Messrs. **Sun Pharmacy**, represented by its Proprietor, Delip Vasnani of the City of Monrovia, Liberia APPELLANT VERSUS The **United Security Insurance Company**, represented by its Acting Managing Director, George W. Wleh of Randall Street, Monrovia, Liberia and its Reinsure and All principals within the Bailiwick of The Republic of Liberia, and thru their Agent, the United Security Insurance to be identified, represented by its Acting Managing Director, George W. Wleh of Randall Street, Monrovia, Liberia APPELLEE

DAMAGES FOR BREACH OF INSURANCE CONTRACT

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

The Appellant in this case, Messrs, Sun Pharmacy, filed an Action of Damages for breach of insurance contract against the United Security Insurance Company, both of which parties are engaged in business in the City of Monrovia, Liberia. The Plaintiff, now Appellant, first acquired two insurance Policies, one for fire and the other for burglary. The total face value of the two policies was $110,00USD for a one year period, starting June 11, 2002 and ending June 11, 2003. At the expiration of the contract on June 11, 2003, the parties contracted an extension for a six month period running from June 11, 2003 to December 11, 2003 for a total premium of $247.50USD. The renewed insurance contract covered fire, lightening, earthquake, windstorm, flood, impact, riot/strike, civil commotion, aircraft and theft. War risk was excluded.

It is important to note that at the time this renewed contract was executed in June of 2003, the warring factions known as LURD and MODEL were wreaking havoc in various parts of Liberia and advancing dangerously toward Monrovia with a declared intent to overthrow the Charles Taylor Government. According to records herein, the LURD forces had control of Bushrod Island by July and early August. It is also recorded that the United Nations Mission in Liberia (UNMIL) arrived August 10, 2003 and that government forces were at the water front and elsewhere to prevent the rebels from crossing the Bridge(s) into Monrovia.

On the night of August 14, 2003, a night guard, while on duty at Appellant's Pharmacy located at the water front, claimed that some armed men appeared and upon seeing them, he ran for his life. He alleged that he later returned and discovered that the Pharmacy had been "burglarized." He reported the incident to his manager, the agent of PAPI Security, a Private Security Company. The agent, upon arriving on

the scene, alerted the Appellant who in turn called the Police. The Police (CID) conducted an on-the-scene investigation and submitted this report:

August 16, 2003

To whom it may concern:
Confirmation Clearance

"This is to certify that on August 15, 2003, Mr. DILIPASNANT, proprietor of SUN PHARMAY reported to the Liberia National Police that the above named Pharmacy located at UN Drive/Waterside, City of Monrovia was on August 14,, 2003 burglarized by unknown person/s who got away with the below listed items:

1. Assorted pharmaceutical drugs
2. One (1) computer set
3. " Type writer
4. " Motorola set (Cell phone)
5. Cosmetics
6. One (1) Fax machine
7. " Telephone set (AFRIPA)
8. “ small generator
9. " power inverter
10. “car battery-135 AH
11. One (1) wall clock
12. Two (2) fans (one wall and one standing)
13. stationeries

Based upon the above complaint, a team of detectives from the Criminal Investigation Division (CID) was immediately dispatched to conduct an on-the-spot investigation.

During said investigation, it was established and confirmed that the crime of BURGLARY was committed by unknown person/s who gained entry by way of the Generator room. They also broke the wall through the Fahmas Business Center which is located next door and entered from two directions by subsequently making two holes on the wall which they used as a passage, thereby absconding with the items mentioned supra.

Observations revealed that the Pharmacy in question was BURGLARIZED," DAMAGED AND VANDALIZED

SIGNED
Atty. Lemuel E. A. Reeves
ASST. DIRECTOR/ClD/CIU/IPA

The report of the Private Security Agency is also quoted:

August 15, 2003
The Management
Sun Pharmacy
U. N. Drive/Water Side
Monrovia, Liberia

Dear Sir:

RE: PAPA SECURITY REPORT
"On Friday, August 15, 2003, Mr. John T. Toe, our assigned security guard at your pharmacy (Sun Pharmacy), located on U. N. Drive, Water Side, Monrovia, reported that on previous night (Thursday, August 14, 2003) group of armed men rushed at the pharmacy site while he was on duty scared him and he managed to escape. Later on, the site was inspected and discovered that the burglars entered the pharmacy through Fahmah Business Center adjacent to the pharmacy.

