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**AMSTERDAM COURT**

Private law department

Case carpenters / rolnulnmers: C/13/705132 / HA ZA 21-687, C/13/7127i4 / HA ZA 22-71  
and C/13/71 2812 / HA ZA 22-72

**Judgment of 16 August 2023**

in the case of

the foundation

**EMISSION CLAIM FOUNDATION,**  
based in Amsterdam. plaintiff,  
C. Jeloschek, lawyer, Amsterdam, against

1. the nameless 'ennootsclzap  
STELLANTIS N.V.,  
based in Amsterdam,
2. the besloten veiznootsclJap met beperkte  
aansprakelijkheid STELLANTIS NEDERLAND B.V.,  
based in Amsterdam,
3. the legal entity incorporated under  
foreign law GENERAL MOTORS LLC,  
based in Detroit (Michigan), United States of A merica, defendants 1 to 3,  
Advocate Mr A. Knigge of Amsterdam,

and

the foundation

**CAR CLAIM FOUNDATION,**  
based in Rotterdam,  
claimant under section 10 18d Rv, lawyer Mr P.  
Haas of Rotterdam,

against the defendants referred to above under 1 to 3 and against

4. the legal person under foreign law  
PSA AUTOMOBILES S.A.,  
based in Poissy, France,
5. the legal entity under foreign law  
AUTOMOBILES PEUGEOT S.A.,  
based in Poissy, France,
6. the legal person under foreign law

AUTOMOBILES CITROEN S.A.S.,  
based in Poissy, France,  
7. the legal person under foreign law  
ADAM OPEL GMBH,  
based in Frankfurt am Main, Germany,  
8. the legal person under foreign law  
OPEL AUTOMOBILE GMBH,  
based in Rüsselsheim am Main, Germany,  
9. the legal person under foreign law  
**GENERAL MOTORS HOLDINGS LLC**,  
based in Detroit (Michigan), United States of America,  
10. the legal entity incorporated under  
foreign law **GENERAL MOTORS**  
**COMPANY**,  
based in Detroit (Michigan), United States of America,  
defendants 4 to 10,  
Advocate Mr A. Knigge of Amsterdam,

and against

11. the private limited liability company NEFKENS B.V.,  
based in Utrecht,  
12. the private limited liability company  
A. VAN BEEK & ZN. B.V.,  
based in Oudenbosch,  
13. the private limited liability company AUTO BHB B.V.,  
based in Leeuwarden,  
14. the private limited liability company AUTO HAAIMA  
B.V.,  
based in Leeuwarden,  
15. the private limited liability company  
**AUTO HILLEN B.V.**,  
based in Steenderen,  
16. the private limited liability company  
**AUTO JETTEN CUIJK B.V.**,  
based in Cuijk,  
17. the private limited liability company AUTO KLAVER 5  
B.V.,  
based in Alkmaar,  
18. the private limited liability company  
**AUTO ROGGEVEEN B.V.**,  
based in Capelle aan den IJssel,  
19. the private limited liability company AUTO  
VERSTEEG BUURMAN BARNEVELD B.V.,  
based in Barneveld,  
20. the private limited liability company AUTO VERSTEEG  
BUURMAN EDE C B.V.,

- based in Voorthuizen,  
21. the private limited liability company AUTO  
**VERSTEEG BUURMAN EDE P B.V.**,  
Based in Ede (Gelderland),  
22. the private limited liability company AUTO VERSTEEG  
BUURMAN ERMELO B.V.,  
based in Ermelo,  
23. the private company with limited liability AUTO  
VERSTEEG BUURMAN VEENENDAAL B.V.,  
based in Voorthuizen,  
24. the private company with limited liability AUTO  
VERSTEEG BUURMAN VOORTHUIZEN B.V.,  
based in Voorthuizen,  
25. the private limited liability company AUTO VERSTEEG  
BUURMAN WAGENINGEN B.V.,  
based in Wageningen,  
26. the private limited liability company AUTO VERSTEEG  
BUURMAN WOUDEBERG B.V.,  
based in Woudenberg,  
27. the private limited liability company AUTO VISSCHER  
I B.V.,  
based in Culemborg,  
28. the private limited liability company AUTOBEDRIJF  
AMBERGEN B.V.,  
based in Stadskanaal,  
29. the private limited liability company AUTOBEDRIJF  
BASTIANS BOZ B.V.,  
Based in Steenberg, Noord-Brabant,  
30. the private limited liability company  
AUTOBEDRIJF BASTIANS STB B.V.,  
Based in Steenberg, Noord-Brabant,  
31. the private limited liability company AUTOBEDRIJF  
BOUWMAN OMMEN B.V.,  
based in Ommen,  
32. the private limited liability company AUTOBEDRIJF C.  
VAN DER MAAT B.V.,  
based in Blokker,  
33. the private limited liability company  
AUTOBEDRIJF DIRKS B.V.,  
based in Bergeijk,  
34. the private company with limited liability  
AUTOBEDRIJF FRANKEN B.V.,  
based in Nunspeet,  
35. the private limited liability company  
**CAR COMPANY GAUKE HIJLKEMA B.V.**,  
based in Drachten,  
36. the private limited liability company AUTOBEDRIJF  
"GORCUM" B.V.,

- Based in Gorinchem,  
37. the private company with limited liability AUTOBEDRIJF GROENEWOUD VAN KESTEREN B.V.,  
based in Schagen,  
38. the private company with limited liability AUTOBEDRIJF **HIJLKEMA** EMMELOORD B.V.,  
based in Emmeloord,  
39. the private company with limited liability AUTOBEDRIJF HIJLKEMA HEERENVEEN B.V.,  
based in Heerenveen,  
40. the private company with limited liability AUTOBEDRIJF HIJLKEMA SNEEK B.V.,  
based in Sneek,  
41. the private company with limited liability JANSSEN KERRES NUENEN B.V.,  
based in Gerwen,  
42. the private company with limited liability JANSSEN KERRES VENLO B.V.,  
based in Venlo,  
43. the private limited liability company AUTOBEDRIJF JAN GROET B.V.,  
based in Den Helder,  
44. the private limited liability company JANSSEN KERRES HEERLEN B.V.,  
based in Heerlen,  
45. the private company with limited liability JANSSEN KERRES MAASTRICHT B.V.,  
based in Maastricht,  
46. the private limited liability company JANSSEN KERRES SITTARD B.V.,  
Based in Sittard,  
47. the private company with limited liability AUTOBEDRIJF KOOIMAN B.V.,  
Based in Oud-Beijerland,  
48. the private limited liability company AUTOBEDRIJF LIEWES RODEN B.V.,  
based in Roden,  
49. the private limited liability company DRIESSEN AUTO V B.V.,  
based in Eindhoven,  
50. the private limited liability company GARAGE A.H. DEN BREEJEN ALMKERK B.V.,  
based in Almkerk,  
51. the private limited liability company **GARAGE DE BLIEK** B.V.,  
based in Oostburg,  
52. the private limited liability company GARAGE G.C. VAN VLIET & ZN B.V.,

based in Woerden,

53. the private limited liability company

**GARAGE HARTGERINK B.V.**,

based in Hengevelde,

54. the private limited liability company

**HAARDIJK AUTOMOTIVE B.V.**,

based in Hardenberg,

55. the private limited liability company

**HEKKERT HEERLEN B.V.**,

based in Heerlen,

56. the private limited liability company

**HEKKERT MAASTRICHT B.V.**,

based in Maastricht,

57. the private limited liability company

**HEKKERT ROERMOND B.V.**,

based in Roermond,

58. the private limited liability company

**HEKKERT SITTARD B.V.**,

based in Heerlen,

59. the private limited liability company

**HEKKERT VENLO B.V.**,

based in Venlo,

60. the private limited liability company

**HENRI & HERMAN B.V.**,

based in Amersfoort,

61. the private limited liability company

**JANSSEN VAN KOUWEN AUTOMOTIVE B.V.**,

based in Amsterdam,

62. the private limited liability company

**CAMP TWENTE B.V.**,

Based in Hengelo (Overijssel),

63. the private limited liability company BOUWMAN PB

B.V.,

Based at 's-Gravenhage,

64. the private limited liability company LOUWMAN PG

B.V.,

Based at 's-Gravenhage,

65. the private limited liability company BOUWMAN PR

B.V.,

based in The Hague,

66. the private limited liability company

**MEKENKAMP CARS B.V.**,

based in Bunnik,

67. the private limited liability company

**MOTORHUIS B.V.**,

based in Leiden,

68. the private limited liability company

**MULDERS CAR COMPANY B.V.**,

based in Tiel,

69. the private company with limited liability MULDER  
AUTOBEDRIJF **NIJMEGEN** B.V.,

