

THE NIGERIAN JURIDICAL REVIEW

Vol. 11

(2013)

Articles	Pages
Criminal Law: What Remedy for the Consumer of Hospitality Services? ~ <i>Etefia E. Ekanem</i>	1
Protection of Consumers of Transportation Services under the Motor Vehicles (Third Party Insurance) Act in Nigeria ~ <i>Ebele L. Okiche</i>	19
Appraisal of the Jurisdictional Regime of the National Industrial Court Of Nigeria ~ <i>Anthony Nwazuoke & Chinedu Igwe</i>	39
Online Contracts in Nigeria: An Overview ~ <i>Edwin O. Ezike</i>	53
Jurisdiction in Actions for Infringement of Trade Marks and Passing-Off in Nigeria ~ <i>Chukwunweke. A. Ogbuabor & Sylvester N. Anya</i>	83
Is Environmental Protection Implicit in Planning Law? ~ <i>Emmanuel Onyeabor & Helen U. Agu</i>	115
Mortgage of Land as Security under the Land Use Act 1978 ~ <i>Dorothy E. Nelson</i>	137
Striking a Balance Between International Trade, Sustainable Development and Human Rights ~ <i>Damian U. Ajah & Chukwunweike A. Ogbuabor</i>	163



FACULTY OF LAW
UNIVERSITY OF NIGERIA, ENUGU CAMPUS

EDITORIAL COMMITTEE

General Editor

Professor Boniface O. Okere, Docteur d'Universite de Paris

Assistant Editor

Professor George. O. S. Amadi, LL.B, LL.M., Ph.D., B.L

Statute and Case Note Editor

Professor Ifeoma P. Enemo, LL.B., LL.M., Ph.D., B.L

Secretary

Dr. Edith Nwosu, LL.B., LL.M., Ph.D., B.L

Book Review Editor

Dr. Chukwunweike A. Ogbuabor, LL.B., LL.M., Ph.D., B.L

Book Review Editor

John F. Olorunfemi, LL.B., LL.M., B.L

Distribution Coordinator

Damian U. Ajah, LL.B., LL.M., B.L

NIGERIAN JURIDICAL REVIEW

VOLUME 11 (2013)

To be cited as: **(2013) 11 Nig. J. R.**

ISSN: 0189 - 4315

© Faculty of Law, University of Nigeria, Enugu Campus

CONTRIBUTIONS

The Journal welcomes articles in any area or related subjects for publishing considerations. Articles and correspondence should be forwarded to:

The General Editor,
Nigerian Juridical Review, Faculty of Law,
University of Nigeria, Enugu Campus, Enugu, Nigeria.
nigeriajuridical@unn.edu.ng, nigeriajuridical@yahoo.com

PUBLISHED BY
Faculty of Law, University of Nigeria,
Enugu Campus

PRINTED BY:
Sylva Prints, Enugu & Abuja
+234-08063978826; +234-08181610325
onyekasyivanus@yahoo.com; sylvanusonyekachi@gmail.com

**PROTECTION OF CONSUMERS OF TRANSPORTATION
SERVICES UNDER THE MOTOR VEHICLES (THIRD PARTY
INSURANCE) ACT IN NIGERIA***

ABSTRACT

Transportation is one of the most important services provided by any economy, the Nigerian economy inclusive. It serves as a means of conveying human beings and materials from one place to the other by road, rail, sea and air. Our concern here, however, is road transportation. The carnage on Nigerian roads is not only alarming but is also escalating by the day. The problem is made worse by the fact that most victims of these accidents are left without remedy. The Motor Vehicles (Third Party Insurance) Act was enacted to take care of people who become victims of road accidents while travelling in passenger vehicles or while in the vicinity of road accidents. Even though the Act which was enacted as a colonial ordinance seems obsolete, the provisions, if properly implemented, could still go a long way in ameliorating the plight of transportation services consumers in the present day Nigeria.

1. Introduction

In this era and time, the average consumer tends to spend more of his income on services rather than on products. Transportation, being the life wire of the economy is one such area of services. In spite of its importance in the economy, the Nigerian transport sector is plagued by poor and shoddy services. The consumer, far from being “the king” here, as the saying goes, is at the mercy of the service provider. Being more concerned with making money than with consumer satisfaction, the provider does not fulfill his own part of the bargain most of the time. Abandoning commuters in between journeys is a daily occurrence on our roads. Over-charging for services is no longer news since fares are fixed at the discretion of the provider who can change them as many times

* E. L. Okiche, Lecturer, Faculty of Law, University of Nigeria. E-Mail address, ebele.okiche@unn.edu.ng.

Protection of Consumers of Transportation Services ~ E. Okiche

as he wishes in one day. Overloading is a common practice as seats in passenger vehicles are re-designed to accommodate as many passengers as possible.

To compound the problem of the transportation services consumer, most service providers have scant regard for his safety and that of his goods resulting in high rate of traffic fatalities. According to the Minister of Health, Prof Chukwu, "Nigeria has the second highest road traffic accidents among 193 countries in the world with 162 deaths per 100,000 persons."¹ The problem here is in two folds. First is how to minimise accidents on our roads and the second is how to ensure that those who become victims of road accident are compensated. Even though both are consumer protection issues², the latter is our concern in this paper while the former is a matter for another day.