We further discovered that the vandals also gained entry into the pharmacy through the generator room. As a result of this act, we immediately contacted the Liberia National Police for their information as usual.

Sir, this is for your information.
" Kind regards,
Respectfully yours,
Edwin B. Broh
MANAGING DIRECTOR

The Manager of Sun Pharmacy, Mr. Delip Vasnani, claimed that he reported the burglary to the Insurance Company on August 15, 2003 through its acting managing director, Mr. George W. Wleh. Mr. Wleh on the other hand stated that he was informed, but not on August 15 but on August 19, 2003 when he visited Sun

Pharmacy. Appellant claimed that the offices of the United Insurance Company were closed due to the hostilities and did not reopen till September 2, 2003. This allegation was not refuted. On that same date September 2, 2003 Appellant visited the offices of the claims officer, Mr. A. Noah Kai, and had a discussion about his losses. The said claims officer visited the scene on September 3r d and 4th 2003 and subsequently wrote a report dated September 8, 2003 for the benefit of his employer, the United Security Insurance Company. Because of certain conclusions and suggestions made by the claims officer in his report we have deemed it necessary to reproduce portions of the lengthy report that we consider are relevant to a determination of this case:

"Report of investigation conducted into a Burglary Claim Reported by Policy holder Mr. Delip Vasnani of Policy Number 16 USG-0014. Relevant Counts:"

"1. I was taken about on an inspection tour of the post crime scene; during that tour on September 3, 2003, I entered Fahmah Business Center and Sun Pharmacy. I was shown repaired (plastered) marks on their common walls which are the walls between the generator room and Fahmah Business Center, the wall between Fahmah Business Center and Sun Pharmacy and the wall between Sun Pharmacy and Diallo Business Center. These plastered areas, according to Mr. Vasnani, were used by the alleged burglar(s) as points of entry into the Pharmacy. I did not enter the Diallor Business Center and the generator room for they were sealed off by welding the doors."

"2. On September 4, 2003, I revisited the scene. This time, the iron sheet door to the generator room was opened in my presence by Mr. Vasnani's Welder who had sealed up these areas prior to commencement of the investigation. I inspected the generator room and saw that repairs of (plastered) patchings were carried out on the wall between it and the Fahmah Business Center."

"3. Interviews were held with a Mr. Adboul Dorleh, proprietor of Fahmah Business Center who told me that this store broken into by looters during the 3 rd phase of the war and that they broke in by way of the front. He further said that Mr. Vasnani repaired the store and put lock on it (so as to seal off people from using it as toilet prior to his (Dorleh) return from where he sought refuge during the 3rd phase of the war. Others (the paddlers) were also talked to and they told me that Fahmah Business Center, Sun Pharmacy, and Mustapha Diallo General Business were looted during the third war."

"4. PAPI Security Services who supposedly has the first hand account of the alleged burglary says it saw "group of armed men rushed at the Pharmacy site while he was on duty scared him and he manage to escape." On the other hand, the Police to whom the matter was immediately reported by PAPI Security Services says ...burglarized unknown person/s..."

"5. Even though the Police is the legally recognized authority to investigate and report findings) on criminal matters such as this one, facts of cases must not be sacrificed or subjected to any influence. Facts are based on direct evidence or on actual observation; accordingly, the first-person account or primary source of the alleged burglary reported that 'group of armed men (who are alleged to be the burglar(s)) rushed to the Pharmacy site...'; the Police report otherwise that unknown person/s burglarized the Sum Pharmacy this is a distortion of material fact."

"6. Destruction of Evidence The direct evidence (the broken walls) was immediately destroyed after the commission of the alleged burglary the areas broken were patched (plastered) in less than 24 hours after the alleged burglary. A puzzling thing; why would Fahmah Business Center which had been broken into before 14th August 2003 was not repaired until August 15, immediately after the alleged burglary against the Sun Pharmacy? That according to Mr. Vasnani, the repairs of Fahmah Business Center was carried out on August 15, 2003 in order to secure what was left at Sun Pharmacy. This strikingly suggests that Mr. Vasnani recognized and realized the unrepaired door of Fahmah Business Center posed serious threat of burglary against the Sun Pharmacy."

