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India Inc. needs a ~Weinstein clause~ in insurance policies

Wall Street calls it the ~Weinstein clause~. Named after Hollywood producer Harvey Weinstein who was accused of alleged sexual misconduct, this clause provides for companies to pay damages to other parties and business partners if such allegations come to light at the time of deals or M&A transactions. Considering the number #MeToo cases cropping up across Indian companies, it is imperative that they have adequate cover against financial liabilities. Several individuals in the advertising, stand-up comedy, media and entertainment sectors have been accused of sexual harassment. Companies have suspended the accused and ordered a detailed investigation thereafter.

A separate clause to deal with the issue could help minimise the liabilities arising out of such cases. For instance, if a listed entity has senior management involved in sexual harassment cases, there are chances of court cases being filed by the victims. Any lawsuit leads to financial and reputational damage. Insurers can minimise the damages, provided a separate clause is added to the policy document.

In the past, a sexual harassment lawsuit involving Infosys, its former employee Reka Maximovitch and Phaneesh Murthy was settled for million. The insurer paid half the amount and Infosys the other half.

In the West, insurance companies have started incorporating the ~Weinstein clause~ in covers like Directors & Officers (D&O) liabilities to provide protection against liabilities. However, there are explicit exclusions for serious crimes like rape and the accused also have to bear some damages. Considering the liabilities involved in such cases, it is imperative that Indian insurers also offer policies with such a clause.

Co-payment of damages by offenders would also dissuade immoral behaviour.

A smaller company could potentially go bankrupt if a billion-dollar case is filed against them, either by victims, shareholders or partners for erosion of share value. At present, D&O policies are mostly silent on the issue of sexual harassment. It is a grey area. Only after a specific harassment-related claim is filed does an insurer take a decision. Having an outright policy outlining whether insurance will cover sexual harassment will be a good start. Further, clearly specifying what cases are covered and up to what extent will be the next step to be taken. For companies who spend several crores on hiring top talent for senior positions, the insurance premium will only be a fraction of the cost. And this could save them the millions of dollars of potential legal expenses.

Source: <https://www.moneycontrol.com>



GIL to pay Rs 50,00,000 to KSPCB for pollution from its plant in Bengaluru

Graphite India Ltd (GIL) told the Supreme Court on Monday that it would pay Rs 50,00,000 to the Karnataka State Pollution Control Board (KSPCB) under the 'polluter pays principle' for its Bengaluru plant, facing complaints of pollution and emission of black dust.

The GIL's counsel told a bench headed by Justice Madan B Lokur that KSPCB could utilise this amount for dealing with measures to curb pollution in Bengaluru's Whitefield area where the plant is situated.

The apex court had on October 23 asked GIL's counsel to apprise it as to how much they were willing to pay on the basis of the 'polluter pays principle'

During the hearing, senior advocate Shyam Divan, appearing for GIL, told the bench that he has taken instructions from the company and it is willing to pay Rs 50 lakh to the KSPCB.

Advocate Aparajita Singh, assisting the court as an amicus curiae in the air pollution matter, agreed with the GIL's proposal and said there was "fugitive emission" in the area and GIL was "putting their house in order".

An advocate, appearing for residents of Whitefield area, claimed that GIL's plant was there since 1997 and they have also filed a plea on the issue before the National Green Tribunal (NGT).

"You pursue your petition pending before the NGT," the bench, also comprising Justices S A Nazeer and Deepak Gupta, said.

The lawyer then said that GIL had set up a "green plant" in Germany and they should do so in India as well.

The bench, after hearing the submissions, asked GIL to deposit Rs 50 lakh with the KSPCB within two weeks and made it clear that it would be without prejudice to the rights of the parties.

During the hearing in the air pollution matter, the bench also dealt with the separate issue of regulation for imported pet coke and the quantity of import.

Singh told the court that she would discuss these matters with Additional Solicitor General A N S Nadkarni, representing the Centre, and they would come out with suggestions on the issue.

The bench asked them to do the needful within three weeks. The apex court had earlier pulled up the KSPCB for "doing nothing" to curb pollution in Bengaluru even as the city was grappling with the problem.

Divan had on the last date of hearing told the bench that GIL would "completely shut down" its Whitefield's plant by November end.

The court had issued notice to GIL on a report filed by the Environment Pollution Control Authority (EPCA) and had asked them to explain why the use of needle petroleum coke (pet coke) should not be stopped at its plant. GIL had told the apex court that it was not using imported needle pet coke at its Bengaluru plant.

In September, the court had allowed GIL's application seeking its permission to import needle pet coke to be used as feed stock for manufacture of graphite electrodes, used in the steel industry. The court is hearing the issue related to pet coke which had cropped up while adjudicating a matter of air pollution in Delhi-national capital region.

