i-notes
Newsletter from India's Leading Insurance Broking House
Nov - Dec 08

## Summary

- Rise of specialty insurance products in India
- Personal and Advertising Injury
- Claims Case Study - Advertising Injury Claim
- Interview - Corporates & Insurers on liability landscape

india insure
The risk managers

# Message from the Editor

Dear Readers,

Kudos to India Inc. and specifically to the Chandrayaan team for giving us a reason to celebrate in this otherwise gloomy atmosphere of recessions, meltdowns, pink slips and the tumbling stock market! The mission has been a great example for the Corporate world about the time to be spent at the drawing board. Clock work precision with which the plan was executed was absolutely exemplary!

Back to our industry, the market continues to be soft. While some of the leading global reinsurers have indicated the stiffening of treaty terms, the effect is yet to be seen in the Indian market. The half yearly industry figures indicate a growth rate of 13.6% as against 11.6% the same time last year.

The File & Use circular issued by IRDA, relaxing terms and conditions of coverages effective Jan 01st 2009, permitting insurers to file variations in deductibles and add on covers in fire, engineering, IAR and motor OD has come as a welcome move and will hopefully see a host of innovative covers coming into the market shortly.

In this issue we take a look at the rise of the specialty lines products in India. Our product section deals with one of the extensions of the CGL policy, the Personal & Advertising injury cover. In this issue we have views shared by some of the seniors in the industry as well as corporate having an exposure to the liability policies. Many thanks to Mr. Basil Almeida, General Counsel, Geometric Global Limited, Mr. S. Balasubramaniam, CFO, Zensar Technologies Ltd, Mr. V. Harshavardhan, General Manager, United India Insurance & Mr. Anuj Tyagi, National Head-Corporate Business, HDFC Ergo for sharing their views with us.

Happy reading!

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

# Rise of specialty insurance products in India

**At a glance**

- India's insurance industry is yet another example of the positive effects of competition and new investors in the marketplace.
- The last few years have seen the rise of many non-traditional and specialty products, majority of them being in the liability segment.
- The increasing stress on corporate governance by SEBI and increasing awareness of shareholder rights have triggered the growth of these new products.

It's been eight years since the insurance sector was opened up for private participation in India. The reasons that prompted the government to bring in reform in this sector are well known. While the public sector life insurance companies made enormous contribution in the spread of insurance awareness, it was recognized that their reach was still limited, the range of products offered restricted and the service to the consumer inadequate.

> The last few years had a lot of innovation in store for the insurance customer both in the life and non-life segment.

Nevertheless, times have changed and the insurance industry has changed gears. The last few years had a lot of innovation in store for the insurance customer both in the life and non-life segment. Whether it was product launches or practices, the industry players have displayed an innovative bent of mind in catering to the need of customers.

Some of the growth triggers for these new products are the increasing stress on corporate governance by SEBI through its Clause 49 regulations, initiation of legal reforms, increasing awareness of shareholder rights & globalization while the entry of foreign players has also acted as a catalyst. In this article we take a peek at the new specialty products that are ruling the roost in today's insurance market place.

### Crime Insurance

Despite heightened efforts at regulation and companies' investments in controls, fraud remains a major threat to companies around the world. According to the PWC Economic Crime Survey, the average direct financial loss to companies in India was close to INR 60 million for the years 2006 & 2007.

Commercial Crime policies are now becoming increasingly popular in view of 2 fold requirements – contractually imposed insurance requirements by customers and the high cost and probability of indemnifying customers for consequential losses. Most crime policies cover not only employee fraud but also third-party crimes including forgery, counterfeit currency and theft of company property.

With the recent spate of cases like the alleged sale of British customers' data and the siphoning of funds of Citibank clients from BPO's in India, crime policy is worth the buy.

### Kidnap, Ransom & Extortion Insurance

Kidnap, Extortion and Detention are real dangers for companies today but is often overlooked by management on the grounds that "it won't ever happen to us". According to the National Crime Records Bureau, in 2006 (the latest period for which data is available), the number of reported abductions jumped 52% to 23,991, from 15,750 in 2005, ranking India sixth among 10 countries with the worst record for kidnappings.

In a world threatened by kidnappers and extortionists, companies can take shelter under the Kidnap, Ransom & Extortion (KRE) insurance policy. KRE insurance policies typically cover the perils of kidnap, extortion, wrongful detention and hijacking. They also cover various expenses including ransom charges, expenses incurred for hiring special negotiators as well as the trauma counselling that the kidnapped victim goes through after being released. The high profile kidnappings like the Adobe CEO's son in Noida and FCI Chairman have increased awareness of this cover.

> Securities class action filings are quickly increasing on the heels of the collapse of the subprime mortgage market and coinciding with an uptick in stock market price volatility.

