SELECTED ESSAYS ON THE LAW OF INSURANCE

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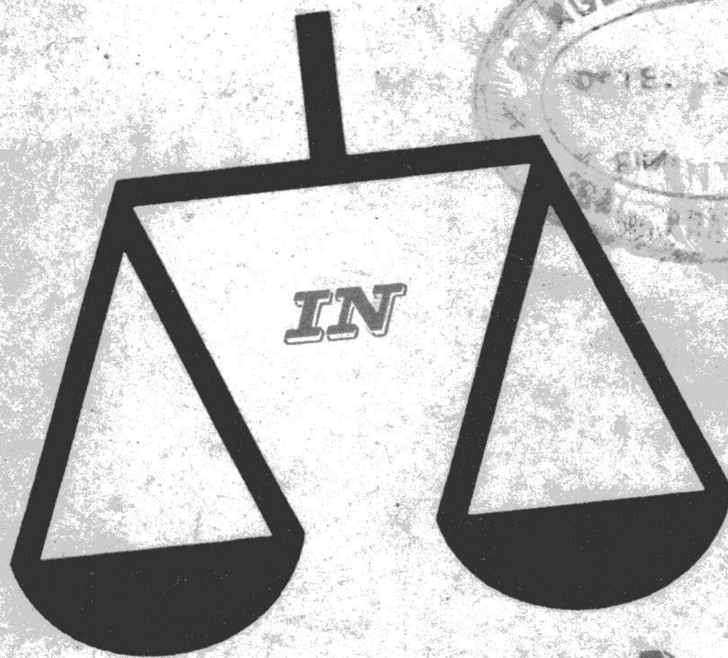

NIGERIA

Insurance Decree No. 58 of 1991 In Perspective

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PREFACE

Selected Essays on the law of insurance in Nigeria has a long history. Some years back when the Insurance Decree No. 58 of 1991 was promulgated the Faculty felt there was the need to highlight and sensitise the reforms introduced by the new Decree as a current law. Hence, it decided in 1992 to organise a seminar at which members of the academia and the business community will be able to interact their ideas.

Regrettably, the dates scheduled for the Seminar fell into the period of the crisis that rocked the University system (LASU inclusive). This culminated in the postponement of the Seminar on not less than two occasions, before it was finally held on the 12th and 13th of November, 1992. A total of fourteen papers were presented at the Seminar out of which twelve were finally selected for publication. These twelve papers formed the basis of this book.

It is no exaggeration to say that what we have endeavoured to put together here are indeed searching critical analysis of the various segements and facets of the law of insurance. It is in the light of this that we give our sincere thanks to all the paper contributors. Special mention must be made here of Mr O. A. Fagbohun who pioneered the Seminar and never relented in his efforts until this book saw the light of day. But for his patience, earnestness and enthusiasm, this success story would have been otherwise.

We would like to conclude with a note of appreciation to Mr. I. O. Smith, Director, Law Centre, Faculty of Law of the Lagos State University. He could not imagine that the essays herein contained have been gathering dust for upward of one year due to lack of funds. The funds which his centre provided saved the day.

We hope you enjoy the book and find it helpful.

Editors

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THE ROLE OF INSURANCE AGENTS, BROKERS AND LOSS ADJUSTERS - AN APPRAISAL

DEBO OLAGUNJU *

NTRODUCTION:

In evaluating the role of the insurance agent, broker or loss adjuster, it is pertinent first to ention that all of them are intermediaries in the business of insurance who either assist a buyer (the sured) or the supplier (the insurer) in the purchasing and supply process. As for the agent and the oker, their duties start right from the proposal stage and probably spans through the whole contract ntil loss arises or the claim is discharged. The loss adjuster's job on the other hand only begins when a ss arises. He is as the name connotes, the middleman only in time of crisis (or loss) and not before. ut his job is much more than adjustment of losses. It is far much more, as it includes the carrying out of orough investigations as we would see later. For now we shall start with the legal perspectives.

'ho is an Agent.

