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An Appraisal of Insurance Policy as Measures of Validity and Enforceability if An Insurance Contract in Nigeria

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ABSTRACT

Insurance policy denotes a document containing details and terms of an insurance contract between the insurer and insured. It is an instrument in writing, by which one party (insurer) in consideration of premium paid, engages to indemnify another party (insured) against a contingent loss, by making payment in compensation whenever the event insured against happens. A policy in a strict sense is a document that contains details of a contract which has been made against the insured perils for which the parties contemplate they would be liable upon occurrence. Whenever a damage or loss occurs in respect of a risk of 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. If there were no losses resulting in claims, the need for insurance would never arise. 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 within the scope of the policy wordings, the tendency is to blame it all on the insurance company and this is a major area of conflict between insurers and the insured.

This appraisal, therefore, critically examines and evaluates insurance policy as measures of validity and enforceability between parties under an insurance contract in Nigeria.

ARTICLE DETAILS

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1. INTRODUCTION

The terms "Policy" according to Osborn's Concise Law Dictionary denotes a document containing a contract of insurance or a document which contains terms of the contract. In a more explicit manner, a policy is a instrument to re-coupe or mitigate losses effected between the insurer and the insured, whereby the insurer agrees to pay money for destruction or damages or do some other things for the compensation on the happening of an event.

Contract of insurance may be oral or written, but in practice, a contract of insurance must be in written form. Nigerian Insurance Act (2026) Section 141 provides that "The contract of insurance must be embodied in a policy". Thus in National Insurance corporation of Nigeria v. Power Industrial Engineering Co. Ltd.[1] it was held that a contract of insurance which is not embodied in a policy remains inadmissible. This position also enjoys statutory protection under Section 141(1) of Insurance Act 2025, while the name of the insured must be specified in the policy under section 142 of the Insurance Act 2025. Also, the insured must always seek professional advice to ensure that they have a good and enforceable insurance policy in the event of a claim arising from loss or damage to the insured property as in Jessica Trading Coy Ltd v Bendel Insurance Co. Ltd.[2] Again, the terms and conditions or warranties of the policy must always be complied with as decided in Edokpolor Coy Ltd v Bendel Insurance Co Ltd,[3] where it was observed by the Supreme Court that where the place of departure is specified by the policy and the ship instead of sailing from that place sails from any other place, the risk shall not attach. In this instance, the insured breached the provisions of the policy by

[1] *National Insurance Corporation of Nigeria v. Power Industrial Engineering Co. Ltd (1986) I NWLR PT 14 and 34* [2] *Jessica Trading Coy Ltd v Bendel Insurance Co. ltd (1996) 10 NWLR pt 476* [3] *Edokpolor coy Ltd v Bendel Insurance Co Ltd (1997) 2 NWLR pt 486, 131.*

departing from the port of Seville instead of Hamburg as specified in the policy. The policy thereby could not attach to the loss suffered by the insured. This is in confirmation with statutory endorsement of Section 156 of the Insurance Act 2025 that, the insured must comply with the specification of the place of departure and destination inserted in the policy.

2. NATURE, DEFINITION AND LEGAL PRINCIPLES 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 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[2].

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,[3] 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,[4] 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.

Also Lord Alexander J. made it clear in the case of Prudential Insurance Company v Inland Revenue Commission,[5] 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,[6] 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

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

[3] *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.*

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

[5] *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.*

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

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,[7] 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,[8] 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',[9] 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.[10]"

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) 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[11].

There has also been notable judicial pronouncement on the meaning of insurance. Lawrence J. in Lucena v Crauford,[12] 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,[13] 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,[14] Insurance, or as

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

[8] *th*

J *Greene, Risk and Insurance, (4 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.*

[9] *th*

H Ivamy, General Principles for Insurance Laws (6 ed) Butterworth, London, 1986.

[10] *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.*

[11] *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.*

[12] *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.*

[13] *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.*

[14] *ndth*

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,[15] 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:[16]

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;[17]

(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[18].