(Contd... 02)

## Rise of specialty insurance products in India..... Contd. # 1

Afraid that publicity will lead to actual kidnappings if the existence of a policy is known, companies with KRE coverage keep their purchase under wraps, so it's hard to guess how many carry the coverage and how often it's put to use.

### POSI

With the stock markets fluctuating with high amplitude, the market place has become pretty risky for companies issuing IPO's. When a company raises capital through the publication of a prospectus, the directors and officers of that entity and their advisors can face potential liabilities arising as a result of any false or misleading information in the prospectus. Most securities actions are fuelled by unfulfilled investor expectations, so legal actions can also occur much after the transaction. Public Offering of Securities Insurance (POSI) also known as IPO Insurance, addresses these uncertainties by ring-fencing securities exposures in a single premium, transaction-specific policy.

Today, corporates are looking to insurers to shield them from the financial consequences of political turmoil around the world.

On October 3, 2008, a securities class action lawsuit in NY Supreme Court was initiated on behalf of investors who purchased preferred securities in various offerings of Merrill Lynch. The complaint alleges that the offering documents "misstated Merrill's financial condition and failed to disclose that the Company bore massive exposure to losses from investments tied to subprime and other mortgages, and was responsible for significant liability arising from its participation in the market for auction rate securities (ARS)".

Securities class action filings are quickly increasing on the heels of the collapse of the subprime mortgage market and coinciding with an uptick in stock market price volatility.

### Title insurance

The rapidly growing Indian realty sector will now see a sea change, thanks to insurance cover on property title. Title insurance protects a person from losses arising due to problems in the title of the property as a property changes many hands before reaching you. It covers losses and damage suffered if the title is unmarketable and it also covers the insured for any claims and legal fees that arise out of such problems.

With the IT boom catching up in India and with companies crossing borders to conduct business, a host of new exposures due to foreign laws and regulations have arisen.

Though prevalent in the overseas market since earlier times, this has been one of the latest entrants in the Indian insurance market.

### Weather insurance

- India lost a mammoth 4mn tone of wheat output due to high temperature in 2004. – *Agri Journal*
- EID Parry sales, net down 86 pc on monsoon failure. - *The Hindu*
- The delayed monsoon has hit the fertilizer stocks badly. - *Analyst*

These headlines reiterate the fact that we still live largely at the mercy of the weather.

In a country where more than 50% of the workforce is dependent on agriculture, weather insurance provides the much needed respite from adverse weather conditions like un-seasonal rain, excess/ shortfall of rain or variations in temperature, wind speeds and humidity. Weather insurance provides coverage when weather causes a loss in income or increase in expenses, but with no attendant physical damage. Once thought of as solely for outdoor events & agriculture, weather insurance can now be used by every type of business like fertilizers, energy, construction, entertainment, travel, cold drink manufacturers, ice-cream dealers etc.

### Political Risks Insurance

As companies expand into international markets they often find that the politics of foreign environments adds risk and complexity to business performance. Hence, today, corporates are looking to insurers to shield them from the financial consequences of political turmoil around the world. Political Risk Insurance (PRI) is a tool for multinational enterprises, financiers, contractors, importers and exporters to mitigate risks arising from adverse government actions, confiscation of assets, breach of contract or war and civil strife.

Till recently in India, ECGC was the sole provider of PRI. Of late, few private insurance companies have also made their foray into this line of insurance. As India's next wave of investment is focused on lesser-industrialized countries like Central & South East Asia, Africa and Latin America, the banks financing these investments may insist on a PRI & this probably will fuel the future growth of PRI in India.

### Clinical Trials Insurance

Insurance coverage for participants in a clinical trial though in existence since the late nineties, it is now that it has become more prevalent.

Clinical Trials insurance protects the insured against lawsuits alleging death, bodily injury, property damages etc, as a result of an individual's or a group's participation in a clinical trial. The term 'insured' includes a wide group of people involved in the clinical trial, from the sponsor that needs to test its new product, the hospital / doctors or investigators that actually conduct the study, a Clinical Research Organization (CRO) that helps the sponsor manage the study, the institution where the study is actually conducted and even to the ethics committee that approves the trial. Not only is legal liability covered, this is the only policy which also provides "No fault Compensation" to the subject. Which means that, the subject need not necessarily opt for a legal recourse; a claim for compensation for an adverse impact due to a study is sufficient for the policy to admit the claim.

In fact, the growth of the clinical trial insurance industry in India is largely linked to the growth of the healthcare industry and also due to the availability of less expensive manpower for their trial & lesser costs charged by any CRO in India.

### Errors and Omissions (E&O) Insurance

While Errors and Omissions insurance earlier existed in the form of Professional Indemnity insurance, it only provided cover for some specified professionals like doctors, lawyers, architects, Chartered Accountants, contractors etc. However, with the IT boom catching up in India and with companies crossing borders to conduct business, a host of new exposures due to foreign laws and regulations have arisen.

