i-notes
Newsletter from India's Leading Insurance Broking House
April 2012

Summary

India Insure
The risk managers

Message from the Editor

Dear Readers,

The challenging economic conditions have not hampered the general insurance industry from growing to INR 58000 crores from INR 47000 crores last year. This year, was a bit sluggish for the Life insurance industry which closed at around INR 1,08,000 crores from INR 1,26,000 crores last year. The New India Assurance Company has crossed a unique mile stone - the five figure mark of INR 10,000 crores premium, the first in the Indian Insurance industry and we look forward to others crossing this milestone in the near future.

Hardening of the CAT peril rates as well as the Motor third Party rates indicate that the trough has been reached and we are likely to witness the commencement of a cycle, where underwriting will get a bit more prudent and premium rates will go higher.

With India witnessing an increased number of claims under the Professional Indemnity line of insurance, we thought it appropriate to delve a little deeper into this topic and the main article in this issue focuses upon understanding the nuances of the Professional Indemnity policy. We are indeed thankful to Mr. Ramakrishna Prabhu, Vice President - Accounts, Hindustan Construction Company and Mr. Neeraj Tuli, Senior Partner of Tuli & Company who have been featured in our Interview column and contributed their views on the state of the Professional industry market in India.

As we commence a new financial year which marks a decade of insurance broking in India, we wish all players the very best!

V Ramakrishna
Editor – *i-notes* & Chairman – India Insure

Professional Indemnity Insurance - better being safe than sorry

- *US investors take PWC to court over Satyam scandal* – 7 February 2009, Times of India
- *National Consumer Dispute Redressal Commission awards a record compensation of Rs. 1.73 cr in medical negligence against AMRI and 3 doctors* – 21 October 2011, The Statesman
- *Kota bridge mishap: NHAI suspects faulty design* –29 December 2009, IBN Live
- *Newly-weds miss flight, consumer court holds Meru cab service guilty* –13 January 2012, Times of India

Negligence! Breach of Confidentiality! Liability! Lawsuit! Professionals in every field dread these terms and dread even more having to deal with them in the course of their careers. No longer are 'professionals' limited to Doctors, Lawyers, Accountants etc. Our society is today increasingly serviced by a growing number of professional people - Project managers, engineers, architects, recruitment consultants, management consultants, media agencies, stock brokers, insurance brokers, I.T. developers … the list rolls on. As long as a person offers advice or service based on an expert knowledge, they can be deemed a 'professional'.

In todays competitive, fast moving commercial environment the potential for errors in the performance of services - alleged or actual is all too real. As a professional, clients will rely heavily on the advice and service provided. Though to err is human….. dissatisfied customers increasingly sue when things go wrong and the financial ramifications can be severe.

To help protect service providers against the financial ramifications of such allegations, the insurance industry has designed the "Professional Indemnity insurance policy" (PI) also called "Errors & Omissions insurance" (E&O) when it is issued to technology companies.

Who needs Professional Indemnity insurance?

Professional Indemnity Insurance is essential for any company, organization or consultant that gives advice or provides services in a professional capacity.

You may need professional indemnity insurance if you:

- Provide advice to your clients
- Handle data belonging to a client
- Are responsible for a client's intellectual property
- Provide a professional service and could be challenged on your work when your advice or services fail to meet a client's expectations and cause financial loss / property damage / bodily injury.

What is Professional Indemnity insurance?

While the Professional Indemnity policy is a legal mandate for some types of businesses in India (like an insurance broker / stock broker); for other professions it is always a sensible recommendation. Essentially the underlying thought behind professional indemnity insurance is to protect the professional from claims caused by the negligent performance of professional services (or breach of duty of care). It covers professionals for claims made against them for financial losses flowing from the advices and services that they provide to their clients. It also provides financial protection to meet the costs of defending legal actions and any damages that may become payable.

What is covered?

- Compensatory damages awarded against the professionals
- Settlements and
- Legal costs and expenses associated with defending legal actions

Who is covered?

- a legal entity and its subsidiaries
- principal/partner/director (past/present)
- employees (past/present)
- contractors

Claim Scenarios

Few organizations are immune to legal action from a customer who's dissatisfied with the performance of promised services. The following scenarios illustrate common professional liability risks.

