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# THE INSURANCE TIMES

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## *In this issue*

Redressal of grievances under the Liability Insurance : An overview

World's First Insurance Salvage Patent: Transforming Accident Recovery into Safety Innovation

The Dilemma of Proximate Cause in view of the varying interpretations

Making the Invisible, Visible: The True Path to Technology driven Operational Efficiency in Health Insurance Claims Processing

Bridging the Trust Gap: Why Insurers Need an Internal Ombudsman

Unrealised Potential: Rural Insurance in India

GST 2.0 Reforms: What They Mean for the Life Insurance Industry and Consumers



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# The Insurance Times



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## Editor-in-Chief's Desk



**Ram Gopal Agarwala**  
B.Com, LLB, FCA.

The Indian insurance industry is at a defining crossroads. As IRDAI continues to push forward with its reforms to make insurance more inclusive, innovative, and investor-friendly, we are witnessing some transformative changes – from the relaxation of capital norms to encouraging insurance product innovation.

A significant recent development is the IRDAI's decision to allow investment in Alternate Investment Funds (AIFs) that support infrastructure, green energy, and social development. This strategic move not only enables insurers to diversify portfolios but also aligns the sector with broader national goals of sustainability and inclusive growth.

Furthermore, the Centre's push to privatize select public sector insurers has rekindled the debate on operational autonomy versus social obligation. While disinvestment may bring efficiency and capital infusion, it must be balanced with strong consumer safeguards and regulatory oversight to prevent short-termism in claims handling and pricing.

Another area attracting attention is insurance fraud. With insurers reporting an alarming 20% rise in fraudulent claims, IRDAI's plan to create a central fraud repository is a welcome step. Data sharing, predictive analytics, and insurer collaboration will be key in fighting this menace.

On the customer front, there's a growing focus on health insurance and bundled offerings. As India moves towards "Insurance for All by 2047," deeper awareness, ease of access, and responsible selling practices remain critical. Recent concerns around mis-selling and rising premiums for seniors highlight the need for stronger policyholder protection mechanisms.

FAIR is organising 29th Edition of its Conference in India, being hosted by GIC Re at Mumbai. Federation of Afro- Asian Insurers and Reinsurers (FAIR) is has around 53 member countries which, promotes co-operation among insurance and reinsurance companies in Africa and Asia. The Insurance Times journal is the media partner in the Event. We shall cover the proceedings in our November issue.

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## Risk-Based Deposit Insurance – A Prudent Reform, But Is ₹5 Lakh Enough?



**Dr. Rakesh Agarwal**

In a progressive step aimed at strengthening the resilience of the Indian banking system, the Reserve Bank of India (RBI) has proposed moving towards a risk-based deposit insurance premium (RBP) regime. This reform, long discussed in policy circles, seeks to replace the current flat-rate model with a risk-sensitive framework that rewards sound banking practices and penalises imprudent ones.

At present, all banks – regardless of their risk profile – pay the same premium to the Deposit Insurance and Credit Guarantee Corporation (DICGC), which provides a cover of ₹5 lakh per depositor per bank. This outdated structure effectively penalises well-governed and financially robust banks, while letting weaker institutions enjoy the same protection at the same cost. It also does little to promote proactive risk management or financial discipline.

The RBP model, already in place in over 30 countries including the US, Germany, and Brazil, corrects this distortion. Banks with poor asset quality, weak governance, or capital stress will pay higher premiums, while stronger banks will pay less. This pricing mechanism will create a healthier banking ecosystem by incentivising better risk practices and enhancing depositor protection in the long run.

However, the move should not stop at pricing reforms alone. There is an equally pressing need to revisit the current ₹5 lakh deposit insurance limit, which has not kept pace with rising incomes, inflation, or the scale of

banking deposits. For a growing middle class and increasingly digitalised savings behaviour, this limit offers little comfort in the event of a bank failure. A reasonable upward revision – say to ₹10 lakh or ₹15 lakh – would significantly improve depositor confidence, especially among retail customers and senior citizens who depend heavily on bank savings.