In brief, E&O insurance provides protection to the individuals/ companies offering professional services against claims brought in respect of negligent acts, errors or omissions in the performance of their professional services.

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# Personal and *Advertising Injury*

## Introduction

Whenever one talks about a commercial general liability policy, they are always referring to a policy which offers them product liability & public liability coverage. While it is known that a CGL policy offers a "wider" version of a Public liability policy and additionally it also provides cover for Product liability under it! Very few are aware of the "wide" cover that is actually offered under the policy.

Section B of a CGL policy offers a cover called – personal and advertising injury! This is consciously opted for by various corporate only when it is a contractual obligation and their customers have insisted this to be included in the policy. We are endeavoring in this article, to highlight the special features of this cover and also discuss the various instances when this cover can come in handy to the insured.

## What is Personal & Advertising Injury?

Individuals and organizations are protected by various legal rights. An attempt at violating or infringing these rights may result in a loss to them. The one who suffers the loss may seek damages in a court of law from the person / organization that is responsible for such violation. The personal and advertising injury section of a CGL policy provides protection to an insured that faces such loss.

The coverage offered could be termed similar to a "named peril" cover. The reason being, that the policy defines very categorically a list of 7 instances which constitutes a personal and advertising injury. Losses occurring within the purview of this list are only covered under the policy. It is the responsibility of the insured to prove that the loss has occurred as part of one of the stated instances. The coverage will also provide protection for a bodily injury as a consequence to this loss.

Given below are the instances which form part of this coverage:

- False arrest, detention or imprisonment.

  This offence is usually an invasion of a person's right to liberty! It involves forcible restraint of person against their will. This not only includes imprisonment but also include instances such as an attendant of a supermarket taking away the keys of a customer's car to prohibit him from leaving the premises.

- Malicious prosecution

  This offence occurs when the insured maliciously prosecutes another person or organization without a probable cause. The defendant against whom the case is filed should win the case and file suit against the insured for wrongfully starting legal proceedings against them. The insured in this case becomes the defendant and their CGL policy provides coverage under the personal & advertising injury section.

- The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

  This offence has to necessarily be committed by the land lord, owner or lessor of premises. A typical example could be when a hotel allots the same room to two guests and the second guest enters the room without the knowledge of the guest already occupying the room.

- 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.

  This offence is caused by false statements being made to third parties about the products, goods or services of another organization or person.

- Oral or written publication of material that violates a person's right of privacy.

  This offence is typically a public disclosure of private facts of individuals; or intrusion in private affairs of a person. Wiretapping or eavesdropping into the private residence of a journalist to prevent an organization's damaging information from being published is an example of such an offence.

- The use of another's advertising idea in your advertisement.

  This is an obvious kind of offence where advertisement ideas are copied by an organization from their competitor's advertisements.

- Infringing upon another's copyright, trade dress or slogan in your advertisement.

  This is again an offence similar to the above where specific copyrights or a unique business style of another company is infringed upon.

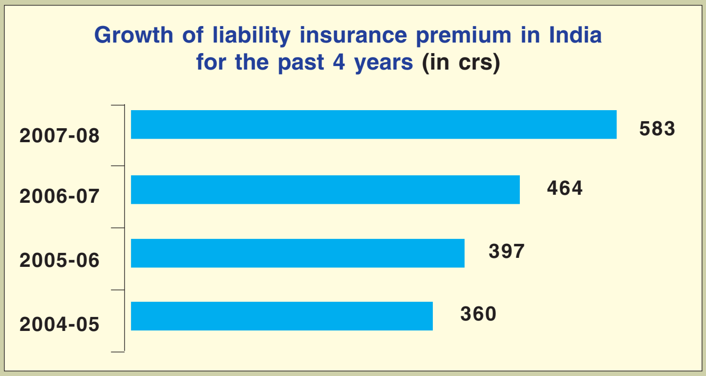
Similar to the specific instances defined to be covered under the policy, this section also has it's own specific set of exclusions. While there is the standard set of exclusions such as knowing and intentional acts excluded, material published prior to policy inception etc, there are also some key exclusions which should be noted and kept in mind.

- Liability assumed under a contract would not be covered unless liability existed in the absence of the contract also. For eg. In order to participate in a famous talk show or reality show, the channel asks each participant to sign a Hold Harmless agreement including covering costs for any civil or administrative suits arising out of the telecast of the show. If subsequently there is a suit against the channel for defamatory remarks made by some of the participants in the show; the channel may ask all the participants to share the cost of litigation. The CGL policy of a participant who did not make any defamatory remark would not cover these costs as no liability exists but for the contractual acceptance of liability.
- Breach of contract is not covered under the policy. If the insured has agreed under a contract with its customer that they will not use their name in any marketing material of the insured for a period of 3 years till the contract is completed; and subsequently within the first two years, the customer's name is published in a brochure of the insured. The liability arising out of a suit brought by the customer for breach of contract would not be covered by the policy.
- Liability arising from any wrong description or misinformation of insured's own product made in insured's advertisements will not be covered under the policy.
- Any suits against insured who are in the business of advertising or broadcasting for any written / oral advertisements that release on behalf of their client.

