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Research Paper

Legal Analysis of Settlement of Insurance Claims in Nigeria

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ABSTRACT
The concept of insurance is well known throughout commercial laws and has, in modern times, become a basic premise upon which commercial activities and contracts are conducted. It was conceived to meet the needs of contracting parties and it has been justified as a commercial and practicable device by means of which the effect of an insured's disaster or occurrence is reasonably taken care of by undertaking an insurance policy. Settlement of insurance claims is one of the legal functions of an insurance company. If there were no losses resulting in claims, the need for insurance would never arise. An efficient and prompt claims settling service is the most effective form of advertisement for an insurance company. Interestingly, very few insured, for obvious reasons, take the trouble to read through their insurance policies and understand the various conditions, warranties, terms and exceptions of the insurance well in advance of a claim. The result is that whenever a claim arises and it is found that the particular loss is not covered by the terms of the insurance contracts, the tendency is to blame it all on the insurance company and this is a major area of conflict between insurers and the insured.
The study generally examined the settlement of claims under Nigerian insurance laws and finally identified the problems and challenges confronting settlement of insurance claims in Nigeria. In this regard, the methodology adopted was the doctrinal approach and being a desk-based research, it made use of both primary and secondary sources of information. The primary sources relied on include decided cases as reported in the law reports and statutes book, while the secondary sources of information include textbooks, articles in learned journals and other relevant materials sourced from the Internet. Unstructured interviews were also conducted with a number of seasoned insurance practitioners. However, all the materials were subjected to content and contextual analysis.
The study revealed that all insurance policies contain some legal conditions that laid down the procedures to be followed in the event of a loss and that the claimant is expected to legally prove that the cause of loss is within the terms of the policy and that the amount claimed is commensurate with the value of the insured property at the time of loss. It concluded that claims settlement is a major area of conflict between insurance contracting parties and that the existing laws and regulations have not adequately addressed the challenges of prompt and efficient settlement of insurance claims.

KEYWORDS: Insurance Contracts, Premium, Indemnity, Claims Settlement and Clauses Affecting.

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I. Introduction

The possibility of being confronted with various hazards of life that could cause pecuniary loss, the uncertainty of the time and period of occurrence of any misfortune that is beyond human control necessitate the situation and need for insurance. The imperativeness of being unable to prevent death coming the way of a family's bread winner or forestalling any accidental event occurring, such as fire outbreak as the occurrence might be beyond human control, further justifies the need and reasons to take out insurance policy that puts us back to our expected position. Insurance Law, as a branch of commercial law, governs the principles and practice of

insurance[1] which is a contract whereby one party called 'the Insurer' undertakes in return for an agreed consideration called 'premium' to pay another party called 'the insured' a sum of money or its equivalent on the happening of a specific event.[2] Most contracts of insurance are contracts of indemnity whereby the insurer agrees to compensate the insured for the loss sustained through the happening of the event upon which the insurer's liability may arise as established by law.[3]

Insurance is an important aspect of the world economy today as most goods exchanged among countries are conveyed by Seas and Air. Since there are hazards associated with these means of transportation like fraud, piracy, seizure, etc. claims could arise from charter party, (freight, hire and demurrage) bill of lading issues, ship and craft building contracts, hull damage and cargo claims, passengers, crew, stowaway and other related claims. Stakeholders from time-to-time seek ways of protecting their goods and minimizing their losses. The importance of insurance therefore, cannot be over emphasized as it allows the insured to shift risks to the insurance companies for protection and claims settlement.[4] Further, Nigeria's maritime activities alone which cover a coastline of approximately eight hundred and fifty three kilometers, constitute a vital sector of the economy. Infrastructure and facilities also include ports and inland waterways of about three thousand kilometers.[5] Nigeria is not only a littoral state but also blessed with rich internal waterways. The port, particularly is an important source of nation's revenue and given the spate of activities within the sector, including that relating to incoming and outgoing cargo, claims are bound to arise. Consequently, the insurance sector with yearly increasing premium income and high proportionate claims settlement ratio are an ever present feature of the Nigerian commercial landscape.[6] The maritime sector is seen as a major component of the nation's developing economy and already playing a very significant role second only to petroleum. Apart from being a major foreign exchange earner, it also provides substantial employment opportunities, while boosting national income and gross domestic product (GDP) .[7]

Settlement of claims is one of the legal functions of an insurance company. If there are no losses resulting in claims, the need for insurance would never arise and there would, therefore, be no insurance companies or activities. An efficient and prompt claims settling service is the most effective form of advertisement for an insurance company. This cannot be taken to mean that the insurer must settle all claims, whether they are genuine or not as only genuine claims legally recognized and covered by the terms of the policy should be settled promptly and equitably.[8] Interestingly, very few insured, for obvious reasons, take the trouble to read through their insurance policies and understand the various conditions, warranties, terms and exceptions of the insurance well in advance of a claim. The result is that whenever a claim arises and it is found that the particular loss is not covered by the terms of the insurance contracts, the tendency is to blame it all on the insurance company and this is a major area of conflict between the insurer and the insured.[9] Infact, most insurers in Nigeria today have had their names discredited due to their inability to meet claims' obligations. Those few that have been able to settle their claims as and when due, do so reluctantly or for fear of litigation and to avoid negative publicity. As a result, most Nigerians view insurance as business with suspicion. Instead of appreciating the strategic value of insurance, members of the public seem to remember only the negative aspects of the industry. They tend to see insurers as societal parasites exploiting the unwary public by collecting premiums without paying legitimate claims.[10] There is the need, therefore, to examine this trend in a study of this nature with the view to changing the perception.

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[1] H Ivamy, *General Principle of Insurance Law*. 4th Edition, Butterworth, 1986. Insurance is a branch of commercial and contract law that govern the principles and practice of insurance sector of the economy.

[2]Section 3 Nigerian Insurance Act LFN 2004 states that a contract of insurance is a contract whereby the insurer undertakes to indemnify the assured in a manner and to the extent thereby agreed against insured losses. See also British Insurance Act, and section 68 Nigerian Insurance Act 1961. *R v London County Reinsurance*(1922) CHI

[3]JO Irukwu, *Insurance Law and Practice in Nigeria*. Sweet and Maxwell, 1976. ; (ii) See Section 58 Nigerian Insurance Act, 1991, Nigerian Insurance Act, 1997 and 2003.

[4] *A contract of insurance is brought in existence when one party (Insurer) undertakes in consideration of a premium to indemnify the other party (insured) against loss occasioned by happening of the insured event*

[5] *Rhodes-Vivour, Maritime Administration in Nigeria Seminar Paper delivered on 12 august 2007. maritime seminar, Lagos.*

[6] *Rhodes-Vivour, Development of Local capacity in the Maritime industry in Nigeria presented in Lagos 14th August, 2012.*

[7] *F. Agbor, Resolution of Insurance Disputes 'A paper presented at the 11th Maritime Seminar for judges and a compilation of Ministry of justice library Abuja, 1st of June, 2010.*

8 *AW Bello, Insurance and claims Nigeria. Nigerian Insurers Publication, 1994.*

9 F *Agbaje, Monitoring Insurance Industries in Nigeria through section 58 Insurance decree (1991) Vol 1 no 1, Journal of Investment and Law , 1994.p. 94.*

[10] J *Irukwu, Potential insured person see Insurance as business associated with fraudulent practices and dishonesty on the part of the Insurers. Insurance Brokers Publication, 2012.*

A person who suffers loss or damage in the hands of another, whether in tort or in contract may generally rely on his/her right, in law to claim damages designed to redress the wrong or loss suffered. The law requires the loss or damage to be caused by the action of a party.[11] In contracts of insurance, the law draws a line short of this limited recompense by allowing parties under an insurance agreement, in appropriate circumstances, to make claims.[12] The concept of insurance is well known throughout commercial law and has in modern times becomes a basic premise upon which commercial activities and contracts are conducted. It was conceived to meet the needs of parties involved and it has been justified as a veritable, commercial and practicable device by means of which the effects of an insured's disaster and occurrence are reasonably taken care of.[13] Understandably, when one goes before a court of law for a redress, one expects nothing short of justice. This expectation is the same in insurance law – 'a refuge and redress in times of need'. It is to be noted that all insurance policies contain a legal condition which lays down, the procedure to be followed in the event of a loss. In claims settlement, however, the onus of proving the loss is on the insured and not the insurer. Thus, the claimant is expected to legally:

a) prove, that the cause of loss is within the terms of the policy.[14]

b) establish that the amount claimed is commensurate with the value of the insured property at the time of loss or accident.

