

# Claims settlement in insurance contracts from a consumer protection perspective in Cameroon

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## **Abstract**

*Everyone in the society is faced with the possibility of one or more hazards that are part of life will sooner or later befall him and may occasion some loss. This misfortune is uncertain as to the time and period when it will occur and this amongst others include: fire outbreak, accident, and even death. This necessitates the need for people to go for insurance policies which suit their various needs in order to permit compensation in case of loss. Most consumers of insurance products are “short changed” in the process because very few take the trouble to read through their insurance policies in order to ascertain and understand the terms and conditions. The result is that most often when a claim arises and it is discovered that the loss is not covered by the terms of the insurance contract, there is the tendency of blaming the insurance companies. This paper posits that: there are of course some “bad eggs” in the industry who manipulate consumers. However, the paper holds that this unpleasant quagmire is often due to lack of understanding of the terms of insurance contracts in general and consumer apathy in particular. The essence of this study is to re-iterate the need to communicate the rules of the insurance game, thereby minimizing some of the misunderstanding and problems faced by consumers.*

**Keywords:** claims settlement, consumer protection, insurance contracts, Cameroon.

**JEL Classification:** K12, K15

## **1. Introduction**

Consumer protection is all about making sure that the consumer is not treated unfairly in any way, be it in the provision of services or products. Consumer protection is an essential component of any financial system<sup>2</sup>. In the area of services, financial services play a major role. The pride of place it occupies in the society cannot be over emphasized. This is because it facilitates, enhances and reinforces the growth of commerce and industry both at the national and international levels by providing the means for developing other areas of the economy. It does this in two ways. First, it acts as a major financier of infrastructural development. Again, it helps in creating a safer operating environment for commerce and industry to thrive by offering security and peace of

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<sup>2</sup> D. Armeanu, N. Istudor, M. F. Sgârdea and A.-M. Burcă, *Analysis of the Romanian Insurance Market based on Ensuring and Exercising Consumers' Right to Claim*, „Amfiteatru Economic”, vol. XVI, No. 36, May 2014, p. 550.

mind to economic operators. Thus, without financial services, the consumer will not be able to manage other areas of his life in order to maintain a decent living.

Insurance is considered to be one of the pivotal players in the financial industry. It stands out as first among equals in this sector because of the edge it has over and above other members of that class. Like banking and financial institutions, insurance provides means for investment and financing of projects but unlike them, insurance is the only means of risk spreading and compensation financing.<sup>3</sup> Human life is full of many uncertain risks and to avoid the undesirable outcome of such risks, it is necessary to turn towards insurance. No society can actually prosper without the mechanisms of risk bearing to which we are exposed on a daily basis.<sup>4</sup> Insurance is meant not only to cushion the consumers from the effect of the harsh realities of life, but also to enhance their quality of life. One thing, which is very certain, is that calamities such as deaths, fire outbreaks, burglaries, accidents, sickness etc. must occur but the only uncertainty is when. Insurance is meant to tamper the effect of these calamities when they occur. Thus, the loss of the bread winner of the family need not signal the end of the children's education or that the family will live in penury.<sup>5</sup>

However, there is strong insurance apathy in Cameroon. It would seem that most Cameroonians have a very poor opinion of insurance as a means of protecting their interest in the event of loss. Cameroonians have tales of disappointments at the hands of insurance companies or insurers.<sup>6</sup> They actually believe insurance companies are simply out to make money rather than pay claims. It is thought that insurance companies are prompt to collect premiums but slow to settle claims made against them by the insured and beneficiaries who are less well informed of the mechanism of insurance.<sup>7</sup> As such claims avoidance is the major reason for consumer apathy towards taking advantage of insurance services for his protection. Insurance companies need to embark on prompt settlement of claims. This will create awareness, confidence and more people will go for insurance. Most people refrain from insurance because of the poor attitude of some insurance companies and their intermediaries.<sup>8</sup>

The aim of this paper is to examine claims settlement vis-a vis consumer protection in Cameroon, with the view of making the consumer more aware of his rights and the insurance companies more alert to their duties.

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<sup>3</sup> Insurance touches nearly every domain of economic and social activities: maritime, air, persons, personal property, enterprises or collectivities and risk such as fire, natural catastrophies', automobile risk, medical and child education.

<sup>4</sup> J. M. Fotso, "Les Defis de l'Assurance au Cameroun", Collection Harmattan, 2011, p 10.

<sup>5</sup> Insurance companies have been known to take up the responsibility of children's education and family upkeep where parents took up insurance policies before death.

<sup>6</sup> Insurance is an operation which in general puts into relation the insurer who is considered as a powerful party and the insured who is the weak party in the contract. The insured most often suffers from multiple abuses.

<sup>7</sup> M.S Ntumnde, *Insurance Law in Cameroon*, Presses Universitaires d'Afrique, Yaoundé Cameroon, 2012, p. 15.

<sup>8</sup> Some insurance companies actually settle claims but there are some bad eggs in the industry which has led to such consumer apathy.

