



Institute of Actuaries of India

Statutory body established under an Act of Parliament

Unit No. F-206, 2nd Floor, F Wing, Tower II, Seawoods Grand Central,
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Disciplinary Proceedings

This matter is being published in accordance with the decision of the Executive Committee (now Council) in its meeting held on 4th March, 2003 applicable to all such cases and keeping in view IAI's membership requirements of the International Actuarial Association.

Reference: Complaint of IRDAI against Ms. Kirti Kothari (M. No. 281)

Complaint No: Complaint No. PD/C/1/2016-2017 (PROSECUTION DIRECTOR LETTER DATED 27TH JANUARY 2017)

THE ALLEGATION

Allegation:

S. No.	Particulars of Allegation	Corresponding Clause/Part of Relevant Schedules under which the alleged acts of commission or omission or both would fall
1.	<p>Ms. Kirti Kothari has committed serious professional misconduct with regard to submission of statutory reports to the Authority Please refer Annexure 2 for details Extract of the complaint from Annexure 2 is as under:</p> <p>1. Ms. Kirti Kothari was the Appointed Actuary (AA) of Reliance General Insurance Company Limited (RGIC) during FY 2014-15 and for five months after the end of FY 2014-15. She certified the IBNR figures as at 31st March, 2015 for the Auditors of RGIC. Based on the certificate, the Financial Statements of RGIC for FY 2014-15 were finalised. However, she raised doubts about the competency of</p>	<p>1. As per Clause 15 of Part-I (Schedule, See Section 31) of the Actuaries Act, 2006 which states, " ... Is grossly negligent in the conduct of her professional duties'.</p>

	<p>IBNR figures certified by her to the Auditors after a gap of 2-3 months. She refused to submit the detailed IBNR report and FCR for FY 2014-15 to the Authority. As on date, the Authority have not received IBNR report and FCR for 2014-15 from her.</p> <p>2. In our opinion, the above behaviour leads to professional negligence or misconduct.</p> <p>3. Ms. Kothari has resigned from the RGIC. Since then she has not been working as AA of any insurance company and therefore, not under the purview of any IRDAI norms and regulations.</p>	
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Prima Facie Opinion of Prosecution Director dated 15 May 2017

Allegation 1:

1. The complainant, IRDAI has quoted the Clause 15 of Part – I (Schedule, See Section 31 of The Actuaries Act, 2006 which states as under:

“ is grossly negligent in the conduct of her professional duties”.

Comments:

The written statement in response to the complaint as well as the rejoinder is directly referring to the chronology of facts, hence each of the facts is being examined below:

In her written statement, Ms. Kirti Kothari has stated as under against the chronology of facts specified by IRDAI and respective rejoinders of IRDAI are also given below:

1. Ms. Kirti Kothari was the Appointed Actuary of RGICL from 2nd May, 2013 to 28th August, 2015.

I agree. The IRDAI has approved my appointment as Appointed Actuary with effect from 1st May, 2013. As required by IRDAI (Appointed Actuary) Regulations, 2000, I have informed IRDAI about my resignation and subsequent relief vide emails dated 27th August, 2015 and 28th August, 2015(Enclosure 1) respectively.

Rejoinder: No comments.

Comments: Since both agree on this point, there is no comment.

2. The financial statements as at 31st March, 2015 were prepared based on the IBNR figures provided by Ms. Kothari.

I agree.

The IBNR figures were provided to CFO in the form of a brief report dated 29th April, 2015 (Enclosure 2) in addition to the IBNR estimates, the report summarises the reconciled information which was used in the estimation and the estimation methods used under different lines of business.

Rejoinder: The Authority is not aware of the internal communications between MS. Kothari and the CFO of the Company. However, it is implied that the financial statements as at 31.03.2015 has incorporated the IBNR numbers certified by Ms. Kothari as Appointed Actuary.

Comments: Since Ms. Kothari agrees on this point, there is no comment.

3. The IBNR Report as at 31st March, 2015 was expected before 31st August, 2015

I agree.

Rejoinder: No Comments

Comments: Since both agree on this point, there is no comment.

4. As the Authority did not receive any IBNR report from RGICL, reminders were sent to Ms. Kirti Kothari, the then AA of the Company.

I disagree.

Other than a reminder dated 21st August, 2015 (Enclosure 3) to submit the reports by 31st August, 2015, there were no other reminders, as the due date had not yet elapsed. This is misstatement/ misrepresentation No. 1 of the facts in the complaint to misstate that I needed to be reminded several times about submitting the reports.

Rejoinder: There is no misstatement/misrepresentation of facts.