The scope of the paper is limited to road transportation by motor vehicles as defined by the Third Party Act.³ Nigeria has the largest network of roads in West Africa and the second largest in Southern Sahara Africa with a total road network of about 194 kilometers of roads as of 2004.⁴ These roads are, however, poorly maintained and this has been said to be the reason for the high rate of traffic fatalities in the country.⁵ The Act does not define "road" but defines "highway" to include "any roadway to which the public have access."⁶ This description covers almost every road in Nigeria. Transportation services in Nigeria are provided by both the government and private persons (including incorporated persons) who make available "passenger vehicles"⁷ as defined

¹ www.thenationonline.net/2011/index/4619 visited 23/7/2013.

² The idea of consumer protection is first to make sure the consumer is protected from loss or injury and secondly to make sure he gets redress if he suffers loss or injury.

³ The Third Party Act, s. 2 defines a "motor vehicle" to mean a vehicle propelled by mechanical power other than a vehicle constructed to run on rails and includes a motor cycle." Tricycles popularly called "Keke NAPEP" come within the purview of the Act as they are mechanically propelled.

⁴ See "Nigeria-Roads" at <http://www.indexmundi.com/facts/nigeria/roads>, accessed 31/8/2013.

⁵ *Ibid.*

⁶ The Third Party Act, s. 2.

⁷ "Passenger vehicle" means a motor vehicle used for carrying passengers for hire or reward. The Third Party Act, s. 2.

by the Act for public use. The Motor Vehicles (Third Party Insurance) Act⁸ is the main legislation on the compensation of accident victims.

The Third Party Act, which has been in existence from colonial times, precisely since 1945⁹ has been the subject of academic discourse. One that is relevant to this paper is Agomo's article titled "The Position of The Third Party Under the Compulsory Motor Vehicle Insurance Legislation."¹⁰ She first gives the number of road accidents and the death that occurred therefrom to underscore the importance of insurance as a means of indemnification for losses. She then outlines the different types of motor vehicle insurance but delimits her scope to the "Act policy" which is the minimum insurance required by law. She examines the provisions of the Act in some detail but the main thrust of her work is section 10 of the Act which according to her is "the most litigated provision of the Act."¹¹ The reason for this frequency of litigation, she further opines, "lies in the misunderstanding regarding the right of the third party to join the insurance company."¹²

She discovers that the third party is in a precarious situation because the Act is "defective in several respects."¹³ First is as a result of the marriage between the law of tort and insurance which means prior proof of fault before insurance can pay. Second is the restrictive nature of the Act. Finally, she noted the unnecessary adherence to the doctrine of precedents by the courts.¹⁴ To solve those problems, she advocates an alternative to the Act like what happens in New-Zealand where compensation is paid regardless of how the accident occurs *i.e.* non-fault based compensation.¹⁵ Much as we agree with some of the issues she raised; the scope of this paper goes beyond those issues. The major issue is not the defects in the Act but non-implementation of its provisions even as it is presently. The problem of the Nigerian consumer is not so much as

⁸ Cap M22, Laws of the Federation of Nigeria (LFN) 2010 hereinafter referred to as The Third Party Act.

⁹ The Act was enacted as Ordinance No. 53 of 1945, its commencement date was 1st April, 1950.

¹⁰ C. K. Agomo, "The Position of the Third Party Under the Compulsory Motor Vehicle Insurance Legislation," in J. A. Omotola (ed.) *Essays On Nigerian Law, Vol. 1* (Lagos: Faculty of Law, 1989) pp 43-60.

¹¹ *Ibid.*, p. 49.

¹² *Ibid.*, p. 50. The problem has since been solved by legislation, see Insurance Act 1976, s. 68

¹³ *Ibid.*, p. 59.

¹⁴ *Ibid.*, pp. 59 – 60.

¹⁵ *Ibid.*, p. 58. For details of the position in New Zealand see, www.cooley.edu.lawreview.

inadequate or defective legislation but lack of will to enforce existing legislation

Afejuku's article¹⁶ is on motor insurance generally. She examines the indemnity given to motor insurers and suggests ways this could be improved. The area that is relevant to this work is the section on third party claims.¹⁷ She only takes a cursory look at the position of the third party noting that the inclusion of the payment of third party property damage is an innovation brought in by the 1976 Insurance Act.¹⁸

Writing 14 years later, Agomo in her book¹⁹ reiterates most of her earlier views. She, however, left the issue of an alternative to the third party motor vehicle insurance open ended.²⁰ All in all, none of the above works reviewed or said anything about consumer protection which is the main interest of this paper. The paper reviews the relevance of the Third Party Act as a consumer protection law in the light of the present realities.²¹ It examines, not just the adequacy or otherwise of the provisions of the Act but also appraises the level of compliance with the provisions of the Act. It is our contention that the Act makes adequate provisions for consumer protection but that the problem is non implementation.

