. Apart from Contract Bonds, the insurers may underwrite Customs or Tax Bonds and Court Bonds.
4. The limit of guarantee shall not exceed 30 percent of the contract value.
5. Surety Insurance contracts shall be issued only to specific projects and not clubbed for multiple projects.
6. The insurer shall not issue any Surety Insurance contracts on behalf of its promoters/their subsidiaries, groups, associates and related parties.
7. The insurer shall not enter into “alternate risk transfer” mechanism.
8. No Surety Insurance contract shall cover Financial Guarantee in any form. Financial Guarantee comprises of any bond, guarantee, indemnity or insurance, covering financial obligations in respect of any type of loan, personal loan and leasing facility, granted by a bank/credit institution, financial institution or financier, or issued or executed in favour of any person or legal entity in respect of the payment or repayment of borrowed money or any contract, transaction or arrangement, the primary purpose of which is to raise finance or secure sums due in respect of borrowed money.
9. The insurer shall ensure that no single risk and aggregate risk is disproportionate to the capital of the insurer.
10. Surety Insurance contracts shall be issued in compliance with applicable laws.
11. Surety Insurance contracts shall not be issued where the underlying assets / commitment are/is outside India. Further, the payment for risk covered under the Surety Insurance contracts will also be made in Indian rupees.

Broker's duties and breach of those duties

In India there has been no landmark judgements on this issue. Even then there is a need to have an insight into the types of errors and omissions that could be made by negligent insurance brokers that can give rise to a successful claim. In the UK there have been cases which examined that can give examples.

In the case Ground Gilbey Ltd & Anor v Jardine Lloyd Thompson UK Ltd [2011] EWHC 124 (Comm), the claimants were the owners of Camden Market in London, where a substantial fire occurred after an LPG portable heater was left 'on' in one of the stalls. The claimants claimed against their insurance policy, but cover was declined on the grounds that they had failed to comply with a Risk Improvement Measure (RIM) requiring the immediate removal of all such heaters. The court said that "a broker owes his client a duty to take reasonable steps to obtain a policy which clearly meets his client's needs and is suitable for the client. An aspect of that is that the client should not be exposed to an unnecessary risk of legal disputes with the insurer." The court further said that "The broker owes his client a duty to draw to the client's attention any onerous or unusual terms or conditions, and should explain to the client their nature and effect. After the risk has been placed, the continuing duty is exemplified by HIH Casualty & General Insurance Ltd v JLT Risk Solutions Ltd in which Longmore LJ stated that, "an insurance broker who, after placing the risk, becomes aware of information which has a material and potentially deleterious effect on the insurance cover which he has placed is under an obligation to act in his client's best interest by drawing it to the attention of his client and obtain his instructions in relation to it".

It is essential that a Broker's duty extends to ensuring that the insured does not find himself with "doubtful or uncertain rights" when he should have had a "clear, unequivocal right". Of greater concern is what this means for insurance brokers who operate in a world where business risks and indeed insurance products are becoming increasingly complex. Courts have noted that "the risk of litigation can never be wholly avoided and a broker is not in breach of duty in consequence alone of insurers putting forward a spurious construction of the cover", major claims where coverage is "clear and unequivocal" are rare – particularly in cases involving complex or untested scenarios. The position is compounded where insurers take arguable, but ultimately weak, policy points as part of a negotiating tactic.

In Alexander Forbes Europe Ltd v SBJ Limited ([2002] All ER (D) 349) the court held that brokers have a duty "going beyond being a post box merely looking at a heading and passing material on". It was for the Broker to "get a grip on the proposed notification, to appraise it and to ensure that the information was relayed to the right place and in the correct form". The concerned Broker was found liable because they failed to show reasonable care in a situation where the Broker "as a company was well aware of the existence of the two separate policies and in 1994 had recently negotiated both of them".