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The Appointed Actuary was expected to submit all the regulatory reports latest by 31st August, 2015. This is an annual exercise and through several conversations and discussions that happen with the AAs during the year like Appointed Actuary Meetings etc., the Authority stress upon all Appointed Actuaries on the importance of submitting all the reports on time. It may be noted that we reminded Ms. Kothari again through mail dated 21st August, 2015 that she has to submit the report latest by 31st August, 2015.

Comments: Both the complainant and respondent agree that a reminder was sent by IRDAI on 21st August, 2015, hence, there is no comment.

5. On 20th August, 2015, we received an email from her stating that she has prepared the IBNR but would like to submit the report alongwith the FCR to ensure that the numbers appearing in the two reports are consistent. She also requested for extension for further two months for submission of both the reports – IBNR and FCR. The Authority advised her to submit the reports before 20th September, 2015.

I disagree with the last sentence.

In response to my email dated 20th August, 2015 (Enclosure 4) to the Authority, the Authority has formally advised me vide email dated 25th August, 2015 (Enclosure 5) from actuarial-valuation-nl@irda.gov.in stating that the Authority has granted an extension from the last date of just 10 days, i.e. upto 10th September, 2015 for the submission of the IBNR reports and FCR.

It was only after I was relieved from the service of RGICL that I received copy of email on 8th September, 2015 from IRDAI to RGICL that the reports need to be submitted by 20th September, 2015. The email stated that the reports were required to be signed by me, as I was Appointed Actuary on 31st March, 2015.

So the matter stated in the complaint under point 5 of chronology of facts is a misstatement/misrepresentation No.2 of the facts.

Rejoinder: There is no misstatement or misrepresentation of facts. Ms. Kothari was given time upto 20 September, 2015 for submission of IBNR and FCR vide our mail dated 8 September 2015.

Comments: Both the complainant and respondent agree that the final extension was given by IRDAI upto 20th September, 2015, hence, there is no comment.

6. Instead of reports, the Authority received an intimation from Ms. Kirti Kothari about her resignation vide email dated 27th August, 2015. She also stated that due to non-availability of complete, validated and signed off information in a timely manner, she will not be submitting the IBNR and FCR.



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I agree.

Prior to my resignation from RGICL, I have repeatedly followed up with RGICL regarding accurate, complete, consistent and reliable data and information at the granular level so the same could be placed in the detailed reports. Vide email dated 23rd August, 2015 (Enclosure 6), I have requested the CEO of RGICL if some timeline could be agreed for providing satisfactory information and data to me, as the reports to be prepared were yet to be placed before the Board even after two quarterly Board meetings after 31st March, 2015.

In the personal meeting on 25th August, 2015 in the office of RGICL, I have also informed the CEO that (1) the regulatory reports will need to be signed by me, as I was the Appointed Actuary as on 31st March, 2015, (2) in absence of required information in timely manner and the fact that the Authority had granted an extension of only 10 days for submitting the reports, I might want to submit a qualified report immediately, stating non-availability of complete and reliable underlying information in a timely manner as a reason. However, the CEO has replied to me that instead of submitting qualified reports, I may resign from the Company, and that the regulatory submissions would be taken care of by the company without involving me.

I have informed this to the Member (Actuary) by phone on 25th August, 2015.

I have resigned on the very next day, my resignation was accepted by RGICL on 27th August, 2015 and I was subsequently relieved on 28th August, 2015. I assumed that RGICL would have sought the necessary advice from the internal compliance function and from the regulator before relieving me.

Rejoinder: Ms. Kothari had provided IBNR figures for preparation of financial statements of RGICL as at 31 March, 2015. However, she did not submit detailed reports (IBNR and FCR) required as per extant norms in support of the IBNR figures provided by her. As stated by her, she could have submitted qualified reports. As regards her relief from the RGICL, Ms. Kothari has stated "I assumed that RGICL would have sought the necessary advice from the internal compliance function and from the regulator before relieving me". We cannot comment on the assumptions made by her. However, RGICL never asked for any advice from the Authority regarding relief of Ms. Kothari.

Comments: It is a fact that Ms. Kothari provided IBNR figures for preparation of financial statements since both the parties are accepting the point. It is also a fact that Ms. Kothari has not submitted detailed reports (IBNR and FCR) as required by the extant norms in support of the IBNR figures provided by her. However it is to be noted that Ms. Kothari resigned on 27th August, 2015 and was relieved on 28th August, 2015 by RGICL. The due date for submission was originally 31st August, 2015 which was extended upto 10th September, 2015.

7. On the very next day of Ms. Kirti Kothari's resignation, i.e. on 28th August, 2015, the Authority received an email from her stating that she has been relieved by the company.

I agree.

Rejoinder: No comments

Comments: Since both agree on this point, there is no comment.