2. Nature of Third Party Insurance

Ordinarily, insurance is a contract between two parties. As a means of spreading loss, it is an agreement where one party, the insurer agrees, in return for a consideration called the premium to pay the other party, the insured a certain sum of money at the happening of a specified uncertain event or events.²² But over the years, third party insurance policies

¹⁶ D. Afejuku, "Indemnity Under Motor Insurance in Nigeria" (1978-1988) 3 *Ng. JR.* pp. 117-127.

¹⁷ *Ibid.*, pp. 122-123

¹⁸ Insurance Act 1976, (repealed), now in Insurance Act 2003, Cap I17, LFN 2004, s. 68.

¹⁹ Chioma K. Agomo, *Modern Nigerian Law of Insurance Law & Insurance* (Lagos: University of Lagos Press, 2003) pp. 191-216.

²⁰ *Ibid.*, p. 212.

²¹ See Anambra State RTC Report for the year 2012 from the FRSC, Anambra State Command.

²² *Charles Chime v. UNIC Insurance Co. Ltd.*(1972) 2 ECCLR 808 at 811. Also *Prudential Insurance Company v. Inland Revenue Commissioners* [1904] 2 K.B. 658.

have developed. A third party insurance is one under which the insurer (the second party) agrees to indemnify the insured (the first party) if he is liable for injuries done to another person (the third party) who is not a party to the contract.²³ Such insurance policies cover losses that result from acts or omissions of the insured that are deemed negligent and result in damage to the person, property or interests of other persons. They could be in respect of professional, product or motor vehicle. Our concern here is motor vehicle third party liability. A third party includes every other person except the contracting parties to the insurance contract. He could be a passenger in the insured vehicle or in another vehicle for that matter or a person walking along a road in the vicinity of the accident.²⁴

3. An Appraisal of the Provisions of the Act

The Act makes it an offence for any person²⁵ to “use or cause or permit”²⁶ any other person to use a motor vehicle on a highway²⁷ without a policy of insurance or a security in respect of third party risks.²⁸ The penalty for contravention of this provision is a fine of ₦400 or one year imprisonment or both. In addition, a person so convicted shall be disqualified from holding or obtaining a driving license for a minimum period of

²³ www.m.businessdictionary.com/definition/third-party-insurance.html, visited 26/8/2013.

²⁴ *Ibid.*

²⁵ “Person” here is not limited to the owner of the vehicle alone. *Williamson v. O’keefe* [1947] 1 ALL ER, 307 and it includes a limited liability company, *Briggs v. Gibsons Bakey Ltd* [1948] N.I. 165

²⁶ The meaning of these words have been the subject of judicial interpretations many times over. See generally Nicholas Leigh-Jones eds. *MacGilluray On Insurance Law* (London; Sweet and Maxwell, 1997) pp. 814-815. Agomo, *Modern Nigerian Insurance Law, op. cit.*, pp 192-193, *Elliot v. Grey* (1960) 1 Q.B. 367 *Brown v. Roberts* [1965] 1 Q.B 1 Cf *Cobb v. Williams* [1973] RTR. 113, *Mclead v. Buchanan* (1940) 2 ALL ER. 179

²⁷ “Highway” includes any roadway to which the public have access, The Third Party Act, s. 2.

²⁸ *Ibid.*, s. 3(1).

Protection of Consumers of Transportation Services ~ E. Okiche

twelve months unless the court, for special reason, orders otherwise.²⁹

The obligation to insure does not apply in respect of motor vehicles owned by the government,³⁰ the police,³¹ or a person who has deposited and keeps deposited with the Accountant-General of the Federation the sum of ₦10, 000 at any time the vehicle is driven by the owner or his servant.³² Also exempted from the provisions of the Act is any vehicle or person declared to be so exempted by the minister.³³

Agomo opines, and in our opinion rightly so, that the reason for the exemption is that the “Government, *prima facie* is obviously in a position to meet such claims without resort to insurance. Therefore, the need for compulsory insurance is not there.”³⁴ The reality on the ground, however, shows that most victims of accidents involving government are uncompensated, thus defeating the aim of the Act. A countless number of transportation services consumers have lost their lives and others maimed in accidents involving government vehicles. Most of these are left uncompensated as a result “of bureaucratic bottleneck”³⁵ even after the government has gone on air to play to the gallery. On the issue of deposits with the Accountant-General of the Federation,³⁶ it would seem that no such thing exists.³⁷ This section of the Act, to say the least, is self-defeating and so should be done away with. Every Government is well able to pay premium for insurance cover and so should do so in order to transfer third party risks to insurers. This will not only take the problem of compensation

²⁹ *Ibid.*, s. 3(2)&(3).

³⁰ *Ibid.*, s. 5(a).

³¹ *Ibid.*, s. 5(c).

³² *Ibid.*, s. 5(b).

³³ *Ibid.*, s. 5(d) and (e). The Minister under the Act is the minister in charge of finance.

³⁴ Agomo, *Modern Nigerian Law of Insurance*, above note 19, p. 194.

³⁵ *Ibid.*

³⁶ The Third Party Act, s. 5(b).

³⁷ A discrete inquiry by this author shows that most staff in the Office of the Accountant-General of the Federation do not know about this provision of the law let alone the deposit.

off the shoulders of the government but will also make it easier for accident victims to get compensated.

