



UNIVERSITY OF UYO LAW JOURNAL

VOLUME 10 (2022)

Published by the Faculty of Law
University of Uyo, Nigeria



UNIVERSITY OF UYO LAW JOURNAL

VOLUME 10 (2022)

Print ISSN: 1119-3573

Published by the Faculty of Law
University of Uyo, Nigeria
facultyoflaw@uniuyo.edu.ng

Citation:

(2022) 10 University of Uyo Law Journal

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CONTENTS

Editorial Comments <i>Mojisola Eseyin</i>	vi
Articles	
Access to Information Laws and Corruption: Any Nexus? <i>Osawe Omosede Andre</i>	1
The Nexus between Human Rights and International Investment Arbitration: Examining the Weiler's Concept of Lost Siblings <i>Francis Ohiwere Oleghe and Olusesan Oliyide</i>	17
Expanding the Frontiers of Trade Disputes in the Workplace: Interrogating the Notion of State Trade Dispute <i>Ogancho O. Ogbole</i>	37
Finality of the Court of Appeal on Labour and Industrial Matters and its Impact on the Crystallisation of Labour Jurisprudence in Nigeria <i>John Fidelis Inaku</i>	57
Public Protection and the Regulation of Compulsory Liability Insurance in Nigeria <i>Kehinde Anifalaje</i>	74
Development of Formal Requirements for Wills: Towards a Change for Better Wills <i>Lilian Ifeoma Nwabueze</i>	107
An Analysis of the Legal Regime for Pension Administration in Nigeria <i>Onikosi Ahmeed Adedeji and Ahmed Muhammed-Mikaaeel</i>	125
Jurisdictional Issues in the Enforcement of Tax Laws in Nigeria <i>Uche Jack-Osimiri, Anthony Ekpoudo, Rowland Ipoule and Amara Ijemah</i>	142
A Synoptic View of Investigative and Prosecutorial Approaches to Transnational Crimes under International Law <i>Glory Charles Okebugwu</i>	185

Land Acquisition for Energy Infrastructure Development in Nigeria: Legal Challenges and the Way Forward <i>Olanrewaju Aladeitan and Adeboro Adamson</i>	215
Statute Review	
A Socio-Legal Evaluation of Akwa Ibom State Map Establishment Law 2023 <i>Ekokoi Solomon</i>	241

EDITORIAL COMMENTS

I am pleased to present Volume 10 of the *University of Uyo Law Journal*. The Editorial Team has worked tirelessly to bring you this issue, comprising ten scholarly papers of nine articles and a statute review. This edition of the journal offers a range of topical and insightful ideas on themes in the fields of international investment arbitration, access to information law, trade dispute and industrial jurisprudence, insurance law, testamentary disposition, pension administration law, taxation law, international criminal law, and legal/constitutional theory. This is in accord with the aim of the *University of Uyo Law Journal* to provide a forum for the widest discussion of subjects on the law and contemporary issues of sub-national, national and global concern.

This edition opens with a paper by Osawe Omosede Andre, which examines the nexus between access to information law and corruption. It argues that corruption impact on access to public information as it works to promote secrecy. As such, any advancement towards opening governments to public scrutiny must foster anti-corruption efforts, which must of necessity validate the demand for openness in government actions and inactions as a right. Thus, the paper notes that a virile public information system will engender transparency that is necessary to expose corrupt acts, as access laws promote public right as well as serve as deterrent to corruption.

The joint paper by Francis Ohiwere Oleghe and Olusesan Oliyide examines the relationship between human rights and international investment arbitration using Weiler's concept of lost siblings. It argues that international investment arbitration (IIA) has elicited so much attention in recent times. So much so that the United Nations Commission on International Trade Law and the International Centre for the Settlement of Investment Disputes have engaged in programmes aimed at reforming the investor-state dispute settlement (ISDS) system, of which IIA is a subset. It makes the point that while the ISDS system has evolved with protection for investors, the experience of host states remains that of misgivings about the system's usefulness, which have resulted in agitations for its reform to give adequate consideration to human rights norms in ISDS cases. The aim of which is to strike a balance between investors' bilateral investment treaty (BIT) rights and their human rights obligations.

The papers by Ogancha Ogbole and John Inaku offer exposés on trade dispute jurisprudence. On the one hand, the former paper examines the constructions of ‘trade disputes’ and ‘state trade disputes’ under Nigerian labour laws and regulations. It argues that the recognition of the concept of state trade disputes under Nigerian labour law contributes in expanding the frontiers of trade disputes in the workplace, which poses recondite challenges for the current constitutional arrangement for labour jurisprudence in Nigeria. It therefore recommends the unbundling of labour, as an item under the Exclusive Legislative List, to pave the way for the involvement of state legislative assemblies if the notion of state trade dispute as conceived by Nigerian labour law is to be properly harnessed. On the other hand, the latter paper examines the impact of the finality of the decision of the Court of Appeal on labour and industrial disputes and how it impacts on the development of labour and industrial jurisprudence in Nigeria, in view of the level of expertise available to the Court of Appeal. It therefore proposes packing the Court of Appeal with judges from the National Industrial Court or, in the alternative, for the establishment of a National Labour Appeal Court, constituted of labour and industrial law experts, to hear appeals from the National Industrial Court of Nigeria.

Kehinde Anifalaje’s paper considers the regulation of compulsory liability insurance in Nigeria as a means of public protection from the risk of death, bodily injury or loss of property. The paper examines the laws regulating compulsory liability insurance in Nigeria and the enforcement of the rights of third parties within the context of the common law rule of privity of contract. It argues that the current tort-based system of compensation coupled with some regulatory challenges patently constitute a hindrance to a timely enforcement of the right of third parties under the contract of insurance, and suggests, among other things, the institutionalisation of a no-fault system of compensation that would guarantee quick and effective compensation of persons, who suffer losses by means of death, bodily injury or loss of property.

Also advancing the need for improved public protection, Lilian Nwabueze’s paper examines public protection through a change in approach towards better Wills by means of legislative amendment to Wills law to include the use of technological devices in communicating Wills; while the paper by the duo of Onikosi Adedeji and Ahmed Muhammed-Mikaaeel examines the legal regime for pension administration in Nigeria, which it argues possess inherent lapses, including lack of direct prosecutorial power on the part of relevant agencies, unjust and insensitive

exclusion of the state and local government workers from coverage under the extant pension scheme and non-compliance of the pension scheme to Shari'ah.

The focus then moves to taxation law, in which Uche Jack-Osimiri, Anthony Ekpoudo, Rowland Ipoule and Amara Ijeomah comprehensively examine jurisdictional issues that emanate in the administration and practice of tax laws, arising from the jurisdiction of the National Assembly and State Houses of Assembly to exercise legislative power to promulgate tax legislation within the limits conferred by the Constitution. It proposes certain measures to bring about reforms for the smooth administration and practice of tax laws in Nigeria. Glory Okebugwu's paper thereafter examines the investigative and prosecutorial approaches in combating transnational crimes under international law. It argues for a neutral body that will ensure balance of conflicting interests in the investigation and prosecution of transnational crimes, as transnational crimes universally present certain challenges to national criminal justice systems. The paper, therefore, recommends the collective involvement of the international community, as well as the adoption of more proactive investigative approaches with long term control guarantees with human rights considerations.

The paper by Olanrewaju Aladeitan and Adeboro Adamson focuses on the loss of proprietary interest by a private entity on the basis of overriding public purpose in the context of a liberalised and privatised regime, which raises critical legal issue regarding the extent to which the legal framework for the acquisition of land for energy infrastructure development impacts on the rights of a landowner and the correlation to the effective performance of the Nigerian Electricity Supply Industry (NESI). The paper proposes a legal regime that is fair and balanced for operators/investors in sector, as well as for other stakeholders. The final paper, a statute review by Ekokoi Solomon, evaluates the Akwa Ibom State Map Establishment Law 2023. It argues that the AKS map law appears to be inconsistent and out of step with the constitutional provisions on boundary adjustment. This, the paper argues, is in view of the nature of the extant constitutional order, which requires the exercise of legislative power to promote the integrity of the legal/constitutional order.

There is evidently a wealth of good reading, thoughtful analyses and helpful materials in this volume of the journal. In effect, the authors have worked diligently to provide innovative perspectives on the issues covered by their papers, which have sub-national, national and international

concerns. We therefore welcome constructive feedback and suggestions on the issues covered in this edition. If there are any questions, comments or concerns, please do well to contact us at facultyoflaw@uniuyo.edu.ng

With gratitude to members of the Editorial Team and our external reviewers, who volunteered their time and intellect to enhance the quality of the papers selected, I welcome readers to turn the pages of this volume of the journal and embrace the wealth of information and knowledge contained in them.

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Public Protection and the Regulation of Compulsory Liability Insurance in Nigeria

*Kehinde Anifalaje**

ABSTRACT

Compulsory liability insurance is one of the means by which the State seeks to protect the citizenry from the risk of death, bodily injury or loss of property they may be exposed to from certain activities of individuals and entities. This article examines the laws regulating compulsory liability insurance in Nigeria and the enforcement of the rights of third parties within the context of the common law rule of privity of contract. It is argued that the current tort-based system of compensation coupled with some regulatory challenges patently constitute a hindrance to a timely enforcement of the right of third parties under the contract of insurance. Drawing lessons from some other common law jurisdictions, including the United Kingdom and South Africa, suggestions towards enhancing the enforcement of third party rights in Nigeria, including a case for the institutionalisation of a no-fault system of compensation that would guarantee quick and effective compensation to affected citizenry, are made.

Keywords: Compulsory insurance law, liability insurance, privity of contract, Nigeria, United Kingdom

I. INTRODUCTION

The compelling need of the Nigerian State to fulfil the constitutionally-imposed obligation of securing and promoting the welfare of the citizenry has necessitated legislative interventions in some aspects of the insurance business which, ordinarily, belong to the realm of private law.¹ Thus, a number of statutes have imposed the duty on certain categories of persons to obtain insurance coverage to cover their liabilities to third parties for defined risks. Risk, as an actuarial concept, forms the basis of any contract

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¹ It is declared in the Constitution of the Federal Republic of Nigeria (CFRN) 1999, Cap C23 Laws of the Federation of Nigeria (LFN) 2004, s 14(2)(b), that security and welfare of the people shall be the primary purpose of government.

of insurance. In this respect, there are two types of insurable risks, namely, the voluntary insurable risk and the compulsory insurable risk. Voluntary insurable risk, which cuts across all classes of insurance, is one in which the assured, desirous of protecting himself or his interest, takes an insurance cover against a specific risk. In this case, the choice is that of the individual who may want to protect himself or his dependants against any future losses by way of insurance. The compulsory insurable risk, on the other hand, arises from explicit statutory obligation to insure a specific risk by defined categories of persons. It is usually targeted at protecting third parties against specific risk or hazard with prescribed penalty for non-compliance.