## 2. The nature of insurance contracts and consumer protection in Cameroon

Insurance contracts have unique features which make them different from other contracts (*sui generis*).<sup>9</sup> The particularity of insurance contracts can be gotten from its definition by Professor E.R.H. Ivamy, who intimates:

*...a contract of insurance in the widest sense of the term may be defined as a contract whereby one person, called the insurer, undertakes, in return for the agreed consideration, called the premium, to pay to another person, called the 'assured', a sum of money or equivalent, on the happening of a specified event.*<sup>10</sup>

According to the CIMA CODE, *"an insurance contract is a bilateral contract which puts on the insurer and insured some obligations to be respected. For the insurer, it is essentially the obligation to ensure the execution of the services laid down by the contract at the occurrence of the insured event.*<sup>11</sup>*For the insured, he has the obligation to declare the risk, pay the premium or contribution at the agreed dates and declare when the contract is in force, new circumstances which might either increase the risk, create new ones thereby rendering inaccurate or null and void the answers given to the insurer.*"<sup>12</sup>

One of the main features of the above definitions is that it is an agreement to pay a sum of money to the insured party or provide him with some corresponding benefits on the occurrence of a peril to the insured. The agreement must be obligatory, not just discretionary for there to be a contract of insurance.<sup>13</sup> It is worth noting that the specified event must have some element of uncertainty about it.<sup>14</sup> An expectation to receive payment no matter how well founded is not a contract of insurance. Thus, the nature of insurance requires that the happening of insured events or at least their severity and time of occurrence be contingent rather

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<sup>9</sup> Insurance is embodied in printed standardized forms, drawn up by the insurer's lawyers and presented to the buyer as a finished product. Insurance is one of a few legal transactions where the layman enters into without a counsel at his elbow. It is undoubtedly detailed and complex as a contract for the sale of land, a will or a deed. Moreover, the insured deals directly with the agent and is seldom concerned about the identity of the principal. Once the policy is received by the insured it is hardly read and never fully understood. It is a contract of adhesion and the prevailing business custom of insurance contracts even for the most careful businessmen is not to read the policy but to rely on the accuracy, skill and good faith of the agent.

<sup>10</sup> E.R.H. Ivamy, *General Principles of Insurance Law*, 4<sup>th</sup> ed. London, Butterworths, 1984 at p 3.

<sup>11</sup> Article 16 (1) of the CIMA Code. Translation from the CIMA code with emphasis added.

<sup>12</sup> Article 12 CIMA Code. Translation from the CIMA code with emphasis added.

<sup>13</sup> J. Birds & al., *Macgillivray on Insurance Law*, 13<sup>th</sup> ed., Sweet and Maxwell, London, U. K., 2015, pp. 1-2.

<sup>14</sup> The uncertainty may be either, as in the case of life assurance, that although the event is bound to happen in the ordinary course of nature, the time of its happening is uncertain, or that the happening of the event depends upon accidental causes and the event therefore may never happen at all.

than certain.<sup>15</sup> The core of a contract of insurance is the certainty of the security and peace of mind, which it guarantees on the occurrence of the insured peril. It aims at putting the insured party back to the position he was before the loss.<sup>16</sup> Thus, insurance is not an agreement to prevent losses even though most often insurers' advice their clients on loss prevention and minimization measures. Similarly, the occurrence of the event on which the payment of claim is made must be one that is uncertain. Uncertainty is twofold. It might be uncertain as to whether the event will occur such as fire outbreaks, burglary accidents etc. On the other hand if the event is one that is bound to happen, the uncertainty is as to when as in the case of death. Furthermore, the events need not be adverse to the insured even though most of the times they are. But one cannot say that events which lead to payment of annuities or survival benefits under life assurance policies are adverse to the insured, it is enough that the events are outside the control of the insured.<sup>17</sup> For example everyone dies eventually; there is no contingency to the ultimate fact of death. However, there is good deal of uncertainty concerning the manner of a person's death (will they die young or old and in what manner).<sup>18</sup> This means that contracts of insurance depend on an uncertain event or contingency as to both time and loss. The loss or its occurrence must be uncertain or fortuitous. The peril insured against must not be brought into operation by an intentional act of the insured. The insurer is not sure when the event would occur.

Thus, the subject matter of insurance could be anything that could sustain damage, injury, loss or death. Physical objects like houses, household equipment, industrial equipment or human beings are insurable. Also intangible objects such as debts, liabilities owed other persons, intellectual property etc. are also subject to insurance. In giving effect to this, the CIMA code not only provide for a wide range of classes of insurance<sup>19</sup> that could be contracted.

Another distinctive feature of insurance is the consideration paid which is known as premium.<sup>20</sup> Premium must not be commensurate to the amount of work

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<sup>15</sup> J.W. Stempel, *Stempel on Insurance Contracts*, 3<sup>rd</sup> ed., Wolters Kluwer Law and Business, USA, 2014, p. 9.

<sup>16</sup> Ibid.

<sup>17</sup> Lord Mansfield in *Carter v Boehm*, (1766) 3, Burr. 1905, 1909-1910 had stated that contracts of insurance are contracts of speculation. Professor Paul Gerald Pougoue puts it that "le contrat d'assurance est a la fois un contrat consensuel, synallagmatique, aléatoire..." Paul Gerald Pougoue, "Commentaire: La Notion de Contrat d'Assurance dans le Code CIIMA" *Revue de Droit et de Science politique*, No.29, 1997, p 24.

<sup>18</sup> J.W. Stempel, *Stempel on Insurance Contracts*, 3<sup>rd</sup> ed., Wolters Kluwer Law and Business, USA, 2014, p. 9.

<sup>19</sup> Article 328 of the CIMA Code lists out the main classes of insurance ranging from fire accidents, miscellaneous risks branches, illness, rail road vehicles, aircrafts, sea lake and river vessels, goods in transit, fire and natural elements, other property damages, general liability, watercraft, lake and river vehicles, credit, guarantee, various pecuniary losses, legal protection, assistance of persons in difficulty, life-death, insurance related to investment funds, traditional saving schemes and investment.