By section 6, a policy of insurance for the purpose of this Act must be a policy which - is issued by an insurer approved by the Minister.³⁸ It would not be wrong to say that this is the most abused section of this Act. The law prescribes who an approved insurer is. It must be a body incorporated under the Companies and Allied Matters Act³⁹ or a body duly established pursuant to any other enactment to transact insurance or reinsurance business and must be registered by the National Insurance Commission (NAICOM).⁴⁰ Yet a lot of fake insurers operate in the country under the very nose of NAICOM. They are in every motor licensing office in the country collecting money from unwary motorists and issuing fake third party insurance certificates to them. As a matter of fact, the Director General of Nigerian Insurance Association (NIA),⁴¹ Mr. Sunday Thomas confirms that out of the over 12.5 million vehicles in Nigeria (excluding motorcycles and tricycles) only 1.5 million have genuine insurance papers.⁴² According to him, the insurance sector loses over N150 billion to these touts who smile to the bank everyday while motorists are left with worthless papers. The reasons for this are not far-fetched. Apart from illiteracy, ignorance is the major factor. The average Nigerian motorist, even the educated one, does not know how well a third party insurance policy can serve him. The provision of the law is that an insurance company's obligation in respect of third party injury or death is limitless

³⁸ The Third Party Act, s. 6(1) (a)

³⁹ Cap. C20 Laws of the Federation of Nigeria (LFN), 2004, Part A.

⁴⁰ Insurance Act, 2003, Cap. 117, LFN 2004, hereinafter referred as Insurance Act, ss. 3 & 4 and National Insurance Commission (NAICOM) is a body established pursuant to the National Insurance Commission Act, Cap N53 LFN, 2004 (hereinafter called) NAICOM Act to regulate insurance business in Nigeria, see Part 11, ss. 5-8.

⁴¹ This is the umbrella union of all approved (registered) insurance companies in Nigeria.

⁴² "Operators Lose N150bn to Fake Insurer" at www.vanguardngr.com/2013/06, visited 1/9/2013.

Protection of Consumers of Transportation Services ~ E. Okiche

while the limit for property damage is N1, 000,000.⁴³ Most Nigerians are not interested in the genuineness of their insurance documents. As far as they are concerned, insurance papers are just for the purpose of avoiding policemen troubling them at checkpoints and nothing more. The law enforcement officers at these checkpoints are themselves either as ignorant as the motorists with fake papers or could not be bothered so long as they are “settled” and so, touting continues to thrive while the consumer is the worse for it.

The liability covered by the Act originally is death or bodily injury to third parties.⁴⁴ This situation has changed. Even though the Act has not been amended since its enactment 68 years ago, its provisions are subject to the Insurance Act. The relevant provision is set out below:

- (1) No person shall use or permit any other person to use a motor vehicle on a road unless a liability which he may thereby incur in respect of damage to the property of third parties is insured with an Insurer registered under this Act.
- (2) The insurance taken out pursuant to subsection (1) of this section shall cover liability of not less than N1 million.
- (3) The insurance under this section shall in addition to the liabilities required to be insured under the Motor Vehicle (Third Party) Insurance Act 1950 and be regulated mutatis mutandis by the provision of the Act.
- (4) A person who contravenes the provisions of this section is liable on conviction to a fine of N250, 000 or imprisonment for 1 year or both.⁴⁵

From the forgoing, one sees that the law makes adequate and ample provisions for the protection of the consumer, the problem is non implementation. One could imagine the kind of protection consumers of transportation services would have been enjoying in Nigeria if the Act is implemented to the letter.

⁴³ Insurance Act, s. 68.

⁴⁴ The Third Party Act, s. 6 (1)(b).

⁴⁵ Insurance Act, s. 68.

The section also provides that the policy must insure the person or classes of persons specified on it in respect of the death or bodily injury to anybody caused by the insured.⁴⁶ In practice most policies are worded in the following or similar words.

This policy covers:

- (a) The policy holder and
- (b) Any other person who is driving on the policy holder's permission provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so permitted and is not disqualified by order of a court of law or by reason of any enact in that behalf from driving such motor vehicle.⁴⁷

One observes that such wording gives a wide coverage to the insured and this makes for good consumer protection. Apart from the person insured, any person who holds a valid drivers' license and drives with the insured's permission is covered. Drivers who are employees of transportation services providers come within the scope. It is commendable that there is no requirement that the policy be a named policy as in life insurance.⁴⁸

Another provision of the Act is that insurers shall pay the hospital expenses of victims provided they are "reasonably incurred."⁴⁹ The amount, however, shall not exceed N100 for each victim treated as an in-patient and N10 for any treated as an out-patient. These amounts are obviously not in tune with reality but the Insurance Act has come to the rescue⁵⁰. In practice, insurers have been known to pay millions of naira⁵¹ in third party claims including costs of litigation, judgment debts

⁴⁶ The Third Party Act, s. 6(1)(b).

⁴⁷ See Universal Insurance Co. Ltd. certificate of motor insurance.

⁴⁸ The Insurance Act, s. 57.

⁴⁹ *Ibid.*, s. 6(2).

⁵⁰ The Insurance Act, s. 68.