Third party, in this context, generally refers to any other person outside the contract of insurance between the insurer and the insured. Thus, on the happening of the insured event which gives a cause of action to the third party, whether in contract or in tort, the latter obtains an enforceable right, which is a chose in action, even though the liability of the insured tortfeasor and quantum are yet to be determined. In other words, from the moment when the negligence and damage occur, the insured tortfeasor, against whom the right exists, is under a legal liability and if that liability is covered by a policy of insurance as required by law, it gives him a contractual right, subject to terms of the policy, which he can enforce against his insurers. A liability insurance contract, therefore, is a contract of indemnity in which the insurer agrees to indemnify the insured for any loss suffered by reason of the insured's liability to another, the third party. It is, generally, designed to protect not only the financial interests of the insured, but also the interests of those to whom the insured may incur liability. It generally ensures that victims receive necessary and effective compensation for damages suffered when the insured risk occurs.

Liability for compulsory insurance, most often, is founded on negligence of the insured party.² As such, the burden is on the third party claimant to prove such negligence on a balance of probabilities, as in all

² In Nigeria, for example, claims under all the compulsory insurance liability policies, except for group life insurance policy under the Pension Reform Act 2014, are, mostly, premised on negligence. Negligence has been defined as 'the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do': *Blyth v Birmingham Waterworks Co* (1856) 11 Ex 781, 784 (Alderson B). Also, in *Lochgelly Iron and Coal Co Ltd v McMullan* (1934) AC 1, 25 (Lord Wright), it is noted that: 'In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damages thereby suffered by the person to whom the duty was owed.'

civil litigation.³ In order to discharge the burden, the claimant must prove that the insured party owed him/her a duty of care; that the insured party was in breach of that duty in failing to exercise such care and that he had suffered damage in consequence thereof, which damage must be such that the law regards it proper to hold the defendant responsible for it.⁴

This article examines the laws regulating compulsory liability policies in Nigeria with a view to determining their relevance, scope of coverage and benefits derivable thereunder as well as their adequacy in the protection of the citizenry against the prescribed insured risks. The enforcement of the right of third parties under the relevant policies is also examined and suggestions for addressing identified gaps in the law are proffered. It is divided into six parts. The next part examines each of the compulsory insurance schemes in Nigeria in terms of the defined risk, the liable insured party, the defined beneficiaries, the schedule of compensation and prescribed punishment for non-compliance under the relevant applicable laws. The third part focuses on the enforcement of the right of third parties in the event of the happening of the insured risks. Part four examines the defects in the current regulatory framework in Nigeria, while part five focuses on reform options. Part six is the conclusion.

II. COMPULSORY INSURANCE POLICIES IN NIGERIA

In Nigeria, there are a number of statutes requiring certain classes of persons to take up insurance policies for specific risks. Such statutes include the Motor Vehicles (Third Party Insurance) Act 1950;⁵ Insurance Act 2003,⁶ Employees' Compensation Act 2010 and the Pension Reform Act 2014.⁷ The statutes regulate the seven compulsory liability insurance, namely, the Motor Vehicle Third Party Insurance, Employers' Liability Insurance, Statutory Group Life Insurance, Builders' Liability Insurance, Occupiers' Liability (Public Building) Insurance, Aviation Third Party Liability Insurance and Marine (Cargo) Insurance.⁸ Each of these

³ Evidence Act 2011 Cap E14, LFN 2004, ss 131 and 134; *Nigerian Bottling Co Ltd v Ngonadi* (1985) 1 NWLR (Pt 4) 739.

⁴ *Donoghue v Stevenson* (1932) AC 562. Lord Atkin's celebrated 'neighbour principle' in the case also requires the exercise of reasonable care towards all who are foreseeably likely to be injured in person or property by one's act or omission: *Donoghue* 580.

⁵ Cap M22, LFN 2004.

⁶ Cap I17, LFN 2004, ss 64 and 65.

⁷ Pension Reform Act 2014, s 4(5).

⁸ Hitherto, under section 45 of the repealed National Health Insurance Scheme (NHIS) Act 1999, Cap N42, LFN 2004, healthcare professional indemnity insurance from an insurance company approved by the Governing Council of the Scheme was mandatory for

compulsory liability insurance would now be examined starting with the Motor Vehicle Third Party Insurance.

A. Motor Vehicle Third Party Insurance

The Motor Vehicles (Third Party Insurance) Act 1950 (hereinafter referred to as the MVTPI Act) is the first law regulating liability insurance in Nigeria with a focus on motor vehicle owners' liability to third parties arising from the use of motor vehicles. Under section 3 of the MVTPI Act, it is prohibited for any person to use, or cause or permit any other person to use, a motor vehicle unless there is in force in relation to the user of the motor vehicle by such person, or such other person as the case may be, a policy of insurance issued by a registered insurer or such a security in respect of third party risks as complies with the provisions of the Act.⁹ The intention of the Act is to protect the third parties and to give them a right of action against those in breach of the provisions of the statute. The statutorily defined risk covers liability for damages which may be incurred by the insured in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle, including a motor cycle, covered by the policy.¹⁰

Coverage for third party risks as defined under the MVTPI Act is, generally, limited to persons or classes of persons as may be specified in the policy in respect of the liability covered by the MVTPI Act. It does not extend to liability incurred in respect of death or bodily injury to persons arising out of or in the course of employment,¹¹ nor to such liability to persons being carried in or upon or entering or getting on to or alighting from a motor vehicle at the time of the occurrence of the event out of which the claims arise, save in the case of passenger vehicle or persons being

every health care provider, including medical centre, institution or professional. Health care provider was defined under s 49 of the Act as any government or private health care practitioner, hospital or maternity centre registered by the Governing Council for the provision of prescribed health services for insured persons and their dependants under the Scheme. There is, however, no such provision in the new National Health Insurance Authority Act 2022 which repealed the NHIS Act in section 58 thereof.

⁹ Under section 7 of the MVTPI Act, the security referred to must be given by a registered insurer approved by the Minister or by a person, company or body of persons, approved by the Minister, carrying on the business of giving securities of a like kind. It is, however, doubtful whether this security is still being given for the purpose.

¹⁰ MVTPI Act, s 6(1)(b).

¹¹ *ibid*, s 6(1)(b)(i). Liability in this case is covered under the Employees' Compensation Act 2010, which makes it compulsory for all employers of labour to contribute to the Compensation Fund established under s 56 thereof and from which payment of compensation to employees for work-related injuries, diseases or death is made. The Employees' Compensation Act 2010 repealed the Workmen's Compensation Act, Cap W6 LFN 2004, which hitherto regulated such payment.

carried by reason of or pursuant to a contract of employment,¹² nor to any contractual liability.¹³

However, under section 5 of the MVTPI Act, some categories of persons are exempted from the requirement to obtain the third party policy. These include the user of a motor vehicle owned by government while such motor vehicle is being used for the purposes of the government owning such vehicle; a person who has deposited and keeps deposited with the Accountant-General of the Federation the sum of ₦10,000.00 (Ten thousand naira) in respect of such a motor vehicle at any time it is being driven by the owner or his servant in the course of his employment; user of a motor vehicle driven for police purposes by or under the direction of a superior police officer as defined in the Police Act; a person or class of persons exempted from the provisions; and any motor vehicle or type of motor vehicle exempted from the provisions of the Act by the Minister. It is noteworthy that, whereas the MVTPI Act is limited to liability for death or bodily injury to third parties arising from the use of a motor vehicle on the highway,¹⁴ the Insurance Act, in section 68 thereof, has extended the scope of liability to one incurred in respect of damage to the property of third parties. Section 68 of the Insurance Act prohibits the use of a motor vehicle on a road by any person unless an insurance of not less than ₦1,000,000 .00 (One million naira) in respect of liability he may incur in

¹² MVTPI Act, s 6(1)(b)(ii). 'Passenger vehicle' is defined in s 2 of the MVTPI Act as a motor vehicle used for carrying passengers for hire or reward. In *Lion of Africa Insurance Co Ltd v Anuluoha* (1972) NCLR 74, it was held that the widow could not recover because her husband was a gratuitous passenger. The court stated that whilst death caused by the motor vehicle covered by the policy must in general be covered, the proviso (ii) showed that a policy was not required to cover the case of a passenger in a motor vehicle who was killed unless the motor vehicle was either a passenger vehicle or the person concerned was being carried by reason of or in pursuance of a contract of employment.. The court further stated that it is only if the person is being carried for hire or reward that an insured must be covered by a policy. See also Halbury's Laws of England, (3rd edn, vol 22, Butterworths 1964) para 755 where it is stated that: 'Subject to certain exceptions, a policy is not required to cover liability in respect of the death of, or bodily injury to, a person being carried in or upon, or entering or getting into or alighting from, the vehicle at the time of the occurrence of the event out of which the claim arises. Anyone who travels as a passenger in a private car has, of course, a right of action against his host, if negligent driving of the host, or of the host's servant if he is driving within the scope of his employment, results in injuries to the passenger, but this may be a barren remedy if the host is insured only within the compulsory limits. Even if the host has a wider insurance, the direct remedies against the insurance company available to a third party within the range of compulsory insurance will not be open to the passenger.'

¹³ MVTPI Act, s 6(1) (b) (iii).

¹⁴ In *Adeoye v West African Provincial Insurance* (1970) NCLR 409, it was held that liability covered under section 10(1) of the 1950 Act is limited to the risk of death of, or bodily injury to third party, and does not apply to liability incurred on the damage of a third party's property; see also, *Lion of Africa Insurance Co v Anuluoha* (n 12).

respect of damage to the property of third parties is insured with a registered insurer.

Failure to procure the requisite third party insurance policy by a liable party as required by the MVTPI Act or the Insurance Act is punishable on conviction with a fine of ₦250,000.00 (Two hundred and fifty thousand naira) or imprisonment for one year or to both such fine and imprisonment.¹⁵ The person so convicted shall also be disqualified from holding or obtaining a driving licence for a minimum period of 12 months from the date of the conviction.¹⁶

B. Employers' Liability Insurance

The employers' liability insurance is a compulsory insurance required of all employers of labour in the private and public sector of the economy and is regulated by the Employees' Compensation Act 2010 (ECA). The ECA covers all employers and employees in the public and private sectors of the Federal Republic of Nigeria except any member of the armed forces other than a person employed in a civilian capacity.¹⁷ Thus, any employee, whether or not in a workplace, who suffers any disabling injury arising out of or in the course of employment is entitled to payment of compensation.¹⁸ The defined insured risks include a disabling injury resulting in the death of the employee, permanent total disability, permanent partial disability or disfigurement, temporary total disability, temporary partial disability as defined under sections 17, 21, 22, 24 and 25 of the ECA, as well as

¹⁵ Section 3(2) of the MVTPI Act as amended by s 68(4) of the Insurance Act 2003. It has also been held in *Management Enterprises Ltd & Ors v Otusanya* (1987) 2 NWLR (Pt 55) 179 that, a plaintiff injured through the negligent driving of a motor vehicle by a defendant who was not insured against third party risks as required under s 3(1) can maintain an action for damages against both the defendant and the owner of the vehicle even though he himself was insured against third party risks. It was further held that the mere breach of the provisions of section 3(1) of the MVTPI Act without attendant negligence may make the culprit liable to prosecution but will not give a right of action in damages unless negligence is proved. See also, *Monk v Warbey & Ors* (1934) All ER Reprint 373. It is noteworthy that in respect of death or bodily injury to third parties, damages are at large as they are dependent on the award of a court of competent jurisdiction or as may be agreed upon between the parties: MVTPI Act; s 10; National Insurance Commission, *Market Development and Restructuring Initiatives: Guidelines for Compulsory Insurance* (NAICOM 2010) 3.

