

## Message from the Editor

Dear Readers,

The response to the "i-notes" has been very heartening and it is indeed a great pleasure to bring to you this fifth issue.

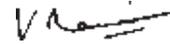
The much-awaited detariffing of rates by IRDA is still under review and implementation will not be as expected in April 2005. We are however optimistic that the whole programme will get decided sooner than later.

As we fast approach the last quarter of the year, when both Insurers and Brokers are busy finalizing Insurance programs of their Corporate Clients, we are encouraged by the softening

trends in the International Market to procure competitive rates for our clients.

The festive season continues and with Christmas and New Year just round the corner we take this opportunity to wish you Seasons Greetings and the very best for the coming year.

With warm regards,



V Ramakrishna  
Managing Director

## Do you Understand your Insurance Policy?

The movement towards Plain English in Insurance Policies



"XYZ General Insurance Company Limited ("the Company"), having received a proposal and the premium from the Proposer named in the schedule referred to hereinbelow, and the said Proposal and Declaration together with any statement, report or other document leading to the issue of this Policy and referred to therein having been accepted and agreed to by the Company and the Proposer as the basis of this contract do, by this Policy agree, in consideration of and subject to the due receipt of the subsequent premiums, as set out in the schedule with all its Parts, and further, subject to the terms and conditions contained in this Policy, as set out in the Schedule with all its Parts that on proof to the satisfaction of the Company of the compensation having become payable as set out in Part 1 of the Schedule to the title of the said person or persons claiming payment or upon the happening of an event upon which one or more benefits become payable under this Policy, the Sum insured/appropriate benefit will be paid by the Company."

If you have fully understood the above paragraph in the first reading, chances are you are a seasoned insurance veteran. It is an extract - known as the "preamble" - from an Insurance policy of an Indian General Insurance company. One wonders how many people actually read and understand the preamble, leave alone the entire policy document which is normally more than 10 pages.

For various reasons, traditionally insurance policies have always been difficult to understand and read almost like legal documents. An insurance product is intangible by nature - the only tangible component is the policy document, which is difficult to comprehend. A consumer about to sign a proposal or purchase an insurance policy for her House holders insurance should not have to pay a lawyer to explain what the legalese in the relevant documents means. Clients often feel the complicated legal phrasing is intentional. Thus the need for clarity of expression for the insurance policy wording has come to the fore.

### Why is Plain English important?

It is a generally accepted rule of contract law that a party to a contract is imputed full knowledge of the contract provisions. In written contracts in general, an individual will be bound by the terms whether they were read and understood or not. Although an insured can be held to have knowledge of the provisions of the insurance contract even though he or she may not have read it, the courts have traditionally been reluctant to hold insureds responsible for the same, as they recognize the highly technical nature of insurance and the fact that insurance policy language is often complicated and not easily understood by the average insured. There is therefore a tendency on the part of the courts to balance what they perceive as the unequal bargaining positions of insureds and insurers by giving the insured the benefit of the doubt.

An insurance policy is a "contract of adhesion", which means that any doubt or ambiguity in a policy provision will be resolved against the party that drafted it. Since the insurer drafted the policy, any question concerning its meaning will ordinarily be decided against the insurer and in favor of the insured. Courts

## Contaminated Products Insurance

Manufacturers and Retailers - especially those in the food, drink, tobacco, cosmetics and pharma sectors - are vulnerable these days to loss due to Product Contamination and Extortion.

Accidental Contamination is any accidental or unintentional contamination (or any adverse publicity implying such) of a Product. Contamination can take the form of bacteria, viruses, chemical toxins, mislabeling, foreign objects, shards of glass in containers etc. Malicious contamination is also a tangible threat originating from extortionists or, even from a disgruntled employee.

E-coli bacteria in beverages, cyanide in capsules, salmonella contamination in meat, mislabeled products, threats to spread harmful rumors about a product-these and similar hazards create a crisis situation for a company and can result in serious consequences, forcing product recalls and causing potentially catastrophic losses. The costs to a company consequent to a real or alleged contamination include product recall costs, loss of market share and brand credibility, loss of hard won retail shelf space and costs incurred to build the image back again.

The manufacturer is liable for damages provided the use or consumption of such Products has resulted in bodily injury, sickness, disease or death of any persons within 120 days following such consumption or use, or has caused physical damage to tangible property, including animals and/or livestock.

"We're seeing a definite rise in incidents of contamination and malicious threats, especially in Europe and the U.S.," said AIG Europe's head of Crisis Management, Diane Borden. "Food and agricultural products, juices and soft drinks, beer and wine, cosmetics and lotions, pharmaceutical products, tobacco, anything that can be ingested or applied poses a potential threat to health, and therefore to business."

