Informal English translation

decision

AMSTERDAM DISTRICT COURT

Private Law Division

suspension of payments proceedings number: C/13/21/4-S
pronounced: 28 May 2021

On 23 April 2021 F. Verhoeven and C.R. Zijderveld, administrators in the provisional suspension of payments pronounced on 15 February 2021 of:

the public limited liability company
STEINHOFF INTERNATIONAL HOLDINGS N.V.,
with its corporate seat in Amsterdam,
registered with the Chamber of Commerce under file number 63570173,
business address: Building B2, Vineyard Office Park, Cnr Adam Tas & Devon Valley Road, Stellenbosch 7600, South Africa,
hereinafter: SIHNV,

submitted an application for implementation of the provisions of Article 281b in conjunction with Articles 28ld and 281e of the Dutch Bankruptcy Act (*Faillissementswet*) and for taking measures in place to secure the interests of the creditors as referred to in Article 225 Dutch Bankruptcy Act. On 30 April 2021 the administrators submitted a revised Annex 5 to the application.

1. Course of the proceedings

1.1. By decision of 15 February 2021, this court granted SIHNV provisional suspension of payments and appointed F. Verhoeven as administrator, with appointment of K.M. van Hassel and C.H. Rombouts as supervisory judges. By decision of 18 February 2021 C.R. Zijderveld was appointed as second administrator.

1.2. Also on 15 February 2021, SIHNV filed a composition plan within the definition of Article 214(3) Dutch Bankruptcy Act with the court registry. The District Court set the date by which the claims must be submitted on 15 June 2021. The court set the date of the consultation and voting on the composition plan on 30 June 2021.

1.3. On 15 February 2021 the court also determined that the administrator(s) were permitted to notify the creditors by electronic means if so desired.

1.4. By decision of 5 March 2021 the District Court set a number of supplemental provisions for the securing of the claims of the creditors with respect to what is set out in Articles 256 and 257 Dutch Bankruptcy Act.

1.5. The District Court has determined that the present application will be handled during a public hearing on 19 May 2021 and that any statements of defence must be submitted no later than 12 May 2021. A number of interested parties made use of this opportunity and submitted a statement of defence. The counter-applications as submitted by some interested parties will not be dealt with now. Those applications will be handled at a later stage.

1.6. After the case was called on 19 May 2021, the following appeared:

- F. Verhoeven and C.R. Zijderveld, administrators, assisted by attorneys D.G.J. Heems and F.H. van der Beek;
- attorneys P. Kuipers, M.L.J. Noldus and P. Wakkie, for SIHNV;
- attorneys R.D. Vriesendorp and O. Salah, for Conservatorium Holdings LLC;
- attorney F.M. Peters, for Public Investment Corporation, Government Employees Pension Fund, Compensation Fund and Unemployment Insurance Fund (hereinafter collectively: PIC);
- attorneys P.W. Schreurs, J.W. de Jong, H.J.T. Kolstee and L.C.H.J. Hox, for Hamilton BV and Hamilton 2 BV (hereinafter: Hamilton);
- attorneys C.B. Schutte, R. van den Berg and L. Heide-Jorgensen, for Lancaster 101 (rf)(Pty) Ltd (hereinafter: Lancaster);
- attorneys A.J. Dunki Jacobs and V.R. Vroom, for Baupost Capital LLC, Farallon Capital Europe LLP, Sculpter Investments IV S.a.r.1. and Silverpoint Capital L.P. (hereinafter: G4);
- attorney Q.L.C.M. Bongaerts, for Alexander Reus, P.A. d/b/a DRRT and Stichting Steinhoff International Compensation Claims (hereinafter: DRRT/SSICC);
- attorney K. Rutten, for Deminor Recovery Services (Luxembourg) SA, DRS Belgium SRL and 127 investors (hereinafter: Deminor);
- attorneys J. de Rooij and R.E.E. van Dekken, for Burford Capital LLC (hereinafter: Burford);
- attorney W.J.P. Jongepier, prospective chairman and independent member of the proposed committee of representation;
- further, a number of interested parties appeared via video connection, including representatives of the Association of Shareholders (*Vereniging van Effectenbezitters*) (hereinafter: VEB) and L.J. du Preez, chairman of the Executive Board of SIHNV, who spoke in the session.

During the session the parties explained their positions in further detail, some in part on the basis of written arguments.

