

THE LEGAL AND MORAL CHALLENGES OF INSURANCE PRACTICE IN THIS MILLENNIUM WITH SPECIAL REFERENCE TO THE CONSTRUCTION OF MARKETING AND ETHICAL INSURANCE POLICIES

1.0 Introduction:

1.1 I must admit that this topic is intriguing, intimidating and overtly ambiguous. To have a clear thought on its expectation, I first resorted to unraveling the intention of the organizers of the forum. Happily however, I have to simplify the ideas to encourage myself with certain understandings, namely; that as far as insurance business is concerned, the gap between law and moral has been considerably reduced; that “construction” here stands more for designing of policies, than for interpretation of insurance contract terms, and that “marketable and ethical” stand for realistic and consumer-friendly policies. If my understandings are right, I hope I will flow with the audience, but if unfortunately my reading of the topic is wrong, then O God am in trouble!

1.2 The history and philosophy of insurance date back to earliest human endeavours on earth and rooted in moral, es spirit de corp, and being one another brother’s (and sister’s) keeper, commandership, social integration, and mutual cooperation among communities and population of persons exposed to similar risks, be it of maritime venture, mortality or natural disaster. People have

always come together to assist one another whenever challenged by disaster, death, sickness or liability or demand of business ventures. But when insurance became a business, and dealings between insurers and consumers, the need for law, to regulate the relationships became inevitable. Insurers objectives became to provide insurance services to the satisfaction of the consumers at a profit. Wherever are conflicting interests, there are bound to be some questions of ethics, mutual suspicion, doubts as to the partys' intentions.

- 1.3 In this millennium, characterized by global village concept facilitated by ICT and internet, and constant change, the expectations and demand of consumers of insurance products and other financial services are becoming more sophisticated, so that what was yesterday novel and of highest standard and quality today becomes ordinary and outdated. The primary challenge insurers now face and will continue to face is fashioning, designing and milling out contemporarily realistic and consumer-friendly insurance products and financial services which will meet and, if possible, exceed the expectations of global markets. This demands being imaginative, innovative and constantly researching our market environment. The secondary challenge is the way we draft our contract terms to ensure always that there is complete agreement of the

minds of the insurer, the insureds and sometime other third parties who may by quasi-contract, assignment or operation of law, have cause to benefit from the proceeds of the contract. This is perhaps one area where the issues of law, moral and ethic come to play.

2.0 Contemporary Challenges

2.1 Insurance is supposed to exist to ensure the survival of industry and commerce as well as other sectors of the economy. But there are a lot of contemporary challenges facing the industry that the survival of insurance itself is threatened. The challenges we have to deal with are grouped into 4: Legal, moral, millennium products of global warming, and global financial meltdown, and self-inflicted threats.

2.2 Legal

The legal challenges to insurance in West African sub-region which quickly come to mind include restrictions on:

- i. Entry, typically by minimum capital base and other requirements;
- ii. Exit from the business
- iii. Operation of insurance business
- iv. Investment of insurance funds
- v. Cross-border trading.

The legal environment itself can be unfavourable for example with retrogressive taxation laws, and, interpretation of provisions of statute and contract terms against insurers by the courts

2.3 Moral

- The contribution we make to our environment
- The extent to which we obey our national and business laws
- Perception by consumer of insurance services
- The image problem of insurance due to culture and ignorance
- Competition from other financial services in the sector
- Indifferent attitude to claims administration
- The exclusions on our policies
- How we interpret our contract terms

2.4 Self-inflicted Threats:

We must admit that there are self-inflicted injuries in our market such as:

- Soft market regime
- Resistance to change;
- Poor product offering;
- Continuous use of outdated standard terms contract;
- Forced selling instead of marketing
- Destructive competition

- Unethical practices, delays in settling claims or indifferent attitude to claims administration
- Lack of reliable statistics
- The insurance gap in our sub region

3.0 Response to the Challenges:

3.1 Faced with challenges and threats listed above, what should be our professional reaction as an industry saddled with crucial role of driving the economy and guaranteeing the survival of the society?

3.2 Moral Challenge, and Self-Examination, and Cleansing:

3.2.1 The Industry should first of all purge itself of all misdeeds, discussed under self-inflicted threats, and resolve to turn a new leaf.

(i) Embrace Healthy Competition:

On embrace we can only call for healthy competition among insurers bearing in mind that price war (or war of attritions) is not the only tool for completion. There is urgent need for co-operation in the area of statistics and information sharing.