¹⁶ MVTPI Act, s 3(2) & (3).

¹⁷ ECA, ss 2(1) and 3. It is noteworthy that the ECA does not contain a particular provision for penalty in case of failure of an employer to register itself and its employees under the Act except for the general provision under s 99(1) of the Act, which prescribes a fine of ₦250, 000.00 (Two hundred and fifty thousand naira) or a term of not less than one year imprisonment or to both fine and imprisonment for any person convicted of contravening any of the provisions of the Act.

¹⁸ ECA, s 7.

mental stress, occupational disease and hearing impairment as defined under sections 8, 9 and 10 respectively of the ECA.

It is remarkable that compensation under the ECA is rooted in a social insurance programme as it is embedded with the pooling of risks of employers for liability for the defined risks. By pooling their risks together, the employers insure one another against the possibility of the covered risks materialising against any one of them. It is thus generally financed by contributions made by the employers into the Compensation Fund established under section 56 of the ECA. Contributions from the employers are based on the categorisation of risk factors as well as the assessment of rates applicable to each class and sub-class of industry, sector or workplace.¹⁹ The assessment is based upon estimates of the employer's payroll for the year or as determined by the Board.²⁰

The scale of compensation is provided for under Part IV of the ECA, which contains a comprehensive provision on eligibility for compensation and the quantum thereof. Compensation under the ECA includes a monthly payment that is equal to 90 per cent of the remuneration of the employee for permanent total disability under section 21; monthly payment that is equal to 90 per cent of an estimate of the loss of remuneration resulting from the impairment of earning capacity from the nature and degree of the injury for permanent partial disability or disfigurement under section 22; a lump sum in accordance with the Second Schedule to the ECA or Regulations made by the Nigeria Social Insurance Trust Fund Management Board (NSITFMB) for temporary total disability and temporary partial disability in respect of a disability that does not last for more than 12 months under sections 24 and 25 respectively of the ECA and health care and disability support under section 26.

Other available compensation is the survivor benefits which are payable to dependants of employee who dies from work-related injury.²¹ Dependants in this context include the spouse, children, adoptive and foster family of the deceased or a disabled employee, who was wholly dependent upon his earnings at the time of his death, or would, but for the disability due to the occupational accident or disease, have been so dependent.²² Compensation to the dependants ranges from between 30 per cent and 90 per cent of the employee's monthly emoluments. The monthly payment of compensation to the dependants is for the life of the person to

¹⁹ *ibid*, s 33.

²⁰ *ibid*, s 34.

²¹ *ibid*, s 17(1).

²² *ibid*, s 73.

whom the payment is made, unless a shorter period applies under the provisions of the ECA or as the NSITFMB may, from time to time by regulation, specify.²³ For instance, compensation to the dependent child who is an undergraduate student is paid until the child completes his/her undergraduate studies or reaches age 21, whichever comes first,²⁴ while payment to a disabled child is made until such time as the NSITFMB believes that the disabled child would no longer have been dependent on the deceased employee²⁵

It is noteworthy that eligibility for compensation under the ECA is on a 'no fault' basis, that is, compensation without the need to prove negligence or breach of legal duty on the part of the employer nor any fault on the part of the employee in causing an injury or disease. In other words, payment is made to the injured employee or the survivors of a deceased employee irrespective of the default or otherwise of the employee nor the negligence of the employer in causing the disabling injury or death.

C. Statutory Group Life Insurance

The statutory group life insurance is regulated under the Pension Reform Act 2014 (PRA) The PRA, in section 4(5) thereof, requires every employer to whom the Act is applicable to maintain a Group Life Insurance Policy in favour of each of his employees for a minimum of three times the annual total emolument of the employee and premium thereon is to be paid not later than the date of commencement of the cover. The PRA is, generally, applicable to employment in the Public Service of the Federation, the Federal Capital Territory, the States, the Local Governments and the Private Sector.²⁶ In the case of the Private Sector, application of the Act extends only to employees who are in the employment of an organisation in which there are 15 or more employees, while employees of organisations with less than three employees and self-employed persons can participate voluntarily in accordance with guidelines issued by the National Pension Commission (NPC).²⁷

²³ *ibid*, s 19.

²⁴ *ibid*, s 17(1) (c).

²⁵ *ibid*, s 17(1) (d).

²⁶ Pension Reform Act (PRA) 2014, s 2(1).

²⁷ PRA, s 2(2) & (3). The Contributory Pension Scheme (CPS) which is established under section 2(1) of the PRA provides for payment of retirement benefits of employees to whom the CPS applies. Generally, under s 4 of the PRA, the contributions for any employee in relation to the employee's monthly emoluments are a minimum of 10% by the employer and a minimum of 8% by the employee.

Thus, in addition to retirement benefits for which the Contributory Pension Scheme (CPS) is primarily established,²⁸ where an employee dies, his entitlement under the life insurance policy maintained under section 4(5) of the PRA is payable by the underwriter to the named beneficiaries in line with section 57 of the Insurance Act.²⁹ Similarly, under section 9 of the PRA, where an employee is missing and is not found within a period of one year from the date he was declared missing and a board of inquiry set up by the NPC makes a determination that, having regards to available information and all relevant circumstances, it is reasonable to presume that the employee is dead, his entitlement under the CPS as well as the life insurance policy is payable to designated beneficiaries.

In the same vein, under section 16(2) of the PRA, an employee who retires, disengages or is disengaged from employment on the advice of a suitably qualified physician, or a properly constituted medical board certifying that the employee is no longer mentally or physically capable of carrying out the functions of his office due to total or permanent disability either of the mind or body, is entitled to have access to the benefits of the life insurance policy.³⁰

D. Builders' Liability Insurance

Under section 64 of the Insurance Act 2003,³¹ it is prohibited for any person to cause to be constructed any building of more than two floors without taking a policy of insurance with a registered insurer. The insured risk arises when such building is under construction and covers the liability of the person in respect of construction risks that could be caused by his negligence, or the negligence of his servants, agents or consultants, which may result in bodily injury or loss of life to, or damage to property of any workman on the site, or any member of the public. Thus, the owner and /or contractor of the building under construction, sub-contractors, agents, servants and consultants of the contractor or the owner, are liable parties in this respect.³²

²⁸ PRA, ss 1(a) & 7.

²⁹ *ibid*, s 8(1). Section 57 of the Insurance Act 2003 prohibits the issuance of any policy of insurance on the life of a person or other event without inserting in the policy the name of the person interested in it or for those whose benefit or on whose account the policy is made. The only exception to this is policy for the benefit of unnamed persons from time to time falling within a specified class or description, if the class or description is stated in the policy with sufficient particularity to make it possible to establish the identity of all persons who at any given time are entitled to benefit under the policy.

³⁰ The PRA, under s 16(1), generally restricts an employee from making any withdrawal from his retirement savings account before attaining the age of 50 years.

³¹ Cap I17 LFN 2004.

³² NAICOM (n 15) 4.

Failure to take out an insurance policy as required under the Insurance Act is a punishable offence which makes the erring person liable on conviction to a fine of ₦250,000.00 (Two hundred and fifty thousand naira) or imprisonment for three years or to both such fine and imprisonment.³³ Survivors of the site worker or of any member of the public who dies in a collapsed building under construction, as well as any site worker or any member of the public who is injured in such building or whose property is damaged, can also institute an action for damages. While benefits payable to a site worker is regulated under the Employees' Compensation Act, damages obtainable by a third party in case of death or bodily injury is dependent on the award of the court, or as agreed between the claimants and the insurance company. The maximum amount that can be obtained for property damage is, however, limited to a maximum of ₦10, 000, 000.00 (Ten million naira).³⁴

E. Occupiers' Liability (Public Building) Insurance

Under section 65 of the Insurance Act 2003, every public building is required to be insured with a registered insurer against the hazards of collapse, fire, earthquake, storm and flood. Public building, in this context, includes a tenement house, hostel, a building occupied by a tenant, lodger or licensee, and any building to which members of the public have ingress and egress for the purpose of obtaining educational or medical services, or for the purpose of recreation or transaction of business.³⁵ The insured risk is the legal liabilities of an owner or occupier of such premises in respect of the death of or bodily injury to any user of the premises and third parties, or the loss of or damage to their property.³⁶ An owner or occupier of public buildings who defaults in effecting the required policy of insurance is liable on conviction to a fine of not more than ₦100,000.00 (One hundred thousand naira) or to imprisonment for one year, or to both such fine and imprisonment.³⁷

In addition, any user, licensee, or third party who sustains injury, or the personal representatives of a user, licensee, or third party who dies as a result of any of the five insured perils as well as any user, licensee, or third party whose property is damaged as a result of any of the said perils could institute an action for damages in respect thereof against the liable

³³ Insurance Act 2003, s 64(3).

³⁴ National Insurance Commission (n 15) 4.

³⁵ Insurance Act 2003, s 65(2).

³⁶ *ibid*, s 65(3).

³⁷ *ibid*, s 65(6).

party.³⁸ Claim under personal liability is fixed at ₦5, 000,000.00 (Five million naira); Public liability at ₦10, 000,000.00 (Ten million naira) and property damage at ₦35, 000,000.00 (Thirty-five million naira), while claim under employers' liability is as regulated under the Employees' Compensation Act.³⁹

F. Aviation Third Party Liability Insurance

The Civil Aviation Act 2006 and the Air Transport Economic Regulations 2015 prohibit any person, including aerodrome operator, air navigation, meteorology services, ground handling and other allied aviation service providers, from operating any aircraft in public air transport category without adequate and valid insurance to cover its liability towards compensation for damages that may be sustained by third parties for a prescribed amount as specified by the Nigerian Civil Aviation Authority (NCAA).⁴⁰ The insured risk is the liability arising from the death and bodily injury to passengers in the course of carriage by air within or from Nigeria and a statement to that effect is required to be provided in their tickets.⁴¹ The minimum third party liability insurance limit for aircraft engaged in aircraft operations in Nigeria is determined in relation to the Maximum Take-Off Weight (MTOW) of an aircraft as prescribed,⁴² while that of aircraft engaged in the carriage of passengers, mail, and cargo in Nigeria is in relation to the aircraft available capacity.⁴³

The limits of liability for death or bodily injury of passengers, loss or delay of baggage and cargo for domestic and international operations is as prescribed by the Civil Aviation Act.⁴⁴ Moreover, the minimum insurable cover for aerodromes, air navigation, meteorology services, ground handling and other allied aviation services is to be fixed, from time to time, by the NCAA.⁴⁵ The insurable sum is required to cover airside and landside, bodily injury, property damage, hijacks and hostage-taking and war risks.⁴⁶ In the same vein, operators of some aviation services, including Ground Handling, Aerodrome (International), Aerodrome (Domestic), Air Navigation Services, Aeronautical Meteorology, Aviation Fuel Supplier,

³⁸ NAICOM (n 15) 6.

