

“The Gruenthal cartel against the Contergan victims”

Judgement by Cologne Higher Regional Court on the collusion scandal between Grünenthal and Contergan Foundation enters into force

Press release dated 04.06.2018

The defendant, Attorney Karl Schucht, in a letter to the members of the Federal Family Affairs Committee dated 22.2.2013, claimed that the plaintiff, the Contergan victim Andreas Meyer, had spoken untruth at a public hearing of the Federal Family Affairs Committee.

Meyer has lodged a successful cease-and-desist suit against Schucht at the Cologne Higher Regional Court.

With the judgement by the Cologne Higher Regional Court on 12.4.2018 (Akz. 15 U 85/17) concerning the collusion scandal between Grünenthal and the Contergan Foundation, which has now entered into force, Attorney Karl Schucht (defendant) is forbidden to assert:

“a. Mr Meyer has alleged that for 30 years Grünenthal has also been looking into the medical files of the affected persons at the Contergan Foundation. This allegation is untrue. At no time has Grünenthal had access to the medical files of the Contergan Foundation. The medical files were and are always kept in the office of the Contergan Foundation.

b. Mr Meyer has alleged that Grünenthal has been paying for the experts of the Medical Commission of the Contergan Foundation for

30 years. This allegation is untrue. The experts of the Medical Commission have always been paid out of funds of the Contergan Foundation.”

Should Attorney Schucht repeat these assertions, he must reckon with a fine of up to 250,000 € with the alternative of detention for up to 6 months.

However, the further claims established by Meyer for rectification towards the then members of the parliamentary committee were dismissed because a legitimate interest could not be seen to exist any more, since the members of the then committee no longer have any involvement in the consideration of legislation. A further appeal was not permitted by the Cologne Higher Regional Court, because it concerned a decision in an individual case without fundamental significance.

In the grounds for its judgement, the Cologne Higher Regional Court determined among other things on pages 13 and 14 (of the German text):

“(1)

The Regional Court correctly recognised that, independently of whatever may have been the contents of the “reference files” that were ultimately transferred to the Grünenthal company’s archives, Attorney Wartensleben had received the medical files (...), so that these were accessible to employees of this company.

Mr Wartensleben received them in his capacity as a member of the Medical Commission of the Contergan Foundation, but at the same time he was employed in the initial period as this company’s corporate lawyer, and later, after leaving the company, he represented it as an attorney.

The same applies, for the whole of Mr Wartensleben’s period of activity, to his assistant and employee R., who was an employee of Grünenthal.

It may be that one can speak of a “dual role” of Attorney Wartensleben and the other employee R. It may also be that one can assume the imposition of “confidentiality” by statute or in law, or at least organised in the form of a so-called “Chinese wall”.

However, there was always an identity of the persons involved, which on this account alone could justify the possibility for “Grünenthal” to become aware of the contents.

(2)

It is also not in dispute that the financing of the work of the Medical Commission was at least partly secured by a lump-sum payment which the Grünenthal company transferred to the Contergan Foundation.

This practice had existed since 1973 and was placed on a contractual basis in 2005, under which the Grünenthal company agreed to make an annual payment of 24,000.00 EUR to the Contergan Foundation to serve as coverage of expenses by the Medical Commission.

The question which remains in dispute between the parties, of whether payments to the experts were made directly by the Contergan Foundation, which the Regional Court took as the sole basis for its judgement, is not decisive here.

The cease-and-desist claim is thus founded on the fact that untrue assertions were made by the Defendant which were in danger of repetition.” (our abbreviations and deletions.)

Meyer comments: “The collusion judgement is historic for us Contergan victims because it not only proves that collusion between Grünenthal and the Contergan Foundation existed. At the same time it also proves that in recent decades the Federal Government was also aware of this collusion. Because the Federal Government through its ministries had oversight and/or supervision of the Contergan Foundation. For decades, all Federal Governments placed the Contergan victims at the mercy of the Grünenthal company. It can be seen here how Grünenthal enjoyed preferential treatment. And for decades they all remained silent and tolerated this. Regardless of which party they belonged to. This is how a cartel works: the Grünenthal cartel against us Contergan victims.”

“And it was not only their accomplice, Attorney Karl Schucht, who lied for Grünenthal in 2013. In 2013 the then Federal Government also lied to the German Parliament, simply for the purpose of defaming a Contergan victim who had spoken the truth. For whom did they lie? For Grünenthal!”, says Meyer.