(Contd... 02)

Professional Indemnity Insurance - better being safe than sorry .... Contd. # 1

Professional	Facts	Claim
Design Engineer	A design fault in a concrete slab (insufficient reinforcement) caused the concrete to bow.	Claim for rectification by principal contractor for Rs. 22,50,000
Hospital	Allegations that a patient received inadequate care, potentially hastening death.	Claim filed for Rs. 33,00,000
Software company	Timekeeping software provided to the client was defective. Failed to maintain employee login & logout time. Failure results in over/underpaying employees and the need to replace the timekeeping clocks.	Customer sues software company for Rs. 12,00,000
Event Manager	An event management company was responsible for booking a venue for a specialist event but forgot to confirm the booking. As a result, the venue was not available for the client and the event had to be cancelled.	Client files claim for Rs. 45,00,000
Software Vendor	A telecom company sues for lost revenue and expenses to recover billing files for wireless customers that were deleted by their software vendor who was updating the system.	Claim for Rs. 35,00,000
Tax Adviser	A tax adviser had prepared a client's tax returns for a number of years but failed to include in the returns relevant details of taxable income provided to him by the client. The client was liable to pay penalties arising from late payment of the undeclared income.	Client files claim for recovering the penalty amount of Rs. 3,00,000
Staffing firm	A temporary staffing firm assigned two temporary bookkeepers to a company for one year. During this period, the bookkeepers failed to pay the mortgages on the company's properties, as well as the property taxes, resulting in a loss to the company of more than Rs. 10 lakhs. The client also cross-checked & found that the book keepers assigned had a poor work history.	The company sued the staffing firm for the amount of the loss, alleging negligence in the quality of staff provided.
BPO	As a result of incorrect coding, dividend cheques could not be automatically processed by the client and had to be manually processed.	BPO sued by client for additional costs
Travel agent	The travel agent was supposed to have booked a customer on a Europe honeymoon tour but instead booked a group Egypt tour.	Customer sues travel agent for deficiency in service

Extensions of Cover include:

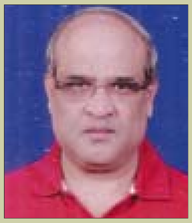
Employee Fraud/ Dishonesty	Meets claims arising from the actions (or omissions) of dishonest, fraudulent, criminal or malicious employees. *Eg- An employee contracted to your client is involved in theft from the client's office.*
Breach of confidential information	Covers claims arising from any breach of confidentiality while conducting the Insured's business. *Eg- An employee of an IT developer who was assigned to develop a client's project sold the invention rights of that project to another competitor.*
Breach of Contract	Covers claims arising from breach of contract *Eg - When the software developed by the insured for its client, failed to live up to its performance commitments made via a contract, the Insured was sued for breach of contract.*
Loss of Documents	Covers claims from any liabilities which Insured may incur to third parties as a result of these documents being lost as well as costs in replacing such documents. *Eg- The 'tidying' spree of the house keeping department in a lawyer's office resulted in valuable client documents being lost. The lawyer then had to deal with the replacement costs.*
Intellectual Property Rights	Covers claims arising from Unintentional infringement of any intellectual property of any third party excluding patents and trade secrets. *Eg- A jewellery designer thought that her pendant design was new & unique but unfortunately it was in vogue in another country for quite some time. Hence she faced claims for infringement.*
Defamation, Libel & Slander	Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's products, goods or services is covered here

(Contd... 04)

Interview – *Corporate*

Our society is increasingly serviced by a growing number of professional people. The 'traditional' professions such as law, accountancy, architecture, engineering and medicine are well established but today we enjoy the services of many more people deemed professional in their own right. In this section, we speak to **Mr. Ramakrishna Prabhu, Vice- President, Accounts, Hindustan Construction Company** on the awareness levels of liability risks and risks mitigation among Indian corporates today. We also speak to **Mr. Neeraj Tuli, Senior Partner at Tuli & Company** on the frequency and severity of PI claims affecting the Indian market currently.

What is your view on the awareness levels of liability risks and risk mitigation among Indian corporates today?



Ramakrishna Prabhu (RP): Awareness is increasing day by day but certainly not up to the desired level. After implementation of proper corporate governance required particularly for listed companies, companies are required to frame proper Risk Management Policies and independent Board Members are increasing looking into this aspect. This has pushed the corporates to a great extent to look into its risk management policies and improve thereon.

Neeraj Tuli (NT): The awareness of risk is a function of personal exposure to risk and the impact when a claim is made against an entity or an individual, and news of what has happened to others. As corporate India has moved in to overseas markets - whether by way of trade, listings on overseas exchanges, or the provision of services - and claims have been made against Indian entities or individuals, there has been a corresponding increase in the awareness of the risk that, in truth, has always been present. In the D&O sphere the most obvious illustration of the realization risk is the actions in the US against Satyam and its former directors. More than anything else, that will have raised the realization of the need for D&O cover. However, what is less well known or recognised at this stage is the fact that we are seeing an increasing number of domestic liability claims, i.e. claims in relation to goods and services sold and supplied by Indian entities to the domestic market. As risk is recognised, steps are taken to mitigate that risk.

HCC being established over 8 decades ago, at what point in time did the Professional Indemnity policy become part of your company's insurance program & why?

RP: HCC realized the need for professional indemnity policies from 2004 onwards. Earlier HCC was mainly engaged in civil construction, where in projects are executed as per the design and drawings submitted by clients. Hence responsibility for design engineering was with the clients. Now we are venturing more and more in to Engineering, Procurement and Construction (EPC) space. This exposes the company to engineering and design risks as well. We have also entered the BOT area. Hence we have to mitigate this risk by having proper professional indemnity policy.