"7. Mr. Vasnani maintained that he began commercial activities on 13 th August 2003. This assertion cannot be easily believed because Waterside was the major front line of the 3rd phase of the LURD rebel war for the capture of Monrovia; especially, the proximity of Sun Pharmacy to the Waterside Bridge, the main front line. On August 13, 2003, no commercial activities had began within the entire commercial area of Waterside for on that date government militia were still minding the entire area because LURD forces had not left the other end of bridge on Bushrod Island. If we should briefly follow national events chronologically beginning August 11, 2003, on 11 th August 2003 Mr. Taylor left Liberia, 14 th August 2003, ECOMIL disengaged LURD fighters from Bushrod Island but stop civilians entering on the Island; this means, the whole week of August 11, there was no commercial activities in the Waterside area and moreover in the entire Monrovia district i.e. including all its suburbs."

"8. Mr. Vasnani said "No, Diallo Business Center has been vacant and Fahmah was broken into before 14 th 2003. This is an answer to the question: "Please state whether or not the Fahmah Business Center, genera Business Center, Diallo Business Center and the Sun Pharmacy were burglarized concurrently." Since Fahmah Business Center was broken into by looters, it would be illogical to believe that the same looters did not loot Sun Pharmacy. Therefore, I am convinced that Sun Pharmacy was looted during the way."

"9. Looking at the Policy Exceptions, Conditions and Warranty
Exception five (5) says "The Company shall not be liable for loss or damage: "caused by arising from war invasion act of foreign enemy hostilities or warlike operation (whether war be declared or not) civil war military or popular rising insurrection rebellion revolution military or usurped power martial law state of siege or any of the events or causes which..."

"10. The Policy holder did not take the measure necessary or reasonable precaution to prevent the alleged burglary because Fahmah Business Center which has common wall with Sun Pharmacy had been broken into prior the August 14, 2003, yet he did not repair it until Sun Pharmacy was allegedly burglarized. This is NEGLIGENCE on the part of the policyholder, Mr. Vasnani."

"11. In view of all that have been perused, it is very conspicuous that the whole exercise is a SHAM concocted by the policyholder by veneering the looting that took place on the pharmacy during the 3 rd phase of the war with BURGLARY, a risk covered under his policy."

"12. RECOMMENDATION: Therefore, it is my recommendation that the claim be rejected, the policy 16USG-0014 be cancelled for reasons mentioned above. Also, the premium paid be pro-rated and the unearned portion be returned to him "

On September 8, 2003, the same date the claim officer presented his report recommending that the Appellants claim be denied, the said officer communicated with the Appellant and also dispatched to the said Appellant inquiry sheet or questionnaire to be filled out and returned to him and in fact informed Appellant that the investigation into his complaint had begun. On the same date, Appellant returned the completed questionnaire to the claims officer.

On October 9, 2003 the acting managing director of the Insurance Company, Mr. George W. Wleh, sent the following letter to the Appellant.

October 9, 2003
Mr. Delip Vasnani
Proprietor
Sun Pharmacy
P.O. Box 3377
Waterside
Monrovia, Liberia

"Dear Mr. Vasnani:
We refer to the conference held with you on October 7, 2004, in which you were informed about the inadmissibility of your claims accordingly, we write to confirm our rejection. Your claim is rejected for the following reasons:

1. That your Pharmacy was looted instead of being burglarized as claimed this is war risk and it is not covered under your Policy with united Security Insurance Company (UST).

2. Misdescription, misrepresentation and negligence.

3. Destruction of Evidence: you immediately repaired the broken areas without the insurer's inspection so as to authenticate the truthfulness of your claim.

4. Failure to comply with Documentary Evidence Warranty of the Policy.

Besides reason one (1) above, if there were burglary, it would not be admissible because of reasons two, three and four (2-4). In view of the foregoing, we hope you will understand the position we have taken.

