

On the Ownership and Enforcement of Cash Value of Insurance Policies

Yuming Zhang

East China University of Political Science and Law, Shanghai, China

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Abstract: As a special problem in life insurance contract, the subject of interest ownership of policy cash value has been in many academic circles. Even though the Supreme Court has basically made clear the theory of “policy holder first” through the “Judicial Interpretation of Insurance Law (III)”, from a theoretical point of view, it is still in question, including where the value belongs to and whether it can be enforced under the premise of policy holder.

1. Introduction

The cash value of insurance policy is a special problem in the life insurance contract. In the part of the life insurance contract in the insurance law, there are many articles closely related to this problem. In the event that the applicant cancels the contract or under legal circumstances, the insurer shall return the cash value of the policy as agreed. However, in practice, there are many different views on related issues. Therefore, on the basis of clarifying the definition and nature of the cash value of insurance policies, this paper tries to discuss the attribution of the cash value of insurance policies.

2. Enforcement Disputes on the Ownership of Cash Value in practice

Before discussing the legal theory, first of all, we can make an analysis of the number of cases and the judgment results concerning the enforcement of the cash value of insurance policies in practice.

2.1 Differences in Local Norms

Taking “cash value of insurance policies” as the Keywords, 119 documents were retrieved from Chinese judicial documents network and non-litigation cases, excluding divorce inheritance and insurance policy pledge loan cases, and 44 related enforcement objections, reconsideration rulings and judgments were found in nine provinces of Jiangsu, Zhejiang, Shandong, Fujian, Hebei, Henan, Hunan, Jilin and Liaoning. In the concrete case judgment, the judgment result is also very different. In the relevant laws and regulations, the insurance law stipulates the relative principle of the cash value of the policy. In practice, in order to unify the law enforcement standards, local courts often further regulate them by means of notices or answers. However, due to the lack of a unified judicial interpretation, the rules issued by local courts are divided into two distinct views on whether the policy cash value can be implemented and how it is implemented. On the one hand, some courts hold that the cash value of the policy after surrender is the liability property of the policyholder, which can be enforced by the court. When the whereabouts of the applicant are unknown or the applicant refuses to terminate the contract, the court may directly deduct it. On the other hand, some courts hold that although the cash value of the policy is the property of the applicant, the court cannot force the applicant to terminate the contract on the premise that the applicant terminates the contract; if the beneficiary is designated and the beneficiary is not the person to be enforced, the court cannot enforce the insurance money.

Because of the conflict of legislative rules in different regions and the absence of official documents issued by the Supreme Court at one time, the legislative norms of the courts in different regions largely dominate the judicial decisions in this region. The current situation of judges with different results is not only not conducive to the confirmation of Chinese judicial credibility, but

also leads to more legal disputes due to the different expectations of the parties for the results.

2.2 Tendentious Rules of the Supreme Court

In fact, in the process of drafting the “Judicial Interpretation of Insurance Law (III)”, the Supreme People's Court actually made a demonstration on the issue of “whether the cash value of the insurance policy can be enforced”. Article 28 of the draft stipulates: “The insured, the insured and the beneficiary are different subjects. The insured rescinds the contract without the consent of the insured and the beneficiary. If the parties claim that the rescission is invalid, the people's court will not support it. When the applicant cancels the contract, it shall notify the insured and the beneficiary. The people's court shall support the claim of the insured, the beneficiary or other persons with the consent of the insured to assume the contractual status of the applicant after paying the money equivalent to the cash value of the policy to the applicant. If the insured and the beneficiary require the applicant to compensate them for the losses caused by the cancellation of the insurance contract, the people's court shall deal with them according to the legal relationship between the insured and the applicant. “ This provision essentially introduces the “right to interfere system” of Japan and Germany, that is, the insured and the beneficiary can give the creditor the realization of the debt by paying the cash value of the insurance, thus making the insurance contract continue to be effective. For the expenses of the insured and the beneficiary, the law gives the relief channel, that is, according to the legal relationship between the insured and the insured, if the insured is only based on the general gift, then the insurance is insured. There is no loss for the person and the beneficiary, and of course there is no need for the insured to compensate. If there are other legal relationships, it will be dealt with according to other legal relationships. It can be seen that the judicial interpretation of the insurance law provides fairly equal protection to the insured, the insured and the beneficiary. If the cash value of the insurance can be withdrawn by directly forcing the termination of the life insurance contract, the door will be closed to the insured and the beneficiary in order to make the insurance contract continue to be effective. Such an approach obviously runs counter to the original intention of article 28 of the draft of the “Judicial Interpretation of the Insurance Law” to protect the insured and the beneficiary.