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[19] where the assured has no insurable interest in the property he cannot recover under the policy as he has

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Lord Couch (1984) on insurance 2 ed. Pg 4-5, cited in the black law dictionary 7 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.

[15] *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.*

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

[17] *"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.*

[18] *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.*

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

suffered no loss and the insurer is under no duty to indemnify him.[20] 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.[21] 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[22] He must also give credit for any sums received by him from any person that damages his vessel when claiming from his insurers.[23] 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, [24] 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.
However, the legal principles of insurance such as, insurable interest, utmost good faith, subrogation, proximate cause among others must be embedded in the policy with the provisions therein strictly adherent to, as the breach or absence of any of the fundamental principles lead to unenforceability and subsequently repudiation of claims.

3. CLASSIFICATION OF INSURANCE POLICY

Insurance policies under any type of insurance are classified according to the manner in which the subject matter described and according to the amount recoverable in the event of loss under the contract of indemnity. Policies are usually classified into two: Valued policy and Unvalued policy

(a) **Valued Policy**

This is a policy which specifies the agreed value of the subject matter insured. In property insurance, the value recoverable may be fixed by an agreement and inserted in the policy. This valuation is binding on the parties in the contract for the purpose of all the rights that may arise. In Burned v. Rodocanachi;[25]
Lord Selborne asserted that;
for the purpose of the contract of insurance and for the purpose of all right arising from the contract, it may well be that the valuation is a valued policy is conclusive, and the effect may be that for those purposes the assured is not entitled to say ‘’my loss has been greater than that which has been covered by the policy**.**

This was further confirmed in Felicitas Aguilar B. v. Heirs of Luisa, Phillipine SC, again in Fiese v Aquilar,[26] where Lord Manfield C.J. declared that:
it has been heard again that it is unnecessary to prove the amount of interest under a valued policy. Therefore, you must take it that the value insured is the plaintiffs interest.

However, the assured can claim that the amount on the policy was not the amount or real value of property, therefore, not conclusive probably as a result of fraud or mistake in the policy. Thus, in the absence of fraud, the value fixed by the policy between the insurer and the insured, is conclusive as the insurable value of the subject matter intended to be insured whether the loss, be total or partial. In the event of partial loss, the assured must prove that he is entitled to recover the amount of his loss. Section 30 of Insurance Act, 1961 states that: a valued policy must specify the agreed value of the subject matter insured.
Section 30(3) further provides that:

[20] *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.*
[21] *See generally section 33 Nigerian Marine Insurance Act 2004.*
[22] *Yorkshire Insurance Co. v Nisbet Shipping Co. Ltd. (1961) 2 All ER 487*
[23] *Goole Ind Hull Steam Towing Co. Ltd v Ocean Marine Insurance Co. Ltd (1927) LL Rep 242 KBD*
[24] *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.*
[25] *Burned V Rodocanachi (1882) 7 AC 333;*
[26] *Felicitas Aguilar B. v. Heirs of Luisa (2022), Phillipine SC and Fiese v Aquilar (1597) SC.*

Subject to the provision of this Act, and in the absence of fraud, the value fixed by policy, is as between the insurer and the assured, conclusive of the insurable value of the subject matter intended to be insured, whether the loss be total or partial.
Note further that, the measure of indemnity under a valued policy is guided by the depreciation value and the market value before or after the loss. The Nigeria Insurance Act (2025) Section 58 further strengthening the importance of actuarial valuation of insurable assets.

