Solved Scanner Appendix

CS Prof. Prog. M - III (New Syllabus)

(Solution of June - 2014 & Question of December - 2014)

Paper - 9.3: Insurance Law and Practice

Solution of June 2014

Chapter - 3: Insurance Contract and Indian Market Conditions
2014 - June [4]
Following are the points of difference between 'Insurance agents' and 'Insurance brokers'.

S. No.	Insurance Agent	Insurance Broker
1.	Section 2(10) of the Insurance Act, 1938, defines an Insurance Agent as an insurance agent licensed under section 42 of the said Act and who received or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance.	Regulation 2(i) of the IRDA (Insurance Brokers) Regulations, 2002, defines Insurance Broker as a person for the time being licensed by the Authority under Regulation 11, who for remuneration arranges insurance contracts with insurance companies and/or reinsurance companies on behalf of his clients.
2.	In simple words Insurance agents are insurance professionals that serve as an intermediary between the insurance company and the insured. As a board statement of law, an agent's liability to their customers is administrative.	Insurance brokers can be best described as a kind of super-independent agent. Brokers can offer a whole host of insurance products for you to consider.
3.	An Insurance Agent represents the insurance company.	An Insurance Broker represents the client.

4.	Insurance Agent at any point of time can sell the insurance products of only one insurance company with which he is attached.	An Insurance Broker is licensed to recommend the products of any insurance company.
5.	The main duties of agents are timely and accurate processing of forms, premiums and paperwork.	Brokers have the duty to analyze a business and secure correct and adequate coverage for the business.

Chapter - 4: Regulatory Environment - Specific Legislations
2014 - June [6]
No, an Indian insurance company cannot invest its policy holders funds abroad. Section 27C of Insurance Act, 1938 Prohibits Insurance company from investing the funds outside India. The provision states that:

(1) "Without prejudice to anything contained in sections 27, 27A and 27B, the Authority may, in the interests of the policy-holders, specify by the regulations made by it, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act".

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy-holders shall be invested in the infrastructure and social sector as may be specified by regulations made by the Authority and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance general insurance, or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policy-holders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:
Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.
Note: "In answers to the questions based on case study, the students may write any other alternative answer with valid reasoning".

Chapter - 7: Life Insurance - Practices, Procedures
2014 - June [2] (a), (b), (c)

(a) Mr. Nayar, is the agent of the insurance company in which Mr. Kumar was the holder of a life insurance policy. The relationship of Mr. Nayar (being an agent) and the Insurance Company (Being an employer) are governed by the Indian Contract Act, 1872 and Sections 182 to 238 of the Indian Contract Act, 1872 governs the relationship between a Principal and an Agent.
An Agent is a person employed to do any act for another or to represent another in dealings with third persons. The function of an agent is to bring his principal into contractual relations with third persons. A Principal is a person for whom the above act is done or who is so represented. An agent, who acts within the scope of authority conferred by his or her principal, binds the principal in the obligations he or she creates against third parties.

In the present case, The company may not be entitled to recover the money from the agent Mr. Nayar as the negligence occurred on the part of Insurance Company official Mr. Sharma and Mr. Nayar, the agent is not responsible for the double disbursement of claim to the insured i.e. Mrs. Kumar.

(b) Yes, the excess money paid could be legally recovered from Mrs. Kumar.

There are generally several causes in the policy agreement that forbid double indemnification. The Insurance Company generally reserves the right to recover the amount from the Policyholder or the member of policyholder's family or any other person, if it is found that the benefits are erroneously paid due to the fault of the Policyholder. Further, in case the insurer is not in a position to recover such amounts from the member or any other person, the Policyholder will be liable to pay the said amount to the insurer within the prescribed time limit from the date of its demand.

The Policyholder however, will not be liable or responsible for any wrong payments made by the company without any fault on the part of the Policyholder but nothing stops the company in recovering the excess amount paid to Mrs. Kumar.

(c) The Insurance Company generally reserves the right to recover the amount from the Policyholder or the member of policyholder's family or any other person, if it is found that the benefits are erroneously paid due to the fault of the Policyholder. However, the Policyholder will not be liable or responsible for any wrong payments made by the Company without any fault on the part of the Policyholder. In this case since the cheque has been issued in the name of Mrs. Kumar, it is doubtful that the company can legally recover money from the children of Mrs. Kumar.

2014 - June [3]

Following are the points of Difference between 'Nomination' and 'Assignment'

S. No.	Nomination	Assignment
1.	Nomination is appointing some person(s) to receive policy benefits only when the policy has a death claim.	Assignment is transfer of rights, title and interest of the policy to some person(s).
2.	In other words, by merely nominating someone, the right, title and interest of the insured over the policy is not transferred straight forwardly to that nominated person and remains with the insured person only.	In other words, the insurer is bound to pass over the benefits, claims and/or interests to the assigned person(s). Even during the time the insured is alive (or even prior to the death of the insured person).
3.	Nomination is done at the instance of the insured.	Along with the instance of the insured, consent of insurer is also required.

