

Deny Network Mutual Assistance's Insurance Nature

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Abstract: The level of medical insurance has been significantly enhanced because to Network Mutual Assistance. However, the definition of the legal nature of Network Mutual Assistance is quite different in the regulations and judgement documents. This article reviews the principles of insurance and concludes that, while Network Mutual Assistance complies with some aspects of insurance legislation, it lacks the profit elements of insurance. The existing law does not include Network Mutual Assistance under the definition of insurance.

Keywords: Network Mutual Assistance; Legal Nature; Mutual Insurance; Internet Insurance

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1. Introduction

Network Mutual Assistance, represented by simple mutual assistance, water drop mutual assistance and mutual assistance, has shown rapid growth in a short period of time, under the catalysis and encouragement of policies. Network Mutual Assistance is considered to be a new type of protection developed by the financial and insurance industry. In 2019, 150 million Chinese were covered by the Network Mutual Assistance, and the national medical security level has increased by 0.73% due to Network Mutual Assistance^[1]. The General Office of the State Council recently issued the “14th Five-Year Plan for National Medical Security.” The plan proposes to build a fair, unified, and sustainable multi-level medical security system that covers the whole people, coordinates urban and rural areas. In February 2020, the Central Committee of the Communist Party of China and the State Council issued the “Opinions on Deepening the Reform of the Medical Security System” for the first time to incorporate Network Mutual Assistance into my country’s medical security system, and proposed to encourage the development of mutual medical assistance.

However, there has been a “shutdown wave” in Network Mutual Assistance. The “Notice on Carrying out Special Rectification of Illegal Insurance Business in the Form of Network Mutual Assistance Plan” pointed out that Network Mutual Assistance is not under the supervision of the China Insurance Regulatory Commission because it is not insurance. Nevertheless, there are still some courts make judgments that the contract between the Network Mutual Assistance and the member is an insurance contract^[2]. Therefore, it is necessary to analyze the legal nature of Network Mutual Assistance, strengthen mutual assistance, and have more people benefit from the social security system.

2. Analysis of the elements of insurance

Although the regulatory documents define that Network Mutual Assistance is not insurance, the

determination of the nature of Network Mutual Assistance cannot rely on regulatory documents alone. The focus of this regulatory document is to adjust the disguised or actual operation of insurance business, and There is still a lot of room for interpretation on the definition of the legal nature of Network Mutual Assistance. According to the structure of the Insurance Law, we must first examine whether it meets the constituent elements of insurance. That is, whether a certain behavior actually falls within the scope of the “Insurance Law,” rather than just through the determination of the name of the behavior. The determination of the legal nature of Network Mutual Assistance should not only be based on normative documents, but should also depend on whether it meets the insurance elements.

In terms of comparative law, both Japan and Taiwan have defined insurance, believing that the elements of insurance include risk-taking and diversification, insurance benefits, the law of large numbers, and the existence of consideration relations. Professor Jiang Chaoguo said that the insurance elements include six items: collectiveness, existence of risks, consistency of danger, necessity of compensation, compensation, and independent right of claim. This statement has been widely recognized by Taiwan’s academic circles ^[3]. Similar views have also been recognized in the jurisprudence made by the Ministry of Finance of Taiwan ^[4]. In Japanese insurance law, the elements of insurance include risk-taking and risk dispersive mechanism, the principle of insurance benefits, the law of large numbers, the existence of consideration (the principle of equal payment and opposition to payment in insurance transactions), etc. The judgment of whether it is insurance also depends on whether to have the elements of insurance ^[5]. Profitability is not an indispensable element of insurance.

As far as German law is concerned, in order to deal with the unpredictability of future development, Germany deliberately did not define insurance ^[6]. Only the German Insurance Regulatory Law provides for penalties for illegally operating insurance businesses ^[6]. However, at the same time, the German legislature (Federal Insurance Supervisory Office) recognized the conceptual features of insurance based on the BVerwG case ^[6]. As the basis for insurance trials, ^[6] the elements of insurance include the occurrence of uncertain events, compensation, risk dispersion, the same risk, and the law of large numbers ^[6].

In China, the adjustment scope of the insurance law is commercial insurance. Although the 2017 “Insurance Law” (the third major revision) expert proposal draft proposed: the profitability of insurance restrictions need to be removed. However, at present, profitability is still being reviewed by the insurance law.

