

Copy.

A f f i d a v i t .

I, Kurt Biegi, born 28 Aug. 1904 at Bamberg,
of Bamberg, Hauptwachstrasse 11,

formerly prokurist with ELMAG works, Alsace, Maschinenbauges.m.b.H.

(Elmag G.m.b.H.) in Muehlhausen/Alsace, now business manager of Sued-
werke G.m.b.H., in Bamberg the legal successor to Elmag G.m.b.H.,

know that false statements on my part will render me liable to punish-
ment. I declare on oath that my statement is true and was made in order
to be presented as evidence to the Military Tribunal at the Palace
of Justice, Nuernberg.

The main prerequisite for the creation of the lease contract between
Elmag A.G. and the Krupp Elmag G.m.b.H. was the transfer order issued
by the High Command of the Army for the Motor Vehicle Plant (Krawa) of
the Fried. Krupp firm in Essen in the spring of 1943.

In summer, 1944 the Allied troops had advanced rapidly from the At-
lantic coast to the Vosges mountains, and suddenly stopped in the be-
ginning of August, 1944 at the Burgundian gate. In anticipation of the
further advance of the Allied forces which eventually took place in
November 1944, the decision had to be taken to remove the Krupp Motor
Vehicle Plant again, this time to the interior of the Reich.

Copy. (page 1 of original cont'd)

To effect this evacuation the transfer order of the Reich Minister for Armaments and War Production - Special Committee Tractor Manufacture of the Main Committee Motor Vehicles, was issued. This transfer order was also proclaimed by the Armaments Inspectorate (Rue) Oberrhein on 13 September 1944.

(page 2 of original)

According to the legal interpretation of the Friedr. Krupp firm, the actual basis for the lease contract with Elmag A.G. was removed by this second transfer, and the Elmag G.m.b.H. informed her lessor accordingly. Professor Fullner who handled this matter for the Chief of German Civil Administration (C.d.Z.) in Strassbourg, at that time explained to Minister President Köhler at the same office with the entire legal train of thought - as far as I recall - , and he then informed me that Herr Koehler had no intention of "releasing Krupp from the provisions of the contract." The resultant, more precise juridical interpretations presented to Koehler met with no success.

When Alsace and Muehlhausen were already occupied by Allied troops, we further endeavored

Copy.

Page - 3 -

(page 2 of the original, cont'd)

to obtain a purely legal dissolution of the lease contract, the fulfillment of the provisions of the contract having become impossible for both parties owing to the actual developments of the war. At the order of the management of Elmag G.m.b.H., or the Suedwerke G.m.b.H., which had replaced it, I undertook a motor trip to find the Chief of Civil Administration, Gauleiter Wagner, or Minister President Kochler, but had an accident with the car near Heidelberg, and could not continue my trip. If it had been at all possible under the war conditions, the question of dissolving the contract would have been brought by us before a German court for decision. In its letter of 3 December 1944 the German High Command of the Army clearly took up exactly the same attitude; i.e. that the lease contract had been terminated by the new transfer order. A copy of this letter of the High Command of the Army, dated 3 December 1944, which I herewith certify to be a true and correct copy, I have attached to this affidavit.

- 3 -

(page 3 of original)

- 3 -

When the fundamental requirements of the contract ceased to be fulfilled, Elmag G.m.b.H. could no longer consider itself to be the leascholder of the enterprise in Muehlhausen, and from 1 October 1944 we looked upon ourselves as administrators of the property shares of Elmag A.G. which had been left to us in the lease contract. The result

Copy -

was that Elmag G.m.b.H. did not have to pay any further rent after 1 October 1944, and that expenses and proceeds of the enterprise in Muehlhausen were entered into the accounts of Elmag A.G.

For reasons of business caution we nevertheless still carried for a long time a reserve in our balance sheets for our obligations. Although we held the legal interpretation given above since September 1944, we continued of course to administer the assets entrusted to us with the diligence of a conscientious business man, especially since Herr Dalmer as representative of the Elmag was not in a position - in view of the confused situation brought about by the war, to restart the enterprise. The enterprise in Muehlhausen was therefore managed as a business branch by the administration of the "Suedwerke" (Elmag G.m.b.H.) in Bamberg; but, again for reasons of business caution, care was paid from 1 October 1944 that accounts were kept strictly separate, even though from that date it would - in my opinion - have been possible and legally permissible to have separate balance sheets for the Muehlhausen and Bamberg plants or simply to return the Muehlhausen plant to Elmag A.G. if Herr Dalmer had wanted it or had been in a position to do so. Control Council Law No. 53 then required a clear separation of foreign and domestic obligations, which made it

Copy

Page - 5 -

(page 3 of original, cont'd)

necessary to discuss our legal interpretation on the dissolution of the lease contract in Muehlhausen with the American Military Government also. I put the above case history before 1st Lt. Murphy of the Property Control office, Bamberg, and asked him

(page 4 of original)

to decide whether in his opinion we were bound by the lease contract with Elmag A.G. after 1 October 1944. 1st Lt. Murphy took up the following attitude which I recorded in a memorandum at that time:

" If the contract had expired on 1 Oct. 1944, according to German law, and if the Gauleiter did not allow this justified demand, then it is indeed one of the main tasks of the occupying power to re-establish a proper legal point of view, so that the contract should be considered dissolved as of 1 October."

Bamberg, 30 March 1948

signed: Kurt Biegi

No. 3009.

I herewith certify that the above is an authentic signature of business manager Herr Kurt Biegi of Bamberg, Hauptwachstrasse No. 11, Bamberg, 2 April 1948.

Fee Reg. No. 3009

Value: 3,000.-

4.00 notary, art. 39

0.15 turn-over tax
4.15 total (Sa)

signed: Dr. Todt
Notary

Stamp:
Dr. Ernst Todt
Notary in Bamberg

signed: Dr. Todt
Notary

Copy

Enclosure:

Copy

- Page 6 -

Army High Command
(Chief of Services Armaments
and Commander of the Reserve Forces)

Berlin W 35, Tirpitzufer 72-76,
3 December 1944.

Go Firma Suedwerke
Bamberg,

B a m b e r g
Kaspar Zeusstrasse 2

Subject: Evacuation.

Refer.: Your letter Bi/Bue/We of 13 November 1944

The questions in above-mentioned letter have been
considered as follows:

- 1.) Costs due to a request by the civil administration
chief for the commencement of new productions in
order to continue employment of the remaining
workers. will not be reimbursed by the Army High
Command since these costs do not constitute eva-
cuation costs within the meaning of the evacuation
definitions of 26 August 1943.
- 2.) Costs due to a request by the civil administration
chief for extension of the agreement of 5 July
1944, will also not be reimbursed as evacuation
costs by the Army High Command. We hold that the
basis of agreement has, in conformity with Sec. 2
par. 1 of the agreement, fallen away through the
order for evacuation of your production from
Muelhausen, so that the agreement may be terminated
without notice for important reasons.

By order, signed: (illegible)