Source: <https://thehindubusinessline.com>



Russia's Megafon sues Hewlett Packard in U.S. over network outages

Megafon, Russia's No. 2 mobile phone operator, is suing Hewlett Packard Enterprise in a California court over major outages on its cellular network, court documents showed. The suit, filed in the U.S. District Court, Northern District of California San Jose Division on Oct. 23, alleges that HPE's Russia division signed a deal worth more than \$28 million in 2013 to upgrade Megafon's wireless network. But the system HPE built to store user data and services repeatedly failed, Megafon alleges in the lawsuit, which could total more than \$200 million, with the sum due to be determined by the court. Megafon confirmed it had filed the claim and added that it is ready to reach a settlement with HPE, which declined to comment on what it described as "ongoing legal matters". HPE told Reuters it rejected the allegations in Megafon's lawsuit and said it would "vigorously" defend itself. HPE's User Data Repository (UDR) system suffered "numerous cascading catastrophic failures", leading to major network outages in November 2016, April 2017, and May 2017, Megafon alleges.

"Certain of these failures resulted in near shutdowns of Megafon's cellular network of more than 80 million subscribers," the lawsuit, which was seen by Reuters, said. "Megafon's damages include funds paid to HPE, repair costs, lost customers, and ... the need to completely rebuild its UDR system at an estimated cost of more than \$28 million." Megafon said it decided in 2011 to upgrade its wireless network for LTE communications and to unite its eight regional networks into a single federal network accessible to users with a single SIM-card. It signed a deal with HPE's Russia division after also receiving interest in the contract from Alcatel, Ericsson, Huawei, NSN, Oracle, Tekelec and ZTE, the lawsuit said. In the court document, Megafon said it had awarded the contract to HPE as it promised the best solution. HPE built a system, which was meant to allow Megafon to unite its regional networks, but this proved faulty and failed, Megafon said in the lawsuit.

Source: <https://in.reuters.com>



Firm in dispute with insurer over liability for bridge collapse

Italian infrastructure group Atlantia has set aside 350 million euros (\$400 million) to cover the estimated cost of rebuilding the Genoa bridge which collapsed in August and compensating the families of those killed. The viaduct disaster claimed 43 lives, sparking intense criticism from the Italian government for motorway operator Autostrade and its parent company Atlantia.

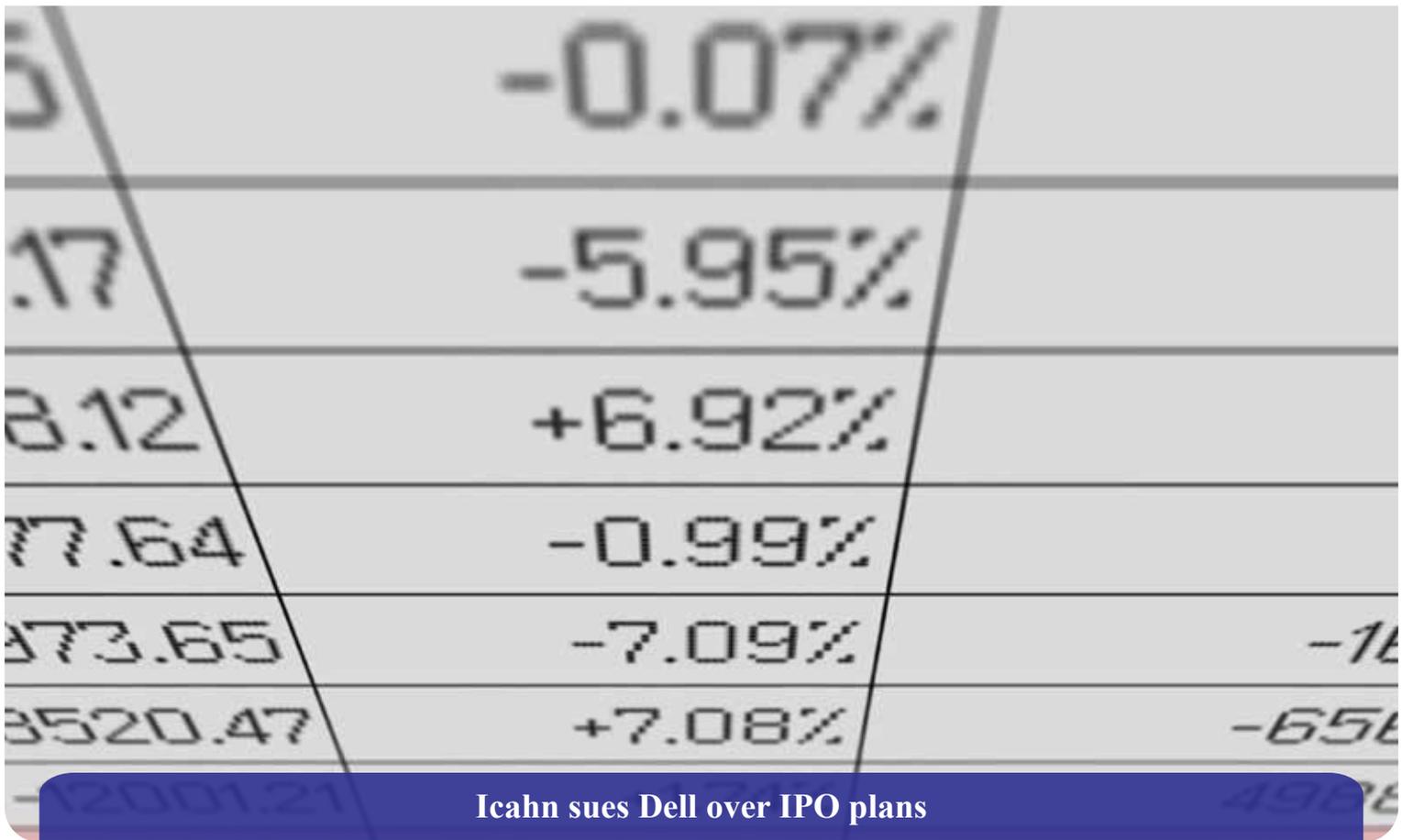
Atlantia's provision for the preliminary estimated costs of the disaster meant the group's net profit for the first nine months was 15 percent lower than a year earlier.