⁵¹ The writer is privy to many claims paid by Universal Ins. Co. Ltd. to third parties. On one occasion, the company paid over ₦2,000,000 to commuters in an accident involving one of the luxurious bus operators in the South East.

Protection of Consumers of Transportation Services ~ E. Okiche

and hospital expenses in addition to compensation for loss of life and disabilities.

The proviso to the section excludes some third parties from claiming under the Act. Liability arising out of and in course of employment of a third party is not covered under the Act.⁵² This means that employees of service providers such as drivers and conductors (guards) are excluded. It is submitted that this is rightly so. For one, these do not come within the description of “consumers” for the purposes of the Act. Moreover, the liability owed them by their employers comes within the ambit of Workmen’s Compensation Act,⁵³ itself a compulsory insurance.

Also, gratuitous passengers cannot claim under the Act.⁵⁴ The case of *The Lion of Africa Insurance Co Ltd v. Stella Anuloha*⁵⁵ is illustrative here. The plaintiff/respondent had earlier on, in another case, been awarded damages in respect of the death of her husband caused by the negligent driving of one Ezeoba. She then brought the present suit to recover the award from the defendant/appellants, the insurers of the said Ezeoba under the Third Party Act.⁵⁶ It was found that the deceased was a gratuitous passenger as the vehicle was a private car, not a “passenger vehicle” as defined by the Act.⁵⁷ The Supreme Court held that Mrs. Anuloha cannot recover. Could the decision of the court have been otherwise if the motor had been a “passenger vehicle” but the driver for one reason or the other had decided to carry the deceased free of charge? The Court did not advert its mind to this area. One is aware of some (philanthropic?) service providers carrying school children during certain hours of the day without collecting fares from them or some who do the same for commuters during festive periods. In the event of an accident in such circumstance, will the victims be able to recover?

⁵² The Third Party Act, s. 6 (1)(i).

⁵³ Now Employee Compensation Act, 2004 Act No 13.

⁵⁴ The Third Party Act, s. 6(ii).

⁵⁵ (1972) A.N.L.R. 467.

⁵⁶ Then Cap. 126, LFN, 1958.

⁵⁷ The Third Party Act, s. 2.

In all, one is unable to see the reason for this exclusion. A “consumer” has graduated from being one who “purchased” goods or services to being one “who the supplier of goods and services ought to have in contemplation that might be affected by such goods or services.”⁵⁸ Liability should not be tied to payment of fares. After all “third party” includes the pedestrian in the vicinity of the accident⁵⁹ for the purposes of the Act. Also, premium⁶⁰ for third party insurance does not vary with the value of what is insured. This is because it is the liability of the insured that is the subject matter of the contract and this cannot be quantified in advance. Given all these, we think that a passenger should not be excluded simply because he did not pay a fare, more so since the indemnity comes from the insurance company. This section has outlived its usefulness and so should be amended. The English equivalent of the Act from which our own is adapted has since been amended.⁶¹

The third exception is “any contractual liability.”⁶² Liability here is one which arises independent of any tort and is completely dependent on contract alone. Terms and conditions of such a contract will come to play here in the event of any liability.

Contrary to the doctrine of privity of contract, the Act gives strangers to the contract direct right of action against insurers provided they are persons or classes of persons specified in the policy⁶³ In *Sule v. Norwich Union Ins.*⁶⁴ the injured passenger who was not a party to the contract recovered from the insurers. The doctrine of privity of contract

⁵⁸ Workshop Papers on the Reform of Consumer Protection Law by Nigerian Law Reform Commission 2006, p. 10. *Donoghue v. Stevenson*, (1932) A.C. 562.

⁵⁹ *National Insurance Co Ltd v. Chand*, AIR 1995 J & Kgi.

⁶⁰ Insurers in Nigeria collect a flat rate of N5,000 as premium for Third Party Motor Insurance.

⁶¹ English Road Traffic Act, 1972, s. 148 (3).

⁶² The Third Party Act, s. 6 (1) (iii).

⁶³ *Ibid.*, s. 6(3)

⁶⁴ (1974) N.C.L.R. 412 .

which constitutes a thorn in the flesh of consumers is done away with.⁶⁵

A policy of insurance under the Act is of no effect “until there is issued by the *approved insurer*⁶⁶ to the person by whom the policy is effected a certificate...”⁶⁷ To underscore the importance of third party insurance, it is mandatory that a certificate of insurance in respect of a motor vehicle must be produced before such a vehicle could be registered or licensed.⁶⁸ Needless to say, this is obeyed only in breach. To assist consumers further, the Act limits the right of insurers to hang onto certain terms and conditions in the policy to avoid indemnifying third parties.⁶⁹ A breach of a condition subsequent to claim such as non-notification of the event leading up to the claim or prior admission of claim without the insurer’s consent would not entitle the insurer to avoid liability.⁷⁰ In *Sule’s* case where no notice was given (even though a condition in the policy required the insured to give notice), it was held that the breach did not estop the third party from recovering under the policy.