Even in India, where consumer activism is still nascent, we have witnessed cases like the Cadbury's chocolates or the Cola pesticide cases in recent times.

### Contaminated Products Insurance

Insurers have designed a cover to protect companies against such risks - known as "Contaminated Products Insurance"

What 'events' are normally covered?

- Accidental Contamination - accidental or unintentional
- Malicious tampering - intentional or malicious tampering or contamination or creation of adverse publicity implying such
- Product Extortion - any threat to commit a malicious tampering for the purpose of demanding ransom

### What costs are normally covered?

A typical Contaminated Products Insurance policy will cover the following costs or losses once any of the above events is proved as a trigger:

- Recall costs in the event of own or third-party recall as well as recalls or sales bans at the direction of public agencies, especially costs for examination, transportation, destruction, analyses, decontamination of plant sites, storage space and cancellation charges, additional storage capacities, installation and dismantling costs, notifications to customers or end users, etc. It also includes costs of related advertising and publicity.
- Costs of manufacturing and replacement of the recalled goods
- Business Interruption costs - Lost profits plus ongoing expenses
- Rehabilitation costs
- Advertising measures, sales promotion, re-launch of a product on the market, appropriate expenses to preserve brand integrity
- Consulting fees
- Extortion payments

### Exclusions

Exclusions would normally include Intentional acts by Company, inherent vice, non-compliance of statutes, etc

### Difference between Product Liability and Contaminated Product Insurance

There is always a little confusion between product liability insurance and contaminated products insurance. The difference is that product liability only covers claims made by third parties; it doesn't cover the company's direct losses in monetary terms and reputation. The real pinch is usually not felt by the companies until the costs and related losses incurred by a product recall can cause them more serious damage than third party customer suits.

In addition to paying for the legal costs, the policy can give suppliers a marketing edge by showing potential major customers that someone else has put their money on the line and has given a sort of stamp of approval.

### Premium Rating

It is a complex insurance wherein the rating is difficult to arrive at. Thus, there are no ready formulae by which the premium is quantified. However, the following are the some of the parameters on which the premium rate depends.

- Revenues of the Insured
- Product Type
- Packaging
- Past Incidents
- Crisis Management/ Recall Plans
- Geographic Markets
- Quality Control
- Product Testing

## Do you Understand your Insurance Policy? - Contd... # 01

have essentially adopted this position. The rationale behind this principle is that since the insurer chose the policy language, it can be assumed that the insurer has sought to limit its scope. Fairness dictates that any doubt as to the meaning of the language used should be resolved in favor of the insured. To do otherwise, and employ a narrow and technical construction, would result in an injustice. As a result, there is a compelling reason for insurers to adopt a "positive claims attitude" toward policy interpretation, that is, to focus on looking for ways to cover a claim rather than for ways to exclude it.

"The insurance policy is first and foremost a legal contract." However, the 'first party' to that contract is the 'average person'-an automobile driver, a property owner, or a business owner. Their expectations are based on their reasonable understandings of the policy language, what might be described as a commonsense meaning.

It is therefore as important for Insurers to move towards Plain English documents as it is for the users. The premise behind the plain English movement is that legal documents ought to be plainer--and more comprehensible--to the average person.

### What is Plain English?

Plain English is language that is clear, direct and straightforward.

- ▶ Clear straightforward expression, using only as many words as are necessary - using language that avoids obscurity, inflated vocabulary and convoluted sentence construction.
- ▶ It is not baby talk, nor is it a simplified version of the English language. It is written with the reader in mind and with the right tone of voice that is clear and concise.
- ▶ It doesn't mean reducing the length or changing the meaning of your message.
- ▶ It's not about banning new words, killing off long words or promoting completely perfect grammar. Nor is it about letting grammar slip.
- ▶ It is not an amateur's method of communication. Most forward-looking senior managers always write in plain English.

And finally, it is not as easy as we would like to think.

### Example of a Clause which can be re-drafted in Plain English

Existing clause (108 words)

"Cancellation/ Termination

The Company may, at any time, cancel this policy, by giving 7 days notice in writing by Registered Post/Acknowledgement Due post to the insured at his last known address in which case, the Company shall be liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of the cancellation. The Insured may also give 7 days notice, in writing, for the cancellation of this policy, in which case the Company shall cancel the policy from the date of receipt of notice and retain the premium for the period this policy has been in force at the Company's Short period scales."

