

Determining the Materiality of an Undisclosed Fact: An Onerous Duty on the Assured

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Abstract : The duty of disclosure in Nigerian insurance law is in need of reform. The materiality of an undisclosed fact (notwithstanding that it was an honest and innocent non-disclosure) currently entitles insurers to avoid insurance policies, leaving an insured with an uncovered loss. While the test of materiality requires an insured to voluntarily disclose facts that will influence an insurer's decision without proper guidelines from the insurer, the insurer is only expected to prove that the undisclosed fact had influenced its judgment in fixing the premium or determining whether to accept the risk. This problem places an onerous duty on the assured to volunteer to the insurer every material fact even though the insured only has a slight idea about the mind of a hypothetical prudent insurer. This paper explores the modern approach to revisiting the problem of an insured's pre-contractual obligation to determine material facts in Nigerian insurance law. The aim is to build upon the change in the structure of insurance contract obligations in other common law jurisdictions such as the United Kingdom. The doctrinal and comparative methodology captures the burden imposed on the insured under the existing Nigerian insurance law. It finds that the continued application of the law leaves the insured in the weakest position, and he stands to lose in a contract supposedly created for his benefit. It is apparent that if this problem remains unresolved, the over-all consequence will contribute to a significant decline in the insurance contract, which may affect the Nigerian economy. The paper aims to evaluate the risks of the continuous application of the traditional law, which does not keep with the pace of modern insurance practice. It will ultimately produce a legally compliant reform, along with a significant deviation from the archaic structure that exists in the Nigerian insurance law. This paper forms part of an on-going PhD research on "The insured's pre-contractual duty of utmost of utmost good faith". The outcome from the research to date finds that the insured bears the burden of the obligation to act in utmost good faith where it concerns disclosure of material facts.

Keywords : disclosure, materiality, Nigeria, United Kingdom, utmost good faith

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