(b) **Unvalued Policy**

The Insurance Act of 1961 provides for the definition of what is an unvalued policy in the following terms:
An unvalued policy is a policy which does not specify the value of subject matter insured, but subject to the limit of the sum insured. It leaves the insurable value to be subsequently ascertain in the manner herein before specified.
In an unvalued policy, the sum recoverable by the insured is not fixed by the policy, but may be ascertained according to the sum insured or the value at the date and time of the loss. The sum specified is the amount of insurance, if any, merely indicates the amount beyond which the liability of insurers does not extend or covered. For example, in marine insurance, specific policy is written for each and individual shipment while open policy, on the other hand, provides coverage for all goods shipped by the insured, while the policy is in effect subject to declaration of each shipment. Policies are also classified in voyage and time policy. In this case, the policy specifies the attachment and duration of the risk and list of perils insured against. A number of risks which the insurer is not willing to bear are excluded from the cover provided by the policy.
Insurance policy may be determined by the parties, or cancelled by the insurer, for instance where
it has been induced by fraud on the part of the assured to issues it as in Robinson v Tommy.[27] If the policy contains terms which have not been agreed upon by both parties, it may be rectified. If a material alteration in the terms of the policy is made by the assured without the consent of the insurer, the insurer is entitled to avoid liability as in Stephen v Australasian Insurance Co.[28] The policy often contains a promissory warranty that the assured shall undertake that some particular things shall or shall not be done, for instance, that the insured vessel will sail by a specified date. Policy of Insurance can be assigned to another party, where there is no provision in the policy to the contrary.
There are various rules relating to the construction of the words contained in a policy, that may
affect the precedent of the rules that exist for the guidance of the court. It is to be noted, however, that after the policy has been effected by the insurer, the broker has certain duties, authorities and rights which will depend on whether or not he has received express instruction from the assured. In the practice of insurance business, policies are known and described by different names according to their manner of execution and the nature of the risks covered. However, payment of premium is a condition precedent for issuance of a policy by an insurer and evidence of contract of insurance as observed by Kazeem JSC in the case of NICON v Power Industrial Engineering Ltd[29].

4. TYPE OF INSURANCE POLICY.

Insurance policy is divided into Life and Non-Life also known as General Insurance policy which is further divided into Marine and non-Marine policies. such as fire, burglary, motor, fidelity, consequential/loss of profit, travels, home owners occupiers, contractors all risks Insurance policies among others.
Life Assurance provides a lump sum amount of sum assured at the time of maturity or in case of death of the policy holder. Life Assurance either endowments or accidental benefits are acknowledged as an investment and not contract of indemnity. Falilu A. Agoro v. Niger Insurance Plc [30]: involved disputes over gratuity benefits owned by an insurance company.
Life Assurance is a long term policy that usually offers protection against life risks where the Assured individual is promised to be compensated by the assurers' company for uncertainties and ambiguities of life related to death. Moses Odigwe v. Cadbury Nigeria Plc[31]: involves disputes over compensation/ insurance claims related to workplace injuries.
Non-Life of General Insurance policies covers assets, loss or damages to insured properties, goods and services, dishonesty, perils of the sea, business interruption, failure and loss of profits among others by providing compensation to the insured when the invents insured against occurred. They are contract of indemnity that aims to protect, restore or compensate the insured who has suffered a loss upon payment of premium back to the financial position which he occupied before the loss on the happening or occurrence of the event insured against. The policy also takes care of legal liabilities and other risks covered.

[27] *Robinson v Tommy (1811) 2 Camp 158*
[28] *Stephen v Australasian Insurance Co. (1872) CR 8 CP18.*
[29] *Kazeem JSC in NICON v. Power Industrial Engineering Ltd (1986) INWLR (Pt 14) at 34*
[30] *Falilu A. Agoro v. Niger Insurance Plc (2022) NWLR.*
[31] *Moses Odigwe v. Cadbury Nigeria Plc (2023) NWLR.*

The amount specified in the policy is the sum insured which during the policy period symbolizes the insurers maximum liability for claims. It usually covers a short period of time or one year but renewable thereafter. The duration can be longer depending upon the type of insurance.

5. CONSTRUCTION OF A POLICY OF INSURANCE(RULES)

Every insurance policy has five parts: declarations, insuring agreements, definitions, exclusions and conditions. Many policies contain a sixth part: endorsements. These sections are guide posts in reviewing the policies. Examine each part to identify its key provisions and requirements.

