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## More rights for policyholders

Veröffentlicht am 10.04.2008

Re-billing and additional payment for unit-linked life insurance policies

Many people are too well brought up to speak with their mouths full; but they have no qualms about doing so with their heads empty. (Orson Welles) Insurance companies owe re-invoicing and subsequent payment in the case of unit-linked life insurance policies, the Federal Court of Justice (BGH) decided in its latest ruling of 26.09.2007 (Ref. IV ZR 321105). Policyholders may be entitled to a minimum surrender value after termination – also in the case of unit-linked life insurance. Experts estimate that insurance customers are entitled to several billion euros from terminated unit-linked and other endowment life insurance policies. The BGH points out that contract clauses on the offsetting of acquisition costs may also be invalid for unit-linked contracts due to intransparency. The insurance customer is also entitled to a minimum surrender value from the insurer in the event of premature termination. Legal grounds are non-transparent or invalid clauses in the insurance conditions, in the contract in question in 55 12 111 and 24 1 GCl. According to the Zillmerungsverbot, insurance companies would have had to transparently inform customers “upon conclusion of the contract” about the economic disadvantages of premature termination. The clause on offsetting the acquisition costs (including the commission for the brokerage) by way of Zillmerisation is also non-transparent and thus invalid if the insurance customer “cannot see the extent of the disadvantage associated with the offsetting”. Actuarial reserves and fund assets equated – Insurers previously did not consider the previous BGH rulings of 12.10.2004 for unit-linked life insurance to be relevant, because they related the minimum surrender value to the unzillmerised actuarial reserve. In unit-linked life insurance,

however, there is no such unzillmerized actuarial reserve, only a fund account. However, the court now ruled clearly that in the case of unit-linked life insurance, the “unzillmerised fund account” is the starting point for the customer’s claim for subsequent payment instead of the unzillmerised actuarial reserve. The ruling does not mention cancellation deductions – these were originally only invalid because their calculation was based on the “current value”, a term which the BGH also considered to be non-transparent. However, there is also no non-transparent current value in the case of unit-linked contracts, as the fund account takes its place. So if cancellation deductions are provided for at all in unit-linked contracts, these at least cannot be challenged with the preceding BGH rulings. Further adhesion beginnings to loads of insurers and mediators – only a fraction of the capital life insurances are held out up to the expiration – cause are often substantial consulting errors of the mediators. The Federal Court of Justice (BGH) also commented on this this year (ruling of 14.06.2007): Agents or insurers are liable if the brokered life insurance does not meet the needs of the customer, for example, does not correspond to his financial capacity. In this respect, claims for damages from terminated life insurance policies of the last 30 years are addressed. Ambiguous clauses open to interpretation – The ambiguity of contractual clauses (which are not completely opaque) results in the interpretation which is more favourable to the policyholder. In its judgement of 18 August 2006, the Heidelberg Local Court (AZ: 30 C 122106) ruled against MLP AG that around 90 % of the acquisition costs in certain contracts must be reimbursed. In the court’s opinion, the insurer had not made it sufficiently clear in its clauses that the acquisition costs were incurred in each of the first 10 years and was therefore only allowed to charge the costs calculated annually for the first 10 years in total. Case-by-case examination required – beyond the aforementioned BGH rulings, further claims of the insured persons may arise for quite different reasons. Often, only an actuarial appraisal reveals how the insurer has actually calculated – on the basis of the clauses it has used or even without any such clauses at all. Only in this way do the disadvantages become discernible at all and accessible to further legal review. Insurers usually do not offer this transparency for good reasons. More information under 089/17 90 90 35 in the question time sponsored by the Halstenbeker magazine on 11 December starting from 16.00 o’clock of Dr. Johannes Fiala, attorney from Munich, ([www.fiala.de](http://www.fiala.de)) and Dipl.-Math. Peter A. Schramm, expert for insurance mathematics (Diethardt), actuary DAV, publicly ordered and sworn by the IHK Frankfurt/Main for insurance mathematics in the private health insurance ([www.pkvgutachter.de](http://www.pkvgutachter.de)).

(Halstenbeker Magazin 11/2007,42)

Courtesy of [www.halstenbeker-magazin.de](http://www.halstenbeker-magazin.de).

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## Dr. Johannes Fiala

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## Weiterempfehlung

Sie haben gefunden, wonach Sie gesucht haben? Sie kennen jemanden der unserer Unterstützung benötigt?  
**Empfehlen Sie uns gerne weiter.**



Dr. Johannes Fiala  
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Rechtsanwaltskanzlei



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