8. On 8th September, 2015, the Authority wrote an email to the CEO of RGICL advising that as the IBNR used in the financials as at 31st March, 2015 was furnished by Ms. Kirti Kothari, IBNR and FCR for FY 2014-15 should be prepared and signed off by Ms. Kothari. A copy of the email sent to the personal email address of Ms. Kothari is attached herewith as Attachment 4.

I agree.

Rejoinder: No comments

Comments: Since both agree on this point, there is no comment.

9. On 22nd September, 2015, the Authority received an email from Ms. Kothari stating that she will not be in a position to sign or forward such a detailed report prepared by the company to the Authority. However, she did not comment on any consistency between FCR and IBNR figures – a concern which was raised by her earlier.

I disagree.

In context of the email dated 8th September, 2015 from IRDAI to RGICL, I was contacted by RGICL and I have received from RGICL the 21 draft reports as word documents and 592 tables as excel files by email on 18th September, 2015 (Enclosure 7) for my review, only two days before the deadline provided by IRDAI. The trail mails in the email enclosure show that the information was also collated by CFO on the very same day.

Hence in the absence of (1) agreed communication of terms of engagement between RGICL and me and (2) complete information and reliable documented checks in a timely manner for my review, I have forwarded to IRDAI vide email dated 20th September, 2015 (Enclosure 8) the documents and tables as I received from RGICL, while informing IRDAI about the background leading to my forwarding unsigned reports to IRDAI.

I had mentioned in the end of email that RGICL was yet to communicate to me when they would provide the draft FCR for my review,

The email referred to in point 9 above was sent by me two days after the IBNR reports and tables were already forwarded to IRDAI. This email dated 22nd September, 2015 was regarding FCR only (Enclosure 9) and followed the telephonic talk I had with

RGICL on 22nd September, 2015 in which the CFO informed me that the Company is drafting a FCR for my review and signature, as required by IRDAI. As the context of communications related to FCR, I have restricted my email to FCR only, for which any email communication was yet to commence. I have also stated clearly the reason for not submitting the FCR was as mentioned in the IBNR report.

However, this email of 22nd September, 2015 sent by me has been misused in the complaint to misstate that (1) the email was regarding submission of both IBNR and FCR and (2) I was now no more concerned about the consistency of figures appearing in FCR and IBNR tables. This is misstatement/misrepresentation No.3 of facts about my concern on consistency.

Rejoinder: There is no misstatement or misrepresentation of facts.

Please refer to the Attachment No.5 of our letter dated 22.03.2016. Ms. Kothari has clearly stated in her email dated that "..... I would not be in a position to sign or forward such detailed report prepared by the company for the Authority". As Ms. Kothari had provided IBNR for preparation of financial statements of RGICL as at 31 March, 2015, it was necessary that numbers in FCR and IBNR should be consistent and those numbers need to be certified by her. It is the Actuary's responsibility to ensure that estimations are arrived at using generally accepted actuarial principles and complying with the regulatory requirements. While an unsigned IBNR report was sent through mail, FCR is not sent at all. Further, the IBNR is not only unsigned, it is incomplete also. Till date there is no signed report from her. In this connection please refer to our comments under observation 1 to 6 below. Thus, the entire manner in which Ms. Kothari handled her job amounts to Professional misconduct.

Comments: Regulation 8(h) of the Insurance Regulatory Development Authority (Appointed Actuary) Regulations, 2000 specifies the duties and obligations of an Appointed Actuary in the case of the insurer carrying on general insurance business to ensure:

- (i) The rates are fair in respect of those contracts that are governed by the insurer's in-house tariff**
- (ii) That the actuarial principles, in the determination of liabilities, have been used in the calculation of reserves for incurred but not reported claims (IBNR) and other reserves where actuarial advice is sought by the Authority**

As per the Circular no. IRDA/ACTL/CIR/MISC/081/05/2010 dated 13th May 2010 which was superseded by the amendment circular no. IRDA/ACTL/CIR/MISC/153/07/2014 dated 5th July, 2014 issued by IRDAI states: (1) insurers shall submit the Financial Condition Report in accordance with the amended Financial Condition Report enclosed with effective from 31st March, 2015 and (2) The Financial Condition Report as on 31st March shall be submitted before 31st August of every year effective from FY 2014-15.



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Ms. Kirti Kothari was Appointed Actuary as on 31st March, 2015. She was required to submit the IBNR and FCR by 31st August, 2015 which date was originally extended by IRDAI to 10th September, 2015. She resigned as Appointed Actuary on 27th August, 2015 and was relieved by RGICL on 28th August, 2015.

10. On 29th September, 2015, the competent authority received an IBNR report by email in word document without any signature from the personal email id of Ms. Kothari, Email ID: kirti_kothari@hotmail.com.

I disagree.