<sup>20</sup> Premium is the consideration which the insured pays to the insurer in return for the insurer's promise to pay the sum insured in the event of a loss or damage within the terms of the insurance contract.; *See the case of Sun Insurance Office v Clark*, (1912) A.C. 443 at 460, where per Lord

done. It means that the amount of premium must not be equivalent to the value of the insurers' actual performance but is calculated in relation to the likelihood that performance will be required within a certain time. This is because insurance is all about a pool of risk. The insured community contributes into a common pool from which the few who suffer loss are paid-off.<sup>21</sup>

Insurance is all about taking money from a lot of people to meet the misfortune of a few in a way that would not hurt the pocket and interest of the individual.<sup>22</sup>

In the past, it used to be a case that a mere promise to the premium grounded a valid contract of insurance. However, this is no longer the case today. Payment of premium is now a condition precedent for the validity of insurance contracts.<sup>23</sup> "The receipt of an insurance premium shall be a condition to a valid contract of insurance and there shall be no cover in respect to insurance risk, unless the premium is paid in advance."<sup>24</sup>

Insurable interest is another unique feature of all insurance transactions. It is so important that without it there cannot be a valid contract of insurance for in order for any insurance contract to be enforceable, the policy holder must have an insurable interest in the person or property on which he procures insurance. Insurable interest is considered by the CIMA code as:

*Any person having an interest in the continuing existence of an object may have it insured. Any direct or indirect interest in the non-occurrence of a risk may be the object of an insurance policy.*<sup>25</sup>

The issue here is that once a person has an insurable interest in any insured event he could recover under the contract even if he is a stranger to the contract. This means that the doctrine of privity of contract, which is the ban of consumers, has no place in insurance contracts. For instance a third party who suffers injury to his person or property as a result of motor vehicle accident would recover even though he is not a party to the insurance contract.<sup>26</sup>

Another most important factor in insurance contracts is that of utmost good faith. This principle of utmost good faith is usually based on the fact that if the

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*Atkin* 'the premium is the consideration, which the assured in exchange for their undertaking to pay the sum insured in the event insured against'; also in the case of *British Marine Insurance Co. v Jenkim*, (1900) I.Q.O 299 at 403, Bigham J, held that 'any consideration sufficient to support a simple contract may constitute, the premium in a contract of insurance'.

<sup>21</sup> This theory of risk is derived from the law of averages. Insurance is subject to the law of large numbers. The function of insurance is to combine a large number of risks and reduce the degree of risk and uncertainty. This is based on the idea that only a small proportion of those in a pool of risk will suffer losses from a specified period.

<sup>22</sup> M.S. Tumnde, *Insurance Law in Cameroon*, Presses Universitaires d'Afrique, Yaounde, Cameroon, 2012, pp. 22-23.

<sup>23</sup> Article 13 of the CIMA Code was amended in 2011 requiring that premiums be paid upfront and in one installment.

<sup>24</sup> *Ibid.*

<sup>25</sup> Article 36, CIMA Code.

<sup>26</sup> Article 200 of the CIMA code has rendered motor vehicle liability insurance compulsory for all motor vehicles, its trailers or semi-trailers in the CIMA member states.

insured fails to give such disclosure or the insured makes a material misrepresentation, then the insurer has a powerful remedy, i.e. the right to declare the contract void.<sup>27</sup>

*In carter v Boehm,*<sup>28</sup> Lord Mansfield said “Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed i.e most commonly in the knowledge of the assured only: the underwriter trust to his representation and proceeds upon confidence that he does not keep back any circumstances in his knowledge to mislead the underwriter to belief that the circumstances do not exist. The keeping back of such circumstances is fraud and therefore the policy is void.

*Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the risk runned is different from the risk understood and intended to be runned at the time of the agreement...the policy would be equally void against the underwriter if he concealed ...good faith forbids either party, by concealing what he privately knows to draw the other into a bargain from his ignorance of the fact and believing in the contrary.”*

In Cameroon, according to the CIMA Code, the insured is required to answer the questions asked by insurers accurately, notably in the proposal form through which insurer’s question them at the time of the conclusion of the contract, on circumstances of a nature allowing the insurers to evaluate the risk which they are taking responsibility for.<sup>29</sup>

Most often the insured hide important information believing to benefit from such a situation by paying lower premiums. When such material facts<sup>30</sup> get to the knowledge of the insured the contract becomes void. Although the CIMA code does not hold a non-disclosure or misrepresentation against the party to an insurance contract who is guilty of it unless he acted in bad faith,<sup>31</sup> however, it is necessary for the insured to beware.

### 3. Consumer protection

To understand the sense in which this phrase is used, one might need to look at the meaning of both words separately at first. A look at the definition of the word “consumer” given by various authors and statutes reveals that there are two broad categories: those who define it narrowly and those who prefer the extended

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<sup>27</sup> R. Merkin, *Insurance Law: An Introduction to Insurance*, Routledge, New York, USA, 2013, P 8; In most insurance forms, there is always a warranty clause which holds that “I warrant that the above statements made by me or on my behalf are true and complete and I agree that this proposal shall be the basis of the between me and the company”.

<sup>28</sup> (1766) 3 Burr 1905.

<sup>29</sup> See Article 12 (2) CIMA Code.

<sup>30</sup> Material facts are those that would influence a prudent insurer’s decision in accepting the risk.

