

WIRECARD and EY:

**What new evidence do we have?
What did the Parliamentary Investigative Committee find?
What is EY's line of defense?
How do the legal proceedings move forward?**

Webinar, July 20th, 2021

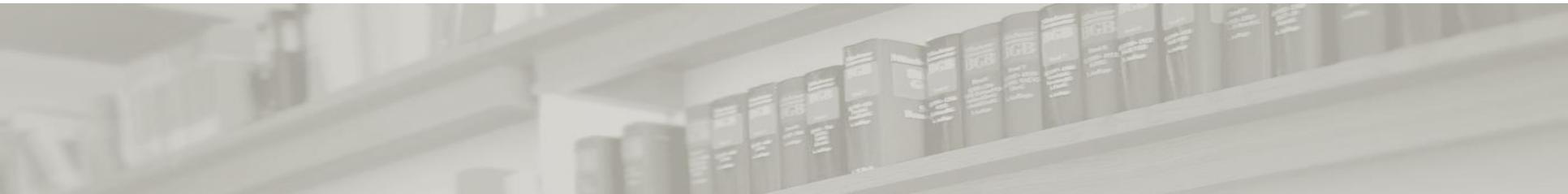
**Dr. Susanne Schmidt-Morsbach
and Dr. Wolfgang Schirp, Berlin**

**Attorneys-at-Law Dr. Susanne Schmidt-Morsbach
and Dr. Wolfgang Schirp, Berlin**

- **How are the legal proceedings moving forward?**
- **What new evidence do we have?**
- **What is EY's line of defense?**

Attorney-at-Law Dr. Marc Liebscher, LL.M., Berlin

- **What new evidence is there?**
- **What results did the Parliamentary Committee obtain?**





The TPA ("third party acquirer") were allegedly major revenue generators at WIRECARD

TPA = allegedly a type of subcontractor of WIRECARD AG

Alleged business worth: Billions.

Alleged security deposit for this business: Trust accounts, most recently in the amount of 1.9 billion EURO

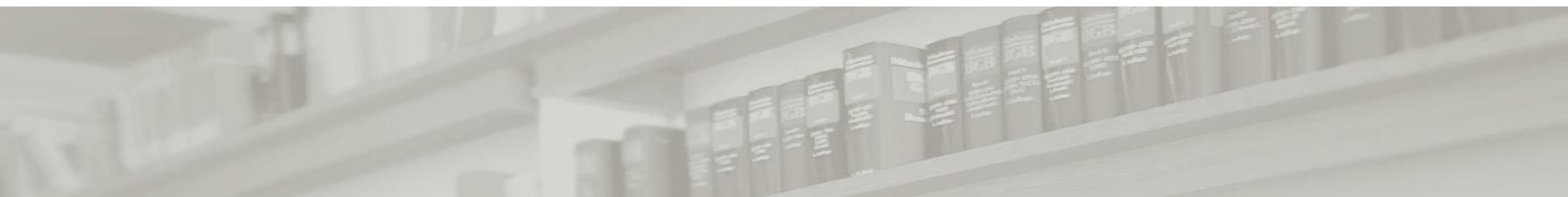
Revelation in June 2020: **Trust accounts do not exist**

Insolvency administrator Jaffé: **Entire TPA business never existed**



- We constantly monitor the parliamentary committee investigating WIRECARD
- Testimony by KPMG partner Alexander Geschonneck (responsible for April 27th, 2020 report):

„Using common auditing standards, these trust accounts could not have been audited. ...We have worked with methods that any other auditor would work with. Using these usual methods, no evidence could be found for the trust accounts that were on WIRECARD's balance sheet.“



