

INSURANCE: A dormant word for many business people.

Couple of years ago my laptop computer was stolen. I mentioned this to a client - a fine Indian gentleman. He asked if I insured the laptop. He was amazed when I said No! He said to me: “Mr Jemide, I insure everything” and for emphasis he added “down to my underwear”. There I was a lawyer being chastised by a client on something he considered so basic. Indeed many business people in Nigeria are less than lukewarm when it comes to insuring their assets. The reasons may differ and often include: distrust for insurance companies, a poor knowledge of insurance and the understandable lack of funds. Others believe that Insurance companies play the “escape game” once an Insurance claim is filed. However do you know that in year 2004 the Nigerian Insurance Industry earned a premium income of N68.4 billion and paid out claims worth N26 billion? I am certain that loss or damage suffered from uninsured (but insurable risks) that same year was more than double the N26 billion paid out. Insurance requirements will vary from person to person depending on your business and your estate in life. This article serves as a mind juggler by reviewing some typical areas of exposure that are often ignored.

1. ASSET PURCHASES

Whenever you are negotiating the purchase of fixed assets or a going concern with fixed assets e.g a factory, you should note that risk passes to you as soon as you exchange documents. For example imagine that you just purchased a factory premises (a going concern) and after you signed the dotted lines that night there is an unexpected fire (do not rule out sabotage) which guts the factory. Whose loss is it? It is yours! Therefore with such transactions your pre- purchase due diligence should request for insurance status on the property. If the assets are not covered by any policy or you are not satisfied with the type of cover or the reputation of the insurance company, then you should insist in negotiations that the assets be insured as a condition for closing. When entering into this type of transaction always consider a valid insurance on the asset as an integral part of the asset being purchased. You would therefore do well to request for the original insurance policy and do not forget to include a subrogation clause in the Deed of Sale assigning the right to collect the insurance claim on the policy, if indeed it becomes necessary.

2. TENANCY AGREEMENTS

Typical Tenancy Agreements contain a clause that makes it obligatory for the Landlord to insure the premises and that in the event of a fire or any peril that makes the property un-habitable the Landlord is obliged to use the Insurance payment to reinstate the building. Such clauses state further that during the period that the tenant dislocated the rent ceases to run. In practice for one reason or the other very few landlords actually insure their tenanted premises. The reality is that if the property is subject to a mishap the landlord would be in double jeopardy. Such a landlord will suffer loss of income due to unpaid rent for the period of disuse and also the cost of reinstating the damaged property. It is suggested that the landlord being the dominant party should build in the cost of the Insurance premiums into the rent or pass on the covenant to insure to the Tenant. Depending on the type of building and the calibre of tenant it is possible for the landlord to enforce this. Some tenants would see the benefit anyway! It is advisable to explore the possibility of having an Insurance

policy that covers both the cost of repairs and the loss of income for the period of repairs. This would be a wise choice! Another possibility in Tenancy agreements is to take out an insurance policy known as tenant default indemnity which would compensate the landlord in the event that the tenant is unable to pay rent due to insolvency. The tenant default indemnity in Nigeria will not only take an adventurous insurer to sign on but will also saddle the parties with the onus of drawing a line between insolvency and recalcitrance.

3. HAULAGE AND FREIGHT

Goods in transit (GIT) insurance covers risks in moving goods from one point to the other within country – typically road haulage. Any thing can happen to goods in transit - from accidents to armed robbery. In practice manufacturers who use haulage contractors insist on the haulage contractor having a GIT insurance as a pre-condition to engaging their services. Business people who import goods by ship or air also have an insurable risk which can be covered. If your import terms with your overseas supplier are not CIF (cost insurance and freight) then it is advisable for you to ensure that you take out a policy of your own.

4. WORKMEN COMPENSATION

Section 40 of the Workmen's Compensation Act makes it compulsory for every employer to insure every workman employed by him against injury or death arising out of or in the course of his employment. The Act in Section 40 defines an employer to include: (a) Federal and State Governments; (b) Any persons corporate or unincorporated and their legal representatives if deceased; (c) An employer of an person on secondment under a contract of service (d) members of the management committee of an association/club with employee's. Section 1 of the Act defines a workman to be any person "who has entered into or working under a contract of service or apprenticeship with an employer, whether the contract is expressed or implied, is oral or in writing" I think the appropriate questions from this wide definition are: Who is not an employer? How many employers are workmen's compensation insurance compliant? One interesting exception to the definition of a workman in Section 1 is "a member of the employer's family dwelling in his house". One wonders if a total stranger living with you as a domestic can fall within this exception. Is he/she a member of your family? Author Norman Selwyn in his book – Law of Employment paragraph 2.236 page 60 says "a domestic servant is an employee.....for employment in a private household is deemed to be a business like any other. However this does not apply if she is a close relative of the employer" How many people in Nigeria have workmen's compensation insurance for their domestics? It is interesting to note that if Section 40 (3) of the Act is applied strictly many employers shall be guilty of an offence and liable on conviction to a fine as specified therein. On a positive note would it not be save the day if your injured driver or domestic staff benefit from an insurance if an accident occurs?

SOME USEFUL TIPS IN BUYING INSURANCE

1. Consider using a broker

Some of the benefits you may enjoy from using a broker include the fact that you can often negotiate favourable rates on your premiums; you can also get experienced hands-on advice and in the event of a claim, your broker is available to pursue it.

2. Undervalued Insurance is better than no insurance

People often forget that you can determine the value of your insurance. At least the premiums may be more affordable and you will get something instead of nothing in the unlikely event of a peril. For example you buy a brand new car and for N5

Million Naira and your budget cannot accommodate the premiums on a comprehensive insurance. You may decide to fix the value of your insurance at N2.5 Million instead of N5Million.

3. Group or Fleet Insurance may reduce your premiums

You can negotiate healthy discounts when you group your assets together. For example your Fleet of cars should be insured as a negotiated package with one Insurance company. Some other benefits can be negotiated with a fleet insurance.

4. Payment plan on your premiums

Some insurance companies allow you a payment plan on your Insurance premiums. How does this work? Assume your yearly premium is N1 Million on a particular asset worth 100Million Naira. The insurance company asks you to make a deposit of say 50% and spread the balance over a few months. In exchange for your 50% down payment you get the Insurance policy which means you are covered. In the event of an unfortunate incident before your final payment you are requested to complete your payment before your claim is processed.

I shall conclude by telling a true story of a particular company that procured an order to supply some toxic chemicals. The chemicals were loaded on a truck for delivery and the truck arrives its destination. The driver parks for the night to offload the next morning. Then a sudden explosion! The chemicals explode on the back of the truck, fire ensues damages the truck and certain parts of the adjoining office building. Some of the risk could have been mitigated if the parties involved had averted their minds to Insurance. The owner of the building did not insure the building. The truck owner did not insure the truck comprehensively. And the owner of the consignment did not take out a goods in transit insurance (GIT). It was quite an ordeal for all involved.

Are you thinking of all your Insurable risks that need cover? Then this article has been worth its ink!

Ayuli Jemide, is a Partner with Detail Solicitors