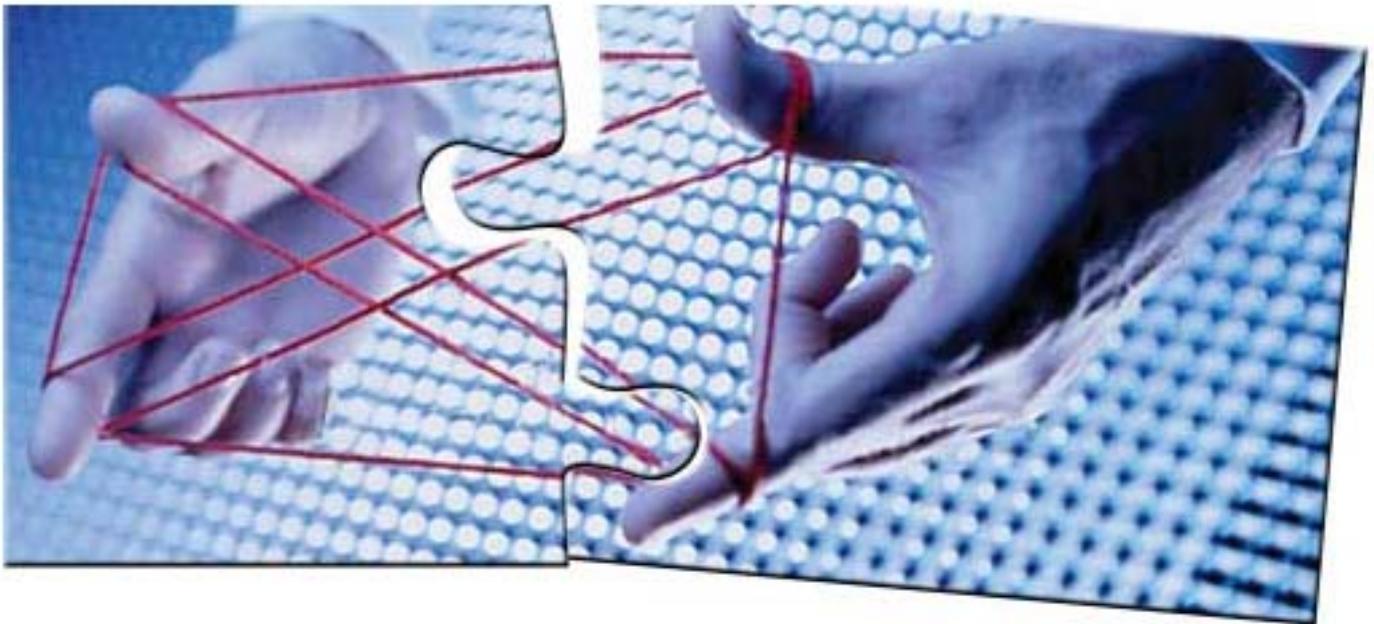




Volume V, No. 4

Journal

MARCH 2007



Making Insurance Contracts Simpler

बीमा विनियामक और विकास प्राधिकरण

INSIDE

Statistics - Life Insurance	4
Vantage Point <i>U. Jawaharlal</i>	6
In the Air	7
परीक्षण परख बीमा - परीक्षण यथात् की आवश्यकता दाटला के एम एस राजू	38
भारतीय निगमित क्षेत्र में आईपीओ संभावित अरक्षितता तथा सुरक्षा आवश्यकता साझे दावेदार	41
Statistics - Non-Life Insurance	44
Round-up	46

35

Claims Data Pool The Initiative Must Begin

Lakshmi

ISSUE FOCUS

Plain English in Insurance <i>- V. Ramakrishna</i>	12
Contract Certainty and the Insurance Market <i>- Arup Chatterjee</i>	15
Reinsurance Agreements <i>- K.L. Naik</i>	18
Life Insurance Contracts <i>- G. Prabhakara</i>	23
Contractual Obligation in Insurance Contracts <i>- G V Rao</i>	26
Understanding the Insurance Policy <i>- Yagnapriya Bharath</i>	30
Towards Simpler Contract Wordings ... <i>- Sanjeev Kumar Jain</i>	32

Plain English in Insurance

NEED OF THE HOUR

V. RAMAKRISHNA ASSERTS THAT 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.

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 ten 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 Householders insurance

should not have to pay a lawyer to explain what the legalese in the relevant documents means.

World over, insurance contracts remain a question of concern as regards the language used.

Why is it that when insurance is a contract between two parties, one of them (the insured) has no say in the wordings? Would the number of disputes come down if plain language was used in all contracts?

History of Insurance policy wordings

The earliest authenticated insurance contract (i.e. that which displays the characteristics of insurance), is a marine insurance contract on a ship "The Santa Clara" dated 1347 in Genoa. The policy is in the Italian language and appears in the form a maritime loan to avoid the church prohibition against usury.