An agent, under the law of Agency, is one who has the contractual capacity to bring into eration a contract, between a person (called his principal) and another (called the third party). In other ords an agent is that person who acts on behalf of another in his dealings with third parties.[1] According the principle *QUI FACIT PER ALIUM FACIT PER SE,* any person (except in certain exceptional rcumstances),[2] can act through an agent.

There has been attempts to classify agents into various classes.[3] The determinant factor in all e categorisation is whether or not such an agent has the authority to bring his principal into contractual lationship with others, or can bind him by his acts so as to make him liable to third parties.[4] From hat has been said so far, it could be seen that the agency relationship is structured triangularly, that is:) between the agent and his principal, (2) between the principal and third party and (3) between the gent and third party.

At this juncture, the questions that naturally come to mind are, how does the insurance agent fit into l these?, how for example, does he bind his principal? In fact, who is his principal in an insurance transaction?, it the insured, or the insurer? Before we can answer these questions, it is advisable to start by looking into e statutory provisions in respect of an insurance agent in Nigerian.

According to Section 28 of the Insurance Decree[5], any person, provided he is not a minor, or of nsound mind, or had both been convicted of breach of trust, cheating or criminal misappropriation of funds n apply to the Director of Insurance to be licensed as an Insurance Agent. The Director, if satisfied that the pplicant has complied with the provisions of the Decree shall issue license to the applicant and such license hich is renewable yearly shall entitle the holder to act as an insurance agent for the insurer or insurers named the license. From the foregoing, it could be seen that the agent is that of the insurer and not of the insured.[6]

he Role of the Insurance Agent

Basically, the role of the insurance agent is best appreciated when viewed against the background of s relationship to the insurer and the insured (a) before the contract, (b) whilst the contract is still subsisting, d (c) after a loss has arisen. It is in this light that we shall now forge ahead.

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1. See Robert Lowe, Commercial Law (1983) 6th edition P. 7; see also M. O. Adesanya and E.O Oloyede, Business Law in Nigeria (1983) p. 117.
2. These exceptional circumstances will include where the law requires personal performance or prohibits delegation e.g. as in '*Delegatus non potest delegare*' - i.e. a person whom power has been delegated cannot further delegate same.
3. E.G. Del Credere Agents, Factors, Mercantile Agents, Estate Agents, Brokers, Partners, Auctioneers, Bankers, Insurance Agents, Advertisement Agents, Confirming houses e.t.c.
4. See Lowe, op cit. 14. C. F. Okey Achike, Commercial Laws in Nigeria (1985) p. 109.
5. See Decree No. 58 of 1991
6. Note that there would however be incidence of law where the agent can become that of the insured. We shall discuss this later

