MARINE INSURANCE IN NIGERIA

Written By Rufus OlaOluwa

MARINE insurance is part of maritime business regulated by maritime law. Maritime law regulates activities of states, its agencies and other authorised persons to carry out legimate business in the coaster water territories or sea waters over which states have both civil and criminal jurisdictions.

Maritime law is closely associated with the international law of the sea. This is because international law of the sea regulates all the seas and oceans of the world, delimitating them into relevant areas and establishing different legal regimes over the areas.[1] These different legal regimes concerns the rights of the coastal states, the land locked states and other states concerning transit, innocent passage, and the use of the resources of the seas including environmental protection and establishing principles of freedom of the seas and the users of the high seas and the sea bed.[2]

Maritime law on the other hand, relates to the regulation of the trade and economic activities of states and legal persons trading across borders using the sea. Economic activities of businessmen without insurance to serve as a security against any peril as sea will surely lack economism. This is why marine insurance is today regarded as a component part of maritime business and subsequently part of maritime law.

Insurance is an intricate economic and social device for the handling of risks to life and property. It is social in nature because it represents the cooperation of various individuals for mutual benefitt by combining together to reduce the consequence of similar risks; many people pay premium to bear out or indemnify the unfortunate few for the losses that may occur.[3]

DEFINITION

Since the insurance laws do not provide for a general definition, it is not easy to define but describe what insurance is. The economist see insurance as an economic device for the protection of risks in business. The lawyer conceives of the concept of insurance as a legal contract to give protection to people.

Generally, the fundamental characteristics of insurance include:

1. The transfer or shifting of risks from an individual to a group: and
2. Sharing of losses on equitable basis by all members of the group.

MARITIME INSURANCE

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This is a contract whereby an insurer undertakes to indemnify the assured on the extent thereby agreed against losses incident to a marine adventure.[4]

Marine insurances are usually on ship, goods, freight, or profits, against maritime perils, such as perils of the seas, fire, war perils, pirates, thieves, capture, seizure, restraint of princes and peoples, jettison, barratry, and other like perils. The contract is contained in a policy of sea insurance, which may be for a voyage, or time, or for both a voyage and for a time or may be a floating policy, which leaves the name of the ship or other particulars to be defined by subsequent declaration.

Almost all policies effected in the U.K. are modelled on a policy called Lloyd's policy, recognised and scheduled to the Marine Insurance Act of 1906. The main Act regulating the marine insurance business in Nigeria is the Marine Insurance Act of 1961 which was a replica of the English Marine Insurance Act of 1906. The contract of insurance in Nigeria is also governed by the Insurance Act of 1976 and the Insurance Decree of 1991[5]. Since the promulgation of the Insurance Act 1976 and Insurnace Decree 1991, marine classes of Insurance had a normal and steady growth in term of premium income. The provision that Insurance on all imports into Nigeria must be effected by insurers registered under the Nigerian Insurance Laws provides a booster to the marine insurance business.[6]

The marine insurance contract is strictly that of indemnity. It is ordinarily based on the value agreed upon in advance, unlike fire insurance where it is limited to the actual loss sustained, value of which may be greater or lesser than the value of actual risk.

The marine insurance contract is embodied in a document called a "policy." The underwriter agrees to indemnify the assured against loss or damage caused by certain specified perils called "maritime perils" in consideration of the payment of a certain sum called the "premium."

The contract may be extended beyond maritime perils to risks on inland water and to risks incidental to, and during the construction and launching of vessels. However, there are a few inland water ways in Nigeria and the coverage of the policy may cover the ship within the inland waters.[7] It should be noted that a contract is one of marine insurance notwithstanding that it embodies mixed sea and land perils.

THE SUBJECT MATTER OF MARINE INSURANCE

Every lawful marine adventure may be the subject matter of marine insurance.[8] Marine adventure according to S.5 of Marine Insurance Act 1961 means a situation where:

(a) any ship, goods or other movables (otherwise called "insurable property") that are exposed to marine perils;

(b) the earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit or the security of any advances, loans or disbursements is endangered by the exposure of insurable property to maritime perils; and

(c) 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.

This section further defines "maritime perils" as "the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barrantry, and any other perils, either of the like kind or which may be designated by the policy."

