

Insurance: Current Issues In Nigerian Law And Practice

Introduction

It is a New Year. We again wish you a Happy and Prosperous New Year.

We have established Associateship relationship with two Law Firms in Benin City , Edo State and Jos, Plateau State to attend to the legal needs of our clients in these two jurisdictions.

For January 2003, our newsletter is on the vexed issue of Nigerian Insurance companies (?Insurance Companies?), practices, Law and the phobia that Insurance companies never settle claims.

However, with the advent of younger and more innovative insurance companies and an insuring Clientele, and particularly the Insurance Act of 1997 , the perception of the Insurance companies have improved. Unfortunately, the average per capital income of the populace have being on the decline and this has affected the advancement, in real financial terms, of every business sector including the Insurance industry.

This newsletter would, summarily, deal with some of the already known principles of Insurance in the hope that when you elect to take an insurance policy and subsequently need to make a claim, the transaction would be more bearing for you, as you would engage in it from a position of KNOWLEDGE.

Premium Payment

By the Insurance Act of 1997 (?the Insurance Act?), for there to be a valid contract of Insurance, the Client (?Insured?) must show that he/it has fully paid his premium. This is at variance with the old practice, which is the reverse to the provisions of the Insurance Act. The rule is the same when there is a need to renew the Insurance Policy.

A commendable innovation under the Insurance Act is the fact that the liability of the Insurance Company attaches immediately a premium is paid whether or not an Insurance Policy is issued or delivered to the insured Client.

There is also the requirement under this Law that an advance unstamped copy of the Policy must be delivered to the Insured within thirty (30) days of the payment of the first premium. A stamped copy of the Policy must be delivered within ninety (90) days after the payment of the first premium.

Riders, Warranties, Etc

Unlike in the past when Insurance Companies were alleged to have refuted liability on the ground of a breach of a rider or warranty clause, which were usually printed in very small letters at the back of the Insurance Policy, the Insurance Act forbids such riders, warranties, or other variation which usually sought to attach fresh conditions, alter or amend the Insurance Policy without the knowledge and consent of the Insured. Failure to adhere to this requirement makes such a rider or condition illegal, null and void and also exposes the Insurance Company to a fine of =N=25,000 on contravention.

Disclosures & Good Faith

The underlying fundamental principle that governs most contracts especially a contract of insurance is the principle of utmost good faith on the part of both the Insured and the Insurer. This requires that all material facts and information relevant to the proposed insurance policy must be disclosed.

In the past, there were a lot of conflicts between Insurance Companies and the Insured parties as to what constituted 'material facts relevant' to an Insurance Policy. The Insurance Act has graciously delimited these to mean such information that the Insurer itself requested for, from the Insured, which the Insurance Company considered to be reasonably prudent in accepting the risk and fixing the premium for taking the risk. The words of the Insurance Act are 'any information not specifically requested for shall be deemed not to be material'. Section 58 (1) of the Insurance Act.

Naturally arising from the above paragraph is the fact that only a breach of a material and relevant term would invalidate a contract of insurance. Usually also, such a breach must amount to a fraud for it to be held to be material.

Insurable Interest & Indemnity

Another area of dispute is that of insurable interest . For a claimant to make a claim under a policy of insurance, he must have an insurable interest in the subject matter of the insurance policy. An insurable interest is a special relationship by the Insured to the subject matter of an Insurance policy, which entitles the Insured/claimant to either, make a claim under the policy or to sue where the insurance company refuses to settle a claim.

Related to insurable interest is the fundamental principle of indemnity which is simply that in the event of a loss or injury, the Insurer is required to place the Insured back to the same position, as much as possible, as the Insured had occupied before the occurrence of the insured peril.

Of necessity and as a matter of public policy, the Law does not allow an insured person to recover more than what he may have lost as a result of the occurrence of an insured peril; no matter what he may have paid as a premium. This is because Insurance consists of various pools of resources from whence any loss can be made good.

The Insured and Third Party Claims

In the past, a person who is not a party to an insurance policy (?an outside third party?) could not bring an action against an Insurance Company because there was no legal contract between them. This led to a lot of injustice.

Now, under the Insurance Act, an outside third party can commence a legal action against both the Insured and the Insurance Company. This procedure is however slightly technical as the outside third party is required to serve on the Insurance Company a prior notice of its intention to commence the legal action; also, the action must be in the form of a third party notice for indemnity. This means that the liability of the insurance company is subject to the Court first determining that the Insured was liable to the outside third party; it is upon a determination of the Insured primary liability that the Insurer's secondary liability then arises to take the place of the Insured.

Conclusion

For there to be advancement in the Insurance industry, which would be of further benefit to the business community, there is a need for an improvement in the following areas.

- Continuing education of the insuring public on the importance and relevance of insurance

especially in a developing economy. This is more so when the illiteracy rate in Nigeria remains high.

- Payment of correct premiums by the insuring Clients. Stories abound of big corporate organisations not paying full or correct premiums because they want to save or cut costs.
- Greater regulations of Insurance Brokers who continue to contravene the provisions of Section 41 (1) of the Insurance Act which requires that all Insurance Brokers must not later than thirty (30) days of the receipt of an insurance premium, remit such premium to the Insurance Company. Related to this is an urgent need by the Insurance Companies to collectively become alive to their corporate responsibility by reporting erring brokers to the Nigerian Insurance Commission without fear or favour of the Brokers.
- There are also concerns about rate cutting amongst the Insurance Companies. Whilst to the insuring public, this practice of charging the 'minimum rate' may appear to be bargains, they undermine the financial base of the Insurance Companies who as a result may not have the ability to settle a claim when an insured peril occurs, even where they have the intention to. Insurance companies must engage in healthy competition applying good corporate governance behaviour which abhors corruption and other related unethical practices.

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EHIJEAGBON O. OSEROGHO

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