The court held that "quibbles about letterheads, headings and references to the Group are no answer when SBJ was closely aware of and had negotiated E&O cover for the Group". It was felt that broker firms have a duty to be alert to possible desirable actions in response to correspondence from a client and must have a firm-wide strategy in place which ensures that when such information is received from clients, the broker is alive to making such notifications accurately and promptly. They have to consider what they receive and give advice in the context of their overall knowledge, even where the client is himself a broker and so could be expected to have similar knowledge.

In the case of Standard Life Assurance Ltd v OAK Dedicated Ltd & Others the claimant sued both the insurer and the Broker. The insured was found guilty of mis-selling mortgage endowment policies and had paid compensation to over 97,000 investors. Although the individual payments averaged less than £10,000, collectively they totalled over £100 million. When the claimant sought to recover these payments under its own professional indemnity insurance policy, its insurers asserted that a policy excess of £25 million applied to each investor claim, meaning that no claim stood payable as per policy terms. The court found that the insurers had correctly applied the policy excess, but also that the ability to aggregate investor claims was critical to the claimant and that the insurance brokers had been negligent in arranging insurance cover which did not provide for this.The court said: 'It is the duty of a broker to identify and advise about the type and scope of cover which the client needs and, in doing so, to match as precisely as possible the risk exposures that have been identified within the client's business with the coverage available.'

In the case McNealy v Pennine Insurance Co Ltd & Others, [1978] 2 Lloyd's Rep. 18, the claimant, a property repairer and part-time musician, asked the Broker to arrange a motor insurance policy. Upon being asked what his occupation was, the claimant advised that he was a property repairer. The defendant then placed cover with an insurance company offering low rates to a restricted class of motorist, which excluded 'whole or part-time musicians'. When a claim had to be made the insurer rejected the claim. Upon suing the Broker, the court concluded that the broker had known about the exclusions to the policy. It also found that the broker had been negligent in failing to ascertain from the claimant and disclose to the insurer the material fact that the claimant was a part-time musician. The court stated that: 'It was clearly the duty of the broker to use all reasonable care to see that the assured, Mr McNealy, was properly covered...the judge was quite right. The broker was liable for not taking proper care to effect the insurance, and he is therefore liable for the full amount of the claim.'

In the case Transport & Trading Co Ltd v Olivier & Co Ltd (1925) 21 Ll.L. Rep. 379, the claimant had instructed the Broker to arrange insurance for a vessel owned by the claimant. The cover among other things required Particular Average Loss. When the ship was in Algiers, a fire broke out. However, when the claimant sought to make a claim against its policy, the brokers were unable to produce a copy of it. The insured filed a professional negligence case against the broker. The court found that the Broker had not insured the risk at all. The court in this case awarded the claimant the amount it had paid by way of policy premium which, unusually in this case, was greater than the value of the claim.

CLAIM REPUDIATION GUIDE

Repudiation letters will most likely come under Court scanner and are scrutinized to understand a) the reasons for repudiation, b) the factual/legal basis for reaching the decision. Hence the repudiation letter received should be studies by the insured and their legal/insurance advisors.

Often, as the hearing in a case commences, the Court looks for the repudiation letter to understand why a claim was declined. A reading of the letter at that stage itself creates a definitive impression in the mind of the Court which appears to linger and have its own effect through the proceeding, irrespective of the skill of the lawyer who may represent and argue the matter further.

If the insurer has issued a detailed and well drafted repudiation letter, the same would help their cause. A weak or unclear communication (lacking in content or substance) is of advantage to the insured and indicates that the claim had real merit and the insurer is on a weak wicket. Apart from lack of clarity in the letter, omission to take all the available grounds may also cause a Court to reject fresh grounds being raised later. This can make the claim payable.

The Supreme Court of India in the case M/S Galada Power & Telecomun. Ltd. vs United India Insurance Co. Ltd. (2016), clearly upheld this rule by asserting that: "Additionally, as has been stated earlier, in the letter of repudiation, it only stated that the claim lodged by the insured was not falling under the purview of transit loss. Thus, by positive action, the insurer has waived its right to advance the plea that the claim was not entertainable because conditions enumerated in duration clause were not satisfied."