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Maritime Insurance may be effected in relation to all interests which are exposed to "maritime perils." The following are the popular types of marine insurance:

1. **HULL INSURANCE** - This is an insurance of the vessels and its equipment. The equipment include machinery, tools, coal, engine stores and furniture and fittings. The hull policy is a matter of registration concerning the business being transacted and the insurer may exclude certain hazardous types of risks.

2. **CARGO INSURANCE** - The insurance of cargo is the insurance of goods and merchandise on board and this does not include the personal goods and properties for the crew and passengers.

3. **FREIGHT INSURANCE** - In order to prevent losses associated with cargoes being destroyed or the vessel being lost on the way or some other difficulties making the shipping company to lose its freight, it may effect a freight insurance to cover such eventualities. If the cargo insurance is perfected by the owner of the cargo, freight insurance is perfected by the shipping company i.e. the transporter.

4. **LIABILITY INSURANCE** - This includes liability to third party by reason of hazards on the sea.

Maritime Perils

The perils of the sea refer to unfortunate accidents, casualties at sea which might occur. It covers losses causes by the sea water, stranding, cyclone, storm, lightening, fog, rough weather, collision with other ship, striking upon a submerged rock or icebergs. War perils cover lost incurred owing to hostile acts of the enemy. Pirates and Rovers are sea robbers and rioters who attack the ship from the shore. Jettison refers to throwing part of the cargo overboard into the sea in order to lighten the ship in view to save the ship and residue of the cargoes in an emergency. Barrantry means wrongful act wilfully committed by the captain or crew in contravention of their duties, thereby causing prejudice to either the owners of the cargoes or the ship or both of them. For example, setting fire on the ship intentionally.

The perils of the sea does not include the ordinary tear and wear in the ordinary course of usage of the ship. For example, the malfunctioning or breakage of a part of the ship does not constitute perils at sea.

Therefore a ship is required to be sea worthy before commencing a marine adventure. In the case of **Narumal & Son V. Niger Benue Transport**[9], the supreme court stated that "to be sea worthy, a ship must be fit in design standard, condition and equipment to encounter the ordinary perils of the voyage.

But the duty to supply a sea worthy ship is not equivalent to a duty to provide one that is perfect, and such as cannot break down except under extraordinary peril. What is meant is that the ship must have that degree of fitness which an ordinary careful and prudent owner would require his vessel or ship to have at the commencement of her voyage, having regard to all the problematic circumstances of it.[10]

THE MARINE POLICY

This is the document specifying the terms and conditions of the contract of marine insurance. Five essential particulars or details must be specified in every marine insurance policy. According to S.25 of the Act, the particulars include:

1. The name of the assured or any person who effect the insurance on his behalf;
2. The subject-matter insured and the risk insured against;
3. The voyage or period of time or both as the case may be covered by the insurance;
4. The sum or sums insured;
5. The name or names of the insurers.

According to S.26 (i) of the Act, a marine policy must be signed by or on behalf of the insurer, provided that, in the case of corporations, the corporate seal must be sufficient or else, as is usually the case, by the signature by a director or by a duly authorised officer.

The policy of marine insurance must be duly stamped under the stamp Act.[11] The insurer must make out or execute a duty stamped policy of insurance within one month of receiving the premium. Failure by insurer will make them liable to the payment of a fine[12]

KINDS OF MARINE POLICIES

Marine Insurance policies are in one form (written form) but they are of different kinds. They are known by different names, according to the manner in which they are executed or the risks which they are intended to cover. These kinds include:

1. **Voyage policy** i.e. from one place to another e.g. from Lagos to London.
2. **Time policy** e.g from 1st of February to 1st of March, 2000.
3. **Voyage and Time or Mixed policy** - This is a combination of "voyage" and time policies e.g. from Lagos to London for the period 1st of June to 2nd July, 2000.
4. **"Port" Policy** - This policy covers a ship while in a particular port or in a number of ports.
5. **Value Policy** - This policy specifies the agreed value of subject-matter insured e.g. policy for N10,000.
6. **Unvalued Policy** - This policy does not access the value of the subject-matter. This may be ascertained when the peril occurs. This will be governed by the Act[13]
7. **Floating Policy** - This policy describes the insurance in general terms and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration by the assured when the risk is actually run.
8. **Policy Proof of Interest (PPI)** - This type of policy is issued when the assured has no insurable interest in the subject-matter insured and has no expectation of acquiring such an interest at a later date. It is also called "Honour Policy." In law, this is a wagering contract and generally void. However in practice, the "Honour" clause gives it validity.
9. **Lost or Not Lost Policy** - This is a policy issued to the assured at a time the assured cannot ascertain whether the subject matter is safe or not - since the cargo has been sent before the information came to him. It will be void if the assured knew that the cargo is lost or if the insurer knew that the cargo has arrived at its destination.

