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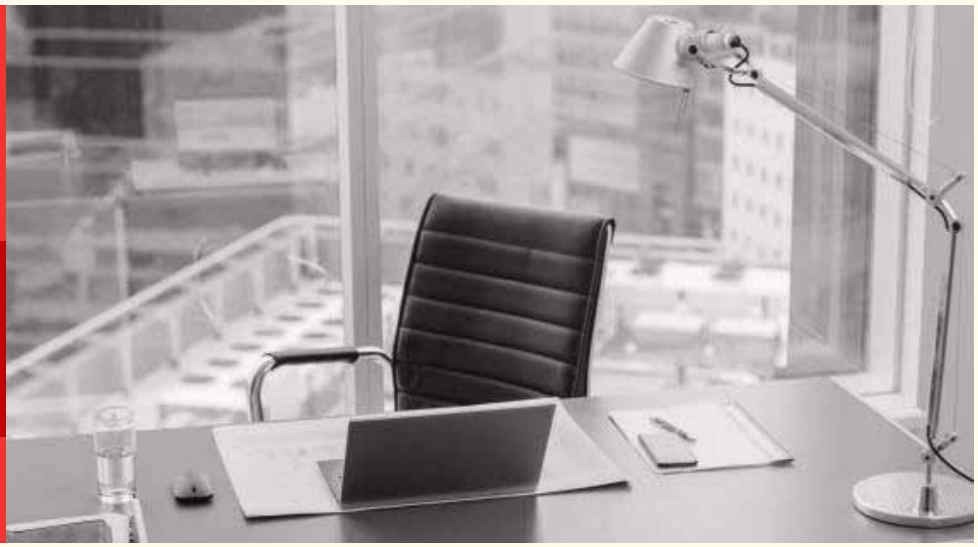
RISK ALERT

Newsletter from India's Leading Insurance Broking Company

bharat RE™

HIGHLIGHTS

FROM THE CEO'S DESK



The first six months of the financial year 2020-21 has been challenging, to say the least, dominated exclusively by the Covid 19 pandemic with lockdowns and related unprecedented human and economic consequences.

The insurance industry, as part of the economy, also had its challenges with substantial drop in premium especially in the Motor insurance sector, due to negligible sale of vehicles and drop in renewals, during the lockdown, which was to an extent offset by medical insurance premium atleast for some of the insurers, especially in the stand alone health sector.

From the commercial insurance point of view, a seemingly innocuous condition in the property insurance properties called the "unoccupancy clause", ***which states that the insurance coverage will be suspended if the premises coverd under the policy is not occupied for a continuous period of 30 days or more,*** created a lot of panic and confusion among the corporates with the insurers and reinsurers giving complicated and often contradictory clarifications and guidelines from insisting on written approval and endorsements in the policies to prescribing various do's and don'ts on safety and security procedures. The General Insurance Council had to finally clarify that coverage will continue without any requirement for communications and endorsements but still ambiguities continued during the period regarding engineering policies and fire coverage under package policies.

Unnecessary hair splitting by the insurance industry compounded probably by the main insurer not taking a clear stand on the issue created unnecessarily anxious moments for the corporates and also undermined the credibility of the insurance industry with the insureds.

The other major point of debate was the coverage for Business Interruption during Covid 19, the Indian policies clearly required Material Damage as a prerequisite to claiming Business Interruption. Policies issued worldwide were not so clear and a flood of lawsuits are in various courts with differing judgements being pronounced.

One thing is clear is that we tend to look at the insurance policy as a kind of a versatile agreement with the insurance company provided by "friendly" relationship managers, giving an impression that every issue can be sorted out to the satisfaction of the insured in the event of a claim. A yearly renewal and probably a long standing relationship with the insurance company again gives a false sense of security to the commercial enterprises that things will be decided in their favour when a claim arises!!