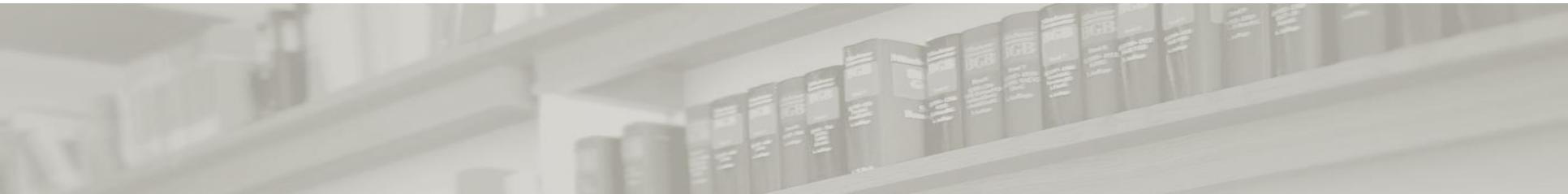
- James Freis:
 - US citizen
 - last CEO of WIRECARD before insolvency proceedings

- Statement in „Handelsblatt“ interview, January 22nd, 2021:

„After only one hour, I knew it was a scam.“

Upon inquiry by the reporters: *„It took WIRECARD auditors months to determine that the money was not there. You one hour?“*

- Answer: *„I do not comment on that.“*

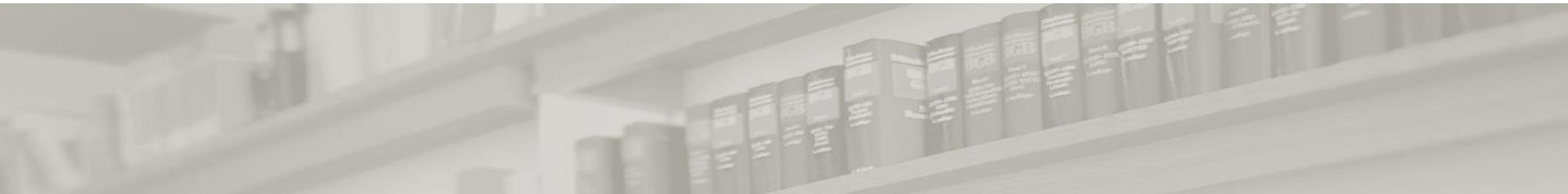


EY refers to secret documents, which they do not want to provide:

- Contracts with third-party acquirer firms
- Trust agreements
- Account statements and confirmations
- Expert opinions
- Meaning: "*We have it, but we don't show it.*"

Our procedural response:

- Request for judicial submission instruction!
- §§ 421 ff. and 142 ZPO (German civil procedure code)



EY's assertion:

"It is okay if no bank statements or bank confirmations were provided for the trust accounts. We did not have to ask for that."

Our procedural response:

This statement by EY is wrong!

IdW audit standard 302: "Bank confirmations are dispensable only if risks are low or internal controls at WIRECARD are sufficient."

These exceptions were not present here - so bank confirmations were required!





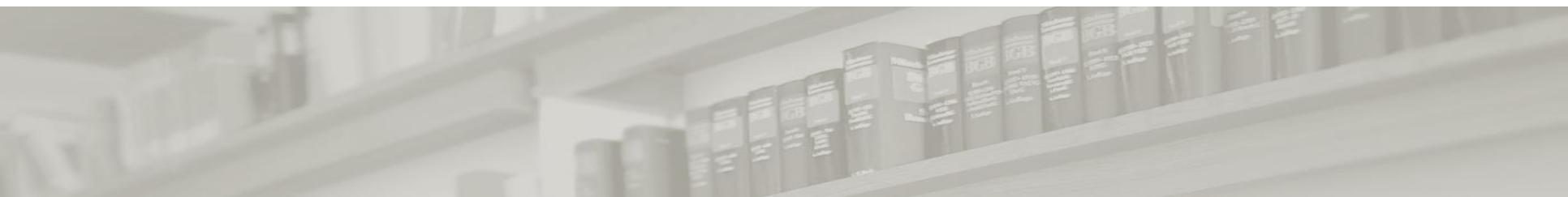
As far as trustee statements were available, they were clumsy falsifications.

Quotation from materials of the Parliamentary Investigative Committee:

"Both signatures allegedly made by Mr. Shanmugaratnam Rajaratnam on these confirmations as well as both stamp imprints allegedly belonging to Citadelle can be selected in the PDF in each case with a "double click", which has the consequence that an object field opens, which contains a date as well as the name "Oliver". The mentioned elements "signature" and "stamp" were thus copied into the document. In addition, the time stamp stored in the object fields bears a date from 2017 and thus provides substantial evidence of backdating of the electronic document."