This was reiterated by the SC in the case Saurashtra Chemicals ... vs National Insurance Co. Ltd. (2019): "22. Hence we are of the considered opinion that the law as laid down in 'Galada' on issue (2) still holds the field. It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC."

Therefore, if speaking repudiation letters are deficient the insured has right to take up review in various courts.

In general terms, it may be seen that

In dealing with the grounds, repudiation letters would be based on one or more of the following (or any other reason as may arise in particular cases) viz.,

a) The contract of insurance was not valid or void and as such there was no liability for the Insurer under the same
b) That there was no loss as claimed that has been found after due survey/ investigation
c) No covered peril has operated for admission of claim
d) the loss fell within the scope of any exclusion and as such not payable
e) There has been breach of condition(s) of the Policy as a result of which the Insured was not entitled to the claim
f) That the quantum of loss had been grossly exaggerated to such extent making the claim fraudulent.
g) Any other relevant ground arising from terms contained in the policy.

Relevant factors

While referring to relevant aspects, insurer may be found referring also to the following: -

1. Reference to the documents / expert opinion that have been obtained from experts/ authorities on which reliance is placed.
2. In case of for lack of documents / clarifications provided by the Insured, the efforts taken and reference to reasonable opportunity given to Insured to provide the same.
3. Here the insured was not able to substantiate the loss or prove the extent of loss as covered under the Policy, repudiation should clearly state the requirements and the lack of proof.

It is important the repudiation letter must be final after considering all the circumstances. If not, the insured has a case.

It is necessary that while repudiating, the Grievance Redressal procedure may also be informed.

Insurers when they feel that they may not be fully aware of all facts, or new grounds may occur later in the context of any further materials.

In such instances, it is customary that they use reservation clause in repudiation letters possibly in the following manner: "The above repudiation is based on the facts and circumstances presently known. We reserve the right to amend, modify, alter or place reliance on additional grounds / reasons for the said repudiation when necessary."

Health Claims

In the context of health claims, it is usual to find disputes and litigations out of repudiation on the ground of pre-existing diseases.

In many cases, insureds would find it difficult to agree with the way by which the pre-existing exclusion is sought to be applied. For instance a claim for heart surgery is rejected not because the person had heart ailment earlier but because he was suffering from Hypertension or Diabetes.

Inference is drawn that the heart ailment is caused by Hypertension/Diabetes and therefore it is to be considered a complication and hence pre-existing. It can be difficult for insurers to answer a Court which asks whether every Hypertensive suffers Heart complication or whether every Heart patient is Hypertensive and if not, how a certain connection is being made between Heart ailment and Hypertension (/Diabetes).

Brief one-liner repudiation letters, if issued in any claim, especially health insurance claims, not only violate the IRDAI Regulations, but are also against natural justice and public policy. Similar is the result if insurers use stereotyped forms and get them filled up with some words in the middle. Insureds must examine them because they would be deficient and against the interests of the insured.

PROPOSAL FORM, DISCLOSURE AND OVER THE COUNTER INSURANCE

The case Aro Road and Land Vehicle Limited v. Insurance Corporation of Ireland [1986] IESC 1, by the Supreme Court of Ireland offers very good interpretation of the above issues. This case related to Marine Transit of motor vehicle parts where the Broker arranged the insurance with the insurers. The court recorded that the "The insured company reluctantly took out insurance on the goods…". Hardly any disclosures were sought by the insurer. The court recorded in para 7: "It is well established that the duty of disclosure (where such duty applies) ceases to exist as soon as the contract is concluded: see Whitwell v. Autocar Fire and Accident Assurance Co. Ltd. (1927) 27 LI.L.Rep. 418 and Looker v. Law Union Insurance [1928] 1 KB. 554."

