

Insurance law

Is it true because it is written?

Nowadays a large number of insurance law related publications are available. Commercial insurance is increasingly catching the attention of authors, too. It is very comfortable to solve insurance related issues by relying on literature and not by following spirit and purpose of the law. The conclusion seems questionable: is a legal argument true because it is written somewhere?

The insurance industry has clearly recognized the crucial importance of the insurance literature for the development of case-law as well as for the education of solicitors specializing on insurance. The policy holding industry has missed this development.

Insurers sponsor the “development of law” in a permissible scope and in various fields. Of course, lobbying is legitimate also within these fields. From the insurance companies point of view it is part of the marketing and a useful strategic measure. Nevertheless, it is still worthwhile to take a look behind the scene.

Nowadays, sponsoring of publications such as legal commentaries and books is quite common in various legal areas, not only in the area of insurance law. Highly qualified specialists such as highly qualified lawyers receive usual lawyers’ fees for publishing reviews. On the one hand this supports the development of literature. On the other hand it distorts the neutrality of the written word. A disclosure of “sponsoring” does not take place.

The pervasion of science by corporate interests such as those of an insurer continues from another spot. In recent years several insurance institutes, which receive regular financial support from booster clubs, have been established at many universities. In turn private individuals and companies are members of the boosting associations. A glance at the membership list of almost every insurance related association supporting

a university institute with insurance focus makes plain that generally insurers are the main sponsors.

Statements that criticize insurers are hardly to be expected

In this context, the suspicion arises that the results of the scientific work of the respective institutes possibly lose their neutrality. Critical statements or articles are hardly to be expected. The result is, that the relevant commentaries or articles effecting insurers mostly support the insurers' side.

The opinion-making is not only influenced by publications or financial support but also by education. Some specialized publishers and organizers are partly owned or at least influenced by insurers. Participants of seminars and courses are often not aware of this.

From the insurers' point of view, these effects are useful. But policy holders and their associations could put up some resistance. The *Bund der Versicherten* (Association of the Insureds) does a good job in this regard. However, for an equivalent support by the policy holding industry, resources are probably missing. Furthermore, there is a lack of willingness to enter in the competition. There is obviously no direct business interest of the policy holding industry in a respective countermovement.

Impaired balance of power

As a consequence, the balance of power is impaired at the policy holders' expense. The predominant opinion in literature is often insurer-friendly and the significance of individual commentaries seems doubtful today. Nonetheless, they influence jurisdiction. Particularly, first instance courts do not have the resources to deal with complex insurance cases and respective issues. Opinions in literature are often accepted thoughtlessly. The belief in the written word has a significant effect.

Only the German Federal Court of Justice has corrected the predominant opinion in literature in recent years. The German Federal Court of Justice is however kept from judgments against the insurance industry. Critical appeal proceedings for insurers regularly end up with a withdrawal of the appeal, with a settlement or with a payment by the insurer to prevent a binding decision. A statement of the German Federal Court of Justice is then barely possible. The recent reform of the withdrawal procedure hardly helped because it is ineffective.

A way out of the dilemma is extremely difficult. It would be desirable if the associations of the policy holding industry become more active. However, support of scientific institutes and publications either by insurers or policy holders should be transparent.

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