Thus, to solve the problem often encountered by the insured against the insurers, the various Insurance legislations made some far reaching regulations to guide the insurers in honouring their obligation towards the assured or third parties. For instance, the 2003 Insurance Act has, by some of its provisions, protected the insured whose positions were precarious under common law with issues of "No Premium, No cover" under Section 50 where payment of premium was made a condition precedent for a valid insurance contract and claim settlement. Section 55 provides that a proposal form must contain request for all material facts to settlement of a claim. How far these statutory frameworks and legislative responses can go in addressing the ugly trend created gaps that need urgent examination and down-to-earth recommendations.

Contracts of Insurance, being contracts that require utmost good faith, entail separation between genuine and fraudulent claims, the limit to which any claim can be made so as to reduce, minimize or discourage fraud on the part of the assured. Also, to prevent the insurers from denying liability especially, where they ought to pay for total loss as against partial loss. Further, there are many possibilities for moral hazards on the part of the assured that range from excessive risk-taking, outright fraud, insuring the same good many times, over invoicing or seeking to insure properties already known to have been lost. All these provide veritable grounds for repudiation of claims and liabilities.[15] Insurance is an intangible product that, most insured are not in a position to evaluate and have knowledge of the contents of the insurance policies and their pricing in the same manner as consumers of tangible products. As a result of the foregoing, limits have to be set to the extent to which an insured can make claims.[16]

The insurance industry is bedeviled with obstacles and challenges of obsoletes, defective and inadequate legal provisions whereas protective of the contracting parties to an insurance contract. Non-availability of protection even to third parties whose situations are precarious coupled with the challenges of inadequate implementation machinery creates gaps that need to be addressed in a study of this nature. However, it should be noted that the Nigerian Insurance Act, 1961 preceded the 1976, 1990, 1999 and 2003 Acts but they steadily decline in value and relevance to the societal needs in their inability to keep pace with expected growths as regards claims settlement. The economically devastating effects of fraudulent insurance claims, if nothing else, make reforms of the insurance laws a matter of serious urgency. Apart from some provisions of the Acts that are anachronistic to the present reality of the insurance principles and practice, the Acts, being products of an era when the Nigerian insurance practice was at its formative stage, could not contemplate and provide for situations that constitute the fulcrum of the industry today.

Insurance plays a central role in the commercial activities among nations both on bilateral and multilateral business relations especially in the areas of export and import of goods. This has made improvement in the insuring habit and settlement of claims indispensable.[17] This study, therefore, beams its searchlight on

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[11] G.O Olawoyin, Litigation involving insurance companies and ability to meet clams obligations. GRASP Publications,1989

[12] T Osipitan, New dimension in the Nigeria Law of Insurance, Dalton Publications, 2000.

[13] H Ivamy, The Origin and Development of Liability Insurance, Vol. 53, Law review, 1979.

14. Ivamy H (1986) General Principle of Insurance Law 4th edition Butterworth London

15. AK AmirekKolade, Maritine fraud and the insurance industry unpublished thesis submitted to the faculty of law Obafemi Awolowo University, Ile-Ife for the award of LLM degree, 2009.

16. AK AmireKolade, Public Relation in the Insurance Industry unpublished degree project submitted to the Insurance Department, University of Lagos, 1986.

17. AK AmireKolade (2009), Maritime Fraud and the Insurance Industry. (Unpublished) Thesis submitted to the University of Law, Obafemi Awolowo University, Ile-Ife for the Award of LLM Degree.

analysing, identifying, examining, evaluating, enlightening and understanding of the basic knowledge and principles of insurance. It also deals with the analysis of settlement of claims procedures and measures to encourage the operators in the industry and sensitise contracting parties on their rights and limitations when it comes to making claims. The study is also significant in that it identifies the sources and challenges of settlement of claims in the insurance industry especially the exposition of fraudulent claims. It also proffers possible measures to combat the challenges posed by the menace through insights into court jurisdiction and decided court cases on settlement of claim under Nigerian insurance laws so as to improve the growth and development of insurance laws. The study equally answers the research questions posed as they have not been specifically or fully answered by previous studies. Accordingly, the study is beneficial to the Nigerian insurance industry, insurance law experts, maritime operators, Nigerian government and its agencies charged with the responsibilities of regulating insurance practice, including the judiciary in its judicial interpretation role and the legislature in its law-making processes. It is also beneficial to other professional institutions in the country as the consequential recommendations are provoked to the basis for legal reforms in the insurance industry and add to existing literature in the area of settlement of insurance claims.

The focus of this study, therefore, is the legal analysis of the settlement of claims under Nigerian insurance laws and it further examines, in a comparative manner, the applicable insurance laws principles and practice of settlement of insurance claims in other selected jurisdictions notably, United States of America and United Kingdom particularly in Marine and Non-Marine Insurances.

Nature and Definition of Insurance.

The very nature of insurance makes the creation of a good public image a difficult task. It is an unsought and intangible product that most potential Insured's are not in a position to either evaluate or having knowledge of the contents and pricing in the same manner as consumers of tangible products. For this reason, people show little interest, even when approached by sales agent or insurance brokers. Perhaps, insurance is rather like dental treatment which most people need but few are prepared to admit that they do. The fact that insurance provides protection, security and indemnity to individual, survival of commercial and industrial organizations instead of their liquidation when adversities strike and in the face of unforeseen contingencies is neither recognized nor appreciated. To the public, insurance is buying something to comply with the law as in the case with motor insurance and other compulsory insurances, in case, their houses get burnt or something they should have in order to provide for their families and relation in the event of death. It is a product one cannot enjoy immediately until the Insured events against occurred or may never enjoy if the event insured against fails to occur[18].

Insurance contract involves, in the main, two parties i.e. the insurer and the insured. The insurer is the person who provides the benefits under an insurance contract and it must be a registered insurer, in this case, a corporate body. The insured, is any person who is capable of entering into a contract of insurance. It includes a minor, if the contract is for its benefit. But insane persons and drunkards may lack such capacity, contracts of insurance made by such persons are voidable.

In *Irukwu v T.M.I.B,*[19] the court of appeal explained the nature of a contract of insurance and whether a court can foist a contract on a party. A contract for insurance should be one of utmost good faith '*uberimae fidei*'. The insurer and the insured must be ready, and willing to engage in such a transaction. The court cannot foist on a party by a coercive order to enter into a contractual transaction more especially that of insurance, which also follows the normal characteristics of ordinary contract.

The subject of insurance must also be distinguished from the subject matter of the contract of insurance. In *Rayner v Preston,*[20] Brett L. J made the distinction when he said:

The subject matter of the contract of insurance is money and money only. The subject matter of insurance is a different thing from the subject matter of the contract of insurance. The only result in the policy on accident, which is within the insurance happening, is a payment of money. It is true that under certain circumstances in a fire policy, there may be an option to spend the money in rebuilding the premises, but does not alter the fact that the only liability of Insurance Company is to pay money.

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[18] *KA Amirekolade, Public Relation in the insurance industry (Unpublished) Degree project submitted to the insurance department for the partial award of BSC degree*

[19] *Irukwu v TMIB (1997) INWLR 113 where The court of appeal explained the nature of a contract of Insurance. A contract for insurance should be one of utmost good faith 'uberimae fidel'. The insurer and the insured must be ready, and willing to engage in such a transaction. The court cannot foist on a party by a coercive order to enter into a contractual transaction more especially that of insurance, which also follows the normal characteristics of ordinary contract.*

[20] *Rayner v Preston (1881) Ich. D1 – the subject matter of contract of insurance is money and money only.*

Also Lord Alexander J. made it clear in the case of *Prudential Insurance Company v Inland Revenue Commission,*[21] that, it is not sufficient to call a document an insurance policy if the happening of the event insured against does not contain element of uncertainty. He further asserted that the purpose of insuring a ship or a house is not to ensure that the ship shall not be lost or the house shall not be burnt but rather the insured should have a right to call on the insurer to indemnify or compensate him on the happening of the event in order to lessen or cushion the effect of the loss.