The email was sent by me on 20th September, 2015 (Enclosure 8), which was the deadline communicated by IRDAI in email of 8th September, 2015. The complaint has misstated that I have sent an email on 29th September, 2015. On going through the supporting evidence (attachment 6 of Annexure 3 of Complaint form) (Enclosure 10), it can be seen that there is no beginning portion of this email and the top part of the email which is supposed to contain the details of date, the sender and recipients of email, has been replaced by a thank you signature from some other email of mine. I have enclosed the correct email dated 20th September (Enclosure 9), and the email dated 26th November 2015 (Enclosure 11) sent by me.

This is misstatement/misrepresentation No.4 of the facts in the complaint. This is a serious misstatement/misrepresentation as the email sent by me to Member (actuary) has been modified in the complaint with the intention to show me in poor light by implying that I have been irresponsible in meeting deadlines, and also do not keep the regulator informed if the deadline is expected to be breached.

As the context to FCR has not been mentioned in the complaint in the point 9 of the chronology of facts and also the fact that the complaint has not mentioned that I had already forwarded the IBNR reports and tables to IRDAI via email dated 20th September, 2015, the point 10 in the complaint has been misstated to show as if I have, on 22nd September, 2015, expressed my inability to sign on IBNR reports and tables, but have subsequently submitted these via email dated 29th September, 2015, many days after the deadline provided by IRDAI for this purpose without keeping IRDAI informed about this. This is misstatement/misrepresentation No.5 of facts about dates of emails, trying to imply that I have been careless in my communications with the regulator.

Rejoinder: There is a typo error in first sentence of point no.10. "29 September 2015" should be read as "20 September 2015"

We confirm that there is no misstatement or misrepresentation of facts.

We submit that we have not replaced any signature as mentioned by Ms. Kothari. This is a bland allegation which is serious. For the sake of completeness, we are attaching the entire trail mail dated 21 December 2015 received from Ms. Kothari. It may be observed that this mail contains the word "Thanks" as well as earlier mails submitted by us as Attachment 6 vide our letter dated 22 March 2016. It is clear from the attachment that "thank you" signature is not replaced from any mail.



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Comments: It seems that she has sent an email on 20th September, 2015 (agreed to by both the parties) along with the IBNR reports and tables (unsigned). Both agree that she has submitted unsigned IBNR reports and tables on 20th September, 2015. Hence, there is no comment.

11. It is necessary to get both the IBNR and FCR signed off by Ms. Kirti Kothari as financials were prepared using the IBNR certified by her. After certifying the IBNR along with FCR, it is mandatory to ensure consistency between FCR and IBNR. As she was not willing to submit the reports, it may mean that she had doubts about the IBNR figures submitted to the Auditors by her. In that case, it may mean that the financials of the company for FY 2014-15 may not be correct. For examining the correctness of the financials, the Authority needs both the reports – IBNR Report and FCR.

I disagree.

This is misstatement/misrepresentation No. 6 of the facts in the complaint that I have raised doubts on the IBNR estimates. As Appointed Actuary, I have certified the IBNR estimate. But there was no certification of FCR, as mentioned above. As the numbers mentioned in IBNR Report and FCR relate to the same entity for the same period, the details of IBNR reports and tables are indeed required to be consistent with the details and tables in FCR.

The reasons for my not submitting the reports while I was Appointed Actuary at RGICL and after I was relieved from RGICL have already been mentioned in my response to points 6 and 9 above. These do not lead, in any way, to the conclusion made in the complaint that non-submission of reports "may mean that I had doubts about the IBNR figures submitted to RGICL". Hence, they also do not lead, in any way, to the conclusion in the complaint that "it may mean that the financials of the company for FY 2014-15 may not be correct".

Rejoinder: There is no misstatement or misrepresentation of facts.

It is reiterated that numbers in FCR and IBNR should be consistent and those numbers need to be certified by the Appointed Actuary. It is the Actuary's responsibility to ensure that estimations are arrived at using generally accepted actuarial principles and complying with the regulatory requirements. Evidences as cited in our letter dated 22.03.2016 clearly proves irresponsibility on the part of Ms. Kothari while carrying out her role as an actuarial professional. It is shocking that a report which is unsigned and which is merely forwarded is taken as submission of IBNR report in defense against Authority's complaint that she is not only careless in performing her duty but also communicating with the Regulator.

