

Burden of proof of management board in the case of damages claims - Company Law

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GRP Rainer Lawyers Tax Advisors, Cologne, Berlin, Bonn, Düsseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London www.grprainer.com/en explains: In exercising its duty, the management board of a business has to take into account several obligations. In this context, the application of the level of care taken by a prudent and conscientious business manager is top priority. It must measure itself against this benchmark. Within the framework of possible litigation for damages, the burden of proof lies with the management board in cases of doubt. However, the BGH has already indicated in a few judgments that the management board's duty of care is to be understood broadly for the purposes of its corporate activities.

An overly narrow interpretation of the notion of care would restrict activities too far and make sensible corporate behaviour almost impossible. The assumption of economic risks is part of the daily business of a company participating in the business world. Nevertheless, the management board should always keep in mind the welfare of the business and be able to verify comprehensible economic reasons for its actions. Consequently, liability does not exist simply because a business deal turns out to be unsuccessful or damage arises through slight negligence.

The supervisory board and especially the courts must therefore decide on a case-by-case basis having regard to the underlying facts whether the management board has breached its duty of care. Of course, they should not lose sight of the protection of shareholders in doing so, since the shareholders have no influence on the company's business dealings. The demarcation between corporate risks and loss-making deals entered into carelessly can in practice usually only be made with the help of external auditors.

A member of the management board's liability risks are often not foreseeable in advance. During the course of litigation for damages, all parties concerned should obtain legal assistance and also potentially engage the services of auditors. If there has been a breach of a duty of care, the company is entitled to damages vis-à-vis the management board. A lawyer active in the field of company law can examine on a case-by-case basis whether claims exist and how these can be enforced. Additionally, he can ensure in advance that the issue of liability does not affect daily business.

<http://www.grprainer.com/en/Board-of-Directors.html>

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Anlage: Bild