2. The administrators' application

2.1. The administrators requested the District Court to, in observance of the provisions of Articles 281b in conjunction with 28ld and 281e Dutch Bankruptcy Act, as well as Article 225 Dutch Bankruptcy Act:

(i) rule with regard to the list of claims that must be drawn up based on Article 259 Bankruptcy Act and of which a copy must be filed with the Court Clerk based on which Article 263 Bankruptcy Act that:

a. the administrators do not have to place the claims of the SIHNV MPC Claimants on the list as referred to in Article 259 Dutch Bankruptcy Act;
b. the administrators are entitled to place the claims of the other creditors on the list as referred to in Article 259 Dutch Bankruptcy Act in anonymized form, by only including a claim number to be assigned by the claims agent and the amount of the claim in question;

(ii) to appoint a committee of representation (hereinafter: committee) consisting of the members named in the revised Annex 5 to the application.

2.2. The administrators base their request on the following.

2.3. It has become clear that the group of creditors of SIHNV is large and varied, both in terms of nature of their asserted claims and in terms of their identities and capacities. The international nature of the Steinhoff group furthermore entails that the creditors are located all over the world. Without application of a system tailored to such situation, this would make the submission of claims and the voting on the composition plan extraordinarily cumbersome and complex.

2.4. The “Brandaris system”, as currently set out in Articles 281a et seq. Dutch Bankruptcy Act was written specially for large-scale suspension of payments proceedings such as these. The introduction of Articles 281a et seq. Dutch Bankruptcy Act was intended to introduce a set of rules to preserve the practical feasibility of the procedure in suspension of payments, in situations in which the number of creditors exceeds either 5,000 or 10,000. The goal was to maintain the integrity of the procedure as outlined in the Dutch Bankruptcy Act and minimize and manage the costs involved. SIHNV and the administrators have already invoked the certain elements of the Brandaris system at an earlier stage of this suspension of payment proceedings. As those requests were granted, this system is already (partly) "in force".

2.5. In concrete terms, the District Court may determine based on Article 28ld Dutch Bankruptcy Act that specific types of claims or claims below a certain amount – which amount may not be higher than €450.00 – do not need be included on the list as referred to in Article 259 Dutch Bankruptcy Act. Based on Article 281e Dutch Bankruptcy Act, the District Court may appoint a committee. The voting right on a composition plan as referred to in Article 268 Dutch Bankruptcy Act is extended to this committee instead of to each creditor individually. The legislative history of the Brandaris system shows that with the introduction of the system the legislature intended to offer a solution for potential problems that arise in large suspension of payments proceedings such as this one. Application of the Brandaris system largely eliminates the problems identified.

2.6. In close consultation with SIHNV, the administrators put together a list of potential committee members. The administrators endeavoured to put together a committee that would be representative for the creditor population involved in the composition plan, so that the vote

would do justice to the interests of all the creditors involved in the composition plan. In the proposed structure of the committee, see revised Annex 5 to the application, the administrators sought to address the most significant groups of creditors. In assembling this committee they opted for a mixed structure, made up of members who are direct representatives of (a group of) creditors, and members who do not represent any separate group of creditors. In putting the committee together the administrators also took into account the proportion of voting rights per group of creditors, as would apply if a regular vote were held. For this representation, the administrators based themselves on the calculations of the creditor population produced by the Analysis Group. The legislature did not intend for there to be an extensive investigation of the creditor population at this phase, but considered that the debtor's statement in this regard should be deemed acceptable. Nonetheless, it should be noted that the administrators did not base themselves only on the statement of SIHNV itself, but also on the conclusions of a major economic consulting firm, the Analysis Group.

2.7. SIHNV supports the requests of the administrators, as well as a considerable portion of the creditors support them or did not file objections against them, according to the administrators. The representatives of (the groups of) creditors Deminor, Burford, DRRT/SSICC, Conservatorium, G4 and the VEB informed the District Court that they support the requests of the administrators. Additionally, Innsworth sent a letter of support to SIHNV. Hamilton and Lancaster, on the other hand, do have objections against the requests.