³⁹ *ibid* 5.

⁴⁰ Civil Aviation Act 2006; s 74, Part 18.11.1, 2 & 3 of the Air Transport Economic Regulations 2015.

⁴¹ Air Transport Economic Regulations 2015, pt 18. 11. 6.

⁴² *ibid*, pt 18.11.7.

⁴³ *ibid*, pt 18.11.8.

⁴⁴ *ibid*, pt 18.11.9.

⁴⁵ *ibid*, pt 18.11.10.

⁴⁶ *ibid*.

Airstrip and Heliport, are required to maintain minimum insurance cover for their operations as may be prescribed by the NCAA from time to time.⁴⁷

In order to ensure compliance with the foregoing provisions, failure to obtain the requisite minimum insurance cover constitutes a ground for refusal, suspension or revocation of the permission to operate the air transport service(s) in question.⁴⁸ In addition, such failure constitutes an offence punishable on conviction to a fine of not less than ₦10,000,000.00 (Ten million naira), while the principal officers of such carrier, aerodrome operator, aviation fuel supplier, or any provider of ground services, air traffic control services, aircraft maintenance services are liable to imprisonment for a term of not less than two years.⁴⁹

G. Marine (Cargo) Insurance

Generally, every lawful marine adventure may be the subject of a contract of marine insurance.⁵⁰ Specifically, marine cargo insurance is an insurance that covers loss or damage to goods while in transit on board a ship from maritime perils.⁵¹ Coverage could also extend to damage prior to loading and after discharge and during inter-modal transportation.⁵² As such, marine (cargo) insurance is required for the import of goods being conveyed by sea from outside Nigeria and such insurance is required to be made with an insurance registered in Nigeria under section 67 of the Insurance Act. It is an offence, punishable on conviction with a fine of ₦500, 000.00 (Five hundred thousand naira) for any importer, broker or agent to effect any insurance otherwise than in compliance with the provisions of the Insurance Act.⁵³

Generally, by virtue of section 7(1) of the MIA, every person who is interested in a marine adventure has an insurable interest and can take

⁴⁷ *ibid*, pt 18.11.11.

⁴⁸ Civil Aviation Act 2006, s 74(2).

⁴⁹ *ibid*, s 74(4).

⁵⁰ A contract of marine insurance is generally defined under s 3 of the MIA 1961 as a contract whereby the insurer undertakes to indemnify the insured, in manner and to the extent thereby agreed, against losses incident to marine adventure. Under s 5(1) and (2) of the MIA 1961, there is a maritime adventure whenever any insurable property, such as ship, goods or other movables, are exposed to maritime perils, as well as where 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. "Maritime perils" is defined under s 5(3) of the Act as the perils consequent on, or incidental to, the navigation of the sea, that is, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

⁵¹ *British India General Insurance Co Ltd v Thawardas* (1978) 3 S C 143.

⁵² *Adefuye & Co v Royal Exchange Assurance Co* (1962) LLR 43.

⁵³ Insurance Act 2003, s 67(4).

up the policy of insurance. Thus, any person who stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of the insurable property, or may be prejudiced by its loss, or damage thereto, or by the detention thereof, or may incur liability in respect thereof has an insurable interest in the marine adventure and may legally insure such interest⁵⁴ This would include owners of insurable property, manufacturers/sellers of the goods in transit, mortgagor, mortgagee, consignee, as well as the insurer who has an insurable interest in its risk and may re-insure in respect of it.⁵⁵ The insurable value of insurance on goods and merchandise, subject to the express provision or valuation in the policy, is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole.⁵⁶ Also, where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.⁵⁷

III. ENFORCEMENT OF THIRD-PARTY RIGHTS

At common law, it is trite, under the principle of privity of contract, that no one can sue on a contract, except those who are contracting parties thereto and, if the contract is not under seal, from and between whom consideration proceeds.⁵⁸ Thus, where the insured has incurred liability to

⁵⁴ MIA 1961, s 7(4); *Lucena v Crauford* (1806) 2 Bos & PNR 269; *British India General Insurance Co Ltd v Thawardas* (n 51) 143; *Adefuye & Co v Royal Exchange Assurance Co* (n 52) 43.

⁵⁵ MIA 1961, ss 11 and 16.

⁵⁶ *ibid*, s 18(c); *Berger and Light Diffusers Property Ltd v Pollock* (1973) 2 Lloyd's Rep. 442.

⁵⁷ MIA 1961, s 75.

⁵⁸ In *Dunlop Pneumatic Tyres Co v Selfridge & Co* (1915) AC 847, 853, Lord Haldane had asserted that: 'In the law of England, certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property, as, for example, under a trust, but it cannot be conferred on a stranger to a contract as a right to enforce the contract *in personam*.' See also *Tweddle v Atkinson* (1861) 1 B & S 393; *New India Insurance Co v Odubanjo* (1971) 1 NCLR 363. The equitable principle which qualifies the legal rule is that a party to a contract can constitute himself a trustee for a third party of a right under the contract and thus confer such rights enforceable in equity on the third party. The trustee then can take steps to enforce performance to the beneficiary by the other contracting party as in the case of other equitable rights. The action should be in the name of the trustees; if, however, he refused to sue, the beneficiary can sue, joining the trustee as a defendant: see *Vandepitte v Preferred Accs. Ins Corp of New York* (1933) A C 70, 79 – 80.

a third party under any of the compulsory insurance policies, the third party, generally, has no direct right of recourse against the insurer as regards any right he might have against the insured tortfeasor. In this respect, the issue of joining the insurer is almost always a recurring matter in all liability insurance policies, particularly for motor vehicle third party policies. Under section 10 of the MVTPI Act, for example, it is generally judicially acknowledged that the third party could join the insurer in the determination of whether there is a contract of indemnity between the insured tortfeasor and the insurer. The preponderance of judicial authority, however, is that a third party, in an action against the insured tortfeasor for damages for negligence *simpliciter* causing personal injuries or death, has no claim against the insurer and cannot join the latter *ab initio* as a co-defendant in the suit except, perhaps, by way of third party proceedings based on contract of indemnity, if any.⁵⁹

In this circumstance, the third party is considered a stranger to the contract between the insurer and the insured and thus cannot sue to enforce the policy against the insurer.⁶⁰ This is so notwithstanding that the policy, being a liability policy, is meant to benefit the third party to whom the liability is established. However, the insured tortfeasor who apprehends a dispute between him and his insurer as to the liability of the latter under the insurance policy is allowed to apply to join such insurer to the suit and, not until then, is there also an issue concerning the contract of indemnity.⁶¹ In the same vein, an insurer may apply to be joined in such

⁵⁹ *Ajufor v Ajobor & Ors* (1978) 6 – 7 SC 39, 52; *Dede v United Arab Airlines* (1969) NCLR 58; *Ogbara v Afolabi & Ors* (1971) NGHC 10; *Anifowoshe v Jegede* (1968) NCLR 482; *Olusanya v Akintola* (1970) NCLR 232; *United Bank for Africa Ltd v Achoru* (1990) 6 NWLR (Pt 156) 254; Cf, however, *Onocha v Audu* (1968) NCLR 111; *Brizino v Alabi* (1975) NCLR 199, where the court in the respective cases refused to strike out the insurer who was joined by the third party in an action against the insured.

⁶⁰ It is noteworthy that under s 68 of the repealed Insurance Act 1997, where a third party was entitled to claim against an insured in respect of a risk insured against, he had a right to join the insurer of that risk in an action against the insured in respect of the claim. This provision was applicable to actions brought by third parties under any of the liability insurance policies, including motor vehicle third party policies. However, this provision is conspicuously missing in the Insurance Act 2003. The relevant section of the 1997 Insurance Act was first enacted as s 11 of the Insurance (Special Provisions) Decree of 1988.

⁶¹ *Ogbara v Afolabi & Ors* (n 59) 10. In *Carpenter v Ebbelwhite & Ors* (1939) 1 KB 347, 357-58 (Greer, LJ) stated that: 'It seems to me that the making of such a claim is contrary to anything that has ever been decided in regard to actions for declarations. It has never been determined that in an action by a plaintiff against a defendant, there can be a claim by the plaintiff for a declaration of liability against a third person for the relief claimed in the action where no dispute has as yet arisen between the plaintiff and that person. It would not make any difference if the claim for a declaration against that person were made in a separate action against him, for it would still be vexatious for the plaintiff to

an action against the insured if it intends to dispute its liability to indemnify the insured.⁶² Nevertheless, the MVTPI Act as well as the Insurance Act 2003 contains a number of salient exceptional provisions aimed at ensuring that whatever right the third party has against the insured can be duly enforced against the insurer notwithstanding the absence of any privity of contract between the third party and the insurer which are discussed hereunder.

First, for rights accruing to a third party under the MVTPI Act, a strict liability is, generally, imposed on the insurer in respect of any claim arising under a policy of insurance issued in terms of the Act.⁶³ The MVTPI Act also contains several other provisions aimed at ensuring that the third party is not unduly prejudiced in the claims settlement process by any evasive tactic by the insurer. Thus, under section 8 of the Act, any condition of the policy of insurance purporting to relieve the insurer of its obligation on account of any act or omission of the insured after the happening of the event giving rise to the liability is rendered of no effect. In this regard, any term of the policy that does not relate to the risk covered, but which merely requires the insured to take or refrain from taking certain steps after loss is of no effect as far as third party claims are concerned. As such, failure of the insured to give notice of loss or of third party proceedings as required by the policy, or the admission by the insured of liability to third party contrary to policy term, for example, would not relieve the insurer of its obligation to satisfy third party claims.

In *Martins v National Employers' Mutual General Insurance Association Ltd*,⁶⁴ the plaintiff brought an action against the defendant insurers for a declaration that they were liable to pay the damages and costs awarded against the insured in a judgement obtained by the plaintiff in a civil action. The plaintiff was injured by the negligent driving of a person insured by the defendants for statutory cover in respect of third party risks. It was a condition of the policy that the insured or his legal personal representatives should give the defendants notice of any

bring such an action against that person before any dispute had arisen between them. It seems to me that no dispute can arise between the plaintiffs and the insurance company until after the disposal of the action by the plaintiffs against the defendant Ebbblewhite in favour of the plaintiffs and the establishment of a right of indemnity by Ebbblewhite against the insurance company.'