Very truly yours,

George W. Wleh
ACT. MANAGING DIRECTOR"

Upon receipt of the letter rejecting the claim, the Plaintiff/Appellant instituted this Action of Damages for breach of insurance contract against the Defendant/Appellee. After a Jury Trial, a verdict of not liable was entered in favor of the Defendant/Appellee and final judgment rendered thereon.

Appellant has fled to this Court on a 4-Count Bill of Exceptions, the essence of which is that the verdict was against the weight of the evidence adduced at the Trial, and that same should therefore be set aside.

The parties raised and argued several issues. We shall however decide this case on the following issues:

1. Whether Appellant's preponderance of evidence supported his claim of burglary and that the verdict of not liable was therefore against the weight of the evidence.

2. Whether or not Appellee's allegations of "war risk" and "looting" and the preponderance of evidence are conclusive to support his plea of not liable and the subsequent verdict.

3. Whether Appellant's failure to present documentary proof of his loses within 14 days after the incident, as required by a provision of the insurance policy, serves as a bar to recovery.

4. Whether Appellee's conspiracy or collusion theory was supported by the evidence.

5. Whether in the absence of the alleged burglars, that is their arrest, trial, and conviction, the insured could recover.

We shall dispose of these issues in the order in which they appear. Did the Appellant's preponderance of evidence support his claim of burglary and that the verdict of not liable was against the weight of that evidence. We hold that the Appellant indeed did proof his theory of burglary. The Appellant produced substantial evidence to support his claim which are (1) the report of the private security agency called PAPI based on information provided by the night guard who was on the scene keeping watch when some armed men visited the premises scaring him to death, and as a result he ran away and upon returning subsequently he noticed that the premises had been burglarized. The other piece of evidence was the report of the police who were called to the scene the following day of the incident which was August 15, 2003. After the police had investigated the premises, they wrote an opinion based on their expertise in criminal investigation. They confirmed the private security's report that a burglary had occurred. The other prevailing circumstances also have led to a conclusion that the Appellant provided good and sufficient proof that his premises were burglarized. For example, when Counsel for Appellant was asked whether the doors and windows were dislodged or broken down to make way for the

intruders, he answered no. The intruders, according to the report, made two holes in the walls of the adjacent building and entered the pharmacy. This was the evidence the Appellant herein relied upon to file an action of damages for breach of insurance contract.

Let us now review the evidence that was produced by the Appellee on the basis of which a verdict of not liable was entered in its favor. Appellee's theory about what occurred was that the pharmacy was not burglarized, but rather looted like all other stores in that locality during the hostilities and as such the Appellee's claim would fall under the "war risk" exclusion clause. Some definitions at this point will be helpful. We begin with the word "loot." The word is not listed or defined per se by Black's Law Dictionary but synonyms are to maraud, meaning to rove about in search of "booty;" to "pillage or plunder;" to invade another person's domain to pillage or to loot. **Black's Law Dictionary, Sixth Edition, Pane 966 (1990).**

For purposes of a clearer understanding of this case we shall also define the words "pillage or plunder," and "booty." The words "pillage or plunder" mean the forcible taking of private property by an invading or conquering army from the enemy's subjects. The word "booty" means property captured from the enemy in war, on land. From the definitions herein a conclusion can be drawn that the words "loot, pillage or plunder," according to Black's Law Dictionary, are certainly undescriptive of what happened to Sun Pharmacy on the night of August 14, 2003. In other words there was no looting; pillaging or plundering that could be attributable to LURD, MODEL or the AFL forces, nor can the items listed in the claim be considered as booty captured from the enemy. There was, however, evidence of a forcible entry, done under cover of night, through holes made in the walls of the adjacent building(s). There was absolutely no proof produced to substantiate the allegation that the Sun Pharmacy was bombed or set ablaze by either one of the military forces thereby exposing it to looting or vandalism. It is a fact that Liberia was at war but just because of that fact we cannot rule out the possibility that things could have happened that had nothing to do with the war, such as the burglary complained of.