2.8. The requests filed by the administrators are in the interests of the joint creditors, or at least do not harm their interests, because the requests provide for a relatively fast and cost-efficient resolution of the suspension of payments of SIHNV and the vote on the composition plan. Whether the composition plan is in the interests of the joint creditors is something to be assessed by the committee, should the requests will be granted. The appointment of the committee would not change the fact that the District Court shall apply the court sanctioning tests to the composition plan and the creditors remain entitled to act against the sanctioning by the court.
The administrators have not yet formed their opinion on the composition plan. They will release their recommendations on the composition plan prior to the vote on the composition plan. The administrators have, however, established in accordance with their statutory task that SIHNV is making use of the suspension of payments proceedings in good faith.

2.9. With regard to the requests that are based on Article 281b in conjunction with Articles 28ld and 218e Dutch Bankruptcy Act, the legislature has "integrated" a safeguard for the creditors' interests by determining in Article 281b(2) Dutch Bankruptcy Act that these measures can only be implemented jointly. The balanced membership of the committee provides another safeguard. The most significant groups of creditors are represented in the committee, with the two largest groups (both in terms of number of claims and aggregate amount of the claims) having a veto power. Moreover, independent experts have expressed their willingness to be on the committee. These experts, who jointly also have a blocking vote, have no independent interest in the composition plan and its details, and so are ideally suited

to safeguard the interests of the joint creditors.

3. The positions

SIHNV

3.1. SIHNV supports the requests of the administrators. It is important to gain clarity about the way consultation and voting on the composition plan will take place. The possibility of the participation of large numbers of creditors should be taken into account, a situation for which the "normal" suspension of payments system is not suited. This also applies for the many creditors who have not yet been heard from: previous WCAM cases such as Fortis/Ageas have demonstrated that (many) more creditors than expected may appear at the very last minute. Hamilton does not want to acknowledge that it is a creditor that is only acknowledged in the context of the composition plan offered and might have no more than only a subordinated claim. It has become clear that Hamilton consists of two entities - creditors - that have had claims of shareholders assigned to them. Hence, Hamilton has at best only two votes, and certainly not more. In a regular vote, Hamilton would not, according to current estimates, have a blocking vote, neither in number of creditors nor in claim value. With a seat on the committee, Hamilton would presumably have a stronger voice. The blocking vote of independent committee members also offers a significant guarantee. Moreover, Hamilton can always still express its concerns during the court sanctioning hearing. It seems that for Hamilton there is still only one stratagem, namely: delay, drag things out, stall, and put SIHNV under so much pressure that Hamilton ultimately gets more than what it is entitled to. Hamilton itself was not a creditor of SIHNV until the assignment of the claims. Lancaster did not demonstrate that it was a creditor of SIHNV, and has not as yet submitted a claim to the administrators. Lancaster is therefore inadmissible as an interested party in these proceedings, and the petition submitted with its defences must be disregarded.

HAMILTON

3.2. Hamilton has issues with the composition plan offered by SIHNV. The concerns are directed principally against the more favourable treatment of certain creditors. Hamilton wishes to have the opportunity to discuss this at the meeting of creditors on 30 June 2021. The meeting of creditors seems to be fairly cut-and-dried. There are two opponents: Hamilton and Lancaster.

3.2.1. In the application, the administrators assert that use of the Brandaris system should be applied. That system is intended for situations in which there is effectively little to no view to who the creditors are (or might be). In this case, the majority of the creditors have already been known to SIHNV by name for several years. Hamilton expects that only a small fraction of the group of creditors who have not already made themselves known via representatives, will register at a later stage. SIHNV should already have a clear picture of the number of creditors that will register themselves, now that one of the major deadlines for registration in South Africa has recently (on 5 May 2021) expired. Additionally, the work that the administrators are attempting to prevent by assembling a committee will to a large degree have

to be carried out anyway because a verification process will have to be conducted in the parallel insolvency proceedings in South Africa. The administrators are mentioning the potentially large number of creditors, but do not make clear why such numbers should actually be expected. Another reason for introducing the Brandaris emergency act were administrative and technical reasons and efficiency reasons back in the pre-digital age of the 1960s. Those reasons are certainly no longer relevant in the present case, being that Computershare has been engaged to handle this as claims administrator. Moreover, it must be noted that the Brandaris emergency act is exactly that: an emergency act. After its initial use directly after its introduction, the system was never used again, and with good reason: the Brandaris emergency act compromises fundamental rights of creditors.