Where a Certificate of Insurance has been delivered to the insured, the Act restricts the right of the insurers to decline liability by reference to such matters as:

- (a) The age or physical or mental condition of persons driving the motor vehicle; or
- (b) The condition of the motor vehicle; or
- (c) The number of persons that the motor vehicle carries; or
- (d) The weight or physical characteristics of the goods that the motor vehicle carries; or

⁶⁵ For a full discussion on this see F. N. Monye, *Law of Consumer Protection* (Ibadan; Spectrum Books Ltd., 2003) pp. 132 – 136.

⁶⁶ Emphasis mine, see our comment on this above, p. 7.

⁶⁷ The Third Party Act, s. 6(4), see also The Motor Vehicle (Third Party Insurance) Regulations Schedule, Form A.

⁶⁸ *Ibid.*, s. 9.

⁶⁹ The Third Party Act, ss. 8 and 9.

⁷⁰ *Ibid.*, s. 8. Also *Sule v. Norwich Union*, above, note 64.

- (e) The times at which or the areas within which the motor vehicle is used; or ...⁷¹

The Act however preserves the right of the insurer to recover from the insured any sum paid in discharge of the liability which is covered only by virtue of the two sections above.⁷² Again, this is a plus for consumer protection. Insurers cannot hide under warranties and conditions in insurance policies to repudiate claims. The Act makes them strictly liable to indemnify transportation services consumers even where the insured is in breach of certain conditions or terms in the policy. The remedy opened to the insurer is to recoup its losses from the insured after indemnifying the consumer.⁷³

Section 10 gives the condition under which insurers are liable to satisfy judgment debts. If a certificate of insurance has been delivered to the person entitled as provided by the Act⁷⁴ and judgment has been obtained in respect of liability covered by the Act, notwithstanding that the insurer may be entitled to avoid or cancel or may have in fact cancelled or avoided the policy, it is still liable to pay not just the judgment debt, but costs and interests as well.⁷⁵ The insurer is, however, not liable to pay if:

- (a) it has no notice of the bringing of the proceedings which is the subject matter of the judgment before or within 7 days of its commencement⁷⁶ or
- (b) execution is stayed pending appeal⁷⁷ or
- (c) before the accident which gave rise to the matter, the policy was cancelled by mutual consent or in accordance with policy condition and the certificate of insurance was either surrendered to the insurer or the

⁷¹ *Ibid.*, s. 9.

⁷² *Ibid.*, ss. 8 & 9.

⁷³ *Ibid.*, proviso to ss. 8 & 9.

⁷⁴ *Ibid.*, s. 64.

⁷⁵ *Ibid.*, s. 10(i). *Northern Assurance Co Ltd v. Wuruola* (1969) NCLR 4 (SC).

⁷⁶ *Ibid.*, s. 10(2) (a).

⁷⁷ *Ibid.*, s. 10(2)(b).

Protection of Consumers of Transportation Services ~ E. Okiche

- insured had made a statutory declaration of its loss or destruction which made its surrender impossible⁷⁸ or
- (d) after the accident but before 14 days from the cancellation, the certificate was surrendered or the insured makes a statutory declaration of its loss or destruction⁷⁹ or
- (e) the insurer has commenced an action in respect of failure to return it.⁸⁰

The insurer can also avoid the policy and escape liability to the third party as a result of misrepresentation or non-disclosure. To do this, however, the Insurance Company must have commenced the action before or within three months of the action which gave rise to the claim. In addition, it must give the third party notice of its action within 7 days specifying the non-disclosure or misrepresentation it tends to rely on. This will enable the third party decide whether or not he wants to be joined as a party.⁸¹

The current Insurance Act re-enacts this section (*i.e.* s. 10) of the Act⁸² probably to underline the importance of the section and for ease of reference. In addition, the insurance Act brought in a new innovation by providing for a time limit within which to settle claims. Where the insurer admits liability, the claim must be settled within 90 days from the date the claim was made to the insurer. Also, where the insurer declines liability, it must deliver a statement in writing to that effect to the affected claimant within 90 days.⁸³ The insurer is liable to a fine of ₦500, 000 if it fails to comply with this section.⁸⁴

Looking at section 10 generally, one again sees the wide coverage given to consumer interest. Notwithstanding the

⁷⁸ *Ibid.*, s. 10 (2)(c)(i).

⁷⁹ *Ibid.*, s. 10 (2)(c)(ii).

⁸⁰ *Ibid.*, s. 10(2)(c)(iii).

⁸¹ *Ibid.*, s. 10(3).

⁸² Insurance Act, s. 69.

⁸³ *Ibid.*, s. 70.

⁸⁴ *Ibid.*, s. 70(2).

intention to cancel or even cancellation of a certificate of insurance, the insurer is still, subject to being given notice, bound to indemnify the consumer. To further help the course of the consumer no particular form of notice is required. Notice here has been construed widely by the courts. In *Perera v. Motor & General Ins. Co. Ltd.*,⁸⁵ a letter asking the insurers to confirm its repudiation of liability in writing to enable the third party know whether to initiate proceedings or not was held to be adequate notice.⁸⁶ Furthermore, even where the insurer intends to rely on non-disclosure of material facts or misrepresentation, it must not only give notice to the third party, but must also specify the particular non-disclosure or misrepresentation. This is because the insurer is not free to adduce further allegations or go beyond the ones already specified in the notice.⁸⁷

Even where the insured is declared bankrupt or is in liquidation (in the case of corporations) the claim of the consumer who has secured judgment is not thereby defeated. The rights of the insured are transferred and rest in him *i.e.* the consumer.⁸⁸ The insured is mandated, under the Act to give information concerning the particulars of the insurance such as the policy details, receipt for premium payment, *etc* to the third party in the event of an accident.⁸⁹ This will, of course, help the consumer seek indemnity from the insurers of the service provider.

