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REGULATING THIRD-PARTY LIABILITY INSURANCE: BECAUSE EVEN SATELLITES HAVE
BAD DAYS

Abstract

The proliferation of mega-constellations of CubeSats by private and governmental entities has introduced new risks of satellite-related catastrophes, such as satellites colliding with one another or plummeting to Earth. These heightened risks have instilled doubt within the insurance market regarding third-party liability insurance coverage for satellites in Low Earth Orbit (LEO).

According to the Outer Space Treaty (OST) and Liability Convention, a State is liable for damage caused by a space object if the launch occurred in, or was procured by, the launching State. While the treaties do not mandate the procurement of third-party liability insurance, many signatory States have implemented national laws obligating private operators engaged in space activities to acquire such coverage, recognising the potentially limitless cost of damage to third parties.

Third-party liability insurance shields against claims for bodily injury or property damage caused by a launch vehicle or satellite. The requisite level of coverage varies among States, with some regimes attributing liability solely to the launch operator and others holding all operators accountable throughout the satellite's lifespan. The State typically guarantees protection beyond the mandated minimum liability up to an unlimited amount or a specified limit. Covered perils include contamination resulting from the launch vehicle, damage from spent rocket parts, and collisions caused by a satellite.

The amplified risk of third-party incidents due to increased debris could prove costly for governments and insurers, potentially erasing decades of insurance premiums. Consequently, many insurers either withdraw third-party liability coverage for satellites in LEO or substantially increase premium prices. Such inaccessibility to third-party liability insurance also serves as a peril to the advancement of modern active debris remediation techniques and in-orbit servicing.

Recognising insurance's vital role in sustaining a thriving space economy, this article proposes innovative approaches to restructure the insurance market and manage insurers' risks in providing third-party insurance coverage for satellites in orbit. It outlines various national approaches to third-party liability insurance requirements and suggests solutions such as establishing a pooled third-party liability insurance system, involving space agencies and regulators more closely in shaping the insurance market and having the regulator underwrite a fixed annual capacity of third-party insurance. Adopting these strategies may ensure insurers' continued willingness to cover LEO satellites while providing stable insurance conditions for operators and governments.