Four loads of goods were arranged, and three of those loads safely reached their destination, but one container was hijacked by a man with a pistol. It was set on fire and its contents destroyed. The insured had to file a court case to get compensation and as recorded by the court: "at the end of the hearing the sole issue was whether the insurers were entitled to repudiate liability on the ground that, before the policy was effected, Mr. Mansfield, the managing director of and main shareholder in the insured company, had not disclosed that in 1962 he had been convicted of ten counts of receiving stolen motor parts and sentenced to twenty-one months imprisonment. It was established that the convictions and sentence took place and that they were not disclosed to the insurers, but it was not shown that Mr. Mansfield had anything to do with the malicious destruction near Newry of the container of goods. This defence was entirely a technical one under the law of insurance."

Issue of non-disclosure

The SC found fault with the High Court where the Judge "while personally of opinion that Mr. Mansfield's non-disclosure of his convictions and imprisonment was not material, deferred to the expert opinion given, that a reasonable and prudent underwriter would regard that matter as material..." The SC was clear that in this case the concerned disclosure was not required. It said:

"12. Generally speaking, contracts of insurance are contracts uberrime fidei, which means that utmost good faith must be shown by the person seeking the insurance. Not alone must that person answer to the best of his knowledge any question put to him in a proposal form, but, even when there is no proposal form, he is bound to divulge all matters within his knowledge which a reasonable and prudent insurer would consider material in deciding whether to underwrite the risk or to underwrite it on special terms.

13. That is the general rule. Like most general legal rules, however, it is subject to exceptions. For instance, the contract itself may expressly or by necessary implication exclude the requirement of full disclosure. It is for the parties to make their own bargain – subject to any relevant statutory requirements – and if the insurer shows himself to be prepared to underwrite the risk without requiring full disclosure, he cannot later avoid the contract and repudiate liability on the ground of non-disclosure."

Example of Over-the-Counter Insurance

"14. An example of a contract of insurance which excludes full disclosure is where the circumstances are such as to preclude the possibility of full disclosure; or where the requirement of full disclosure would be so difficult, or so impractical, or so unreasonable, that the insurer must be held by his conduct to have ruled it out as a requirement. This is exemplified by many forms of what I may call "over-the-counter insurance." Because this case is concerned only with fire and theft cover, I am addressing myself only to property insurance. Many concerns, such as airlines, shipping companies and travel agents – acting as agents for an insurance company and usually under the umbrella of a master policy – are prepared to insure travellers or consignors of goods in respect of luggage or of goods consigned, in circumstances in which full disclosure is neither asked for nor could reasonably be given effect to. The time factor, if nothing else, would rule out the requirement of full disclosure in many instances: an air traveller who buys insurance of his luggage in an airport just before boarding an aeroplane could not be expected to have time to make disclosure of all material circumstances.

Insurance sold in that way obviously implies a willingness on the part of the insurer to provide the cover asked for without requiring disclosure of all material circumstances. The question in this case is whether this insurance, which the judge has held was entered into by Mr. Mansfield's company in good faith and without any intention to defraud, was attended by circumstances which show that the insurers are precluded from claiming that full disclosure was a prerequisite of a valid contract of insurance."

Another Judge of the Court McCarthy J. was even more caustic. He stated: "23. In my view, if the judgment of an insurer is such as to require disclosure of what he thinks is relevant but which a reasonable insured, if he thought of it at all, would not think relevant, then in the absence of a question directed towards the disclosure of such a fact, the insurer, albeit prudent, cannot properly he held to be acting reasonably. A contract of insurance is a contract of the utmost good faith on both sides; the insured is bound to disclose every matter which might reasonably he thought to be material to the risk against which he is seeking indemnity; that test of reasonableness is an objective one not to be determined by the opinion of underwriter, broker or insurance agent, but by, and only by, the tribunal determining the issue. Whilst accepted standards of conduct and practice are of significance in determining issues of alleged professional negligence, they are not to be elevated into being an absolute shield against allegations of malpractice —see O'Donovan v. Cork County Council [1967] I.R. 173 and Roche v. Peilow [1985] I.R. 232. In disputes concerning professional competence, a profession is not to be permitted to be the final arbiter of standards of competence. In the instant case, the insurance profession is not to be permitted to dictate a binding definition of what is reasonable."