Tuli & Co has been in operation since 2000. At what point in time did the Professional Indemnity policy become part of your insurance program & why?

NT: I personally have been dealing with Professional Indemnity/E&O claims for almost 25 years in different jurisdictions, and as a result I have seen the damage that a claim can do to an individual or entity that is the target of a claim. The damage can occur even when the claim is tenuous because, whatever the validity of the third party claim that has been made, managing the process of determining the claim and dealing with the costs that arise is often underestimated by the insuring public. For example, in the past few years I have been involved with liability claims against Indian policyholders where the amounts claimed in damages against an Insured are comfortably above the policy limits, and the defence costs incurred run into millions of dollars. Even in domestic claims, we are seeing the cost of legal services in India rising whether we are talking about law firm rates or the charges of Senior Advocates. The rise has been such that the costs levels we are seeing on certain claims from Indian firms run into hundreds of thousands of dollars, and the rates for some Senior Advocates comfortably exceed even what one would expect to pay for Queen's Counsel in England. Because of the experience we have, we have always found it prudent to take an E&O policy.

Do you believe that the Professional Indemnity policy available today is aligned to completely meet your requirement? If no, what are the areas of improvement you would look for?

RP: We have a decent indemnity limit and are covered as per our needs to match our risk profile. It is different from the standard market policy for Design and construction. We are able define the policy as per our need.

NT: Although the policy wording is important it is surprising how many policyholders appear not to have read the wording prior to purchase, and sometimes it will not be read until a claim is made. By that time it may be too late as the policy will normally set out provisions that Insurers require in relation to the notification of claims and circumstances, incurring defence costs, making admissions, compromising an action, etc. However, the wording is only one part of the equation. The others are the ability of the Insurer to manage the evolution of any liability claim, including with respect to the appointment of defence counsel in diverse jurisdictions, speed of response with respect to settlement, the proactive management of developments that occur during the life of a claim, speed of payment, and so on. I would also highlight the desirability of long-term stability in the Insurer/Insured relationship. The stability of that relationship can sometimes be beneficial when it comes to dealing difficult claims, and breaking the relationship by moving to a new Insurer for the sake of a minor saving in premium may easily prove to be a false economy.

Looking ahead five years, what do you think are the main 3 sources from which the future liability issues will emerge?

RP: If we are talking about all types of liability policies then it is third party/ tort, our clients/contracts and our share holders/regulators. These days, the business environment has become complex and demanding. Delivery on time is becoming a major issue. Apart from the client, the third party also becomes very aggressive. Share holders are also getting very educative, which definitely is a welcome move.

NT: As Indian corporates acquire overseas entities the risk of claims such as D&O and EPLI looks likely to increase. That is not because there is anything inherently wrong with the business practices of Indian corporates, but rather because the culture and regulatory environment is different abroad, as are expectations. The bedding in period while cultures are more closely aligned can produce claims, as we have already seen. I also see an increase in E&O claims as the level of services being offered by India to the world moves up the knowledge chain such that what is being provided to customers has more economic value and consequently the potential for appreciable loss if the service delivery is negligent.

(Contd... 07)

Professional Indemnity Insurance - better being safe than sorry .... Contd. # 2

Why is Professional Liability insurance vital?

Professionals are expected to have extensive knowledge or training in their area of expertise. Additionally, they are expected to perform the services for which they were hired, according to the standards of conduct in their profession. If they fail to use the degree of skill expected, they can be held legally responsible for any harm or financial loss that they cause to another person or business.

The most obvious advantage of professional indemnity coverage is of course protection from legal liability in case of a lawsuit. Not only does the policy cover against monetary settlements and awards but also protects against the exorbitant legal cost resulting out of such litigations. A single claim can ruin a business financially since litigation can be expensive, time-consuming and resource hungry.

A lot of clients today require a company to have professional indemnity cover before they consider working with an establishment. So the purchase of such a policy will help apply for deals that may have otherwise been off limits.

As a professional, reputation is everything and maintaining this reputation is critical. A person who has worked hard to establish a fortune and reputation will not want to see this disappear overnight as a result of a negligence/ oversight - as has happened to several high-profile and extremely successful professionals / companies in recent years.

On the Increase……

Contractual Obligations: Today, companies are crossing borders to conduct business which brings a host of new exposures due to foreign laws and regulations. As a consequence of globalization, service providers are increasingly finding professional liability insurance as one of the pre-requisite requirements when tendering for business with overseas companies, especially where contracts are awarded by clients based in the US, Europe, UK and Australia.

Litigious Environment: The increasing economic interdependency and cultural exchange between the West and the East is contributing to higher awareness of consumer rights as well as the use of litigation to enforce those rights. The frequency and severity of lawsuits against professional service providers has been on the rise for last few years, fueled by countless customers who believe that they have suffered when professional services did not live up to their expectations.