Suggested clause (70 words)

"Cancellation/ Termination

The Company or the Insured may cancel this policy by giving 7 days notice in writing (and collecting acknowledgement) to the other. Premium shall be repayable as follows:

- In case of cancellation by Company - pro-rata for the unexpired term from the date of cancellation
- In case of cancellation by Insured - balance premium after adjusting premium at short period scales (from date of policy till date of receipt of notice)"

### Indian Scenario

IRDA has taken the role of torchbearer in this direction - the sample wordings of motor policy proposed in the Motor de-tariffing report are a refreshing change from the existing Tariff wordings. The Private Sector insurers also, thanks to their MNC inputs and market-oriented policies have brought in some changes - for instance, all important words are highlighted where they first appear and are explained on the "definitions" page.

We still have some distance to cover before we reach this goal - but the first steps have been taken.

## In Lighter vein

### A Few Outrageous Insurance Claims

- Kathleen Robertson of Austin, Texas, was awarded \$780,000 by a jury of her peers after breaking her ankle tripping over a toddler who was running inside a furniture store. The owners of the store were understandably surprised at the verdict, considering the misbehaving little toddler was Ms. Robertson's son.
- 19-year-old Carl Truman of Los Angeles won \$74,000 and medical expenses when his neighbor ran over his hand with a Honda Accord. Mr. Truman apparently didn't notice there was someone at the wheel of the car when he was trying to steal his neighbor's hubcaps.
- Terrence Dickson of Bristol, Pennsylvania, was leaving a house he had just finished robbing by way of the garage. He was not able to get the garage door to go up since the automatic door opener was malfunctioning. He couldn't re-enter the house because the door connecting the house and garage locked when he pulled it shut. The family was on vacation, and Mr. Dickson found himself locked in the garage for eight days. He subsisted on a case of Pepsi he found, and a large bag of dry dog food. He sued the homeowner's insurance claiming the situation caused him undue mental anguish. The jury agreed to the tune of \$500,000.



## Risk Management Tips (Static Electricity)

We begin this section by paying tributes to late Benjamin Franklin, who has done pioneering work both in Static Electricity and started the first Fire Insurance Company in United States in the year 1752.



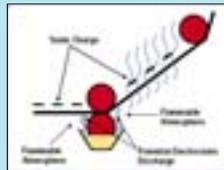
### Knowledge Base

Static Electricity may be defined as the Potential energy released from an electrostatic discharge. Some of the types of electrostatic discharges are Spark discharge, Propagating brush discharge, conical pile discharge, Lighting-like discharge, etc.

Causes and factors that govern static charge generation and discharge are conductivity of the chemical or mixture, spraying, splashing, agitation, mixing, pouring, flow velocity, sampling, gauging, sieving, grinding, sliding, pneumatic transport, relaxation time, bonding, earthing, humidity, ionization etc. Process industries mainly electronics & chemical industries are potential in increase of dangers from discharge of static electricity.

Proper earthing, protective footwear & clothing cut the risk exposed from static electricity. Eg: Explosions in the chemical industry while handling and transportation of highly flammable substances or damage to sensitive equipments in an electronic industry.

Fig: Areas of potential Electric Discharge.



### Risk Management - Flammable Liquids

To control the build-up of static electricity generated in flammable liquids, close attention must be given to the following procedures:

- Fill pipes should either extend almost to the bottom of the tank or enter from below to minimise mist formation.
- Use low-speed stirring or agitation to achieve mixing of materials. Avoid pouring powders directly into the vessels containing flammable solvents from insulated bags or kegs, instead use metal scoop. The flooring and the footwear should be conductive enough. This avoids explosions.
- Wherever possible, limit the velocity of liquids in pipelines to below 1 m/sec. This will generally reduce the formation of static electricity to non-hazardous levels.
- The manufacturers of hydrocarbon solvents generally add anti-static agents to assist the dissipation of any static charges formed. This information is not normally published and must be verified by contacting the manufacturer.

### Conclusions

Proper risk management of electrostatic hazards is the key to minimizing the probability of the sudden and costly occurrences of flash-fires, explosions, and production losses in various industrial operations.

Static electricity is an ignition source, and must be understood to prevent accidents on the process line. Successful risk management of electrostatic hazards must be done on three levels: real-time, preventive, and post-incident.

Identifying an effective convertor for each application and equipment must be carefully done for having effective static neutralizers. Specifying and purchasing static neutralizers for use in hazardous areas, one must remember that it's an investment in loss prevention- and it must be judged and valued as such.

## Disclaimer

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