Comments: It is a fact that numbers in FCR and IBNR should be consistent and those numbers need to be certified by the Appointed Actuary. It is the Actuary's responsibility to ensure that estimations are arrived at using generally accepted actuarial principles and complying with the regulatory



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requirements. However, non-submission of reports does not indicate that she had doubts about the IBNR figures submitted to RGICL. She has however, mentioned that she has doubts about consistency of figures in the email dated 26th November, 2015 wherein she mentions as under: "While I was in employment at RGICL, I have also come to know that some of the numbers for the year 2014-15 were inconsistent across different submissions made to the Authority. Also, some numbers of the previous year were different from what was stated in the report of previous year. "

12. Being appointed actuary for the entire FY 2014-15 and for 5 months after the end of FY 2014-15, certifying the IBNR figures as at 31st March, 2015 for the Auditors, raising doubts about the consistency of the figures given to the Auditors after a gap of two-three months and still refusing to submit the detailed reports to the Authority about the figures certified to the Auditors may be construed as "professional misconduct".

I disagree.

In continuation to my response to point 11 above, it cannot, in any way, be concluded that " I have raised doubts about the consistency of the figures given to Auditors". The reasons for non-submission of detailed reports are already stated in my response to points 6 and 9 above.

Perhaps seeking an extension from the Authority for completing the regulatory reporting exercise and explaining to the Authority the reasons for delay have been used to wrongly imply in the complaint that I "probably had doubts on the IBNR estimate itself". This is misstatement/misrepresentation No.7 of facts in the complaint.

I believe that I have conducted myself in the most professional manner, given the circumstances, and that there is no breach of code of professional conduct on my part, and hence, this cannot be construed as "professional misconduct".

Rejoinder: There is no misstatement or misrepresentation of facts.

Ms. Kothari has not submitted the IBNR and FCR reports supporting the IBNR figures submitted by her for the preparation of financial statements of the insurer as at 31 March, 2015.

The Authority has submitted ample evidences vide letter dated 18 November 2015 addressed to Ms. Kothari to support our observations that she has expressed her inability to sign off the reports as she was not sure about the correctness and consistency of relevant numbers.

Comments: It is a fact that numbers in FCR and IBNR should be consistent and those numbers need to be certified by the Appointed Actuary. It is the Actuary's responsibility to ensure that estimations are arrived at using generally accepted actuarial principles and complying with the regulatory requirements. However, non-submission of reports does not indicate that she had doubts about the IBNR figures submitted to RGICL. She has however, mentioned that she has doubts about consistency of figures in the email dated 26th November, 2015 wherein she mentions as under:

“While I was in employment at RGICL, I have also come to know that some of the numbers for the year 2014-15 were inconsistent across different submissions made to the Authority. Also, some numbers of the previous year were different from what was stated in the report of previous year. ”

13. It may be noted that even after her resignation from RGICL, the Authority had extended additional help to her for completion of IBNR and FCR by asking RGICL to extend a consultancy arrangement to her so that she could complete the statutory requirements. Please refer letters dated 18th November, 2015 addressed to Ms. Kothari and to the CEO, RGICL on this subject. However, Ms. Kothari has not cared to pay any regard to the Authority's requests.

I disagree.

Other than the copy of email communication dated 8th September, 2015 from IRDAI to RGICL, instructing RGICL that the reports were to be signed off by me as I was Appointed Actuary on 31st March, 2015, I was not informed by the Authority that "the Authority had extended additional help to me for completion of IBNR and FCR", and that "the Authority had asked RGICL to extend a consultancy arrangement for me".

With reference to sub-regulation (3) of IRDAI (Appointed Actuaries) Regulations, 2000, requesting RGICL to extend such a consultancy arrangement to me for discharging a regulatory requirement on specific request by IRDAI would also require the details of terms of engagement to be provided by RGICL to IRDAI, and a specific approval be sought from IRDAI for such an arrangement for this purpose. However, none of the above information was made available to me.

In response to letter dated 18th November, 2015 by Member (Actuary) to me, I have communicated to Member (Actuary) vide email dated 26th November, 2015 (Enclosure 11) that I was prepared to review the draft contents of reports and underlying tables provided there were agreed terms of engagement between RGICL and me, as I was now no longer an employee or Appointed Actuary of RGICL.

I have also stated in my email dated 26th November, 2015 to Member (Actuary), that I was unwilling to commit a timeline, given the time elapsed since my relief from RGICL, and also the volume of information which was required to be reviewed. I had for reference my recent past experience at RGICL where the Company officials did not commit to any timeline, either verbally or in writing, either during my employment at RGICL or after my relief from RGICL, for providing the required complete and reliable information with documented checks for completeness and consistency.

RGICL had requested me to visit their office on 8th December, 2015, knowing that I have committed to no timeline for this activity. So the point made above in the complaint is a misstatement/misrepresentation No. 8 of facts.

In my proposed terms of engagement of RGICL (Enclosure 12), I have specifically stated that I need to keep IRDAI informed about the agreed terms of engagement and take the Authority's specific approval of my appointment as Appointed Actuary for this purpose.