<sup>31</sup> Article 19, CIMA Code.

meaning of the word.<sup>32</sup> Among the first are those who confine it to contractual transaction. For instance, part of the definition by Black's Law Dictionary says that it is "a person who buys goods and services, for personal, family or household use with no intention to resale."<sup>33</sup> The Cameroon consumer protection legal framework also holds that the consumer is "any person who uses products to meet his own needs and those of his dependents rather than to resale, process or use them within the context of his profession, or any person enjoying the services provided."<sup>34</sup> A consumer is therefore a natural person who buys or uses products or services for personal rather than business purposes.<sup>35</sup>

The question then is "who is a consumer in the case of an insurance contract?" The CIMA Code which regulates insurance in the Central African states does not use the term let alone define it. However, from the foregoing analysis, it is obvious that the insurer is the service provider or supplier.<sup>36</sup> The consumer includes the insured<sup>37</sup> who purchases the insurance, his beneficiaries and third parties. This is because by the nature of insurance a stranger to the contract who has an insurable interest in the subject matter of insurance can recover from the claim under the insurance policy in question?<sup>38</sup>

Protection is derived from the verb "protect" which literally means "to shield or defend against danger or injury."<sup>39</sup> Protection then means the act of shielding or defending somebody or something from danger or injury. This meaning however does not tie with the intention of insurance. Insurance is not aimed at preventing loss but aims at restituting the insured back to the position in which he was before the loss. The word, protection is used here in the second sense which according to Kanyip means "the provision of financial redress for the consumer who has been injured or suffered loss."<sup>40</sup> Combining the meaning given to the two terms, one sees that Consumer protection in the domain of insurance aims at safeguarding the interest of insurance consumers. It refers to the laws and regulations that ensure fair interaction between insurance service providers and

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<sup>32</sup> See F.N. Monye, *Law on Consumer Protection*, Ibadan, Spectrum books ltd, 2003, pp15-19; B.B Kanyip, *Consumer Protection in Nigeria, Theory and Policy*, Reckon Books Ltd, Abuja, Nigeria, 2005, pp. 11-26.

<sup>33</sup> B. A. Garner, *Black's Law Dictionary*, 8<sup>th</sup> edn. St. Paul, Minn, USA, West Group. 2004, p. 335.

<sup>34</sup> Section 2, of Law No.2011/012 of 26 May 2011 on the Legal Framework on Consumer Protection in Cameroon.

<sup>35</sup> Ibid; B. A. Garner, *Black's Law Dictionary*, 8<sup>th</sup> edn.St. Paul, Minn: West Group, 2004, p. 335.

<sup>36</sup> Section 2 of Law No.2011/012 of 06 May 2011 on Framework on Consumer Protection in Cameroon.

<sup>37</sup> The insured is considered widely to include an applicant or a proposer for insurance.

<sup>38</sup> Thus, a third party who is a passenger in an insured vehicle, a person within the premise of an insured vehicle, a person within the promises of an insured building or contract site, a person who consumes or uses a defective product manufactured by an insured producer are all consumers for the purposes of insurance

<sup>39</sup> *The New Webster Dictionary of the English Language*, USA, Lexicon Publication Inc, 2004, p. 803

<sup>40</sup> B.B. Kanyip, *Consumer Protection in Nigeria, Law, Theory and Policy*, Reckon Books Limited, Abuja, Nigeria, 2005, p. 27.

consumers. This is in line with the definition given by the Consumer protection legal framework. It considers consumer protection as the act of safeguarding the interest of the consumer in matters relating to the supply of goods and services, fraudulent and hazardous practices and formulating rules of law, which recognize the bargaining weakness of the individual consumer and which ensure that the weakness is not unfairly exploited.<sup>41</sup> The interest to be protected here hinges on the eight recognizable rights of the consumer, which are the right to safety, right to choose, right to be informed, right to a healthy and sustainable environment, right to be heard, right to consumer education and right to satisfaction of basic needs.<sup>42</sup> Consumer protection in insurance generally includes the introduction of greater transparency and awareness about the policies, prevention of fraud, education of consumers, elimination of unfair practices and grievance redress.

The role played by insurance in the protection of these rights and the elimination of unfair practices and grievance redress will be examined below under Claims settlement.

#### 4. Claim settlement

The end product of insurance is claim settlement. A consumer of insurance services whose claim is not paid by the insurer has certainly lost the protection insurance is supposed to provide him/her. As a result it is important that consumers be properly educated on claims procedure in the insurance world. The high level of illiteracy coupled with consumer apathy make it very difficult for the average Cameroonian to be interested in protecting his rights.<sup>43</sup> Nonetheless, the CIMA Code has made certain classes of insurance compulsory,<sup>44</sup> and the need for proper information is increasingly felt. A lot of people who ordinarily have their claims paid lose their right of indemnity from the proposal stage. The very first thing a proposer needs to do is to make sure that the insurer with whom he intends to do business with is legitimate. The CIMA Code holds: any insurance company of a member state...must be incorporated in the form of a Public Limited Company (PLC) or Mutual Insurance Company (MIC).<sup>45</sup> Subject to the provisions of this code, no insurer shall commence insurance business in the Central African region unless the insurer has obtained a business license by registering in the Commerce

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<sup>41</sup> See Section 3 (a) of Law N° 2011/012 OF 06 May 2011 on the Legal Framework on Consumer Protection in Cameroon.

<sup>42</sup> [www.consumerinternational.org](http://www.consumerinternational.org), visited on the May 21<sup>st</sup>, 2015; Section 3 (b), (c), (d), (e), (f) of Law N° 2011/012 OF 06 May 2011 on the Legal Framework on Consumer Protection in Cameroon.

<sup>43</sup> The literacy rate in Cameroon is 71.3% with rank of 162 out of 194, UNICEF, 2013 at [www.unicef.org](http://www.unicef.org), accessed on May 21<sup>st</sup>, 2015.

<sup>44</sup> Article 200 of the CIMA Code has instituted compulsory insurance for all those who operate motor vehicles, semi-trailers and trailers on the road. Before the CIMA Code, Cameroon following Law No.65-LF-9 of 22 May 1965 had introduced compulsory motor insurance.

