i notes
Newsletter from India's Leading Insurance Broking House
April 05

Summary

india insure
The risk managers

Message from the Editor

Dear Readers,

The Indian Insurance Industry has just completed yet another financial year – its fourth full year since Private players were licensed. While the number of players have remained almost constant, the growth in combined market share of the new companies is impressive. Private Non-life Insurers have written around Rs 3536 crores of Premium out of a total market size of Rs 17600 crores – a market share of 20% as against 15% last year. Private Life Insurers have also been chipping away at the market of the PSU giant, LIC, and have managed a share of around 22% this year.

Insurance Broking also has gained wider acceptance this year – while accurate statistics are not available, we understand the combined brokered volume has touched around Rs 1500- Rs 2000 crores. On our part, we are happy to report the closing of our second full year as Brokers. We have improved our performance – having brokered around Rs 101 crores of premium across our 6 branches.

In this issue of i-notes, we deal with Automobile Insurance, focusing on the differences between Indian and US underwriting practices and coverages. Whenever de-tariffing happens,it is expected that our practices will also change. We also deal with a new Insurance Product – Kidnap & Ransom Insurance in our "Product" section. Under "Risk Tips", we present some ideas to manage Errors and Omissions Insurance better.

Warm Regards

V Ramakrishna
Editor – ***i-notes*** & Managing Director, India Insure

Automobile Insurance - Indian vs US Markets

Introduction

Auto insurance protects against risks associated with owning or driving of an automobile, and it constitutes about 40-50% of non-life premium worldwide.

However, being a part of Tariff, auto insurance in India has traditionally been different from that in markets like the US – in areas of coverage, classification and underwriting/ rating practices.

Classification

In India, we have only "**Motor**" insurance regardless of whether the vehicle is owned by an individual or an organization, whereas in the US it is driver-centric.

Worldwide, a **Personal Auto** policy covers personally owned vehicles - primarily used for personal trips or to commute to work – with a broader cover and a lower premium. This policy is portable i.e. the policy stays with the Owner and not the car. On the other hand, vehicles owned by an organization are covered under a **Commercial Auto** policy, whose coverage is restrictive and expensive, and it is not portable.

Coverage

TAC has devised 2 flavors for auto insurance '**Liability only'** and **'Package'** insurances. The former is a limited version which addresses legal requirement of vehicles coming onto public roads, as per the Motor Vehicles Act. The latter covers Damage to the cars, liability to the passengers and driver.

US Insurers, on the other hand offer Insurance under six heads:

- ***Bodily Injury Liability*** (similar to our Third Party Personal Injury cover) coverage applies to injuries that policyholder or designated driver cause to others. Owner and family members listed on the policy are also covered when driving someone else's car with their permission.
- ***Property Damage Liability*** (similar to our Third Party Property Damage cover) pays for damages to others' property like car, lamp posts, telephone poles, fences, buildings or other structures car hits.
- ***Medical Payments*** or Personal Injury Protection (PIP) pays for the treatment of injuries to the driver and passengers of the policyholder's car. At its broadest, PIP can cover medical payments, lost wages and the cost of replacing services normally performed by someone injured in an auto accident.
- ***Collision*** coverage pays for damage to car resulting from a collision with another car, or due to flipping over or damage caused by potholes. Collision coverage generally comes with a deductible. This coverage will reimburse the costs of repairing insured car, even if at fault, but with the deductible. If insured is not at fault, insurance company would first recover from the other driver's insurance company and then re-imburse the deductible.
- ***Comprehensive*** coverage reimburses for loss due to theft or damage caused by something other than a collision with another car or object, like fire, falling objects, missiles, explosion, earthquake, windstorm, hail, flood, vandalism, riot, or contact with animals such as birds or deer.

  In India, Own Damage section covers both Collision and Comprehensive coverages. Unlike here, in US, States do not require purchase collision or comprehensive coverage, but lenders do insist on the same.
- ***Uninsured*** and ***Underinsured Motorist*** Coverage reimburses policyholder, a member of the family, or a designated driver if hit by an uninsured or hit-and-run driver.