It is also essential to ensure that the shift to risk-based premiums is implemented with fairness and transparency. The RBI and DICGC must develop a robust and objective framework to assess banks' risk scores, based on capital adequacy, governance, operational risk, NPA trends, and audit findings. Smaller banks and cooperative banks may require transitional support to adapt to this new regime without hurting financial inclusion efforts.

One challenge that must not be overlooked is the perception of fairness and independence. While the new structure intends to signal risk-awareness, regulators must ensure that depositors do not misinterpret it as implying differing levels of safety. The ₹5 lakh cover remains uniform across all banks, and this fact must be clearly communicated.

In conclusion, while risk-based deposit insurance is a forward-looking, necessary reform, it must be accompanied by an upward revision of the coverage limit. Only then can the dual objectives of systemic stability and depositor trust be truly achieved. □

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# Insurance Demystified

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## The Dilemma of Proximate Cause in view of the varying interpretations



**Dr Abhijit K. Chatteraj**  
Chartered Insurer

*There are several ways the word Proximate Cause is interpreted in the absence of a precise legal definition. It is referred to as the nearest, immediate, dominant, effective, efficient, or operative cause of loss. In reality, it is the most effective and efficient cause of loss. Effective because it is the most potent and active cause in producing the intended result, and efficient because of its yield orientation.*

### Scenario

An ill-fated overloaded (goods) commercial carrier met with an accident in the busy thoroughfare of Delhi. It was raining very heavily on that day, and the road was full of potholes. Poor visibility made it very difficult for the young driver, who was also reckless.

In this case, the cause of the accident can be many - The driver thought it was poor visibility that caused the accident; the police believed it rash driving as the leading cause of the accident; the motor vehicle inspector alluded the poor maintenance of the vehicle as the leading cause of the accident; while a pedestrian, witness to the accident, blamed the poor road condition triggering the accident. The surveyor believed that the overloading was the cause of the accident. ***With different lenses, the cause of the accident changed.***

The insurer is liable for any loss proximately caused by a peril insured against. In the above case, the peril that caused the loss varied depending on who was interpreting the cause of the accident....

***In insurance, the question of proximate cause arises to***

***determine whether the agreement reached in the policy covers the intended loss of the parties. To delve into the intentions of parties, we need to consider the Insured, Excluded, and Uninsured perils.*** Most of the policies are named peril policies. However, these policies come with 'exclusions' that atone the scope of the perils covered. Losses from perils other than the specified or named are called 'Uninsured' for that specific policy. Under an All Risks Policy, all perils are covered, except for those specifically excluded.

It is pertinent to note the section 55 (1) of the Marine Insurance Act 1906 which states, "Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

***Consider the following scenario: a fire policy covers the peril of fire, but excludes fire triggered by a bomb, which is a war peril typically excluded from a standard fire policy. Fire occurs during a bombing. The key question to be decided in the scenario above is the cause of the fire, which can take various forms.***

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## The Problem of Causation

There is no problem when the various perils causing the loss are insured perils. The causation problem arises when more than one peril is operating, and some of these perils are either excluded or uninsured. The problem occurs when it becomes challenging to isolate the effect of a peril that is insured from the operation of a peril that is uninsured.

## Meaning of Proximate Cause

*The Latin maxim "In jure non remota causa sed proxima spectatur," meaning "In law, the immediate, not the remote, cause is to be considered.* The doctrine addresses questions of causation in legal disputes, involving multiple factors (perils) that lead to a single outcome. Thus, the principle tries to restrict the insurer's liability by considering perils or causes that directly influence the outcome, instead of considering distant or tangential causes.

*There are several ways the word Proxima Cause is interpreted in the absence of a precise legal definition. It is referred to as the nearest, immediate, dominant, effective, efficient, or operative cause of loss. In reality, it is the most effective and efficient cause of loss. Effective because it is the most potent and active cause in producing the intended result, and efficient because of its yield orientation.*

Consider the following scenario: a fire ravaged a portion of a building. A storm blew the damaged portion and wrecked a nearby building. The owner of the adjoining building claimed the loss under the fire policy. In this case, the Court held that fire was a remote cause and the storm was a proximate cause, not payable under the fire policy without STFI cover.