<sup>45</sup> Book III, Section 301, CIMA Code.



Register of his or country.<sup>46</sup> In spite of the above provisions, there are unregistered or unlicensed insurance companies, who go about collecting money from the unsuspecting public. They usually have their agents who go around in motor parks, and at the port of entry where cars are cleared.<sup>47</sup> They indulge in rate undercutting by charging below the approved tariffs because they know they have no intention of ever settling resulting claims.

Also at the preliminary stage, the need to properly complete the proposal form cannot be over emphasized. Insurance contracts unlike other contracts are based on utmost good faith.<sup>48</sup> This basic rule was stated in *Carter v Boehm*<sup>49</sup> where the judge held that:

*Insurance is a contract upon speculation. The special facts upon which the contingent chance is to be computed lies most commonly in the knowledge of the insured only: the underwriter trusts to his representation and proceeds upon the confidence that he does not keep back any circumstances in his knowledge, to mislead the underwriter into a belief that the circumstances does not exist. The keeping back of such a circumstance is a fraud and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived, and the policy is void; because the risk runned is really different from the risk understood and intended to be run at the time of the agreement. Good faith forbids either party; by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact and his believing the contrary.*<sup>50</sup>

The duty of utmost goodfaith lies until the formulation of the contract. As such, non-disclosure of material facts whether as a result of mistake, inadvertence, fraud or any other reason entitles the injured party to avoid the contract.<sup>51</sup> In the words of Lord Mansfield:

*...the keeping back in such circumstances is a fraud, and therefore the policy is void. Although the suppression should happen through mistake,*

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<sup>46</sup> Article 326 of the CIMA Code; See Article 385 of the OHADA Uniform Act Relating to Commercial Companies and Economic Interest Groups.

<sup>47</sup> For example, at the Douala Port of entry insurance brokers can be seen all over proposing insurance to owners of imported cars and the rates given are negotiable.

<sup>48</sup> This means that both parties are bound to disclose to each other all facts that are material to the risk whether asked or not. Contracts of insurance are *sui generis* in that unlike other contracts, they are contracts of *uberimae fidei* where parties must disclose all material facts. There should be no concealment, misrepresentation, half- disclosure and fraud

<sup>49</sup> (1977) 3 Burr. 1905 at 1910.

<sup>50</sup> Ibid.

<sup>51</sup> Article 18 of the CIMA code states ...the insurance contract shall be null and void in the case of non- disclosure or concealment or fraudulent misrepresentation that changes the nature of the risk or reduces the insurer's appraisal, even when the risk omitted or misrepresented by the insured has no impact on the claim. The premiums paid shall be forfeited by the insured and the insurer shall have the right to receive payment of all premiums due and payable as damages.

*without any fraudulent intention; yet still the underwriter is deceived and the policy is void.*<sup>52</sup>

According to the CIMA code:

*Where an insurer requires an insured to complete a proposal form or other application form for insurance, the form shall be drawn up in such a manner as to illicit all such information as the insurer considers material in accepting the application for insurance of the risk: and any other information not specifically required shall be deemed not to be material.*<sup>53</sup>

A proposer is only required to answer questions on the proposal form truthfully and to the best of his knowledge so that the insurers may be able to evaluate the risks which they are bearing.<sup>54</sup> Even though this has relieved the proposer of the hardship of providing information since they only have to answer to questions provided in the insurer's forms, the problem is far from solved. This is because a lot of proposers still engage in such practices as supplying half information as answers to questions in the form or outright lies. Insurers, who usually do thorough investigations at claims stages using experts, discover this and decline all liabilities even the ones that could have legitimately been admitted. Fraud vitiates claims. This is because, where an insured is found to have made a fraudulent claim upon the insurer, the insurer is obviously not liable for the fraudulent claim. But obviously there would have been a minimum claim which could properly have been made and which the insured when found out seeks to recover. The law holds that the insured that has made a fraudulent claim may not recover the claim that could have been honestly made.<sup>55</sup> The logic is simple. The fraudulent insured must not be allowed to think he will go free.<sup>56</sup> Consumers of insurance products need to honestly answer questions in proposal forms. Where they do not know or are not sure, they should say so and not guess.

Another area where consumers should be weary is in allowing insurance agents to complete proposal forms on their behalf. Insurance companies make the completion of a proposal form a prerequisite for obtaining an insurance policy. It is always common for the proposer to be assisted by intermediaries who bring the

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<sup>52</sup> See (1977) 3 Burr. 1905 at 1910.

<sup>53</sup> Article 7 of the CIMA Code.

<sup>54</sup> Article 12 (2) of the CIMA Code.

<sup>55</sup> The sanctions of non-disclosure and misrepresentation provided for by the CIMA Code make a distinction as between where it was actuated by bad faith and where he acted in good faith. In the case of bad faith, he incurs according to article 18 of the CIMA code nullity of the contract. The guarantee by the insurer retroactively disappears. The insurer has the right to reclaim all money paid for previous losses and to keep all premium previously paid; he also has the right to further payment of premium that have fallen due. Article 18 is only applicable in circumstances of intentional non-disclosure and misrepresentation. In the case where bad faith has not been established, article 19 (2) of the CIMA code is applicable.