Declarations - Identifies who is an insured, the insured's address, the insuring company, what risks or property are covered, the policy limits (amount of insurance), any applicable deductibles, the policy number, the policy period, and the premium amount.

Rules for Construction of Insurance Policy

1. The insured bears the duty of invoking the cover afforded under the policy together with any proviso to any exclusion, whilst the insurer bears the duty of invoking the exclusion.
2. Insurance contracts are construed using the same principles that apply to commercial contracts.
3. Special conditions added to a standard form contract are given greater weight unless otherwise agreed between the parties. A specific provision is usually given greater weight than a general provision.
4. Clauses in dispute should be given their ordinary and natural meaning, read in light of the contract as a whole and the object of the contract.
5. Contracts should be construed in a way that a clause is not rendered useless
6. A court is entitled to consider headings and marginal notes when interpreting a clause, unless the contract states otherwise. However, the wording of the clause must prevail.
7. The contract must be read in its commercial setting so as to fulfil and not restrain its commercial purpose.

The contra proferentem rule is to be adopted by the court as a last resort to remove ambiguities where the approaches outlined above have failed. The contra proferentem rule provides that, in interpreting documents, ambiguities are to be construed unfavourably to the drafter.

6. ASSIGNMENT OF AN INSURANCE POLICY

An assignment of an insurance policy is the transfer of ownership rights from the policyholder (assignor) to a third party (assignee). Primarily common in life insurance, it enables using policies as collateral for loans or transferring ownership, which is generally irrevocable. It can be absolute (total transfer) or collateral (limited, usually for debt security).

Key aspects of policy assignment:

- **Absolute Assignment** transfers all rights, title and interest to the assignees
- **Collateral Assignment** is a temporary transfer to a creditor (e.g. a bank) for security, which is released upon debt repayment.
- **Process:** Assignment must be done in writing, typically through an endorsement on the policy or a separate instrument, and requires notifying the insurer.
- **Effect:** The assignee “steps into the shoes” of the insured gaining control of policy benefits and rights, including the ability to surrender the policy or change beneficiaries.
- **Validity:** The assignee must have an insurable interest in the insured person or property at the time of loss.
- **Nomination:** Revocable designation of who receives money after death (nominee receives, but doesn’t own).

7. DELIVERY OF POLICY DOCUMENT

Policy document delivery is the formal process of providing an insurance contract to a policyholder, serving as proof of coverage and detailing terms, coverage, and responsibilities. It is finalized when the insurer sends the document via paper (mail/hand delivery) or electronically (secure email/portal), often requiring proof of receipt or a signature to confirm the policy is in force.

Key Aspects of Policy Delivery

- Methods: Common methods include physical mail, in-person, email with a secured link, or through a, client portal.
- Electronic Delivery (E-delivery): Requires insured consent for electronic transmission of documents. This often includes e-signature tools for efficiency, such as those discussed in the
  Equitable E-delivery Process guide.
- Purpose: Ensures the policyholder understands coverage and provides a written, binding document for claims and legal purposes.
- Timing: Delivery typically occurs within a specified timeframe, often soon after underwriting and premium payment.

Legal and Formal Requirements

- Proof of Receipt: Insurers frequently use registered mail or electronic tracking to confirm delivery.
- Regulatory Compliance: Electronic delivery cannot generally replace paper if the insured does not consent, or for certain legally required paper documents (e.g., in ANY).
- Content: The document outlines the contract, exclusions, and key information like coverage amounts.