based in Tiel,

70. the private limited liability company  
**OPEL CENTRALE SLIEDRECHT** B.V.,

based in Sliedrecht,

71. the private limited liability company OPELCENTRALE  
ALBLASSERDAM B.V.,

based in Papendrecht,

72. the private limited liability company ORANGE  
MOTORS B.V.,

based in Naaldwijk,

73. the private limited liability company PEEMAN EN  
SLOT B.V.,

based in Den Helder,

74. the private limited liability company STERN 50 B.V.,

based in Wormerveer,

75. the private company with limited liability VAN BEEK  
AUTOBEDRIJF BERGEN OP ZOOM B.V.,

based in Bergen op Zoom,

76. the private company with limited liability VAN BEEK  
AUTOBEDRIJF BREDA B.V.,

based in Breda,

77. the private company with limited liability VAN BEEK  
AUTOBEDRIJF ROSENDAAL B.V.,

based in Roosendaal,

78. the private company with limited liability VAN BEEK  
AUTOBEDRIJF VLISSINGEN B.V.,

based in ~~Flushing~~

79. the private company with limited liability VAN DE  
WEEM VENRAY B.V.,

based in Venray,

80. the private limited liability company VAN DER BURG  
AUTOMOTIYE B.V.,

based in Zoetermeer,

81. the private company with limited liability VAN DER  
**LINDEN** VAN SPRANKHUIZEN B.V.,

based in Hoorn (Noord-Holland),

82. the private limited liability company VAN **MILL**  
DORDRECHT B.V.,

based in Dordrecht,

83. the private limited liability company  
**VAN MOSSEL CITROEN** B.V.,

based in Amsterdam,

84. the private limited liability company VAN MOSSEL  
OPC B.V.,

- based in 's-Hertogenbosch,  
85. the private limited liability company VAN  
**MOSSEL WEST B.V.**,  
based in Amsterdam,  
86. the private limited liability company VAN **OORD  
LEIDSCHHE RIJN B.V.**,  
based in Maarssen,  
87. the private limited liability company VAN **OORD  
MAARSSSEN B.V.**,  
based in Maarssen,  
88. the private limited liability company VAN **OORD-  
BOLL ZEIST B.V.**,  
based in Maarssen,  
89. the private company with limited liability VAN **VLIET  
PGH B.V.**,  
based in Woerden,  
90. the private limited liability company WASSINK  
**AUTOGROEP C B.V.**,  
Based in Doetinchem,  
91. the private company with limited liability WASSINK  
**AUTOGROEP P B.V.**,  
Based in Doetinchem,  
92. the private limited liability company  
**WELLING CARS B.V.**,  
based in Heerlen,  
93. the private limited liability company  
**WELLING HEUVELLAND B.V.**,  
based in Heerlen,  
94. the private limited liability company  
**WELLING WESTERN MINING REGION B.V.**,  
based in Heerlen,  
95. the private limited liability company  
**WENSINK AUTOMOTIVE B.V.**,  
based in Apeldoorn,  
96. the private limited liability company  
**WIJNAND'S AUTO SERVICE BUNSCHOTEN B.V.**,  
based in Bunschoten,  
97. the general partnership  
**AUTOMOBILE COMPANY BOUWMAN  
h.o.d.n. AUTOBEDRIJF M.C. BOUWMAN**,  
office located in Ommen,  
98. the private limited liability company  
**CAR COMPANY MULDER B.V.**,  
based in Zwolle,  
99. the private limited liability company  
**CAR COMPANY MULDER BALK B.V.**,  
based in De Fryske Marren,  
100. the private limited liability company

CAR COMPANY MULDER DORDRECHT B.V.,  
based in Dordrecht,  
101. the private company with limited liability  
AUTOBEDRIJF NIJS B.V.,  
based in Someren,  
102. the private limited liability company AUTOBEDRIJF  
NOTEBOOM ROTTERDAM B.V.,  
based in Rotterdam,  
103. the private company with limited liability  
AUTOBEDRIJF STROEVE B.V.,  
based in Coevorden,  
104. the private limited liability company AUTOBEDRIJF  
**TINEKE** GROET B.V.,  
based in Schagen,  
105. the private limited liability company AUTOBEDRIJF  
VAN FRAASSEN B.V.,  
based in Goes,  
106. the private company with limited liability  
AUTOBEDRIJF VAN JAARVELD B.V.,  
based in Montfoort,  
107. the private company with limited liability  
AUTOBEDRIJF VAN **SCHIE** B.V.,  
based in 's-Gravenzande,  
108. the private company with limited liability  
AUTOBEDRIJF VAN VOORDEN ALMERE B.V.,  
based in Almere,  
109. the private limited liability company AUTOBEDRIJF  
WETERINGS B.V.,  
based in Gilze,  
110. the private company with limited liability  
AUTOBEDRIJF **WILMINK** ALMELO B.V.,  
based in Almelo,  
111. the private limited liability company AUTOBEDRIJF  
WISSE B.V.,  
based in Terneuzen,  
112. the private company with limited liability AUTOHUIS  
DE POORT B.V.,  
based in Amersfoort,  
113. the private company with limited liability AUTOHUIS  
**DELFIJL** B.V.,  
based in Delfzijl,  
114. the private limited liability company AUTOMOBIEL- EN  
GARAGEBEDRIJF M. VAN TILBORG B.V.,  
based in Zaltbommel,  
115. the private company with limited liability  
AUTOMOBIELBEDRIJF P. AND D. BROERE B.V.,  
based in Krimpen aan den IJssel,  
116. the private limited liability company



- AUTOMOTIVE COMPANY RUESINK DOETINCHEM B.V.,  
based in Doetinchem,  
117. the private company with limited liability  
AUTOMOBIELBEDRIJF RUESINK ENSCHEDE B.V.,  
based in Enschede,  
118. the private company with limited liability  
AUTOMOBIELBEDRIJF RUESINK RUURLO B.V.,  
based in Ruurlo,  
119. the private company with limited liability  
AUTOMOBIELBEDRIJF RUESINK ZUTPHEN B.V.,  
based in Zutphen,  
120. the private company with limited liability  
AUTOMOBIELBEDRIJF THALEN BEILEN B.V.,  
based in Midden-Drenthe,  
121. the private limited liability company  
AUTOMOBIELBEDRIJF VAN SPLUNDER B.V.,  
based in Ridderkerk,  
122. the private limited liability company AUTOMOBIELBEDRIJF  
VAN SPLUNDER OUD-BEIJERLAND B.V.,  
Based in Oud-Beijerland,  
123. the private company with limited liability  
AUTOMOBIELBEDRIJF VOS DEN BOSCH B.V.,  
based in Genderen,  
124. the private company with limited liability  
AUTOMOBIELBEDRIJF VOS ZANDDONK B.V.,  
based in Waalwijk,  
125. the private company with limited liability  
AUTOPALACE ZWOLLE B.V.,  
based in Zwolle,  
126. the private limited liability company BERTENS  
TILBURG B.V.,  
based in Tilburg,  
127. the private company with limited liability BROEKHUIS  
ALMERE B.V.,  
based in Almere,  
128. the private company with limited liability BROEKHUIS  
EDE B.V.,  
Based in Ede (Gelderland),  
129. the private company with limited liability BROEKHUIS  
HARDERWIJK B.V.,  
based in Harderwijk,  
130. the private company with limited liability BROEKHUIS  
HENGELO B.V.,  
Based in Hengelo (Overijssel),  
131. the private company with limited liability DAVO  
AUTOBEDRIJVEN B.V.,  
based in The Hague,  
132. the private limited liability company

**DE GOEIJ GARAGE B.V.**,  
based in Montfoort,  
133. the private limited liability company  
**DE JONG AUTOBEDRIJF KATWIJK B.V.**,  
based in Katwijk,  
134. the private limited liability company  
**DELSINK CARS B.V.**,  
based in Renkum,  
135. the private limited liability company **DRIESSEN AUTO  
I B.V.**,  
based in Eindhoven,  
136. the private limited liability company  
**CAR COMPANY NOTEBOOM ROTTERDAM NORTH B.V.**,  
based in Rotterdam,  
137. the private limited liability company **CARABAS B.V.**,  
established in Papendrecht,  
defendants 11 to 137,  
Advocate M.J. van Joolingen of 's-Hertogenbosch, the

Netherlands, and

the foundation  
**DIESEL EMISSIONS JUSTICE FOUNDATION**,  
based in Amsterdam,  
claimant under section 1018d Rv, lawyer Mr  
L.C.M. Berger in Amsterdam,

Against the defendants listed above at 1 to 137 and against

138. the legal entity incorporated under  
foreign law **VAUXHALL MOTORS  
LIMITED**,  
Based in Luton, United Kingdom,  
139. the legal person under foreign law  
**VAUXHALL FINANCE PLC**,  
based in Cardiff(United Kingdom),  
140. the legal person under foreign law  
**IBC VEHICLES LIMITED**,  
Based in Luton, United Kingdom,  
141. the foreign legal entity **PSA RETAIL  
UK LIMITED**,  
Coventry, United Kingdom, defendants 138 to  
141,  
Advocate Mr A. Knigge of Amsterdam.