<sup>56</sup> Article 18 CIMA Code, holds that "irrespective of the ordinary causes of invalidity and subject to the provisions of article 80, the insurance contract shall be null and void in case of concealment or fraudulent misrepresentation by the insured when this non-disclosure, concealment or fraudulent misrepresentation changes the nature of the risk or reduces the insure's appraisal, even when the risk omitted or misrepresented has no impact on the claim".

form for completion or at times actually fill out the form. Insurance agents are intermediaries or canvassers who act for the insurer to solicit proposals and effect insurance.<sup>57</sup> They are remunerated on commission basis based on the number of businesses they introduce into the company. As a result most of them especially in Cameroon focus on business acquisition rather than educating the consumer or customer and the protection of the consumer's interest. So, allowing an agent to complete a proposal form on one's behalf could lead to dire consequences given the effect of non-disclosure especially with the position of the law now. Before the law was divided on who should bear responsibility for misrepresentation or known disclosure by an agent who completes the proposal form for an insured –the insured or the insurer?<sup>58</sup> This has been put to rest by the CIMA Code. According to the CIMA Code:

*...where presentation of an insurance transaction shall be made by persons empowered thereto by the provisions of article 501, the employer or principal shall be liable for damages resulting from the negligence of their employees or mandated acting in their power. The employees or mandates shall, in this case be deemed as agents notwithstanding any agreement to the contrary.*<sup>59</sup>

From this provision of the CIMA Code, it would mean insurers are fully responsible for the conduct of intermediaries acting under their authority. Thus, if the agent exceeds his authority, the insurance company would be liable to the insured by virtue of the apparent authority vested in the agent. Any inaccuracy by an agent is therefore construed against the insurer. However, the insured needs to be very cautious in this regard as to the various manipulation of the agents for any misrepresentation could lead to the repudiation of a claim which otherwise would have been paid.

Another area where caution is important is with regards to the terms and conditions of the policy. These are usually of three types. Namely:

- Condition precedent to the validity of the contract
- Condition subsequent to the validity of the policy
- Condition precedent to the liability of the insurer

They are discussed briefly.

**a. Condition precedent to the validity of the contract.** These are conditions that must exist at the time of the formation of the contract or to the attachment of the risk for the contract to be valid. Until such conditions are fulfilled there is no contract or if there is a contract, the risk under it does not

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<sup>57</sup> M. S. Ntumde, *Insurance Law in Cameroon*, Presses Universitaire d'Afrique, Yaounde-cameroun, 2012, pp. 160-181.

<sup>58</sup> Contracts of insurance are based on Utmost good faith calling for full disclosure by the insured of all material facts to the risk. As such the participation of the insurance intermediary in the completion of the insurance proposal form has given rise to the question as to who is responsible for any inaccuracies contained in a form completed by or with the assistance of the intermediary. Should the responsibility for such inaccuracies be borne by the insurer or the insured?

<sup>59</sup> Article 505 of the CIMA Code.

attach.<sup>60</sup> They may be implied or express. There are issues agreed upon by the parties before or during the formation of the insurance contract. Some of them have been discussed in passing: they include the payment of the premium or contribution of insurance, existence of an insurable interest, names and residence of contracting parties, the effective date and duration, the subject matter on which insurance could be effected, the conditions of automatic renewal, if stipulated, the cases and conditions of extension or termination of the contract or cessation of its effect.<sup>61</sup> A breach of any of these conditions renders the contract null and void and not merely voidable.

**b. Condition subsequent to the validity of the contract.** These conditions come into effect after the formation of the contract and agreed by the parties as essential to the continuous validity of the contract. Usually they relate to things, which the insured must do or refrain from doing for the continuous validity of the contract such as: aggravation of risk, double insurance in respect of the same risk, assignment of policy etc.<sup>62</sup> The effect of the breach of these conditions depends on the intention of the parties. If their intention is to render the contract void from the date of the breach or to suspend the contract until the breach is remedied.

**c. Condition precedent to the liability of the insurer.** This type of condition does not affect the validity of the policy, rather it relates to things which the insured should do or refrain from doing in order not to prejudice his interest in the event of a claim.<sup>63</sup> For instance, most insurers have the following conditions in their policy forms: In the event of any occurrence which may give rise to a claim under this policy, the written statement of the accident must be transmitted to the insurer within 30 days with full particulars.<sup>64</sup> Every letter, claim, writ of summons and process shall be notified or forwarded to the company immediately on receipt. Notice shall also be given to the company immediately the insured shall have knowledge of any impending prosecution, inquest or fatal injury in connection with any such occurrence as aforesaid.<sup>65</sup>

Another area is that of stringent terms. Here the law has intervened to mitigate the hardship the insured suffers as a result of stringent terms and conditions in insurance policies. Under Common Law, once any term is made a "warranty", its breach entitles the insurer to repudiate liability no matter how

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<sup>60</sup> See *Zeus Tradition Marine Ltd v Bell*, (2000) 2, Lloyds Rep. 58, 9.

<sup>61</sup> See Article 8 (1) of the CIMA Code.

<sup>62</sup> For example, where at the time of the motor vehicle insurance claim the driver is not of the required age or does not have the valid documents required by the regulation in force for the driving of a motor vehicle except in the case of theft, violence or use of the vehicle without the insured's knowledge, also in regards to persons transported, when the transportation is carried out without the safety conditions laid down by the competent authorities. See Article 207 and 208 of the CIMA Code.

<sup>63</sup> R.M. Merkin, J.S. Smith, *The Law of Motor Insurance*, 1<sup>st</sup> ed., Sweet and Maxwell Limited, London, Great Britain, 2004, P 236.

<sup>64</sup> Article 230 of the CIMA Code.