There are some interesting rules governing the above principle.

## Bacon's Rule

In keeping with the 'In jure non remota causa sed proxima, Sir Francis Bacon advocated that the **Last Cause or the Near Cause controls** the outcome when multiple perils are involved. **According to Bacon, courts should examine the immediate cause of an event and consider this while determining liability, rather than tracing the chain of causation back to its original source. That is, they should not trace the causes of the cause.**

## Newton's Rule

On the other hand, Sir Isaac Newton advocated a theory of

causation (based on Philosophiae Naturalis Principia Mathematica in 1687), which highlighted that the Initial Cause Controls the final outcome. One may recall that Newton's first law of motion states, 'A body remains in the state of rest or uniform motion in a straight line unless and until an external force acts on it'

*Courts often employ Newton's rule, which states that an initial peril directly triggers a subsequent peril, as long as an extraneous peril doesn't intervene to disrupt this linear progression. Initial peril is what the Court decides as the proximate cause.*

*Let us understand the concept with the help of a case involving United India Insurance Co. Ltd. Vs SBK Shipping Private Ltd.*

## Case Background

SBK Shipping Private Ltd. is in the business of providing barges for transporting materials, such as iron ore, from the port to ships. The company had four steel barges bearing registration Nos.CGE 50, WAI 185, WAI 206 and WAI 217, respectively. The company took out a marine insurance policy on November 5, 2004, from United India Insurance Co. Ltd., to protect its four barges against damage. Clause 4 of the insurance policy states that the insurance covers loss or damage to the barges caused by perils of the seas, rivers, lakes, or other navigable waters, as well as perils such as fire, violent threat and piracy. The policy, as stated in Clause 5, categorically excluded coverage for loss, damage, liability, or expenses caused by an earthquake or volcanic eruption.

On December 26, 2004, a huge tsunami wave crashed against the shores of South Asia, wreaking havoc on lives and properties. The four barges belonging to the above-insured were damaged. The barges, nos. CGE 50 and WAI 185 were towed back to the port when they were noticed floating on the sea.

The insurer paid the resultant towing cost of Rs 14,400-the other two barges, having numbers WAI 206 and WAI 217, were totally damaged. The insurer paid a claim amount of Rs. 4,97,160/- for barge No. WAI 206, but refuse to pay a claim amount of Rs. 9,16,250/- for barge No.WAI 217. The insurer declined payment for WAI 217 by its order dated September 13, 2005, stating that the loss was caused by a tsunami, and the proximate cause of the Tsunami was an earthquake, which was not covered under the Institute Time Clauses Port risk of the policy issued. The insured made a

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representation to the IRDA, the regulator, on September 19, 2025, seeking payment of the insurance claim in respect of the Barge bearing registration No.WAI 217. The insured made another representation to the insurer, which, by proceedings dated March 27, 2006, reiterated that 'tsunami' was the peril that caused the loss, and it was not covered under ITC Port Risks; the claim was, therefore, rejected. In the meantime, the IRDA, by its proceedings on January 25, 2007, maintained that the insurer was correct in rejecting the claim.

The insured filed W.P.No.6063 of 2008 seeking issuance of a writ of certiorarified mandamus ( a combination of legal writ certiorari and mandamus)calling for the records relating to the order of the respondent dated 27.03.2006 and quashing the same ( via certiorari) and consequently directing the insurer ( via mandamus) to sanction and disburse the claim amount for the damaged barge No.WAI 217 as covered by Insurance Policy No.011500/22/04/ 01/00000044.

By its order dated 18.08.2011, the learned Single Judge ( Chennai High Court) accepted the writ petition and rejected the order of the insurer dated March 27, 2006. Faced with this setback, the insurance company moved to the division court.

### The points of Contention :-

1. Whether a Tsunami constitutes an earthquake within the meaning of the ITC Port Risks policy ...
2. Whether a Tsunami or an earthquake was the proximate cause of the loss..
3. What is the bearing of exclusion clause 5 on the insured's claim?

