

## **PRESS RELEASE**

29 May 2009

### **Parent Company Need Not Pay**

**Cologne, 29 May 2009 – Upon cancellation of a profit transfer agreement, a company need not provide security for future rights of its subsidiaries' pensioners to pension adjustments. The German Federal Labour Court ("BAG") has dismissed a claim to this effect which had been brought by a pensioner of HT Troplast GmbH, a company formerly belonging to Rütgers GmbH. Rütgers was advised by Luther Rechtsanwaltsgesellschaft.**

The question of whether an obligation to provide security exists pursuant to Sec. 303 German Stock Corporation Act ("AktG") is of great financial importance to companies because all pensioners of the controlled company would be entitled to security if a control and profit transfer agreement were terminated. In the case at hand, a pensioner of HT Troplast GmbH had in a test case claimed security from Rütgers GmbH for expected future pension adjustments in the amount of approximately €25,000. Potentially, about 3,000 pensioners would have been entitled to claim security. The lower instance and appellate courts dismissed the pensioner's claim. By judgment dated 26 May (3 AZR 369/07), the Federal Labour Court has now rejected the appeal against this dismissal, stating as reason that a legitimate interest in the provision of security did not exist.

On behalf of Rütgers GmbH:

Luther Rechtsanwaltsgesellschaft mbH, Essen: Dr. Mark Oelmüller  
(Employment Law)

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## **Brief Profile of Luther Rechtsanwaltsgesellschaft mbH**

Luther is one of the leading German commercial law firms providing comprehensive services in all economically relevant fields of legal and tax consulting. The full-service law firm employs more than 280 lawyers and tax advisors and is represented at 13 German economic centres and at important investment locations in Europe and Asia with its five international offices in Brussels, Budapest, Istanbul, Shanghai and Singapore. Its clients include medium-sized enterprises and large corporations, as well as the public sector. Luther is part of the PMLG international group of law firms and is the German member of Taxand, a worldwide network of independent tax firms.

Luther is a law firm with an entrepreneurial approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit. Our interdisciplinary teams develop optimised solutions for our clients and implement them efficiently.

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