

# Research on the Judicial Settlement Mechanism of Economic Disputes

— A Case Study of Insurance Contract Disputes

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**Abstract.** The increasing number of economic disputes involving insurance contracts has become a stumbling block to the development of China's Insurance Industry. The dispute settlement mechanism of insurance contract disputes is widely used. However, some of its own drawbacks are prohibitive. The establishment of a diversified dispute settlement mechanism of the insurance contract meets the needs of different levels of dispute resolution, which has become an important topic to support the sustainable development of the insurance industry. Based on the author's learning and practical experience, this paper put forward a kind of diversified settlement mechanism of insurance contract disputes, which is striving to provide some reference for the effective settlement of insurance contract disputes.

## Introduction

The insurance contract dispute is a kind of confrontation between the two parties. Its widespread existence is not conducive to the establishment of the industry image; if not properly resolved, it will affect the sustainable development of the entire insurance industry. At present, our country is relatively lack of understanding of insurance. When the contract disputes arise and the parties do not know how to deal with the problem rationally, the both parties after unsuccessful consultation often directly check evidence at court. However, the way to solve the dispute has its own drawbacks; at the same time, a large number of litigation will be a certain pressure on the court. On the other hand, in recent decades, various non litigation settlement mechanism based on arbitration, mediation, negotiation has become a trend of the times because of its agility, convenience and practical characteristics. This paper attempted to build a diversified settlement mechanism of insurance contract disputes in line with the development of China's insurance industry with a view to a more equitable and effective settlement of disputes. This will protect the interests of the insured and maintain the image of the industry so that to promote the development of the industry.

## The Transformation of China's Insurance Contract Dispute Resolution Mechanism

**Diverse concept of solving the insurance contract dispute.** The concept of diversification is the core and the most profound value of constructing the diversified dispute settlement mechanism; at the same time, it not only advocates the rule of law, but also provides the basis for the rationality and value of non litigation settlement mechanism. The diversification of the dispute settlement mechanism of insurance contract is mainly from the aspects of the interests of the parties, the diversity of the culture and the actual demand, which emphasizes the diversity of dispute settlement methods and applicable norms so that to achieve the purpose of integrating the modern rule of law and traditional law culture, national judicial power and the autonomy of the parties with the purpose of integrating the insurance contract, legal norms, the habit of the insurance industry and other social norms. In addition, we should also pay attention

to the concept of effectiveness and autonomy of the dispute settlement of insurance contracts.

**The benefit concept of dispute settlement of insurance contract.** China's insurance contract disputes rising year by year. On the one hand, it is related to the insurer and the insured insurance management being not strict and lacking of knowledge; on the other hand, it is also related to the legalization of China. As an eastern country, traditionally, the Chinese hate litigation. But in the process of carrying out the rule of law in recent decades, many people have a wrong understanding of the rule of law, which is necessary to rely on judicial power to resolve disputes and litigation is a strong awareness of rights protection performance. At the same time in the process of promoting the rule of law, the traditional folk dispute resolution mode has not kept pace. In fact, both the government and the parties to the insurance contract should establish the effectiveness of the insurance contract dispute resolution. After comparing the benefits and costs, they should choose the most effective solution rather than blindly pursuing the litigation.

**The autonomy of dispute settlement in insurance contract.** The so-called autonomy concept, we believe that it refers to mobilize the subjective initiative of the parties in the process of solving the dispute, which is played by the parties themselves in the process of dispute resolution and vigorously promotes the autonomy of the parties and the spirit of cooperation and consultation to resolve disputes. Insurance contract disputes involve the interests of both parties, so the parties should have the right to speak and full respect for the views of the parties can make the settlement of disputes more valuable. Mediation and negotiation can give full play to the subjective initiative of the parties to the insurance contract, which will resolve disputes in accordance with the will of the parties themselves. Litigation and arbitration means that the parties can not reach an agreement. Transferring the right to settle disputes to the court or arbitration tribunal, such a decision should be the last resort to resolve the dispute.

### **China's Insurance Contract Dispute Settlement Mechanism of the System: Litigation and Non Litigation Coordination**

**Binding force of non litigation settlement mechanism of insurance contract in China.** The binding force of insurance contract dispute resolution is very important; lacking of restraint will cause the parties to settle the same dispute in more than two ways, which may result in waste of resources or damage the credibility of non litigation solutions. In the common three kinds of dispute settlement in China's Insurance contract, arbitration is as promissory as the litigation. Unless the arbitration procedure does not conform to the law, the court shall have no right to reject the award of the arbitration tribunal and the parties may apply for enforcement of the arbitrary award by the court.