⁶² *Dede v United Arab Airlines* (n 59) 58; *Alagbe v Sunmonu* (1971) 1 NCLR 320.

⁶³ Section 6(3) of the MVTPI Act dispenses with the rule of privity of contract and permits a third party to sue.

⁶⁴ (1969) NCLR 46. Similarly, in *United Nigeria Insurance Co Ltd v Oloko* (1981) 3 CA 241, a policy condition requiring the insured to give immediate notice in writing of a claim was held to be of no effect against the third party claiming from the insurer.

proceedings. Five days after the judgement, the defendants received from the plaintiff's solicitor, a copy of a letter addressed by him to the insured demanding damages to which no reply was given by the defendants. The contention of the insurer was that no notice was given of any proceedings. It was held that, for the purpose of relieving an insurer of liability under a policy of motor vehicle insurance, a condition in the policy requiring that notice of proceedings should be given to the insurer by the insured comes within the provisions of section 8 of the Motor Vehicle (Third Party Insurance) Act such that to show that notice was not given as required by the condition is no defence to a claim by a third party for a declaration that the insurer is liable to satisfy a judgement obtained against the insured in respect of a liability required to be covered by compulsory third party insurance. The insurer was thus held liable to satisfy the judgement obtained against the insured in respect of the liability covered.

Also, by virtue of the said provision of section 8 of the MVTPI Act, a permitted driver could successfully sue his employer's insurer for an indemnity in respect of damages awarded against him for injuring a third party despite a breach of the condition to give notice to the insurer as stipulated in the policy. In *Sule v Norwich Union Fire Insurance Society*,⁶⁵ for example, a permitted driver who sued his employer's insurer for an indemnity in respect of damages awarded against him for injuring a third party was held protected by section 8 despite his and the insured employer's breach of policy condition to give notice. It was further held that a permitted driver, though not a party to the policy, derives benefits from the terms of the policy and has the right to claim directly against the insurer, indemnity in respect of any liability which the policy purports to cover in respect of a permitted driver; and where the policy purports to cover liability to any person, this includes liability to the owner of the insured vehicle, who can be a 'third party' so long as he is not driving, notwithstanding that he is the insured/policy holder.⁶⁶

Nevertheless, by the proviso to that section 8, the insurer's right of recovery from the insured, of payment so made to the third party, is preserved if that is recognised by a term of the policy of insurance. In *Yorkshire Insurance Co Ltd v Haway*,⁶⁷ it was held that an insurer who

⁶⁵ (1971) NCLR 271.

⁶⁶ *ibid* 287–88.

⁶⁷ (1969) NCLR 464, 475–76. Also, in *Lion of Africa Insurance Co v Oduah* (1973) 3 ECSLR 78, it was held that, in the absence of a term in the policy as envisaged under section 8 of the MVTPI Act, where an insurer settles third party claims under compulsion of law despite the insured's breach of a condition precedent to notify the insurer, the latter is entitled to claim the sum from the insured under general contract law. This is because the

settled third party claims as required by the Act notwithstanding a breach of notice condition by the insured could recover the payments from him by virtue of a provision in the policy to that effect and the proviso to section 8. It was further held that the insured could not set up the payment to the third party as an estoppel against an insurer relying on the breach.

Similarly, under section 9 of the MVTPI Act, all such terms restricting the scope of the policy as to specified matters, including the age or physical or mental condition of persons driving the motor vehicle; the condition of the motor vehicle; the number of persons that the motor vehicle carries; the weight or physical characteristics of the goods that the motor vehicle carries; the times at which or the area within which the motor vehicle is used; the horsepower or value of the motor vehicle; the carrying on the motor vehicle of any particular apparatus; or the carrying on the motor vehicle of any particular means of identification other than any required to be carried under the provisions of the Road Traffic Laws, are of no effect. Thus, while section 8 relates to policy conditions, section 9 invalidates any provision in the policy, howsoever it is described, whether condition, warranty or exception, which limits the right of recovery of third parties as regards the specified matters. Like the proviso to section 8, the proviso to section 9 also preserves the right of the insurer to recover from the insured any sum paid to the third party in discharge of the liability of the insured as required by the MVTPI Act. However, unlike section 8 which allows recovery only where there is a provision to that effect in the policy, section 9 grants a statutory right of recovery to the insurer even though no reference to recovery is made in the policy.

Furthermore, where a judgement has been obtained against the insured by a third party in respect of any liability as required under the MVTPI Act, the insurer is statutorily obliged to satisfy the judgement debt, including costs and interest, irrespective of any right of avoidance or cancellation of the policy the insurer may have, or that it has actually avoided or cancelled the policy.⁶⁸ In *Perera v Motor and General Insurance Co*,⁶⁹ it was held that section 10 imposed a statutory, as opposed to contractual liability on insurers to pay persons who obtained judgement against the persons insured on a claim covered by the policy. In this instance, a third party is given a direct right of action against the insurer to enforce the liability. Nevertheless, the insurer is relieved of the statutory

insured is in breach of contract and damages awarded from the breach would be the amount paid by the insurer.

⁶⁸ MVTPI Act, s 10(1).

⁶⁹ (1971) 2 All NLR 261, 265.

obligation if it has no notice of the proceedings in which the judgement was given before or within seven days of the commencement of the said proceedings,⁷⁰ or that there is a stay of execution of the judgement pending appeal.⁷¹ Notice of such proceedings could be properly given by the third party or by the insured. In *Martins v National Employers' Mutual Association*, it was held that the two letters written by the third party's solicitor giving details of the accident and the vehicle satisfied the statutory requirements.⁷² The courts have, however, consistently held that failure to comply with such notification conditions does not absolve the insurers of liability. As it has been rightly observed:

Conditions requiring the giving of notice of loss are not intended to enable insurers escape liability, but rather to give them a reasonable opportunity of investigating the claim under the most favourable circumstances, and thereby of detecting and rejecting fraudulent or exaggerated demands. The condition ought to be construed fairly to give effect to this object, but at the same time so as to protect the assured against being trapped by obscure or ambiguous phraseology.⁷³

In addition, with reference to any liability, the insurer is relieved of such liability if, before the happening of the insured event, which was the cause of the death or bodily injury giving rise to the liability, there has been a cancellation of the policy of insurance by mutual consent, or in accordance with policy term.⁷⁴ In this regard, the certificate of insurance is required to have been surrendered by the insured to the insurer either before the happening of the insured event or after the happening of such event, but before the expiration of fourteen days from the taking effect of the cancellation of the policy, or a statutory declaration has been made as to its destruction or loss which makes it impossible to be so surrendered.⁷⁵ The insurer is also relieved of liability if, either before or after the happening of the insured event, or within a period of fourteen days from the taking effect of the cancellation, the insurer had commenced proceedings in respect of insured's failure to surrender the certificate of insurance.⁷⁶ Relief from the obligation to satisfy a judgement debt is also available to the insurer in cases where, apart from any provisions

⁷⁰ MVTPI Act, s 10(2) (a); *Mobil Oil (Nig) Plc v IAL 36 Inc* (2000) 6 NWLR (Pt 659) 146.

⁷¹ *ibid*, s 10(2) (b).

⁷² *Martins* (n 64); affirmed by the Supreme Court in (1969) NCLR 365, 395.

⁷³ See, eg, *Martins v National Employers Mutual General Insurance Association Ltd* (n 68) 46, 56 (Lambo J).

⁷⁴ MVTPI Act, s 10(2)(c).

⁷⁵ *ibid*, s 10(2) (c)(i) and (ii).

⁷⁶ *ibid*, s 10(2) (c)(iii).

contained in the policy, a judicial declaration on its right to avoid the policy on ground of non-disclosure or misrepresentation of a material fact has been so obtained in an action commenced before or within three months after the commencement of the proceedings in which the judgement was given.⁷⁷ The insurer is further given the right to recover from the insured, any excess sum above the insured sum paid to the third party on account of the performance of the statutory obligation.⁷⁸

Moreover, apart from regulating the contractual relationship between the insurer and the insured *inter se* in respect of payments to third parties in sections 8, 9 and 10 as highlighted above, section 11(1) of the MVTPI Act operates, notwithstanding anything in any written law to the contrary contained, to transfer and vest the insured's right against the insurer in the third party to whom liability has been incurred in terms of the provisions of the Act if such liability is incurred either before or after either of the stipulated insolvency situations spelt out thereunder. These include the bankruptcy of the insured or the making of a composition or arrangement by the insured with his creditors, or, in the case of an insured company, by the making of a winding-up order, a resolution for the voluntary winding up, appointment of a receiver or manager of the company's business or undertaking, or the possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge in case of a registered company.⁷⁹ Similarly, where an order is made for the administration in bankruptcy of the estate of a deceased debtor, any right of his in respect of any debt proved in bankruptcy owing by the deceased in respect of any liability against which he was insured under a policy issued in terms of the MVTPI Act, is transferred to and vested in the person to whom the debt is owing.⁸⁰

Thus, in any of the foregoing events, since the liability of the insured to a third party is not in any way affected., any right which the insured might have against the insurer is automatically transferred to the third party so as to allow the latter to claim directly from the insurer up to the limit of the insurer's contractual liability and the insurer is obliged to accord the third party the same right he would have accorded the insured but for the occurrence of those events.⁸¹ The right so vested cannot be contracted out by any condition of the policy purporting directly or

⁷⁷ *ibid*, s 10(3).

⁷⁸ *ibid*, s 19(4).

⁷⁹ *ibid*, s 11(1) (a) &(b)..

⁸⁰ *ibid*, s 11(2).

⁸¹ *ibid*, s 11(4).

indirectly to avoid the policy or alter the rights of the parties thereunder on the happening of these events.⁸² However, where the liability of the insurer to the insured exceeds the liability of the insured to the third party, the insured is vested with the right to recover such excess from the insurer.⁸³ On the other hand, since the insurer cannot be liable for any sum that exceeds the insured sum, if the liability of the insurer to the insured is less than the liability of the insured to the third party, the latter is vested with the right to recover the balance from the insured.⁸⁴

Generally, the transfer of the right of the insured under the contract to the third party, as expressed in section 11 of the MVTPI Act, is dependent on the latter establishing the insured's liability. In *Post Office v Norwich Union Fire Insurance Society Ltd*,⁸⁵ where a similar provision contained in section 1 of the Third Party (Rights against Insurers) Act 1930 (UK) was considered, the plaintiff alleged that a firm of contractors had damaged one of their cables. Before proceedings could be started against the contractors, they went into liquidation. The plaintiff started proceedings against the contractors' insurer claiming that, on the insolvency of the insured, they were entitled to sue the insurer direct under the 1930 Act. It was held that the plaintiff could not sue the insurance company except in such circumstances as the insured himself could have sued the insurance company. It was also held that the insured could only have acquired a right to sue for the insurance money when his liability to the third party has been ascertained and determined to exist, either by judgement of the court, or by an award in arbitration, or by agreement, so as to give rise to a right of indemnity, and that, until this is done, the right to an indemnity does not arise.⁸⁶

⁸² *ibid*, s 11(3). See also, Third Parties (Rights against Insurers) Act 2010 (UK), s 17.