With these definitions fixed on our mind, can we agree with the Appellee that looting took place at the Sun Pharmacy, that some persons were roving about in reach of booty? Or can we now say that some invading or conquering army from the enemy's subjects took the private property of the Appellant on the night of August 14, 2003 as opposed to the reports filed by the Criminal Investigation Division (CID) of the Police Department indicating that the pharmacy was burglarized? The question is, which army invaded the Sun Pharmacy, LURD, MODEL or the AFL and made away

with only a few items and in fact entered through dugouts instead of blowing up the doors or walls with military weapons, such as hand grenades. There is no answer on the records. The Appellee's Counsel argued further in support of his looting theory that other stores in the area had been looted, and why not Sun Pharmacy. We consider that averment to be a naked allegation and a presumption of facts not proven. There is no record in the case file to substantiate the allegation that the pharmacy was looted and to prove that other stores in the vicinity of the pharmacy were looted and that a conclusion can therefore be reached that because other stores were looted the pharmacy also was looted.

We are in agreement with Appellee's contention that looting does occur during war, but can not agree with his conclusion that seems to suggest that there can be no burglary during times of war. There will always be burglary as long as people of unscrupulous and ungodly minds find an opportunity under cover of night to break into other people's dwelling or business places and take away their property. Burglars have no special occasion or the lack of an occasion to function. We also opine that according to Liberian popular definition of the word, looting does not only occur in times of war. Looting may occur during civil commotion such as we saw during the rice riot of 1979 and at some other times when there existed a breakdown in law and order. Burglary also could occur during such a period of lawlessness. To conclude therefore, that the Appellee's premises were looted without any proof of looting except to say that at the time of the incident Liberia was at war will be a generalization and a premature conclusion, which we are unwilling to foster. The police have the expertise to attach appropriate appellations or label to conditions, situations, and activities. This is part of their training. After their investigation they concluded that a burglary had occurred. Now, the fact that the unknown men were bearing arms should not lead to a hasty conclusion that they were "men of war." In our midst are also armed robbers who are not necessarily soldiers of the "king's army." The distinguishing factor in this case is that the armed men herein surreptitiously gained access to the pharmacy and made away with assorted items leaving behind other items in the store. In our Liberian experience we know that "looters" operate openly under the glare of sunlight and before human eyes and most often are not selective about the things they take. We also know that looting occurs when there is a breakdown in law enforcement at which time there is uncontrollable mob action, the actors grabbing and taking away whatever they can carry. If this was what happened on the night of August 14, 2003, the records in this case, which is our only source of information, did not so indicate. We are therefore convinced enough to conclude that the armed men were rogues that made away with property that belonged to Sun Pharmacy. These acts were done surreptitiously under cover of night

and by forcible entry, through holes dug in the walls of adjacent building(s) in order to enter and take away property of another person without his consent and knowledge. The above described actions are tantamount to a criminal offense, and not an act of war.

We also need a definition of war risk, Appellee's other defense, and _ we know of no better place to find it than between the pages of the United Security Insurance Company Policy No. 17 USG, the burglary policy under which the plaintiff/appellant is claiming. Quoting from Clause 5 of the insurance burglary policy, it reads as follows: **War risk** Caused by, arising from war, invasion, act of foreign enemy, hostilities or warlike operation (whether war be declared or not) civil war mutiny, military or popular uprising, insurrection, rebellion, revolution, military, or usurped power, martial law, state of siege, or any of the events, or causes which or state of siege or whilst engaged in any Military Naval or Air Force operation or from participation in any strike or civil commotion.

Now, from the description of what constitutes war risk, as contemplated by the policy itself, can any parallel be drawn between the incident that happened at Sum Pharmacy on the night of August 14, 2004 and the description or definition given in said clause 5 of the policy? We hold, no. There can be no such analogy made or comparison or conclusion drawn. The war risk that was excluded under the policy does not suit the description of events and circumstance that led to the Appellant's loss.