Increasing Competition: An increasingly litigious society isn't the only reason professionals are facing potential financial loss from allegations of negligence. Competition has driven many professionals to offer a wide variety of services that may go beyond their core expertise, dramatically increasing their exposure to claims. Also as market competition continues to increase, there is a greater chance that marketing and sales pressure will invite over-promising of supplier capabilities.

The Cost of Defending Litigation: The legal costs in defending a professional liability lawsuit alone can be enormous and the defense of claims can take many years. The cost of defending legal action escalates to the point where, regardless of the outcome; the legal costs alone can be financially crippling.

Accountability & Regulations: Companies today operate in a fast changing environment. Whether through media scrutiny or increased Government regulations, organizations are increasingly exposed and held accountable for the results of their actions.

Points to consider while purchasing a PI policy

Choosing the right limits of indemnity:

Typical cover starts at around the Rs. 10 lakhs mark. It again will vary depending on whether the Insured is an Individual or a firm. The limit of indemnity chosen should reflect the actual loss that might arise which in turn will depend upon a number of inter-related factors such as:

- The nature of the advisory services being provided
- The size and complexity of the project
- The extent of any high risk activities
- The country where the service is being provided (as a claim in USA can be very high compared to a claim in India)
- Claims made against those in the same profession

Cost inevitably has a strong influence when selecting indemnity limits although the cost of doubling the limit of indemnity cover from Rs. 1 cr to Rs. 2 cr does not mean that the cost of the premium doubles. Also claims can take many years from first notification to final settlement and so the level of cover opted for should contain some 'future proofing'.

'Professional Services' as defined by the Policy:

Of particular importance is the definition of 'professional services' that are insured by the policy. It is important to review this section carefully to ensure that the definition includes all services offered by the organization.

Territorial limits: Territorial limits typically reflect the territories from which the service is rendered. A broader territorial limits clause may cover conduct of professional services worldwide.

Extended reporting period:

The extended reporting period on an Errors & Omissions / PI policy is to protect in the event that the professional decides not to renew the current policy (in case he plans to retire / the company closes down) or if the insurer refuses to renew the policy (because of a high claims etc.). In such cases, the insurer offers a designated period of time after the policy has expired during which a claim may be made and coverage triggered as if the claim had been made during the policy period. This clause is applicable / triggered only if there is no renewal policy in place at all.

Though the premium for an extended reporting period may be high; the protection it affords is well worth the investment.

Claims made: PI policies generally operate on what is known as a "claims made" basis. "Claims-made" policy means that the policy in force at the time a claim is made will pay for losses, regardless of when they occurred in the past subject to the retroactive date. The Retroactive date of a policy is the date after which acts, errors or omissions of the insured are covered; any act, error or omission occurring before that date will not be covered.

For example, let's assume the period of insurance as 1st July 2008 to 30th June 2009. In September 2008, a claim is notified which relates back to an incident that occurred in November 2006. Without a retroactive date of at least November 2006, the current policy would be unable to respond. So it is important to ensure that the retroactive date is mentioned on each renewed policy.

Additional Insured (AI): Insurers repeatedly receive requests from insureds to add the insureds' clients onto their errors and omissions

(Contd... 05)

Report Card - February 2012

Gross premium underwritten by non life industry for and up to the month of February 2012 (Rs. In crores)

INSURER	FEBRUARY 2011-12	FEBRUARY 2010-11	GROWTH OVER THE SAME PERIOD OF PREVIOUS YEAR	APRIL - FEBRUARY 2011-12	APRIL - FEBRUARY 2010-11	GROWTH OVER THE SAME PERIOD OF PREVIOUS YEAR
NIA	653	523	25.0%	7642	6371	19.9%
UII	597	492	21.2%	7013	5559	26.2%
NIC	687	555	23.8%	6915	5439	27.1%
Oriental	450	384	17.0%	5348	4744	12.7%
ICICI	426	367	16.1%	4734	3878	22.1%
Bajaj	281	241	16.5%	2974	2613	13.8%
AIC	376	388	-3.2%	2432	1774	37.1%
ITGI	187	136	37.7%	1806	1637	10.3%
HDFC ERGO	147	95	54.1%	1663	1170	42.1%
Reliance	142	141	0.7%	1577	1514	4.2%
TAIG	131	92	42.6%	1548	1097	41.1%
RSA	134	94	43.3%	1330	1029	29.3%
Chola	106	76	38.7%	1229	877	40.1%
Shriram	129	83	54.4%	1113	687	61.9%
Star Health	52	36	44.3%	1062	1211	-12.4%
ECGC	81	71	14.8%	869	783	11.1%
FG	72	49	48.9%	847	556	52.2%
Bharti AXA	82	52	57.5%	773	491	57.4%
Apollo DKV	71	53	33.7%	419	251	66.9%
Sompo	30	25	19.3%	356	259	37.3%
SBI	31	9	257.9%	211	30	
L&T	15	4	330.0%	124	10	
Max BUPA	10	3	240.2%	99	21	
Raheja	2	1	45.0%	19	7	
PUBLIC TOTAL	2843	2412	17.9%	30219	24670	22.5%
PRIVATE TOTAL	2046	1555	31.5%	21885	17341	26.2%
GRAND TOTAL	4889	3968	23.2%	52104	42011	24.0%

