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**L E G A L
NEWSLETTER**

**THE NEED FOR BUSINESS INTERRUPTION
INSURANCE COVERAGE IN NIGERIA IN THE
FACE OF THE RECENT COVID-19 PANDEMIC**



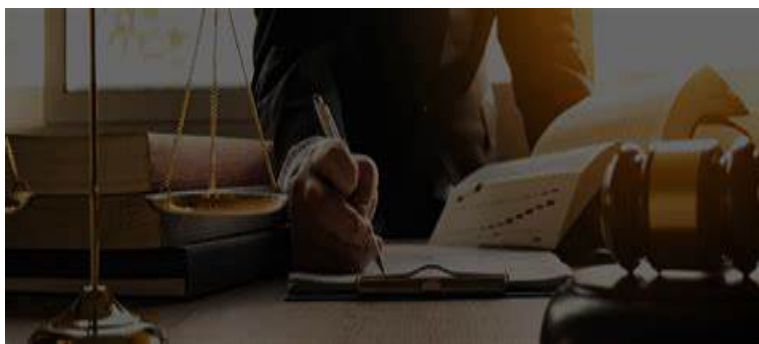
THE NEED FOR BUSINESS INTERRUPTION INSURANCE COVERAGE IN NIGERIA IN THE FACE OF THE RECENT COVID-19 PANDEMIC



INTRODUCTION:

The outbreak of corona virus (COVID-19) pandemic has no doubt, occasioned an unprecedented human and economic crisis across the globe. The resultant lockdown and abrupt shutdown of major economic activities in the world has apparently given rise to several business disruptions and economic losses across nations including Nigeria.¹ According to Kristalina Georgieva, Managing Director of International Monetary Fund (IMF), the economic effect of the pandemic would result in “a recession at least as bad as during the Global Financial Crisis or worse”, and this is because the world is currently experiencing the most difficult economic situation since World War-II.²

The consequence of the foregoing crisis is that many organizations would be seeking for ways to ameliorate the effect of the pandemic on their businesses. One of the options open to some businesses is to have recourse to their insurance policies, and the most significant insurance coverage which business owners would resort to is the business interruption insurance coverage. This write up briefly examines the concept of business interruption coverage; the extent to which such insurance claims may be potent for the insured business owners in the face of the recent pandemic, and the need to broaden the Nigerian insurance legal framework to include business interruption insurance.



BUSINESS INTERRUPTION INSURANCE COVERAGE:

Business interruption insurance has been defined by Black's Law Dictionary as an agreement to protect against one or more kinds of loss from the interruption of an ongoing business, such as loss of profits while the business is shut down to repair fire damage.³ According to Janene,⁴ business interruption insurance coverage relates to the insurance coverage that generally allows a business to recover certain losses in the event that the business suffers physical damage or loss that prevents it from operating its business.⁵ It indemnifies against losses caused by the

inability of the insured business to continue business operations due to a hazard or peril “insured against,” such as a fire or storm that causes physical damage to a business’ physical plant or real property.⁶ However, the business insurance focuses on the profits reasonably lost during the period of interruption.⁷

Jason in explaining the concept of business interruption insurance stated that, it is an insurance policy that covers short term financial loss arising from interruption to a business operation as a result of damage to the business premises or equipment, and can also be extended to include prevention of access to the premises, and sometimes includes loss caused by interruption to supply of goods and services.⁸

The import of business interruption insurance as shown in the foregoing definitions is that it allows insured business owners to claim lost profits incurred as a result of interruption to their business operations due to hazards, perils and civil authority (an order from the government for some businesses or their operations to be shut down for some reasons).⁹ The business interruption insurance is designed to recover the earnings or profit the insured would have made had the peril not occurred.¹⁰ It puts the insured in a position he would have been had the peril not occurred.¹¹ It is however, noteworthy that, for a policy holder to succeed in such claims there has to be proof of physical damage or loss to the property of the insured,¹² as well as proof of loss of profits during the period of the business interruption;¹³ and the loss must flow from the damage alleged.¹⁴

THE POSSIBILITY OF BUSINESS INTERRUPTION INSURANCE CLAIMS FOR COVID-19 PANDEMIC:

Claim for loss of profit as a result of the COVID-19 pandemic under the business interruption policies is recoverable, but it largely depends on the language or wordings of the insurance policy.¹⁵ This is because, every insurance policy makes provision for the extent of the peril it covers and those that are excluded under its exclusion clause,¹⁶ of which in most cases, some diseases are either clearly excluded or some classes are expressly included in the policy. For instance, in *Catholic Med. Ctr. v. Fireman's Fund Ins. Co.*,¹⁷ it was held that the business interruption must be caused by a covered communicable disease event at the premises described in the Declarations (policy).



In that case, the policy (Declaration) defined “communicable disease event” as an “event in which a public health authority has ordered that the premises described in the Declarations be

evacuated, decontaminated, or disinfected due to the outbreak of a communicable disease at such premises”.