## Conclusion

This cover is usually available under a CGL policy provided by all insurers. The cover usually has a sublimit under the policy and all other conditions such as defense costs & supplementary payments being part of the limit are applied even to this section. Organizations take this cover usually as part of a contractual obligation. However, as is evident from the coverage mentioned, it is a very beneficial cover to have. This coverage is not comprehensively available in either a Professional Indemnity policy or a Director's and Officer's insurance policy. Each of these policies provides partial coverage for the same. Over 90% of CGL policies issued will have the personal & advertising injury extension, but it is quite possible that an equal percentage of insureds have little knowledge of the benefits of the coverage available.

## Rise of specialty insurance ......Contd. # 2




### Directors & Officers Insurance

In recent years, Directors & Officers (D&O) liability insurance has become a core component of corporate insurance. D&O insurance has been growing steadily in India, but when one juxtaposes this to international practices; it is miniscule because in the US & other developed countries up to 90-95% of the listed companies have cover.

At its most basic, D&O insurance protects directors and officers against legal claims for wrongful acts performed by them and connected to their corporate positions. Wrongful acts include omissions, errors, misleading statements, neglect or breach of duty and employment practice related violations.

Following the US Securities and Exchange Commission's initiative to introduce stricter rules to watch the accounting scandals, the Sarbanes-Oxley Act of 2002 and the Clause 49 of SEBI regulations for listed companies, the D&O cover has attracted more attention especially from companies that have some overseas exposure. Moreover a series of major corporate debacles like the Infosys sexual harassment case, the HP rape & murder case where the director was held liable, the Polaris case where the director was jailed & had to pay damages for breach of contract – all these indicate a renewed emphasis on the responsibility of individuals serving in these positions.

### Commercial General Liability insurance

Earlier in India we had only the public liability insurance policy that covered third party liabilities of bodily injury & property damage. Now a wider version of the same has evolved and become popular known as Commercial general liability insurance. In a nutshell, commercial general liability insurance, or CGL, is coverage that will protect your business in the event that you are sued. It is often used to cover claims against your business for injury or property damage. Typical examples include if a customer is injured at your place of business, or say an employee damages property at a client's site.

> Following the US SEC's initiative to introduce stricter rules to watch the accounting scandals, the Sarbanes-Oxley Act of 2002 and the Clause 49 of SEBI regulations for listed companies, the D&O cover has attracted more attention.

It is accepted the world over as the complete policy to provide seamless protection to the Insured and it covers third party liability arising from bodily injury, property damage, product completed operations, advertising and personal injury.

## Claims Case Study: *Advertising Injury Claim*

### Factual Background

On April 11, 1996, a patent was issued to Sunil Gupta, Vice President of Phoenix Global, Inc., for *the design of a mounting* for a particular type of outdoor plastic light. Phoenix Global manufactured & sold the mounting in two pieces designated as the B-1 and B-1S bases. In August 1999, Uttam Industries began manufacturing a similar mounting with pieces designated as DRB- 1, DRB-1S, DRB-3, and DRB-3S bases. Both Phoenix Global and Uttam Industries marketed their products to equipment manufacturers, which then sold completed lighting fixtures to retail stores.

In December 2001, Phoenix Global filed suit against Uttam Industries alleging patent infringement and unfair competition. The complaint alleged three causes of action: direct patent infringement; indirect or contributory infringement; and unfair competition (alleging that Uttam Industries had used artwork from Phoenix Global's brochures in its advertisements and designated its products using model numbers that were similar to theirs).

### Policy Coverage Details

Uttam Industries had a Commercial General Liability (CGL) insurance policy that provided coverage for 'advertising injury' caused by an offense committed in the course of advertising [Uttam Industries] goods, products or services. It defines "advertising injury" to include injury arising out of one or more of the following offenses:

a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organizations' goods, products or services;
b. Oral or written publication of material that violates a person's right of privacy;
c. Misappropriation of advertising ideas or style of doing business;
d. Infringement of copyright, title or slogan.

The policy also had some exclusions; one of which was - Claims arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured are excluded.

### Conclusion

Risk is now firmly on India Inc.'s corporate governance agenda. This coupled with the fact that the integration of the Indian economy with global trends and practices resulting from increasing overseas exposure, expansion and acquisition activities has fueled the rise of these specialty products.