Insured may not know what the Insurer wants

Further he ruled: "28. If the determination of what is material were to lie with the insurer alone, I do not know how the average citizen is to know what goes on in the insurer's mind, unless the insurer asks him by way of the questions in a proposal form or otherwise. I do not accept that he must seek out the proposed insurer and question him as to his reasonableness, his prudence, and what he considers material. The proposal form will ordinarily contain a wide ranging series of questions followed by an omnibus question as to any other matters that are material. In the instant case, if Mr. Mansfield had ever had the opportunity of completing a proposal form, which, due to the convenient arrangement made between the insurers and C.I.E., he did not, there is no reason to think that he would have recounted petty convictions of about 20 years before the time."

Further Comments on Over-the-Counter Insurance

"29. There is a second ground upon which, also, in my view the plaintiff is entitled to succeed. Without detracting from what I have said in respect of the general law of insurance, in my judgment, that law is materially affected by over-the-counter insurance such as found in cases of the present kind, in other forms of transit and in personal travel, including holiday insurance. If no questions are asked of the insured, then, in the absence of fraud, the insurer is not entitled to repudiate on grounds of non-disclosure. Fraud might arise in such an instance as where an intending traveller has been told of imminent risk of death and then takes out life insurance in a slot machine at an airport. Otherwise, the insured need but answer correctly the questions asked; these questions must he limited in kind and number; if the insurer were to have the opportunity of denying or loading the insurance one purpose of the transaction would he defeated. Expedition is the hallmark of this form of insurance."

INSURANCE AND THE USE OF STANDARD FORM CONTRACTS

The case C & J Fertilizer, Inc. v. Allied Mutual Insurance Co, 227 N.W.2d 169 (1975), by the Supreme Court of Iowa explains why Standard Form Contracts (policies) are required in the insurance sector.

Standard Form Contracts are used everywhere

The court quoted from W. Slawson, Standard Form Contracts and Democratic Control of Lawmaking Power, 84 Harv. Law .Rev. 529 (1971) that: "Standard form contracts probably account for more than ninety-nine percent of all contracts now made. Most persons have difficulty remembering the last time they contracted other than by standard form; except for casual oral agreements, they probably never have.

But if they are active, they contract by standard form several times a day. Parking lot and theatre tickets, package receipts, department store charge slips, and gas station credit card purchase slips are all standard form contracts. "* * * "* * * The contracting still imagined by courts and law teachers as typical, in which both parties participate in choosing the language of their entire agreement, is no longer of much more than historical importance."

Insurance Policy is a 'take it or leave it' contract

With respect to those interested in buying insurance, it has been observed that:

"His chances of successfully negotiating with the company for any substantial change in the proposed contract are just about zero.

The insurance company tenders the insurance upon a `take it or leave it' basis. Few persons solicited to take policies understand the subject of insurance or the rules of law governing the negotiations, and they have no voice in dictating the terms of what is called the contract. They are clear upon two or three points which the agent promises to protect, and for everything else they must sign ready-made applications and accept ready-made policies carefully concocted to conserve the interests of the company. The subject, therefore, is sui generis, and the rules of a legal system devised to govern the formation of ordinary contracts between man and man cannot be mechanically applied to it.'" 7 Williston on Contracts § 900, pp. 29-30 (3d Ed. 1963).

The court continued: “It is generally recognized the insured will not read the detailed, cross-referenced, standardized, mass-produced insurance form, nor understand it. 7 Williston on Contracts § 906B, p. 300 ("But where the document thus delivered to him is a contract of insurance the majority rule is that the insured is not bound to know its contents"); 3 Corbin on Contracts § 559, pp. 265-66 ("One who applies for an insurance policy * * * may not even read the policy, the number of its terms and the fineness of its print being such as to discourage him").