The earliest insurers were merchants underwriting risks for fellow merchants, on a part time basis. The contract of insurance was not created as a result of judicial or legislative innovation, but by the merchants themselves as a result

Introduction

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

One wonders how many people actually read and understand the preamble, leave alone the entire policy document which is normally more than ten pages.

of commercial expediency and need (Necessity being the mother of invention).

Very few reported cases exist, or legal principles were established by the judiciary on the Continent, until Lord Mansfield C.J. took office in the Highest Court in England. During his tenure in office a large number of cases and principles were established by the eminent judge, many of which today exist unaltered (examples of which would be that insurances contracts are contracts of good faith, the duty of disclosure, the effect of misrepresentation and non-disclosure on the insurance contract, the effect of fraud on the insurance contract, warranties, etc., to name a few).

However, policy wordings have to a large extent, remained unaltered and follow the example of the Lloyds policy wordings which had been created more than 200 years ago. This is particularly evident in the field of marine insurance. Personal lines insurance policy wordings however have been greatly improved and simplified in recent times.

The Legal Position

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 not easily understood by the average insured. There is therefore a tendency on the part of the courts to balance what they perceive

In written contracts in general, an individual will be bound by the terms whether they were read and understood or not.

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 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.

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.

Examples of Complex Clauses

Readability experts recommend that the average length of sentences should be 20 or fewer words. Longer sentences risk providing too much information and often fail to organize that information in a clear, accurate and effective manner.

Take for instance a Re-instatement clause (174 words) picked up from an insurance policy today. It is too long, contains superfluous information, arranges its relative and subordinate clauses poorly (they intrude between the subjects and their verbs), and presents ideas in a way that is not logically organized.

'If the Company at its option, reinstate or replace the property damaged or destroyed, or any part thereof, instead of paying the amount of the loss or

damage, or joint with any other Company or Insurer(s) in so doing the Company shall not be bound to reinstate exactly or completely but only as circumstances permit and in reasonably sufficient manner, and in no case shall the Company be bound to expend more in reinstatement than it would have cost to reinstate such property as it was at the time of the occurrence of such loss or damage nor more than the sum insured by the Company thereon. If the Company so elect to reinstate or replace any property the insured shall at his own expense furnish the Company with such plans, specification, measurements, quantities and such other particulars as the Company may require, and no acts done, or caused to be done, by the Company with a view to reinstatement or replacement shall be deemed an election by the company to reinstate or replace.

A suggested revision (89 words) follows:

"If the Company decides to settle the claim by reinstating or replacing the damaged property entirely or partly, it need not necessarily reinstate exactly but may do so to the best of what the circumstances permit. This is to be done in a reasonable time frame and restricted to the cost of reinstating at the time of loss subject to adequacy of the sum insured. Cost of any kind of betterment and also including the cost of plans, specifications, measurements, quantities etc is to be borne by the insured.

In a similar vein, consider the following clause in a property insurance policy:

"We will not disclaim coverage under this policy if you fail to disclose all hazards as of the inception date of the policy, providing such failure is not intentional."

This sentence pattern can be improved as follows:

"If your failure to disclose all hazards is not intentional, then we will not disclaim coverage under this policy."

Plain English is any message, written with the reader in mind, which gets its meaning across clearly and concisely so the reader can take the appropriate action.

What is happening - World / India

Over the last two decades, a 'culture of clarity' has been gaining ground with many insurers around the English-speaking world. In several countries including US and UK, campaigns towards making insurance policies in Plain English have become a movement. In these countries apart from insurance companies other companies like government departments, banks and local councils have come to realize that clear communication is actually a good idea. Instead of writing to impress or confuse, they are now writing to inform and explain. They are using plain English to do this. It is heartening to note that in several states of the United States, the need to shift to plain English has gained momentum. Almost all insurance policies in Michigan are now written in plain English, or at least score fairly well on the readability tests. Furthermore, they have been written in plain English for the last five to ten years. But

Consider these examples:

- In 1977, Royal Insurance Company, Canada unveiled its "simple English" Select Homeshield Policy for home insurance. Sales increased 38%, from \$58 million to \$79 million in the same year.
- Since the early 1970's, Bank of Nova Scotia has been redesigning forms and writing contracts in plain legal English. So far, it has never had a court case because of plain language.

In India, to a large extent with IRDA's intervention and the opening up of the industry, several insurers have been working towards simplifying the policy wordings to make them more reader-friendly. Highlighting difficult/ technical words and providing definitions for them has been one significant improvement in rendering the policy more understandable.

Conclusion

In spite of the above, even today, if you ask the general public, they will still cite insurance policies as prime examples of legalese. Why? Because insurance policies used to be written in legalese, and people simply gave up trying to read the policies. There is a strong case for all the industry players to devote more attention to propagating Plain English in insurance policy wordings.

With the consumers interest gaining momentum across the world the day is not far off when the insurance policies will be in plain English and this would hopefully result in the spread of insurance awareness.

Over the last two decades, a 'culture of clarity' has been gaining ground with many insurers around the English-speaking world.

The author is Managing Director, India Insure Risk Management Services P Ltd. The views expressed in this article are personal.