The delivery of policy document is statutorily provided by Nigeria Insurance Act (2025) section 17 as follows:

1. The policy document in respect of a contract of insurance shall be delivered to the insured on or before the commencement of the policy.
2. An insurer who contravenes the provisions of this section shall be liable to a penalty of not more than 5% of the premium received and such other penalties as may be prescribed in regulations issued by the commission.
3. An insurer shall not be entitled to rely on any term, condition or warranty in a policy of insurance to refuse a claim where it is established that the policy document was not delivered to the insured or his broker before the loss occurred, except where the loss occurs within the period specified in subsection (1).
4. The means of delivery of policy document under this section shall include physical delivery by insurer, agent broker or courier services providers, email or other contractual electronic means.
5. Where email or other contractual electronic means are deployed, the insurer is bound to ensure that the policy document was actually received.

8. ALTERATION OF POLICY

Policy may be altered with the consent of the parties. Alteration is usually made by an endorsement of the policy, signed or initiated by the parties. All policies, however, can be altered, rectified or terminated by either parties on mutual concern. Only those who consent to the alteration will be bound by it. If the policy is varied or altered in any respect by the assured alone, it becomes void but such a result can only arise when the alteration is material. Therefore, in Sanderson v Symonds[32], where the policy allowed the ship to sell, barter, and exchange goods at any of the ports to which under the terms of policy she might proceed during her stay and the assured inserted the word 'and trade' after the words 'her stay', the court held that alteration was not material. Accordingly, the insurer was liable although they assured had not signed the alteration.

Alterations in the nature of the voyage, by changing the port of destination, the flight, or the day of the sailing, have been held to be material alterations by which the policy was avoided, except in regard to those insurers who had signed or initiated the alterations. In Norwich Union Fire Insurance Co v. Colonial Mutual Fire Insurance Co. Ltd,[33] a vessel was insured for $15,000 by her owner under a policy issued by the plaintiffs. It was reinsured $2,500 with the defendants. The reinsurance policy stated:

The said ship and goods merchandise are and shall be valued of $2,500 on hull and machinery, etc. valued at $313,050. Being against the risk of total steamer only subject to the same clauses and conditions as the original policy and amount to pay as may be thereon during the currency of the original policy the plaintiffs as to the terms concerning the hull and machinery and the original policy was altered to read: Agreed to reduce policies on hull and machinery valued at $313,050. to pay $225,000 in event total loss, constructive total loss and return premium 10 percent gross on $313,050'

The defendants did not assent and were not aware of the alteration in the original policy. Shortly afterwards, the vessel sank and became a total loss. The owner claimed from the plaintiff the original value of the vessel as $313,050, but ultimately compromised for $225.000. The plaintiff paid them $12,220, which was the compromised proportion of the $2,500 which was the sum insured under the reinsurance policy. The plaintiff, however, claimed the balance of the $2,500. Cardie, J held that the action failed because the alteration was a material one and had been made without the assent or knowledge of the defendants, who was accordingly discharged from the liability under it. He observed further as follows:

that the parties first embodied their new bargain in a "slip" and then endorsed the effect of the "slip" on the reinsurance policy. If this was not a variation of a material character. I know not what a material variation can be. The original right and obligation under the head policy were altered in substantial fashion. Premiums were varied and returned, the amount payable on total loss, constructive total loss was deliberately altered to a striking extent, vis from $313.050 to 225,000. It cannot, possibly be said that the policy as altered was the same as the original policy. The very object of the parties was to effect a serious alteration. It is true that the "thinking" i.e. the physical subject-matter of the reinsured policy remained the same, but the foundation of the reinsurance policy, to wit, the head policy, was changed in substantial manner. In other words, the original foundation of reinsurance policy had in my view ceased to exist. The original policy had, in substance, become a fresh policy with different terms. The alteration had been effected without the assent or even the knowledge of the defendants. The only sound rule seems to be that the head policy

[32] *Sanderson v Symonds.(1819)1brod & Bing426 see further sander v McCullom 1819, Moore CP5*

[33] *Norwich Union fire Insurance co V. Colonial Mutual Fire Insurance Co. Ltd (1922) KC 12*

cannot be altered save with the consent of the reinsurer. It is not without interest to refer to a branch of the law which although different in some ways, yet presents many features in common with insurance. I refer to suretyship. It is well settled that if a creditor, without the consent of the surety, varies the terms of his bargain with the debtor, the surety is prime facie discharged.