It said the provision was to cover the "cost of demolition and reconstruction of the road bridge and compensation payable to victims' families and to the injured".

Autostrade said in a separate statement it was in a dispute with the insurance company regarding its liability for the incident under the relevant third party liability policy, which the motorway company believes to provide cover. Autostrade did not name the insurance company.

Atlantia's net profit of 733 million euros was also below an average estimate from analysts of 767 million euros. The Rome-based company, which is controlled by the Benetton family, also decided not to pay an interim dividend for the first time since 2013. It said Autostrade, which until recently accounted for two thirds of Atlantia's core profit, may not contribute to the dividend it plans to pay out to investors in May 2019. Autostrade's core profit contribution is set to halve following Atlantia's acquisition of Spanish rival Abertis. The Italian group took over Abertis together with Spanish builder ACS, which is headed by Florentino Perez, the chairman of Spanish soccer club Real Madrid. Shares in the group ended up 1.3 percent, reversing earlier losses, with a Milan-based analyst citing the reassurance that a dividend on Atlantia's 2018 results would not be scrapped. The government has blamed Autostrade for serious oversights in the collapse of the bridge and has said it intends to revoke its Italian motorway concessions. The company and nine of its employees are under judicial investigation, along with the transport ministry, for culpable homicide. Autostrade per l'Italia, has denied wrongdoing, saying regular, state-supervised inspections had indicated the ageing bridge was safe.

Source: <https://in.reuters.com>



Activist investor Carl Icahn sued Dell Technologies Inc. on Thursday, alleging that the computer maker did not disclose financial information related to its plans to go public by buying back its tracking stock.

Mr. Icahn, who owns 9.3% of Dell, called the proposed deal a "conflicted transaction that benefits the controlling stockholders, at the expense of the DVMT stockholders." Dell said in July it would pay \$21.7 billion in cash and stock to buy back shares tied to its interest in software company VMware Inc., returning it to the stock market without an initial public offering.

Mr. Icahn and other hedge fund investors have resisted the plan, saying the proposed deal massively undervalues the tracking stock.. "We believe this is a threat blatantly deployed in an attempt to coerce DVMT stockholders to vote in favor of the merger, or else risk the unknown consequences of the forced IPO conversion," Mr. Icahn said on Thursday, urging investors to vote against the deal. Mr. Icahn is no stranger to lawsuits. He sued AmTrust Financial Services Inc. earlier this year over its go-private plans.

The investor also turned legal arguments against Dell in the past, having alleged that Michael Dell and Silver Lake undervalued the company's go-private deal several years ago. Mr. Icahn, along with investor Darwin Deason, also urged Xerox Corp. shareholders earlier this year to oppose a sale to Japan's Fujifilm Holdings Corp.

Dell declined to comment, while Mr. Icahn did not immediately respond to requests for comment.

Source: <https://www.businessinsurance.com>



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