  Underinsured motorist coverage comes into play when an at-fault driver has insufficient insurance to pay for the total loss or if a pedestrian is hit. So far this concept is not prevalent in our country.

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INTRODUCTION

Critics of Insurance Privatisation in India often voice the feeling that the new Private players, in spite of the presence of foreign partners, haven't contributed to adding new and innovative Insurance products, although they have been around now for more than 4 years. They feel the same set of products which were always available with PSUs have been re-designed and launched under different names.

While this is true to some extent, it is also true that some innovative covers, like Credit Insurance, Multi-modal Transport Operators insurance, etc **have** been introduced over the last few years (operators feel that this is the best that could have been done in a tariff environment and with insufficient underwriting data). One such unusual cover is the **Kidnap & Ransom Insurance** cover. It has been launched only recently, and very few companies offer the cover – understandably so, as it is a complex and sensitive issue.

NEED FOR KIDNAP & RANSOM COVER

World over, terrorist activities have been increasing substantially over the last few years. Kidnapping for ransom money is also on the upswing. Whilst certain countries are more notorious for their criminal and terrorist activity, today no part of the world is immune from this threat.

Extortionists don't discriminate. Any company of any size can be a target for extortion threats against the company and its employees. People tend to associate business extortion and kidnapping with global companies. While multinational companies are perhaps more vulnerable to attacks due to their multiple locations and visibility, local companies are increasingly at risk too.

The fact is, radical groups, out on a mission to eliminate the "infidels" or attract media attention to their cause, and criminals, exist everywhere.

Kidnap, Extortion and Detention are real dangers for companies today. They are, however, often overlooked by managements on the grounds that "it won't ever happen to us", but the damage this can inflict on a business can be very severe - as the annual roll call of corporate and individual victims around the world testifies.

While no insurance cover can ease the emotional and physical pain, Kidnap & Ransom cover can help ease the financial burden and resolve issues smoothly.

WHAT IS KIDNAP & RANSOM COVER?

Kidnap and Ransom insurance provides assistance to the family and business with regard to independent investigations, negotiations, arrangement and delivery of funds, and numerous other services vital to a safe, speedy and satisfactory resolution.

Extortion Insurance will help you manage the costs associated with an extortion threat against your products, proprietary information, computer system or your people – these costs can be enough to push a small to medium-sized company to its financial limits.

These costs and risks may not feel like everyday exposures, but too often they are. And when they happen, you may need financial assistance to meet extortion demands and the extensive costs associated with negotiation and recovery.

When an individual is kidnapped, the repercussions are many and varied. The immediate impact is on the family and the employer. Families are placed under enormous stress. Employers on the other hand, have to deal with the loss of a key employee and the profound effect that can have on a Company's ability to continue trading.

Consequently, adequate protection against these events in the form of specialist advice and the safety net of an insurance policy has quickly become essential for vulnerable families and an integral part of every company's risk management portfolio.

The specific policy details may be tailored to meet specific needs. Access to a specialist crisis management company is a key benefit under the policy.

Being a highly specialised product, it would also require the service of one of the few brokers who can handle this business in a completely confidential and efficient manner.

POLICY FEATURES

Note: all policy features are Indicative only; they will differ from company to company

Who is indemnified?

- Those persons specified in the Schedule.
- A person who is temporarily engaged for the sole purpose of negotiating and/or delivering a Ransom and
- A passenger in a vehicle belonging to the Assured or an Insured Person

What is an Insured Event?