3.2.2. Hamilton realizes the importance of a global settlement as SIHNV is striving for, and supports that strive emphatically.
Hamilton is, however, critical of the proposal as SIHNV has presented to its creditors and believes that this request of the administrators is unnecessary and improperly infringes on fundamental rights. For Hamilton, it is important that the voting ratios are not upended by instituting a committee, and that Hamilton reserves the right to dispute claims of other creditors. Hamilton has no objection to certain practical interventions on the basis of Article 225 Dutch Bankruptcy Act.

3.2.3. Hamilton observes that the administrators appear to be marching to the tune that SIHNV and its legal advisors have composed, and are doing so at the tempo being prescribed by SIHNV. For lack as yet of concrete information in this regard, Hamilton has doubts about the administrators' critical attitude towards SIHNV. Since their appointment, the administrators have not conducted concrete and substantive discussions with representatives of the most significant creditors concerning the suspension of payments, the composition plan, or the appointment of the committee – at least not with Hamilton, although it would have been easy to do so. The fact is that Hamilton was forced to seek contact with the administrators on its own, and that contact was only successfully made for the first time on 31 March 2021. At that moment the administrators had already made the decision to file the this application.

3.2.4. In this regard it is also notable that in the Master Claim Form (exhibit 1 to the statement of defence) the administrators already announced their opposition to any valuation method other than the one proposed by SIHNV. This attitude cannot be reconciled with the task of the administrators, as they have not even heard the criticism of that valuation method and the discussion on this matter still needs to take place during the meeting of creditors. The foregoing is important to take into account in the decision on whether to institute a committee. After all, this is ultimately about the interests of creditors who stand to lose a significant portion of their claims as the result of the composition plan, and would have their fundamental rights infringed even prior to that if the committee were to be instituted.

3.2.5. The Explanatory Memorandum to Article 281d Dutch Bankruptcy Act shows that for

application of this provision, the court must weigh the interests prior to deciding whether the rights of creditors must yield. In the present suspension of payments proceedings there is no cause whatsoever to apply Article 281d Dutch Bankruptcy Act. The administrators' request as given under 1 of the application can also be satisfied by way of Article 225 Dutch Bankruptcy Act. Because that constitutes a much less severe violation of the (ownership) rights of the MPCs in general, and certainly Hamilton's, and because Hamilton has no significant objections to such a second 225-request, the 281d-request should be rejected.

3.2.6. SIHNV's interest in the requests, which they do not explain, is evidently in the lack of confidence in the result of a vote on the composition plan. That is not entirely surprising, because at present a majority of the disadvantaged shareholders (in any event the ones represented by Hamilton) are critical of the composition plan. The reason for this is simple: the creditors are being divided up into different groups and these groups are being treated differently. Furthermore, SIHNV is running a significant risk by trying to keep Hamilton's voice out of the meeting of creditors instead of discussing Hamilton's concerns openly.

3.2.7. Hamilton asks the court to reject the administrators' requests.

LANCASTER

3.3. The composition plan is not a voluntary arrangement with creditors as referred to in Article 252 Dutch Bankruptcy Act. Unsecured creditors are not being treated equally. The composition plan leaves the claims of the Financial Creditors entirely intact. In fact, what is being offered here is a collective settlement agreement for certain groups of creditors instead of a composition plan for all unsecured creditors. This is not what suspension of payments proceedings are intended for. Lancaster endorses Hamilton's argument that in this case, the Brandaris system does entail an unnecessary, and thus impermissibly disproportionate, restriction of the fundamental ownership rights of creditors. For Lancaster it is of major importance that they are able to use their right to dispute claims of other creditors (and in particular, those of the Financial Creditors) so that a vote on the composition plan can be held with a quorum of votes that is fairly apportioned. The exercise of that right is being unjustifiably and disproportionately limited by the requests of the administrators to not include the MPC claims on the list of claims and to anonymize the other creditors, while instituting a committee assembled on the basis of estimated voting ratios. The creditors have not had the opportunity to express their positions on these voting ratios.