Every major claim (fortunately not very common, but, at the same time can happen to anyone!!) invariably gets into issues from admissibility to interpretation of the policy terms and conditions, leaving the insureds frustrated and fatigued, and exposing the difference between the expectation and reality!!

Vijay T
AICWA, ACS, BL, AIII
CEO & Executive Director

ON OUTSOURCING

The knowledge needed for any activity has become highly specialized. It is therefore increasingly expensive, and also increasingly difficult, to maintain enough critical mass for every major task within an enterprise. And because knowledge rapidly deteriorates unless it is used constantly, maintaining within an organisation an activity that is used only intermittently, guarantees incompetence.

- Peter Drucker

IN THE NEWS

CRASH OF THE CRANE

A 70 tonnes crane collapsed in Vizag killing 11 persons when it was being taken for a trial run for a distance of 30 meters. An expert committee that was set up to probe the crane crash has found that structural and design issues are the reasons behind the mishap.

The entire mishap took place in less than 10 seconds, as the link between the gears and disc brake along with the electric hydraulics failed, resulting in breaking of basement bolts and leading to the tilting of the crane. The automatic system which backs up during the technical break down was also said to have failed. The committee has also found that the crane had no proven track record,

The original supplier, who was to operationalise the crane in 2010 backed out from the project. Another agency was entrusted with the operationalisation of the crane only in 2020.

The company did not provide a design manual for the crane, the panel found, and added that four bearings, including central bearings, were damaged, triggering the collapse.

DESIGN.....PROCESS.....TRAINING.....RISK MANAGEMENT

DO WE LACK A SAFETY CULTURE?

More than 800 tonnes of Styrene, a gas which is hazardous and can cause respiratory illness and skin irritation, had leaked from a plant recently. The gas leak caused the deaths of as many as 12 people, and hospitalisation of hundreds. The concentration of Styrene in the air was beyond hazardous levels at 461 ppm on the day of the leak, 374 ppm after over 24 hours after the disaster.

The Joint Committee probing the Styrene gas leak pointed out that there was only one temperature monitoring gage at the bottom of the tank, the outdated design of the tank, absence of any interlock system arrangement between the temperature monitoring and refrigeration systems, and no external water spray arrangement over the tank in case of temperature increase.

The report also found that the water sprinkler system was not automated and manual sprinklers could not be accessed as the controls were in the hazard area, a similar problem was with the alarm system which was also not automated. The unit could not access personal protective equipment which revealed the lack of safety preparedness.

Chiller system was switched off the previous evening as part of routine maintenance and no temperature or pressure monitoring was done at the middle or top of the tank where space is left for vapourisation, found the committee.

In addition, the report also pointed out that TBC (Tertiary Butyl Catechol) which is an inhibitor chemical to slow down the reactions, was not topped up since there was no TBC stored at the site.

Even as basic safety protocols were not followed, the response of the officers and workers present at the factory to the gas leak was also slow.

There was a time lapse of almost an hour between the gas detector alarm noted by the control room and to reach the fire hydrant sprinkler valves. The sprinklers could not be activated as they were within the hazardous vapour zone.

It was more than 1.5 hours after the gas leak was detected, that personnel wearing safety SCABA equipment were able to start the sprinkler system. By the time the pumping of emergency chemicals to stabilize the tank started, over 800 tonnes of gas had already leaked.

BHARAT REview

These recent accidents in Vizag have again shown that the safety and risk management culture in India probably has a long way to go!!

At the same time, we need to act against the belief that accidents happen only because of negligence or safety and risk management protocols not being adhered to.

Risk awareness and safety culture has never been a part of our daily routine and without doubt, gets extended to the work environment also. Every accident invariably shows the lack of this and we tend to gloss over the disease by focussing only on the symptoms manifested in an accident and the resultant investigation report.

LIGHTNING DOES NOT STRIKE TWICE OR DOES IT??