As to the nature of insurance contract, judicial exposition makes it more explanatory. As far back as 1766, Lord Mansfield,[22] had stated that contracts of insurance are contracts of speculation. It is speculative in the sense that the insurer agrees to make financial benefit or other consideration for an uncertain specified event. The insurer is not sure when it will happen. Lord Mansfield's statement, in part, shows the nature of insurance contracts depending or an uncertain contingent event. Thus, contracts of insurance are aleatory. At this juncture, a distinction must be made between aleatory contract and wagering contracts. By law. wagering contracts are void, and not enforceable by legal process. While aleatory contract is generally not void, but it does not possess the characteristic of a contract of insurance which is based on event that may or may not take place or based on element of uncertainty as decided in *University of Nigeria Nsukka v Edwards W. Turner & Sons (W.A) Ltd,*[23] as a good case in point. There, the plaintiff agreed to pay a premium of £51,660 a year, net over a period of 50years in return for a lump sum payment up to £46million at the end of the period. It is apparent from the agreement that the principle of indemnity is violated in this case. The court found no difficulty in deciding that there is no insurance contract but in substance, a mere scheme of investment.

It is, therefore, pertinent to point out here that a good definition must combine legal, economic and social viewpoints of insurance as to bring out the functions, features and purposes of same. Insurance law is concerned with the rules, principles and regulations which determine when an insured has suffered a loss or when an insurer is liable under the contract as well as the extent of the liability of the insurer. Greene's,[24] definition, therefore, combines both legal and functional approaches as it states that:

Insurance is an institution which reduces risk by combining under one management a group of object so situated that the aggregate accidental losses to which the group is subject becomes predictable but narrow limits.

He further explains that insurance includes certain legal contract under which the insurer within certain consideration promises to reimburse the insured or render services in the case of accidental services or losses suffered during the time of the agreement. Another writer by the name 'Ivamy',[25] who defined insurance from the legal and functional point of view, brings out the essential elements of insurance, when he writes;

"Insurance is a contract whereby one person called the insurer or assurer undertakes in return for an agreed consideration called the premium to pay another person called the insured or assured a sum of money or its equivalent on the happening of a specified event.[26]"

The above quoted part of Ivamy's book, made it clearer that the essential elements of insurance are the insurer, the insured and the consideration, which is known as 'Premium' in insurance contract. Lord Choley and Giles preferred to suggest the prescription of what insurance is all about as the purchase of security, the assured anxious to protect himself from risk purchase from the insurer, a right to indemnify if the risk should materialise. The purchase price which the assured pay the insurer is known as the premium often an annual payment and the insurer's promise to pay if the event assured against occurs. It is embodied in what is called a policy. Thus, it is an agreement by which one party (the insurer) commits to do something of value for another party (the insured)

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[21] *Prudential insurance company v Inland Revenue Commission (1904) 2KB 658 that, it is not sufficient to call a document an insurance policy if the happening of the event insured against does not contain element of uncertainty. He further asserted that the purpose of insuring a ship or a house is not to ensure that the ship shall not be lost or the house shall not be burnt but rather the insured should have a right to call on the insurer to indemnify or compensate him on the happening of the event in other to lessen or cushion the effect of the loss.*

[22] *Lord Mansfield in carter v Boehm (1766) contract of insurance are of speculation.*

[23] *University Of Nigeria Nsukka V Edwards W. Turner & Sons (W.A) Ltd (1965) LLR 35 distinction between aleatory contract and wagering contract was established.*

[24] J *Greene, Risk and Insurance, (4th ed) Butterworth London, 1977. Insurance is an institution which reduces risk by combining under one management a group of object so situated that the aggregate accidental losses to which the group is subject becomes predictable but narrow limits.*

[25] *H Ivamy, General Principles for Insurance Laws (6th ed) Butterworth, London, 1986.*

[26] *Insurance is a contract whereby one person called the insurer or assurer undertakes in return for an agreed consideration called the premium to pay another person called the insured or assured a sum of money or its equivalent on the happening of a specified event.*

upon the occurrence of some specified contingency, especially an agreement by which one party assumes a risk faced by another party in return for a premium payment[27].

There has also been notable judicial pronouncement on the meaning of insurance. Lawrence J**.** in *Lucena v Crauford*,[28] defined insurance as a contract by which one party in consideration of a sum of a price paid to him adequate to the risk become security to the other that he shall not suffer loss, damage or prejudice by the happening of the peril specified to certain things which may be exposed to them.

The Nigerian Court of Appeal, per Dennis Edozie, JCA in *Liberty Insurance co. Ltd. v John,*[29] explained insurance, to mean a contract whereby the insurer agrees to compensate the insured for the loss the latter may sustain through the happening of the event upon which the insurer's liability may arise. However, Insurance has been defined as the conversion of intermediate risks into a fixed cost by way of consolidation. In law and business, it is a contractual arrangement which provides for compensation by an insurer to an insured party from loss resulting from a contingency**.** Again, according to *George J. Couch,*[30] *Insurance*, or as it is sometimes called, assurance, is a contract by which one party, for a consideration sum or at different times during the continuance of the risk promises to take a certain payment of money upon the destruction or injury of something in which the other person has an interest.

A contract of insurance is brought into existence when one party, the insurer, undertakes in consideration of a premium to indemnify the other party, the assured against loss occasioned by a maritime adventure. The term marine insurance has received statutory definition in Nigeria by virtue of Section 3 of the *Insurance Act 2003, cap M2 Laws*,[31] of the Federation of Nigeria 2004 as follows:

A contract of insurance is a contract whereby insurer undertakes to indemnify the assured, in manner and to the extent thereby against losses, that is to say, the losses incident to an adventure.

However, in order to appreciate in full the breadth and area of coverage of the subject of insurance, it is necessary that consideration be taken of the next two Sections 4 & 5 of insurance act 1961 which provide as follows:[32]

Section 4 (1) A contract of insurance may, terms, or usage trade, be extended so as to protect the assured against losses or on any land risk may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall after or affect any rule of law applicable to any contract of insurance as defined in section 3 of this Act.

Section 5 (1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular, where there is a marine adventure wherein

(a) any ship goods or other moveable are exposed to maritime perils, such property being referred to in this Act as insurable property;

(b) the earning or acquisition of any freight, passage money', commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;[33]

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[27] An agreement by which one party the insurer commits to do something of value for another party (the insured) upon the occurrence of some specified contingency, especially an agreement by which one party assumes a risk faced by another party in return for a premium payment.

[28] Lawrence J in Lucena v Crauford (1806) 2 Bos 269 As a contract by which one party in consideration of a sum of a price paid to him adequate to the risk become security to the other that he shall not suffer loss, damage or prejudice by the happening of the peril specified to certain things which may be exposed to them.

[29] Liberty Insurance Co Ltd v John (1996) NWLR 192 CA Chambers encyclopedia (170) vol. VII P 508 Funk and Wagnalls standard reference encyclopedia (1996) Vol. 14 of 4934.

[30] Lord Couch (1984) on insurance 2nd ed. Pg 4-5, cited in the black law dictionary 7th ed. P. 802. Insurance, or as it is sometimes called, assurance, is a contract by which one party, for a consideration sum or at different times during the continuance of the risk promises to take a certain payment of money upon the destruction or injury of something in which the other person has an interest.

[31] Statutory definition of marine insurance under section 3 of the marine insurance Act Cap M2 LFN 2004.A contract of marine insurance is a contract a whereby insurer undertakes to indemnify the assured, in manner and to the extent thereby against marine losses, that is to say, the losses incident to marine adventure.

[32] Marine Insurance Act 1906, Section 4 and 5 Nigerian Marine Insurance Act 1961 and 2004 section 33

[33] "Marine perils" means the perils consequent or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, racers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the life may be designated by the policy.

(c) any liability to a third party incurred by the owner of, or other person interested in, or responsible for insurable property by reason of maritime peril.

For the purposes of this section, *marine perils* means the perils consequent or incidental to the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, racers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the life may be designated by the policy.

These sections of the Act make it clear that the scope of insurance is as follows:

A contract of indemnity between an insurer and an insured made in consideration of a premium in respect of a maritime adventure, which occurs when any ship goods or other moveable are exposed to maritime perils, such property being referred to in this Act as insurable property; the earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils; or any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

A policy of insurance may also expressly, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage. It may also cover the building, or the launch of a ship, or any other adventure analogous to an adventure, so long as the adventure falls within the definition of marine adventure[34].