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On enquiring with RGICL vide emails on 8th December (Enclosure 13) and again on 17th December, 2015 (Enclosure 13) RGICL has informed me on 17th December, 2015 vide email (Enclosure 13) that my proposed terms of engagement appeared unreasonable and that the matter has been placed before the IRDAI for their guidance.

Vide email dated 21st December, 2015 (Enclosure 14) to Member (Actuary), I have informed that I am awaiting revert from RGICL regarding the agreed terms of engagement and that the reporting work has not yet commenced due to this. This email has not been placed in supporting evidence in the complaint. This is misstatement/misrepresentation No. 9 of facts in the complaint.

Having got no reverts from IRDAI or RGICL, I have requested the Member (Actuary) vide email dated 13th January, 2016 (Enclosure 15), to advise on whether any decision has been taken regarding this matter and whether the matter was to be regarded as closed. This email has also not been placed in supporting evidence. This is misstatement/misrepresentation no.10 of the facts in the complaint. The above two misrepresentations are serious, as it appears that the Member (Actuary) has not bothered to get these emails included in the attachments to complaint and has instead the complaint states that "I have not cared to pay any regards to the Authority's requests". I have not received any revert from IRDAI at any time after 18th November, 2015.

I would have been more than happy to discuss with RGICL and/or IRDAI to resolve this matter amicably as I have been awaiting a revert from either parties for a long time, and hence have not taken on any major work commitment since my relief from RGICL.

Having received this complaint one and a half years after I have been relieved from my responsibilities as an employee Appointed Actuary at RGICL, I am quite surprised that the Member (Actuary) has not responded to my email or communicated anything to me regarding this reporting exercise, and has instead authorised this complaint to the IAI, alleging that I have been "grossly negligent in my conduct of professional duties".

Rejoinder: There is no misstatement or misrepresentation of facts.

The Authority did not include all the e-mails received from Ms. Kothari as supportive documents as it was felt that these were not relevant for the complaint. For instance, in the email dated 26.11.2015 (Enclosure – 11 of her submission), she reconfirmed "... I am unable to verify or certify the consistency and accuracy of numbers in the tables.....".

Further our Letter to Ms. Kothari dated 18/11/2015 (copy enclosed) clearly mentioned that we are enclosing a copy of letter addressed to CEO of RGICL also.

While it could be construed that Ms. Kothari's resignation without submission of report is gross professional negligence, the Authority enabled her to access the data and systems of the insurer in spite of the fact that she ceased to be AA of the RGICL so that she could complete her duties as AA.

The Authority expects that a responsible AA will submit report within a reasonable extended time limit if he/she is unable to submit within a timeline.



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It is stated that a mail dated 13 October 2016 has not been placed in the supporting evidence. It is submitted that the abovementioned mail doesn't lessen the impact of professional negligence.

Comments: Since the terms of engagement were not finalised between RGICL and Ms. Kirti Kothari, she was unable to complete the assignment as required by the IRDAI. RGICL apparently sought guidance from IRDAI. There is no further correspondence on the matter.

14. For further reference, we attach an email showing communication of MS. Kothari with the RGICL regarding the remuneration she demanded from the insurer.

I disagree.

The email (Enclosure 13) contained my proposed terms of engagement based on my reasonable assessment of the effort required in the review exercise and the other legal formalities under such a consultancy arrangement for the purpose of signing on regulatory reports. I was sincerely hoping that the terms of engagement would at least incentivise the Company to provide me, at the earliest, the consistent and reliable information I needed for discharging the specific requirement of IRDAI. However, the complaint has tried to show me in poor light by stating that "I demanded remuneration from insurer".

In the email dated 8th December, 2015 by RGICL to Member (Actuary), no concerns were raised by RGICL about my proposed monetary terms of engagement with RGICL. So it is not clear why this point was included in the chronology of facts.

Regarding Complaint points 1,2 and 3, I have already placed my response in points 11 and 12 above.

Rejoinder: There is no misstatement or misrepresentation of facts.

Please refer to our letter dated 18 November 2015 addressed to Ms. Kothari (Attachment No.7 of our letter dated 22 March 2016) which is self-explanatory and shall be clear evidence of how Ms. Kothari made baseless comments about the Authority in her every reply.

Considering that Ms. Kothari has provided IBNR figures for preparation of financials of RGICL as at 31 March 2015, it is highly surprising that "she is hoping that company will provide consistent and reliable information." In this regard please refer para 6 & 7 of our letter dated 18 November 2015 which is reproduced below in verbatim:

"You had been working as the Appointed Actuary of the RGICL for more than 2 years. It is expected that the Appointed Actuary working for such a long period with the company should have a fair idea about the processes and systems of the company and if he/she has any doubts about the accuracy of the data or any other matter, he/she should have brought this fact to the notice of the board of the Company and to the Authority before certifying the IBNR figures used for the preparation of Financial statements.