A massive fire gutted an entire manufacturing facility of a sanitary products maker which is an Indian arm of a Japanese conglomerate. The massive fire raged for more than eight hours and destroyed the facility which was spread over three lakhs sq meter and had a market share of almost 35-40% of the Indian market.

The fire is believed to have originated due to a short circuit at one of its storage areas which quickly spread to other areas.

The loss is estimated in excess of INR 1000 crores. Interestingly, the same insured had a massive fire three years back in another location with the loss estimated of around INR 700 crores.

Source: Media / Internet

BHARAT REview

We understand that the previous claim has not been fully settled and another large claim is sure to test the insured and the insurer to the fullest!!

The objective of insuring the assets of any commercial enterprise ideally should be with an expectation that in the event of an accident threatening the survival of the enterprise, the insurance compensation is received in a timely and reasonable manner.

Regrettably, the intense competition to write business at any cost and the focus of commercial enterprise owners or their finance team on pricing has made the claims process difficult and complicated.

The recent increase in the property insurance pricing, though unwelcome to the insuring corporate world, would in our opinion, significantly improve the loss paying appetite of insurers.

CLAIMS ANATOMY

COLLAPSE OF THE CROWN!!

A portion of a crown of a 265 TPD (tonnes per day) furnace for producing packaging glass suddenly collapsed. After normal repair of the furnace, it had been heated to 900 0 Cover a period of 9 days. The production process was started with cullet charging over a period of 2 days and temperature was increased to 1500^{0}C when the crown collapsed. Any large claim in today's environment becomes a game of chess and the exclusions under the policy are moved by the surveyors leaving it to the insured to counter them.

As expected, the loss assessors quoted the workmanship and material defect exclusion in the policy and a Root Cause Analysis (RCA) was inevitable. Investigating the cause of damage, an expert went into the RCA and ruled out

Overheating of the super structure of the whole smelter and crown, as the data from Scada showed the temperature was below 1600^{0}C, which is normal.

- Possible failure in controlling the expansion of the crown made of silica, as the expert found that the crown movement was properly adjusted by the bolts and performed by experts in the field.
- Poor quality of crown material by testing the silica profiles in a lab in Germany and finding the same within acceptable parameters.
- Poor quality of workmanship as the undamaged portion of the crown did not show any abnormalities in laying of the refractories. An endoscopy report also confirmed the same.

Endoscopy study of the damaged portion of the crown refractory showed localised heating indicating excessive fire from the burner. This was possible due to flame from the burner touching the bricks or change in fuel characteristics or change in combustion property.

Change in fuel or combustion property was ruled out by checking the fuel characteristics and the absence of a sudden drop or increase in temperature in furnace negated the possibility of change in combustion property.

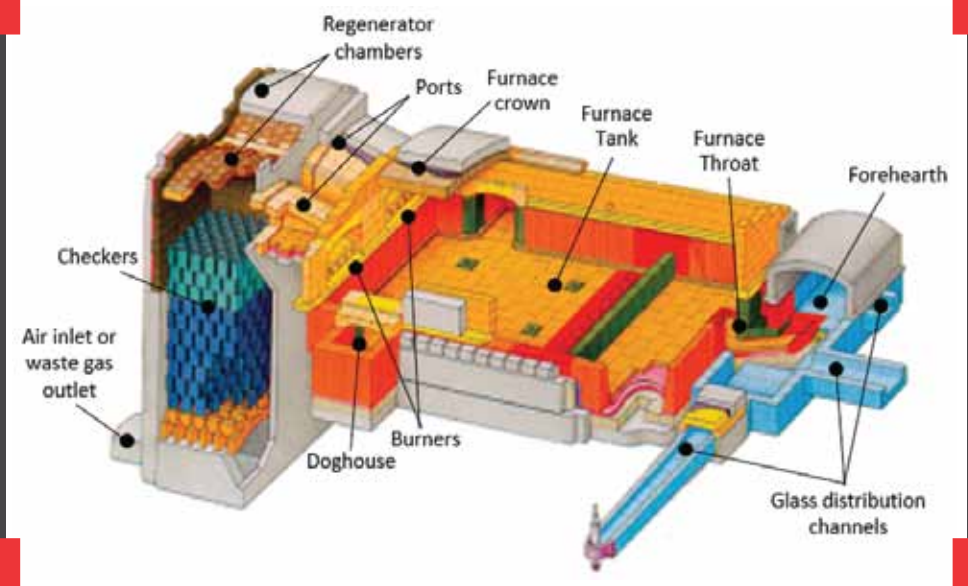
The cause was narrowed down to the burner issue and after detailed analysis of the log book etc..it was discovered that an engineering team had fixed a cooling duct problem just before the collapse. They may have accidentally disturbed the burner angle causing the flame to hit the crown resulting in localised heating and collapse. This was further corroborated by the insulation dropping inside the melted glass being noticed in the analysis of the endoscopy report.