The role of courts is explained: “But the inevitable result of enforcing all provisions of the adhesion contract, frequently, as here, delivered subsequent to the transaction and containing provisions never assented to, would be an abdication of judicial responsibility in face of basic unfairness and a recognition that persons' rights shall be controlled by private lawmakers without the consent, express or implied, of those affected.... A question is also raised whether a court may constitutionally allow that power to exist in private hands except where appropriate safeguards are present, including a right to meaningful judicial review.”

Regulator’s Role

The court noted the role of the Regulator called Commissioner of Insurance in USA: “The statutory requirement that the form of policies be approved by the commissioner of insurance.

The Code, neither resolves the issue whether the fine print provisions nullify the insurance bargained for in a given case nor ousts the court from necessary jurisdiction. See, e. g., Benzer v. Iowa Mutual Tornado Insurance Ass'n, 216 N.W.2d 385 (Iowa 1974); Union Ins. Co. (Mutual) v. Iowa Hardware Mut. Ins. Co., 175 N.W.2d 413 (1970). In this connection it has been pertinently stated:

"Insurance contracts continue to be contracts of adhesion, under which the insured is left little choice beyond electing among standardized provisions offered to him, even when the standard forms are prescribed by public officials rather than insurers. Moreover, although statutory and administrative regulations have made increasing inroads on the insurer's autonomy by prescribing some kinds of provisions and proscribing others, most insurance policy provisions are still drafted by insurers. Regulation is relatively weak in most instances, and even the provisions prescribed or approved by legislative or administrative action ordinarily are in essence adoptions, outright or slightly modified, of proposals made by insurers' draftsmen. "Under such circumstances as these, judicial regulation of contracts of adhesion, whether concerning insurance or some other kind of transaction, remains appropriate."

The mass-produced boiler-plate "contracts," necessitated and spawned by the explosive growth of complex business transactions in a burgeoning population left courts frequently frustrated in attempting to arrive at just results by applying many of the traditional contract-construing stratagems.

Reasonable Expectations of Insured

The court found from Restatement (Second) of Contracts, the following analysis of the reasonable expectations doctrine: "Although customers typically adhere to standardized agreements and are bound by them without even appearing to know the standard terms in detail, they are not bound to unknown terms which are beyond the range of reasonable expectation. A debtor who delivers a check to his creditor with the amount blank does not authorize the insertion of an infinite figure. Similarly, a party who adheres to the other party's standard terms does not assent to a term if the other party has reason to believe that the adhering party would not have accepted the agreement if he had known that the agreement contained the particular term. Such a belief or assumption may be shown by the prior negotiations or inferred from the circumstances. Reason to believe may be inferred from the fact that the term is bizarre or oppressive, from the fact that it eviscerates the non-standard terms explicity agreed to, or from the fact that it eliminates the dominant purpose of the transaction. The inference is reinforced if the adhering party never had an opportunity to read the term, or if it is illegible or otherwise hidden from view. This rule is closely related to the policy against unconscionable terms and the rule of interpretation against the draftsman."

UNFORESEEN AND SUDDEN PHYSICAL DAMAGE

Various Views of Courts

In the case Anderson & Middleton Lumber Co. v. Lumbermen's Mutual Casualty Co., 53 Wn.2d 404 (1959) 333 P.2d 938, the Supreme Court of Washington explained: “[2] The word "sudden" is defined in Funk & Wagnalls Standard Dictionary of the English Language as, "happening quickly and without warning; coming unexpectedly or in an instant; as, sudden death; sudden dismissal." In Webster's New International Dictionary (2d ed.), it is defined: "Happening without previous notice or with very brief notice; coming or occurring unexpectedly; unforeseen; unprepared for; as, a sudden shower, death, emergency, turn for the better, or attack of the enemy.