→ **Document was allegedly signed in 2016.**

→ **Here easily recognizable forgery by Oliver Bellenhaus in 2017!**

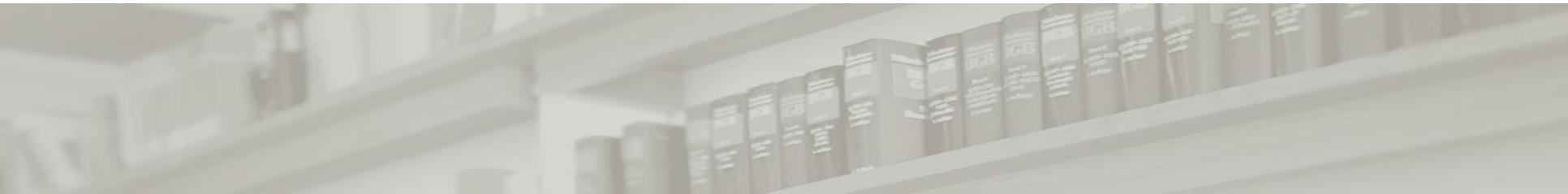


EY's assertion:

"We only did a "normal" annual audit. It was not possible to detect the deception. This would only have been possible with a special forensic examination."

Our procedural answer:

- This statement of EY is wrong!
- Also in the "normal" annual audit, data analyses are made that would have revealed the deception.
- For example "Journal Entry Testing" (JET)

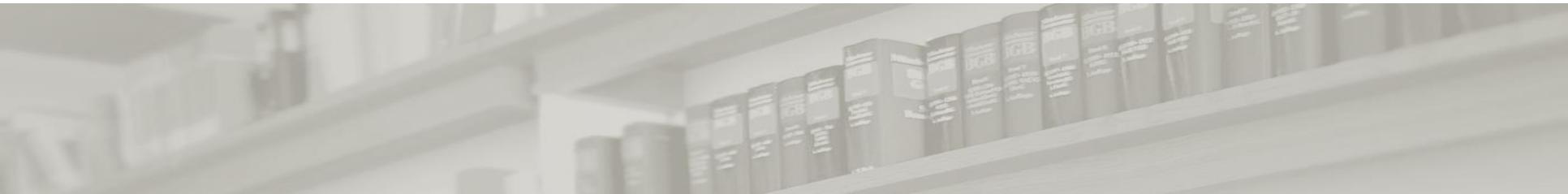


EY assertion:

"The deception was too sophisticated. We could not have found the errors."

Our procedural response:

- This statement by EY is false!
- Industry standard: "Global Analytics" software.
- EY's own investigation software "EY EAGLe" and "General Ledger Analyser" and "Subledger Analyser" are always applied and uncover false entries.
- **Why not here??**

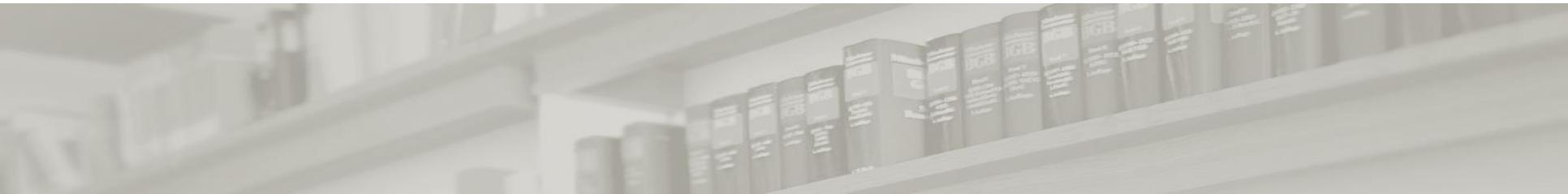


"Concurrence Memorandum" dated 03.03.2016

In this document, EY has WIRECARD confirm that:

- Wirecard itself - but not the TPA partners - is the "key contact" to the end customers and maintains communication with them,
- Wirecard itself knows the end customers ("*Wirecard knows these merchants*"),
- Wirecard is the material owner of the business ("*it is Wirecard's business from an economic point of view*"),
- Wirecard itself decides on the acceptance of end customers and evaluates their risk, and can also reject end customers with a poor risk profile,
- Wirecard itself selects the TPA partner and can also replace this partner at any time with another TPA partner or bring the business with end customers to itself.