Since the silica drip erosion was continuous it weakened the entire crown at both the side and front wall areas and an abrupt catastrophic failure of the entire furnace was a possibility.

Considering the above, the experts decided to go in for "hot repair" in the running furnace as a temporary measure and then for "cold repair" after the furnace was shut down. The cost of hot repair was about 30% of the cold repair.

The surveyors refused to pay for the first hot repair stating that they cannot pay twice for the same repair. The insured contended that the hot repair was like a temporary first aid and stabilisation without which there could have been a catastrophic failure of the furnace and the cold repair was the actual repair. Fortunately, an add on cover under the policy recommended by Bharat Re saved the day and the surveyor found it difficult to push this argument beyond a point.

The next contention by the surveyors citing another exclusion under the policy which excluded testing risks. They contended that the accident happened after staring up of the plant after repairs and the furnace was still under the testing phase. The insured showed that the furnace had reached full production temperature 2 days before the accident and raw material feed and output of finished goods were already underway when the accident happened. Also, in an operating furnace, some repairs or the other are always carried out and was not considered as testing



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In a claim situation, nobody gives up easily!! The insured out of necessity and the surveyor / insurance company because it holds the cheque book!! The quantum of repair cost included significant amount of technical supervision fees running into crores, as this is a specialised field with very few manufacturers / repairers available. The cost and number of man days were hotly contested and finally a negotiated settlement after prolonged discussions was agreed.

BHARAT REview

Interestingly, the initial claim after the first assessment by the insured was about 3% of the final claim settled. Every claim situation has its complexities and involves technical, commercial and insurance issues to be handled.

As we always say, if you are a lawyer, commercial and technical expert and an insurance expert all rolled into one, you as an insured can hope to take the claims settlement to its logical conclusion. If not, leave it to us!!

Minesh Patel - B.E (Electrical), AIII (Fire). Sales Engineer in the pumps industry and has been in insurance sector for more than a decade. Specialisation in customizing insurances for Chemical and Engineering industries

Kishore Hegde - B.Com, C A., LIII. Proficiency in spearheading initiatives encompassing business valuation, financial analysis, taxation, due diligence, regulatory processes & financing. More than two decades in the Financial and service industry

A POLICY CAN LAND US IN TROUBLE

AN UNEXPECTED TURN OF EVENTS!!

Bharat RE has been predominantly a Corporate Broker, and we have always been highlighting the complexities in handling commercial claims. However, issues even in policies that we think are standardised like a Motor policy or an Overseas Medical Policy are quite common and the message of “Buyer Beware” is universal.

A 75 year old individual had taken an Overseas Mediclaim Policy (OMP) with a private insurer. He passed away due to Cardiac Arrest in London. The family incurred an expenditure of more than Rs.3 lakhs towards Ambulance charges, Embalming and also towards repatriation of the remains. Most of the OMP provide cover for repatriation of remains. However this policy provided for this cover only if the expenses were incurred because of an Accident and not an illness!!