3.3.1. Lancaster raises extreme objections to the way things are being handled in these proceedings, including the provision of information by the administrators. Lancaster is being impeded in an impermissible manner in its ability to review and verify the grounds of the request for suspension of payments, and also in its defence against the requests of the administrators that are intended to restrict Lancaster's rights. The request is premature. It is clear from the application that both the administrators and SIHNV do not know what the

amount of the claims against SIHNV is. The application provides only rough estimates in this regard. For example, claims of the Financial Creditors in the amount of over €9 billion are being presented, while SIHNV's own, unverified figures show that they could only be a unsecured creditor for no more than €2.7 billion, and yet according to the composition could still get 100% of their claim. The weight that is given to the claims of the Financial Creditors in the composition plan was simply adopted by the administrators, without question. Lancaster cannot accept this. Also, the claims of other creditors are not specified. The principal amount of the pending claims of Lancaster is known quite precisely, but nonetheless is shown incorrectly. Only €220 million of Lancaster's total claim of over €700 million is specified in the composition plan. How many creditors have registered their claims with the intention of discussing and voting on the composition in the creditors meeting, as well as the ratios, will only be known after 15 June 2021. It is already clear that a very large number of creditors have united in six different claim vehicles (the ACGs). Consequently, it is clear that after 15 June 2021 it is entirely possible that the number of creditors reporting independently will be limited and that those who do report with smaller claims will do so by means of authorizing one of the ACGs. This makes it likely that there will be a very clear number of (representatives of) creditors present at the voting hearing, which means that there is no reason to now, on the basis of the dubious numbers of SIHNV, establish a committee and assemble it as requested by the administrators.

3.3.2. If the District Court nonetheless sees sufficient grounds to proceed with the appointment of a committee, Lancaster requests the court, pursuant to Article 281e (1) Dutch Bankruptcy Act, to determine that Lancaster should have a seat on the committee and be represented by at least two members (proposed by Lancaster).

3.3.3. In the session, in response to PIC's assertions, Lancaster's counsel argued that they are, in fact, authorized - on the basis of an (internal) (management) resolution - to represent Lancaster in the session. PIC misinterpreted the resolution in question.

3.3.4. Lancaster requests this court to reject the requests of the administrators.

PIC

3.4. PIC disputes Lancaster's authority to appear in these proceedings and Lancaster's counsel's authority to act on behalf of Lancaster in this session. Additionally, PIC asserts that Lancaster did not submit a claim to the administrators. As shareholder of Lancaster and on behalf of its representatives on Lancaster's board, PIC explicitly objects to Lancaster's input and requests the court to not allow Lancaster's counsel's arguments.

DEMINOR

3.5. Deminor supports the administrators' request to appoint a committee, to ensure an

orderly process of conducting the meeting of creditors. This would be in the interests of all creditors. Deminor emphasises the administrative and logistical challenges described by the administrators in the process of voting and deliberating on the composition plan if no committee is established.

DRRT/SSICC

3.6. DRRT and SSICC move that the requests of the administrators be granted. DRTT has registered claims for 67 professional shareholders, a few of which in turn represent a large number of individual investors. The number of creditors represented by DRRT and SSICC alone is enough to meet the requirements of Article 281b Dutch Bankruptcy Act. To a large degree, this number neutralizes the arguments of Hamilton to the effect that with its 12,562 votes, it would have a decisive voice in the vote on the composition plan. Hamilton's complaint that the establishment of a committee would force it to tolerate a deterioration of its position is incorrect. Hamilton already did not have a decisive voice in the vote on any composition plan without a committee. There are only two Hamiltons represented here, which gathered their claims by assignment.

G4

3.7. In G4's opinion, the composition plan does justice to all creditors of SIHNV. The composition therefore enjoys the support of the Financial Creditors, and thereby of the biggest creditors of SIHNV by far. The requests of the administrators also enjoy the support of the G4. G4 therefore moves that these requests be allowed.

CONSERVATOR1UM

3.8. Conservatorium, one of the Contractual Creditors, has an allowed claim of €1.5 billion, and supports the administrators' requests. The handling of the present request has already demonstrated that the large number of creditors entails significant practical problems, and the institution of a committee is needed.

BURFORD

3.9. Burford supports the requests of the administrators.

VEB

3.10. VEB, as special interest representative within the definition of Article 3:305a, Dutch Civil Code of investors that purchased shares in SIHNV, supports the requests of the administrators.

4. Assessment

4.1. The decision currently before the District Court concerns only the request to take measures as referred to in Articles 281b in conjunction with 281d and 281e Dutch Bankruptcy Act, and Article 225 Dutch Bankruptcy Act, namely to determine that certain types of claims need not be placed on the list as referred to in Article 259 Dutch Bankruptcy Act and that the

other claims can be placed on this list anonymously, as well as the institution of a committee of representatives. The content of the composition plan is not on the agenda.