Before the Contract

When a person intends to purchase a policy, or insure, what he does is to approach an insurance company or the latter's agent[7] stating his intention, whereupon he is given a form (called proposal form) to fill. At this stage the person is referred to as the proposer. The proposal form contains a variety of questions ranging from the proposal's name, address, occupation, to age, health, particulars of the proposed subject matter of insurance etc., etc., and could be cumbersome atimes or difficult for the proposed insured to answer. It is at this stage that the insurance agent gets involved, and if care is not taken, the nature of his involvement might implicate his principal. Generally an insurance company will be estopped from denying that its agent did not pass on information received by him to them as the knowledge of an agent is deemed imputed to his principal. In ***Wing V. Harvey***[8] an English case on the point, an agent having being authorised to do so, collected premiums on behalf of his company and later pass them to his directors even though he knew at the time of the collection that the insured had broken a condition of the policy. It was held that the agent having being authorised to collect premiums on behalf o the company, and having had knowledge of the insured's breach of a condition of the policy before collection, the company is deemed imputed of that knowledge and the insured is entitled to rely on the agent passing on his knowledge to the company. Where however, fraud is involved, e.g. as for where the agent colluded with the insured in order to defraud his company, no estoppel can arise. In ***Newsholme Brothers v. Road Transport and General Insurance Company Limited***[9] An agent whose agency authority does not extend to the filling of proposal forms but only to the soliciting of business for his company in defiance of his authority filled in a proposal form on behalf of the proposer and in it wrote answers which were materially untrue. The proposer warranted the truth of the statements in the proposal form and this was made the basis of the contract. When a claim arose, the insurance company repudiated liability on the ground of the untrue statements in the proposal form. The court held that the company was entitled to repudiate liability on that ground for the knowledge of the true facts by the agent in this case could not be imputed to the company. In the case, the agent although said not to be regarded as that of the proposer was described as his *amanuensis*.[10] The decision in the Newshome case followed that in the earlier case of ***Bigger v. Rock Life Assurance Company***.[11] However in Bigger's case the court seem to be of the opinion that once an agent, whether his scope of authority is limited or not fills a proposal form on behalf of the proposer, then he should be regarded as the agent of the proposer for that purpose and not that of the insurer again. It is submitted that this view is harsh considering the implication on the insured. For even though, he might not be able to recover from the insurance company, he could still proceed on a personal action against the agent for negligence or fraud. But if the law now regards him as his agent, then his (the insured) claim becomes more cumbersome were he to proceed against him on a personal action, for it would be deemed that he had authority to do what he did or acted in that behalf. It is, however, understandable where the scope of his authority is expressly limited.[12] The view in the latter case of Newsholme where he (the agent) was described as only the proposer's *amanuensis* is therefore preferred. One thing that is clear from the two cases, however, is that where both the agent and the proposer know the answers to be false, the agent is committing a fraud on his company, and his knowledge would not be imputed to the company. Although it could be argued that in the Newsholme's case, the proposer was not aware of the agent's acts, however, it appears the gravemen of the decision in that case was hinged upon the fact that the proposer warranted the truth of the answers in the proposal form by signing it. According to **Scrutton L.J.**:-

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7. In actual fact it is the insurance company's agent acting as a salesman who approaches the insured.
8. (1854) 5 De G.M & G. 256.
9. (1929) 2 KB. 356.
10. One who writes on behalf of another that which he dictates.
11. (1902) 1 K.B. 516.
12. In which case the assured will be fixed with the notice of limitation C.F. Macgillivray & Parkington on Insurance Law (1981) 7th ed. para. 356, p. 147.

"If the answers are untrue and he (the agent) knows it, he is committing a fraud which prevents his knowledge being the knowledge of the insurance company. If the answers are untrue, but he does not know it, I do not understand how he has any knowledge which can be imputed to the insurance company. In any case, I have great difficulty in understanding how a man who has signed, without reading it, a document which he knows to be a proposal for insurance, and which contains statements in fact untrue, and a promise that they are true, and the basis of the contract, can escape from the consequences of his negligence by saying that the person he asked to fill it up for him is the agent of the person to whom the proposal is addressed."[13]

It is important at this juncture to distinguish the decision in the Newsholme's case from that of an earlier one, in ***Bawden v. London, Edinburgh and Glasgow Assurance***[14] which decided to the effect that even though the agent made false statements in the proposal form which was signed by the proposer, the agent's knowledge must be imputed to the company. In that case, a man who was almost illiterate and had only one eye signed a proposal form filled for him by the local agent of the insurance company, and which contained a declaration that the proposer had no physical infirmity. The court held that this declaration afforded no defence to the insurance company in a claim brought by the assured since the fact of the man's physical infirmity was known to their agent, this knowledge must be imputed to them. The difference between this case and Newsholme is that the contract was essentially one with a one-eyed man, and who is almost illiterate.[15]

In the Nigerian case of ***Northern assurance Company Limited v. Idugboe***[16] the supreme Court seems to have followed the reasoning in ***Bigger v. Rocklife and Newsholme*** to the effect that where an agent completed a proposal form for an alliterated proposer, then he is regarded as the agent of that proposer and not that of the insurer. It is contended by some writers that this view is reasonable in view of the fact that it would be illogical for a person who fills a proposal form to say he is the agent of the person to whom the proposal is made.since that would be tantamount to making a contract with himself.[17] This position seems to have been supported by the provision of S. 48(2) of the insurance decree,[18] which provides.