Any settlement made by the insurers in respect of liability under the Act is invalid unless the third party concerned is a party to such settlement.⁹⁰ Even where the insured is dead, the policy “remains in force and available for third parties notwithstanding the death of any person insured under such policy as if such a person were still alive.”⁹¹ This

⁸⁵ (1971) ANLR 586.

⁸⁶ *Ibid*, at 591.

⁸⁷ *Zurich General Accident and Liability Ins Co v. Morrison* [1942] 2 K.B. 53.

⁸⁸ The Third Party Act, s. 11 (1).

⁸⁹ *Ibid*, s. 12 (1).

⁹⁰ *Ibid*, s. 15(1).

⁹¹ *Ibid*, s. 15(2).

provision, among others, underscores the importance the legislature places on consumer compensation to the extent that the death of the provider is not a bar.

Every motorist on the highway is bound to, if required to do so by a police officer, produce his certificate of insurance.⁹² It is an offence to make any false or misleading statement in order to obtain certificate of insurance.⁹³ It is equally an offence to forge, alter, deface or mutilate or allow or aid anybody to forge, alter, deface or mutilate a certificate of insurance...⁹⁴

4. The Act as a Consumer Protection Legislation

Who then is the “consumer” for the purposes of the Third Party Act? The Act covers the insured against any liability he may owe a third party which arises from the use of the insured motor vehicle.⁹⁵ The insured’s (*i.e.* the owner of the vehicle and in this context, the service provider) own losses are not covered by the provisions of the Act. The object of the law is the third party. Since one can only be a passenger in a vehicle while making use of the services of a transportation services provider, it is obvious that it is the third party who is a consumer for the purposes of this Act. This accords perfectly with the philosophy behind consumer protection – recognizing the inequality of the bargaining power between the consumer and the producer or service provider and ensuring that the later does not unduly exploit this inequality to the detriment of the former.⁹⁶

A critical look at the Act reveals far reaching provisions made by the legislature for the protection of the consumer. To start with, the Act makes it compulsory for every motorist, not

⁹² *Ibid.*, s. 17.

⁹³ *Ibid.*, s. 20(1).

⁹⁴ *Ibid.*, s. 20(2)(a)&(b). The penalty is N400 or 2 years imprisonment or both.

⁹⁵ See the long title to the Act.

⁹⁶ E. L. Okiche, “The Relevance of Bankruptcy Law to Consumer Protection” *Unizik Law Journal*, Vol. 7 No. 1 2010 p. 249.

just road transport service providers to have insurance.⁹⁷ To ensure this, presentation of insurance certificates is made a condition precedent for the licensing and registration of any vehicle.⁹⁸ This is to make sure that the victims of road accidents are compensated irrespective of the financial status of the insured by the use of the risk transfer mechanism of insurance. To further ensure consumer protection, the Act prohibits insurers either from entirely relying on certain conditions and terms to deny liability to consumer or putting them (insurers) to the strictest proof before they can deny liability. The law refuses to allow death or bankruptcy of the insured defeat consumer rights by giving third parties direct rights against insurers.⁹⁹

Our research, however, reveals that in spite of the beautiful provisions made by the Act, the consumer is far from being protected. The reasons for this are many but the most prominent among them is the non-commitment of those responsible for the implementation of the Act. The law enforcement agencies, particularly the police¹⁰⁰ whose duty is to ensure that every motorist has a certificate of insurance, are not alive to their duty. This is shown by the fact that despite the fact that the distance between one police check point and another in most Nigerian highways is less than 1 kilometre apart, yet up to 90% of Nigerian motorists carry fake insurance papers.¹⁰¹

NAICOM's inability to rout fake insurers is perhaps a greater problem than that of the police for if its fake insurance papers are not issued out in the first place there will be no need for the police to arrest anybody. Ineffective regulation of the insurance industry is the bane of the sector. The genesis of the problem of touting in the industry is that from inception, insurance used to be an all comers affair with no government

⁹⁷ *Ibid.*, s. 3, also Insurance Act, s. 69.

⁹⁸ See The Third Party Act, s. 91.

⁹⁹ The Third Party Act, s. 15(2).

¹⁰⁰ The Third Party Act, s. 17(1).

¹⁰¹ See "Operators Lose N150bn to Fake Insurers," above note 42 above.

regulation until 1961.¹⁰² People used to collect money in the name of premium with no intention of fulfilling the obligation of claims settlement. Many people came to regard insurers as fraudsters. NAICOM was set up to police the industry. It is disheartening that more than 15 years after inception, illegal and unregistered insurance companies still abound in the society especially at motor licensing offices. These collect “premium” without ever intending to pay any claim. It is not known that NAICOM has prosecuted any of them and so the business of touting continues to thrive.