In the United States case of *Meyer Natural Foods, LLC v. Liberty Mutual Fire Insurance Company*,¹⁸ where the Defendant’s insurance policy had an exclusion clause, the court held that a contamination exclusion clause in the policy barred or exculpates the Defendant’s coverage for the contamination of beef with E. coli while in the insured’s possession. It must however, be noted that the court arrived at the foregoing decision following the unambiguous wordings of the insurance policy. The Court rightly recognized that in some instances where the clauses are ambiguous, the ambiguity will be resolved in favour of the Plaintiff. *For example, it has been held that a “pollution exclusion” clause whose definition includes “contaminants or irritants” may, depending on the facts of the claim, be “boundless” in application, and thus ambiguous in nature.*¹⁹

It thus follows that for a policy holder to successfully claim coverage for COVID-19 pandemic under the business insurance coverage, the policy must either specifically make provision for the coverage of pandemics and/or civil authority; or make provision which gives room for the contemplation of such coverage.²⁰

On 22nd May, 2020 a Paris Commercial Court, in a suit filed by a French Restaurateur, Stephane Manigold, ordered his insurer AXA Mansard to pay him two months’ worth of coronavirus-related revenue losses. In that case, the Plaintiff filed a lawsuit demanding the insurer’s cover for his operating losses after a government order in mid-March to close bars and restaurants to slow the spread of the coronavirus. The court held that the administrative decision to close the restaurant qualified for insurance cover as a business interruption loss.²¹

BUSINESS INTERRUPTION INSURANCE COVERAGE UNDER THE NIGERIA INSURANCE LAW:

Insurance transactions in Nigeria are regulated by several legislations;²² however, the statute that is relevant to this article is the Insurance Act, 2003. By Section 2 of the Insurance Act, 2003, there are two major classes of insurance coverage (business), to wit: life insurance business and general insurance business.²³ The life insurance business is further classified into three categories by the Insurance Act, 2003 to wit: the individual life insurance business; group life insurance and pension business; and health insurance business.²⁴

The general insurance, on the other hand is also further classified into eight categories, to wit: fire insurance business; general accident insurance

business; motor vehicle insurance business; marine and aviation insurance business; oil and gas insurance business; engineering insurance business; bonds credit guarantee and suretyship insurance business; and miscellaneous insurance business.²⁵

Section 2(4) of the Insurance Act, 2003 provides that for the purposes of the Act, any part of an insurance business may be treated as part of a particular class of insurance business; and reinsurance of liabilities under an insurance policy shall be treated as insurance business of the class to which such policy would have belonged if it has been issued by the reinsurer. Furthermore, by section 2(5) of the Insurance Act, 2003, an insurer may be authorized (subject to the provisions of the Act) to transact any new category of miscellaneous insurance business if he shows evidence of adequate reinsurance arrangement in respect of that category of insurance business and requisite capital where necessary and other conditions as may be required from time to time.

Although there is no clear provision for the practice of business interruption insurance policy in Nigeria, which constitutes one of the reasons why the policy is not popular in the Nigerian insurance industry, it is however, being practiced by few insurance companies in Nigeria²⁶ probably through the window provided by Section 2(3) of the Insurance Act, which makes provision for “miscellaneous insurance business”.



CONCLUSION:

The economic effect of the COVID-19 pandemic has shown how pivotal business interruption insurance is to every business organization and every financial system. It helps to financially protect companies in the event of a serious incident such as the prevalent pandemic, which could consequentially lead to abrupt termination of some businesses.

There is no doubt that many businesses in Nigeria may not be able to continue their operation as a result of the orders made by the Federal Government of Nigeria and various State governments of the Federation in a bid to contain the spread of the COVID-19 pandemic. Whilst many businesses are quick to arrange their business insurance which covers their property and contents, business interruption insurance is often overlooked, especially in Nigeria. Business interruption however, could be the only element that would salvage some businesses from the effect of the pandemic given that it provides coverage to the insured’s business for the expected profits the insured would have made during the period of the business interruption.



It has been said that Nigeria’s insurance sector is still one of the most underdeveloped compared to its counterparts in other jurisdictions.²⁷ The lack of definite and comprehensive legal regulatory framework in the insurance industry is thus, not unconnected to the dearth of business interruption insurance in Nigeria.

It is thus, suggested that the extant Insurance Act, 2003 be amended to broaden the practice of insurance businesses in Nigeria to explicitly include business interruption insurance. This will provide more impetus for its practice in Nigeria.

Interestingly, some governments such as the *United States Government* have taken some proactive steps to address the economic backlash on businesses across the nation as a result of the COVID-19 pandemic through the proposal of legislation entitled the *Pandemic Risk Insurance Act of 2020 (“PRIA”)*, which if enacted, would effectively provide a federal loss-sharing program for insurance claims relating to losses from a certified pandemic or epidemic, such as COVID-19 in the United States.²⁸ It is also suggested that the Nigerian Government should also take a cue from the United States Government by enacting a related legislation that would also address the economic impact of the COVID-19 pandemic on businesses in Nigeria.

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