* Source : IRDA

Observations: Performance for April-February 2012 Period

- The industry (incl stand alone health insurers, ECGC and AIC) have collected premium of Rs. 52104 crores recording a growth rate of 24% in Apr-Feb 2012 compared to Rs. 42011 crores during the same period last year.

	Apr – Feb 12	Apr – Feb 11	Growth
	Premium (Rs. crs)		
PSU	30219	24670	22.49%
Private	21885	17341	26.20%
Total	52104	42011	24.03%

- The PSU's have registered a growth rate of 22.5% during this period compared to last year's 21%.
- The private players have registered a growth of 26.2% during this period on par with the growth rate achieved during the same period last year.
- The accretion achieved by the PSU's during this period is Rs. 5549 crores and private players: Rs. 4544 crores towards the overall market accretion of Rs. 10093 crores.
- The major contributors for the performance in the period Apr-Feb 2012 have been National with 1476 crores, United India with an accretion of 1454 crores, New India with an accretion of 1271 crores, ICICI Lombard with an accretion of 856 crores and AIC with an accretion of 658 crores.
- At the end of this period, the private players have collectively increased their market share to 42% from 41.3%.

policies as additional insureds. However, many insurers will not allow this because of the following reasons:

- First, many reinsurance contracts will not allow non-professionals to be added to the policy.
- Secondly, coverage under the policy is triggered by allegation of failure to render, or negligence in rendering a defined professional service. Typically, the Additional Insured is not rendering the professional service and therefore coverage will not be triggered.
- Adding AIs broadens the scope of potential liability, and is difficult to underwrite.
- Additionally, E&O policies contain insured-versus-insured exclusions that preclude coverage when one insured sues another insured under the same policy.

So, finally even if the client seeks coverage as an AI & manages to get it, then any related claims made against the insured by the AI will not be covered.

Conclusion

The services industry has entered an era of unprecedented change that will continue unabated. More and more individuals and businesses are looking for accountability for the adverse consequences they experience as a result of services delivered to them. As this trend continues, there is a need for professionals, who give advice and provide a service, to ensure they have adequate insurance to protect them against a claim. The need for professional indemnity is today greater than ever, with the threat of legal action in India rising rapidly over the past few years. With an expanding class of potential claimants, increased expectations about standards of service and professional care, new and revised laws protecting consumers and the likely creation of class action lawsuits, the relevance of professional indemnity cover has never been higher.

News TitBits

Mitsui Sumitomo picks up 26% stake in Max New York Life

Source: Asia *Insurance Review*

Mitsui Sumitomo has picked up 26% stake in Max New York Life Insurance Company Ltd for around Rs 2,731 crore, valuing the Indian insurance venture at Rs 10,506 crore. New York Life Insurance, the current foreign shareholder has completely exited from the JV.

New India premium collection at Rs 10,000 cr

Source: *Mydigitalfc*

Public sector general insurance company New India Assurance has achieved Rs 10,000 crore premium collection mark for FY12 on the back of strong growth in motor and health insurance verticals.

HDFC Ergo joins peers to settle claims without TPA

Source: *Mydigitalfc*

The list of general insurers opting to settle health insurance claims in-house is getting longer. The latest to join the club is HDFC Ergo General Insurance, which has decided to settle in-house all claims on retail policies sold from FY13.

Readers Speak

"Your opinion on the draft guidelines issued by IRDA on licensing of bancassurance agents"?

In the last issue of inotes, we had invited our Readers opinion on the above topic.

Response from Mr. Suresh Agarwal, Executive Vice President and Head, Distribution and Strategic Initiatives, Kotak Mahindra Old Mutual Life Insurance

The draft guidelines break down the entire country into 3 zones and opens up the bancassurance space geographically. It allows appointing multiple insurers though maximum 1 per state as categorized in their zonal definition. Draft guidelines intend to restrict selling multiple insurers' products from one outlet, though different states can sell different insurers products. It is a progressive development that creates a win-win situation for all stakeholders. Customers will now have easier access to insurance products, which in an Indian context assumes special significance because of the lack of any defined social security mechanism. From an insurer standpoint, it will significantly expand the bancassurance channel, which combines lower cost and better efficiency. However, multiple tie-ups in different states could pose administrative and logistical challenges which insurance companies will have to tackle. From an industry standpoint , the move will help better the appeal and penetration of insurance.