"The proposal form or other application form of insurance shall be printed in easily readable letters and shall state, as a note in a conspicuous place on the front page, that 'An insurance agent' who assists applicant to complete an application or proposal form for insurance shall be deemed to have done so as the agent of the applicant"

The section seems to directly limit the authority of the insurance agent and finally bury the controversy attendant to agents helping proposers to complete proposal forms.[19]

Whilst the Contract is Subsisting

Since the contract of insurance covers a long period, usually from the issuance of the policy till loss arises, it is pertinent therefore to examine the role of the insurance agent during this period between the issuance of the policy and loss, before the claim is finally made.

13. Ibid, at page, 375, C.F. Another early case which also followed the decision is Bigger v. Rock Life (supra), Dunn v. Ocean Accident and Guaranted Corporation Limited (1933) 50 T.L.R. 32.
14. (1892) 2 Q.B. 534.
15. Queare? will the illiterates Protection Act afford such a man any defence were it to be in Nigeria.
16. 1 A. L. R. Commercial. 155., or (1966) All N.L.R. 84
17. See M.O. Adeyemi, "The Legal Status of Insurance Agents" in Nigeria Commercial Laws: Problems and Perspectives (1984), edited by I.A. Ayua, and published by the Dept. of Commercial Law, A.B.U. Zaria.
18. (Supra)
19. Queare? But supposing the proposer is illiterate, or blind and this caveat is not translated or read to him by a fraudulent agent, It is submitted that the proposer can invoke the Illiterates Protection Act against such an agent in case he brings a personal action against him for claim or damages.

It is important to say here that contracts of insurance are contracts *Uberime fidei*, that is, they are based on the principle of good faith that neither party to the contract shall conceal anything material to the contract.[20] The need for this duty is usually required mostly at the beginning of the contract (i.e. the proposal stage) since it is a requirement that may influence the judgment of a prudent insurer in fixing the premium or determining whether or not he will underwrite the risk.[21] Because the acceptance or rejection of a risk, or how much to charge in order to bear it (the premium) is conditional upon the nature of such risk which can only be gleaned by the insurer from the amount of information received from the proposer/insured, most policies usually stipulate as a condition precedent, the continuous disclosure of any circumstance or material fact which may arise during the life or the existence of the policy. If this condition is imposed, then any material change in the information already supplied at the proposal stage must be communicated to the insurer and this is where the role of the agent comes in once again. Will any knowledge of such change already communicated to the insurer's agent be deemed imputed to the insurer? As said earlier on, this would appear to certainly be the case.

In ***Pimn v. Lewis***,[22] a water cornmill was insured under a fire policy. Rice chaff which was more inflammable than pollard (i.e. the final part of the husk of corn) was used in the cornmill, to the knowledge of the insurance company's agent. In fact the agent lived in the corn-mill's neighbourhood and even inspected it at the proposal stage. It was held that the insured was not duty bound to disclose that rice chaff was ground at the mill, since this fact was deemed known to the company through its agent.[23] The position in Nigeria seems to be that an insured would only be able to rely on the insurer's agent knowledge if only the latter had express authority to receive such a disclosure or representation on behalf of the insurer.[24]

After a Loss Has Arisen

After a loss has arisen one of the conditions precedent to a claim (sometimes referred to as conditions subsequent to contract) is that the insured must give notice of loss within a stipulated period or in some cases, as soon as possible, or immediately. Sometimes the mode of giving such notice is stipulated (c.g. at the insurer's head office.)[25] Sometimes it is not. Where not so stipulated, is notice to the insurer's agent valid, or deemed to be notice to the insurer himself? From dicided cases, the answer would appear to be in the affirmative. In the case of ***Marsden v. City and County Assurance Company***[26] a policy was effected through a local agent of the defendants and was subject inter-alia, to a condition, that 'In case of loss or damage, an immediate notice must be given to the manager, or to some known agent of the company.' After making the policy, but before the loss, the defendants transferred this branch of their business (plate glass cover) to another company. The Plaintiff was not aware of this transfer and so when loss arose, served notice to the local agent who thereon made his report to the latter company. It was held that notice to the local agent was sufficient notice, within the stipulated condition.[27]