Lancaster

4.1 With regard to the question of whether the attorneys C.B. Schutte, R. van den Berg and L. Heide-Jorgensen are competent to appear on behalf of Lancaster in these proceedings and be heard in the session, the court considers as follows. The assumption at law is that an attorney, without actually presenting an authorization, is to be taken at his or her word with respect to a claim to be representing a party (cf. Article 3:71(2), Dutch Civil Code, and Article 80(3), Dutch Code of Civil Procedure). There are exceptions to this premise, but what has been argued by PIC is insufficient to justify an exception, so the arguments of Lancaster's attorneys will be admitted.

4.2. With regard to Lancaster's admissibility, the court considers as follows. In view of the fact that in South Africa Lancaster has issued a summons to SIHNV (a copy of the summons was enclosed to Lancaster's statement of defence), Lancaster has sufficiently demonstrated that it is an interested party in these proceedings. After all, Lancaster has sufficiently demonstrated that it may have a claim against SIHNV and thereby can be qualified as a potential creditor. This makes Lancaster competent to appear as an interested party. Contrary to what SIHNV argued in the session, in the run-up to the session the District Court did not wish to set a condition on who should be qualified as an interested party in the present request, but the District Court only wanted to avoid it only becoming clear in the session (instead of upfront) on what basis a party asserted for being a creditor - and thereby for being an interested party.

not placing claims of MPC Claimants on list and committee to be instituted

4.3. The District Court is of the opinion that the requests by the administrators under 2.1(i)(a) and (ii) must be granted. It explains this as follows.

4.4. These proceedings concern application of several specific provisions of the Brandaris system. This system, set out in the Second part A of Title II of the Dutch Bankruptcy Act, provides for a simplification of the formalities in very large suspension of payments proceedings. It was introduced in 1968 in the context of the suspension of payments of insurance company Brandaris N.V., and after that was never (to this court's knowledge) used again, although remained in the Dutch Bankruptcy Act.

4.5. Article 281b Dutch Bankruptcy Act entails that the provisions of the Brandaris system can be applied if it is clear that the number of creditors exceeds 5,000. This condition is clearly met, being that in the session it was shown that there have already been over 27,000 creditors who have submitted their claims to the administrators, and both the administrators and SIHNV assume an original number of creditors of around 66,000 in total. This means that the provisions of the Brandaris system can, from a technical standpoint, be applied in this case. Whether the requested measures will be applied will depend on the specific situation at issue. The District Court observes that most provisions, including the institution of a committee, compromise the positions of individual creditors as would be applied in regular suspension of payments proceedings. However, the legislature clearly understood this, as the legislative history indicates, and accepted this consequence of the introduction of the Brandaris system.

4.6. On the basis of Article 281d Dutch Bankruptcy Act, the District Court can determine that certain types of claims do not need to be placed on the list referred to in Article 259 Dutch Bankruptcy Act. The legislative history of this Article reveals that the drafting of a list of creditor claims in cases involving large numbers of creditors is seen to be extremely onerous and that in the interests of settling large suspension of payments proceedings within a reasonable term the openness that the list is meant to guarantee must be partially set aside. Creditors who wish to know whether their own claims have been acknowledged, and in what amount, will in this case have to obtain that information through the mediation of the administrator, according to the legislative history. Article 281b(2) Dutch Bankruptcy Act determines that the facility of Article 281d Dutch Bankruptcy Act can only be affected by the provision of Article 281e Dutch Bankruptcy Act. Article 281e Dutch Bankruptcy Act provides for the option to appoint a committee that, in short, will vote on a composition plan instead of individual creditors, as referred to in Article 268 Dutch Bankruptcy Act, in which case a heavier requirement on the majority needed applies. It follows from the legislative history that it is seen as extremely onerous to hold a meeting with very large numbers of creditors, collect authorizations and in the meeting verify the authorizations in order to establish whether a composition plan has been accepted.