4.	It can be changed or revoked several times.	Normally assignment is done once or twice during the policy period. Assignment can be normally revoked after obtaining the "no objection certificate" from the concerned Assignees.
5.	No attestation is prescribed in the case of nomination.	Attestation is required in case of assignment.
6.	In case of nomination, the money will be paid to the nominee if he survives the assured.	In case of assignment, money under the policy shall be paid to the assignee.
7.	Nomination is made without consideration.	Assignment of a life policy may be with or without consideration.

Chapter - 9: General Insurance - Practices and Procedures - Focus Claims

2014 - June [1] (a), (b), (c)

(a) Yes, the repudiation of claim by New Horizon General Insurance Company is very well justified because of the following reasons:

Presence of unusual conditions

The presence of unusual conditions at the site of loss raises suspicion about the authenticity of the claim made by the insured i.e. Excellent Polymers. The unusual conditions prevailing at site are as given below:

- The fire had been extinguished and the fire brigade had also left the site before arrival of Claim Officer of Insurance Company.
- Separation of the control section from the manufacturing section by a distance of around 25 feet.
- Remote possibility of electric short circuit as Electrical wiring was at a safe distance from the machinery and stock.

Doubts created on account of contradicted facts and documents

The facts and document submitted by insured were in contradiction. The insured raised the insurance claim regarding loss of stock for ₹ 1.5 crore. Though, the purchase and sales figures as submitted by insured were for sizeable amounts but the bank statements showed that the average monthly transactions for receipts and payments did not exceed ₹ 5 lakh.

According to the proposal made by the Excellent Polymers, the plant had been commissioned in December, 2011. However, as per electricity bills the average consumption of power was negligible. Further, one of the electricity bill had a remark "premises closed".

Facts in the report submitted by Investigating Officer

As per the investigation report submitted by Investigating Officer, the following facts were found to fall under the category of fraudulent claims:

Purchase invoices were from the parties who were non-existent. This fact was confirmed by sales tax authorities as sales tax registration number quoted on bills were fake.

Keeping in view, the aforementioned facts of the given case, the act of repudiating the claim on the grounds of the relevant provision in the Insurance policy is justified as the insurance contracts are based on the principle of "Uberrimae fidei" i.e. utmost good faith and suppression of any material fact is a clear violation of this principle of good faith.

(b) In case of general insurance Business, a surveyor or a loss assessor is appointed by the Insurance so as to assess the actual amount of loss incurred by the insured. The nature of general insurance contracts is indemnity contracts and the main feature of indemnity contract is to indemnify the insured for the loss incurred by him. The job of an insurance and loss surveyor is to assess the actual loss incurred by the insured and his role is very important. The surveyors are also subject to follow professional ethics and conduct in their working.

In the given study, the loss surveyor submitted its report assessing the loss at ₹ 1.5 crore as claimed by the insured. Though the case study does not contain enough details so as to judge whether the surveyor has used due diligence in carrying out the survey but the presence of many unusual conditions stating above gives a hint that the claim was fabricated. In view of this, it may be argued that surveyor has not used due diligence in carrying out the survey and he may be subject to professional misconduct.

(c) The New Horizon General Insurance company repudiated the claim of the insured (Excellent Polymers) and forfeited all benefits under the claim. It complained to the insurance regulator alleging misconduct on the part of Pavitra Surveyors. However, it did not lodge any police complaint against the insured. Ideally, the Insurance company should have lodged police complaint against the insured but as per legal consideration there is nothing wrong in the New Horizon General Insurance Company's not lodging a police complaint for attempted fraud on the part of the insured. Lodging an FIR for a fraud or an attempted fraud depends on the anti fraud policy of the company. Very often in practice, insurance companies do not go beyond repudiation of a fraudulent claim.

Chapter - 13: Objective Questions

2014 - June [5]

(a) False
(b) False
(c) False
(d) True
(e) False

Question Paper of December - 2014

Chapter - 1:Understanding and Managing Risk

2014 - Dec [2] (b) It is generally believed that an insurance contract wholly and fully handles and eliminates all risks. Do you agree with the statement? Discuss. (10 marks)

2014 - Dec [5] How does 'insurance' differ from 'hedging'? (5 marks)

Chapter - 2: General Principles and Concepts of Insurance

2014 - Dec [2] (c) Distinguish between 'insurance contracts' and 'wagering agreements'. (10 marks)

Chapter - 5: Regulatory Environment- General Insurance

2014 - Dec [3] Write a note on warranties in marine insurance. (5 marks)