Pure hedging document for EY! (Industry jargon: "Cover your ass")





Claim EY:

"We trusted our client WIRECARD and were allowed to do so."

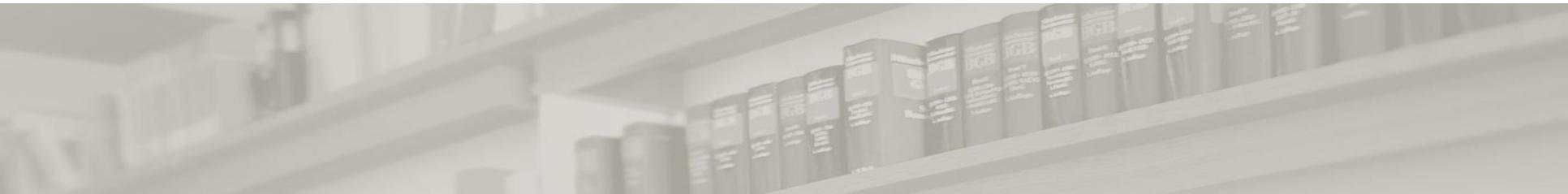
Our procedural response:

- This statement by EY is false!
- "Professional skepticism" required when performing the audit.
- So explicitly EY's own "Audit Performance Handbook."

- **Why not complied with?**



- Martin Wambach: senior auditor (managing partner at Rödl & Partner).
- Evaluated EY's work on behalf of the Parliamentary Investigative Committee
- Drew up a detailed report (main part plus two addenda)
- Polite tone, but clear findings: "*A critical basic attitude was missing, trivial accounting as well as quality standards were neglected, and warning signals were studiously overlooked.*"
- Cansel Kiziltepe (SPD representative in the Parliamentary Investigation Committee): "*The Wambach report is a damning verdict for EY.*"



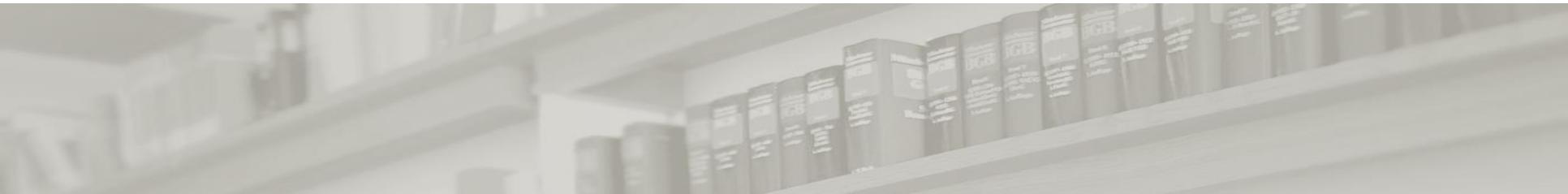


EY claim:

"Significant transactions were outsourced to Ireland or Dubai. We could not audit these transactions."

Our procedural response:

- This statement by EY is false!
- "Full Scope Reporting" was also carried out with regard to the WIRECARD subsidiaries in Ireland and Dubai.
- In other words, transactions were identified as material and all audit procedures were also carried out there!