Another reason for the low implementation of the provisions of the Act is ignorance. A good number of motorists are ignorant of the Act and the protection it affords them financially. This is why most of them patronize fake insurers who have nothing to offer them. Among consumers, ignorance is also a major factor. They have no idea that they could access compensation running into thousands of naira in the event of road accidents from insurance companies. Finally, amongst the few people that are aware of their rights under this law, some are lethargic about enforcing these rights as a result of the unhealthy attitude of some insurers when it comes to claims settlement. They create unnecessary bottlenecks to repudiate claims.

5. Recommendations and Conclusion

From the discourse above, the problem of the consumer of transportation services is not lack of laws but non-implementation of laws. We recommend that the law enforcement agents whose duty it is to ensure compliance be more alive to their duties. The police and members of the Road Safety Corps who are equally empowered to check certificates of insurance¹⁰³ should collaborate to ensure that motorists comply with the provisions of the Act. To do this, there must be consistent and on-the-job training for them. They should be made to understand the requirements and importance of the Third Party Insurance Act. If this is done, the high visibility of

¹⁰² E.L Okiche “ The Impact of Recapitalization Law on Nigerian Insurance Industry,” (2012)1 *Journal of Contemporary Law*, pp. 211-223.

¹⁰³ Federal Road Safety Commission (Establishment) Act ,Cap. F19, LFN 2004, s. 10 (4)(1).

police and road safety corps on our roads will result in better consumer protection.

On its own part, NAICOM needs to get its act together by being more proactive. The enormous powers given to it under the Act¹⁰⁴ should be utilized. Nothing stops it from organizing constant and sustained raids at motor licensing offices across the nation. There is no gainsaying the fact that the moment one or two of these fake insurers are prosecuted the rest will know that it is no longer business as usual. Again, the need for aggressive public education and awareness cannot be over-emphasized. Grassroots and massive publicity in the motor parks, markets, churches and media should be embarked upon. Once the general public knows that the third party insurance is not just to satisfy the law but to protect them, the story will change. This is where NAICOM needs to partner with NIA. There seems to be a gap between the two bodies at the moment buttressing the need for NIA to be represented in the board of NIACOM.¹⁰⁵

Coming to the Act itself, our grouse is mainly with the provision exempting government vehicles and gratuitous passengers.¹⁰⁶ Every vehicle on the road should be insured and every passenger whether gratuitous or not should be covered. The issue of inadequate penalty under the Act, we can say is of no moment since based on the doctrine of *lex posterior derogat legi priori*,¹⁰⁷ the Insurance Act has taken care of that matter.

On the issue of finding an alternative system of compensation such as the “no fault” type of New Zealand¹⁰⁸ we humbly submit that this might not be the best for Nigeria given the well-known “Nigerian factor.”¹⁰⁹ Our opinion is that irrespective of the fault based system of Nigeria, the Act could

¹⁰⁴ The NAICOM Act, ss. 6-9.

¹⁰⁵ Okiche, *The Impact of Recapitalization Law*, above note 102, p. 220.

¹⁰⁶ The Third Party Act, ss. 5 & 6(i)(b)(ii).

¹⁰⁷ A Latin maxim which means that “the younger law overrides the previous legislation.”

¹⁰⁸ Agomo, “The Position of the Third Party under the Compulsory Motor Vehicle Insurance Legislation”, above note 10, pp. 58-59.

¹⁰⁹ People will fraudulently claim even where they were not involved in any accident.

still provide effective and adequate compensation for the consumer if every passenger vehicle is made to comply with the Act. For instance, if passenger vehicle A and B are involved in an accident and both are insured, if vehicle A is at fault, its insurers will pay compensation to every passenger in both vehicles who was injured. If on the other hand, it is vehicle B which is at fault, its insurers will settle everybody since all passengers whether in Vehicle A or B are consumers for the purposes of the Act. In the event of a lone accident, the insurer of the service provider will, of course pay since its insured is obviously at fault as the fact of the accident is proof of the insured's negligence.

Moreover, the provision of the law for victims of uninsured or untraced drivers¹¹⁰ makes the no fault alternative unnecessary. The NAICOM Act¹¹¹ sets up a Security and Insurance Development Fund which is to be used in the development of the insurance industry in Nigeria.¹¹² Among other things it is "to be used to compensate innocent individual third parties permanently disabled or killed by uninsured or unidentified drivers."¹¹³

In conclusion, however, we think it is high time the Act is amended. It was enacted as a Colonial Ordinance 68 years ago and since then many things have changed; if not for anything, we need to assert our independence at least. Again, even though the Insurance Act took care of some of the very obsolete provisions, by the doctrine of *Lex specialis derogate legi generalis*,¹¹⁴ there is need for amendment. For now, however, what is more important is making sure the Act is properly implemented even in its present form. If this is done, the consumer of transportation services will be reasonably well protected.

¹¹⁰ Insurance Act, s. 78.

¹¹¹ NAICOM Act, s. 17 (1)(c).

¹¹² *Ibid.*, s. 20.

¹¹³ Insurance Act, s. 78 (1)(b)

¹¹⁴ Which means that where "two laws govern the same factual situation, a law governing a specific subject overrides a law which governs the general matter."