A contract of insurance, therefore, is a contract of indemnity i.e. the amount recoverable is measured against the extent of the assured's pecuniary loss[35] where the assured has no insurable interest in the property he cannot recover under the policy as he has suffered no loss and the insurer is under no duty to indemnify him.[36] Where double insurance has been taken out he may claim from both insurers up to the extent of the indemnity allowed under the Insurance Act and where he received a sum in excess of the allowed indemnity he holds it in trust for the various insurers according to their right of contribution amongst themselves.[37] Where the insurer has paid to the insured the full amount insured on a total loss he becomes subrogated to the right of the insured against third parties. Thus, where a vessel suffers a collision and sinks and its insurers pay the insured, any sums recovered from the owner of the vessel at fault will belong to the insurer subject to the qualification that he can only receive what he has paid out and no more[38] He must also give credit for any sums received by him from any person that damages his vessel when claiming from his insurers.[39] For instance, for a contract, in order to qualify as a contract of marine insurance must set out to insure loss incident to a marine adventure thus in *Re London County Commercial re-insurance office Ltd*,[40] where a contract set up in the form of a contract of a marine insurance set out to indemnify the insured against a total loss in the event of peace not being declared between Great Britain and Germany before 31st March 1918, it was held not to be a contract of marine insurance. Thus, we can see that the principal items to be insured under a marine insurance policy are – Ships, Cargo, Freight, Profit commissions and wages. In contract of insurance generally, in order to qualify for indemnity, the loss suffered must have been proximately caused by a peril insured against and where the loss is not attributable to the event insured against or belong to excluded losses, there can be no indemnity.

Origin and History of Insurance

Insurance in the world was first introduced into United Kingdom by the Lombard in the 14th century (about 600 years ago) with the purpose of covering their international trade. By this period the northern Italian cities of Florence and Venice had developed into great trading centers and had internationalized their business activities by including banking and insurance practice. With the discovery of America, the trading initiative shifted from the Mediterranean and this caused London to become the leading insurance center of the world. During this period insurance was practiced by merchants as parts of their daily trading. They met at the docks to discuss the sharing of risks with each other. One of the early meeting places was the coffee house of Edward Lloyd in Tower

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[34] *Jackson v Mumford (1904) 9 comm cases 114 CA vessels in the course of construction were insured against fire in shops, on board of ship or stocks, trails and all marine risk to completion and acceptance by admiralty.*

[35] *Rikard v Forestal Land timber and Railway Co (1941) 3 All ER 62 Hl.*

[36] *See Marine Insurance Act cap M2 LFN 2004, See also Law Union and Rock Insurance v Onuolha (1998) 6 NWLR 576 and CCB v Nwokocha (1998) 9 NWLR 96 where principles of indemnity were recognized by Nigerian Courts.*

[37] *See generally section 33 Nigerian Marine Insurance Act 2004.*

[38] *Yorkshire Insurance Co. v Nisbet Shipping Co. Ltd. (1961) 2 All ER 487*

[39] *Goole Ind Hull Steam Towing Co. Ltd v Ocean Marine Insurance Co. Ltd (1927) LL Rep 242 KBD*

[40] *Re-London County Commercial Reinsurance Ltd (19127 LT 20 ch.D. Insurance on Peace treaty between GB and Germany held not to be contract of Marine insurance.*

Street in London. The details of the proposed adventure would be drawn up in a document and the merchants would write their names underneath indicating the percentage of the risk, which each merchant was prepared to cover. Eventually such signatories metamorphosed to be known as underwriters. By reason of the fact that the insurance was based on ad-hoc agreement created disputes on claims in the system as insurers expanded during the 16th century. As a result of the occurrence of the frequent dispute and claims a chamber of assurances was established in 16th century (1575) to settle disputes on claims between policyholders and underwriters. This led to the standardization of insurance practice and policies. The established chamber did not have legal backing; hence, its decisions were not enforceable. By reason of this defect on the chamber, a court of arbitration was formed in 1601 to settle disputes that may arise. Up till the 17th century most businesses were still handled by individual merchants on full time profession. To support this, the South Sea Company Act, 1720 that is Bubble Act restricted the provision of insurance to individual underwriters who were merchants by then. In 19th century, London assurance and Royal exchange assurance were granted royal charters to transact insurance in Britain, but there were also individual competitors. Various case laws on insurance emerged because of various emergent disputes and claims settlements. These laws were codified to form the insurance act 1906 in Britain. Main centres for insurance business were in London, Liverpool, Lloyd's chamber, in Glasgow and some other major seaports. The Nigerian Insurance Act 1961 was the first major codification of the law relating to insurance in Nigeria and was copied from the British Insurance Act of 1906.[41]

The Insurance Industry and Practice in Nigeria

The Nigerian Insurance Industry is relatively young, the present concept of modern and organized insurance did not start until 1921 when the Royal Exchange Assurance of London opened an outpost or Agency office in Lagos. Prior to this time, the insurance business handled were restricted to marine insurance of export produce, thus making marine insurance one of the oldest forms of insurance with the sole aim to indemnify or protect the assured against losses incidental to maritime adventures and losses arising from materialization of the perils of the sea. Other forms of insurance subsequently followed. insurance is, therefore, an essential feature of modern commerce and international trade which made settlement of claims and indemnification principles under the Nigerian insurance laws a focal points that call for proper handling to ascertain genuineness of all claims to guide against fraudulent claims.

Insurance practice is divided into two namely, life and general insurance businesses while the general insurance business is further divided into marine and non-marine insurance business such as fire insurances, burglary, motor, fidelity, all risks, consequential insurances among others. At present, there are forty-nine insurance companies licensed to underwrite both life and non-life or general insurance business. The industry also have about 500 insurance brokage firms, about 50 loss adjusting outfits and 3 reinsurance companies thus making the industry an open one where competition is keen and reasonably fair to the extent that companies, now employs marketing officers and commissioned agents to canvass for business despite the brokers-dominated nature of the market.[42]

All classes of Insurance business are transacted within the Nigerian insurance market and legally controlled by the Insurance Acts of 1961, 1996, 1990, 1997 and 2003a while regulatory responsibility for the Legal Control of insurance practice is exercised by the National Insurance Commission (NAICOM) under the Commissioner for Insurance. Yet in very practical economic terms, the Nigerian economy remains highly 'under-insured' compared to some developing countries and advanced economy. Insuring habit and financial literacy still remain at a very low ebb. However, people are now more conscious of the opportunity cost of being an Insured. Insurance service sector has contributed greatly to the growth of the financial systems in the economy[43]. The industry recorded over N2 trillion gross premium income in 2018.

Nonetheless, there exists some short comings in the insurance industry among which are:

(i) poor level of awareness which is largely due to low level of educational and economic development of the nation which will hopefully improve as times goes on.

(ii) poor level of management as most companies are poorly staffed in terms of qualified professionals and this has affected the level of innovations, effective claims settlement, administration and sound investment of insurance funds. However, with universities, polytechnics and professional training institutes, producing

[41] *IF Odekunle. Historical background of Marine Insurance: Journal of Nigerian Insurers Association No 13, August Edition, 2006.*

[42] *Nigeria Insurance Association Publication, 2016.*

[43] *Amirekolade K.A. (1986) public Relation in the insurance industry (Unpublished) Degree project submitted to the insurance department partial University of Lagos for the award of BSC insurance degree.*

graduates, the situation is rapidly improving and one can boastly predict that the future of the Nigerian insurance industry is very bright[44].

Insurance and International Trade

The world economy depends on international trade which involves movement of goods and services from one country to the other. Developed and developing countries require raw materials to keep their industries running for the production of goods that sustain their economy. Various mode of transportation such as sea, land and have been exploited in transporting these goods and services from one country to the other. Because of the hazardous nature of the voyage, it becomes necessary to seek protection for the goods carried and the vessel or aircraft used in transporting the goods. Insurance was developed to provide the needed protection. Overseas trade is vital to any country's economic development and wealth creation. It follows, therefore, that it should take place without any hindrance. Insurance plays a vital role in the development of foreign trade of any country. Its contribution towards promoting international trade starts from the insurance cover for importation or procurement of raw materials and machinery, processing to the finished products and claims settlement when insured event against occurred.