We shall now take recourse to a Supreme Court decision in a case, the facts and circumstances of which are similar to the case at bar. In **Picasso Cafeteria and Spanish Gallery vs. Mano Insurance Corporation, 38L1R297, 305 (1990) ,** Mr. Justice Supuwood speaking for the Court defined what constitutes War Risk. He said:

"As a matter of law, to warrant a denial of insurance claims on the basis of a war risk exclusion clause of the insurance policy, it is a settled principle that the injury, subject of the claim must have been a direct result of the war. It is stated further that an actual military offensive or defensive operation, the direct effect of which gave rise to the claim is required and not just a remote effect." We also hold, as did the Court in the cited case, that the few items taken from the pharmacy, under cover of night cannot be considered a direct effect of war. There was no military offensive or defensive operation in progress at the Waterside on the night of August 14, 2003 when the Appellant sustained the loss.

The Court held further that:

"As to the substantive issues raised in the Petition, a recourse to the records shows that the incident in question occurred on June 24, 1990; this fact was confirmed by the police report dated June 4, 1991 over the signature of Col. Rudolph Flowers, Sr. then acting Director of Police. On that day there was no violent hostility of any kind between the contending parties." **Id at page 305.**

We say the same in the instant case that on the night of August 14, 2003 there was no violent hostility of any kind between the contending parties in the waterside area. On that night the invading forces had not yet crossed over into the City of Monrovia. Appellant's losses could not have therefore been a direct effect of war. The forces of the rebellion were restrained from entering into the City of Monrovia by the UNMIL peace keeping forces that were in Monrovia before August 14, 2003, the date of the incident.

The defendant/appellee has advanced a multiplicity of defenses to defeat the payment of appellant's claim but without any real proof to support those defenses. For instance, appellee stated in the pleading and argument that Sun Pharmacy was looted along with other stores in the area. Where is the proof? It is not sufficient to support an allegation by assuming the existence of facts. Appellee again stated that appellant's pharmacy was not in operation on August 14, 2004, and that in fact the pharmacy had been looted during the third phase of the war. We ask again, where is the record for that determination? Again, appellee argued that appellant was negligent by not repairing the broken door(s) to his neighbor's store till the losses he now complains of occurred but at the same time the said appellee cast a suspicious eye on appellant for repairing the holes dug into the wall of the adjacent building through which the intruders made their entry and exit. The said Appellee, who claims the pharmacy was looted long before August 14, 2003, and that losses were a result of war now says that the Defendant failed to take the necessary precautions to prevent the burglary. These defenses including the suspicions that the Appellant was faking a burglary in an effort to defraud the insurance company, all of which have failed to meet the standard of proof necessary to overcome the Appellants preponderance of evidence, suggests to this Court that the Appellee is contriving or trying to find any means available to breach his contract to award the insured's claim under the policy. Appellant's claim of burglary was supported by an on-the-spot investigation conducted by the Criminal Investigation Division (CID) on August 15, 2003, the next day after the incident, when evidence was fresh. The said report signed by a police officer qualified to prepare and execute such a report, stated that burglary occurred.

Said report not being refuted by submission of another professional report or opinion stands accepted. Where is the evidence in Appellee's record to overcome or contradict the police report? It is not enough that Appellee's employee, the claims officer, submitted a long self-serving report, challenging the authenticity of the facts contained in the police report. The evidence required is that which will substantiate the allegations thus made.

It is a settled principle of law that he who alleges a fact has the burden of proof. It is not sufficient to merely make an allegation, the person making the allegation is required to prove it." **Renney Pentee Vs. George B. Tulav, 4OLLR 307, 315 (2000), William G. Knuckles Vs. Liberian Trading and Development Bank, LTD, 40 LLR 511, 535 (2001).** Pursuant to that principle of law, Appellant herein, relying on the expertise of the police (CID), reported the incident to them and obtained their expert opinion as to what happened at his place of business on the night of August 14, 2033. And not only that, an eye-witness, the night guard, described what happened on that night and what he discovered after he returned on the scene sometime later. These are first-hand information to support Appellant's claims of burglary. Appellee on the other hand has not supported any of his claims either of looting, war risk or general effect of war.