Where mode of giving notice is stipulated and an agent is not authorised to receive same and he does so in defiance of his authority, the notice will be void. Ivamy rightly contends that an agent whose authority has been so limited has no 'usual authority' to waive compliance by the insured with this condition.[28]

20. C. F. the cases of Carter v. Boehm (1766) 3 Burr. 1905 per Mansfield C.J. at p. 1909; Joel v. Law Union and Crown Insurance Company (1908) 2 KB 863. per Fletcher Moulton L.J.
21. See S. 19(2) Marine Insurance Act 1961 and also Ivamy, General Principles of Insurance Law (1986) 5th ed. P. 126.
22. (1862) 2 F & F.P. 778.
23. See also the case of Wing v. Harvey (supra).
24. See S. 48(3) of the Insurance Decree (supra).
25. See the case of Brook v. Trafalgar Insurance Company Limited (1946) 79 Lloyds Law Rep. p. 365 CA. on the point.
26. (1865) L.R. 1 C.P. P. 232.
27. See particularly P. 239 of the report, per Erle, C.J.
28. Ivamy, Op cit at page 432 C. F. Re Williams and Lancanshire and Yorkshire Accident Insurance Company's Arbitration (1903) 19 T.L.R. p. 82.

THE INSURANCE BROKER

Generally, a broker is also regarded as an agent under the law of agency.[29] However, under the law of insurance, he is an agent with a technical type of job to do. Hence he must be an expert and demonstrate some versatile knowledge regarding the job of insurance broking. Unlike the insurance agent therefore, not just anybody can be an insurance broker. To be one you must have the required qualification, and or experience.[30]

Qualification

To qualify as an insurance broker, an individual or firm consisting of the individuals must have also been qualified professionally as an insurer and must be registered with the professional body of insurance brokers. In Nigeria, there is the Nigerian Corporation of Insurance Brokers which acts as the professional body and which all Nigerian brokers must register with.[31]

From the foregoing, it would therefore be seen that the job of the insurance broker entails much more than just acting for a party, he is in all an organised person or set up whose job is the placing of insurance business on behalf of his clients, with insurance companies. He is the agent of the insured paid by the insurer from the premiums collected. We can, therefore say that he is indirectly paid or remunerated by the insured since his commissions comes from the premiums collected from the insured.

According to Section 30 of the Insurance Decree, no person shall transact insurance broking business in Nigeria unless he is issued with a certificate of insurance broking by the Director of Insurance after due application for same has been made to the Director. The director must be satisfied that

(a) the person has the prescribed qualification

(b) has unlimited liability and

(c) has deposited with CBN a fixed deposit of a sum not less than ₦25,000.00.

The certificate is renewable yearly and the Director is vested with wide powers to cancel same within that period in order to check various abuses ranging from contravention of the provisions of the decree, to making of false statement, misrepresentation to clients, and conviction for fraudulent or dishonest practice.

The Role of The Insurance Broker

The Insurance Broker is the agent of the insured simpliciter and so it is best to examine his role in the light of his relationship via his obligations and responsibilities to the insured as his principal.