- **Kidnap** - illegal taking and holding captive of one or more Insured Person(s) by persons who then demand payment, specifically from assets of the Assured or an Insured Person, a Ransom as a condition of the release of such Insured Person(s).
- **Extortion** - shall be the making of illegal threats either directly or indirectly to the Assured or to one or more Insured Person(s) to:

  (1) kill, injure or abduct an Insured Person(s); or

  (2) cause physical damage to or loss of Property; or

  (3) disseminate, divulge or utilise Trade Secrets; or

  (4) introduce a computer virus designed to damage, destroy or corrupt the Assured's computerised data

  by persons who then demand a Ransom as a condition of not carrying out such threats.
- **Products Extortion** shall be the making of illegal threats to the Assured or the production of publicity that the Assured's Products will be or have been contaminated, polluted or rendered substandard, by persons who demand a Ransom from the Assured, either: -

  a) as a condition of not carrying out such threats, or

  b) before providing further information about the affected Assured's Products.
- **Detention** - shall be the holding under duress of an Insured Person(s) for whatever reason and whether by authorities legally constituted in the place of custody or by others. With respect to salary payments only, Underwriters' liability shall

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Automobile Insurance ....Contd. from # 01

Underwriting Practices

The primary difference between the Indian and US underwriting practices is that while we have traditionally focused on the "vehicle" risk, US insurers do a risk profile of the "Driver".

The driver-centric approach of US considers various personal characteristics of the driver as underwriting parameters in addition to vehicle parameters to arrive at physical damage and liability premium, while in India the parameters used to stop with IDV (Insured Declared Value), vehicle's cubic capacity, broad geographic zone and age of vehicle for own damage.

In US Liability premium depends on:

Limits – greater the limits selected higher the costs,

Age – principal drivers with age less than 30 yrs pay more premium than those in higher age group. They have identified a typical character called youthful driver (an unmarried male member in a family of less than 25 years and licensed to drive). Even if one of the drivers in a family is a youthful drivers the premium rating of family goes up!,

Gender – men to pay more premium than women,

Marital Status – unmarried, or divorced people pay more than married ones!

Use of the Vehicle – premium payable decreases in the order of business usage, work use, pleasure or farming use.

Similarly, the physical damage premium is built around

Deductible Amount – a lower deductible entails higher premium,

Make and Model – high performance cars require higher premium payment

Model year – newer cars require higher premium than older ones

Cost of Vehicle – the expensive models cost more, like in Indian IDV

Age, Sex, Marital Status, use of vehicle and territory of garage also influence physical damage premium computation.

In India, underwriting criteria have started including more detailed Driver/ Owner data (along with additional Vehicle data) since the time TAC prescribed a revised proposal format recently. Additionally, certain Private Insurers (eg: Bajaj Allianz and Tata AIG) are seeking information beyond the TAC format to be able to make better underwriting decisions.

Sample some of the information sought:

- details of main drivers – date of birth, relationship with owner, driving experience
- marital status
- gender of main driver
- whether vehicle is driven mainly on city roads or highways etc

It is important to understand the practices being followed abroad – as we are likely to adopt most of them as soon as we move into a de-tariffed environment. It might help us as individuals or organizations to prepare better for de-tariffing.

Kidnap, Ransom & Extortion....... Contd. from # 02

be for a period of 60 months or until 30 days after the date on which the Detention ceases whichever shall first occur.

- **Hijack** - shall be the illegal holding under duress for a period in excess of six hours, of an Insured Person whilst travelling on an aircraft, motor vehicle or waterborne vessel.

Benefits Provided

- Ransom which has been surrendered.
- The loss in transit of a Ransom
- Ransom Paid by Company and Ransom paid by Insured Person.
- The fees and expenses of a Security Consultants Group
- Detention and Hijack.
- Personal Accident
- Additional expenses comprising the following :
  1) Fees and expenses of an independent negotiator/Public Relations Consultant
  2) Costs of travel and accommodation incurred by the Assured or an Insured Person ;
  3) Fees for the independent psychiatric care and/or medical care and/or legal advise incurred prior to within twelve months following the release of a kidnapped Insured Person;
  4) Fees and independent legal advice incurred prior to and within twelve months following the release of a kidnapped Insured Person;
  5) Reward paid by the Assured to an informant for information which leads to the arrest and conviction of parties responsible for an Insured Event provided that the offer is approved by local law enforcement officials and underwriters;
  6) 150% of a kidnapped Insured Person's net Salary;
  7) Sums payable by way of interest on loans raised specifically to meet a Ransom and in respect of amounts subsequently reimbursed hereunder, provided that the loan is repaid within seven days of the Assured receiving reimbursement of the same from the underwriters;
  8) Costs of recording equipment and advertising solely and directly to obtain the release of a kidnapped or detained Insured person
  9) Fees and Expenses of an Interpreter
  10) Personal Financial Loss
  11) Fees and Expenses of Security Guards
  12) Fees and Expenses of Forensic Analysis.
  13) Rest and Rehabilitation Expenses
  14) Costs of Cosmetic or Plastic Surgery