In 2013, in an answer to a Minor Interpellation by the Parliamentary Group Die Linke (Left Party), the Federal Family Affairs Ministry, which had been responsible for supervision of the Contergan Foundation since 1972, declared among other things that Schucht’s letter also expressed the opinion of the Federal Government (answer dated 22.4.2013 to question 1 of the Minor Interpellation – Printed Paper 17/12998 dated 4 April 2013). In a further answer, the Federal Family Affairs Ministry declared that according to the knowledge of the Federal Government the company Grünenthal GmbH had had no access to the files of the Foundation (answer dated

22.4.2013 to questions 3 and 4 of the Minor Interpellation - Printed Paper 17/12998 dated 4 April 2013).

The Federal Minister for Family Affairs at the time of the reply to the Left Party's Minor Interpellation was Dr. Kristina Schröder (CDU). The answer to the Left Party's Minor Interpellation dated 22.4.2013 was signed by the Parliamentary Secretary of State Dr. Hermann Kues (CDU).

Meyer: "I can understand that the lies in Schucht's letter coincided with the wishful thinking of the then Federal Government (answer to question 1). But then to deny knowledge of the fact that the Grünenthal company had had access to the files of the Foundation (answer to questions 3 and 4), is no less of a scandal than the lies in Schucht's letter."

Meyer recalls:

In 1972, the then Federal Minister for Youth, Family and Health (BMJFG), Käte Strobel (SPD), gave a ceremonial speech to the inaugural meeting of the Council of the Contergan Foundation. Attorney Herbert Wartensleben was also present at this meeting. At the same meeting, Wartensleben was appointed as Chairman of its Medical Commissions. At a Council meeting in 1973, the Federal Minister Dr. Katharina Focke (SPD) devoted her entire attention to the medical points table. This table measures the degree of damage suffered by the affected persons, and thus the amount of their pensions. Wartensleben's presence was also noted at this meeting. Some time later, Wartensleben was co-author of the medical points table. Wartensleben's parallel function as head of Grünenthal's legal department was known to everybody at that time.

"The successive Federal Governments not only permitted that, through Wartensleben as Chairman of the Commission, Grünenthal could influence which of us was damaged by Contergan or not. Under the eyes of the successive Federal Governments, Grünenthal - through Wartensleben - was also co-author of the damage criteria," says Meyer.

In 1983, the Contergan Foundation allowed itself to be represented by the Brussels lawyers of the Grünenthal company against a Belgian affected person who was fighting in the courts for his recognition as a Contergan victim. In 2017, a lawyer engaged by the Contergan Foundation confirmed that at least between 1972 and 1983 it was common for the Foundation's office and the Medical Commission's experts to send documents relating to affected persons to Wartensleben's office address at the Grünenthal company for his work on the Commission.

Since 1972, the successive Federal Family Affairs Ministries also regularly

appointed their own ministry officials to the chairmanship of the Council of the Contergan Foundation and were thus, both then and now, always informed in detail about all happenings within the Contergan Foundation. Also from the beginning, ministry officials from the Federal Ministry of Finance (BMF) and the Federal Ministry of Labour and Social Affairs (BMAS) have also been represented on the Council of the Contergan Foundation. The Council is the decision-making and control organ of the Contergan Foundation. The Federal Family Affairs Ministry nominates and appoints the members of both the Management Board and the Council.

Wartensleben was indisputably, from 1972 until the end of 2003, the Chairman of one of the two Medical Commissions. In this period, the following persons held the office of Federal Minister for Family Affairs: Käte Strobel (SPD), Katharina Focke (SPD), Antje Huber (SPD), Anke Fuchs (SPD), Heiner Geißler (CDU), Rita Süßmuth (CDU), Ursula Lehr (CDU), Hannelore Rösch (CDU), Angela Merkel (CDU), Claudia Nolte (CDU), Christine Bergmann (SPD), Renate Schmidt (SPD).