⁸³ MVTPI Act, s 11(4)(a). See also, Third Parties (Rights against Insurers) Act 2010 (UK) s 8.

⁸⁴ MVTPI Act, s 11(4) (b). See also, Third Parties (Rights against Insurers) Act 2010 (UK) s 14. Section 10 of the Third Parties (Rights against Insurers) Act 2010 also gives the insurer the right to set off the amount of the insured's liability against the amount of the insurer's own liability to the third party in relation to the transferred rights. Nevertheless, by virtue of section 11 (5) (a) & (b) of the MVTPI Act, the provisions of sections 11, 12 & 13 of the MVTPI Act are not applicable where a company is wound up voluntarily for the purposes of reconstruction or of amalgamation with another company as well as any other case to which the provisions of s 26 of the repealed Workmen's Compensation Act, which vests the rights against the insurers of a company going into liquidation as respects any liability the company might have under the Act to any workman to such workman, applies.

⁸⁵ (1967) 2 Q B 363.

⁸⁶ *Cf Chandris v Argo Insurance Co Ltd* (1963) 2 Lloyd's Rep 65, where it was held that an insured had suffered loss when he had incurred liability to the third party, even though the existence and amount of that liability had not yet been established. See also, *Castle Insurance Co Ltd v Hong Kong Shipping Co Ltd (The Potoi Chau)* (1984) 1 AC 226.

Similarly, in *Bradley v Eagle Star Insurance Co Ltd*,⁸⁷ the applicant, who was employed by a company in their cotton mill developed a respiratory disease caused by the inhalation of cotton dust. The company was wound up in 1975 and dissolved in 1976. Intending to bring an action against the company's insurers under the 1930 Act, the applicant sought an order requiring the insurers to disclose to her the terms and particulars of the relevant insurance policies. The House of Lords applied the *Post Office* case and held that an insured could not sue for an indemnity from the insurer until its liability to the third party has been established. It was further held that, as the insured company had been dissolved and it was not possible for the third party to restore the company and establish its liability, no right of indemnity could be transferred to her under section 1 of the Act; accordingly no useful purpose could be served in making an order for pre-action discovery. In essence, therefore, the third party would not have any right of action against the insurer until he has established the liability of the insured in any of the manners stated by the court.

In order to ensure a smooth and speedy enforcement of the right of the third party against the insurer, the insured is required, under section 12(1) of the MVTPI Act, to give to the third party any necessary information pertaining to the existence or otherwise of a policy, as well as all particulars relating to the policy as specified in the certificate of insurance. This duty also extends to a bankrupt debtor, personal representatives of the deceased debtor and, as the case may be, the official assignee, trustee, liquidator, receiver, manager, or person in possession of the property, to give, at the request of any person claiming in respect of a liability to him, such information as may reasonably be required to ascertain whether any rights have been transferred to and vested in him under the provisions of the MVTPI Act. The duty also includes giving a right of inspection of all contracts of insurance, receipts for premiums, and other relevant documents in the possession, power, or control of such persons.⁸⁸ Furthermore, any contract of insurance which purports either directly or indirectly to avoid the contract, or to alter the rights of the parties upon the giving of any such information, or otherwise to prohibit, prevent or limit the giving of such information, is to be of no effect.⁸⁹ Also, under section 12(3) of the MVTPI Act, once there is a reasonable ground of belief that rights may have been transferred to the third party against any particular insurer, the said insurer shall be subject to the same duty of

⁸⁷ (1989) AC 957.

⁸⁸ MVTPI Act, s 12 (4).

⁸⁹ *ibid*, s 12(5).

disclosure as it is imposed on the bankrupt debtor, personal representatives of the deceased debtor, the official assignee, trustee, liquidator, receiver, manager, or person in possession of the property.

Furthermore, under section 13 of the MVTPI Act, no agreement between the insured and the insurer after liability has been incurred to a third party and after the commencement of the bankruptcy proceedings, or the winding up of a company, as the case may be, nor any waiver, assignment or disposition made by, or payment made to the insured after such commencement, is to be of no effect to defeat or affect the rights so transferred or vested in the third party. Further protection is given to the third party under section 14 of the MVTPI Act, which excludes the bankruptcy of the insured from having effect on any right so acquired by the third party pursuant to the provisions of the Act nor any right against the insurer as spelt out under sections 11, 12 and 13 of the MVTPI Act.

In the same vein, under section 15 of the MVTPI Act, any settlement purportedly made by an insurer in respect of any claim which might be made by a third party as it relates to any liability as is required to be covered by a policy issued pursuant to the provisions of the Act without the third party being made a party is rendered invalid. Also, the death of the insured would not affect the validity of the policy which is to remain in force and available to the third party as if the insured person were still alive. On the other hand, the insurer is entitled to rely, as against a third party, on any defence the insured would have had, such as contributory negligence, had the action been brought against the insured as well as any policy defence, such as breach of the duty of *uberrimae fidei* or warranty or condition, as it would have had against the insured.⁹⁰

It is noteworthy that certain limitations which could be identified with the MVTPI Act have been addressed in the Insurance Act which provisions are applicable to third party claims under all compulsory liability insurance. For example, section 10(1) MVTPI Act has merely imposed a liability to settle any judgement debt in respect of a third party claim against the insured without stipulating the period within which it should be discharged. Under section 69 of the Insurance Act, the insurer is required to settle such judgement debt obtained against the insured in respect of any claim relating to any risk required to be insured against under the Insurance Act or any other law, not later than 30 days from the date of delivery of the judgement. This obligation is to be so discharged notwithstanding that the insurer may be entitled to avoid or cancel or may

⁹⁰ See, eg, *Re Carr & Sun Friendly Insurance Co* (1897) 13 TLR 186; *Pickersgill & Son Ltd v London and Provincial Marine Insurance Co* (1922) 3 KB 614.

have avoided or cancelled the policy.⁹¹ In this respect, the provisions of section 10(2) and (3) of the MVTPI Act as regards the defences the insurer might have had against the insured had the latter claimed an indemnity in respect of the third party's claim, namely the giving of notice of proceedings, cancellation of policy and avoidance for non-disclosure or misrepresentation, have been re-enacted *mutatis mutandis* in section 69(2) – (4) of the Insurance Act to cover other liability insurance policies.

Section 70 of the Insurance Act further gives protection to the interest of the third party in the claims settlement process by requiring the insurer to settle the claim not later than 90 days after the issuance of the discharge voucher where it accepts liability or, within the stipulated period of the 90 days from the date of the receipt of the claim, deliver a statement in writing stating the reason for disclaiming such liability to the third party, or his authorised representative. Failure of the insurer to so settle or disclaim within the stipulated period is punishable on conviction to a fine of ₦500, 000.00 (Five hundred thousand naira). In any instance that the insurer accepts liability and fails to settle the claim within the stipulated period of 90 days, the NAICOM is empowered, at the request of the insured, to effect the payment from the statutory deposit of the insurer. In addition, unless there is an appeal pending, failure of the insurer to satisfy a judgement obtained from a court of competent jurisdiction for 90 days, as well as a verified five complaints of failure to pay claims promptly by NAICOM, is a ground for the cancellation of the certificate of registration of such insurer under section 8(1) (e) and (m) respectively of the Insurance Act.

It is remarkable that the provisions of sections 69 and 70 are applicable to all forms of third party liability claims arising out of insurance required by law, including motor vehicle third party claims. It is also noteworthy that section 10 of the Motor Vehicle (Third Party Insurance) Act as well as section 69 of the Insurance Act, does not enure for the benefit of the insured, but is basically designed to give protection to third parties who have obtained judgements against insured tortfeasors.⁹²

⁹¹ In *Kano v Nigerian Safety Insurance Co* 3 NLR 329, 331, Muhammed, CJ, while commenting on the provisions of a similar provision in s 43 of the Insurance Act 1976, stated that the provision is primarily intended to protect the interests of the Nigerian public against insurers who are wont to delay in the settlement of claims and in consequence cause hardship to genuine claimants against them.

⁹² In *Oginni v Motor and General Insurance Co* 3 LRN 63, the insured, against whom judgement had been obtained by a third party for injuries sustained from the insured's negligent driving, sued the insurer, purportedly under the statutory provisions (section 10 of the 1950 Act and section 43 of the repealed Insurance Act 1976, re-enacted as section 69 of the Insurance Act 2003), for an indemnity against the judgement. It was held that the insured could not rely on the provisions which were applicable only to "persons entitled

Furthermore, unless death of or serious bodily injury to a person is involved, section 71 has dispensed with the requirement of delivery of police report to the insurer by a claimant before settlement in non-fatal accidents once there is sufficient evidence of proof of loss or damage. In this respect, without prejudice to any other mode of proof, a statement of the facts to the insurer concerned together with a statement of an eye witness to the accident, if any, where only one person is involved in the accident, or by each and everyone involved where more than one person is involved, shall be sufficient evidence of proof of loss or damage for the purpose. This, no doubt, would help expedite the claims settlement process in this regard.

IV. DEFECTS IN THE CURRENT REGULATORY REGIME

Despite the extensive provisions of the MVTPI Act and the Insurance Act 2003 to protect the interests of third parties in compulsory liability insurance policies, there are still other notable gaps in the law which need to be addressed. First, the exemption of government vehicles from the requirement of motor vehicle third party insurance policy is no longer explicable on any justifiable ground. Indeed, it is not unusual for government vehicles to be involved in road accidents that could involve loss of life or injury to third parties.⁹³ The exemption of these government vehicles, however, does often limit the right of third parties to recover for the loss due to bureaucratic bottlenecks associated with making reports and filing claims with concerned government ministry, department or agency. In the same vein, the exclusion of persons in passenger vehicles in section 6(1) in respect of liability covered by third party policies is discriminatory and unjustifiable since the insured risk is the liability of the

to the benefit of (any) such judgement” against the insured; in *Kano v Nigerian Safety Insurance Co* (n 91) 329,332, it was held that section 43 of the Insurance Decree 1976, like section 10 of the 1950 Act, relates to the enforcement of judgements against insurers. It does not relate to the situation such as in the case where the insured is claiming directly against his insurers.