Firstly, the broker is under a duty to the insured to act carefully otherwise he may be liable to the latter for negligence. He must observe the duty of care and skill in carrying out the insured's instructions. In ***Fraser v. B. N. Furman (Productions) Ltd., Miller Smith & Partners (A firm) Third Party***,[32] the defendants (a manufacturing company), employed the third parties who are insurance brokers, to replace their insurances. Subsequently, one of the defendant's employees got injured during the course of her employment with the defendant and brought an action against them for negligence and breach of statutory duty which she duly recovered. In a third party action by the defendants, the defendants claimed, to be indemnified against the damages and costs which they had been ordered to pay to the plaintiff (the employee), contending that the insurance broker had, in breach of contract, failed to secure them insurance cover against employer's liability. The Court held them so liable to the defendants even though they tried to raise a defence that had they still placed the insurance, a condition to the effect that

29. See foot note 3 (supra)
30 See other types of brokers e.g. Commodity brokers, futures brokers and the Stock Exchange broker which requires the widest possible experience since their job is mostly speculative.
31. In the U.K the counterpart is the Insurance Brokers' Registration Council established under the Insurance Brokers (Registration) Act 1977.
32. (1967) IW. L R. 898.

insured shall take reasonable precautions to prevent accidents and disease' in the policy would have [...] the claim, in that defendants did not comply with that condition. In ***Cherry Limited v. Allied [...] Brokers Limited***[33] the plaintiffs (manufacturers of suede and leather garments) who had a [...]derable number of policies in connection with their business in force, sought to terminate the [...] of their brokers (the defendant). They wrote the letter to this effect, and informed them to [...]nate all policies which they had placed on their behalf with effect from a certain date. At a later [...], the defendants had a meeting with the plaintiffs advising them that a certain Insurance Company [...] G.A) and another would not cancel their policies or return their premium. The Plaintiffs believing [...] they had double insurance in force in respect of their consequential loss, having effected a new one [...]gside the G.A., cancelled the new one. At a later date, the G.A. agreed to cancel the plaintiffs policy. [...] defendants did not advise the plaintiffs of this fact. A loss arose whereby the plaintiff sustained [...]tantial damage to their premises and they claimed to be indemnified by the defendants by way of [...]mages for breach of contract or negligence. The court held that the plaintiffs were entitled to recover [...]om the defendants as damages such sum as they would have recovered under the G.A., policy if that [...]licy had been in force as at the time of the loss.

Secondly, the broker must make all necessary enquiries as to material facts relating to the [...]surance company and notify this to the insured otherwise he may be liable. Here such facts as the claims history of the company will be relevant.[34] Conversely he may also be liable to indemnify the insurers if he fails to disclose a material fact about the insured to them e.g. the insured's criminal record.[35]

Finally, the law governing the relationship of principal and agent under the law of agency will be applied *strictu - sensu* in the relationship of the broker and the insured.[36]

THE LLOYD'S BROKER

The Lloyds is an international market for the supply of marine (and other related) insurances. Therein, there are individual underwriters who group together in order to underwrite large risks which ordinarily would have been too much for an insurance company to bear. The tradition there is that an underwriter representing his own syndicate sits at the 'box'[37] waiting for the business of the day. The Lloyds broker then prepares a 'slip' which is a sheet of paper containing the details of the risk to be insured, showing amongst others, the name of the insured, period for which cover is required, the inception date of cover, perils or type of cover required, property sought to be insured, sums insured/limits of liability, the conditions to be imposed by the policy, premiums to be paid etc.

The broker will then present the slip to an underwriter who specialises in the kind of business for which he is seeking insurance, with a view for the latter to accept the 'lead' or the first proportion of the risk. After some negotiations between the underwriter and the broker, the former then takes a certain percentage of the risk, stamps and initials his signature under it, whereupon the broker leaves him and proceed to other underwriters until the whole slip is fully initialled 100%. The Lloyds broker then returns to his office with the slip and prepare the policy in accordance with it. He later submits the policy to the Lloyds policy signing office where it is further cross-checked with the slip before it is signed on behalf of all the syndicates. In all, it would be seen that the Lloyds broker's job is much more than the ordinary insurance broker's job of only placing business with insurance companies on behalf of his client. He on the other hand prepares the policy for his client. As a result of this rather technical job, not just

33. (1978) 1 Lloyd's Rep. 274.
34 See Ogden v. Reliance (1975) 1 Lloyds Rep. 52. See also Raoul Colinvaux, The Law of Insurance (1984) 5th ed. page 319.
35. See Woolcot v. Excess Insurance (1978) 1 Lloyds Rep. p. 633.
36. C. F. Lowe, *Op cit*; And Maggillivray & Parkington Op cit at page 152 para. 368 - 384.
37 This is a small office-like cubide provided for each underwriter and their staffs.

anybody can be a Lloyds broker. To be a broker at Lloyds, you must be appointed by the committee of Lloyds, which is responsible for the day to day administration of Lloyds. The committee must be satisfied as to the expertise, integrity and financial standing of such applicant.