16 August 2023

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Plaintiffs will hereinafter be referred to separately as SEC, SCC and SDEJ. Collectively, they will be referred to as the Foundations. Defendants 1 to 10 and 138 to 141 will hereinafter be collectively referred to as Stellantis et al. Defendants 11 to 137 will hereinafter be collectively referred to as the Car Dealers.

## 1. The procedure

1.1. The conduct of the proceedings is evident from:

- SEC's subpoenas dated 19 July 2021 against defendant 1, defendant 2's legal predecessors, and defendant 3, with exhibits,
- The rolling decision of 22 September 2021 and the documents mentioned therein,
- SCC's summonses dated 17 January 2022 against defendants 1 to 137,
- SDEJ's subpoenas dated 18 January 2022 against defendants 1 to 141,
- the deed of merger, name change and conversion of (the legal predecessors of) defendant 2, with one production,
- The rolling decision of 2 February 2022 and the documents mentioned therein,
- SDEJ's reinstatement notice dated 22 March 2022 in respect of defendant 6,
- SCC's deed of production,
- SDEJ's deed of production,
- SEC's waiver of agency action against the foreign-law legal entity Robert Bosch GmbH, initially and exclusively co-sued by SEC, with one production,
- The rolling decision of 22 June 2022 and the documents mentioned therein,
- The rolling decision of 20 July 2022 and the documents mentioned therein,
- the deed declaring defendants 4 to 141 and appointing exclusive advocate of SEC,
- the deed of utterance appointing exclusive advocate of SCC, with exhibits,
- the deed letting out designation exclusive advocate of SDEJ, with exhibits,
- the interlocutory judgment of 5 October 2022, setting an oral hearing,
- the reply containing objections of lack of jurisdiction, inapplicability of the Wamca, inadmissibility of the Foundations, applicable law and designation of the exclusive advocate, also containing a request for (partial) stay of proceedings, by Stellantis et al, with exhibits,
- the reply conclusion non-applicability Wamca, inadmissibility Foundations, applicable law and designation of the exclusive advocate, of the Car Dealers, with productions,
- the minutes of the oral hearing of 14 March 2023 and the (procedural) documents mentioned therein,
- a letter dated 25 April 2023 from Stellantis et al's lawyers with comments on the minutes,
- a letter dated 4 May 2023 from the lawyers of SCC and SDEJ in response to the trial transcript, also response to the letter dated 25 April 2023 from Stellantis et al,
- a response dated 5 May 2023 from the lawyers of Stellantis et al.

1.2. Finally, judgment was rendered.

## 2. What is this case about?

2.1. This case is a so-called class action. In this case, each of the Foundations seeks to represent the interests of (former and current) owners of certain types of diesel cars of the car brands Peugeot, Citroën and Opel (called Vauxhall in the UK). According to the Foundations, certain types of diesel vehicles contain impermissible emission control systems (so-called tampering software), causing the diesel vehicles to emit more nitrogen oxide (NOx) than permitted. According to the Foundations, car owners suffered damages as a result. The Foundations brought claims against Stellantis et al (comprising top holding companies, car manufacturers and distributors, among others) and the Car Dealers.

2.2. At this stage of the proceedings, the substance of the case is not yet at issue. First, this judgment decides whether the Dutch courts have jurisdiction, whether the old or the law applicable to collective actions since 1 January 2020 applies and whether the Foundations meet the applicable admissibility requirements. This judgment will also decide which law is applicable in assessing the claims on the merits.

### *The opbovw of clit judgment*

2.3. This judgment is structured from here on as follows:

3. The facts
4. The collective claims and positions on the issues at the first stage of the proceedings
5. to 12 The court's assessment
5. Jurisdiction, consistency with foreign proceedings and relative jurisdiction
  - Introduction
  - Claims against the Dutch defendants Claims against the EU defendants, US defendants and UK defendants
  - Reliance on lis pendens or detention for connection with foreign proceedings
  - Relative competence
  - Applicability of old and/or new collective action law The
6. admissibility of the Foundations under section 3:305a (old)
7. of the Civil Code
  - No cash compensation The
  - similarity requirement The
  - guarantee requirement
  - Applicable law
8. Applications under section 22 Rv and SDEJ's change of claim
9. Conclusions
10. Litigation costs
11. Continuation of proceedings
12. The decision
- 13.

### 3. The facts

SEC

3.1. SEC was incorporated on 11 December 2020. Article 2.1 of its bylaws reads:

The purpose of the foundation is to represent the interests of the Victims who have purchased or leased one or more Manipulated Vehicles, including but not limited to:

- a. establishing and investigating the course of events leading to and relating to (i) the development and installation of one or more Manipulation Instruments in Manipulated Vehicles and (ii) the sale and/or supply of Manipulated Vehicles to the Defendants;
- b. Promoting the interests of Defendants and representing Defendants in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as appropriate;
- c. representing the interests of Victims worldwide in connection with the Claims;
- d. obtaining and distributing financial compensation for (part of) the damage the Victims claim to have suffered;
- e. representing the collective interests of Victims in environmental matters, in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as appropriate;
- f. anything related or conducive to the above, all in the broadest sense;

all to the extent deemed appropriate by the board.

3.2. The definitions list in the bylaws includes the following definitions of terms used in the bylaws:

c) Claims: One or more complaints, demands, contentions and/or (legal) claims made by the Complainants and/or the Foundation in the interest of the Complainants, on any legal basis whatsoever, against the Motor Vehicle Manufacturers or other Entities and/or their Policy Makers in respect of any form of detriment, loss or damage which the Complainants allege to have suffered or to be suffered individually or collectively, as a result of the manipulation of emissions from Manipulated Vehicles in certain test situations and/or the misrepresentations made by Motor Vehicle Manufacturers, Entities and/or their Policy Makers with respect to actual levels of emissions, including but not limited to claims or contentions of Defendants related to the purchase, ownership or lease of vehicles and claims related to emissions of environmentally hazardous substances;

d) Entities: all (legal) persons who are or have been involved in the production and/or development, import, distribution and/or sale or lease of Manipulated Vehicles and all entities and/or (supervisory) organisations, and/or their Policy Holders, who are (have been) involved in any way in the authorisation and/or approval of the Manipulated Vehicles, all in the broadest sense;

e) Victims: (legal) persons who have purchased or leased one or more Manipulated Vehicles;

f) Manipulated Vehicle means a vehicle equipped with or featuring a Manipulation Instrument or software or technology installed to operate as such;

g) Manipulation device means a constructional part of a motor vehicle prohibited under Article 5(2) of EU Regulation (EC) No 715/2007 that measures temperature, vehicle speed, engine speed, acceleration, intake depression or other **parameters** for the purpose of activating, modulating, decelerating or deactivating any part of the emission control system so as to reduce the effectiveness of the emission control system under conditions that would be expected during normal vehicle use;

h) Motor vehicle manufacturers: all legal entities (and their (de facto) Executives) affiliated to, belonging or having belonged to the group of companies of a manufacturer or supplier of passenger cars, commercial vehicles, trucks and other motor vehicles, including their affiliated or associated companies, as **well as** component suppliers, **that** are or have been involved in the manipulation or modification of emissions, or the production or supply of such devices or technology, including but not limited to companies involved or potentially involved in regulatory or investigative processes related to what is known as the "emissions scandal" or "dieselgate";

3.3. The SEC's subpoena, so far as relevant, states the following:

3.5. In these proceedings, the Foundation represents the interests of all (first and subsequent) purchasers and all lessees of Shoemel diesels and [addition court: those] imported into the Netherlands in the period between 1 September 2009 and 1 September 2019 (the "Relevant Period") (...), registered in the Netherlands (with the RDW) and/or sold or leased in the Netherlands, always excluding Defendants. This group consists of both consumers and professional parties (such as rental companies, lease companies, companies with their own fleet of vehicles or taxi companies), collectively referred to as "the Defendants".

3.6. The representation of the interests of the Debtors falls **within** the statutory purpose of the Foundation. Although the definition of the Defendants *implies* that the Foundation also looks after the interests of persons or entities located in other jurisdictions, the vast majority of the Defendants will be resident or domiciled in the Netherlands and therefore have suffered damage here. This, of course, does not affect the possibility for foreign Duped Parties to *opt-in* to a settlement or collective settlement of damages.

3.4. Articles 3, 5, 6 and 10 of SEC's articles of association read, in so far as relevant, as follows:

### **3. ARTICLE 3 - ORGANS AND STRUCTURE**

3.1. The foundation has the following bodies:

- (a) a board;
- (b) a supervisory board; and

(c) a joint meeting of management and supervisory board.