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Being Appointed Actuary for the entire FY 2014-15 and for 5 months after the end of FY 2014-15, certifying the IBNR figures as at 31 March 2015 for the Auditors, raising doubts about consistency of certified figures after a gap of two-three months and still refusing to submit detailed signed off reports to the Authority about certified figures may be construed as "professional misconduct".

From the above, it is clear that Ms. Kothari, while working as the AA was not fully aware of necessary internal controls in the company which she is supposed to know as AA.

Comments: It is a fact that numbers in FCR and IBNR should be consistent and those numbers need to be certified by the Appointed Actuary. It is the Actuary's responsibility to ensure that estimations are arrived at using generally accepted actuarial principles and complying with the regulatory requirements. However, non-submission of reports does not indicate that she had doubts about the IBNR figures submitted to RGICL. She has however, mentioned that she has doubts about consistency of figures in the email dated 26th November, 2015 wherein she mentions as under: "While I was in employment at RGICL, I have also come to know that some of the numbers for the year 2014-15 were inconsistent across different submissions made to the Authority. Also, some numbers of the previous year were different from what was stated in the report of previous year. "

PRIMA FACIE OPINION:

The basic point of contention seems to be that Ms. Kirti Kothari had certified the IBNR figures for the year ended 31st March, 2015 and submitted to RGICL as well as IRDAI. However, she has not submitted the detailed signed off reports – IBNR and FCR till the date of the complaint i.e. 22nd March, 2016. It is to be noted that Ms. Kirti Kothari had resigned on 27th August, 2015 and she was relieved by RGICL on 28th August, 2015. The extended date for submission of the reports was 10th September, 2015 which was further extended to 20th September, 2015.

Since she had resigned and was relieved prior to the deadline for submission, she was no longer the Appointed Actuary of RGICL on the date of the deadline. She was therefore, unable to access the records of the company. IRDAI had informed RGICL vide letter dated 18th November, 2015 to allow her access to the documents required as well as work out the compensation for the same. She has stated a remuneration of Rs.1 lakh per day for the work specified, which RGICL found unreasonable. It seems RGICL has raised this issue with IRDAI. Their response on the same has not been submitted.

An Appointed Actuary cannot do the work as such after his/her resignation from the job unless the company cooperates with him/her. Ms. Kirti Kothari cannot



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be held responsible for the work when she cannot get access to records for completion of the work. Hence, she may be held not guilty.

PROCEEDINGS AT THE MEETING OF DISCIPLINARY COMMITTEE HELD ON 6TH OCTOBER 2017

It was noted that Ms. Kirti Kothari has provided the estimate of IBNR for Statutory Valuation. However, she has complained about the data only after 2-3 months. It was decided to advise Prosecution Director to relook at the Prima facie opinion on the technical aspect of the case.

REVISED PRIMA FACIE OPINION OF PROSECUTION DIRECTOR DATED 23RD NOVEMBER 2017

Prosecution Director relooked at the complaint as well as the technical aspect as specified by Disciplinary Committee. Prosecution Director mentioned that the specific allegation in the complaint is that Ms. Kirti Kothari has not submitted FCR and IBNR (final) within the time limit specified by IRDAI. It is pertinent to note that the time limit specified is 31st August 2015 which was extended upto 20th September 2015, while she has resigned on 27th August 2015 and was relieved by RGICL on 28th August 2015. Under such circumstances, Prosecution Director mentioned that her prima facie opinion is not being revised since the allegation is about non-receipt of the report by IRDAI.

PROCEEDING AT THE MEETING OF DISCIPLINARY COMMITTEE DATED 7TH JULY 2018

Disciplinary Committee discussed the prima facie opinion of Prosecution Director. The following points were noted and discussed.

1. It was clear that Ms. Kirti Kothari has estimated the IBNR provisions and has signed off on the same on 29th April 2015. These provisions were considered in the financial statements, the annual report and the solvency position that were submitted to the company Board and the IRDAI.
2. However Ms. Kirti Kothari has not submitted the signed detailed Appointed Actuary's report which details the data, the methodology and the assumptions used in the estimation of the IBNR provision for each line of business as required by the IRDAI. She has also not submitted the signed Financial Condition Report (FCR) as required by the IRDAI on the same date.
3. The last date for submission of these reports was 31st August 2015.
4. The committee noted that she was the Appointed Actuary for about 4 months from the date of estimation till 28th August 2015 (3 days before the last date for submission).
5. She claims to have not submitted these reports as she was not an Appointed Actuary on the last date for submission.