⁹³ In a recent Report by the National Bureau of Statistics, government vehicles involved in road crashes across the country between January and March 2022 were about 55: Biodun Busari, ‘1, 834 died in 3,345 Road Accidents in 3 months – NBS Report’ *Vanguard* (Lagos, 10 June 2022) <<https://www.vanguardngr.com/2022/06/1834-died-in-3345-road-accidents-in-3-months-nbs-report/>> accessed 30 March 2023; Odita Sunday, ‘Two Feared Dead in Ex-President Jonathan’s Convoy Accident’ *The Guardian* (Lagos, 6 April 2022) <<https://guardian.ng/news/two-feared-dead-in-ex-president-jonathans-convoy-accident/>> accessed 30 March 2023.

insured party and premiums payable on the policy is not so much dependent on the value of the vehicle, the subject matter of insurance.⁹⁴

Another issue of concern is the propriety or otherwise of joining the insurers to the suit brought by a third party against the insured tortfeasor. While section 10 of the MVTPI Act as well as section 69(1) of the Insurance Act 2003 imposes an obligation on insurers to settle judgement debts within 30 days from the date of delivery of judgement, there is no explicit provision in the law for non-compliance, nor is the law explicit on the circumstances in which the third party may proceed against the insurer where the latter fails to settle.⁹⁵ The preponderance of judicial authority, as noted, however, is that third parties must have first established the liability of the insured and obtained judgement against the latter before proceeding against the insurer for satisfaction of the judgement debt, all other things being proved. The third party, therefore, is left with no other option than to initiate another suit against the insurer. The implication of this, as it has been rightly noted in *Brizino v Alabi*, is that:

[N]on joinder of the insurers calls for the multiplicity of legal proceedings. The third party obtains judgement against the insured who appeals to the Supreme Court and fails. The insurers then refuse to pay and the third party will be compelled to start fresh proceedings against the insurers which may ultimately end in the

⁹⁴ Premium for motor vehicle third party policies is fixed at ₦5, 000.00 (Five thousand naira) for all vehicles and it is prohibited, under section 51 of the Insurance Act 2003, for any insurer to, by itself or as a member of an association of insurers, make a general increase in the minimum rates of premium charged or to be charged with respect to any class of insurance business made compulsory by law except with a prior approval of NAICOM. In contrast to what is obtainable in Nigeria, the Supreme Court of India in *National Insurance Co Ltd v Faqir Chand & Ors* 1996 ACJ 111, while interpreting s 146 of the Motor Vehicles Act 1988 which relates to the necessity for insurance against a third party risk, has held that, other than the contracting parties to the insurance policy, the expression 'third party' should include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of the insurance policy. According to the court, every insured takes out an insurance policy against third party risks, and enters into a contract with insurers, only with the motive, intention and purpose of covering the risks which may arise in relation to claims lodged against him by a third party. By agreeing to issue the insurance policy, the insurer undertakes to insure the insured and indemnify him against all risks and in relation to all claims lodged against him by third parties. Narrowing the concept, scope, and ambit of a third party, and therefore, excluding the passengers in the vehicle from the operation and purview would not only defeat the very purpose of taking out the insurance policy, but the very object of the Motor Vehicle Act which makes it mandatory requirement of law that all vehicles/ owners must be compulsorily insured against third party risks.

⁹⁵ The only available sanction that could be meted out to the insurer is contained in section 8(1)(m) of the Insurance Act which empowers the NAICOM to cancel the registration of an insurer upon receipt and verification of not less than five complaints of failure to pay claims promptly.

Supreme Court. . . . Furthermore, as a matter of common sense, it may appear ridiculous to deny the third party joining the insurers as party . . . when subsequently, they may be permitted leave to appeal against the very judgement in the case to which they are said they could not be joined as a party. To my mind, whatever interest they may protect at their appeal, they may as well protect it at the hearing of the suit in the lower court.⁹⁶

It is also noteworthy that the requirement to give notice of the proceedings to the insurer under these provisions,⁹⁷ arguably, is to give the insurer the opportunity to be joined as a party to the suit (if it so wishes) if it has any contending issue as regards the policy of insurance. However, the general practice has been for the insurers to wait for the liability of the insured tortfeasor to be determined first rather than join the initial suit whereas they have been known to actually be the ones controlling the proceedings even though they are not made parties thereto.⁹⁸

Moreover, the establishment of the liability of the insured, which is a condition precedent to proceeding against the insurer on the transfer of the right of the insured to the third party in the specified circumstances spelt out under section 11 of the MVTPI Act, is no longer in tandem with the current trend in some common law countries, particularly, the United Kingdom (UK). Apart from the issue of multiplicity of suits and cost implication to the third party, the insured and the insurer, the current law subjects the third party to a precarious position because, in some cases, the insured could have gone into the expense of establishing the liability of the insured to him only to discover when an action is subsequently brought against the insurer that the latter is not liable under the insurance contract. Furthermore, the insurer could, at the subsequent proceedings, rely on some defences, such as non-disclosure or misrepresentation of material fact, which they could have had against the insured to defeat the third party claim, even though policy condition relating to the giving of notice of proceedings could be met by the third party.

⁹⁶ *Brizino* (n 59)199, 202-203 (Bello Ag CJ). Similarly, in *Shingleton v Bussey*, 223 So 2d 713, 715 (Fla 1969), the Florida Supreme Court held that the vehicle insurance liability policy in question should be construed as a 'quasi-third party beneficiary' contract giving the third party beneficiary a right to bring a direct action against an insurance company. The court also noted that the time has arrived when the legal reasons advanced in favour of joinder and direct action against an insurer outweigh and preponderated over the traditional notions asserted to justify precluding an injured third party from enjoying such right. Third party cannot sue the insurer alone, but can join the insurer in an action against the insured.

⁹⁷ MVTPI Act, s 10(2)(a); Insurance Act 2003, s 69(2)(a).

⁹⁸ *Onoche v Audu* (n 59) 111, 118 (Bello J); Olusegun Yerokun, *Insurance Law in Nigeria* (Princeton Publishing Co 2013) 382.

In the UK, section 1 of the Third Parties (Rights against Insurers) Act 1930 and the decisions in *Post Office v Norwich Union Fire Insurance Society Ltd*⁹⁹ as well as *Bradley v Eagle Star Insurance Co Ltd*,¹⁰⁰ which made the establishment of the liability of the insured a condition precedent to the transfer of rights are no longer applicable. Section 1 of the Third Parties (Rights against Insurers Act 2010(UK) has conferred on a third party, who claims to have rights under a contract of insurance by virtue of a transfer of the right of the insured, the right to bring proceedings to enforce the rights against the insurer without having established the insured's liability as to the existence and amount by virtue of a declaration or a declaratory, a judgement or decree, by an award in arbitral proceedings or by an arbitration or by an enforceable agreement. though such rights may not be enforced without having established the liability.¹⁰¹

Furthermore, where the transferred rights are subject to a condition, whether under the contract of insurance or otherwise, that the insured has to fulfil, anything done by the third party, which if done by the insured would have amounted to or contributed to fulfilment of the condition, is to be treated as if done by the insured.¹⁰² The policy condition requiring the giving of notice of a claim within a certain time limit, for example, would be deemed satisfied if given by the third party within the specified time frame. Section 2 thereof also gives a third party the right to bring proceeding against the insurer and, optionally, the insured, for either a declaration as to the insured's liability to the third party, or a declaration as to the insurer's potential liability to the third party, or both. It is noteworthy that the declarations made by the court is binding on the insurers only unless the insured is made a defendant to the proceedings.¹⁰³

Similarly, in South Africa, in respect of any liability incurred by the insured towards a third party and the insolvency of the insured, section 156 of the Insolvency Act 1936 provides the third party, on the sequestration of the estate of the insured, with a right of direct action against insurers to recover the amount of the insured's liability to him, but not exceeding the maximum amount for which the insurer has bound itself to indemnify the insured.¹⁰⁴ As such, third parties need not have obtained

⁹⁹ *Post Office* (n 85).

¹⁰⁰ *Bradley* (n 87).

¹⁰¹ Third Parties (Rights against Insurers) Act 2010 (UK), s 1 (2) (3) & (4).

¹⁰² *ibid*, s 9(1) & (2).

¹⁰³ *ibid* s 2(9) & (10).

¹⁰⁴ In *Woodley v Guardian Assurance Co of South Africa Ltd* 1976 (1) South Africa 758 (W), it was held that s 156 of the Insolvency Act applies to companies as well as individuals.

judgement against the insured before acquiring a right of action against insurers. Furthermore, like in the UK, while the third party is required to establish both the liability of the insured to him as well as that of the insurer under the insurance contract when proceeding against the latter under section 156, he is not required to join the insured to his action against the insurer, unless he desires to do so. Also, in Louisiana, the Louisiana Direct Action Statute provides that ‘all liability policies . . . are executed for the benefit of all injured persons . . . to whom the insured is liable and allows third party a right of direct action against insurers, regardless of the solvency of the insured.’¹⁰⁵

V. CHARTING A PATH FOR REFORM OF THE CURRENT LAW

In the light of the foregoing identified gaps in the current laws on compulsory liability insurance in Nigeria, the following suggestions are hereby proffered. First, the exemption of government vehicles from the requirement of third party liability insurance should be reviewed to make it mandatory also for such vehicles to be so covered. In the same vein, the exclusion of liability in respect of gratuitous passengers in section 6(1)(b)(ii) of the MVTPI Act should be reviewed to extend coverage to such persons. There is actually no justification for their exclusion given the fact that pedestrians and some other persons within the vicinity of the event who are injured or died could benefit from the third party policy.¹⁰⁶ Similarly, the exclusion of third party insurance policy from any contractual liability under section 6(1)(b)(iii) of the MVTPI Act should be

¹⁰⁵ Similarly, in some civil law jurisdictions such as in Belgium, Art 150 of the Insurance Act 2014 gives third parties direct claims right against casualty insurers regardless of the solvency of the insured. The third party can proceed directly against the insurer and need not join the insured to the action although the insured may intervene in the proceedings. The insurer can also apply for the insured to become a party to the proceedings. Similarly, in France, Art L 124-3 of the *Code des Assurances* recognises the right of the injured third party, or of a third party subrogated in its rights, to file a claim directly against the liability insurer of the party responsible for the loss. In respect of property damage, however, there is no statutory right of direct action against the insurer but case law recognises the right of a third party to claim against the insurer on behalf of the insured, if the insured fails to do so, by way of an action *oblique* subject to Art 134-1 of the Code. Third parties may proceed against the insured to establish his liability and then bring a separate *action directe* against the insurer or may proceed against both insurer and insured in the framework of the *action directe* proceedings. Unless the third party has established the liability of the insured in separate proceedings, third party must usually join the insured in the *action directe* and establish the liability of both the insured and of the insurer: Michel Tournois, ‘Direct actions by victims against insurers of wrongdoers in France’ (1996) *IJIL* 194, 202.