Nigeria, being a developing country naturally endowed with port facilities actively takes part in maritime activities to sustain her economy. Since the promulgation of Insurance Decree 1976, Insurance has experienced a tremendous boom so also is the settlement of claims and unimaginable proportion of fraudulent claims. The economic downturn worldwide has also spread to shipping and insurance. Nigeria's experience is by no means exceptional. However, the history and development of insurance in Nigeria is traceable to the history of insurance in both Great Britain and America. The contract of insurance is governed by the Insurance Act and the various Insurance Decrees in Nigeria with important legal decisions. Before 1976, insurance of goods imported into Nigeria was the responsibility of the supplier. Sections 46 of the Insurance Decree of 1976 make it obligatory for insurance of all import to Nigeria to be placed with a duly registered insurance Company in Nigeria. Before the commencement of this decree, imports to Nigeria were purchased C.I.F. (Cost, Insurance and Freight) which means that the insurance of those import was placed with oversea insurer, since the decree came into effect, all imports to Nigeria were insured locally. Equally, under section 62 of the insurance decree of 1991, it was made compulsory for every insurance in respect of goods to be imported into Nigeria to be placed with an insurer licensed to operate in Nigeria. Consequently, every letter of credit or such similar document issued by any bank or other financial institutions in Nigeria in respect of such goods shall be on a cost and freight basis only. Thus, an importer whose goods are procured on this basis has no insurable interest in the cargo until they are received on board the ship. The Commissioner for insurance may, however, give permission in writing to an insurance broker to place such risk with underwriters outside Nigeria if he is satisfied that by reason of the exceptional nature of the risk or other exceptional circumstances, it is not reasonably practicable to effect the insurance within the country.

Since the promulgation of these Insurance Decrees and Acts, insurance had witnessed tremendous and steady growth in term of premium income, efficient and prompt settlement of claims. The provisions in the Decree 1997 that insurance of all imports into Nigeria must be effected by insurers registered under the law provides a tonic to the growth and development of insurance in Nigeria.[45]

Settlement of Insurance Claims

In spite of the difficulties which surround the definition of Insurance and formation of Insurance contract, claims settlement remains a universally acknowledged feature of insurance law. There is no doubt, that it is in consideration of the premium paid or agreed to be paid by the insured, that the insurer undertakes to indemnify the insured on the happening of the insured peril.

Claims, therefore, simply means, the cause of action a party has against another which arose out of his contractual rights, duties and obligation to the other party and in some cases against a third party. Furthermore, a claim has also been defined as; an interest or remedy recognized at law, the means by which a person can obtain a privilege, possession or enjoyment of a right or things.

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[44] *Amirekolade K.A. (1998) Defects in the current insurance decree (unpublished) degree project, submitted to faculty of law university of Lagos for the partial award of LLB law degree.*

[45] *KA Amirekolade, Maritime Fraud and the Nigerian Insurance Industry, op.cit.*

Whenever, a damage or loss occurs in respect of a risk for which a policy has been taken out, the insured having paid his premium is entitled to claim for the replacement of the items lost, risk suffered, damage experienced in accordance with the terms of the policy. Once the claim for damage or compensation has been put before the insurer, the insurer invites its claim/damage assessor to value the damage with a view to replacing the damaged property. The burden of proving that the loss was caused by the peril, which had been insured, lies on the assured. This is based on the rule of evidence in civil proceedings that he who asserts must prove. *In Regina Fur Co vs Bosson*[46] the insurer insured some furs under an "all risks" policy and it was stolen. The insured claimed for loss by theft. The insurer denied liability and put the assured to the strictest proof of the claim that they were in fact stolen. The court held that the burden of proving that the loss was by theft was on the assured and in this particular case, the burden was not discharged. However, where the loss falls within an exception or exemption clause in line with the policy terms, the burden of proving such exception lies on the insurer, as it was held in *Mokwe v Royal Exchange Assurance.*[47] Apart from the above legal position, the degree of proof required under the insurance legal framework outside the region of mathematics is simply proof, on the balance of probability.

Notice and Particulars of Claims

Policies of insurance contain provisions stipulating that the insurer must be notified of claims or losses within a specific or reasonable time. A similar provision, has been upheld by the Court, to defeat the insured's claim[48]. Some insurance policies, require notices of losses or claims be given "as soon as possible." In such situations, the courts consider all existing and relevant circumstances, to arrive at a decision, on whether the insured has complied or breached these provisions.

Accordingly, the court had in *Verelets Administratrics Co. v Motor Union Insurance* [49] upheld the validity of a notice of claim given nearly one year after an accident when the evidence before the court revealed, that the assured's personal representatives only became aware of the existence of the policy, almost a year after the assured's death. Some Insurance Policies require that the notice must be given "immediately" or "forthwith". As was held in *Williams v Lancashire Yorkshire Accident Insurance*.[50] Judicial interpretation of such provisions, is that such notices must be given within reasonable time without unjustifiable delay.

Under some Insurance policies, the Insurer must be notified of losses or claims, within a prescribed period. The likes of such policies, frequently stipulate that compliance with the specific period for the giving of notice of claims are conditions precedent to the insurer's liability to settle the insured's claim. Interestingly, the courts, out of respect for the sanctity of contract, had upheld such conditions, to the benefit and detriment of the insurer and the insured respectively,[51]. As held in See *Cassel v Lancashire Yorkshire Accident Insurance,* the Insurance Decree, happily abolishes the automatic repudiatory rights of the insurer vis-a-vis the insured's non-compliance with the likes of the above conditions precedent. The Decree 40 of 1988 provide as follows:

In a contract of insurance, a breach of a term whether called a warranty or a condition shall not give rise to any right by or afford any defence to the insurer against the insured unless the terms is material and relevant to the risk insured against.

The Act consequently precludes an insurer from repudiating a claim, unless the alleged breach committed by the insured is material and relevant to the risk insured against.[52] The Act, therefore, foists the burden of providing the requirements of relevance and materiality of the breach to the risk insured against, on the insurer. Where the insurer fails to discharge the burden, then such insurer cannot repudiate the claim. In as much as conditions for claim settlements, relate to events which occur after the conclusion of the contract of insurance, it is doubtful if such conditions can be relevant to and material to the risk insured against. Insurers are, therefore, unlikely to show that breaches of conditions relating to the settlement of claims are material and relevant to the risk. *Ionan v United Nigerian Insurance Co Ltd*.[53] Even if insurers are able to show these twin requirements, the Act provides for partial indemnity of the insured in appropriate circumstances. The Act states: "Where there is a breach of material term of a contract of insurance and the insured makes a claim, the insurer is not entitled to

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[46] *Regina fur Co. v Bossom (1951) 2 Lloyd Report 446. The case was based on rule of evidence in civil proceeding that he who assert must prove.*

[47] *Mokwe v Royal Exchange Assurance (1974) 4 ECSLR 280. The burden of proving that the loss falls on exception clause lies on the insurer*

[48] *London Guarantee Co v. Fearnly (1880) AC 911.*

[49] *Verelets Administratrics Co. v Motor Union Insurance (1925) 2 K.B 127*

[50] Williams v Lancashire Yorkshire Accident Insurance (1920) WR 222

[51] *See Cassel v Lancashire Yorkshire Accident Insurance (1885) TLR 495.*

[52] Section 55 Nigerian Insurance Act (2003) *reputation of claim must be subject to a breach of material that relevant to a loss.*

[53] Ionan v Limited Nigeria Insurance Co. Ltd.

repudiate the whole or any part of the contract. The insurer shall be liable to indemnify the insured only to the extent of loss which would have been suffered if there was no breach of the term.

Time Limit for Settlement of Claims

It is obligatory for the insurer to accept or reject the insured's claim within a reasonable time, of the notices of claim. In practice, delays are encountered by the insured in claim settlements. While some of these delays are inevitable, majority of delays experienced by the insureds are avoidable ones. The 2003 Act generally fails to seriously address the issues on avoidable delays.[54] The Act states: "Where a house or other building insured against for loss by fire is damaged or destroyed, and there is no reasonable ground to suspect the owner, occupier or other persons who in other building is guilty of fraud in respect of willfully causing the fire. The insurer who is liable to make good the loss of any person entitled or interested in the insured house or building causing the money payable to be paid out and expended toward the re-building, reinstating or repairing the house or other building co-burnt down, damaged or destroyed by fire. The above provisions vest the insurer, with the power to elect reinstatement, rebuild or repair the building burnt down, damaged or destroyed by fire. The insurer may also elect to pay the insured or other interested person for the loss suffered. Such indemnity should not exceed the sum insured. A disturbing aspect of the above provision is the non-imposition of a time limit on the insurer for the acceptance or rejection of fire claim.