Chapter - 6: International Regulatory Framework

2014 - Dec [2] (a) Indicate the pre-conditions that must exist for an effective supervision to enforce the core insurance principles of the International Association of Insurance Supervisors (IAIS). (10 marks)

Chapter - 7: Life Insurance - Practices, Procedures

2014 - Dec [4] Explain the concept of trust in life policy. (5 marks)

Chapter - 9: General Insurance - Practices and Procedures - Focus Claims

2014 - Dec [1] R Ltd. is a public limited company and is engaged in procurement of rice and its exports. In the course of its business, it utilised the godown facilities offered by the port authorities for storing rice bags awaiting shipment. Right from the commencement of its business, it has covered the risks under a fire insurance policy taken from a very reputed public sector general insurance company. The insurer has been servicing the account through one of its development officers. The policy period normally runs between the first of July of one year and the end of June of the subsequent year.

There were cyclonic storms and heavy rains on 22nd and 23rd July, 2010 resulting in severe flooding of the godowns of the port trust where R Ltd. had stored the rice bags awaiting shipment. On ceasing of the rains on 25th July, 2010, R Ltd. found that most of the rice bags stored in the port godowns had either been damaged or washed away. The doors of the godowns had been lifted and carried away by the rainwater and except for some clusters of rice grains found on the floors of the godown here and there, the entire stock of rice had been washed away. The insured immediately lodged a claim with the insurer asking for a compensation in terms of the fire policy.

On examination of the case, the insurance company noticed the following:
The policy was due for renewal on 1st July, 2010. A notice for the payment of premium had been issued to the insured and served on it. The insured had drawn a cheque on 28th June, 2010 on its bankers for the insurance premium due on the basis of the premium notice and had handed over the cheque to the development officer servicing the amount, on the evening of 30th June, 2010. This was duly acknowledged by the development officer, who also issued a cover-note for the oncoming period. The cheque was deposited by the development officer with the insurer's branch to which he was attached on 17th July, 2010 when he returned to the headquarters from his official tour. The branch officials deposited the cheque into the insurance company's bank account on 18th July, 2010 and the bank credited the account with the premium on 25th July, 2010 because of the intervening public and bank holidays. The regular policy for the year 2010-11 was not issued by the insurance company till the event of loss. The insured had enjoyed the cover with the same insurance company from the year 2003-04 and no major loss claim had been made by R Ltd. so far on the insurance company.
On receipt of the claim papers from R Ltd., the insurance company's claims department made an analysis of the same and sent a reply to R Ltd. rejecting the claim for the following reasons:

(i) The company was not on cover at the time of the loss, since no premium had been paid by R Ltd.
(ii) The premium was received on 25th July, 2010 after the loss had occurred and hence no insurance policy can be granted.
(iii) Loss due to floods is not covered under a fire policy.
(iv) The cover note issued by the development officer did not bind the insurance company.

On receipt of this reply, R Ltd. approached you for advice on the resolution of the dispute. One of the methods suggested by R Ltd. was to proceed against the insurer before the Insurance Ombudsman. R Ltd. also felt that the IRDA could be approached directly for the resolution of the dispute.
Additional facts that may assist in the formation of your views are as follows:

(a) Goods stored in the godowns were 20,000 tonnes of rice whose cost of acquisition was ₹ 200 crore. The quantum of storage was supported by independent stock registers maintained by the port authorities.
(b) The District Collector of the area, who was appointed by the State Government as the Relief Commissioner, certified that all the goods in the godowns were lost in the floods and there existed no salvage.
(c) The stocks in the godowns carried an insurance cover for ₹ 250 crore.
(d) A public sector bank had advanced ₹ 80 crore against the stock in the godowns and on the date of flood loss, the outstanding loan amount was ₹ 75 crore. The bank has lodged independently a claim with the insurance company asking the insurer to pay the claim directly to it against the loan outstanding.

In the backdrop of the above information, make an assessment of the situation and give your opinion in detail on the following issues:

(i) Whether a cover for insurance existed on the day of the accident? (10 marks)

(ii) Whether the claim was covered in terms of a fire policy? Also indicate what type of losses are not covered under a fire policy? (10 marks)

(iii) Whether the IRDA can intervene in the matter, on behalf of the insured/bank for the settlement? (10 marks)

(iv) Whether the insured is entitled to any claim under the policy from the insurer? (5 marks)

(v) If the claim has arisen, specify the amount of the same. (5 marks)

(vi) Whether the insured company can approach the Insurance Ombudsman for the settlement of the claim? (5 marks)

(vii) Whether the lender bank has an insurable interest in the property and hence be a party to the claim settlement? (5 marks)

Chapter - 10: General Insurance - Practices and Procedures - Focus Underwriting

2014 - Dec [6] Describe the rules of interpretation of a policy. (5 marks)

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