

WACH UND MECKES



Dr. Henning Krauss
Of Counsel

Qualifications	<ul style="list-style-type: none">• Ph.D., University of Regensburg 1994• LL.M., DUKE University School of Law 1991• Studied law at the Ludwig-Maximilians-University of Munich
Professional Experience	<ul style="list-style-type: none">• Of Counsel at WACH + MECKES since March 2018• Bub, Gauweiler & Partner from January 2015 to February 2018• Weitnauer Rechtsanwälte from September 2008 to December 2014• Partner at Krauss, Amereller / Arqis from September 1995 to August 2008• Shearman & Sterling from 1991 to 1995
Memberships	<ul style="list-style-type: none">• VGR Corporate and Company Law Association (<i>VGR Wissenschaftliche Vereinigung für Unternehmens- und Gesellschaftsrecht</i>)• Munich Legal Society (<i>Münchener Juristische Gesellschaft</i>)
Expertise	<ul style="list-style-type: none">• Represents local and international clients in complex business disputes, particularly in the areas of post-M&A and corporate law (corporate litigation) as well as commercial and general contracts law• Corporate Law and M&A
Languages	<ul style="list-style-type: none">• German• English
Listed in	<ul style="list-style-type: none">• Global Law Experts – Commercial Litigation Germany
Publications	<ul style="list-style-type: none">• "Keine Schadenersatzansprüche auf Rückabwicklung der Beteiligung an einer mehrgliedrigen stillen Gesellschaft" (<i>No claim for damages for exiting a multi-member silent partnership</i>), comments on the Judgment of the Court of Appeal (OLG) in Munich dated 11.06.2012 - 21 U 4562/11, GWR 2012, 376.• "Rechtsmissbräuchliche Anfechtungsklage verpflichtet nicht zu Schadenersatz gegenüber Aktionären anderer Gesellschaften" (<i>Liability for abuse of process in bringing an action for annulment does not extend to shareholders of other companies</i>), comments on the Judgment of the Court of Appeal (OLG) in Hamburg dated 20.10.2010 - 11 U 127/09, GWR 2011, 10.• "Keine Klage auf die angepasste Leistung bei Störung der Geschäftsgrundlage eines Gesellschaftsvertrages" (<i>No claim for adjusted performance due to interference in the implicit transaction basis of a partnership agreement</i>), comments on the Judgment of the Court of Appeal in Munich dated 17.03.2010 - 20 U 2885/09", GWR 2010, 243.• "Ausschluss der im EU-Ausland beschäftigten Arbeitnehmer bei Aufsichtsratswahlen unionrechtskonform" (<i>Exclusion of employees working in other EU countries from election of the supervisory board in conformity with EU law</i>), comments on the Ruling of the Landau Regional Court (LG) dated 18.09.2013 - HKO 27/13, GWR 2013, 518.