Apart from the technical job required of him at Lloyds, however, the broker's position as the agent of insured does not materially alter. Indeed in the case of ***Rozanes v. Bowen***[38], **Scrutton L. J.**, re-emphasised this when he said *"The individual members of Lloyds sit at Lloyds and brokers come to them and present proposals for risks. ... I agree, that in the case of marine insurance there is not the slightest doubt, and never has been the slightest doubt, that the broker is not the agent of the underwriter."*[39] However, by a special custom of Lloyds, the broker is regarded as the agent of the underwriter for the purpose of collection of premium only and he is liable to the underwriters for same.[40]

THE CONTROVERSIAL CASH AND CARRY PROVISION IN THE INSURANCE DECREE AND THE ROLE OF AGENTS/BROKERS:

This paper will be incomplete without touching on the role of agents and brokers in the collection of premium in view of the provision of Section 37 of the Insurance Decree which is a new provision in Nigeria. It provides as follows:

> *"The receipt of an insurance premium shall be a condition precedent to a valid contract of insurance and there shall be no cover in respect of an insurance risk, unless the premium is paid in advance."*

This provision in effect makes the policy of insurance available only on a 'cash and carry' basis, and allows an insurer to avoid the whole policy altogether where premium was not paid before its issuance. Traditionally, what most insurers do, is to issue policies in advance of payment of premium and debit the accounts of agents and brokers, on the mutual understanding between both (i.e. agents/brokers on the one hand, and Insurers on the other), that the premiums will be paid later. Even though some insurance companies put provisions similar to S. 37 in their policies, they seldom enforce it, and the tradition was that once a loss arises, and the insured (for his agent/broker) later on pays the premium (even after the loss), the insurance company would still go ahead and settle the claim. This tradition followed the Common Law position that once there is an agreement between the insurer and the insured, the latter is bound only by his promise to pay. Thus, in ***Wooding v. Monmouthshire and South Wales Mutual Indemnify Society Ltd***[41] Viscount Maugham had this to say in relation to premium:-

> *"There is, I think no principle of law that there must be implied in a contract of insurance a provision that the right to indemnity by the assured is conditional on his previous payment of the premiums. As a matter of commercial goods sense, there is a great deal to be said for the terse phrase - 'no premium no cover!' It is doubtless for that reason that insurance companies usually require that the consideration for which they undertake to indemnify the assured must be paid before the risk attaches. There is, however, no doubt that a contract of insurance may involve merely a promise by the assured or his broker to pay the premium."*[42]

38. (1928) 32 Lloyds Law Rep. P. 98.
39. Ibid. at p. 101; C.F. Express Assurance Corporation v. Bowring and Company Ltd, 11 Com. Cas. 107, particularly at p. 112. And Hayhow v. Smith (1951) 84 Lloyds Law Rep. p. 504.
40. See Minett v. Forrester (1811) 4 Taunt 541; Wilson v. Avec Audio - Visual Ltd (1974) 1 Lloyds Rep. p. 81 (C.A.) C.F. Colinvaux, *Op cit* at p. 319
41. (1939) 4 All E.R. p. 570.
42. Ibid. at page 581, underlining mine. C. F. Roberts v. Security Co. [1897] 1 Q.B. 111.