3.2. The governance structure of the foundation is set up in accordance with the provisions of the Claims Code.

#### **5. ARTICLE 5 - BOARD: COMPOSITION, APPOINTMENT, RESIGNATION**

The management of the foundation shall consist of a number of natural **persons** of at least three to be determined by the Supervisory Board. (...)

5.2. No close family or similar relationships, including but not limited to marriage, registered partnership or unmarried cohabitation, may exist within the management and supervisory board and between management and supervisory board members. If the foundation has a funding agreement with an external party, the same applies to the relationships of directors and supervisors with persons associated with that external party.

5.3. The directors have no direct or indirect profit motive realised through the foundation.

5.4. Board members are appointed and suspended by the supervisory board. The Code of Claims contains provisions on the desired composition of the foundation's board. When appointing board members, these provisions are followed to the extent practicable.

#### **6. ARTICLE 6 - GOVERNANCE: TASKS AND POWERS**

6.3. If the Foundation has a funding or litigation funding agreement with an external party, the board shall ensure that

a. the individual members of the Executive Board and members of the Supervisory Board, as well as the lawyer or other service providers engaged by the foundation, are independent and autonomous from the external financier and the direct or indirect

affiliated (legal) persons, as well as that the external financier and its directly or indirectly affiliated (legal) persons are independent of the other party to the collective action; and

b. the terms of funding (including the amount and system of compensation to be agreed) do not reasonably conflict with the collective interest of the Deterred Parties.

6.5. The managing board is obliged to set out annually the main features of the governance structure of the foundation based on the Code of Claims. In this explanation, the managing board shall include the extent to which the foundation follows the provisions of the Code of Claims. To the extent that the Board deviates from the Claims Code, it shall explain why and to what extent the foundation deviates from it.

6.6. The board is obliged to submit any proposed substantial change in the governance structure of the foundation and in its compliance with the Claims Code to the supervisory board for discussion.

(...)

#### **10. ARTICLE 10 - SUPERVISORY BOARD: COMPOSITION, APPOINTMENT, RESIGNATION**

101. The Supervisory Board of the foundation consists of a number of three or more natural persons to be determined by the Supervisory Board.

102. The Code of Claims includes provisions on the desired composition of the foundation's supervisory board. When appointing supervisory board members, these provisions are followed to the extent possible.

103. No close family or similar relationships, including but not limited to marriage, registered partnership or unmarried cohabitation, may exist within the Supervisory Board and the Board, or between Supervisory Board members and Board members. If the foundation has a funding agreement with an external party, the same applies to supervisory board members' relationships with persons associated with that external party. Main or ancillary positions of board members and supervisory board members that impair independence should also be avoided.

3.5. SEC, by letter dated 4 June 2021, held Stellantis N.V. and the legal predecessors of Stellantis Nederland B.V. (Peugeot Nederland N.V., Citroën Nederland B.V. and Opel Nederland B.V.), among others, liable for the damages suffered by its constituents, invited them to acknowledge that liability and enter into negotiations on those damages.

#### *SCC*

3.6. SCC was founded on 1 October 2015. Article 2(1) of its constitution reads:

The foundation aims to promote the interests of Car Owners, including but not limited to:

- a. establishing and investigating the course of events leading to and involving (i) the development and installation of prohibited software and/or hardware in the Manipulated Vehicles and (ii) the sale and/or supply of the Manipulated Vehicles to the Car Owners;
- b. determining and investigating the course of events leading to and relating to (the consequences of) the application of one or more Updates to the Manipulated Vehicles;
- c. the determination and investigation of (i) all (financial) consequences of the above for the Car Owners, (ii) the possibility for the Car Owners to enforce Claims against (one or more) Car Manufacturers, including but not limited to the rescission of their purchase agreements of Manipulated Vehicles with Local Dealers against (full) reimbursement of the purchase price (iii) the ability of the Car Owners to obtain (full) compensation from the responsible parties for the damages suffered and to be suffered by them, (iv) the ability of the Car Owners to obtain all necessary indemnities and/or warranties in respect of all possible negative consequences of the manipulation of the Manipulated Vehicles - both before and after one or more Updates - for Manipulated Vehicles, in order to ensure the undisturbed use of the



Manipulated Vehicles to continue and (v) alternative options for solving the emission problems of Manipulated Vehicles;

- d. Obtaining a (liability) declaration from any court of competent jurisdiction that (one or more) Car Manufacturers, Bosch, their (former) management boards, their (former) supervisory boards, (one or more) Importers (one or more) Local Dealers and/or other culpable parties have violated applicable laws and regulations including, but not limited to, violation of laws and regulations regarding environmental (standards), unfair trade practices, misleading advertising and/or (consumer) sales law and any obligations to the Car Owners arising therefrom;
- e. bringing actions for injunctions and/or seizures;
- f. Obtaining compensation for the (financial) impact on Car Owners; and
- g. anything related or conducive to the above, all in the broadest sense.

3.7. The definitions list in the bylaws includes the following definitions of terms used in the bylaws:

b. Car Owner: (legal) person who purchased or leased one or more Manipulated Vehicles during the Relevant Period;

c. Car manufacturer: all legal entities (and their (actual) policymakers) that belong or have belonged to the group of companies of a car manufacturer that is or has been involved in an emissions scandal (...);

i. Manipulated Vehicle means a vehicle of one of the brands carried by an Automobile Manufacturer, equipped or fitted with hardware and/or software (...) with the intention of manipulating emission tests and/or as a result of which the legal emission standards are exceeded;

k. Local Dealer: a dealer officially authorised by a Car Manufacturer in (one or more) Manipulated Vehicles during the Relevant Period with (at the time) an outlet in the Netherlands;

o. Relevant Period: the period during which Manipulated Vehicles were sold and/or delivered;

u. Update: soft- and/or hardware modifications applied to (part of) the Manipulated Vehicles by which the prohibited soft- and/or hardware was allegedly removed, as a result of which the Manipulated Vehicles would allegedly meet legal emission standards; (...)."

3.8. SCC's subpoena, so far as relevant, states the following:

## **GLOSSARY**

**Car owners**

**Private Parties and Business Parties**

**Vehicles affected**

Euro 5 **and** Euro 6 diesel vehicles of category M 1, M2, N1 and/or N2 within the meaning of Article 2 of the Emissions Regulation, marketed **under** the Peugeot, Citroën (including DS) and Opel brands from 1 September 2009 to 1 September 2019, including in any case the models specified in **Production 1**

(..)

**IV. THE INJURED PARTIES ON WHOSE BEHALF THE FOUNDATION STANDS IN THESE PROCEEDINGS**

53. Car Claim is conducting these proceedings on behalf of Car Owners. (...)

54. The group of Car Owners is territorially limited to Car Owners who were ordinarily resident in The Netherlands at the time the relevant Agreement(s) were entered into. This does not alter the fact that some Car Owners may have emigrated from **the Netherlands** over the years. For that (only limited) group of Car Claim owners, Car Claim requests the court, in view of article 1018f paragraph 5 last sentence of the Dutch Code of Civil Procedure, to rule that these proceedings also result in an "opt-out" obligation for them (in accordance with article 1018f paragraph 1 of the Dutch Code of Civil Procedure).

57. Car owners are divided into two main categories, namely Private Parties and Business Parties. (...)

58. Private Parties are natural persons, not acting in the exercise of a profession or business, who:

(i) have purchased a new Affected Vehicle from a Dealer or have taken it into use through a leasing arrangement (Private Parties A);

(ii) have purchased a second-hand Affected Vehicle from a Dealer or have been placed in use through a leasing arrangement (Private Parties B); and

(iii) have purchased a new or second-hand Affected Vehicle through a party other than a Dealer or have obtained its use through a leasing arrangement, e.g. in a private transaction, from an occasion dealer (Private Parties C).

59. Business Parties refer to non-Private Parties, which:

(i) have purchased a new Affected Vehicle from a Dealer or have taken it into use through a leasing arrangement (Business Parties A);

(ii) have purchased a second-hand Affected Vehicle from a Dealer or have obtained its use through a leasing arrangement (Business Parties B); and

(iii) have purchased a new or second-hand Affected Vehicle through a party other than a Dealer or have taken it into use through a leasing arrangement, e.g. in a private transaction, from an occasion dealer (Business Parties C)

(...)

60. Car Claim does not merely represent the interests of Car Owners who have the Affected Vehicles in their possession at the time of the judgment to be given in these proceedings. It also looks after the interests of Car Owners who no longer have the Affected Vehicles in their possession, but have had them in the past. (...)"

3.9. Articles 3, 5, 6 and 10 of SCC's articles of association read, in so far as relevant, as follows:

#### **ORGANS AND GOVERNANCE STRUCTURE**

##### **ARTICLE 3**

1. The foundation has the following bodies:
  - a. a board;
  - b. a supervisory board; and
  - c. a joint meeting of management and supervisory board.
2. The governance structure of the foundation is set up in accordance with the provisions of the Claims Code. (...)
3. The board and the supervisory board are responsible for maintaining the foundation's governance structure and compliance with the Claims Code.