Even as India's insurance market is growing from strength to strength, let us expect a lot of new products and innovations along the way. A right combination of product innovation, enchanting customer service, quick claims settlement and investments in customer education will open up new frontiers for the insurance industry. This supported by enabling regulations would be the perfect catalyst for sustaining such growth momentum over the next few critical years.

Subsequently, Uttam Industries sought indemnity for the judgment from Indiawide Insurance Co., the insurance company from which it had purchased the CGL insurance policy in December 1995. In response to Uttam's claim under the "advertising injury" provision of the policy, Indiawide Insurance sent them a letter dated 22 December 2001, in which it denied coverage mentioning that the policy did not cover "wilful" patent infringement or unfair competition and that the claim was subject to the "knowledge of falsity" exclusion which suggests that Uttam had acted wilfully. The issue then went to Court.

### Case Proceedings

The Court observed that the precise question presented is *whether the trade dress infringement in the underlying suit constitutes a "misappropriation of advertising ideas or style of doing business"?*

In answering that question, the Court noted that it must first decide more generally whether trade dress infringement can ever be a "misappropriation of advertising ideas or style of doing business". Several courts on several occasions have concluded that trade dress infringement may constitute a "misappropriation of advertising ideas or style of doing business". Trade dress is defined as "the total image of a product and may include features such as size, shape, color or color combinations, textures, graphics or even particular sales techniques". Thus, while the classic trade dress infringement action involved the packaging or labeling of goods, it may extend to marketing techniques and can include certain sales technique[s] designed to make the product readily identifiable to consumers and unique in the marketplace. Because trade dress may encompass marketing or packaging designed to draw attention to a product, it can constitute an "advertising idea" or "style of doing business".

The basis for Phoenix Global's trade dress infringement claim were the model numbers used by Uttam Industries that were confusingly similar to Phoenix Global's numbers and the artwork from its advertisements used by Uttam Industries in advertising its products. Together, these aspects of the trade dress for the light mounting manufactured by Phoenix Global clearly constitute an "advertising idea" or "style of doing business" as those terms are defined above.

The Court having determined that the trade dress infringement in this case constitutes a "misappropriation of advertising ideas or style of doing business", it now had to determine whether there was a causal connection between the advertising injury and Uttam Industries advertising activity. Phoenix Global in its suit claimed that Uttam Industries did more than simply publish an advertisement containing a picture of the infringing product – It alleged that Uttam Industries identified the product by similar model numbers in an advertisement designed to look like Phoenix Global's & it had suffered an injury as result of the promotion. Phoenix contended that by using its artwork and model numbers in advertising, promoting & marketing its products, Uttam Industries likely confused or deceived the general public and purchasers. The Court declared that these allegations and evidence were sufficient to establish the requisite causal connection between Uttam Industries advertising activity and the injury suffered by Phoenix Global.

Now, the final argument which the Court had to decide was whether coverage is barred by the policy's "knowledge of falsity" exclusion. The Court found that "Uttam Industries did not engage in false advertising, which would have required a showing that it had made a false or misleading statement of fact about its products. The term "falsity" is not defined in the policy and in common parlance, the term "false" is to mean "untrue" or failing to correspond to a set of known facts. In this case, however, there are no such assertions. Rather, Uttam Industries was found to have created the likelihood of consumer confusion by designing products similar in appearance to Phoenix's products. Therefore, the exclusion does not preclude coverage.

### Final Outcome

In sum, the Court finally concluded that the trade dress infringement committed by Uttam Industries gave rise to an "advertising injury" under the CGL insurance policy and hence the insurer had a duty to defend as well as pay the claim.



## News TitBits

### Financial turmoil should spur evolution of insurance regulation: E&Y

The insurance industry and its regulators should use the current global financial turmoil as a driver for a "constructive evolution of regulatory guidance," according to Ernst & Young's Global Insurance Center. The events demonstrate the interconnectivity of financial markets and underscore the need for increased risk management, E&Y said in a statement.

### Centre to streamline FDI policy as foreign investments touch $17.2 bn

The country has managed to receive foreign direct investment (FDI) worth $17.2 billion in the first six months of this financial year, a whopping 137% increase over the same period last year. But the global financial crisis prompted the government to announce on Tuesday that it would further streamline the FDI policy, including easing of FDI norms in the defence sector, to help meet the target of $35 billion for the fiscal.

### Indian companies post 225% investment growth amid gloom

Notwithstanding the global economic gloom, a record 7,068 new projects worth over Rs. 5 lakh crore were announced in the first six months of financial year 2008-09, an increase of a staggering 225 per cent as compared to investments announced in the same period last year. This was revealed in a study "Project Investments in India" for the six-month period from April to September 2008 carried out by Projects Today.