¹⁰⁶ See, eg, Road Traffic Act 1972, s 144(4)(A), amended by the Road Traffic Act 1988 (UK).

amended to make such contractual arrangements of no effect in the interest of the affected passenger.¹⁰⁷ Also, the exclusion of liability incurred in respect of death or bodily injury to persons arising out of or in the course of employment in section 6(1)(b)(i) of the MVTPI Act should apply only in cases where there is actually a cover in respect of that liability pursuant to the requirements of the Employees' Compensation Act.

Furthermore, since these compulsory insurance policies are executed mainly for the protection and benefit of third parties pursuant to statutory obligations, there is really no basis for the circumlocution procedure of enforcing the third party right under section 10 of the MVTPI Act and section 69 of the Insurance Act 2003. While the doctrine of privity of contract is still relevant and should continue to be upheld by the court, the Nigerian law should be amended to make it possible for the third party to bring an action against the insured/tortfeasor and the insurer for the enforcement of his right in a single proceeding once the event giving rise to the liability of the insured has occurred.

In this circumstance, once the liability of the insured is established, the court would be in the position to direct the insurer to indemnify the third party forthwith. This procedure would eliminate the multiplicity of actions which necessarily result from the non-joinder of an insurer in a tort action *ab initio* and would, no doubt, save cost and time of all interested parties. Similarly, in case of the insolvency of the insured, the need to first establish the liability of the insured before proceeding against the insurer implicit in section 11 of the MVTPI Act should be dispensed with.¹⁰⁸ The third party should be allowed to initiate one and single proceedings to determine the

¹⁰⁷ See, eg, Road Traffic Act 1972 (UK), s 148(3), which provides that: 'Where a person uses a motor vehicle in circumstances such that under section 143 of this Act, there is required to be in force in relation to his use of it such a policy of insurance or security as is mentioned in subsection (1) of that section, then, if any other person is carried in or upon the vehicle while the user is so using it, any antecedent agreement or understanding between them (whether intended to be legally binding or not) shall be of no effect so far as it purports or might be held – (a) to negative or restrict any such liability of the user in respect of persons carried in or upon the vehicle as is required by section 145 of this Act to be covered by a policy of insurance; or (b) to impose any conditions with respect to the enforcement of any such liability of the user; and the fact that a person so carried has willingly accepted as his the risk of negligence on the part of the user shall not be treated as negating any such liability of the user. For the purpose of this subsection, references to a person being carried in or upon a vehicle include references to a person entering or getting on to, or alighting from, the vehicles, and the reference to an antecedent agreement is to one made at any time before the liability arose.'

¹⁰⁸ *Post Office* (n 85); *Bradley* (n 87).

liability of the insured as well as the insurer's liability under the policy as it is now available in some other common law jurisdictions.¹⁰⁹

In general, it is more desirable if the various compulsory liability insurance are converted into a social insurance programme and compensation paid out to third parties/victims on a no-fault basis.¹¹⁰ The conversion should not be that complex since a Security and Development Fund, to provide for the payment of any claim admitted by or allowed against a registered insurer where such claim remains unpaid by reason of insolvency or cancellation of the registration of the insurer as well as compensation for innocent individual third parties permanently disabled or killed by uninsured or unidentifiable drivers, has already been established.¹¹¹ Apart from the fact that benefits are easier to claim under such scheme, proof of negligence of the insured tortfeasor nor fault on the part of the third party would be irrelevant. Moreover, for motor vehicle third party insurance policy, for example, a no-fault compensation scheme would significantly reduce unfair denial of compensation in cases where the tortfeasor has no cover, such as with the case of unlicensed drivers or one driving without the permission of the user of the vehicle. The no-fault system of compensation could be made mutually exclusive of the fault-based system such that claimants could still retain their right to litigate.

VI. CONCLUSION

The article has examined the laws regulating compulsory liability insurance in Nigeria, primarily, from the perspective of the scope of coverage, liable parties and beneficiaries, punishment for non-compliance and enforcement of third party rights. Although the insurance market is not as developed in Nigeria as it is in some other developed communities,¹¹² the Nigerian government has recognised the need and potential benefits of providing some minimum level of protection from the unforeseen damages

¹⁰⁹ See, eg, Third Parties (Rights against Insurers Act 2010 s 1 (UK); Insolvency Act 1936, s 156 (South Africa).

¹¹⁰ Under the present legal regime, compensation is fault-based. As such, the negligence of the insured not only has to be proved, but also that the damage occasioned thereby was attributable to his action or omission.

¹¹¹ Insurance Act 2003, s 78. The Security and Development Fund was established under section 17(1) (c) of the National Insurance Commission Act, Cap N53 LFN 2004.

¹¹² In the United States of America, for example, available compulsory insurance include the Social Security, the Universal Health Insurance, Medicare, Unemployment Insurance; Flood Disaster Insurance, Terrorist Insurance and Pollution Insurance: See Y Chen & D Chen, 'The Review and Analysis of Compulsory Insurance' <https://www.businessperspectives.org/images/pdf/applications/publishing/templates/article/assets/5179/IMC_2013_01_Chen.pdf> accessed 15 February 2023.

associated with particular risks to the citizenry. Nevertheless, not only are these compulsory liability insurance relatively few in number, they are also not being well implemented nor the enabling laws duly enforced. It is also noteworthy that most Nigerians are ignorant of their rights under the various compulsory liability insurance such that many cases that would have warranted the payment of compensation/benefits are either not reported and in the few cases where reports are made, the zeal and commitment to enforce the rights are almost absent.

The penetration rate of compulsory liability insurance in Nigeria is reported to be less than 2 per cent because quite a large number of those who ought to take one of the compulsory insurance policies or the other do not have them.¹¹³ For instance, with respect to the MVTPI Act, which is geared towards ensuring that all motor vehicle owners have the minimum liability insurance for the risk of death of or bodily injury to third party, the level of compliance is still relatively low even though it is still the mostly taken policy.¹¹⁴ As of April 2021, out of the estimated 13 million vehicles in Nigeria, only about 3 million have the third party policy.¹¹⁵ Most motor vehicle owners do not see the need to take the cover, while majority of those who take the cover do not know the potential benefits associated therewith as they are taken up only to satisfy the legal requirements for driving on the highway and to avoid being sanctioned by the law enforcement agencies.¹¹⁶

Also, most victims of road accidents are not aware of their rights in the claims settlement process and many who do often compromise their rights for a pittance. The same can also be said of the builders' liability insurance as well as the occupiers' liability insurance which is required under section 64 and 65 respectively of the Insurance Act 2003. Many of such building constructions of more than two floors, which ought to be covered for construction risks, including those belonging to government, are being

¹¹³ Chiamaka Ajeamo 'Embracing benefits of compulsory insurance' *The Sun* (Lagos, 10 October 2019) <<https://www.sunnewsonline.com/embracing-benefits-of-compulsory-insurance/>> accessed 25 March 2023.

¹¹⁴ It has been reported that out of the estimated 16 million – 17 million vehicles on Nigeria roads, only about 4.3 million vehicles were captured in the Nigerian Insurance Industry Database: Afeez Hanafi, 'Insured motorists lose claims over ignorance of third party insurance benefits', *Punch* (Lagos, 19 December 2021) <<https://punchng.com/insured-motorists-lose-claims-over-ignorance-of-third-party-insurance-benefits/>> accessed 18 February 2023.

¹¹⁵ Bankole Orimisan, 'Only 2.5 m motorists captured as insurers plan N7, 500 for third party' *The Guardian* (Lagos, 31 January 2022) < <https://guardian.ng/news/only-2-5m-motorists-captured-as-insurers-plan-n7500-for-third-party/>> accessed 20 April 2023.

¹¹⁶ Hanafi (n 114).

carried out without the requisite mandatory insurance policy just as several public buildings are uninsured against the specified perils.¹¹⁷ Also, it has been reported that the premiums on group life insurance policies for workers in the employment of the federal government are not being paid as and when due.¹¹⁸ The marine (cargo) insurance is also reported to be confronted with the challenge of low patronage.¹¹⁹

Undoubtedly, in the absence of the requisite liability insurance policy, the third party faces the risk of either not being adequately compensated when the insured perils occurs, or not being compensated at all in cases where the financial capability of the tortfeasor could not meet the damages occasioned by his/her tortious act/omission. There is also the attendant loss to the economy of the country in terms of the revenue which premiums from these compulsory insurance policies could have generated and ultimately contributed to the Gross Domestic Product if the laws were duly enforced.¹²⁰ There is, therefore, a need for massive awareness campaign to sensitise concerned individuals and entities, who are liable parties, on the need to effect these compulsory liability insurance as well as the citizenry on their rights thereunder. The insurance industry should also build public trust by promptly paying claims without necessarily relying on undue technicalities to evade their just obligations. More importantly, government at all levels should ensure the due observance of the law as it

¹¹⁷ Zaka Khalik, 'Collapsed Ikoyi 21-Storey Building Has No Insurance Cover' *Leadership* (Abuja) <<https://leadership.ng/collapsed-ikoyi-21-storey-building-has-no-insurance-cover/>> accessed 10 March 2023; Editorial 'Despite Many Professionals, Insurance Law, Cases of Building Collapse Increase' *Daily Trust* (Abuja, 26 December 2021) <<https://dailytrust.com/despite-many-professionals-insurance-law-cases-of-building-collapse-increase/>> accessed 10 March 2023; Editorial, 'Collapsed Ikoyi building wasn't insured' *The Nation* (Lagos, 15 November 2021) <<https://thenationonlineng.net/collapsed-ikoyi-building-wasnt-insured/>> accessed 10 March 2023; Ebere Nwoji, 'Implementing Compulsory Builders' Insurance' *This Day* (Lagos, 10 November 2021) <<https://www.thisdaylive.com/index.php/2021/11/10/implementing-compulsory-builders-insurance/>> accessed 23 April 2023; Ebere Nwoji, 'Wages of poor enforcement of compulsory insurance' *This Day* (Lagos, 2 February 2022) <<https://www.thisdaylive.com/index.php/2022/02/02/wages-of-poor-enforcement-of-compulsory-insurance/>> accessed 20 March 2023.

¹¹⁸ Ajeamo (n 113).

¹¹⁹ Lakinbofa Goodluck, 'The state of marine insurance in Nigeria' <<https://shipsandports.com.ng/state-marine-insurance-nigeria/>> accessed 15 March 2023.

¹²⁰ For instance, it has been revealed that the insurance industry loses about ₦530 billion yearly as a result of failure by vehicle owners to purchase the compulsory motor vehicle third party insurance policy: Ademola Orunbon, 'Imperatives of e-third party motor insurance' *Vanguard* (Lagos, 18 November 2021) <<https://www.vanguardngr.com/2021/11/imperatives-of-e-third-party-motor-insurance/>> accessed 20 April 2023.

relates to policies which they have the legal obligation to effect to serve as an example worthy of emulation by all.



ISBN 1119-3573