#### **BOARD: COMPOSITION, APPOINTMENT, RESIGNATION**

##### **ARTICLE 5**

1. The board of the foundation consists of a number of three or more natural persons to be determined by the supervisory board.
2. The Code of Claims includes provisions on the desired composition of the foundation's board. When appointing board members, these provisions are followed as much as possible.

#### **BOARD: TASK AND POWERS ARTICLE 6**

4. The board is required to set out annually the main features of the foundation's governance structure based on the Claims Code. In this statement, the executive board shall include the extent to which the foundation follows the provisions of the Code of Claims. To the extent that the Board deviates from the Code of Claims, it shall explain why and to what extent the foundation deviates from it.
5. The board is obliged to submit any proposed change in the governance structure of the foundation and in compliance with the Claims Code to the supervisory board for discussion. The board will include the foregoing as a separate agenda item on the meeting agenda.

#### **SUPERVISORY BOARD: COMPOSITION, APPOINTMENT, DEFUNG EREN**

##### **ARTICLE 10**

1. The Supervisory Board of the foundation consists of a number of three or more natural persons to be determined by the Supervisory Board.
2. The Claim Code includes provisions on the desired composition of supervisory board

of the foundation included. When appointing members of the Supervisory Board, these provisions are followed to the extent possible.

3.10. SCC sent several letters during the period from August 2021 to December 2021 to the parties it later subpoenaed, inviting them to enter into consultations and find a reasonable solution for its constituents regarding the impact of the diesel emissions scandal.

### ***SDEJ***

3.11. SDEJ was incorporated on 1 July 2019. Article 2(1) of its constitution reads:

The purpose of the foundation is to promote and pursue the interests of the Victims (...), including but not limited to:

- (a) representing the interests of Victims worldwide in connection with the Claim;
  - (b) Promoting the interests of Defendants and representing Defendants in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as appropriate;
  - (c) obtaining and distributing financial compensation for (part of) the damage the Victims (...) claim to have suffered;
  - (d) representing the collective interests of Victims in environmental matters, in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as appropriate;
  - (e) anything connected with or conducive to the foregoing, everything in the **broadest sense of the word**;
- all to the extent deemed appropriate by the board.

3.12. The definitions list in the articles of association includes the following definitions of in the statutes terms used:

b. Claim or Claims: Complaints, demands and/or claims by the Complainants and/or the Foundation in the interest of the Complainants, on any legal basis whatsoever, against one or more Entities and/or their Policy Holders in respect of any form of detriment, loss or damage which the Complainants claim to have suffered or to be suffering, individually or collectively, as a result of unauthorised manipulation of vehicle emissions in certain test situations and/or the misrepresentations by the Entities as to the actual levels of such emissions, commonly known as the diesel emissions scandal, which expressly includes, but is not limited to, claims by the Complainants in connection with the purchase, ownership or leasing of vehicles and claims in connection with emissions of environmentally hazardous substances;

c. Victims: all natural persons or legal persons under private or public law, or their legal successors, who have been directly or indirectly harmed or injured in any way whatsoever by the acts or omissions of the Entities and Policymakers and on which the Claims are based, in the broadest sense of the word;

d. Entities:

- i. all (legal) persons, in particular manufacturers of passenger cars, commercial vehicles, trucks and other vehicles, including their affiliated companies, who focus on the production and/or sale of such vehicles, of which it has become apparent or the foundation has any suspicion that they contain one or more Unauthorised Manipulation Instruments, all this in the broadest sense;
- ii. all (legal) persons who are or were involved in the production and/or development of an Unauthorised Manipulation Device, all in the broadest sense;
- iii. all (legal) persons who are or have been involved in the import, distribution and/or sale or lease of vehicles with an Unauthorised Manipulation Device, including including the (exclusive) importers and dealers of the relevant car manufacturers referred to under i. above, all in the broadest sense;
- iv. the Policy Officers of the entities referred to above under sub i. to iii.; and/or
- v. other entities and/or (supervisory) organisations, and or their Policy Holders, who are or have been in any way involved in the authorisation and/or approval of the relevant vehicles;
- e. Unauthorised Manipulation Device or Unauthorised Manipulation Device means a manipulation device within the meaning of Article 3(10) of European Regulation No 715/2007, or within the meaning of a similar provision in successor legislation, that does not fall within any of the exceptions defined in this Regulation or successor legislation; (...)"

3.13. SDEJ's subpoena, so far as relevant, states the following:

' . .

#### **ABBREVIATIONS AND DEFINITIONS**

**Affected Vehicle** Euro 5 and Euro 6 diesel vehicles of category M1, M2, N1 and/or N2 within the meaning of Article 2 of the Emissions Regulation, marketed under the Peugeot, Citroën, DS and Opel (including Vauxhall) brands from 1 September 2009 to 1 September 2019 in the EU (i.e. including the UK)

#### *1.2.3 The injured parties whose interests the Foundation represents*

35. (...) This concerns Car Owners who, at the time the Agreement(s) were entered into, had their habitual residence both in the European Union, including the United Kingdom, (the "EU") and in the Netherlands. To the extent that certain Car Owners do not have their habitual residence in the Netherlands but do have their habitual residence in the EU, the Foundation requests the Court to determine that the proceedings will result in binding them on the basis of opt-out (Section 1018f subsection 1 Rv).

36. In doing so, the Foundation distinguishes between Private Parties (subcategories A, B and C) and Business Parties (subcategories A, B and C) for Car Owners in the Netherlands on the one hand, and Private Parties (subcategories D, E and F) and Business Parties (subcategories D, E and F) for Car Owners outside the Netherlands but in the EU on the other.

37. The Foundation therefore also stands up for those Car Owners who no longer own, or have in their possession, an Affected Vehicle at this time or later in the proceedings, but who have in the past owned or had in their possession one or more Affected Vehicles for as long as it has been in the period from 1 September 2009.

3.14. Articles 6 and 10 of SDEJ's articles of association, insofar as relevant, read as follows:

**BOARD: TASK AND POWERS**

**ARTICLE 6**

4. The outline of the foundation's governance structure is set out by the board each year, based on the principles contained in the Code of Claims. The board indicates the extent to which it follows the provisions contained in the Claim Code.

To the extent that the foundation does not follow the provisions of the Code of Claims, the board will state why and to what extent it deviates from them.

**SUPERVISORY BOARD: COMPOSITION, APPOINTMENT, EXERCISE** ARTICLE 10

1. The supervisory board of the foundation consists of three or more natural persons.

3. (...) The Claim Code contains provisions on the desired composition of the foundation's supervisory board. When appointing members of the supervisory board, these provisions are followed as far as possible.

3.15. SDEJ sent letters to Stellantis et al and the Car Dealers in December 2021 and January 2022, in which SDEJ held them liable and invited them to consult on an amicable settlement.

*Stellantis N.V. and Stellantis Nederland B.V.*

3.16. Stellantis N.V. has existed in its current form since 17 January 2021 and as of then is the top holding company of group companies operating the Peugeot, Citroën, DS, Opel and Vauxhall car brands.

3.17. Until 1 August 2017, the Opel and Vauxhall car brands were part of the General Motors group. On 1 August 2017, the General Motors group (see below in 3.29) sold Opel and Vauxhall (and the shares in the companies operating those brands) to France-based Peugeot S.A. (hereafter PSA), which already operated the Peugeot, Citroën and DS car brands. On 16 January 2021, PSA merged with Fiat Chrysler Automobiles N.V. ('FCA'), with PSA being merged into FCA. On 17 January 2021, FCA's name was changed to Stellantis N.V.

3.18. Since 1 October 2021, Stellantis Nederland B.V. has been the (only) official importer and distributor in the Netherlands of new Peugeot, Citroën, DS and Opel vehicles that are

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intended for the Dutch market. Until 1 October 2021, the importation and distribution of these vehicles was carried out by its legal predecessors: Peugeot Nederland N.V., Citroën Nederland B.V. and Opel Nederland B.V. On 1 October 2021, these three companies merged, with Peugeot Nederland N.V. as the acquiring company, and the name and legal form changed to Stellantis Nederland B.V.

3.19. Apart from Stellantis N.V. and Stellantis Nederland B.V., the companies listed below at 3.20 to 3.28 also currently belong to the Stellantis group.

*The auto manufactureri*

3.20. PSA Automobiles S.A. (hereafter PSA Automobiles) is engaged in the design, development and production of (parts of) vehicles (including software) of the car brands Peugeot, Citroën and DS.

3.21. Automobiles Peugeot S.A. (hereinafter Peugeot) is engaged in the production of (parts of) Peugeot vehicles, and since 2019 also Opel vehicles, and the marketing of Peugeot vehicles.