### Impact of Economic slowdown of US market on Credit insurance

The economic slowdown of US market have shown its impact on ECGC in a very different way. Most of the exporters in India, particularly Textile Exporters to US market are facing the threat of payment defaults. The potential claims due to this default payment is expected to be around Rs. 100 Cr. This amount is over and above the normal claims that are reported to ECGC. Already ECGC has settled claims worth 160 Cr. till October. The demand for cover against payment defaults is increasing from all the Indian Exporters and the ECGC has stopped giving coverage to new clients and that too with a single buyer cover.

## Report Card - September 2008

**Gross premium underwritten by non life industry for and up to the month of September 2008** **(Rs. In crores)**

| INSURER | SEPTEMBER | | APRIL - SEPTEMBER | | % GROWTH OVER PREVIOUS YEAR |
|---|---|---|---|---|---|
| | 2008-09 | 2007-08 | 2008-09 | 2007-08 | |
| New India | 441.32 | 469.40 | 2785.33 | 2663.40 | 4.58 |
| National | 346.24 | 287.87 | 2164.66 | 1954.58 | 10.75 |
| United India | 317.54 | 271.98 | 2092.84 | 1853.03 | 12.94 |
| Oriental | 292.21 | 282.72 | 2040.87 | 1989.39 | 2.59 |
| ICICI-Lombard | 271.45 | 262.84 | 1925.11 | 1726.59 | 11.50 |
| Bajaj Allianz | 212.78 | 176.01 | 1416.15 | 1122.51 | 26.16 |
| Reliance General | 146.00 | 138.48 | 986.22 | 946.44 | 4.20 |
| IFFCO-Tokio | 97.83 | 75.05 | 716.02 | 533.56 | 34.20 |
| Tata-AIG | 59.16 | 53.94 | 497.27 | 413.10 | 20.38 |
| Royal Sundaram | 67.04 | 52.69 | 388.99 | 320.87 | 21.23 |
| Cholamandalam | 53.22 | 40.09 | 358.33 | 266.51 | 34.45 |
| HDFC ERGO | 28.08 | 14.34 | 143.36 | 112.03 | 27.96 |
| Future Generali* | 14.17 | 0.00 | 71.96 | 0.00 | |
| Shriram General *** | 5.53 | 0.00 | 7.01 | 0.00 | |
| Universal Sompo ** | 0.08 | 0.00 | 1.14 | 0.00 | |
| Bharti AXA *** | 0.68 | 0.00 | 0.70 | 0.00 | |
| **PRIVATE TOTAL** | **956** | **813** | **6512** | **5442** | **19.67** |
| **PUBLIC TOTAL** | **1397** | **1312** | **9084** | **8460** | **7.37** |
| **GRAND TOTAL** | **2353** | **2125** | **15596** | **13902** | **12.18** |
| **SPECIALISED INSTITUTIONS:** | | | | | |
| **1. Credit Insurance** | | | | | |
| ECGC | 63.97 | 55.09 | 347.22 | 313.24 | 10.85 |
| **2. Health Insurance** | | | | | |
| Star Health | 7.94 | 3.13 | 239.19 | 46.34 | 416.14 |
| Apollo DKV* | 3.16 | 0.00 | 13.14 | 0.00 | |
| **Health Total** | **11.10** | **3.13** | **252.33** | **46.34** | **444.49** |
| **3. Agriculture Insurance** | | | | | |
| AIC | 165.94 | 111.92 | 379.86 | 351.74 | 7.99 |

Source: IRDA Journal

* Commenced operations in November, 2007

** Commenced operations in February, 2008

*** Commenced operations in July, 2008

### Observations

1) The general insurance industry has clocked a premium growth rate of 13.60% for April-Sep 2008 as against 11.60% in the previous corresponding period.

2) The private insurers' growth has slumped to 19.67% compared to 25.36% in the previous corresponding period.

3) The public sector insurers have registered a rise in growth: 7.37% compared to 3.90% in the previous corresponding period.

4) Cholamandalam has witnessed the fastest growth rate of 34.45% during this period closely followed by Iffco Tokio at 34.20%.

5) ECGC is growing at a substantial pace registering a growth rate of 10.85% compared to 6.90% last year.

## News TitBits

### IRDA okays policy customization

The IRDA has issued a circular for relaxation of terms & conditions in coverages of the general insurance products effective 1st Jan, 2009, permitting insurers to file variations in deductibles and also new add on covers for fire, engineering, IAR & Motor OD products. The Minimum Total Sum Insured limit of 100 crores for IAR policies have been removed and IAR policies can now be issued to all industries including petrochemical industry. Electronic equipment insurance which was earlier limited to fixed equipments has now been extended to include movable/portable equipments.