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- Rückforderung gewinnunabhängiger Ausschüttungen durch KG setzt gesellschaftsvertragliche Regelung voraus" (*Demand for the return of payouts which are not based on profits from a limited partnership presupposes contractual regulations*), comments on the Judgment of the Federal High Court of Justice (BGH) dated 12.03.2013 - II ZR 72/11, GWR 2013, 359.
- "Kein Widerrufsrecht bei durch Fernabsatzvertrag erworbenen Index-Zertifikaten" (*No right to revoke index certificates purchased through long-distance sales contracts*), comments on the Judgment of the Federal High Court of Justice (BGH) dated 27.11.2012 - XI ZR 384/11, GWR 2013, 184.
- "Vollzug der Schenkung einer Unterbeteiligung mit Kontrollrechten erfolgt mit Abschluss des Gesellschaftsvertrages" (*Execution of gifting sub-participation with controlling rights takes place at the conclusion of the partnership agreement*), comments on the Judgment of the Federal High Court of Justice (BGH) dated 29.11.2011 - II ZR 306/09, GWR 2012, 108.
- "Rückzahlungspflicht des Treuhänders, wenn er die bestimmungsgemäße Verwendung des Treugutes nicht beweist" (*Repayment obligations of a trustee where the intended use of the trust property is not proven*), comments on the Judgment of the Court of Appeal in Hamm dated 25.07.2011 - I-8 U 54/10, GWR 2011, 423.
- "Keine verdeckte Sacheinlage bei Darlehensrückzahlung aus Bareinlage des bürgenden Inferenten" (*No hidden contribution in kind in the case of a loan repayment in cash from the guarantor*), comments on the Judgment of the Federal High Court of Justice (BGH) dated 12.04.2011 - II ZR 17/10, GWR 2011, 283.
- "Sonderzahlungszusage zugunsten stiller Gesellschafter ist Schenkungsversprechen" (*Special payment assurance in favour of silent partners is a promise to make a gift*), comments on the Judgment of the Court of Appeal in Hamburg dated 11.02.2011 - 11 U 12/10, GWR 2011, 159
- "Keine Legitimation des Erwerbers eines Geschäftsanteils gemäß § 16 GmbH a.F. bei Ausschluss des Erwerbs durch die Satzung" (*No legitimacy in the shares acquired pursuant to §16 Limited Liability Companies Act (prior version) if the purchase is excluded in the articles of association*), comments on the Judgment of the Court of Appeal (OLG) in Brandenburg dated 13.10.2010 - 7 U 43/10, GWR 2010, 549.
- "GbR-Gesellschafter haftet quotaal für die aktuelle Forderung und nicht für den Nominalbetrag eines Darlehens" (*A partner in a partnership is proportionately liable for current claims and not for the nominal loan amount*), comments on the Judgment of the Court of Appeal in Berlin dated 29.06.2010 - 4 U 78/09, GWR 2010, 479.
- "§ 712 I BGB ist auf die gesetzliche Gesamtgeschäftsführungsbefugnis des BGB-Gesellschafters nicht anwendbar" (*§712 I of the German Civil Code is not applicable to the general management power of a partner in a partnership*), comments on the Judgment of the Court of Appeal in Braunschweig dated 07.04.2010 - 3 U 26/09, GWR 2010, 426.
- "Einziehungsbeschluss unter Verstoß gegen § 5 III 2 GmbHHG ist nichtig" (*Redemption of shares in breach of § 5 III 2 of the German Limited Liability Companies Act is void*), comments on the Judgment of the Essen Regional Court (LG) dated 09.06.2010 - 42 O 100/09, GWR 2010, 349.

- "Verfügungsgrund des § 16 III 5 GmbHG entfällt nicht vor Ablauf von 3 Jahren nach Einreichung der unrichtigen Gesellschafterliste" (*Grounds for an injunction pursuant to §16 III 5 of the German Limited Liability Companies Act do not expire before 3 years have passed since the submission of the incorrect list of shareholders*), comments on the Ruling of the Court of Appeal in Berlin dated 01.04.2010 - 2 W 36/10", GWR 2010, 295.
- "Keine wirtschaftliche Neugründung bei siebenmonatiger Vorbereitung der Aufnahme des Geschäftsbetriebs" (*No re-establishment of business within the seven-month preparation period before commencement of business operations*), comments on the Ruling of the Federal High Court of Justice (BGH) dated 18.01.2010 - II ZR 61/09", GWR 2010, 162.
- "Ist die Beurkundung von Geschäftsanteilsabtretungen in der Schweiz nach dem MoMiG wirksam?" (*Is the certification of the transfer of shares in Switzerland valid under the Law for the Modernisation of the German Limited Liability Company Law and the Prevention of Misuse (MoMiG)?*), GWR 2010, 51.
- "Verjährung des Befreiungsanspruchs eines Treuhänders" (*Statute of limitations for exemption claims by a trustee*), comments on the Judgment of the Federal High Court of Justice (BGH) dated 12.11.2009 - III ZR 113/09", GWR 2010, 38.
- "Keine anspruchsmindernde Berücksichtigung von AfA als Vorteilsausgleichung" (*Tax deduction for depreciation (AfA) is not to be taken into account as an adjustment of advantage*), comments on the Judgment of the Court of Appeal in Hamm dated 14.10.2009 - I-8 U 12/09", GWR 2009, 472.
- "Keine Anrechnung auf die Einlagepflicht bei verdeckter Sacheinlage im Falle rechtskräftiger Entscheidung vor dem 01.09.2009" (*The obligation to make contribution in the case of a hidden contribution in kind is not to be taken into account in binding decisions before 01.09.2009*), comments on the Judgment of the Court of Appeal (OLG) in Koblenz dated 16.06.2009 - 6 U 120/05", GWR 2009, 419.
- "Kein Vollzug einer fehlerhaften Innen-Gesellschaft bürgerlichen Rechts durch den Beitritt weiterer Personen" (*No execution of a defective partnership by the accession of additional partners*), comments on the Ruling of the Federal High Court of Justice (BGH) dated 21.09.2009 - II ZR 250/07", GWR 2009, 393.
- "Geschäftsführer einer Treuhandkommanditistin muss das aufsichtsrechtliche Tätigwerden der BaFin nicht immer offenlegen" (*A managing director of a trustee limited partner is not always required to disclose the Federal Financial Supervisory Authority's (BaFin) supervisory activities*), comments on the Judgment of the Court of Appeal (OLG) in Köln dated 26.03.2009 - 7 U 188/08", GWR 2009, 350.
- "Endgültige Entäußerung des Stiftungsvermögens ist Voraussetzung für wirksame Errichtung einer liechtensteinischen Stiftung (*Definite relinquishment of assets is a pre-requisite for the valid establishment of a Liechtenstein foundation*), comments on the Judgment of the Court of Appeal (OLG) in Stuttgart dated 29.06.2009 - 5 U 40/09", GWR 2009, 317.
- "Bestätigung der Bestellung von Koerfer zum Aufsichtsratsmitglied der Continental AG" (*Confirmation of the appointment of Koerfer as member of the supervisory board of Continental AG*), comments on the Ruling of the Hannover State Court (LG) dated 12.03.2009 - 21 T 2/09", GWR 2009, 297.
- "Zahlung der AG auf Gesamtschuld mit Aktionären ist keine Einlagenrückgewähr" (*Payment by a stock corporation of a liability, to which it is jointly and severally liable together with its shareholders, is not a repayment of contribution*), comments on the Ruling of the Court of Appeal (OLG) in Munich dated 02.07.2009 - 31 Wx 24/09", GWR 2009, 247.
- "Die Haftung von Treugeber-Kommanditisten fehlgeschlagener geschlossener Fonds" (*The liability of trustee limited partner of failed closed-end funds*), GWR 2009, 185.

