

Third-party fault [Beitragsausfallschaden]

of statutory health insurances

Johannes Brocks

Abstract:

This dissertation addresses the judicially unsolved problem of the interface between private indemnity law and the right of recourse of social health insurances.

In detail, it deals with the question, if statutory health insurances (herein referred to as “health insurance”) may claim compensation of the difference in contributions, when its member suffers a third-party injury in a way, which causes the assessable income to decrease. The reason for this decrease leads back to the direct link between the assessable income and the members payment obligations. If the assessable income decreases, so does the income of health insurances – meanwhile the insurance cover remains the same. If this constellation occurs without the impact of a third party, the health insurance has to bear this risk, which is based on the principle of solidarity. In the event of a third-party harm, the question rises on whether the health insurance may claim compensation from the injuring party.

Due to a lack of contractual and tortious claims, the health insurance regress is merely then possible, when the member has a compensation claim against the injuring party and this claim is subject to a statutory subrogation as defined in § 116 SGB X. Since the member does not suffer actual damage (because of the decrease of his payment obligations), there is in fact no claim for damages that could be passed on to the health insurance.

In order to not leave the health insurance without any regress, the legislator ruled this scenario in § 224 II SGB V. This regulation fictions a contribution damage for the time in which the member receives sickness benefits. Thus, this fictional claim passes on to the statutory health insurance in accordance with §116 I 2 No. 2 SGB X.

The question on whether a damage fiction also applies for the period of time in which the member does not receive sickness benefits or if the health insurance shall remain an indirect injurer without the possibility of regress, remains unanswered. It's this dissertations goal to find a proper solution for this problem. In doing so, various approaches are being followed. Starting with the examination of a direct application of § 224 II SGB V during the period of not receiving sickness benefits and then inspecting the possibility of an analogue application of this rule. In the next step the dissertation examines the opportunity of solving the problem by means of a third-party damage liquidation.

Eventually, the carved out findings are utilized for a submission of possible statutory changes in order to eliminate unclarities in the application of law.