### Cabinet clears way for 49% FDI in insurance

After many years of debate, the government has decided to increase the foreign direct investment (FDI) limit in insurance firms from 26% to 49%. The government will now introduce a bill in Parliament to effect this change. The government, however, conceded that the bill may not be passed by the current Parliament for want of time. The Union Cabinet gave its approval for introduction of the Insurance (Amendment) Bill, 2008, for amendment to Insurance Act 1938, General Insurance Business (Nationalisation) Act, 1972, and Insurance Regulatory and Development Act, 1999, in the Rajya Sabha on the basis of recommendations made by Group of Ministers.

### Market turmoil hits life insurance industry

The turmoil in the equity markets appears to be taking a toll on the life insurance industry as well. Growth rates for the industry have slowed down. Upto end August '08 the life insurance industry recorded a premium income of Rs 26,451 crore marginally lower than Rs 27,491 crore in the corresponding period last year. The decline was largely on account of 29% decline in business of Life Insurance Corporation of India to Rs 14,360 crore compared to Rs 20,206 crore last year. The year-to-date figures show that the private life insurance industry is growing at a healthy pace and that it is the LIC which is dragging down growth. However, an analysis of monthly figures shows that there are signs of an incipient slowdown.

### British risk management standard launched

The British Standards Institution has launched its standard for risk management. The standard, BS 31100 Code of practice for risk management, has come into effect from Oct. 31. The standard is intended to be a guide to risk management principles, models, framework and processes to assist organizations to achieve their objectives through effective risk management, according to BSI British Standards.

### Reinsurance treaty terms likely to stiffen

The global financial turmoil has cast its shadow on treaty renewal negotiations between domestic insurance companies and international reinsurers. Top-level insurance officials said that with the asset write-downs and losses by global reinsurers, treaty terms were likely to stiffen.

# Interview - *Corporates & Insurers on liability landscape*

Events like the AIIMS being ordered to pay Rs.5 lakh compensation to a patient for wrong diagnosis, Airports Authority of India being ordered to pay Rs.1 crore to the family of a girl crushed in an escalator at the airport, the Infosys sexual harassment case, Coke & Pepsi pesticide controversy - all these demonstrate that we live in an age of litigation. In fact, with rising consumer awareness and courts becoming more consumer-friendly, such instances are fast becoming a norm.

Liability is emerging as one of the most significant risks faced by corporations in a booming Indian economy as it gets integrated to the global economy. And as companies scramble to protect themselves from the financial consequences of these risks, the result is that - it has triggered the growth of liability insurance in India. Liability insurance has by far outstripped the other lines of business recording a growth rate of 26% for the last FY.

In this issue, we speak to two corporates and two insurers about the increasing awareness of liability insurance and changes in the liability landscape in India. We would like to place on record our sincere thanks to Mr. Basil Almeida, General Counsel, Geometric Global Limited, Mr. S. Balasubramaniam, CFO, Zensar Technologies Ltd, Mr. V. Harshavardhan, General Manager, United India Insurance & Mr. Anuj Tyagi, National Head-Corporate Business, HDFC Ergo for sharing their views with us.

### Corporates

1) Liability risk management: Is there a gap between awareness and action?

**Mr. Basil:** We saw customers introducing liability insurance clauses in our contracts for the first time in 2002. This was the trigger for learning more about liability risks and the methods of managing them. However, at that time, obtaining liability insurance cover was more driven as a response to the customer requirements rather than a well thought out exercise for managing legal risks. We have grown more matured in our approach to managing liability risks and obtaining insurance cover is no longer something that we purchase just to satisfy customers.

**Mr. Balasubramaniam:** No there is no gap. The users are quite aware of the issues involved and why the risk management practices are important.

2) What are the main obstacles to achieving successful management of liability risk within your business?

**Mr. Basil:** The cross-border spread of operations is one of the largest obstacles that we face today. The probability and impact of the same risk can vary from region to region and very few Indian companies that operate globally are able to avoid the trap of trying to manage such risks centrally from India.

**Mr. Balasubramaniam:** It is always a mix between the risk identified and the cost of mitigating the risk through Insurance. To a large extent, a good risk management portfolio ensures that risks are well documented and accountability for mitigation through various process initiatives well documented.

3) As businesses are coming under rising threat from liability risks, do you see the awareness of liability insurance increasing among your customers in India?

**Mr. Basil:** The degree of awareness is certainly much higher than what it was 5 years ago. However, we have to start making a shift towards better understanding of liability insurance as opposed to mere awareness. There is a strong need for more professional guidance on this subject.

**Mr. Balasubramaniam:** I cannot comment much on this question, since close to 95% of our Customers are Overseas Customers, and out there the awareness is quite high.

4) In the past two years, have the terms of insurance requirement in your contracts with vendors/ customers become more stringent?

**Mr. Basil:** The terms of insurance requirement have certainly become more stringent and complex. They have moved from simple single line requirements of coverage amounts to several lines (and sometimes paragraphs) spelling out the finer details like sub-limit amounts and maintenance of cover for a certain period beyond termination of the contract.