The purpose of the contract was to insure the respondent against an accidental breakdown of the equipment covered by the policy. The word "sudden" was, of course, placed in the contract for a purpose. Is it more reasonable to assume that it was placed there to show an intent to exclude coverage of a break which did not happen instantaneously, or to exclude coverage of a break which was unforeseen and therefore unavoidable? It seems to us that the risk to the insurer would be the same, whether a break was instantaneous or began with a crack which developed over a period of time until the final cleavage occurred, as long as its progress was undetectable

On the other hand, the insured should not be permitted to proceed recklessly and hold the insurer liable for damage if it had been forewarned of a possible break and could have taken steps to forestall it or avoid an interruption of business resulting therefrom."

Sudden does not mean instantaneous but unforeseen and unexpected
"[3, 4] A contract of insurance should be construed to effectuate its purpose, just as any other contract. There is no suggestion that the policy was not meant to cover breakage resulting from latent defects in the machinery or from fatigue. The cause is not, nor is the result, one which it is claimed is excluded. It is only contended that the result, in order to be within the coverage of the policy, must have happened instantaneously. We do not so construe the word "sudden," when its primary meaning, in common usage, is not "instantaneous" but rather "unforeseen and unexpected." There is no suggestion that the break could have been foreseen and certainly no evidence that it was. According to the evidence, until just before the wheel was removed from the shaft and the break was discovered, the only suspected cause of the oscillation and vibration was the looseness of the wheel on the shaft. We conclude that the trial court was justified in finding that a sudden break occurred within the meaning of the policy."

Another view: Actual Damage must be sudden rather than the cause

In the case Pacific Chemicals Pte Ltd v MSIG Insurance (Singapore) Pte Ltd and another [2012] SGHC 198, the High Court of Singapore stated:

"The words of Section I of the Policy state that it is the loss or damage that must be sudden and unforeseen, rather than the cause thereof. Loss or damage which results from an unforeseen cause may (more often than not) be also unforeseen, but the nature of the loss or damage that results may itself not be sudden. It is the nature of the physical loss or damage that is the focus of the inquiry in this case. I agree with the view of the Supreme Court of the Australian Capital Territory in Vee H Aviation Pty Ltd v Australian Aviation Underwriting Pool Pty Ltd (No SC 61 of 1995) ("Vee H Aviation") in which it drew a distinction between the nature and cause of the loss or damage. In Vee H Aviation, the policy provided that the defendant would indemnify the plaintiff for the costs of rectification arising from a "Breakdown" of the plaintiff's aircraft engine. Breakdown was defined as "sudden and unforeseen damage resulting from (a) Breaking seizing or burning out of Aircraft Engine parts, vibration, ... excessive electrical current or voltage, failure of insulation, short circuit or arcing... (b) Failure of protecting, measuring or regulative devices or failure of or failing in connected equipment of any Aircraft Engine." The Supreme Court of the Australian Capital Territory noted (at [17]) that:

In the present policy, it is the damage that must be sudden. The definition clearly contemplates that the cause of the damage may be something that has been taking place over a period of time, such as the wearing out or loosening of a part, or fatigue. ... The definition of Breakdown used in this particular policy required that the damage, as distinct from the cause of it, should be both sudden and unforeseen. ...