3.22. Automobiles Citroën S.A.S. (hereinafter Citroën) is engaged in the production of (parts of) Citroën and DS vehicles and the marketing of those vehicles.

3.23. Opel Automobile GmbH ("Opel Automobile") was acquired by PSA in August 2017 and previously belonged to the General Motors group. Opel Automobile has been engaged in the design, development, production and marketing of Opel vehicles since August 2017.

*The underneitiations in the Veretiigcl Kingdom*

3.24. PSA Retail UK Limited (hereinafter PSA Retail UK) is engaged in the sale, leasing and marketing of new and used Peugeot, Citroën, DS and Vauxhall vehicles (and parts thereof) in the UK through a network of dealers.

3.25. Vauxhall Motors Limited (hereinafter Vauxhall Motors) is the distributor of Vauxhall vehicles in the UK and is engaged in the marketing thereof.

3.26. Vauxhall Finance Plc. (hiema: Vauxhall Finance) is engaged in leasing, financing and insuring Vauxhall vehicles in the UK.

3.27. IBC Vehicles Limited (hereafter IBC Vehicles) operates the Luton (England) car plant producing Vauxhall and Opel vehicles and, since April 2019, Peugeot and Citroën vehicles.

3.28. Vauxhall Motors, Vauxhall Finance and IBC Vehicles were part of the General Motors group before its acquisition by PSA in 2017. Now they are entities within the Stellantis group.

### *The General Motors group*

3.29. General Motors Company (hereafter: GM Company) is the top holding company of the General Motors group and holds all shares in General Motors Holdings LLC (hereafter: GM Holdings). The General Motors group owned the car brands Opel and Vauxhall, among others, until 1 August 2017. The activities related to these two car brands were carried out by German and English subsidiaries. On 1 August 2017, PSA acquired Opel and Vauxhall from GM Holdings.

3.30. GM Holdings directly or indirectly holds all shares in the domestic and foreign subsidiaries of the General Motors group, including in General Motors LLC (hereinafter GM LLC).

3.31. GM LLC engages in the design, development, manufacture and sale of vehicles for the Chevrolet, Cadillac, GMC and Buick brands in the United States of America (US).

3.32. Adam Opel GmbH (hereinafter Adam Opel) belongs to the General Motors group. It was engaged in the design, development, production and marketing of Opel vehicles until the acquisition of its business by Opel Automobile on 1 July 2017. It is now mainly engaged in the administration of pension provisions. GM Company was the parent company of Adam Opel until 1 July 2017.

### *Car dealers*

3.33. Autodealers are a group of Netherlands-based car dealers selling Peugeot, Citroën, DS and Opel vehicles, among others. They have the vehicles taken from (the legal predecessors of) Stellantis Nederland B.V.

## **4. The collective claims and positions on the issues at the first stage of the proceedings**

4.1. All three Foundations brought claims against Stellantis N.V, Stellantis Nederland B.V. and GM LLC. SCC and SDEJ additionally brought claims against other companies within the Stellantis Group and the GM Group, including the car manufacturers, and against the Car Dealers. SDEJ also brought further claims against the four UK-based companies of the Stellantis group.

4.2. The claims of the Foundations, as set out in the summonses, are reproduced verbatim in Annexes I to III attached to this judgment. SEC, SCC and SDEJ seek declaratory relief and damages. SCC and SDEJ also claim rescission and annulment of the purchase and lease agreements concluded between the injured parties and the Car Dealers. Very briefly, the Foundations each lay underpinning their claims that their constituents suffered harm because Stellantis et al marketed vehicles with a prohibited defeat device. This is unlawful because those vehicles do not meet the applicable emission standards. The injured parties on whose behalf the Foundations are acting are therefore entitled to damages.



According to SCC and SDEJ, this also provides grounds for impairment of the purchase and lease agreements between the injured parties and the Car Dealers. SCC and SDEJ therefore also rely on non-conformity (Article 7:17 of the Civil Code) and (mutual) error (Article 6:228 of the Civil Code). SDEJ also relies on the Unfair Commercial Practices Act (Section 6:193a et seq. of the Civil Code) and unlawful group dealing (Section 6:166 of the Civil Code).

4.3. The court adopted a procedural order by rolling decision dated 20 July 2022. It stipulated that this first phase of the proceedings deals with (i) the jurisdiction of the Dutch court, (ii) the applicable collective action law, (iii) the admissibility requirements for the Foundations under Article 3:305a old and/or new Civil Code, (iv) the appointment of an exclusive representative and (v) the applicable law to the claims of the Foundations.

4.4. The views of the Foundations on these issues can be summarised as follows. This court has international and relative jurisdiction to hear the claims of the Foundations, Section 3:305a (new) of the Dutch Civil Code applies to these proceedings, the Foundations meet the admissibility requirements and Dutch law applies to their claims insofar as they concern claims of their Dutch constituencies. SDEJ concludes that different legal systems apply to the claims of its European constituencies. To the extent that the court rules that Article 3:305a (new) DCC applies, SEC requests that it be appointed as exclusive advocate within the meaning of Article 10 18e paragraph 1 Rv. SCC requests that SDEJ be designated as exclusive advocate and that SCC be permitted to perform independent procedural acts. If SDEJ is inadmissible, SCC requests that it be designated as eKclusive advocate. In the same vein, SDEJ requests that it be designated primarily as exclusive advocate and, in the alternative, SCC, subject to the stipulation that SDEJ remains authorised to perform independent litigation acts in this case. Finally, the Foundations opposed the request of Stellantis c.s. and the Car Dealers to open an interim appeal.

4.5. The defendants have not yet put forward any substantive defence to the Foundations' claims at this first stage. They have made submissions (according to the established procedural order) on the issues mentioned above. Stellantis et al conclude that this court has no jurisdiction over the defendants domiciled abroad and that the claims against these defendants are governed by different foreign legal systems. All defendants take the position that Article 3:305a (old) of the Civil Code applies to these proceedings. They also conclude that the Foundations are inadmissible in their collective claims because the admissibility requirements, in particular the similarity requirement and the guarantee requirement, are not met. They requested to be allowed to lodge an interim appeal if the views they put forward on jurisdiction, the applicability of Article 3:305a (old) of the Civil Code, the (in)admissibility of the Foundations or the applicable law were rejected. Finally, they requested that the Foundations be ordered to pay the costs of the proceedings (including follow-up costs), to be increased by statutory interest.

4.6. The parties' contentions are discussed in more detail below, insofar as relevant.

## **The court's assessment**

### **5. Jurisdiction, consistency with foreign proceedings and relative jurisdiction**

#### *Introduction*

5.1. This case is partly international in nature. Therefore, the court must assess (also ex officio) whether it has jurisdiction.

5.2. PSA Automobiles, Peugeot, Citroën, Opel Automobile and Adam Opel are based in the European Union (hereinafter the 'EU Defendants'). GM Company, GM Holdings and GM LLC are based in the US (hereinafter also referred to as the 'US Defendants') and PSA Retail UK, Vauxhall Motors, Vauxhall Finance and IBC Vehicles are based in the UK (hereinafter also referred to as the 'UK Defendants'). The US Defendants and UK Defendants are therefore domiciled outside the European Union (hereinafter collectively the 'Outside EU Defendants').

5.3. The question whether the Dutch court has jurisdiction must be answered in relation to the EU defendants on the basis of the Brussels I-bis Regulation'. The dispute falls materially, formally and temporally within the scope of this Regulation (Articles 1, 6 and 66 Regulation Brussels I-bis).

5.4. The Brussels I bis Regulation does not apply to the dispute between SDEJ and the UK defendants due to the UK's exit from the European Union ('Brexit'). SDEJ's proceedings against these defendants were instituted on 18 January 2022. This date is after 31 December 2020, the end of the transitional period under Article 67(2) of the Withdrawal Agreement<sup>2</sup>. Therefore, the transitional law under which Regulation Brussels I-bis still retained its validity for UK-based defendants does not apply in this case.

5.5. For the Outside EU defendants, in the absence of applicable regulations or treaties, international jurisdiction should be determined by reference to the common Dutch rules on international jurisdiction in Articles 1 to 14 of the Dutch Code of Civil Procedure (Rv). When interpreting these rules, the case law of the Court of Justice of the European Union (CJEU) on (the predecessors of) the Brussels I bis Regulation should in principle be followed. This is different if it is plausible that the Dutch legislator intended to deviate from the instruments of European Union law or their interpretation by the CJEU when designing a common rule.'

5.6. The Brussels I-bis Regulation and Rv do not contain special rules on jurisdiction in collective actions, so the general rules apply.

<sup>2</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ 2012, L 351/1. as last amended on 26 November 2014. OJ 2015, L 34.

\* Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, *OJEU* 2019. C 384 1/1. Supreme Court 29 March 2019, ECLI:NL: HR:2019:443.

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In the application of those rules, the (groups of) (legal) persons whose interests the Foundations claim to represent must be assumed. This means that the court answers the question of its international and relative jurisdiction in these proceedings, in which the Foundations act as plaintiffs, on the basis that the (legal) persons whose interests they claim to represent would themselves have brought the relevant legal actions **against the** defendants.'

5.7. Both Article 3:305a (old) and Article 3:305a (new) of the Civil Code provide that a foundation or association may institute legal proceedings aimed at protecting similar interests of other persons, insofar as it promotes these interests pursuant to its articles of association.

5.8. Not all of the Foundations' claims are brought against the same defendants. Also, the (groups of) (legal) persons whose interests the Foundations claim to represent differ. These differences are relevant for the assessment of jurisdiction.

5.9. SEC and SCC, according to their articles of association, aim to represent the interests of, and in their subpoenas claim to represent, (legal) persons who, in the period between 1 September 2009 and 1 September 2019 bought or leased one (or more) new or used vehicle(s) with a prohibited manipulation device in the Netherlands. At the hearing, SEC and SCC explained that they only represent Dutch victims, i.e. victims who at the time they entered into the relevant agreement(s) had their habitual residence in the Netherlands and purchased their vehicle (whether or not from one of the Car Dealers) in the Netherlands.

According to its articles of association, SDEJ aims to represent the interests of, and in these proceedings claims to represent, (legal) persons who, in the period from 1 September 2009 until the date of the final judgment to be delivered in these proceedings, have purchased or leased one or more new or used vehicle(s) with a prohibited manipulation device in Europe (including the United Kingdom) or in the Netherlands.

#### Claims against the Dutch zedaazden

5.10. Stellantis N.V., Stellantis Nederland B.V. and the Car Dealers are domiciled in the Netherlands. The Dutch courts have jurisdiction to hear the claims brought by the Foundations against these defendants. Indeed, that jurisdiction is based on the principal rule of the defendant's domicile (Article 2 Rv and Article 4 Regulation Brussels I-bis respectively). To that extent, that jurisdiction is also not in dispute between the parties. Moreover, as the court understands, SDEJ's claims, insofar as it brought them on behalf of (legal) persons who bought or leased a vehicle outside the Netherlands, are not directed against Stellantis Nederland B.V. and the Autodealers, but only against Stellantis N.V. (and the foreign defendants).

*Vorcleringen against EU zedaazden, US defendants and UK defendants*

5.11. The EU defendants and the US defendants - with the exception of GM LLC - have been sued **solely** by SCC and SDEJ. The UK defendants have been sued only by SDEJ.

5.12. Jurisdiction over GM LLC will be dealt with separately in 5.41. In respect of the other US defendants, the EU defendants and the UK defendants, SCC and SDEJ argue that the Dutch courts have jurisdiction on the basis of Article 8(1) Regulation Brussels I-bis and Article 7(1) Rv, with reference to (inter alia) Stellantis N.V. as so-called anchor defendant. SCC and SDEJ additionally rely on Article 7(2) Regulation Brussels I-bis and Article 6(e) Rv, because the place where their Dutch constituency suffered damage (the 'Erfolgsort') is located in the Netherlands.

5.13. The court will first examine below whether a close connection exists (Article 8 Regulation Brussels I-bis) respectively whether there is coherence within the meaning of Article 7(1) Rv between the claims of the Foundations against Stellantis N.V. on the one hand and the claims of the Foundations against the EU defendants, US defendants and YK defendants on the other hand. Stellantis N.V. is domiciled in the district of Amsterdam and may therefore be an anchor defendant.

*Review framework Article 8 Brussels I-bis Regulation and Article 7 Rv*

5.14. Article 8, print 1, Brussels I-bis Regulation allows a defendant domiciled in a Member State, where there is more than one defendant, to be sued in the courts of the domicile of one of the defendants, provided that the claims against the various defendants are so closely connected that the proper administration of justice requires their simultaneous trial and judgment. This avoids the risk of irreconcilable judgments being given in separate trials.

5.15. The interpretation provided by the CJEU of the precursors of this provision<sup>5</sup> also applies to Article 8(1) Brussels I-bis Regulation.<sup>6</sup>

5.16. The rule of jurisdiction in Article 8(1) of Regulation Brussels I-bis is intended to facilitate the proper administration of justice, to limit as far as possible parallel proceedings and thus to avoid incompatible judgments being given when cases are tried separately'. Since this rule of jurisdiction departs from the main rule of Regulation Brussels I-bis that the court of the domicile of the

<sup>5</sup> Article 6. point 1, EEX Convention (Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Brussels, 27 September 1968, Trb. 1969, 101, OJ 1998, C 27/1 ) and Article 6. point 1. Brussels I Regulation (Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, OJ 2001, L 12/1).

<sup>6</sup> Cf. CJEU 16 November 2016, Case C-417/15, ECLI:EU:C:2016:881 (Schmidt), para 26.  
CJEU 20 April 2016. case C-366/13. ECLI:EU:C:2016:282 (Profit Investments SI M), para 61.

defendant has jurisdiction (Article 4), this rule must be interpreted narrowly. That interpretation should extend only to the cases expressly referred to in that regulation.'

5.17. In this regard, the case-law of the CJEU shows that decisions cannot already be deemed incompatible on the basis of a divergence in the resolution of the dispute; to that end, moreover, it is required that this divergence occurs in the context of the same situation, in fact and in law.

5.18. In assessing whether the claims brought against different defendants are so connected that there is a risk of irreconcilable judgments in the event of separate adjudication, all the necessary elements of the file must be taken into account. This may include whether the defendants acted independently of each other. The court will also have to consider the legal basis of the claims. The legal bases of the actions brought against the various defendants (for example, the law applicable to those actions) need not be identical for the purposes of Article 8(1) Brussels I-bis Regulation, provided that it was foreseeable to the defendants that they could be sued in the Member State in which at least one of them is domiciled.<sup>10</sup>

5.19. Section 7(1) Rv provides that if, in summons cases, the Dutch court has jurisdiction over one of the defendants, it also has jurisdiction over other defendants involved in the same proceedings, provided there is such a connection between the claims against the various defendants that reasons of efficiency justify joint proceedings. Article 7(1) Rv is based on (the predecessor of) Article 8(1) Regulation Brussels I-bis, so the interpretation of this provision should follow the jurisprudence of the CJEU, under which the provision should be interpreted strictly. Therefore, as a condition for application of Section 7(1) Rv, the Dutch court must have jurisdiction against one of the other defendants on a ground other than mentioned in Section 7(1) Rv itself. If that condition is met, the second condition for application of Article 7(1) Rv is that the claims against the other defendant(s) are sufficiently connected to the claims against the defendant over whom the Dutch court has jurisdiction on a ground other than that mentioned in Article 7(1) Rv itself."

5.20. In *Kolassa and Universal Music*, the CJEU held, with regard to the predecessor of Regulation Brussels I-bis, that the court before which a dispute is brought must take into account all the information available to it, including, where appropriate, the defendant's contentions, when reviewing its jurisdiction. There is no need at the determination stage

<sup>10</sup> CJEU 20 April 2016, case C-366/13, ECLI:EU:C:2016:282 (*Profit Investments SI M*), para 63.

See, *inter alia*, CJEU 13 July 2006, C-539/03, ECLI:EU:C:2006:458 (*Roche/Primus*), paragraph 26, CJEU 1 December 2011, case C-143/10, ECLI:EU:C:2011:798 (*Painer*), paragraph 79, CJEU 21 May 2015, case C-352/13, ECLI:EU:C:2015:335 (*CDC/Akzo*), paragraph 20 and CJEU 20 April 2016, case C-366/13, ECLI:EU:C:2016:282

(*Profit Investments SI M*), para 65.

<sup>11</sup> CJEU 1 December 2011, ECLI:EU:C:2011:798, *Painer v Standard Verlags*, paragraphs 80-84; CJEU 21 mer 2015, ECLI:EU:C:2015:335, *CDC v Akzo c.s.*, para 23.

<sup>12</sup> HR 29 March 2019, ECLI:NL:HR:2019:443, para 4.2.2.

of jurisdiction, however, no evidentiary proceedings should be conducted in relation to disputed facts that are relevant both to the question of jurisdiction and to the existence of the right of action invoked.\* It follows that in answering the question of jurisdiction, the court is limited to a prima facie judgment.

This standard also applies if the Dutch court examines whether it has jurisdiction in the context of applying the common rules on international jurisdiction<sup>13</sup>, as in this case in relation to the Outside EU Defendants.