9. RECTIFICATION OF THE POLICY.

The general power of the court to rectify mistakes in a document has often been exercised in relation to policies of insurance as confirmed in Motteya v London Assurance,[34] where the policy was expressed to be on the "Elyse" from fort St. George in the East Indies to London. Before the execution of the policy, a liability had been attached to the agreement and entered in the insurance company's book, signed by the assured's agent by two directors on behalf of the company. In the book, the risk was described to be at and from St. George. The loss was not recoverable on the policy as it stood, but if the policy were made to agree with the entry in the book, the claim could be sustained. Lord Hardwick LC held that the intention of the parties was made clear by the wordings and the variance in the policy, being a clerical error, ought to be rectified. The mistakes must not however, be merely that of one party desirous of correcting it, should commence the necessary proceedings immediately the error is discovered. He must not delay the expectation of extents which may make the mistakes operated in his favour, since in that case he would be held to have adopted the policy as executed.

In Low lands SS Co v. North of England Protecting and Indemnity Association[35], a vessel was insured with a mutual insurance association against war risk and was taken over by the admiralty and manned by naval ratings for the purpose as her owner believed, of proceeding to block a port in enemy occupations. This operation would have inevitably led to her destruction. Her owner thereupon informed the association of the proposed voyage. And it was agreed that the policy should be canceled as from the date of her sailing. Two days later she was lost on a voyage under an ordinary admiralty charter, and had not sailed on any expedition to the enemy port. Her owner maintained that they were entitled to recover for a total loss on the ground that the agreement to cancel had been entered into under a mutual mistake. The arbitrator to whom the dispute was referred found that there was no mutual mistakes and that the agreement had not been made on condition which had not been fulfilled, i.e. the vessel taking part in the expedition. The decision that the owner's claim failed, was affirmed by the court. Also, Onimas (Nig)
Ltd. v. Nze Bernard Chigbu[36], equity cannot substitute a new contract for the parties.

10. TERMINATION AND CANCELLATION OF THE POLICY

The parties may terminate the policy by mutual consent. When a broker terminates a policy, he must have clear authority for that purpose. When the seal of the insurance company is affixed to the policy, the contract is complete, the company then becoming merely the custodian of the policy for the assured. Where a broker, subsequent to the sealing of the policy without authority procured its cancellation, such termination was held to be ineffective and the assured was entitled to recover. Christopher Emenike Orji v. Industrial and General Insurance Company Plc.[37]: The claimant sought outstanding entitlements, highlighting disputes over payouts after employment termination.

The mere fact that, there is a good defense to an action on a policy, quite apart from fraud, e.g. a defense of unseaworthiness or deviation, will not entitle the court to cancel the policy. The court is not concerned with defenses to an action on a contract which is in fact, found to exist. But where it is showed that the policy was obtained by a fraudulent misrepresentation or fraud, the court will order it to be delivered up to be cancelled.[38]

Under time policies, the warranty of seaworthiness applies as of the very moment of attachment of insurance. This does not require that the vessel be absolutely seaworthy throughout the tendency of the policy, it merely requires that the "owner, from out of bad faith or neglect, will unknowingly permit the vessel to break ground in an unseaworthy condition." In addition, a breach will not void the policy under time policies; it only results in a denial of liability for loss or damage caused proximately by such unseaworthiness.