### Arguments and Counterarguments of the parties involved -

#### 1. Points raised by the appellant ( Insurer in this case)

- ❖ The colossal undersea earthquake and Tsunami were directly linked as cause and effect.
- ❖ The ITC Port Risks policy specifically excluded earthquakes.
- ❖ The tsunami was caused only by the earthquake, which was proximately caused by the earthquake.
- ❖ The proximate cause is not the cause which is nearest in time or place, but the active and efficient cause that sets in motion a train or chain of events which brings about the ultimate result without the

intervention of any other force working from an independent Source.

- ❖ An earthquake is the dominant cause of a tsunami's occurrence; therefore, it is the proximate cause. As it is an excluded peril in the policy, the liability arising out of such loss is not admissible within the purview of the policy issued.
- ❖ The appellant referred to *New India Assurance v. Zuari Industries Ltd. and others*, (2009) 9 SCC 70, to support its points.

#### 2. Points raised by the respondent ( insured - SBK Shipping Private Ltd.)

- ❖ Even if we presume that the cause of the tsunami was an earthquake, which took place on the distant coast of Sumatra in Indonesia, triggering gigantic waves that destroyed the barges, the tsunami remains a peril of the sea.
- ❖ The respondent put forward the doctrine of *Contra Proferentem*, which maintains that in cases where a provision of the contract can be explained in more than one way, the Court favours the interpretation of the party who has not drafted the contract. Ostensibly, the respondent sought a judgment in its favour based on the ambiguity of the policy wording.

#### 3. Observation of the Division bench of the Chennai High Court

- ❖ Loss must be caused by the peril insured against.
- ❖ The rule of proximate cause, - 'the maxim in jure non remota causa sed proxima spectatur' -in other words, in law, the immediate and not the remote cause should be considered to measure the damage.
- ❖ When a series of events leads up to a loss, it can sometimes be challenging to determine the nearest or proximate cause. The vital point to note is that the proximate cause is the nearest cause and not a remote cause.
- ❖ Scientifically, the earthquake was the cause of the tsunami. Still, for people suffering the devastation or fury of the tsunami in Tamil Nadu, the occurrence of the earthquake, an excluded peril (cause) in this policy, was virtually a remote cause.
- ❖ The massive tidal wave, a Tsunami, was a peril of the sea, and not an earthquake, which was the proximate cause of the damage to the barges.

- ❖ It was not essential to trace the origin of the peril to identify the proximate cause. Even if the exercise is undertaken, there is no need to go to the remote cause.
- ❖ The Court, in its considered view, observed that in the above case, there was no ambiguity in the contract as all forms of peril of sea were covered.
- ❖ The loss in the present case occurred due to giant tidal waves (Tsunami), which hit the barge with great force and damaged it.
- ❖ The earthquake was not the proximate cause of the loss. On the contrary, it was the remote cause.
- ❖ If the tsunami, a peril of the sea, was the direct cause of the damage, there was no scope for further investigation or enquiry as to what caused the tsunami. There is no need to complicate the issue by determining the proximate cause of a tsunami. It was undoubtedly an earthquake.
- ❖ The proximity is in relation to the damage, and if the claim answers the same, it was maintainable.
- ❖ In this case, the honourable judges of the Chennai court accepted the respondent's plea that the damage/loss was caused by the perils of the sea (the Tsunami) and that this was the proximate cause and held that the learned single Judge had rightly ruled so.
- ❖ Additionally, the doctrine of Contra proferentem did not apply to the present case in the absence of any ambiguity in the terms of the contract.

Furthermore, upon examining the tenor of the contract, it only addresses admissible claims, which include perils of the sea (Clause 4.1.1), and excludes earthquake (Clause 5).

- ❖ There was nothing in the contract to indicate that if any of the above admissible claims was caused by a factor enumerated in the excepted clause, even if it was very remote, the admissible claim would also stand excepted.

## Conclusion

The Court referred to Bacon's Rule while deciding on the proximate cause in this case. There was no need to examine the cause of the cause once the same cause was established as the most dominant cause. However, there are instances where the Court has referred to Newton's Rule. Proximate cause is, therefore, capable of varied interpretations depending on the context and nature of the loss.

## To be Continued

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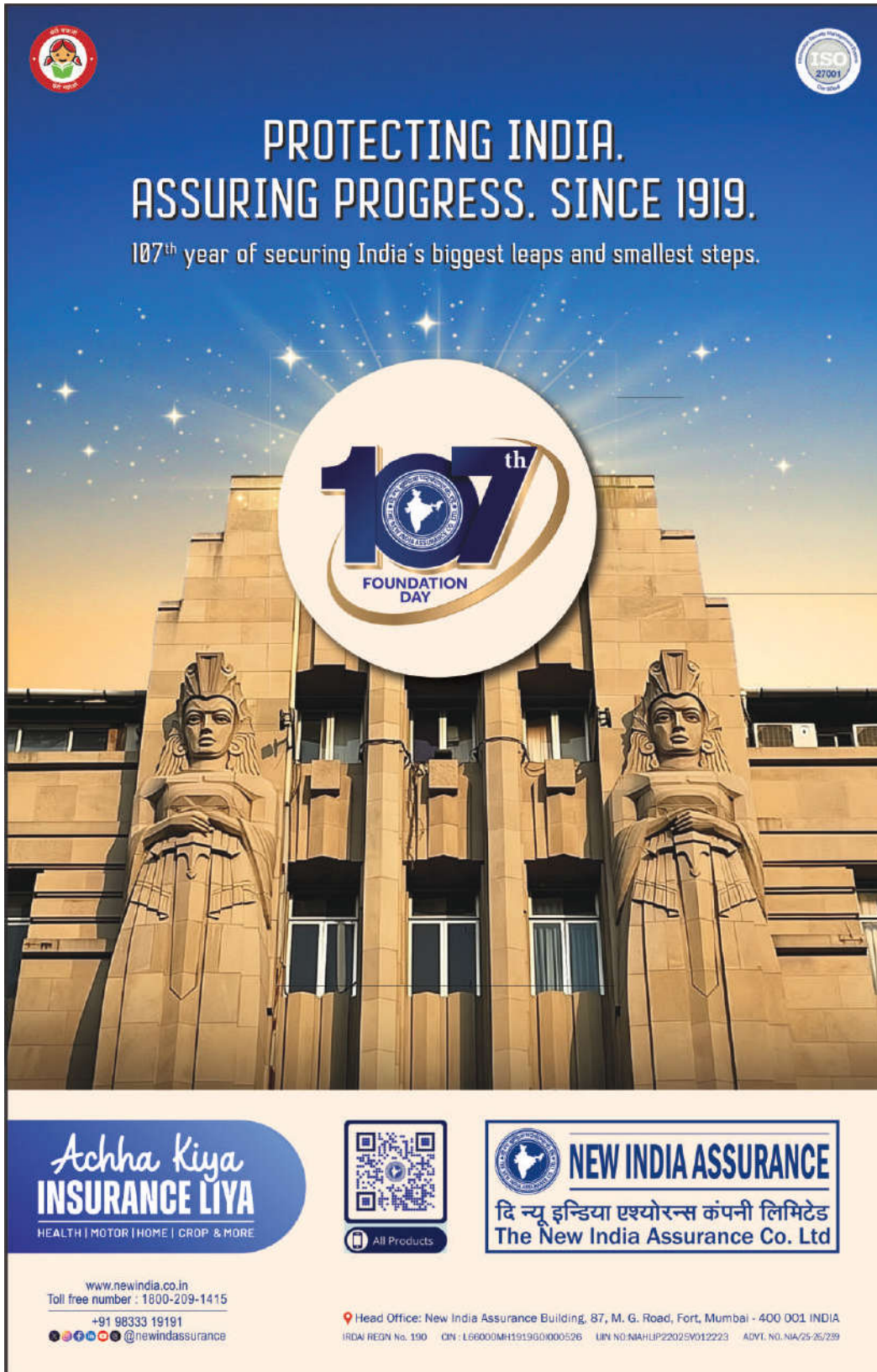
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