When other OMP issued by other insurers were reviewed for the same cover, most of them provided for these expenses, irrespective of whether the death was due to accident or sickness / disease.

SMALL CLAIM BIG CHALLENGE

One of our clients had a fire damage total loss claim for a mid-range Skoda luxury car with policy Insured’s declared value (IDV) of Rs.24 Lakhs. The vehicle was insured with one of the large private sector insurers. The insurer made a subjective and partial offer to settle the claim for Rs.20 Lakhs in spite of the fact that the concept of IDV should get the full amount for a total loss claim. Insurer wanted to follow market value and also saying insured should not make profit out of a loss.

Circulars from the regulator had to be quoted to get the insurer to settle at the IDV.

LEGAL EAGLE

The insured was an SME unit engaged in the manufacturing and refining of oil. The raw material for the process was burnt and used lubricating oil which was received in barrels and stored in the open yard. Apart from this, oil was also brought in and unloaded into used oil pits. The finished product, which was refined lubricating oil was either directly loaded into oil tankers or filled in drums and kept in the open. The part of the plant which was in the open engaged in the processes like centrifugation, settling and decantation, dehydration, condensation and treatment of volatile materials. The part of the plant which was in the closed shed was involved in the less hazardous processes like clay treatment and neutralisation, filtration, blending etc.. The shed also included thermic fluid boilers, water softening plants etc..

The assets were insured under two Fire policies. When the Bankers to the insured were changed, the policies were shifted from one insurance company to another. During this process, the insured alleged that an officer of the insurance company brought two proposal forms for Fire insurance and got those signed by the insured in blank. He also took with him the photocopies of the expiring policies which had been with another insurer, and he had also inspected the plant before giving the premium rates. When the policies were issued, the location of the property was mentioned as "factory-cum-godown and office premises" though there was no godown in the factory premises.

Image is for representative purpose only

The entire factory premises including the assets in the open were completely destroyed in a fire. A surveyor was appointed and during the course of assessment, he indicated to the insured that they had been instructed by the insurance company not to assess loss to the assets outside the covered shed, and which were installed in the open part of the factory premises.

The insured contended that from the beginning of the policy, they had requested the insurance company to amend the policies.

The matter was taken to the National Commission and the Commission, after considering the matter, took the view that the factory premises included all assets inside and outside the shed areas, by relying on the definition of the factory as given in the Factories Act, 1948. The Commission also observed, as per the guidelines in settling the claims, 75% of the loss should have been settled. Interestingly, both the insured and the insurance company were not happy with the order – both filed appeals to the Supreme Court. The Supreme Court disposed off both the appeals by a common order.

The main point of dispute was whether, as per the terms of the policy, all the goods which are lying within or outside the shed are covered under the policy or not.

BHARAT REview

Interestingly, the initial claim after the first assessment by the insured was about 3% of the final claim settled. Every claim situation has its complexities and involves technical, commercial and insurance issues to be handled.

As we always say, if you are a lawyer, commercial and technical expert and an insurance expert all rolled into one, you as an insured can hope to take the claims settlement to its logical conclusion. If not, leave it to us!!

RISK MANAGEMENT

COMPLY OR COUGH UP

Importance of reporting facts and circumstances under Directors & Officers Liability Insurance policy

Corporates and business entities have been facing the challenges in keeping abreast of legal changes and also to comply with law. As the law have evolved, today the pressure for compliance is directly on the people in Management of the organisations.

While realising the legal obligations in terms of compliance with plethora of statutes under which companies operate, CXO-s have also appreciated the role and relevance of Directors and Officers Liability insurance policy which provides indemnity for any legal liability facing government, regulators, customers, suppliers, employees etc for a decision by the CXO due to which they feel affected or aggrieved. The key issue is to capture and report facts and circumstances to the insurance company, within time and to the right measure. The Broker engaged by the client would be the first port of call.