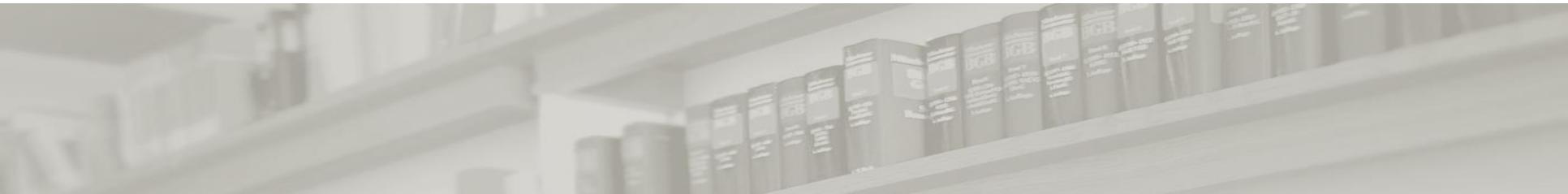
On June 22nd, 2021, BaFin issued formal objections to all WIRECARD annual financial statements since January 1st, 2017, in a formal objection procedure according to § 109 WpHG.

Reason for BaFin objection:

- The contributions of the subsidiaries in particular are inadequately presented.
- The management reports do not *"present the course of business and the position of the Wirecard Group in such a way that a true and fair view is conveyed"*.

BaFin's conclusion: *"no comprehensibility/verifiability of the accounts"*.

Our conclusion: A slap in the face for EY!



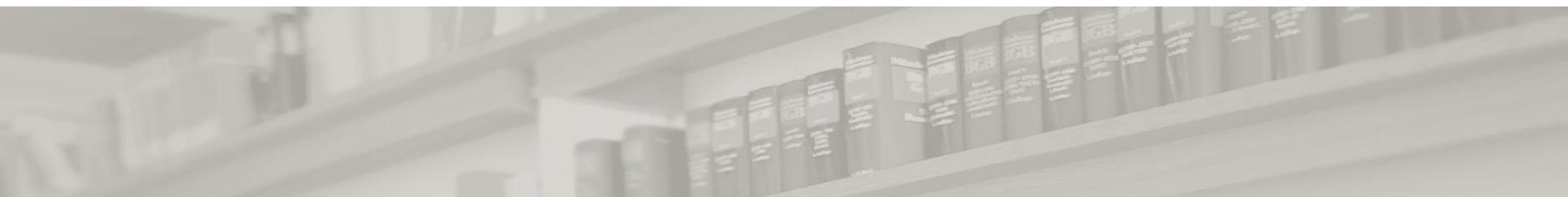


Claim EY:

"WIRECARD has provided collateral for chargebacks on the escrow accounts (so-called "chargebacks/finances". This is normal and unremarkable."

Our procedural response:

- This statement by EY is false!
- Such cash collateral is completely uncommon.
- Alleged disbursements to WIRECARD in the amount of EUR 203.3 million in 2015-2018 were never questioned or verified by EY.
- Absolute amount of cash collateral never questioned (over 2 billion EURO!).



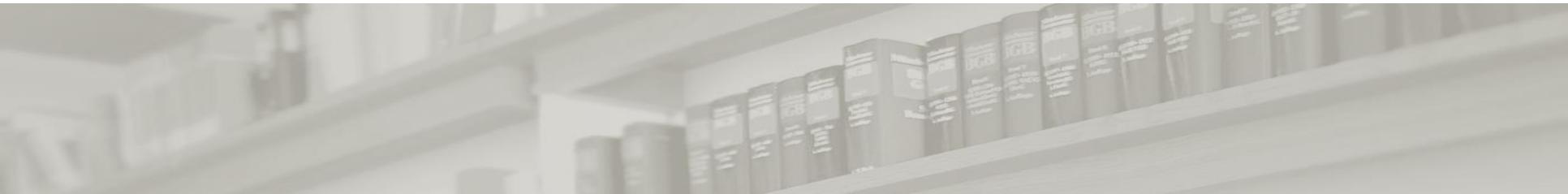
EY claim:

"WIRECARD had a functioning "Internal Control System" (ICS). We relied on this."

Our procedural response:

- This statement by EY is wrong!
- There was no resilient ICS at WIRECARD.
- IdW audit standard 340 and usual audit matrix not complied with.