Furthermore, when an insurer accepts to settle a claim arising from fire policies, section 70 of 2003 Insurance Act provides, settlement of such a claim within specific time of 90-days. The escalating costs of building materials justify the imposition of a time limit, for the acceptance and settlement of fire claims by insurers. An insurer, on realising that the total cost of reinstating or repairing a damaged property may exceeds the sum insured and thereby defeat the legitimate aspiration of such insured, may opting to pay the sum insured in cash. The option to pay cash to the insured, notwithstanding the insufficiency of the sum insured, for the repair or reinstatement of the damaged building. The Act, however, also attempts to provide a time-limit, for the settlement of accepted claims, or the rejection of unaccepted motor accident claims. It states:

Subject to Section 69 of this Act, in every case where a claim is made in writing by the insured, or any other party entitled thereto under an Insurance Policy in relation to a motor vehicle accident, the insurer shall;

a) Where he accepts liability, settle the claim not later than 90 days from the date on which the claim was delivered to it and upon issuance of discharge voucher,[55] or

b) Where he does not accept liability deliver a statement in writing disclaiming such liability to the person making the claim or his authorized representative not later than 90 days from the date on which such a person delivers his/her claim to such insurer.

The above provisions, from the view-point of ensuring prompt settlement of insurance claims, is a welcome development. The provision foists a duty on the insurer, to either settle an accepted claim or to reject an unaccepted claim within a specific time. Even then, the scope of the provision is unjustifiably confined to accident claims. It is difficult to discern any clearly defined justification for such restrictions. Suffice to say, that the aspirations of insuring members of the public, will be better fulfilled if the scope of the provision applies universally to all classes of insurance policies.

A related issue, is the imposition by the Act, of specific sanctions on insurers, who violate the mandatory provisions of accepting or rejecting a claim within ninety (90) days and upon conviction liable to a fine of ₦500,000. A carefully selected sanction will minimize, if not eliminate, totally, defaults by insurers, in accepting or rejecting claims. Obtainance of Police report where necessary is also a condition precedent.

Common Law Consideration on claims settlement.

It is pertinent to first examine common law position and rules on settlement of claims. However, the right of the insured to successfully make a claim depends on the validity or otherwise of the policy of insurance.[56] An invalid insurance policy strictly speaking, is enforceable by neither of the contracting parties. Several reasons may account for such enforceability of an insurance policy. Ivamy noted in his book that

'The parties may not be at Ad idem or the offer of proposer may not have been accepted by the insurer, there may have been non-disclosure or misrepresentation of material facts, entitling the insurer to avoid liability under the policy, the premium may not have been paid in a case where the policy states that it is not to come into force until this has been done, the policy must not have been avoided through alteration by the insured in a

[54] Section 70, which however prescribes a time limit of 90 days for the acceptance or rejection of claims.

[55] See Section 70 of the 2003 Insurance Act.

[56] Ordinance No. 31873 adopts common law rules as part of the sources of Nigeria Law. See Obilade (1980): Nigerian Legal Sweet and Maxwell London. See Park J. (1962) Source of Nigerian Law Sweet and Maxwell London Pp 28

material particular nor must it have expired before the loss takes place, there must have been no breach of condition entitling the insurer to avoid liability'.

Insurance claims may further be defeated, either on the ground of illegality or public policy.[57] The Maxim: *Ex Turpi causa non arituractio* which means (No action can arise from a wrongful cause) is capable of effectively defeating some insurance claims. An insured is precluded from profiting from his criminal or wrongful acts. Consequently, a claim arising from a willful act of the insured, which is calculated to bring the insured event into reality will be defeated on grounds of public policy.[58] On ordinary principle of insurance law as observed by Lord Atking 'an insured cannot by his own deliberate Act cause the event upon which the assurance money is payable' since the insurance have not agreed to pay on that happening.[59] The decision in Beresford's case, attests to the court's unwillingness to uphold claims by the beneficiaries of a life assured, who had committed suicide, as no criminal can be allowed to benefit in any way by his own crime or benefit his estate. Public policy has also provided a spring board for insurers in resisting varieties of insurance claims, for instance, in *Haseldieve v Hopskin* [60] a solicitor intentional criminal act defeated his claim under an indemnity policy. Similarly, public policy was invoked to deny liability in *Geismer v Sun Alliance Insurance,*[61] where the insured failed to declare jewelry and paying import duties as against Custom and Exercise Law. However, there are exemption to public policy defence of denial of liability in claims relating and arising from compulsory insurance (Workman compensation Act) as well as policies procured for the benefit of workers under the Factories Regulations Act. A wrong committed by insured cannot prevent seeking indemnity from the insurer in the event of being adjudged liable to a third party. The decisions in *Timeline v White Cross Insurance Association and James v British General Insurance,*[62] reflect judicial approaches in the area of compulsory insurance policies. Both cases focused on third parties interest in automobile accident suits. Both insured were prosecuted and convicted for manslaughter thereby liable to third party for their wrongful Acts and granted indemnity.

Third Parties' Claims

The contracting parties under contract of insurance are the insured and insurer. Consequently, a third party, not being privy to such contract, ordinarily lacks the power to enforce the contract of insurance[63]. The courts justified their refusal to accord standing to such third parties, on the basis of the secondary nature of the insurers' liability to third parties. Thus, while the insured assumed primary responsibility for the wrongs committed by him against third parties, the insurers' liability was perceived as a secondary one as decided in *Dede v United Arab Airlines & UNIC Ltd*[64].

Against the background of the above judicial reasoning, the courts, perceived all actions instituted by third parties against the insurers, prior to the determination of the insured's liability as premature actions.[65] A fall out of the secondary nature of the insurers' liability, was the need for third parties, who succeeded in proving the primary liabilities of insureds, to commence fresh actions against insurers of such risks, in order to enforce the judgement obtained against their insureds. The arrangements prior to the insurance Decree, aided multiplicities of insurance actions and proceedings. It also delayed insurance litigations and had multiplier effects on costs incurred by third parties, in the quest for justice.

The Decree, also addresses the problems arising from the non-joinder of insurers in actions instituted against insureds. It provides that:

Where a third party is entitled to claim against an insured of that risk insured against, he shall *have a right to join the insurer of that risk in an action against the insured in respect of the claim. A third party shall before bringing an application to join the insurer, give the insurer at least 30 days notice of the pending action and of his intention to bring the application.*

A careful perusal of the above reveals the imposition of certain conditions on third parties, who are desirous of tapping its benefits. Such third parties must notify the insurers of the risk concerned, in writing, of their pending

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[57] *See the dictum of Borough J. Richardson vs Mellish (1924) 2Bing 229 at 252. See Shand 'Unblinderign the unruly horse; Public policy in the law of contract' (1972) 30 C.L..144 at 161*

[58] *See W.TT. Smith v Clinton (1908) 99 Lt 840.*

[59] *See Beresford v Royal Insurance Co. Ltd (1938) AC 586.*

[60] *See Haseldieve v Hopskin (1933) 1 KB 822.*

[61] *Geismer v Sun Alliance Insurance (1977) 2 Hoyd's Rep 62*

[62] *Timeline v White Cross Insurance Association (1921) 2KB 327 and James v British General Insurance (1927) 2 KB 311*

[63] *See Carpenter v Ebblewhite (1939) 1 KB 347, and Nnodi v Okafor (1971) NNLR 105*

[64] *Dede v. United Arab Airlines & UNIC Ltd.)1969) NMLR 75*

[65] *See Audu v NEM Ins. Co. Ltd (1973) All NLR 105, Olusanya v Akinola and Mercury Ass. Co. Ltd. (1970) 2 All NLR 229. Sun Insurance Office v Ojemuyiwa (1965) All NLR 1*

action against the insureds. The notice must also indicate the third parties' intention, to bring an application to join the insurers in the actions already instituted against their insured. It should, however, be noted, that it is not every third party that is entitled to a claim, depending on the circumstances such as liability out of and in the course of employment such as liability to gratuitous passengers. *In Stella Anuloha v Lion of Africa Insurance Ltd,*[66] the appellant obtained judgment against the driver who caused the death of her husband by his negligent driving. But on enforcement, it was held that she could not recover anything from insurers because her husband being a gratuitous passenger was not within the purview of the Act.

Proof of Claim and Method of Proving the Loss

In proving the claim/loss by the insured and rebutting the evidence of the assured, it is the duty of both parties to provide quality evidence to prove the issues before the court; hence it is incumbent upon each party to supply the evidence for the proof of any fact relevant to his own case and as a general rule, he who asserts must prove the assertion. Thus in supplying the evidence to the court in proving the case, the party on whom the burden of proof lies must either establish his case on balance of probabilities or preponderance of evidence.