Our restrictive terms, exclusions and clauses that deal with proximate cause, concurrent cause and successive causes, as well as the effect of warranties and their materiality on the loss should be seriously reviewed.

(ii) Construction of Marketable And Ethical Policies:

On construction of marketable and ethical policies, we suggest that our various markets should conduct products surveys to determine satisfaction gaps among consumer of insurance. It is also important to review our policy wordings to assess the headache which they give to the judiciary, insurance brokers, not to talk of policyholders. The untidy and ambiguous construction of our policies often leads to litigation at the time of claims. The development of insurance in our sub-region should start with designing of realistic products which meet the need of the inhabitants, with consumer friendly policy wording.

The industry should drop the concept of warranties, the breach of which has more damning consequence than condition. Breach of any term can only be consequential if it is absolutely material to a loss. Insurance brokers should be given opportunity to make input to policy terms and wordings, so that we move from standard terms contract to agreed terms contract.

In the case of micro-insurance, attempts should be made to produce one or two page policies with

simple wordings that would be understood by all stakeholders.

All relevant information, material, receipts, for example, needed to assess a risk should be obtained at inception i.e. at the time of underwriting and, not at time of loss or claim. Anti-fraud measures should be built into insurance contract from the beginning so that claims processing should be made more friendly.

(iii) Pragmatic steps should be taken to improve the industry's contributions and relevance to the economy and the society in terms to consciously reducing insurance gaps by deepening insurance penetration and density. The industry's service delivery strategy and awareness creation can minimize ignorance and inculcate insurance culture.

(iv) It is unfortunate that we rely mainly on Swiss Re Sigma as a source of insurance statistic in West Africa. Most often these figures are projections made before individual companies or markets' accounts are published. There is need for a West African (or WAICA) Insurance Directory and Insurance Statistical Digest. Attention to statistics should start with our individual companies, and individual markets.

3.3 Positive Response to Globalization:

Whilst global financial crisis is part of the negative effects of globalization, the global village concept is a positive challenge or opportunity because insurance is an international business. We need therefore to step up our insurance practice and service standard to the level of international best practices, corporate governance, underwriting and rating, product offering, claim settlement and international accounting standard and reporting. We should adopt the level of financial disclosure, the limit to the number of years an audit firm can be engaged, independent director, etc. We cannot operate in isolation.

3.4 Legal

3.4.1 We appreciate the fact that the primary objective of insurance legislation, regulation and supervision is consumer protection, and to ensure that insurance operations and investment are in the interest of the economy. We have to collaborate with the government and legislature to ensure that insurance laws are not inimical to the development and growth of insurance business. We need to work with all arms of government especially, the judiciary to ensure that application and judiciary interpretation of insurance laws are in consonant with the principles of equity, justice and international best practices. There are international

efforts to fight money laundering and drug trafficking. Insurers are expected to comply with these laws and numerous provisions demanding to the appointment of compliance office and whistle-blowers in their companies. These efforts have been incorporated into the laws of one various states, and Insurers should support the war against money laundering and drug trafficking.

3.4.2 We should be abreast with judicial interpretation of contract wordings and align our construction of policies and contract wording with the positive dynamics of development.

3.4.3 The industry should engage all civil and legitimate means to move against laws and government policies that are anti-insurance.

Above all there should be a deliberate programme to harmonize insurance laws in West Africa. Success with ECOWAS Brown Card and Harmonized Convention for Compensation of motor accident victims should motivate the industry.

3.5 Products of the new millennium

But perhaps the greater challenges facing the industry today is the emerging trends in the new millennium, which include:

- Environment – global warming, and weakening economies due to financial melt-down. The extent to which the global financial crisis will affect West Africa cannot yet be measured or imagined. But our sub-region has to contend with micro-economic crisis, banking confidence crisis, threatened capital market melt-down, and currency crisis. The adverse consequences of the global melt-down is coming heavily and quickly as evidenced by increasing unemployment in the real sector, and this is aggravated by weak and inefficient infrastructure in the sub-region.
- Poverty, hunger, health, diseases, HIV/AIDS, unemployment and migration.
- Terrorism, conflicts and militancy, new dimension in crimes: typical examples are cyber crimes, the situation in the Niger Delta Region of Nigeria, including kidnapping.
- Increasing incidence of piracy
- Fraudulent and exaggerated claims

3.5.1 Global Warming:

This phenomena can instigate certain types of risks categorized as with natural disasters e.g. tsunami, hurricane and earthquake. One may be tempted to

suggest special premium rating for designated geographical zones for example. While we can apply technical solutions, insurers could as part of their corporate social responsibility contribute towards afforestation e.g. by partnering with our various government, in tree-planting and re-afforestation programmes.