6. She has later submitted unsigned reports on estimation of IBNR provision over email on 20th September 2015. The company was willing to provide the information and draft Financial Condition Report for her review vide their email dated 1st December 2015. She could not however finalize the financial considerations with the company.
7. The Actuarial Practice Standard (APS 21) which deals with Appointed Actuary and General Insurance Business and the Guidance Note (GN31) which deals with the Financial Condition Report for General Insurance Companies require an Appointed Actuary to submit the reports as in 2 above.
8. The mere fact that she was not Appointed Actuary as on the 31st August 2015 (the last date of submission) does not absolve the responsibility of the estimations performed and signed off by her in the financial statements, the annual accounts and the solvency position.
9. The signed detailed report is very much essential in understanding the estimation and also ensuring that the Appointed Actuary stands and be professionally liable for the estimations provided.
10. The Actuarial Practice Standard (APS 21) and the Guidance Note (GN31) however does not clearly elaborate on the responsibility Appointed Actuary in submitting the signed detailed report of estimation in case the same is not submitted earlier before relinquishing the role.
11. The Prosecution Director's Prima Facie opinion says that Ms. Kirti Kothari is not guilty as it could not be clearly established whether the defendant is guilty of any professional misconduct.
12. The Prosecution Director's opinion seems to have been derived on 10 above in combination with 5 above. In short the opinion seems to have been derived as a consequent non application of APS 21 and GN 31 as she was not an Appointed Actuary on the last date for submission.

In the light of the above, it was decided that the Disciplinary Committee seek the view of the IAI Council on '*whether the APS 21 and GN 31 is applicable in case of non submission of detailed reports as required by IRDAI post the relinquishing of the role before the last date for submission*' before arriving at a conclusion on whether the defendant is guilty of professional misconduct or not.

Further the Disciplinary Committee decided that *Ms. Kirti Kothari should be directed to submit the signed copy of these two reports (after including necessary qualifications as she may feel required and appropriate) to both the company and the IRDAI within a period of 30 days from date of receipt of the directive under intimation to the IAI Council.*

It may further be noted the Disciplinary Committee has not formed any opinion on the violations of any guidelines or regulations as stipulated by the IRDAI for Appointed Actuaries while performing the role as the same is within the purview of the IRDAI. It is up to them to make any decision if any on the same."

Council was requested to provide its views on the requested matter so as to proceed on the case accordingly. Accordingly, letter dated 30th August 2018 was sent by Presiding Officer to the President.



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PROCEEDINGS AT THE MEETING OF THE COUNCIL HELD ON 20TH OCTOBER 2018

Council discussed the letter dated 30th August 2018 from the Presiding Officer, Disciplinary Committee. It noted that the Disciplinary Committee and Prosecution Director have powers of Civil Court as per section 28 of the Actuaries Act 2006. By invoking these powers the Disciplinary Committee can summon or discover and produce any document.

It further noted that Council do not have any authority to provide any opinion or comment on how the proceedings be conducted in the Disciplinary Committee.

The Council advised the Disciplinary Committee to submit its report under section 26 of Actuaries Act 2006. Accordingly, Order of the Council dated 13th November 2018 was sent to Disciplinary Committee.

PROCEEDINGS AT THE MEETING OF THE DISCIPLINARY COMMITTEE HELD ON 6TH DECEMBER 2018

The Committee examined the Office Order dated 13th November 2018 from President in respect to the following

- 1) The complaint above
- 2) Letter from Presiding officer, Disciplinary Committee dated 30th August 2018.

The Committee examined the allegation and observed that the Insurer is responsible for submission of the returns such as IBNR report to the IRDAI as per clause 3 of schedule 2(B) of IRDAI (Assets, Liabilities and solvency margin of the Insurers) Regulation 2000. This is reproduced below;

"Statement of Liability

3. Every general insurer shall prepare a statement of liabilities in Form HG, certified by an auditor approved by the Authority in accordance with section 64V of the Act, and also certified by its appointed actuary in respect of IBNR reserves. The statement shall be furnished to the Authority along with the returns mentioned in section 15 of the Act (Insurance Act, 1938)."

Hence, the allegation did not come under the purview of the Schedule of the Actuaries Act 2006, because the general insurer was responsible for furnishing of returns such as IBNR report to IRDAI. The onus is on the insurer to get a certificate from the Appointed Actuary and comply with the regulations.

RECOMMENDATION:

In view of the circumstances, the Committee recommended for closure of the complaint under Rule 9(4) of the Actuaries (Procedure for enquiry of Professional and Other misconduct) Rules, 2008.



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DECISION AT THE MEETING OF COUNCIL HELD ON 29 DECEMBER 2018

It was decided with majority to close the matter as per the recommendation of the Disciplinary Committee and inform related parties.

Letter to this effect was sent to Complainant and Defendant on 22nd January 2019.

BY ORDER

EXECUTIVE DIRECTOR