[DE] Prominent Figures Liable When Promoting Investment Companies

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In a ruling of 17 November 2011, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that prominent figures who advertise investment funds that ultimately fail can, in some circumstances, be liable for losses suffered by investors. This particularly applies to advertisers who refer to their specialist knowledge in advertising for investment products.

The decision was taken in the case of a former German Defence Minister, who was sued for damages by several investors because of his appearance in an advertisement for an investment fund. In the first instance, the politician was ordered to pay damages. However, the Oberlandesgericht (district appeal court) upheld the appeal against the first instance ruling, overturned the decision and rejected the claim. The BGH has now quashed the appeal ruling and referred the case back to the district appeal court for a new decision.

The BGH considers the defendant to be liable on account of information contained in a prospectus. According to its established case law, liability for information contained in an investment fund prospectus is shared not only by the publisher of the prospectus and the company's management, but also by people who support the company, who exert particular influence on the structure of the actual investment model and who therefore share responsibility for it.

The BGH ruled that the "product information" published by the fund's parent company along with the issue prospectus, as well as the press articles that were distributed with the prospectus, should be considered as common components of an investment prospectus, since they had been distributed together and used jointly to attract investors. The "product information" served as an easy-to-read supplement to the prospectus. In addition, however, when viewed in isolation, it gave the impression of being a comprehensive description of the investment fund and therefore constituted, in its own right, a prospectus in the legal sense. The general comments made by the defendant in the "product information" were supplemented by the two magazine articles distributed with it. The defendant's comments in these articles provided further evidence of his role, his influence on the company and his positive assessment of the reliability of the advertised investment products. An average person interested in the investment fund could interpret the comments of a (now emeritus) university law professor and former Federal Minister, who was portrayed as an expert, as offering an additional

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guarantee of the security and success of the investment fund. The fact that he actually had little influence as an advisory committee chairman was not significant in the overall context of the publications, since it did not prevent readers from acquiring an objective sense of confidence. The fact that he had stepped down from the advisory committee before the plaintiffs decided to invest did not release him from liability. His previous comments were not merely a retrospective assessment of the investment model, but also created the expectation that he would continue to vouch for the interests of investors and investment companies through his political and business contacts.

Urteil des Bundesgerichtshofs (Az. III ZR 103/10) vom 17. November 2011

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=d7b8dd2dd6a7d752410c0ddc8a007fcc&nr=58482&pos=0&anz=1

Ruling of the Federal Supreme Court (case no. III ZR 103/10) of 17 November 2011

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