Nature of Loss to be distinguished from cause

The High Court (Kuala Lumpur) in Bina Puri Sdn Bhd v MUI Continental Insurance Bhd (formerly known as MUI Continental Insurance Sdn Bhd) [2010] 1 MLJ 347 ("Bina Puri") at [88]–[92] and the Supreme Court of Appeal of South Africa in African Products (Pty) Ltd v AIG South Africa Limited [2009] ZASCA 27 ("African Products") at [24]–[25] were also of the view that where the words "sudden and unforeseen physical loss or damage ... from any cause" are used, the court examines the nature of the loss or damage separately from its cause.The Plaintiff relied on the Supreme Court of Washington's decision in Anderson & Middleton Lumber Company v Lumbermen's Mutual Casualty Company 333 Pacific Report (2d) 938 (1959) ("Anderson") in arguing that there was nothing in the Policy to suggest that it was not intended to cover loss or damage resulting from a gradual cause. I am of the view that Anderson does not support and in fact undermines the Plaintiff's argument. The policy in Anderson protected the insured against loss occasioned by an accident, "defined as sudden and accidental breaking of the bandsaw wheel, or any part thereof...". The Supreme Court of Washington focused on the nature of the breaking and cracking of the wheel and considered whether it was "sudden" rather than the cause of the breakage. The insured in that case also argued that the contract was concerned with "the result, and not... the cause of the accident". Mr Ling contends that "deductibles applicable to Section 1 of the Policy set out in the Policy Schedule include loss in respect of 'Fraudulent or Dishonest Act of Employees'... which can hardly be considered to be an instantaneous event". This argument does not detract from fact that coverage under Section I of the Policy pertains to unforeseen and sudden physical loss or damage.

Unforeseen v unforeseeable

"9 The word "unforeseen" is commonly understood to mean "unexpected" or "unanticipated". The parties agreed that the inquiry is a subjective one, i.e. whether the loss or damage was foreseen by the insured. Although courts in some cases appear to use "unforeseen" and "unforeseeable" interchangeably, this can be misleading as "unforeseeable," unlike "unforeseen," is an objective term. The New South Wales Court of Appeal drew a distinction between "unforeseen" and "unforeseeable" in L'Union Assurances de Paris IARD v Sun Alliance Insurance Ltd [1995] NSWCA 539:

"Unforeseen" does not mean "unforeseeable" either as a matter of language or law. The former is subjective and speaks of the mind of the insured. The latter is objective and speaks of the object of perception or thought. ..."

As for "sudden," Mr Ling argued that "sudden" should be interpreted as having the same meaning as "unforeseen." This was in line with the Anderson case referred above.

In contrast, the court in Vee H Aviation PTY Limited v Australian Aviation Underwriting Pool Pty Limited [1996] ACTSC 123, took the view that "sudden" should not be construed as having the same meaning as "unforeseen".

The Supreme Court of the Australian Capital Territory in Vee H Aviation held: "Sudden", to my mind, is to be contrasted with "gradual. Synonyms are "abrupt" and "quick". It is often a connotation of the word that the event it describes should be "unforeseen" or "unexpected", or "without warning" but those words, alone or in conjunction, do not express its denotation. An event may be sudden even though it is foreseen and expected. ... The definition of Breakdown used in this particular policy required that the damage, as distinct from the cause of it, should be both sudden and unforeseen. That requirement is not tautologous. The words have different meanings, and the requirements that they express are cumulative."

SC of South Africa agrees with Vee H Aviation interpretation

The Supreme Court of Appeal of South Africa in African Products (pty) Ltd. v AIG South Africa Ltd. (2009) ZASCA27 took a similar interpretation to "sudden", affirming that courts should "be slow to conclude that words in a single document are tautologous and superfluous" (African Products at [13] and [19]). I agree with the courts' views in Vee H Aviation. I would add that the question whether damage is sudden is one to be determined from an objective viewpoint rather than the subjective one of the insured.

IBroker

Disclaimer : While utmost care has been taken in the preparation of the Newsletter, it should not be used or relied upon as a substitute for detailed advice or for formulating or taking business or personal decisions, which may need a proper study and taking of advice from those licensed to do so. Without prejudice to the generality of the foregoing information contained in the Newsletter, we do not represent, warrant, undertake or guarantee that the information in the newsletter is correct, accurate, complete or non-misleading. We will not be liable to you in respect of any special, indirect or consequential loss or damage.

Editor : P.C. James
E-mail : Secretary@ibai.org

IBAI

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

Scan the QR codes to follow IBAI Social handles for more updates: