

# Double insurance – how good is your protection?

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## The case

Double insurance has been discussed recently in the Supreme Court of India in the case of *United India Insurance Co. Ltd. Vs Levis Strauss (India) Pvt. Ltd.* United India Insurance Co. Ltd. (United) had issued a perils policy to Levis Strauss (India) Pvt. Ltd. (Levis India) to cover its stock in storage. Levis Strauss & Co., the parent company of Levis India, had also obtained a global policy from Allianz Global Corporate & Speciality (Allianz). This policy covered the stock of all its subsidiaries, Levis India included.

During the periods of insurance, a fire broke out in one of Levis India's warehouses, destroying the stock inside. Levis India subsequently made a claim under its domestic perils policy. United repudiated the claim, stating that their perils policy excluded liability for any loss payable under the global policy.

Levis India made a complaint to the National Consumer Disputes Redressal Commission (NCDRC) who noted that the global policy excluded any loss covered by the domestic policy. Therefore, the profits Levis India would have earned on the sale of the damaged stock were payable by Allianz and the loss suffered to the extent of the cost of the stock was payable by United.

In challenging the NCDRC decision at the Supreme Court, United argued that the global policy should cover fire risk to the stock whilst in transit and also whilst in store and elsewhere. United asserted that the loss suffered could not be split into two branches against the two policies. Levis India had already received Rs. 19.52 crores (£2m+) from Allianz whilst its claim with United was for Rs. 12.4 crores (£1.2m+).

Levis India argued that as per Section 2(c)(b) of the Insurance Act 1938 and Section 25 of the Nationalisation Act, Levis India was under an obligation to arrange insurance through a domestic insurer and equally, the primary obligation of the claim should be on the domestic insurer. The two policies should be considered mutually exclusive.

## The decision

In analysing the double insurance aspect of the case, the Supreme Court acknowledged that Levis India had already received more from Allianz than the value of the claim with United. Considering this, the court held that in the case of specific risks, an insured cannot profit from double insurance. United's appeal was granted and the decision of the NCDRC set aside.

This judgment is a helpful reminder of the importance of double insurance clauses and a good opportunity to remind readers of the position under English law.

## What is double insurance?

Double insurance arises where an insured has two or more insurers covering the same claim or loss. Common law principles of indemnity stipulate that an insured cannot recover more than the loss they have claimed for. In other words, an insured cannot profit from their claim. However, where two or more insurers are on risk for the same claim or loss, who pays?

## Which insurer pays (and how much)?

An insured with double insurance is able to choose the insurer against which it may seek an indemnity. However, insurers usually incorporate double insurance clauses into their policies to offer some protection and to reduce their liability to the policyholder. Where both insurers have double insurance clauses, a hierarchy of clauses decides which clause “trumps” the other. Where both clauses are the same, both insurers will be liable for a rateable proportion of the loss.

## What are the different types of double insurance clause?

The main types of double insurance clause are:

- Exclusions/Restrictions/Escape clauses – this excludes liability where another policy covers the same loss;
- Rateable proportion clauses – this states the insurer will only pay its share of the loss;
- Excess clauses – this states the policy will only pay sums above the amount covered by the other policy; and
- Exclusion and excess clause – this clause excludes amounts payable under the other policy other than amounts over and above that which would have been covered under the other policy if the subject policy never existed (essentially a hybrid of the exclusion clause and excess clause).

The table is a useful tool for understanding which clause will “trump” the other.

		Policy B				
		None	Exclusion	Rateable	Excess	Exclusion and Rateable
Policy A	None	F	B E	B R	B XS	B E
	Exclusion	A E	F	A E	A E	B R
	Rateable	A R	B E	R	B XS*	B E
	Excess	A XS	B E	A XS*	F	B E
	Exclusion and Rateable	A E	A R	A E	A E	R
	Exclusions and Excess	A E	A XS	A E	A E	A XS

Outcome key	
F	The insured can claim the full amount from either insurer – the paying insurer can then claim a rateable proportion from the other insurer.
R	Rateable Proportion Applied - the insured can only claim a rateable proportion from Policy A and Policy B.
A R / B R	Policy A Rateable Clause Succeeds - the insured can claim the full amount from Policy B, leaving insurer B to recover from A (A R) / Policy B Rateable Clause Succeeds - the insured can claim the full amount from Policy A, leaving insurer A to recover from B (BR).

<b>A XS / B / XS</b>	Policy A Excess Clause succeeds, only liable to pay loss in excess of Policy B indemnity (A XS) / Policy B Excess Clause succeeds, only liable to pay loss in excess of Policy A indemnity (B XS).
<b>A E / B E</b>	Exclusion Clause Succeeds - Policy A not liable for any amount (A E) / Policy B not liable for any amount (B E).

\*This table assumes the obiter comments in *National Farmers Union Mutual Insurance Society Ltd v HSBC Insurance (UK) Ltd* would be applied, i.e. when an excess clause opposes a rateable proportion clause, the rateable proportion clause would be liable to the full extent of its limits and that the excess clause provides cover in excess of that limit. However, until formally overridden the ruling in *Austin v Zurich General Accident & Liability Insurance Co Ltd* remains law.

## Key considerations for underwriters

We still see many policies where insurers have not opted for the strongest double insurance clause. Whilst there may be commercial reasons for doing so, in the vast majority of cases insurers will want the maximum protection available. Insurers are therefore encouraged to review their double insurance clauses to ensure they have the maximum protection available.

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