"Views expressed herein are purely personal and do not reflect the views of the Company"

Next Issue- ***"Should Professional indemnity insurance be made mandatory for a larger section of professions?"***

According to the SEBI exchange regulations, it is mandatory for every stock broker in the country to have Professional Indemnity insurance for Rs. 5 lakhs. In the same lines, the IRDA has made it mandatory for every Insurance broker operating in India to have a professional indemnity policy against a Limit of Liability not less than 3 times their last earned annual remuneration.

While the respective regulators have made it mandatory for these 2 professions, why are other professions like doctors, lawyers, chartered accountants, architects etc. let scot free without the need for a mandatory PI cover? What do you think? Shouldn't all professionals be mandated by law to opt for such a cover? Many professionals are today providing services to foreign clientele, who come from jurisdictions where actions against professionals for negligence are not uncommon. Will it take a major event to spur our regulators into action on the need for a PI cover?

Your opinion is solicited!

Please send your responses in 200 - 300 words to knowledge @indiainsure.com

News TitBits

IRDA to build firewalls over concerns about insurer-bank linkages
Source: *Asia Insurance Review*

The IRDA says that it is working to create firewalls to protect insurer-bank linkages. With the global financial system yet to recover from the 2008 credit crisis and continuing pressures on banks, the Indian government's 2011-2012 Economic Survey has raised serious concerns over strong inter-linkages between the insurance and the banking sectors in India.

Claims Case Study: *'Notice of Claim' requirement*

Background: Z&Z is an accounting firm based in New Delhi. Z&Z purchased a professional liability insurance policy (claims-made) through Gama Insurance Brokers. The Policy was issued by Lords Insurance Company. The term of the Policy was from August 1, 2006 to July 31, 2007.

The Policy reads, in pertinent part, as follows:

Coverage

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages and Claims Expenses because of any Claim or Claims, first made against the Insured and reported in writing to the Company during the Policy Period or Extended Reporting Period, arising out of any Act, Error or Omission of the Insured.

On or about June 2, 2007, Mr. Hari Prasad, the president of Z&Z, was notified about a potential professional liability lawsuit against Z&Z likely to be filed by one of its clients- M/s Santom. Mr. Hari Prasad then called the representative; Mr. Mohanty at Gama Insurance Brokers and discussed the situation with him. He also sent a casual email to Mr. Mohanty on details of the probable lawsuit. The next day Mr. Mohanty had a telephonic conversation with the claims manager of Lords Insurance Company and kept him informed of this incident.

On December 27, 2007, Mr. Hari Prasad received the complaint filed against Z&Z in the underlying matter and immediately forwarded the same to Gama. Mr. Mohanty of Gama faxed a copy of this complaint

News TitBits

Finance Ministry wants end to 'suicidal' competition in insurance industry
Source: *Asia Insurance Review*

The Indian government has asked the insurance regulator to take steps to contain the trend of "suicidal competition" among insurers, which are undercutting one another by offering policies at low premium rates in order to grab a bigger market share.

Take action against insurers which mis-sell schemes: FM to Irda
Source: Mydigitalfc

"Irda should be expressively punitive to companies who resort to mis-selling or violate the initially agreed terms and conditions," finance minister Pranab Mukherjee told the board of the Insurance Regulatory and Development Authority (Irda).

Motor insurance to get costlier on higher 3rd-party premium
Source: *Economic Times*

Motor insurance rates will rise from April 1 with the insurance regulator notifying new rates for motor third-party premium. The increase ranges from 6% at the lowest end to 40%.

Life insurance premium collection declines 14% since April
Source: Business *Standard*

The busy tax saving season failed to bring cheer to the life insurance market as policy issuance continued to head south, pushing down sales or premium collection by 14 per cent in the current financial year. While lack of products continued to be one of the key reasons for this fall in collection, the volatile equity market also took its toll.

to Lords on December 28th, along with a cover sheet that read, in relevant part: "You [Lords Insurance Co.] were notified of this incident on June 3, 2007 by us."

By letter of January 14, 2008, Lords acknowledged receipt of the complaint but declined to indemnify and/or defend Z&Z in the action. Specifically, the letter reads, in pertinent part, as follows:

Your firm's last policy term with Lords Insurance Co. expired on July 31, 2007. Consequently, you have no valid coverage with Lords Insurance Co. Accordingly, since the "Notice of Occurrence/Claim" form submitted by Gama is dated 28 December, 2007 and is outside the term of coverage for your policy, we disclaim coverage for this law suit.

Z&Z also could not lodge a claim with its present insurer because it was aware of the circumstances giving rise to this claim in the previous policy period itself.

The Issues: The matter went to Court. The gravamen of this case was whether the insurance company received proper notice of a claim under the policy and if Z&Z complied with the written notice requirements under the policy.