<sup>65</sup> The purpose of the above is to enable the insurance company to investigate the loss while it is still fresh.

irrelevant it was to the policy. Once there is a warranty, no question can arise as to its materiality or immateriality to the risk, it being the very purpose of the warranty to exclude all controversy upon that pool.<sup>66</sup>

The practice then was for insurers to use what was known as the “basis of the contract” clauses to further compound the problems of the insured. An example of such clause is: I warrant that the above statements and particulars are true and I have not suppressed or mis-stated any material fact...I hereby agree that the declaration shall be held to be promissory and shall form the “basis of the contract” between me and the company. I am willing to accept a policy subject to the term, exceptions and conditions prescribed therein, and to pay the premium thereon.<sup>67</sup> The effect of the “basis of contract clause” was to elevate every statement made in the proposal form, no matter how irrelevant to the status of warranty. This enabled insurers to avoid claims indiscriminately, even when the breach of the warranty lessens the risk. This was exactly what happened in *Dawsons v Bonnin*.<sup>68</sup> Under the CIMA code the breach of such conditions renders the policy null and void.<sup>69</sup> However, it is worth noting that the situation does not apply to third parties who are victims or beneficiaries.<sup>70</sup>

Similarly, a very important innovation of the CIMA code is article 13 which obliges the insured to take special note of the expiry date of his contract.<sup>71</sup> It states that the effective date of coverage shall depend on the payment of the premium by the insured. As concerns contracts renewed by tacit consent, the non-payment of a premium or fraction thereof after 10 days of its due date shall lay coverage open to suspension after a period of not less than 30 days.....<sup>72</sup>

The foregoing clearly points to the fact that the insured is not only required to be very careful while completing the form but also needs to carefully read the policy to know the terms and conditions under which he/she is contracting the insurance policy. This is why the law on Consumer protection insists that “Standard agreements or adhesion contracts must be drafted in English and French in characters that are visible and legible at first glance by anyone with normal vision.<sup>73</sup> They must be regulated and controlled to provide legal protection to the

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<sup>66</sup> M. A. Clarke, *The law of Liability Insurance*, Informal Law by Routledge, London, 2013, p 147.

<sup>67</sup> Ibid.

<sup>68</sup> (1922) AC 413. In that case the insured inadvertently gave an address in Glasgow, 46 Cadogan street, Glasgow as where the insured lorry was garaged at night. The lorry was actually garaged at the outskirts of Glasgow which in fact lessened the risk of fire. Yet when the lorry was destroyed, it was held that the insured could not recover even though the breach had no effect on the risk.

<sup>69</sup> See Article 207, 208, and 211 of the CIMA Code.

<sup>70</sup> See Article 210 of the CIMA Code.

<sup>71</sup> Regulation No.001/CIMA/PCMA/PCE/2011, modifying and completing the insurance code of the CIMA member states.

<sup>72</sup> Ibid.

<sup>73</sup> See Section 6 (1) of Law No. Law N° 2011/012 of 06 May 2011 on the Legal Framework on Consumer Protection; See also Article 7 (1), CIMA Code which holds that an insurance contract must be written with specific content and in the official language which is French, Article 8 (2) CIMA Code on legible and very legible characters.

consumer...”<sup>74</sup> Writing remains the only condition for the proof of contractual engagements. It is expected that once the insured has kept to the terms of the policy conditions and the insured peril happens, the insurer will indemnify him/her. This, however, is not always the case as majority of insured, when they can read the policy, they do not understand the words used and as a result they violate policy conditions and exceptions ignorantly, even though ignorance is no excuse for breach of condition. Moreover, these terms are sometimes very unfair to the consumer especially with the widespread use of standard contracts in insurance. Also the monolingual nature of some insurance documents also makes it difficult for some insured. Where translations exist, they are so poorly done that they do not make sense to those who can read or write.<sup>75</sup> Most importantly, the reality is that most insurers are not alive to their obligations.<sup>76</sup> It is at this time that the consumer needs to stamp his feet down and insist on being indemnified for his loss. Luckily, both the law and trade associations in the insurance industry have put a lot of measures in place to help them. First the law has made certain classes of insurance compulsory.<sup>77</sup> This is to ensure that any person who suffers loss in respect to these clauses is compensated by insurance irrespective of the financial status of the tortfeasor.<sup>78</sup> 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 property of third parties is insured with an insurer registered under the Code.<sup>79</sup>

Any driver of a vehicle stipulated in article 200 of the CIMA Code must be able to present documents establishing the presumption that the insurance obligation has been fulfilled to state authorities responsible for reporting offences to traffic police of which failure to do so attract a fine.<sup>80</sup> The importance of this provision cannot be over-emphasised. This provision is made to protect passengers in the insured vehicle, the driver and passengers of the other vehicles, pedestrians and other road users such as roadside artisans etc. Thus, a third party who is a stranger to the contract can claim damages for his injury.<sup>81</sup>

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<sup>74</sup> A. M. Assa-Esso, J. I. Sayegh, J. L. Oble, *Droit des Assurance CIMA*, Bruylant, Bruxelles, 2002, p. 203.

<sup>75</sup> The CIMA Code is strictly in French and as such brings up various translations by various researchers or authors. Most companies in Cameroon are French Companies and as such the French language is mostly used in the various insurance contracts.

<sup>76</sup> Section 304 of the CIMA Code requires that policy conditions be submitted in five copies to the Minister in charge of the insurance sector for approval or possible rectification, however, this protective measure is not adequate and much still has to be done to ensure adequate protection of insurance consumers.

<sup>77</sup> Article 200 of the CIMA Code makes Motor Vehicle Insurance Compulsory.

<sup>78</sup> BOOK II, Article 200 of the CIMA Code.

<sup>79</sup> Ibid.

<sup>80</sup> Article 223 of the CIMA Code.

<sup>81</sup> Article 225 of the CIMA Code.