In accordance with the provisions of the civil procedure law, the court mediation has executive power. A conciliation statement made by the people's court, if a party refuses to perform, the other party may apply to the court for enforcement. However, the people's mediation is weak; after the parties to a contract of insurance have reached a people's mediation agreement, the party may bring a lawsuit before returning to the court. Although the current guidelines for the rapid handling of disputes in insurance contracts require that the insurer to participate in the handling of the mechanism should sign a self disciplinary convention and it also points out that the self-discipline convention should generally include the insurer's promise to fulfill the mediation agreement or the decision of the arbitration with the insurer being liable for breach of promise, only the guiding opinion, the individual provinces and cities pilot self-discipline conventions do not limit the insurer to apply for arbitration or litigation after reaching an agreement. Even if there are provisions in the self-discipline convention, not fulfilling the agreement is also a result of the regulatory authorities or industry associations to carry out some punishment, which will not limit the legal right of the insurer to apply for

arbitration or litigation.

The settlement agreement made in accordance with the results of the negotiations has the attributes of the contract, which is not only a change in the original contract between the parties, but also a new agreement on the rights and obligations of the two sides reached. It is not mandatory, which can not directly apply for court enforcement; if one party fails to perform, the other party may sue in accordance with the settlement agreement. The people's mediation agreement and the settlement agreement do not have the power of enforcement, which can apply for litigation characteristics and weaken the parties to resolve the dispute through these two ways; at the same time, it may also cause waste of social resources. The experience of the United States is worthy to learn. When a party refuses to accept the solution of an unconstrained non litigation settlement mechanism and if the trial result is not more than 10%, the party applying for a lawsuit shall be subject to sanctions; that is the full cost incurred by the other party as a result of litigation. By increasing the risk and cost of litigation, it can promote the parties to implement the mediation agreement.

**The relationship between the settlement mechanism of insurance contract litigation and non litigation dispute resolution mechanism in China.** To establish a diversified dispute settlement mechanism of insurance contract, we must correctly deal with the relationship between the dispute settlement mechanism and the non litigation settlement mechanism and establish a comprehensive, coordinated and interconnected dispute settlement mechanism. While emphasizing the authority of litigation, we will cultivate a perfect and compatible with the rule of law in the dispute settlement mechanism of the insurance contract dispute and various solutions should be interrelated and mutually supportive.

The people's court, as the main body of the procedure, should provide support for other solutions. In the case of arbitration, although the people's court shall have the right to revoke the arbitrary award within the scope prescribed by law or not to enforce the award, it shall reasonably hold such rights. The two cases should be treated with caution, especially for the legal provisions of the "Facts of the Main Evidence is Insufficient" or "the Application of Law is Indeed Wrong". We should fully respect the professionalism and independence of the arbitration tribunal. The arbitrary tribunal shall be executed in the absence of any apparent error. Otherwise, it is not only conducive to maintaining the independence of arbitration, but also not beneficial to the promotion of arbitration between the parties.

The connection between the litigation mode of insurance contract dispute and the way of people's mediation can start from two aspects: first, the establishment of information platform between the people's court and the insurance dispute mediation body; the mediation organization shall register and record the case. When the parties can not reach a mediation agreement, the information can be directly submitted to the court and save some resources. When the two sides have reached a settlement agreement, the database can be used as a basis for the court to confirm its effectiveness. In the event that a party refuses to perform the agreement and the other party applies for enforcement, the database may also provide detailed information. The second is to strengthen the implementation of the people's mediation agreement. Where the parties to a contract of insurance have reached a mediation agreement under the auspices of the mediation institution, the mediation agreement shall be submitted to the people's court for confirmation of its effectiveness. The way of reaching settlement agreement through negotiation, for the author, who thought that it can also be used in this way to give its enforcement power. In the process of applying for confirmation of the settlement agreement by the people's court, the court may examine the legality and fairness of the agreement to ensure that the interests of both parties are not infringed upon.

## Summary

The sustainable development of China's insurance industry can not do without the support of fair, effective and diversified dispute settlement mechanism. However, China's current situation is that some of the parties to the insurance contract regard judicial approach as the only way to resolve the dispute, which will result in enormous pressure on judicial resources and let the burden of judicial costs can not afford consumers feel no complaints. This has great relation with the few attention of various non litigation solutions and its ineffective impacts. The problems of how to improve all kinds of non litigation solutions on the basis of litigation to make up for the lack of litigation and meeting the different needs of the parties have become an urgent task to build a diversified dispute settlement mechanism of China's insurance contract disputes. In this context, this paper argued that the key to solve the dispute settlement mechanism is to change the concept of the insurance contract and pay attention to the development of various non litigation solutions so that a variety of solutions in a variety of ways to solve the problem can link, mutually support and commonly develop.

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