We hold that on the issue of the preponderance of evidence, the quantum of evidence weighs heavily in favor of the Appellant. He has by his preponderance of evidence convinced this Court to hold in his favor. We therefore conclude that his pharmacy was not looted. It was burglarized by unknown men who were carrying arms and came under cover of night, dug holes in the walls of the adjacent building and gained entry in to the Appellant's pharmacy and took away the items that are listed in Appellant's claim. The Appellee on the other hand has shown no proof of "war risk" or looting. His allegation of looting or that the loss was a direct effect of war, or that the premises were not burglarized are unsubstantiated assumptions of fact which cannot overcome the Appellant's proof of burglary.

The other reason for Appellee's disclaimer is that Appellant failed to abide by a provision in the insurance contract which requires the insured to file a written report or submit some document of the loss within 14 days after the injury has occurred. In keeping with that provision in the contract, Appellants should have filed his written report on August 29, 2003. The record in this case reveal that the acting Manager of the insurer, Mr. Wleh, admitted to having been informed by the insured about the burglary on August 19, 2003 at which time he even inspected the premises. The records show that Appellee's offices were closed and remained closed till September

2, 2003. How then could the records be filed when the offices were closed? The circumstance herein stated made performance impossible. The insured should not be made to suffer. It is our opinion that the insurer had sufficient notice of the insured's injury. The defenses advanced are mere attempts to disclaim liability. The records show that immediately the offices reopened on September 2, 2003, Appellant went to the claims officer and made a report about the burglary. The said claims officer visited and inspected the scene on two consecutive occasions and wrote a report dated September 8, 2003, in which he recommended that Appellant's claim be denied for reason stated therein and that while said report was pending before Appellee, the claims officer sent a letter dated the same September 8, 2003, informing the appellant that his claim was being investigated. It is interesting to note that Appellee knowing well without any doubt that he would not honor Appellant's claim continued to interact with him by letter or conference. One of those interactions was a conference held on October 7, 2003, and then a letter dated October 9, 2003, informing Appellant that his claim would not be honored because:

1. That the pharmacy was looted and not burglarized and that that was war risk;

2. That the misdescription, misrepresentation and negligence were contributing factors; and

3. That appellant's failure to comply with documentary evidence and warranty is the other.

We are intrigued by the misdescription, misrepresentation and negligence allegation herein stated by the Appellee. From the total picture given, we are convinced that Appellee is trying to avoid payment of the claim. We know this now because of all the contradictory defenses herein made; for example, some of the reasons for denying the claim: misinformation, misrepresentation and negligence. What facts did Appellee produce to substantiate these allegations? How was the Appellant negligent if the loss was a result of war and looting as claimed by the Appellee elsewhere? Did Appellant cause the war or invite looters to his pharmacy? Who made the misrepresentation, Appellant, the CID or PAPI Security? We have seen no proof and without proof we cannot accept Appellee's defenses. We can only label them as attempts to evade or shy away from the responsibility of settling Appellant's claim.

In other that we may render justice and avoid aiding Appellee in his effort to evade honoring his obligation under the insurance policy we have decided to hold that Appellant proved his burglary claim. The Appellee on the other hand failed to prove

his allegations of war risk, misdescription, misrepresentation, and so forth. We hold further that Appellee made it difficult and in fact impossible for Appellee to conform to the documentary evidence warranty by his absence from his office. Appellee by his interactions with the Appellant and the offering of false hope that his claim was under investigation when in fact a decision to disclaim had already been made 5 days after the claims officer visited the pharmacy, are all acts of deception characteristic of an insurer who has no plan to honor his side of the contract.

The fourth issue is whether Appellee's conspiracy or collusion theory was supported by the evidence. Appellant insinuated fraud, that Appellant in collusion or connivance with some person(s) had plans to defraud the insurance company. In order to substantiate this fraud claim, Appellee referred to a handwritten note executed by one Momo Fortune to the Acting Managing Director, Mr. Wleh. The contents of which read thus:

August 13, 2003
"Good Day GWW
I stopped at your house this morning to see how you are coming on but unfortunately you were gone out to hustle.

GWW, our man Dilip wants to see us tomorrow afternoon in town. Please come to my house tomorrow for briefing in Jacob's Town, Paynesville, ask for Mr. Fortune at Zota Entertainment Center or ask for Mother Dee Prayer Mother Church. I will be expecting you between 10 AM -2 PM.

