

MANDATE

02.06.2022

GLEISS LUTZ WINS CASE FOR GELITA BEFORE KARLSRUHE HIGHER REGIONAL COURT IN PROCEEDINGS AGAINST ALLEGED SPECIAL REPRESENTATIVE

Karlsruhe Higher Regional Court's ruling in the appeal proceedings largely confirms Heidelberg Regional Court's judgment on the liability of the alleged special representative Dr. Knüppel. The Higher Regional Court also ordered Dr. Knüppel to pay GELITA AG more than EUR 1.1 million in damages.

Dr. Knüppel had sued two shareholders as well as former members of the management board and supervisory board for payments totalling around EUR 15.5 million on behalf of GELITA AG on account of alleged breaches of notification obligations under stock corporation law and therefore allegedly incorrectly paid dividends. He lost this action before both Heidelberg Regional Court and Karlsruhe Higher Regional Court.

In the proceedings against Dr. Knüppel, the Higher Regional Court found that a special representative must take due care when preparing to file an action. It held that if he comes to the conclusion that claims for damages do not exist or that there would be an unreasonable risk of losing the proceedings were these to be asserted, he must not assert these in court. The Court went on to note that according to these principles, the special representative had culpably violated his duties of care by bringing the action, because this was to a large extent obviously without merit right from the outset and therefore without any prospect of success.

This is a groundbreaking case marking the first time a special representative has been ordered to pay damages (in both the initial and appeal proceedings). Karlsruhe Higher Regional Court's judgment contains fundamental statements on the liability of the special representative and his duties of care vis-à-vis the company. In addition, Karlsruhe Higher Regional Court again dealt with the requirements to be met for resolutions on the assertion of claims and appointment of special representatives pursuant to section 147 German Stock Corporation Act to be effective, and confirmed all decisions already handed down in this regard. This meant that Dr. Knüppel's appointment was invalid due to the inadmissible inclusion of claims pursuant to section 62 German Stock Corporation Act.

GELITA was advised by the following team of Gleiss Lutz lawyers: Dr. Gabriele Roßkopf (partner, lead), Dr. Johannes Culmann (counsel, both Stuttgart), Dr. Thorsten Gayk (counsel, Hamburg, all Corporate).

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