11. INSURANCE POLICY AS MEASURES OF VALIDITY AND ENFORCEABILITY

The validity and enforceability of an insurance policy are rooted in a contractual relationship where the insurer provides financial protection against specific losses in exchange for premium payments as displayed in the schedule of an insurance policy before coverage in compliance with the heavily regulated the insurance industry through the various Insurance Act and Decrees, most importantly, the Insurance Act 2003 and the recently promulgated Nigerian Insurance Act 2025, which dictates strict rules regarding premium payment, schedule, sum insured, inventory, duration of coverage, terms and conditions as contained in the

[34] *Motteya v London Assurance, (1851) 6 ECL 451*
[35] *Low lands SS Co v. North of England Protecting and Indemnity Association (1925) 22 LI LR 510.*
[36] *Onimas (Nig) Ltd. v. Nze Bernard Chigbu (2024) TL*
[37] *Christopher Emenike Orji v. Industrial and General Insurance Company Plc. (2023) CS.*
[38] *Honour v Equitable Life Assurance Society of Untied States (1990) 1 ch 852*

insurance policy and other factors that lead to the exposition of the importance of Insurance policy as measures of validity and enforceability of an insurance contract.

Insurance policy under any type of insurance be it Marine and non-Marine such as fire, burglary, fidelity, goods in transit among others are classified according to the manner in which the subject matter described in the policy and according to the amount recoverable in the event of loss under the contract of indemnity. The declaration in the policy document identifies the insured, the address, the Insuring company, the risk or property covered, the sum insured, policy limits, applicable deductible, the policy number, the policy period, the premium amount payable and all embodied in the policy document to remain admissible in the court of law. Insurance policy also takes care of legal liabilities of parties and other risks coverage of parties under an insurance contract. The amount specified in the policy is the sum insured which brings the policy period symbolizes the insurers maximum liability for claims. It usually covers a short period of time, quarterly, yearly or longer term but renewable thereafter depending on the type of the Insurance policy contract. It also enables continuity and maintenance of good business relationship.

The importance of the insurance policy as measures of validity and enforceability cannot be overemphasized especially, in the areas of:

- Compulsory Insurance: Enforcement is prioritized for mandatory policies, such as Motor Vehicle Third Party Insurance, Builders' Liability, Occupiers' Liability among others with penalties for non-compliance including fines or imprisonment.
- Claims Enforcement: For a claim to be validly enforced, the loss must be covered by the policy, and the policyholder must comply with all terms, including reporting within the specified time.
- Regulatory Oversight: The National Insurance Commission (NAICOM) is tasked with enforcing compliance, particularly with the 2025 reforms aiming to digitize the market and enforce "No ID, No Cover".
- Role of Evidence: In disputes, the policyholder must provide proof of loss. Negligence cases may require demonstrating that the policyholder or agent took reasonable steps to prevent the loss. However, non-payment or partial payment of premiums renders the contract of insurance unenforceable in court.

Flowing from the foregoing, insurance policy is a measure of the validity and enforceability of an insurance contract in Nigeria in accordance with the decision in the case of **NICON v Power Industrial Engineering Co Ltd**[39] that a contract of Insurance which is not embodied in a policy document remains inadmissible in court of law. This position also enjoys statutory protection under Section 141(1) of Insurance Act 2025, while the name of the insured must be specified in the policy under section 142 of the Insurance Act 2025.

12. CONCLUDING REMARKS AND RECOMMENDATIONS

Insurance policy generally emphasizes that insurance is a critical, non-negotiable component of modern commerce and financial planning that provides stability, risk transfer, peace of mind, proactive approach, including regular reviews of coverage, diversifying risk management and finally selection of financially stable insurers to protect against unexpected financial losses through yearly renewal.

Finally, findings in the paper revealed that most insureds are unable to have their claims settled as a result of a particular loss not covered under the policy coverage or a breach and absence of any terms, warranties, conditions either not embodied in the policy or complied with.

It is therefore highly recommended to the insured to always seek professional advice to ensure having a good and enforceable insurance policy coverage in the event of a claim arising from a loss or damages to the insured property. Also that the terms, warranties and conditions most always complied with. Whilst, it is recommended to the insurers to urgently embark on education, advertisements, review of existing Insurance Laws and effective dissemination of information to address the waning public perception.

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