Today the position in Nigeria is different, for apart from the provision of Section 37 of the Insurance Decree, sections 29(2) and (3) and 31(2) and (3) expressly makes it an offence for an agent or a broker respectively, to collect premium on behalf of the insurer and refuse to turn it over. While section 37 has the effect of voiding the Insured's claim sections 29 and 31 seeks to punich an erring agent or broker the effect of voiding the insured's claim, sections 29 and 31 seeks to punish an erring agent or broker irrespective of any other right of action that the insured may have against him for his negligence and/or fraudulent act in failing to turn over the premium.

THE LOSS ADJUSTER

When a loss arises, and the insured duly notifies the insurer, usually the insurer will consult its claims department which then swings into action by making sure that the insured complies with all the terms and conditions of the policy both implied and expressed. The claims department would also be called upon to look into the peril that gave rise to the loss, whether it is an excepted peril or one which is covered by the policy. In all, the claims department must investigate the claim thoroughly and if it sees nothing wrong with it, the insured is settled, or in other words indemnified. Where a loss, however, involves a large sum of money (e.g. a large fire outbreak, aircraft accidents, marine perils etc etc) the job of claims investigation becomes cumbersome and sometime technical. It is at this crucial stage that the job of the loss adjuster becomes relevant.

Who is a Loss Adjuster

A loss adjuster is one who conducts investigation into the cause or causes of loss arising from claims and recommends the appropriate amount of money or otherwise, which is adequate enough to compensate or indemnify the claimant.

According to Section 33 of the Insurance Decree,[43] no person shall transact business in Nigeria as loss adjuster unless he is licensed by the Director of Insurance. Such an applicant must satisfy the Director by being duly incorporated as a company under the Companies and Allied Matters Act; has a paid-up share capital of not less than N100,000.00; has as his Chief Executive a person who is a member of the Chartered Institute of Loss Adjusters or equivalent professional qualification, or has in his employment a qualified loss adjuster who is responsible for the conduct of the business, and where he has been carrying on business before the commencement of the decree has a person though not yet qualified, but has at lease 10 years working experience with a Chartered Loss Adjuster.

The license is renewable yearly and the director is also vested with wide powers either to refuse to renew or cancel altogether an already inssued license. It must be pointed out here, that the decree prohibits an insurer from owing loss adjusting companies.[44] In effect a loss adjuster shall be an independent person.[45]

The Role of The Loss Adjuster

From the foregoing, it would be seen that a loss adjuster is an independent person employed by the insurer in order to investigate claims on its behalf. In performing this function, the loss adjuster, therefore, stands in the position of agent to the insurer. Thus, it is submitted that the law governing the relationship of principal and agent shall apply between them, the insurer being the principal in this case, and the loss adjuster being the agent.

In investigating the claims, therefore, the loss adjuster must act in good faith, and not unreasonably or capriciously. He must observe the duty of care and diligence, and must not be negligent otherwise he would be liable to the insurer.[46] If for example, the insurer loses money by paying a claim

43. (Supra).
44. See 33(7) of the Decree (supra).
45. By this I mean a person in law, which includes a company.
46. C.F. Lowe, op cit generally on duties of the Agent to the Principal.

which they should otherwise not have paid, due to bad investigation by the loss adjuster, it is submitted that the latter will be held liable to indemnify the insurer for the loss.

Finally, even though he is the agent of the insurer, the loss adjuster in the investigation of claims, must always have at the back of his mind, the reputation of his principal and also remember the following words of a learned writer on claims.[47]

> ***"A claims handler has to combine a lot of qualities. He's got to have a thick hide, but be understanding and flexible. He's got to try to maintain an even keel, and steer a course which is acceptable to the finances of his company (principal). He must straddle a line between parsimony and lavishness, not being too stingy or overtly generous. Yet the work is done amidst the hostilities of a harsh legal environment and occasional deceit from multiple parties, while trying to resolve complex issues affecting the lives of people who may or may not be as disabled as they allege."***

47. **See Bill Kizorek, Fishy Claims Experts In Colour published by P.S.I. publications 1163 E. Ogden Ave. Suite 705 - 360; Naperville, K., U.S.A.**