Z&Z's attorney argued that since Mr. Mohanty of Gama had discussed the situation with the claims manager at Lords on 3rd June 2007, that should be treated as a notice of the claim. On hearing this argument, the Court invited them to inspect the "Conditions" section of the Policy with reference to "Notice of Claim".

It states: *"Upon the Insured becoming aware of any Act, Error or Omission which could reasonably be expected to be the basis of a Claim covered hereby,* ***written notice*** *shall be given by or on behalf of the Insured* ***to the Company or any of its authorized agents*** *as soon as practicable during the Policy Period or Extended Reporting Period, together with fullest information obtainable…."*

So, the first argument failed.

Z&Z's attorney then argued that since Mr. Hari Prasad had sent an email to Mr. Mohanty of Gama Brokers regarding the details on 2nd June 2007; that should be construed as written notice of the claim. The question then pondered by the Court was whether Gama was authorized to get this notice under the terms of the policy. The Court observed that the Insurance broker was not acting as an agent of the Insurer and there was no agency agreement between them and hence sending the notice to Gama did not satisfy the policy condition.

Conclusion: The Court declared that the fact that Mr. Mohanty discussed the possibility of a lawsuit with a Lords employee does not satisfy the plain language of the Policy because notice there under must be in writing and, consequently, oral notification would not suffice. Consequently, the fact that Z&Z provided a mail to Gama Brokers does not satisfy the Policy requirement that written notice be received by an "authorized agent". Therefore, the notice requirement contained in the Policy (a condition precedent to coverage) was not satisfied in this case, and hence Lords Insurance Co is not bound to indemnify or defend Z&Z in the underlying suit.

Interview – *Corporate.... Contd.. # 3*

How has the frequency and severity of Professional Indemnity claims changed over the past few years?

NT: Exponentially, since about 2003. From a handful of claims during the preceding 3 year period, there have been periods since where we have seen a handful of claims in a matter of days and, of course, we do not see all of the claims that are actually notified to Insurers. We only see those notifications where Insurers believe our input would be useful. The curve is definitely upward.

What in your opinion is presently missing in this policy and what would be the additional coverage you would be looking for under this policy which is not presently available?

RP: We are looking for Liquidated Damages at a viable cost.

In India, how do you see the role of an insurance broker evolving? In what areas do you see the need for improvement and what do you think they are good at?

RP: I don't think it is evolving at the pace it should because there is a good rapport built between the corporates and the insurers over the years. Big and medium size corporate always like to deal directly with insurance companies. It is very difficult to change mindset. Only re insurance brokers seem to offer better solutions due to their international exposure.

NT: As the market develops I believe we will see the development of lines of expertise, such that particular brokers (companies and individuals) will come to be known for their knowledge of particular lines of business. We are already beginning to see that happen. I also hope we can see an early end to the mindset that judges the quality of insurance cover only by its price. Although that is not an issue that is to be addressed only by brokers, the broking community has an important role to play in making sure it is addressed.

What has been your experience with Insurers as well as Brokers as a user of this policy?

RP: There are very few selected persons in the insurance industry having good knowledge about liability. Since I was in practice as Chartered Accountant, I am familiar with the professional indemnity policy. Since our society is still not as litigative as in the west, there is a lack of claims handling experience related to professional indemnity policy.

NT: The E&O policy is a relatively new concept to the Indian market so it is only to be expected that there will be a learning curve. What has been impressive is the speed with which that learning has occurred. Ultimately, the more claims that have been handled, the greater the appreciation of the actual working of a policy. In simple terms, it is the difference between reading about how to ride a bike, and actually riding it. There is no substitute for experience.

"Views expressed herein are purely personal and do not reflect the views of the Company"

View point

REVISED RATES for ACT OF GOD PERILS -an abrupt hardening

The guideline received from the General Insurance Council regarding the revised rates for the CATASTROPHIC (AOG) perils to be adopted effective 01st March 2012 has had customers shaken up. Though effective 01st March, the effect was not seen immediately as the number of renewals are far lower in the beginning of the month and peak up only end March with April 01st accounting for about 12-15% of the Property premium.

The circular has touched upon two of the most commonly opted for perils by Property owners - the STFI (Storm, Tempest, Flood & Inundation) perils (which presently is an inbuilt peril, not warranting additional premium, with however an option of deleting the peril and getting a premium reduction), as well as the Earthquake peril. While the STFI peril is rated based on occupancy - ranging from 0.01%o for Dwellings to Standalone storage rates of 0.15%o, EQ zone wise rates range from 0.05%o to 0.50%o based on the Seismic classification of the location of risk.

The catch however is not the revised rates, but the fact that these rates are not eligible for any kind of discount. The present discount that a customer enjoys is 80 to 90+%, overall i.e. the AOG perils too get the same discount rate. Hence this removal of the discount on AOG perils is going to effect the customer greatly. The premium for the add-on perils could be way beyond the basic policy premium which are heavily discounted.