We can deduce the following from the above-mentioned multiple insurance concepts and principles, when we combine the “Insurance Law” with the suggested draught:

- (1) A group with the same risks
- (2) Targeted risk diversification and sharing
- (3) Consideration and recompense
- (4) Applicability of the law of large numbers
- (5) Profitability are the key characteristics of insurance in China

Profit motive is not a fundamental aspect of insurance in comparative law. China is still inspecting for-profit businesses’ credentials and profit-making purposes to see if they meet one of the insurance requirements. Despite the fact that China has China Shipowners Mutual Insurance Association, China Industrial Insurance Mutual Aid Association, and other non-profit insurance institutions.

3. Network Mutual Assistance only keeps part of insurance elements

First of all, the Network Mutual Assistance brings together a group with the same risks. The collective nature of insurance can be understood as a technical collective ^[5]. From an economic point of view, the

essence of insurance groups with the same risks is to better share risks ^[5]. Network Mutual Assistance adopts different mutual assistance plans, bringing together different types of economic units with the same risk or danger, and sharing the losses reasonably in the mutual assistance plan. Therefore, this group includes common interests, but also aggregates risks and shares losses.

Secondly, Network Mutual Assistance has realized risk dispersion and sharing. The degree of risk dispersion covers the possibility of differences between the actual economic situation and expectations ^[6]. Insurance contracts share the risk by signing a large number of contracts, transfer the risk to the insurer, and Network Mutual Assistance transfers the risk to other members with similar risks. They all have signed a large number of contractors to share the risk and use the function of insurance.

The third is that Network Mutual Assistance embodies the compensation function of insurance. The insurance consideration and compensation do not require “premium” to be determined and paid immediately after joining the group. There is no connection between the demand for funds and the payment of funds. The essence of compensation is to ensure the stability of the funds of the dangerous “behind the scenes” group ^[7]. In other words, compensation is a requirement of the principle of fairness.

Finally, the law of large numbers is applied by Network Mutual Assistance. The real support behind insurance is the certainty of financial payment ability and the predictability of loss. The essence of the law of large numbers is to obtain possible expected losses through an unlimited number of units, while the fairness of insurance is reflected in the rate of difference ^[8]. Network Mutual Assistance calculates insurance premiums based on specific risk levels, which is also an application of the law of large numbers. The law of large numbers not only refers to insurance technology, but also refers to the mathematical laws that modern insurance industry relies on. Therefore, Network Mutual Assistance uses the core logic of insurance, that is, the law of large numbers.

4. Network Mutual Assistance is not in line with insurance profit factors

Insurance profitability is different from the conceptual profitability of business activities. The purpose of profit refers to the purpose of operating profitable business and distributing profits to employees. Only in this way can it be regarded as “profit,” not “non-profit” ^[9]. For example, although the Japanese Mutual Aid (Insurance) Company is named “company,” it is regarded as an intermediary legal person because it does not operate a for-profit business, but distributes profits to its members in order to survive. This view has also been recognized by Chinese scholars ^[10].

Firstly, since its establishment, the network mutual aid has served a non-profit objective. Members have no right to claim profits and distribute the remaining property on the mutual aid platform because Network Mutual Assistance was established for the purpose of distributing surplus to members.

Second, by their very nature, network mutual aid organizations are not profitable. China’s “Insurance Law” requires that businesses be profitable. The “Insurance Law” mandates that the insurance industry can only develop in one of two ways: as a joint stock limited company or as a state-owned independent company. One of the two organizational forms is not a network mutual aid organization.

Thirdly, there is no profitable capital operation at Network Mutual Assistance. Commercial insurance companies in China impose agreed-upon management fees and use the collected insurance funds to run their businesses and make a profit. Insurance provides economic security by utilizing a separate fund pool. Network Mutual Assistance, on the other hand, does not create fund pools or conduct fund activity. Third-party services manage these monies, which are deposited into personal accounts. Network Mutual Assistance is not legally profitable from this standpoint.

To summarize, Network Mutual Assistance is not “insurance” under the current insurance laws in my country. The legal nature of online mutual help should not only be assessed based on statutory papers, but also if it complies with insurance requirements. The most important difference between Network Mutual

Assistance and insurance, according to the applicable laws of my country's present regulations, is the profitability requirement. Network Mutual Assistance is not covered by the connotation of insurance in the current law.

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