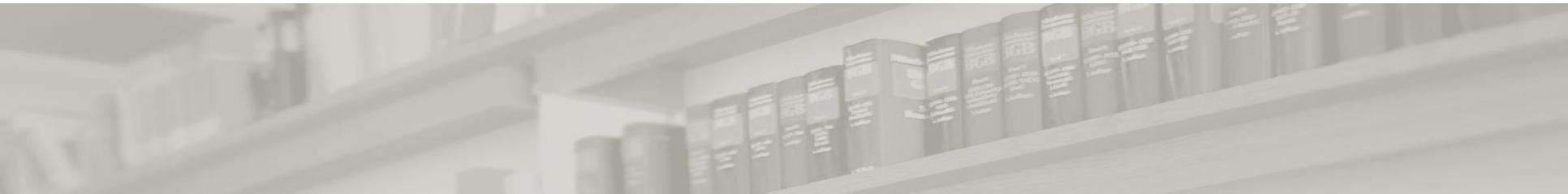
- Why??



We asked long-time EY employees what they thought of EY's defense.

Their conclusion: stunned shaking of the head.

- There is no way that EY's trial arguments can be true.
- EY did not comply with its own audit manual and did not use its own audit software.
- Violation of all rules customary in the industry and all relevant auditing standards.
- **Why??**



Why only EY?

→ EY is „*the last man standing*“, the only solvent opponent

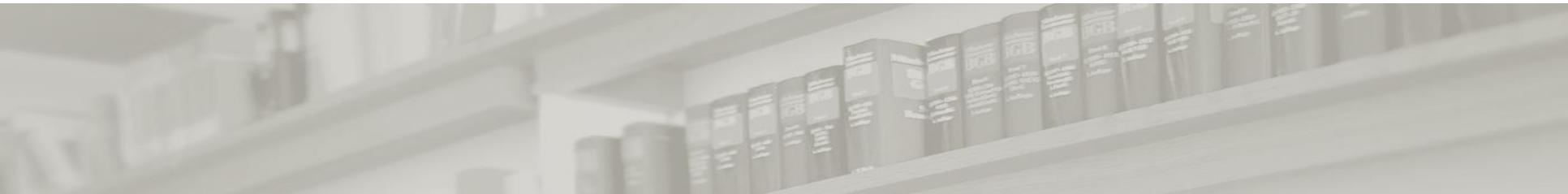
Why directly file a lawsuit, and not wait for sample proceedings?

→ Sample proceedings last too long (> 8 years, rather 12 years)

→ After that, possibly still payment action necessary, with further delay

→ Question: Will EY still be solvent 8 (or more) years from now?

So: We want to obtain judgments within two years!



Our opinion: "YES"

Why we think so:

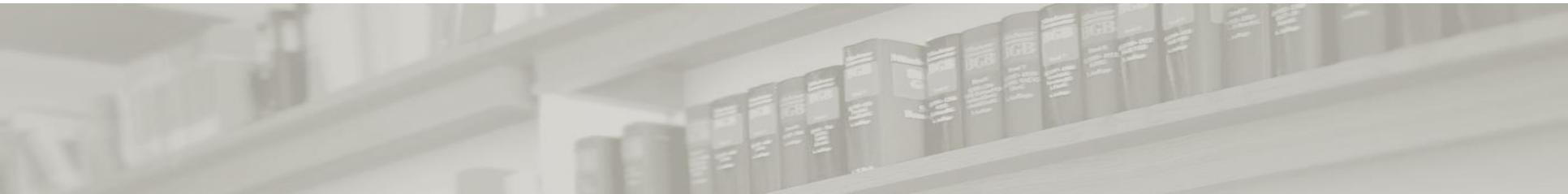
- Hubert Barth and other key employees migrate to European EY entity
- Within EY Germany: Full distribution of profits continues, no accumulation of reserves
- Interest of customers: Continue to be "Big Four," not "Big Three"
- Only weak denial on the part of EY

How long will this take?