As initial immediate measures, Meyer demands that the supervision of the Contergan Foundation should immediately be withdrawn from the Federal Family Affairs Ministry. “The dirty work of this Grünenthal ministry, which has been going on at least since 1972, must now finally come to an end.” says Meyer. It would be a presumption on the Contergan victims to ever again have to take part in a Council meeting in the offices and/or under the chairmanship of this ministry. The current chairmanship of the Medical Commission must also be transferred to another law office with immediate effect. It is unacceptable that the chairmanship of the Commission should continue to be in the hands of the law firm in which the defendant Attorney Karl Schucht was a partner until the end of 2017. All of the experts in the Medical Commission must also be dismissed. The Foundation behaved as if its experts were the only ones in the world who were competent to independently assess whether a person was damaged by Contergan or not. “Yes, sure. For these results, Grünenthal is happy to go on paying them until today,” Meyer believes. In particular, Meyer demands that the Contergan victims should hold the majority on the Council of the Contergan Foundation. Currently 3 ministry officials hold the majority on the Council against the 2 victims’ representatives. Benefit recipients from abroad must also be represented on the Council. “The Contergan Foundation must be in the hands of the Contergan victims, as in Great Britain. We can do it better than the ministry officials of the Grünenthal cartel,” Meyer emphasises.

Meyer calls for a commission of enquiry which, among other things, should clarify the question of why the Contergan Foundation, which belongs to the public sector and must actually be neutral, placed the Thalidomide victims – worldwide – at the mercy of the Grünenthal company for decades. The

question must also be clarified of who else had belonged to this cartel – and has stayed in the background until now. The question still remains open of whether the Contergan trial was dismissed in Grünenthal's favour due to political influence.

“There can only be justice in the Contergan scandal when the politicians succeed in compelling the company consortium of the Grünenthal owners, the Wirtz family, to pay back the costs that have been borne by the public at large (in the form of the benefits paid to us by the Contergan Foundation and future payments for damages, social service payments, health insurance payments, etc., which are largely paid out of taxation and social service contributions, etc.) to the citizens of this country.

This could occur through an expropriation of the company consortium for the benefit of the public. Or the Federal Republic of Germany could guarantee to the citizens of this country by law that after our decease the costs to the public will be paid back by the Wirtz family's consortium over the next 100 years or more.

In both cases at least, the politicians must ensure that the Contergan victims receive the compensation (for all damages to health, property, pension claims, provision for relatives, etc.) to which they are entitled. And in both cases at least, the precedence in civil law which was previously lacking would now have been created. This would send a signal, once and for all, to the unholy alliance of collusion between business and politics that in the Contergan case the corruption was a failure.

As the first lesson from the Contergan scandal, an anti-corruption law must ensure that business scandals – cases of collusion between business and politics, or favours to business by politicians – cannot occur or are prohibited. The politicians' job should be to protect the public. But who protects the public from corrupt politicians? I have launched a petition on this subject: openpetition.de/!Antikorruptionsgesetz.

As a further lesson from the Contergan scandal, a criminal and civil law must be created that produces equality of arms in legal cases involving pharmaceutical and product liability scandals. In the field of criminal law, the prosecuting authorities must be given the power to take successful actions against large or even multinational corporations.

In the field of civil law, consumers must be empowered, through class actions and the reversal of the burden of proof, to enforce their claims against the economic strength of big corporations.

Only when all these steps will have been carried out, will we be able to say

that justice has been done in the Contergan scandal and that this country has learned the lessons from it.” says Meyer.

The final judgement and further information can be found at this link:

http://www.gruenenthal-opfer.de/Judg_Cologne_court_Meyer_Schucht_12_4_2018_force

Information from Mr Meyer’s lawyers, Professor Dr. Jan Hegemann and Dr. Eva-Marie König from Rechtsanwälte Raue LLP, on the legal effect of the Higher Regional Court judgement can be found here:

<https://raue.com/en/practices/intellectual-property/thalidomide-scandal-revisited-raue-llp-achieves-success-for-thalidomide-victim-in-court/>

The Minor Interpellation by the Parliamentary Group Die Linke (Left Party) dated 4.4.2013 together with the answers can be found here:

http://www.gruenenthal-opfer.de/Two_Minor_Interpellations_Left_Party_4_4_2013

Contact:

**BCG - Bund Contergangeschädigter
und Grünenthalopfer e.V.**

c/o Mr Andreas Meyer (Chairman)

Dohmengasse 7, 50829 Cologne

Email: bcg-brd-dachverband@gmx.de

Website: www.gruenenthal-opfer.de

Mobile: 0172 / 2905974

Note: This English translation is unofficial. Only the original German text carries legal authority.