- "Geschäftsführer einer Treuhandkommanditistin haftet aus § 826 BGB bei Verschweigen aufsichtsrechtlichen Tätigwerdens der BaFin" (*A managing director of a trustee limited partner is liable under § 826 of the German Civil Code for concealing the Federal Financial Supervisory Authority's (BaFin) supervisory activities*), comments on the Judgment of the Court of Appeal (OLG) in Munich dated 18.11.2008 - 5 U 2856/08", GWR 2009, 38.
- "Haftung aus Prospekthaftung im weiteren Sinn oder konkludentem Auskunftsvertrag scheidet bei fehlendem rechtsgeschäftlichen Kontakt aus" (*Prospectus liability in the broader sense or implied contract for information to be excluded in the absence of legal contact*), comments on the Judgment of the Federal High Court of Justice (BGH) dated 29.01.2009 - III ZR 74/08", GWR 2009, 13.

Recent matters

Transactional disputes (M&A and financial transactions):

- Acting for the party damaged by options transaction against the issuing bank.
- Acting for the former shareholder of an insolvent company against a management consultancy company which appointed the Chief Restructuring Officer of the company causing the insolvency
- Acting for a supervisory board member of a stock corporation in successfully defending against a motion for removal pursuant to § 103 sub-para. 3 of the German Stock Corporation Act.
- Acting for a company with limited liability in proceedings on injunctive relief against a shareholder for breach of a non-competition obligation.
- Acting for a supervisory board member of a stock corporation in successfully defending against a temporary restraining order by the head of the supervisory board to compel a certain vote.
- Advising the managing director of a company with limited liability in the defense against alleged claims by an administrative receiver for damages in the hundreds of millions.
- Advising an equity arranger in the defense against claims for recourse by an institutional initiator of closed-end funds.
- Acting for the German subsidiary of a foreign bank in ca. 220 court proceedings, defending against prospectus liability claims by investors of various closed-end funds.

Banking, finance and capital market disputes:

White-collar crime related disputes:

- Advising a listed company in connection with a short attack.
- Advising a listed company in connection with it being named in the Paradise Papers.

Professional Liability:

- Acting for a foreign holding company with regard to the enforceability of claims for damages against a management consultancy in connection with the unsuccessful acquisition of a company.

Transactional advice (M&A):

- Advising the board members of a stock corporation on the re-investment in an investment vehicle of a private equity investor, following a successful public tender offer to the shareholders of its holding company.

- Advising the shareholders of a stock corporation on the disposal of their shares to its holding company.
- Advising the minority shareholders of a financial service provider in the acquisition of the majority stake from a regional bank.
- Advising an Indian company on its roll-out in Europe.

Advice in relation to banking, finance and capital markets law:

- Advising a shareholder of a company in the implementation of the financing bank's restructuring plan.
- Advising the shareholders of a stock corporation in connection with the public tender offer of a private equity investor to the shareholders of its holding company.