The anomalies which have crept in are

1. There is no mention of whether the insurer would be permitted to reduce the basic rate to the extent of deleting the STFI cover from the main policy (since an additional rate is being charged as an add- on).
2. The rates for the add on perils are far in excess of the main policy perils (considering the high discounts being offered on the basic rate).
3. There is no incentive for opting for a Higher excess on these perils.
4. Coverage of Tsunami peril presently is judged by the presence of the STFI and EQ covers at the time of claim. it was anticipated that there would be Tsunami rates coming in (it is illogical to have Tsunami peril being guided by the EQ rates) considering the fact that a coastal area is more prone to Tsunami and is in no way related to EQ zones

While the effect is seen immediately on the Property risks, the impact is far higher on long term Project risks. A quick look at the example given below would put across the point more clearly. (see table)

CAR policy for Project cost : Rs. 800 crores,
Project period: 30 months

	Rates until 29th Feb 2012	Rates effective 01st March 2012
Basic rates + other add ons (per mille)	3.9400	3.9400
EQ rate- Zone 1 (0.50*30/12) (A)	1.2500	1.2500
STFI rate - additional (0.15*30/12) (B)	-	0.3750
Gross rate (for discount)	5.1900	3.9400
Discounted rate (giving 85% discount) (C)	0.7785	0.5910
Rate applicable	(C) 0.7785	(A+B+C) 2.2160
Premium (excl. Service Tax)	Rs. 6228000	Rs. 17728000
DIFFERENCE IN PREMIUM Rs. 1,15,00,000		

Another point of contention (right from inception and not specific to the revised guidelines) is the fact that the Earthquake rates are flat rates charged throughout the policy period irrespective of the policy period. The rates in case of the basic premium vary at inception and subsequent rates for each month added on. On similar lines, wouldn't it be more logical to have the EQ rates building up as the period progresses?

While it is a fact that the Reinsurance rates in this line of business have hardened following the Catastrophic losses witnessed worldwide over the past year, was this kind of an increase the intention of the insurers? Particularly when the Indian market has had relatively low catastrophic losses, the market is not yet geared up to face this kind of a hardening. Will all insurers stick to the revised guidelines, or will there be other interpretations? Well, only time would tell us and until then we wait and watch.

– Radhakrishna. C, Director

Disclaimer

Nothing contained in this newsletter shall constitute or be deemed to constitute a recommendation or an invitation or solicitation for any product or services. The company makes no representation as to the accuracy, completeness or reliability of any information contained herein or otherwise provided and hereby disclaim any liability with regard to the same.

Contact us

India Insure Risk Management & Insurance Broking Services P Ltd.

Ahmedabad 105, Sears Towers,Opp. IIPM, Off C.G. Road, Gulbai Tekra, Ahmedabad- 380006. Gujarat, INDIA. Tel: +91 79 32422007, Fax:+91 79 26406044 (M) +91 98250 66044, +91 97255 04381 Mr. Pawan Kumar Mediratta email : pawan.mediratta@indiainsure.com

Bangalore H M Geneva House, Property No.14, 401, 4th Floor, Cunningham Road, Bangalore - 560001, Ph: 080-41128056-57. Fax: 080-41128597 Contact: Mr. Vippin Chandra, e-mail : vippin.chandra@indiainsure.com

Chennai Building No.824,Bhandari Towers, 1st Floor, Opposite to Kilpauk Medical College, E V R Periyar Road, Kilpauk, Chennai – 600 010 Ph: 044-42661540 Fax: 044-42023799, Contact: Mr. V.G. Dhanasekaran, e-mail : dhanasekaran.vg@indiainsure.com

Kolkatta 4th Floor, Larica , 7 Red cross Palace, Kolkatta-700001 Ph: 033-64602097 / 98 Contact: Mr. Dilip Burman e-mail : dilip.burman@indiainsure.com

Hyderabad # 405, Archana Arcade, St John's Road, Secunderabad - 500025 Ph: 040-27822989/90/91, Fax: 040-27822993 Contact: Mr. B N Prasad, email: bn.prasad@indiainsure.com

Mumbai **Branch & Corporate Office :** # 103, 1st Floor, Baba House, Opp. Cinemax Cinema, Chakala, Andheri - Kurla Road, Andheri (East), Mumbai – 400 093. Ph : 022-66791416, Fax: 022-66791421 Contact: Mr. R. Chandrasekaran, email: chandrasekaran.r@indiainsure.com

New Delhi # B-3/6, 2nd Floor, Asaf Ali Road,New Delhi - 110002 Phone No: 011 43538760/61 Contact: Mr. Manikant, email: mani.kant@indiainsure.com

Pune Office No.592/2, Deccan Gymkhana, Off J M Road, 2nd Floor, Next to Hotel Central Park, Pune - 411004. Ph: 020-66030713, 020-66016676. Fax: 020-66030713 Contact: Mr. Suresh Subramanium, email : suresh.subramanium@indiainsure.com