The marine insurance contract is strictly that of indemnity. It is ordinarily based on the value agreed upon in advance, unlike fire insurance where it is limited to the actual loss sustained, value of which may be greater or lesser than the value of actual risk

Many of the fundamental principles which govern non-marine insurance are applicable to marine insurance. For example, the principles **of utmost good faith (Uberrimaefide) and the rights of subrogation and contribution apply to both types of insurance.** But although both types of insurance share similar principles in common in some cases even where the principles are identical, their application may vary and in other cases they are divergent.

The main differences which exist in principles or their application between marine and non-marine insurance may be summarised as follows:

1. Although the requirement of insurable interest applies to both types of insurance, in marine insurance unlike non-marine insurance, it is enough if the insured's interest attaches at the time of loss.[14]
2. While in the case of both types of insurance, the insured is bound to disclose material facts, previous refusals to insure by other insurers will generally be held to be material in non-marine insurance but not in marine insurance cases.[15]

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3. A contract of marine insurance cannot be enforced unless it is embodied in a formal policy,[16] but a contract of non-marine insurance is not required to be in any special form, and it is enforceable even if it is only in oral form.
4. The amount recoverable under a marine policy is measured by the value at the commencement of the risk and not by the value at the time of the loss [17] In non-marine insurance, on the other hand, it is the value at the time of the loss that supplies the measure of indemnity.[18]
5. A contract of marine insurance entered into in a good faith by an unauthorised agent may be ratified after loss [19]. A contract of non-marine insurance, on the other hand, cannot be ratified after loss.[20]

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CONCLUSION

The present day world relations are based on interdependence of nations and peoples on one other. This is due to unequal distribution of goods, services and labour across the globe.

It becomes imperative for countries and nations to exchange scarce and needed goods either by barter or by financial mechanisms developed especially within the capitalist economic system.

The exchange of goods, especially heavy duty technical machines and raw materials, are mostly done by means of sea transport. Economic activities between nations are more readily done through the seaports of coastal states. Even enemy land-locked nations have not much of a choice than to deal with coaster states for the service of their economic development.

Maritime insurance readily occupy a favoured position in maritime activities between different states. Because of its peculiarity and inevitability, it has developed its principles and rules slightly different from those of non-marine insurance but generally retaining the same principles where necessary as stated earlier on. It is not a misnomer for marine insurance to have its principles slightly different from non-marine insurance, this is because the conditions and the platform on which it operates is radically different from those of non-marine insurance.

It is hoped that the improvement on scientific - technical discoveries space technology and satellite will alleviate some of the problems of maritime business and this will in turn enhance positive and more efficient changes in marine insurance business.

Credit:

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2. See generally, the 1982 UN Convention on the Law of the Sea.
3. Yerokun, Olusegun Insurance Law in Nigeria 1992 p.1
4. S.3 Marine Insurance Act 1961
5. Insurance Decree No. 58 of 1991
6. S.43 Insurance Act 1976 and S.62 Insurance Decree No. 58 1991
7. Yerookun O. Op Cit p.362
8. S.5 Marine Insurance Act 1961
9. (1989) 4 SCNJ 107 at 131
10. Yerokun O. Op. Cit. Pg. 365
11. S.83 of Stamp Duty Act, 1955 (cap 51)
12. S.85 of Stamp Duty Act, 1955, see also Stamp Duties (Amendment)Act, 1961
13. S.29 Marine Insurance Act 1961
14. S.4 Marine Insurance Act 1961
15. London Assurance V. Mansel (1879) 11 ch.D. 363 at 368
16. S.24 Marine Insurance Act 1961
17. Ibid S.18
18. Re Wilson & Scottish Insurance Co (1920) 2 ch.28.
19. Marine Insurance Act 1961 S.87 See also Williams V. North China Insurance Co. (1876) I.C.P.D. 757
20. Grover V Mathews (1910) 2KB 401.

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