In the end, Article 16 of the Judicial Interpretation of the Insurance Law (III) stipulates that “when the insurance contract is terminated, the insured, the insured and the beneficiary are different subjects. If the insured or the beneficiary requests to return the cash value of the insurance policy, the people's court will not support it, except as otherwise agreed in the insurance contract”. In fact, the judicial interpretation has made it clear that the cash value of the insurance policy belongs to the insured. However, as far as the theory is concerned, it is not the only choice, even the author thinks, for the policyholder. On the one hand, the insurance law of China only stipulates that the policy holder is the inevitable holder of the cash value of the policy according to the contract, which does not match the meaning of “according to the contract”. There is a big difference between “according to the contract agreement” and “otherwise agreed in the contract”. To replace the principle with exception is actually a deviation from the original legislative intent. Second, the article is unfair in measuring the interests of the interested parties in the insurance contract. It affirms the insured's ownership of the cash value of the policy, denies the rights of the insured or the beneficiary to the cash value of the policy, and violates the structural basic characteristics of the allocation of insurance rights and obligations. For the insurance contract, the distribution of rights and interests has priority over the insured and the beneficiary.

3. The legal nature of policy cash value

Theoretically, the question of which party the cash value of the insurance policy belongs to should originally fall within the scope of party autonomy in the insurance contract. In the system logic of insurance contract, the meaning autonomy of the parties to the contract has been internalized into the structural difference in the allocation of rights and obligations, which is the theoretical basis and system logic to explain the ownership of policy cash value.

The first essence of the insurance system is to protect the interests of the insured. Although the

insured (beneficiary) is not a party to the insurance contract but only a party to the contract, he enjoys the rights under the insurance contract, and the contract itself exists for his benefit. In other words, if the insured is missing, the insurance contract will no longer exist, which is determined by the “otherness” requirement of the insurance contract. This kind of characteristic makes the insurance contract different from other civil contracts and forms a unique set of rights and obligations allocation characteristics. On the one hand, the policyholder bears the obligation to pay the premium, but does not enjoy the rights and interests under the insurance contract. However, it can share part of the interests with the policyholder in the way agreed in the insurance contract. On the other hand, the insurer is only obliged to provide the interests to the beneficiary in accordance with the contract. It is not hard to see that the position of the policyholder in the insurance contract is separated from the rights agreed in the insurance contract. The position of the policyholder in the contract does not necessarily constitute the acquisition of the cash value of the policy. When the insured performs the obligation to pay the premium in accordance with the contract, due to the above structural characteristics, the accumulated insurance premium as the cash value of the policy has actually left the control of the insured. Therefore, from the perspective of the allocation of rights and obligations, the cash value of the policy should not be attributed to the policyholder in nature.

However, China’s recent recognition of the cash value of the policy belongs to the insured, mainly influenced by the “investment income” logic advocated by scholars in Taiwan. Some scholars believe that the source of the cash value of the policy is the premium paid by the insured and overpaid, which belongs to the insured’s savings investment and should therefore belong to the insured. However, it should be noted that life insurance is the alienation of investment behavior. Although people do have investment preference, it is different from the investment behavior for the purpose of obtaining income. The fundamental purpose of insurance is to disperse the risk cost of the insured rather than the investment income. Therefore, the logic of “who invests who benefits” in economics cannot be fully applied.

In addition, from the perspective of legal interpretation, the legal text that defines the cash value of the insurance policy “according to the contract agreement” confirms the principle of “the exclusive right of the insured” as a priority, which itself has exceeded the norms of the insurance law and even violated the important legal fact of autonomy of will “according to the contract agreement”.

Therefore, from the perspective of the insurance contract itself in order to maintain the level of trust, that is, to protect the interests of the insured, the life insurance contract should stipulate that the cash value of the policy belongs to the insured, unless the law stipulates or the life insurance contract stipulates that the applicant is the liquidator. The court may not enforce the cash value of the policy either, because the opposite party of the interests of the insurance is actually the insurer, and the cash value should be independent of the liability property of the applicant, so it cannot be enforced.

Extraterritorial, on the premise of being definitely enforceable, it provides safeguard measures such as “minimum exemption from enforcement” and “beneficiary intervention system”. Even if the enforcement system is confirmed, certain risk safeguard measures should be introduced to protect the interests of the insured and clarify the first essence of insurance.

4. Conclusion

Although there is currently no unified opinion on whether the local courts can enforce the policy, and the Supreme Court has only tendentious opinions to support the enforcement, the author believes that when it is clear that the cash value of the policy does not belong to the insured, the issue of whether the policy can be enforced can be clarified. This is not only conducive to maintaining the conflict of interests of the insured, but also to returning to the fundamental requirement of autonomy of will--When the parties reach an agreement, the benefits of the cash value of the policy can be attributed to the right holders other than the insured through contractual agreement. If the contract clearly vests in the insured, the relevant issues of enforcement can be further explored.

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