When a loss has taken place, the assured becomes entitled to enforce the policy and the insurers become liable to pay the amount of the loss in accordance with its terms. No claim is imposed on the assured by law or by stipulations of the policy. The due performance of these duties, may be made a condition precedent to the liability of the insurers. Therefore, the duties of the assured as regards the making of a claim are:

i. To give notice of the loss;
ii. To furnish particulars of the loss;
iii. To furnish proofs of loss;
iv. To obtain police report where necessary;
v. To make no fraudulent claim.
vi. It is remarkable at this juncture that if the assured fails to make a claim upon, fulfillment of the above duties and the insurers fail to indemnify the assured, he may, in certain circumstances, be entitled to institute an action in court by proving the loss.

a. Thus, whenever a loss or damage occurs under an insurance policy and a claim is pursued, but the insurers are denying liabilities, it, behooves on the insured to present evidence to the court to substantiate his claim that the proximate cause of that loss or damage was an insured risk. In doing so, the claimant, who could be a ship-owner, cargo owner, mortgagee or any other interested party must establish a *prima facie* case, to show that the loss or damage was caused as a result of specified peril or peril insured against. It is remarkable to note that an insured may try to establish a *prima facie* case to show that a loss was caused by a peril of the seas, Barratry, or fire. Thus, in establishing a *prima facie* case against the insurers, the burden of proof rests on the claimant. Note that the above mentioned perils of the seas have their own inherent characteristics.[67]

The insurers are usually empowered, by a stipulation in the policy, to call on the assured to prove that the loss is covered by the policy. A mere notice of loss is not sufficient to satisfy the stipulation, even though it specifies the time, place and cause of the loss. In requiring proofs, however, or in deciding whether the proofs given are sufficient, the insurers cannot act capriciously, unreasonably, or unjustly, by requiring evidence which is not necessary to satisfy them on any reasonable view of the case. It is sufficient if the assured lays before them evidence with which a reasonable man would be satisfied and it is unnecessary to show that the insurers have been infact, satisfied. The stipulation usually provides that the assured may further be required to make a statutory declaration.[68]

In *Watts v. Simmons*,[69] where the policy provided that "A statutory declaration by the assured with regard to any claim hereunder that he believes it to be a loss within the meaning of the insurance, further, that he has no reason to suspect or believe that such a loss has been caused by an excepted risk or is in any respect a loss from which the underwriters are by the terms of this policy declared free from liability. Shall be sufficient prima facie evidence that the loss is not of the character excluded by this policy. It should be noted that the insurers may decide to, by their conduct, waive their right to demand proofs in accordance with the condition. They may, where the proof is insufficient, waive any objection to them on that ground, but mere failure to take objection does to

[66] *Stella Anuloha v Lion of Africa Insurance Ltd Section 58 Insurance Decree 1991.Where a third party is entitled to claim against an insured of that risk insured against, he* shall *have a right to join the insurer of that risk in an action against the insured in respect of the claim. A third party shall before bringing an application to join the insurer, give the insurer at least 30 days notice of the pending action and of his intention to bring the application*.

[67] S Hodges, Cases and Material in Marine Insurance Law, Cavendish Publishing Ltd, 1999. p. 449-450
[68] *Dominion of Canada Guarantee v Accident Insurance Co. (1908) 17 OLR 462*
[69] *Watts v. Simmons (1924) 18ll rep 87 at 177,*

amount to a waiver.[70] Note also that where no time is fixed for the delivery of proofs, they may be delivered at any time before the claim is statute barrel[71]. But if the insured has failed to produce the required proofs at the time when he commences proceedings and a reasonable time for compliance has already elapsed, he cannot fulfill the condition by producing the proof thereafter.

Loss Adjustment and Survey in Settlement of Claims.

Loss adjustment is the process of identifying the cause of incident through discrete investigation, determine the extent to which the incidents has caused damages, quantify the pecuniary effect of such damages, determine extent to which the insurance policy covers such incident and its effect through interpretation of the policy terms and conditions and finally confirming the extent or otherwise the underwriter's liability under the policy. Loss adjustment is either carried out by in-house claims personnel of the insurance company or contracted out to an independent organization and individuals called 'Loss Adjusters.[72]'

The purpose of the insurance policy is to mitigate the loss of the policy holders on the occurrence of an insured event. Policy holders buy insurance for peace of mind and this can be maintained when his/her expectation is met through fairness in the process. Adjusting a claim / loss is, therefore, a fundamental process in claim settlement mechanism and the growth of loss adjusting as a profession derived from the importance of this function. It involves a process of carrying out discrete investigation into the cause of loss, undergoing comprehensive market survey to determine actual cost value at the time of loss and thorough interpretation of policy schedules, terms and conditions before arriving at actual underwriters' liability which will form the basis of recommendations to the insurers. Upon acceptance of the adjusters report the insurer will further instruct and authorize the adjuster to obtain the insured's signature into form of acceptance or discharge voucher as in *Royal Exchange Assurance v Aswani Textile Ltd.*[73]

Where it was held by Candido C.J. (as he then was) that issuance and obtainance of insured signature into form of acceptance or discharge voucher on the instruction of the insurers or representatives of the insurers confirms the acceptance and admittance of liability. There should really be no legal basis for compliant by the appellant.

The volume and complexities of insurance claims and the need to emphasize fairness in the claim settlement process and administration have enhanced the growth and development of professional loss adjustment. Globally, loss adjusters have become an integral and important link in the claims settlement process to the extent that they now play a much wider role from beginning of a project through the pre-insurance survey to the execution and completions stages of the project. They are, however, legally liable for their professional misconduct, negligence and incompetence which made undertaking a professional indemnity liability insurance policy a condition precedent to issuance of a practicing license by National Insurance Commission (NAICOM),

So also in undertaking a marine policy by an insured, the insurer will appoint a cargo superintendent, who will supervise the goods upon arrival, witness the custom examination, stuffing and unstuffing condition, delivery to warehouse or port of discharge and note the discrepancy if any and compile his report for the underwriters who are usually his principal. His duty entails liaising with the insured and his agent and collecting relevant documentation such as invoices, bill of landing and clean report of findings. An insured is required to notify the insurer in accordance with the provisions of the policy as soon as the peril insured against occurs. As regards loss or damage to cargo, the insured is required to obtain from captain of the ship or shipper concerned or Nigeria Port Authority discrepancy certificate or documentary certificate showing that his goods did not arrive safely or got damaged at certain period as the case may be. Insurance companies usually rely on surveyor's report which will contain detailed report about the loss or claim before settlement of a claim. However, claim for loss or

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[70] The form of statutory declaration cannot be directed by the insurers in the absence of a term I n the stipulation to that effect. The assured is entitled to frame the declaration as the chooses. Beeck v. Yorkshire Insurance. (1909) 11 WALR 88

[71] Harvey v. Ocean Accident and Guarantee Corporation (Supra)

[72] Loss Adjuster is a professional that combine the skillful work of claims inspector, investigator, negotiator, surveyor and sound underwriter with good knowledge of policy and contract interpretation aside form identifying Couse of incident and determine extent of loss before making recommendation to the insurers.

[73] Royal Exchange Assurance v Aswani Textile Ltd.(1991) 2 NWLP 639 Where it was held by Candido C.J. (as he then was) that issuance and obtainance of the insured signature into form of acceptance or discharge voucher on the instruction of the insurers and there should really be no legal basis for compliant by the appellant. See also Mayowa Elebute v Mutual Benefit Assurance Co. Plc and Insurance Support Services Ltd (2016) Unreported) Suit No HAD/42/2015

damage is required under the act to be made within 12 months from the date of discharge or damage, although the Nigerian Limitation Act of 1966 gives a claimant up to 6 years to make his claim. Finally, the British Unfair Contract Act of 1977 and Nigeria Decree 40 of 1988 have protected and restored the insured's right not to be denied settlement of genuine claims on flimsy excuses by the insurer or relying on materials facts that are not fundamental to the cause of loss[74].

Insurance clauses that affect claims settlements.

Co-Insurance Clause:- The term co-insurance is used in relation to Insurance transaction between one insurance company and another. It is an arrangement where one of the companies may issue the policy to the insured on behalf of the several insurance companies. But with the names of all the co-insurers appearing in the policy indicating each insurer's proportion of the risk as each insurer under the policy will be liable solely for his/her own proportion of the risk during claims settlement. The importance of this arrangement enhances sharing and spreading or risk, expenses and technology for quick settlement of claims.

Average Clause:- Average clause is an insurance principle which is applicable during claims settlement as a result of underinsurance by the insured. The insured will be receiving less than indemnity according to section 82 of the insurance Act of 1961. It could also lead to none disclosure of actual insured values or breach of warranty. The insurer will settle the claims according to rateable proportion of the level and percentage of the under insurance or value declared. It is a limitation to the principle of indemnity.