Also, the Regional commission for insurance supervision is given wide powers under the law to protect the consumer.<sup>82</sup> One of which is to “protect insurance policy holders and beneficiaries and third parties to insurance contracts.”<sup>83</sup> As a result of this, the code further provides that the commission shall have power to establish a bureau to which complaints against any insurer or reinsurer, insurance brokers or loss adjuster may be submitted to the public.<sup>84</sup> The commission has the right to issue warnings, reprimand, withdraw operating license, and prohibit insurance companies from carrying out part or all of its activities.<sup>85</sup>

By this provision an insured who feels that he has been unfairly treated has the right to report to the commission. Regional Insurance control commission officials have to receive petitions from the insuring public especially with respect to outright repudiation of claims and delay of accepted claims.<sup>86</sup> The requirement of the law is that an amicable settlement must take place within a time limit of twelve months.<sup>87</sup> The CIMA Code has provided for sanctions for late payment.<sup>88</sup> The position of the insured is further strengthened due to the fact that when this delay is not respected, the amount to be paid produces interest double the legal rate as from the day that the offers become definite.<sup>89</sup>

The trade association within the insurance industry has also put a lot of measures in place to ensure that the public is adequately protected. The Association of insurance companies (ASAC)<sup>90</sup> is the umbrella association body that covers all registered and valid insurance companies in Cameroon. It is at the forefront of trying to create a better understanding of insurance by the public. It has 23 members<sup>91</sup> and it aims at maintaining sanity and control in the registration of agents in Cameroon thereby eliminating the “bad eggs” in the industry.

This association seeks to tackle the problem of insurance in Cameroon which includes: limited understanding of insurance by majority of Cameroonians;

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<sup>82</sup> Article 17 of the CIMA Code in Part II on the Institutional System and chapter one on Executive Bodies and Prerogatives.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> In 2013 during the 73<sup>rd</sup> session held from the 21 to 26 of October 2013 the Regional Commission took the bull by the horn and went ahead to sanction some companies that were not paying claims or delayed in paying claims. CHANAS Assurance and PRO-ASSUR were sanctioned to pay 0.2% of turn over for CHANAS Assurance and 0.5% of turn over for PROASSUR. In the 74<sup>th</sup> session held on the 09 to 13 December 2013, Guarantee Mutuelle des Cadres was sanctioned with a fine of 0.2% of turn over for 2012. See [www.horizon.plus.cm](http://www.horizon.plus.cm) on “Cap sur le Renforcement des Droit des Assures, accessed on the 14<sup>th</sup> of October 2016.

<sup>87</sup> Article 231 of the CIMA Code.

<sup>88</sup> Article 233 and 236 (2), CIMA Code.

<sup>89</sup> Interest rate according to the Decision of the Governors of the Bank of African states (COBAC) in 2006, puts it at 10% and can generally be increased by 2%; See also C.F. Kwanga, “Compensation for Personal Injury Resulting from Road Traffic Accidents: A Critical Analysis”, *Commonwealth Law Bulletin*, Vol. 41, Issue2, 2015, pp 271-303, p.15.

<sup>90</sup> Created in 1973, it is governed by Law No.90/053 of 19 December 1990 and ordinance no. 85/03 of 31 August 1985 and the CIMA Code.

<sup>91</sup> See [www.Africaninsurance.net](http://www.Africaninsurance.net), accessed on the 14<sup>th</sup> of October 2016.

lack of confidence in the ability of insurance companies to pay claims; lack of uniformity in liability issues; high rate of uninsured driving thereby resulting in lack of compensation for accident victims, and loss of family breadwinners.<sup>92</sup> To address these, would stimulate the demand side of motor insurance through a valid insurance campaign by engaging the special squad on insurance checks, road show, leafleting exercise. Motor park rallies, mass media and through active engagement with transport associations.

Finally the CIMA code also makes it an option for the claimant to cease the court without recourse to arbitration after the expiry of 12 months.<sup>93</sup>

The consumer protection law has given the judge wide powers by stating that “consumer contracts have to be interpreted in a way that it preserves the right of the consumer.”<sup>94</sup> This rule is for public order and is therefore a direction given to the judge and does not give room for any interpretation. The objective is to sanction the professional who has drawn up the clause in the contract. The judge has to notice the ambiguous nature in the contract and bring out all the legal consequences.

## 5. Conclusion

The forgoing discussion has shown that adequate legal and institutional framework has been put in place to protect consumers of insurance services. However in spite of all these, the insurance consumer is far from protected. Consumers of insurance services do not take advantage of the law and self-regulatory measures put in place. Although illiteracy might be part of the problem, the greatest problem however is consumer apathy. The consumer is simply not interested. He prefers to bear his losses rather than taking action against the insurer whose duty is to indemnify him. Thus the insurer collects his premium and smiles to the bank especially in the case of motor vehicle insurance which is compulsory while the consumer gets poorer by the day. However, the consumer is his own best protector and needs to assert him or herself. Insurance companies do not want adverse publicity and so by the time the insured takes them to Regional Commission for insurance supervision which has powers of discipline and publication, the concerned insurance company would naturally opt for quick settlement. Cameroonian consumers of insurance services need to be aware of their rights and insist on the respect of these rights.

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<sup>92</sup> Eloi Cyrille Tollo, « Raphaël Futé, président de l'ASAC : «30 à 40 % des Camerounais qui possèdent un véhicule aujourd'hui ne sont pas assurés», Journal Investir au Cameroun, 15 October 2016, p1, [www.investir au Cameroun.com](http://www.investir au Cameroun.com), accessed on the 16 of October 2016.

<sup>93</sup> Article 225 of the CIMA Code.

<sup>94</sup> Article 37 of Law no. 2011/012 of 06 May 2011 on the Legal Framework on Consumer Protection in Cameroon.



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