Main Exclusions

- The surrender of a Ransom under circumstances of force or violence - in this case Insurance companies shall not pay the surrendered amount in addition to the actual Ransom demanded.
- Any act of the Assured or an Insured Person which is considered to be a criminal offence as per the law of the land
- A fraudulent or a dishonest act by the Insured persons to fraudulently recover under the policy

Risk Tips on Errors and Omissions Insurance

Errors & Omissions Insurance (E&O - also known as Professional Indemnity), hitherto a little-known and lesser-bought cover, has become quite popular over the last 4-5 years. In Western countries, where contractual obligations and consequent litigation are more commonplace, E&O Insurance has been available longer – where as in India, it is a recent phenomenon, aided by the growth in the Technology Sector and the entry of Private Insurers with foreign joint venture partners.

Even so, in India, most of E&O insurance is still bought more to fulfill a contractual obligation than as a means of protection. Moreover, while cover is being bought, there is very little awareness of how to avoid or minimize losses in this area. One way of protecting against disputes is to have a well-worded contract.

We present below a few tips in this area.

- **Legal review:** Have legal counsel review all contracts, purchase orders, and license and service agreements, including those with subcontractors. Share the relevant clauses of the draft contract with your Insurance Broker – check which clauses are insurable and what might be the indicative cost – it might help in the bidding process.
- **Customizing contracts:** Avoid customizing contracts. If you must customize an agreement, take every precaution possible to protect yourself from litigation. For example, use boilerplate amendments that become "standard exceptions," or make sure your legal counsel reviews all deviations from standard.
- **Limitations of liability:** Take advantage of all contract language measures that enable you to limit your liability. Tailor this language to your industry and customers. Completely limit all consequential, punitive and similar damages and ensure that your liability is limited to the cost of the contract or service provided by you.
- **Disclaiming warranties:** Include warranty disclaimers in your contracts. They help minimize your exposure to litigation by limiting the types of warranties that you are willing to offer. These disclaimers should conform to the requirements of the Uniform Commercial Code with regard to typestyle and content, as well as any local jurisdictional requirements that may apply.
- **Warranties:** Avoid making warranties that are difficult to meet. Make the warranties as specific as possible, avoiding the use of "general warranties" wherever possible.
- **Severability:** Include a severability clause in your contracts. Without it, your ability to rely on provisions in your contract that limit your liability may be jeopardized if a court finds another provision in your contract unenforceable.
- **Indemnities:** Stipulate the indemnification procedures, terms and conditions that are to be followed in the event of a dispute. Protect the assets of your organization by having indemnification wording that inures to your benefit.
- **Arbitration:** Include arbitration provisions in contracts as a means to resolve customer disputes in lieu of litigation.
- **Force majeure:** This clause is important if you operate in natural catastrophe-prone areas, particularly for online services or any business that relies on communications infrastructure to do business. Force majeure clauses limit your liability for losses or breaches resulting from external forces such as earthquakes, tornadoes, storms or other natural events, as well as events such as war.
- **Performance obligations:** Be specific but brief with regard to performance obligations. This is not the place to be boastful about your abilities to achieve lofty performance standards.
- **Amendments and modifications:** Specify the procedures for making amendments and modifications to your contracts. Document any changes made to product and service specifications and deliverables.

Disclaimer

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