A case on hand would tell us in a great measure how close this can come – a large textile manufacturer in the West had actually procured D&O Liability insurance for protecting their directors and officers. Surprisingly one day they received a notice from Ministry of Corporate Affairs listing out about 20 violations which were identified while audit of their annual returns submitted a few years ago.

The Insured did not realise that this is a circumstance to be informed to the D&O Insurer. They engaged a consultant and commuted 10 out of the 20 charges and paid a commutation amount of Rs.5 Lakhs.

Meanwhile their D&O Renewal came over next two years and they did not inform this development to their brokers or insurers. They had answered a relevant question about any fact or circumstances that may give rise to a claim as either a "-" or a blank space.

Two years later they received one more reminder letter from ROC office having jurisdiction seeking their explanation for the balance 20 points which had some serious charges such as non-remittance of PF collected from employees or non-payment of water tax etc. This time the commutation amount indicated by ROC was Rs.50 Lacs and suddenly client wondered " Can we get this from insurance?" and they remembered at that moment that they had a D&O Liability policy.

The claim was reported to the insurer but after reviewing all documentation, the insurance company decided to reject their claim because this event originated in 2017 and right till 2019 they did not disclose this event to the insurer immediately on receipt of notice from Government and not eve in their renewal proposal form submitted on two consecutive renewals. What a disappointment…?

In another case, the client who are in retail garment sales, had put up their product information online to promote sales. Suddenly one day they received notice from Legal Metrology Dept of state government initiating legal action for not displaying the online price as MRP – Maximum Retail Price. The violation called for a fine of Rs.2,25,000/- The client , who had taken a D&O Liability insurance policy, remembered that this is a circumstance to be reported to the insurer and called their brokers immediately. The insurer admitted this as a valid claim

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BHARAT REview

The learning for the Insured policy holder that they should always verify with their broker as to a particular circumstance or fact or any notice or communication received from any source to check if it is relevant to their D&O Liability, Commercial General Liability , Cyber liability, Product Liability or any other liability insurance policy. If so, immediate notification must be made to the insurer under the relevant policy.

CLAIMS ANATOMY

BUSINESS INTERRUPTION – LENGTH……..Y PROBLEM

A sizing machine was damaged in a fire accident resulting in production loss. During the assessment, some of the issues were:

- The unit had several sizing machines which were not processing the same kind of yarn with some of them processing finer counts and others coarser counts. The sales realization for finer counts was much higher than that for the coarser counts.
- Even though the output in kgs was maintained, the profit for the company was much lower as the overall realization on the output had come down drastically.
- Another reason for the output in the quantity being maintained was that the sizing operations were outsourced to third parties. While this had compensated the quantity, the quality of the output and consequently the value realization was not the same.
- Apart from the production quantity being maintained, the sizing machine which was damaged was processing about 40% of the capacity of the sizing block. The trends of production in the few months before the accident were showing an upward trend. This increased trend would have had to be factored in while arriving at the loss, if the insured had to be adequately compensated.

Even though the sizing capacity was more than the actual production during the previous years, the main bottleneck in production was the availability and management of beams which are loaded on to the sizing machine. Since many of the beams had to be handed over to third parties to produce the sized material, the beams in the factory to carry out the production in the rest of the sizing machines which had not been damaged were not adequate, resulting in the reduced efficiency of the entire sizing department, which also affected the overall production.

The entire beam management system had to be recreated and explained to the loss assessor as, in the current situation, the quantity produced was in fact more than the production before the loss and the loss of one machine theoretically did not hamper the overall capacity.

Most Business Interruption claims involve a lot of subjectivities as the insured and the loss assessor need to arrive at the loss based on historical data, which is then adjusted for trends to arrive at the loss the insured has incurred because of an accident.

In this accident, the assessment was further complicated by multiple factors, which had to be looked at in totality to arrive at the actual loss for the insured.

The Claims Team

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Technical Director
He was with New India Assurance. One of the pioneers in the corporate insurance consultancy domain with specialization in Engineering Projects and Textiles