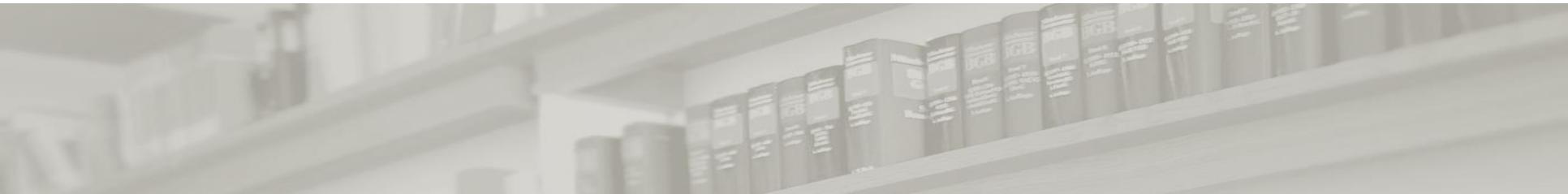
- Approx. 5-7 years (complicated transfer of mandates etc.)

Our conclusion:

- Go to court now!
- Time is not sufficient for sample procedures (KapMuG) and payment claim afterwards

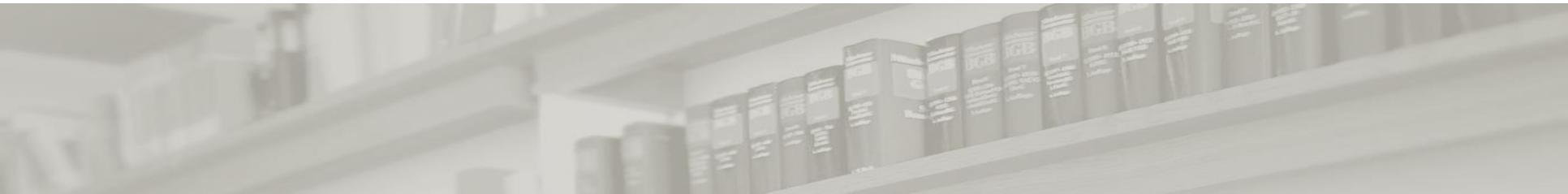


- We form groups of plaintiffs and file class actions on an ongoing basis („Subjektive Klagehäufungen“, § 59 ZPO)
- Action for more than 1.160 plaintiffs already filed, both as class actions and single actions
- First oral hearings before the court begin in autumn
- EY's defence statement is lame and unconvincing
- We continuously bring further evidence





- We have extensive experience with large-scale litigation
- Real-Estate Funds founded by Bankgesellschaft Berlin:
over 8.000 plaintiffs → we won the lead proceedings
→ our clients were compensated by the state of Berlin
- Media Funds founded by German Landesbanken:
over 4.500 plaintiffs → we won the lead proceedings
→ our clients were compensated by the Landesbanken
- More large-scale investor litigation in the past

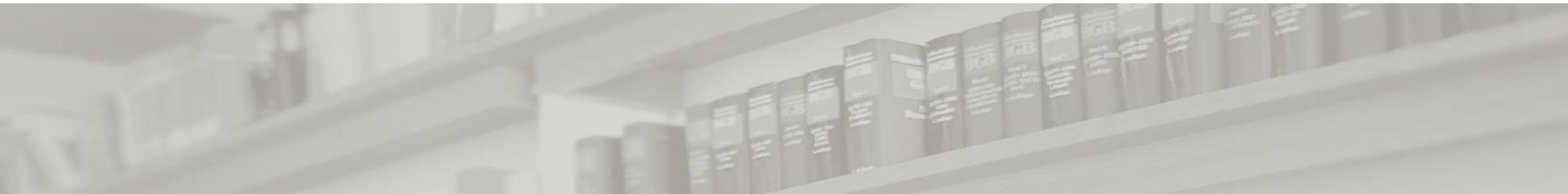


→ Three components:

- my own attorney
- court fees
- only in case of defeat: cost of opposing counsel

→ Rule of thumb: 5-10 % of damages is my stake

- How to calculate your damages: price paid for your shares
- minus sales proceeds, if any
- plus interest

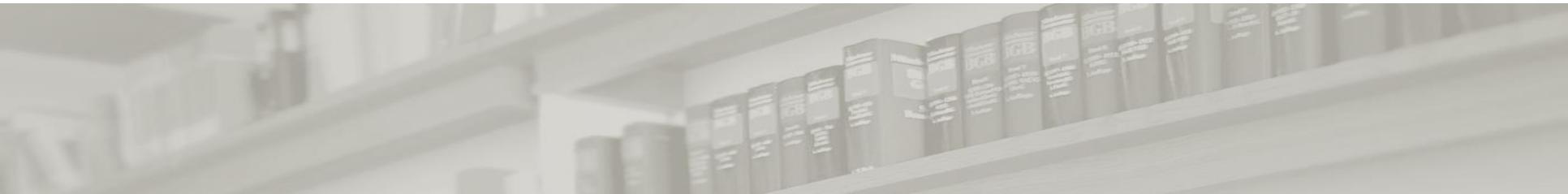


- Litigation funder with commitment for all proceedings?
Not available.