We also need to learn fast and partner with the international community, especially the advanced economies in finding and applying solutions to the impact of global warming. Some of the suggestions to global warming are:

- i. reduction in energy consumption, and
- ii. re-afforestation

3.6 The Global Financial meltdown

3.6.1 The problem of global financial meltdown is a hydra-headed monster which so far does not seem to have yielded to any solutions even in the developed economies. The immediate impact in West Africa are the weakening of national currencies the down-sliding of the capital market and adverse exchange rate. The negative aspect of globalization is that West Africa cannot be shielded from the scarcity of capital and dwindling interest earnings, credit crunch, and unemployment. Recession will also bring about underinsurance or non-

insurance as well as fraudulent claims with their attendance consequences.

3.6.2 Insurance industry cannot be immuned from the adverse effect of the melt-down. So the industry has to belt up and “in case of loss of pressure, wear its mask before helping infants or disabled persons.” There are some cautious solutions to proffer, and they include the following:

- Insurers should review their operational structure and business models in line with emerging realities
 - There is need for companies, to review their costs and expenditure profile
 - Companies should review and restructure investment strategies
4. Greater investment on human capital is expected, to be abreast of the development in risks and investment.

3.7 Critical Challenges of Poverty, Disease and Crime:

3.7.1 Response to critical challenges: How can Insurance respond to the critical challenges of poverty, hunger, unemployment, disease, HIV/AIDS, migration? Insurance is not charity, but the above challenges can be tackled through the strategic development of micro-insurance, and a policy of investment in agriculture, and

small and median scale industries. Collaborative public-private sectors effort will be required in this area. Our governments should be invited to contribute, or subsidize micro-insurance. Insurance companies and other players in financial services sectors should be required to invest a limited proportion of their post-tax profit in special poverty alleviation schemes to empower the rural small scale entrepreneurs.

3.7.2 New dynamics in crime, including cyber crime and catastrophic losses require new product offerings, new underwriting skills and risk management measures from insurers. The solution does not lie solely in exclusions.

4.0 Recommendation

At the risk of repetition, I recommend for discussion consideration and resolution the following:

For the West Africa insurance industry to tackle the contemporary challenges facing insurance industry in this millennium, the industry should:

1. Be ahead of the government and initiate reforms which could form the core provisions of future insurance legislation
2. Manage insurance business in consonant with international best practices, in areas of service

standards, including product offering and claims, corporate governance, financial accounting standards, etc.

3. Engage civil and legitimate means to move against laws that are inimical to the development and growth of insurance.
4. Study and learn from judicial interpretation of insurance contract wordings and decisions on insurance cases, to be properly guided in constructing policies.
5. Initiate standardization and harmonization of insurance laws in West Africa towards a single West African financial and insurance market.
6. Adapt best international solutions to the impact of global melt down with the international community; make proposals to government on the need to provide conducive business environment that will minimize unemployment.
7. Insurers should review their operational structure and business models in line with emerging realities
8. There is need for companies to review their cost and expenditure profiles
9. Companies should review and restructure investment strategies

10. Greater investment on human capital is expected, to be abreast of the development in risks and investment.
11. Partner with the government through corporate social responsibility in addressing the problem of global warming, HIV/AIDS.
12. Apply micro-insurance and investment strategies in collaboration with the governments to tackle the problem of poverty, hunger, unemployment, disease and migration.
13. De-emphasize price-war, and co-operate in area of statistics and information sharing; and create insurance database in West Africa to support a West African Insurance Directory
14. Approach professionally and positively with innovation the changing dynamics in risks, instead of relying on exclusions.
15. Fashion out realistic and consumer-friendly insurance products, and policy wording to the satisfaction of all stakeholders.
16. Move from standard contract terms to agreed contract terms.

17. Build fraud protection measures into policies from inception of contract, and simplify claims processes.
18. Embrace Arbitration and other ADR, including Insurance Ombudsmen, as means of settling disputes arising from insurance contracts, and go to court only as a last resort.

I thank you for listening.

EZEKIEL O. CHIEJINA

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