

How To Work Around The Complexities Of German Insurance

The field of insurance in Germany is subject to constant change. An example, explained by Jens Rödel: "The targeted rates of return have markedly decreased, something mainly caused by the financial crisis. This becomes more and more of a problem, especially for the assurance companies, because partially contractually agreed to guarantee-interest rates can no longer be generated on the capital market." He speaks more below about German's unique insurance system.

What kind of work have you recently completed or are currently dealing with and what are the greatest challenges therein?

Currently in the area of personal insurance, two complex problems keep arising. The first of these is the rescission of an insurance contract by the insurance company due to fraud. Here, the insurance companies refer to the fact that false or inapplicable information was provided by the insurance holder at the time of closing the contract. Generally, this only becomes known to the insurance company years after closing the contract, with the occurrence of an event covered by the insurance. An enquiry to the treating doctor is then begun on the basis of a submitted declaration of release from confidentiality, however, the question remains, with regard to the reforms in legislation concerning data protection, whether this is even permissible.

In this context, there is a relatively new verdict from the Federal Supreme Court, which decided that the insurance holder must be presented with several alternatives with regard to the declaration of release from confidentiality and it must be considered what would happen if no declaration of release from confidentiality is given. Very often there are already mistakes present here.

The declarations are also sometimes too extensive in terms of time. This then leads to the information being unlawfully brought to court, according to the jurisdiction of the Federal Supreme Court. Thus, the insurance company cannot rely on its rescission, which leads to the consequence that it is still, under these circumstances, bound to a duty to perform.

The second issue is particularly relevant in the area of life insurance. Here, the contrary instructions for several existing agreements are erroneous, which leads to the insurance holder still being able to 'get out of' the contract even after years. This is of interest to many insurance holders because of the already above mentioned difficulties, with the possible guaranteed-interest rate not being observed by the insurance company. For the lawyers, the problem is that the jurisdiction is not yet very fully differentiated, so that different courts come to different solutions for the same problems. Lawyers must therefore very closely observe the developments and trends in the case law and determine a strategy in the interests of their clients according to these.

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”Currently in the area of personal insurance, two complex problems keep arising.

There is a classic German saying: "There's probably an insurance for this." Why do you think this is?

In Germany, insurance is mandatory in many different fields. Of course, the most important of these are firstly, social insurances (for example, health insurance, pension insurance etc.) and secondly, for example, third party vehicle insurance. Here, protection against certain risks is already stipulated by law. Moreover, there exists the possibility and the offer of insuring oneself against a wide variety of risks (one could even say, against nearly all risks).

Historically, a significant part of the population is more conservative and of a security-orientated mindset. There is, of course, also the fact that widespread opportunities for getting advice and information are available through insurers, insurance brokers and even internet offers, all of which are used. As a result, many different insurance contracts are made, in order to also be insured in case the worst should come to the worst.

Can you explain Germany's two-tier insurance and why it's so complex for many?

Health insurance in Germany is made up of two parts – there is state (statutory) insurance as well as private health insurance. It is fundamental to note that there is an obligation to obtain insurance. It is the statutory rule that, for most insurance holders, there is a duty to obtain health insurance in the state health insurance system. For those to whom this does not apply, the German Insurance Contract Act rules principally that there is a duty to obtain private health insurance. There is, therefore, in Germany a co-existence between private insurance companies, which are financed by insurance premiums and state social insurance carriers, which are financed by a contributions-based system. The contributions of employees are as a rule paid directly by the employer. This represents a fundamental difference to health systems in other countries. The state health system in Sweden, for example, is financed by means of taxation. In the USA, on the other hand, citizens must pay for health costs themselves or insure themselves privately.

Many would like to have private health insurance because this way, by paying the corresponding premiums, there are more and better services on offer than with state health insurance. However, this only generally works if there is no duty to obtain insurance from the state health insurance system, especially if their income is more than that set by the so-called compulsory insurance limit. If the required income is reached, then there is the possibility to insure oneself privately. The whole thing is then made more complicated by the fact that those who have state insurance can also obtain extra private health insurance. This then steps in for costs and services which are not covered by the state health insurance. A popular example of this is the costs for dentures.

How do you help clients best overcome barriers within this system?

Many people want to obtain private health insurance at an early age due to better services and the relatively low contributions. With increasing age, one notices a reverse trend. The costs for private health insurance are increasing, in parts even significantly above the level of state health insurance. As a result, many want to go back to state health insurance because they can't afford to be privately insured any longer. Indeed, one should bear in mind certain age limits. Over the age of 55, being able to change back to state insurance is as good as impossible and only in a very few exceptional cases can this still happen.

The task of lawyers in this field is to examine the question, whether the legal requirements for such a change already exist or if these can still be met. Alternatively, in order to sink the costs of private health insurance, it can also be considered whether the scope of the insurance can be reduced, or the co-payment raised.

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What have you found to be the most important thing to consider in dealing with insurance litigation in Germany?

The most important thing in the insurance process is the groundwork. At this stage it must be determined exactly how wide the scope of the insurance is and whether there have been any changes made to it. Therefore, it is essential to examine the application for insurance, the insurance policy, and all available insurance conditions and notices of changes in order to be able to ascertain exactly what the scope of the insurance is and whether an event covered by the insurance has occurred.

The principle of production of evidence applies in German civil procedure law. This means that the parties must produce all essential circumstances of the legal dispute. The court does not officially investigate here.

The groundwork mentioned above ensures that an account which corresponds to the civil-procedural requirements can already be made starting from the first legal document. Therefore, one must be careful to ensure accuracy. For example, if, in the context of a lawsuit, a lawsuit cannot be sufficiently and comprehensibly submitted, German civil procedure law provides for the lawsuit being dismissed on the grounds of indetermination.

In your extensive experience at FELS, what have you experienced to be the driving strengths of the business in the field of insurance?

Firstly, the persistent changes in the economy and environment constantly require new insurance products. In the future, the demand for products, which, for example, cover damages made by severe weather due to global warming or which insure against cyber-crime attacks, will probably increase enormously. Secondly, insurance companies of course also strive towards placing innovations for types of insurance which already exist on the market in order to win new clients (even from other insurance companies) or to try to get already existing clients to agree to new contracts. Currently, as a result of the relatively good economic situation in Germany, many are also considering how the currently reached standard of living can be permanently ensured for the future. As an example of this, one can mention accident insurance and disability insurance. As relatively good incomes are currently being earned on average, the preparedness to invest a part of these earnings in insurance products, which represent an extra security to the insurance which is compulsory anyway, is also naturally on the rise.