- There is individual financing for larger cases available

- There is financing for sample procedures (KapMuG)
 - But disadvantage no. 1): duration of sample procedures is > 8 years, rather 12 years
 - But disadvantage no. 2): financing for sample procedures inadequately expensive

- **Our opinion: Do not wait for litigation funder!**

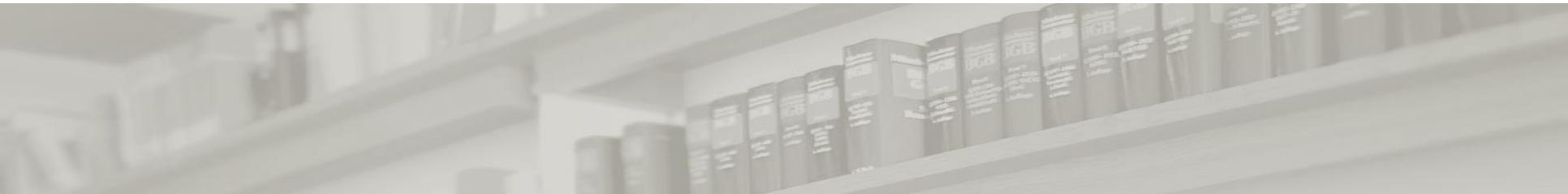


→ **According to present knowledge: „YES“**

- EY is „Big Four“-accounting firm
- EY is economically strong
- EY is profitable
- EY wants to survive

→ **Can I wait for sample proceedings (KapMuG)?**

- passive role of bystanding „Anmelder“ who cannot influence the outcome
- Long duration of proceedings, 8-12 years
- Even then, additional court action may be required to obtain an enforceable judgment!
- „Anmelder“ may still have to bring their own case in the end



Jurisdiction “back-and-forth” between Stuttgart and Munich

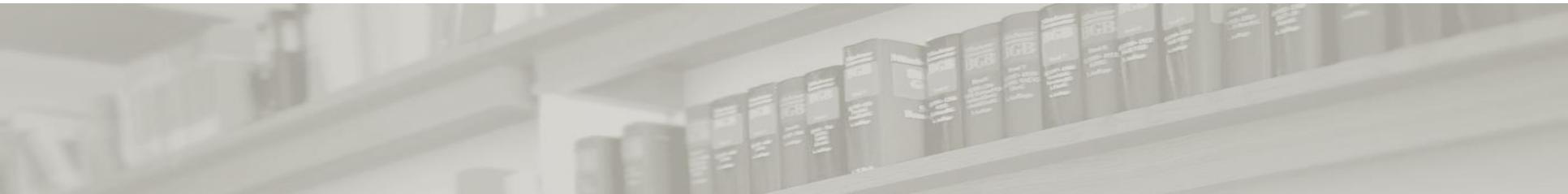
In two Munich proceedings (of another law firm) KapMuG proceedings were declared inadmissible. Our opinion on this:

- Yes, we too believe that at least the essential issues are not KapMuG-eligible.
- KapMuG against EY also strategically wrong because too slow.

In six Munich proceedings (of another law firm) claims were dismissed. Our opinion on this:

- do not overestimate the importance of these decisions
- no legally binding decisions
- factual arguments were not very elaborated, new information was missing

Oral hearings in our own cases to start in fall



→ **Move now!**

→ Further waiting brings no advantages

→ EY's solvency may decline over the years





Thank you for your attention!

If you have questions:

Please e-mail us at wirecard@schirp.com

or call us: 0049-30-3276170