4.7. In view of the special circumstances of the present suspension of payment proceedings, including the large number of creditors, their being located all over the world, the complex bases of the claim of the majority of the creditors (shareholders with a damages claim based on tort in connection with the provision of incorrect information, which claims are only partially acknowledged by SIHNV in the context of the composition plan), the law applicable to claims and the identification of the creditors, the District Court considers it efficient and sufficiently in the interest of the joint creditors to allow both requests. The District Court took into account that, apart from Hamilton and Lancaster, all known parties to the suspension of payments proceedings have expressed their approval of the requests. It is further considered that the establishment of the committee is not a de facto approval of the composition plan in question. The vote on the composition plan will be by the members of the committee in a meeting, and will require a heavier majority of the members (three-fourths) voting for the composition plan for the composition plan to be adopted. Prior to that, the administrators (who are acting in the interests of all creditors) must release a written report on the composition plan, and the administrators have also indicated that they will be providing advice with that report (see 2.8). Besides, the creditors retain a number of different options to make their objections to the composition plan known. They can, for example, raise their objections directly with the administrators, and can also approach the independent members of the committee (or, for that matter, any other members of the committee). Furthermore, with respect to Hamilton it has the option to have a member it proposes participate in the deliberations of the committee, and can make any objections it may have known via that avenue. Additionally, during the public court sanctioning hearing creditors can object to the sanctioning of the composition plan adopted. All in all, the District Court is of the opinion that there are serious reasons in this case that justify the establishment of a committee in order to resolve these suspension of payments proceedings in an effective manner without disproportionately violating the rights of the individual creditors. The fact that the position of individual creditors changes upon the institution of a committee is, partly in view of the fact that the individual creditor still does have the option to bring any objections to the administrators and the committee, of insufficient weight to lead to any other conclusion. The legislature understood these objections in large suspension of payments proceedings such as the present case, and allowed for the appointment of a committee in order to facilitate an efficient process.

4.8. It follows from Article 281e Dutch Bankruptcy Act that the representation of the most significant groups of creditors must be considered in the assembly of the committee. It follows from the legislative history that the committee must be as representative as possible, but that there is no requirement that the members of the committee must be selected from the creditors. On this point the District Court is of the opinion that the committee, in the structure proposed by the administrators (being 15 members) meets this requirement, and that it is in particular the four independent members, which together have a blocking vote, are in a position to uphold the interests of all creditors. The District Court therefore sees no reason to make any changes in the assembly of the committee. Likewise, the District Court sees no reason to grant Lancaster's request to have itself represented by two members in the committee. What it has argued in that regard is insufficient, all the more so because by adding two members and increasing the size of the committee to 17, the independent members would lose their blocking vote. As considered in the foregoing, the District Court is of the opinion that the committee currently proposed is sufficiently representative, consideration the categories of creditors. The District Court also sees no grounds to grant Lancaster's other requests, nor regarding the way the committee was assembled, nor regarding the guaranty by the administrators for the costs of the independent members of the committee.

4.9. The revised Annex 5 to the application also provides for a committee member to be proposed by Hamilton. Being that neither Hamilton nor any of the other interested parties objected to this, Hamilton is requested to, within seven days after the signing of this decision, make a nomination for a member of the committee to be appointed by the court, after which the court will make a decision on that nomination.

placing the other creditors on the list in anonymized form

4.10. Finally, the District Court is of the opinion that the request made by the administrators under 2.1(i)(b) must be rejected. The administrators did not offer sufficient argumentation for this request. The District Court considers the simple circumstance that the administrators cannot rule out that certain creditors have an interest in their financial positions not being made public and that their being made known could have a disruptive effect on the market to be not sufficiently concrete to allow the request. It was up to the administrators, certainly after the defence argued on this point, to make their case on this point more concretely.

4.11. The District Court sees no reason for a costs ruling.

5. Decision

The District Court:

- allows the requests of the administrators under 2.1(i)a and (ii);

- rejects the request of the administrators under 2.1(i)b;

- determines that the committee will be appointed in accordance with proposal as included in the revised Annex 5 to the application, and that with regard to the fifteenth member of the committee, the District Court will decide after the nomination as referred to under 4.9;

- requests Hamilton to, within seven days after the date of service of this decision, make a nomination for a committee member to be appointed;

- rejects all other or further requests made in the context of the present requests of the administrators.

This decision was rendered by N.C.H. Blankevoort, presiding judge, and A.E. de Vos and M.L.S. Kalff, judges, and was pronounced in open court on 28 May 2021 in the presence of F.T.M. Bruning, court clerk.

[signature] [signature]