I am leaving transportation of US $5.00 (Five US Dollars).

Hope to see you alive.
Yours,

A. Momo Fortune
511-795"

According to law, fraud, like other allegations, has to be proven. We were not supplied that proof During the trial counsel for Plaintiff/Appellant on crossing examining the addressee of the note asked whether Mr. Wleh discussed the note with the author, he answered, no. He also asked as to how certain he was that Momo Fortune was in fact the author of the note. He answered that he and Momo Fortune were once co-workers and that he was familiar with his hand writing. Be that as it

may, for evidentiary necessities, the testimony of Momo Fortune, the alleged author should have been sought and produced to substantiate the Appellee's fraud allegation. There is no testimony given by Momo Fortune. There was therefore a doubt as to whether Momo Fortune was in fact the author of the note; also there was no explanation offered to explain the contents of the note since there was no clear and definite reason why the note was written. So for the Appellee in the absence of such an explanation or testimony, to presume or insinuate that fraud was intended, will find no support in law. Fraud, like all allegations of fact must be proven, it is never presumed. In **Charles B. Sancea vs. Republic of Liberia, 3LLR 347, 354 (1932),** the Supreme Court held: "It is a maxim of law that fraud and covin are never presumed even in third parties whose conduct only comes into question collaterally." The best evidence that could have been produced to substantiate the fraud allegation based on the hand written note would have been that of the writer. Appellee having failed to produce that best evidence, the allegation, standing unsubstantiated cannot support a finding of fraud. It must also be noted that according to the testimony and the record herein, the note invited Mr. Wleh to meet with Momo Fortune and the Appellant on a certain date. But they never met until after the occurrence of the alleged burglary. In the absence of proof that the parties met prior to the incident, a theory of covin would be mere speculation. "Fraud cannot be based on presumption, hypothesis and deduction." INTRUSCO Corporation V Osseily. 32LLR 558, 571.

The fifth issue is Appellee's contention that in the absence of the alleged burglars, that is, their arrest, trial, and conviction, the insured could not recover. In his report, the claims officer said that there was reference in the police report to some "unknown men." We hold that although burglary is a criminal offense, punishable by law after a successful prosecution, the insurance policy that was obtained was not intended to reward the State for successfully prosecuting criminals. Rather, the policy was intended to restore the losses that were sustained by the insured arising from the burglary. As it is the responsibility of government to prosecute criminals and if convicted, to punish them, so it is the responsibility of the insurance company to pay for the insured's losses regardless of whether the burglars are apprehended or even prosecuted. The insured's duty is only to proof that the injury sustained is a result of some person or persons who forcibly entered into his insured premises and took away, without his consent and knowledge, his personal property. It is therefore unthinkable for any clause in an insurance policy covering burglary to state that until the burglars are known or tried and convicted, the insured cannot recover his losses. It must be stated clearly that a burglary is a criminal offense punishable by the State, whereas the injury sustained due to the burglary, is recoverable through a civil action, in which the insurer replaces the loss to make the insured whole. The recovery sought

in this case therefore ought not to be and is not predicated upon the Republic of Liberia's apprehension and successful prosecution of the burglars, or even their subsequent imprisonment. The recovery is for loss of property due to burglary which is the purpose for which the insured and the insurer executed the contract. We hold, therefore, that any clause in a burglary insurance policy that is contrary to this view is unenforceable in a court of law.

Wherefore, and in view of all we have been able to establish from the records herein, it is our considered opinion that Appellant proved his burglary claim but that the Appellee failed to prove any of his several defenses. We hold therefore that the verdict was against the weight of the evidence. The Trial Jury should have awarded the claim. Said verdict is therefore hereby set aside, and the judgment reversed. The Clerk of this Court is hereby ordered to send a mandate to the Court below instructing the Judge therein to resume jurisdiction and enforce this judgment awarding the Appellant the sum of $71,220.67 in accordance with the terms of the insurance contract. Costs against the Appellee. AND IT IS HEREBY SO ORDERED.