**Vereinigung Institutionelle Privatanleger e.V.**

**association of institutional shareholders**
**association des actionnaires institutionnels**

V I P Vereinigung Institutionelle Privatanleger e.V. · Olper Strasse 60 · D-51491 Overath

Olper Strasse 60
D-51491 Overath
www.vip-cg.com

**Hans-Martin Buhlmann**
Vorsitzender
Tel: +49 (0)228 · 24 25 212
Fax: +49 (0)228 · 24 25 288
hmbuhlmann@vip-cg.com

Munich District Court
Herrn Breinl, RiaAG
*Registry Court*
Infanteriestraße 5

80315 München

Faxed earlier to + 49 89 5597 3560

09.02.2004

HR B 42039
Münchener Rückversicherungs-Gesellschaft AG

Subject: Petition pursuant to § 104 of the Companies Act - complaint

Dear Mr Breinl,

Many thanks for your indications of 8 January. Our petition was faxed on 29.12.2003 to the number allocated to the commercial register (see above). We would ask you to be so kind as to decide on the petitions contained herein.

We do not assume that the request to appoint retired board members ought to have been sent by the company before 1.1.2004 – i.e. before their resignation; that would have been inadmissible. We would ask you to send us copies of the appointment request and the order – or alternatively, an indication of what might stand in the way of that.

We hereby – initially purely to comply with the time-limit – file a complaint against the appointment order of 2.1.2004 (the first working day of the year). We would ask you to let us wait with our grounds until we have the above-mentioned documents. Failing that, we request judicial indications. Has the order already been published?

Our petition was filed – on the specific fax machine for the commercial register – on the Monday. Since the company's petition decided on could undoubtedly not have been lodged before the Thursday, 1.1.2004 (a holiday), we could be confident that our "anticipatory brief" would be taken into consideration in due time. Both Chairs of the company's authorities had it several days before

it was faxed to the court. The court then decided on 2.1.2004 on the application subsequently received.

The direct legal involvement of shareholders may in general be questionable, but not in the instant case.

First, shareholders are, as company members involved, of course entitled, in connection with appointment of its controlling bodies, to a complaint pursuant to § 20 FGG [Act on *Ex Parte* Jurisdiction Matters], since their rights are affected. It is the object and purpose of § 104 AktG [the Companies Act] to restore the Supervisory Board's ability to act **if** the general meeting is or was not in a position to do so – just what is not, as shown, the case, **because** a general meeting has been held since the published stipulations. Reference is made in this connection to the justification for the petition and the facts presented in it. The court acts in the interest of the company and of its members. A shareholder may indisputably fight any possibly impermissible election of Supervisory Board members by an action for avoidance – the analogy to be followed here.

Moreover, the last (known) decision in this connection, of the Frankfurt Regional Appeal Court, is almost 50 years old, and generally accepted standards have manifestly changed in the meantime. The justification for our original petition is based on the one hand on the (disputed) "urgency", and in detail results from recent legal developments *de lege lata*. The alleged **urgency** follows (only?) from a *lex specialis* in connection with co-determination.

Lastly, the point at issue is not entitlement to a complaint, for the simple reason that our petition indisputably lay before the court **prior in time** to the company's application (through one of its authorities). It was certainly in order for the company to be heard.

The issue here is not individuals, but exclusively that the urgency of the company's application has to be demonstrated to the court. That has (so far) not happened – a flaw.

We cast doubt on the necessity of the order of 2 January, and furthermore on the scope of application of § 104 AktG, which has to be **teleologically reduced** – as our written petition of 29.12.2003 sets forth and further supports with facts.

We would recall that both Chairs of the Münchener Rückversicherungsges.AG authorities were informed beforehand by us, by letter of 27.12.2003 accompanied by a draft of our petition of 29.12.2003.

Yours sincerely,

**V I P Vereinigung Institutionelle Privatanleger e.V.**

Hans-Martin Buhlmann
Chair