**Mr. Balasubramaniam:** No it is about the same but their awareness is high and there are clauses added to ensure that risks are much better covered than in the past.

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

**Mr. Basil:** Intellectual property issues, Employment practices and Information Security.

**Mr. Balasubramaniam:** I guess that it will be more from Performance and delivery issues with increased emphasis from Intellectual Property and Rights.

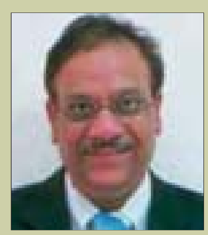
6) With the recent happenings in the financial market, how do you foresee the Indian insurance market to react?

**Mr. Basil:** It is difficult to predict.

**Mr. Balasubramaniam:** The Indian Insurance market would be more cautious and not aggressive to get business at any cost, given that the failure rates of Businesses could be high, going into the future.

### Insurers

1) Can you briefly describe the current conditions in the liability landscape in India? How have exposures increased over the past year for insurers and reinsurers writing this line of business?



**Mr. Harshavardhan:** Increase in Liability Risk exposures have fuelled rising demand for Liability Insurance. Greater Awareness, Legal Environment, Increasing scale of operations of Indian Corporates, accessing of foreign capital, M&A activity, Overseas Listing, Participation of FII's in Indian Stock Markets, Corporate Governance issues etc have driven the need for liability insurance. Besides the variety of covers, increased limits of indemnity are being taken in a scenario of falling premiums and higher retention capacities of PSU Insurers. Exposures have therefore increased. The liability insurance portfolio both for the industry and the company has expanded by about 30%.

**Mr. Anuj:** We clearly see the level of awareness about the liability exposure and product offerings increasing even in the sectors which hitherto have not bought liability insurance. There is a greater level of awareness about the products like D&O, EPLI amongst the

listed companies as compared to the situation around a few years back. Exposures have clearly increased both at domestic as well as international level. More and more companies are getting exposed to international legal scenario directly as well indirectly either through physical presence/operations/ customers or through shareholdings. The changing economic scenario has further increased the exposure for underwriters more specifically for financial lines products.

2) How has the frequency and severity of E&O losses changed over the past few years?

**Mr. Harshavardhan:** While we have not had such losses, market information does indicate a rising trend in respect of Software and BPO Companies. Claims are being increasingly reported from Europe and Australia also in addition to USA.

**Mr. Anuj:** Both frequency and severity of E&O losses have increased over past couple of years. Clearly, the size of contracts, IT companies are getting into with their customers is increasing and that leads to increased severity in the even of claim. Interestingly, contrary to the perception that US is high risk geography, claims in this product class have been seen across the geographies be it US/Europe or even Asia.

3) With the increase in the number of claims being reported by companies in the past 3 years, have you felt the impact of reinsurers getting more selective?

**Mr. Harshavardhan:** Overseas reinsurers are selective both in terms of industries for which cover is granted and the coverage, generally being more willing to cover upper layer exposures only. For eg: Auto component product liability & recall proposals are usually not underwritten by them.

**Mr. Anuj:** Certainly, the classes in which we have been seeing claims in past few years, have been noticing hardening of stance at the reinsurer's end. Reinsurer's have started selecting customer segments, exposure segments and the impact has clearly been noticed in few renewals, recently. This stance from the reinsurance market may further get tough in view of the overall recent insurance/ economic scenario.

4) What are your thoughts about the future of the liability insurance market in India? Do you foresee the Indian market also getting as litigious as other countries, particularly in the West?

**Mr. Harshavardhan:** Litigation definitely bound to increase, though not to the extent in the West. The inhibitors would be the monumental sluggishness of the Indian Legal System and the Indian fatalistic attitude. The latter is slowly changing under the impact of Western values like individualisam and materialistic consumerism.

**Mr. Anuj:** Liability business class will continue to grow or may grow even at a faster pace in the times to come. Clearly, the society is getting litigious (of course not as much as West) and we keep hearing instances of customers filing suits on companies in consumer forums etc or even stake holders filing notices/suits on corporate. However, it may be mentioned here that the biggest customers of liability products in the country are the corporate who have exposures outside of India. Hence, irrespective of whether the society will turn litigious or not the liability product class will continue to grow.

5) With the recent happenings, in the financial market, how do you foresee the Indian insurance market to react?

**Mr. Harshavardhan:** The current financial meltdown may not have severe impact on liability insurance except of course in respect of default liability covers.

**Mr. Anuj:** While early days, but the Indian insurance market (liability insurance), would react exactly the way reinsurers on this business class would react. This is logical, as the insurance companies in the country do not have their own large capacities on the liability products. January 1 renewals of reinsurance programs in ASIA markets should give us some idea about how the reinsurers would react towards India market.

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