Excess and Franchise Clause:- The existence of Excess and Franchise Clauses will affect claims settlement and amount recoverable by an insured under an insurance contract of indemnity. An excess clause stipulates that the insured is to be its own insurer and bear an agreed amount of any loss expressed either as an amount of money or a stated percentage of the loss deductible during claims settlement and mostly common in property polices. Whilst franchise clause, on the other hand, absolves the insurer completely from liability below a certain percentage or agreed figure, the insurer is liable for losses above the agreed figure. Each loss is treated as separate and cannot be aggregate to bring the figure up to franchise bar. The difference between an excess claims and a franchise clause is that the former is where insurer is liable for some amount while in the latter, it is determined by the franchise limits.

Reinstatement:- Reinstatement clause is a claim settlement procedure on actual market value even though the primary obligation of the insurer is to pay money to the insured by way of indemnity or compensation. The contract may give the insurer the option to reinstate rather than pay cash. Section 67 of the 1997 Insurance Act provides statutory modes of settlement of insurance claims.

Ex-Gratia payment:- Ex-gratia payment is a payment or claims that is not legally entitled to or settlement by an insured or recoverable under the terms of the policy but made payable and accommodated by insurer on compassionate ground for maintenance of business interest and relationship usually in term of percentage or proportion of the claimed amount.

Payment of Premium Clause:- Although by virtue of section 23 of the Insurance Act 1961, Insurance Contract is deemed to be concluded when the proposal of the assured is accepted by the insurers, however, by virtue of the section 50(1) of the Insurance Act 1997, the receipt of an insurance premium is a condition precedent to a valid contract of insurance and claims . There is no cover in respect of an insurance risk unless the premium is paid. Hence in *Leadway Assurance v J.V.L Ltd,*[75] it was held that no liability attached to the appellant and the contract of Insurance between the appellant and the respondent was void and unenforceable because no premium was paid for the coverage before the claim. See also *Charles Clime v Unic and Eseimo v Chaime.*[76]

Excepted and Excluded Perils*:* In all kinds of insurance policies, an 'exception clause' is usually inserted. Certain perils are enumerated in the policy and the purpose is to exempt the insurers from losses occurring from the excepted perils. The policy thus specifically excludes the insurer from any loss attributed to the enumerated perils. Such excepted perils are not within the coverage of the policy.

Arbitration Clause

Most contracts of insurance contain Arbitration Clause which entails that any disputes or differences or claims arising out of or relating to the contract of insurance and touching in the interpolation of insurance principles, terms and condition, breach or termination thereof shall first be settled amicably between the parties in accordance

[74] *Nigeria special provision Insurance Decree 40 (1988) on material fact fundamental to a claim*

[75] *Leadway Assurance v J.V.L Ltd (2005) 5 NWLR Pt919 at P. 534*

[76] *Charles Chime v Unic and Eseimo v Claime (1992) ECSLR 508.*

with the provision of the Arbitration and Conciliation Act[77] or any statutory modification, amendment or re-enactment for the time being in force.

Jurisdiction clause

Jurisdictional clauses are always inserted into insurance policies to indicate geographical coverage or expression in times of litigation and settlement of insurance claims. It provided that disputes on claims settlement by parties to an insurance contract must occurred or happened within the geographical expression or jurisdictional area as contained in the policy documents. Also, that litigation on adjudication on settlement must be carried out within the jurisdiction stated except otherwise provided.

II. Summary and Conclusion

It is trite in law that whenever you open a discussion on insurance with any Nigerian, you would be amazed at the level of ignorance exhibited on the subject matter. They prefer to heap on themselves the burden of suffering they should not or ordinarily transferred to insurers for protection at the time of any misfortune. Insurance is, however, not always about death or misfortune. It is also about creation and protection of wealth. Insurance will continue to satisfy the need for investment and security by providing an orderly means for the replacement of property lost or destroyed and for sustaining purchasing power adversely affected by losses attributable to the perils insured against. Also, the huge reserves accumulated by insurance companies to meet expected claims are reinvested, thus providing the industry with much needed funds for capital expansion.

It should be noted that insurance plays a vital role in modern economy and is destined to grow bigger and better in view of the globalization of the world economy. Since there will be risks to be insured which invariably must bring losses and claims to be indemnified, the concept of insurance will always continue to be germane and relevant to modern economy. Modern insurance, though originated from United Kingdom has since spread to other parts of the world and has grown higher in leaps and bounds over the years. Settlement of claims, therefore, is an interest or remedy recognized at law whereby a person can obtain a privilege, possession or enjoyment of a right. It is the cause of an action a party has against another which arose out of his contractual rights, duties and obligation to the others and in some cases against third party. Whenever a damage or loss occurs in respect of a risk for which an insurance policy has been taken out, the insurer invites the Loss Adjuster to investigate the circumstances surrounding the loss, interpret the policy, value and assess the damage with a view of replacement. The burden of proving that the loss was caused by the peril insured against lies on the insured based on the rule of laws of evidence that who asserts must prove. Insurers only settle genuine claims legally recognized and covered by the terms of the policy. Insurance contract between parties sometimes leads to disputes and disagreement during claims settlement. However, some of the challenges affecting the industry are: Public perception and attitude of insurers to claims settlement, weak regulatory framework, inadequate human capital, lack of modern technology, delay in litigation, non-disclosure of material facts, breach of utmost good faith and fraudulent claims.

III. Recommendations

The insurance industry has suffered a lot of misunderstanding between the contracting parties, insurers and their insured especially when it comes to settlement of insurance claims. It is timely now, having accessed the problems, to proffer possible recommendations of minimizing the misunderstanding if this cannot be completely eliminated.

First, dissemination of information is very important to the insurance industry. It is regrettable to note that collation of statistical data of claims settlement over the years is nothing to write home about. The industry cannot tell how much precisely the amount of claims within the various sectors, losses to fraudulent claims, the premium income, the particulars of the losses and circumstances responsible for the losses. The Nigeria Insurers Associations (NIA) must, therefore, be further encouraged and supported to collate, provide and share statistical data information about particulars of claims and amount of claims settlement yearly. Underwriters must take full advantage of 'Consult the Lead' on sharing of information freely. There must be exchange of information between insurers, law enforcement agencies and other financial institutions to check activities of fraudsters. Insurance companies must be encouraged to have public relation department to improve communication, publication and advertisement of both settled and unsettled claims to encourage the public on insurance awareness as claims settlement remain the central issue in insurance contract.

Second, education is key to the success of any enterprise, establishment of more insurance institutions will improve level of education and insurance awareness among the populace in the area of human capital and sound management of insurance companies to affect positively the level of innovation, effective claims administration and investment of insurance funds. This will invariably reduce and eliminate the level of

[77] Arbitration and Conciliation Act (1990) Cap A 19 LFN 2004

misunderstanding between the contracting parties. Introduction of new insurance products to the market to make insurance products more attractive such as micro-insurance products designed to provide insurance coverage for low income and rural segments of the society and this is to be accompanied with mobile and immediate settlement of claims. Insurance is still unexplored and underdeveloped in the developing countries as against developed country such as United Kingdom and United States of America, there should be conscious efforts to further enlighten the developing nation to embrace insurance as this will further safeguard their property, increase their confidence in investment of idle funds, claims awareness and provides employment opportunities.

Third, the law should be specific in certain areas. For instance, in the area of notice of abandonment of insurance claims, there should be specific time stipulated by statutes for giving notice in certain circumstances so as to avoid confusion as experienced in the past. Also, the principles of subrogation and proximate cause in insurance should be made more effective and enjoy statutory enforcement. Again, the proposal forms should contain bold warnings to the proposers as to the duty to disclose all material facts known to them when entering into the contract. However, insurers should indemnify the insured where non-disclosure of material facts occurred in good faith without fraudulent motive in line with provisions of Decree 40 of 1988.

Fourth, it is also recommended that the insurance industry should cooperate with international insurers association and agencies in documenting claims and in respect of insurance claims that have international dimension especially, to forestall settlement of fraudulent claims. At most, international bureaux have more accurate statistical claims data. Also, there is need to have effective monitoring units and intelligence networks to assert claimants against falsification of claims documents such as bill of leading which has been adjudged to be serving two masters (genuine and fraudulent claims). There is need, therefore, to use statutory means to regulate the standardization of condition of carriage under bill of lading contract to check fraudulent abuses as now witnessed in marine insurance contracts.