*Nairtve link between the receivables from Stellantis N.V. and the receivables from the EU geJaagJen?*

5.21. The claims of SCC and SDEJ against PSA Automobiles, Peugeot, Citroën, Opel Automobile and Adam Opel (hereinafter also referred to as the Car Manufacturers) are based on tort and are based on the allegations that these defendants acted in breach of the Framework Directive' and the Emissions Regulation'. According to SCC and SDEJ, the Car Manufacturers developed and applied a prohibited defeat device, produced and marketed vehicles with a prohibited defeat device, wrongfully granted Euro 5 and Euro 6 type approvals to the vehicles in question applied for and mistakenly issued a certificate of conformity for these vehicles issued.

5.22. The claims of SCC and SDEJ against Stellantis N.V. are also based on tort and rely, inter alia, on the following contentions. Stellantis N.V., as the legal successor (whether or not by universal title) of PSA and General Motors, which were the owners of the Car Manufacturers, is liable for the conduct of the Car Manufacturers. PSA and General Motors, as parent companies, exercised decisive influence over the Car Manufacturers at the time.

Furthermore, Stellantis N.V., as a top holding company, exercised decisive influence over the Automobile Manufacturers and, on that basis, is jointly and severally liable for the alleged damages caused by the production and marketing of diesel vehicles with a prohibited manipulation device. The Foundations substantiate these contentions with annual reports and reports of the (legal predecessors of the) Stellantis Group in which Stellantis N.V. (and its legal predecessors) presented itself, according to the Foundations, as a policymaker.

5.23. Stellantis N.V. has argued that it and its legal predecessor PSA are not operating entities. It disputes that it or PSA has been involved in developing, manufacturing or selling engines and/or emission control systems. Also

" CJEU 28 January 2015, Case C-375/13, ECLI: EU:C:2015:37 (Harald Kolassa v Barclays Bank plc), para 64 and CJEU 16 June 2016, Case C-12/15, ECLI:EU:C:2016:449 (Universal Music), paras 43-46.

<sup>13</sup> HR 12 April 2019, ECLI:NL:HR:2019:566, paragraph 3.4.4; HR 12 June 2020, ECLI:NL:HR:2020:1037 with Opinion of A-G De Bock of 31 January 2020, ECLI:NL:PHR:2020:95.

" Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles.

' Regulation (EC) No 713/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.

Stellantis N.V. disputes that it or PSA determined the subsidiaries' operational policies. According to Stellantis N.V., its employees only perform administrative, financial, legal, tax and HR-related work. It refers to a written statement by its *chief legal officer* dated 7 November 2022 in which he stated that Stellantis N.V. and PSA were not involved in the design, development and production of vehicles or the manufacture of emission control systems and obtaining type approvals. Therefore, there is no identical situation *de facto* and *de jure*, no foreseeability that the Car Manufacturers could be sued before the Dutch courts and no risk of irreconcilable judgments or administration of justice benefiting from joint treatment of the claims. A close connection between the claims against Stellantis N.V. and the claims against the EU defendants cannot therefore be assumed, Stellantis et al. said.

5.24. In its assessment, the court distinguished between, on the one hand, the claims insofar as they were brought by SCC and SDEJ on behalf of those involved who bought or leased a vehicle in the Netherlands (hereinafter: Dutch car owners), and, on the other hand, the claims insofar as they were brought by SDEJ on behalf of those involved who bought or leased their vehicle outside the Netherlands (hereinafter: foreign car owners). The court held that the Dutch court should, on the basis of Article 8 Regulation Brussels I-bis has jurisdiction when it comes to the claims brought on behalf of the Dutch car owners against the EU defendants/Car manufacturers. However, there is no jurisdiction when it comes to the claims brought on behalf of foreign car owners against the EU defendants/Car manufacturers. To this end, the following reasoning applies.

5.25. The claims against Stellantis N.V. and the Car Manufacturers are based on the same legal basis: tort. Stellantis N.V., as legal successor to the former parent companies PSA and GM Holdings (see 5.35 below) and as policymaker, is held jointly responsible for the unlawful actions of the Car Manufacturers. Whether Stellantis N.V. (and its legal predecessor PSA) is itself an operating entity is therefore immaterial to that extent. The claims against Stellantis N.V. and the Car Manufacturers are based on the same complex of facts. Stellantis N.V. (or its legal predecessors) and the Car Manufacturers are part of the same chain, which, according to SCC and SDEJ, is aimed at developing, producing, marketing and supplying diesel vehicles with a prohibited manipulation device. Assessing the claims requires answering essentially the same factual and legal questions (the first of which is whether a prohibited manipulation device was developed and applied). With regard to Stellantis N.V., in addition, it must be assessed whether it is jointly liable as the legal successor of the former parent companies and/or as a policymaker.

5.26. For the summary judgment to which the court can limit itself in answering the jurisdictional question (see 5.20), the Foundations have sufficiently substantiated that PSA, as the parent company, had decisive influence over the economic activity of the Car Manufacturers in question. The statement of the *chief legal officer* of Stellantis N.V. is insufficient to rebut the presumption a priori that PSA had decisive influence over the Car Manufacturers. Furthermore, Stellantis N.V. does not dispute that

it could in turn be held liable for (possible) unlawful behaviour by its legal predecessors PSA and GM Holdings.

5.27. Despite the possibility that different legal systems may apply to individual claims against different defendants, the fact that there is the same factual basis and the same legal basis (tort) is sufficient to assume that the same situation exists, factually and legally.

5.28. When it comes to the claims brought on behalf of Dutch car owners, it was also foreseeable to the Car Manufacturers that they could be sued in the Dutch courts. Indeed, the Car Manufacturers had to anticipate that they could be sued before a court of a Member State in which the vehicles they manufactured were marketed.

5.29. When it comes to the claims brought on behalf of the foreign car owners, the aforementioned foreseeability is lacking. The vehicles bought or leased by the foreign car owners were marketed in countries other than the Netherlands and bought or leased outside the Netherlands. Contrary to SDEJ's argument, foreseeability cannot be based on the fact that Stellantis N.V. is established in the Netherlands as the (current) parent company of the Car Owners. Stellantis indeed, N.Y. will be the parent company only from January 2021. Before that, France-based PSA was the parent company of the Car Manufacturers (and until mid-2017, US-based GM Company for the Opel and Vauxhall car brands). Policy decisions were therefore made outside the Netherlands during the relevant period. SDEJ has not argued that any policy decisions relevant to the assessment of the claims were taken after January 2021. It is therefore concluded that it was not foreseeable to the Car Manufacturers that they would be sued for damages claims by the foreign car owners before the court of Stellantis N.V.'s domicile.

5.30. This means that for the claims brought by SDEJ on behalf of the foreign car owners against the EU defendants, the provisions of Article 8(1) Brussels I-bis Regulation are not satisfied.

5.31. SDEJ's reliance on Article 7(2) of Regulation Brussels I bis (the place where the harmful event occurred) also fails in this regard. After all, the place where the damage occurred (the 'erfolgsort') is not in the Netherlands for foreign car owners, while there is also no evidence to suggest that the place where the damaging event occurred for a foreign car owner (the 'handlungsort') is in the Netherlands.

5.32. Furthermore, the court has also not found any other ground for jurisdiction when it comes to the claims brought on behalf of the foreign car owners against the EU defendants. The court will therefore decline jurisdiction to hear the claims brought by SDEJ on behalf of the foreign car owners against the EU defendants.



*Consistency between the claims against Stellantis N.V. and the claims against the US defendants?*

5.33. All the Foundations have sued GM LLC. The Foundations argue that GM LLC may have retained some liability for past mistakes after the sale of the Opel and Vauxhall brands to PSA in 2017.

SCC and SDEJ have additionally sued GM Holdings and GM Company, alleging that they too may have remained liable after the sale of Opel and Vauxhall to PSA. SDEJ further alleged that GM Holdings had decisive influence over the Opel/Vauxhall business.

5.34. Stellantis c.s. argued that the US defendants do not have or did not have a group relationship with Stellantis N.V.. The fact that activities were once transferred to PSA, whose top holding was located in France, means that it was not foreseeable for these defendants that they could be sued in the court of Stellantis N.V.'s domicile. Therefore, the connection required by Section 7 Rv between the claims against Stellantis N.V., on the one hand, and the claims against the US defendants, on the other, cannot be assumed, Stellantis c.s. said.

*GM Holdings and GM Company*

5.35. This argument of Stellantis c.s. does not succeed in respect of GM Holdings and GM Company, insofar as SCC and SDEJ are defending Dutch car owners. It follows from the Master Agreement submitted by SDEJ that GM Holdings is the selling party in the asset liability transaction in which the Opel and Vauxhall brands were transferred to PSA. In this Master Agreement, agreements were made on 'Emission Matters'. These agreements have not been made public.

In the financial statements ('annual report') of GM Company submitted by SDEJ, it is mentioned that Opel/Vauxhall was sold to PSA Group in 2017 through the Master Agreement and that its controlled seller (i.e. GM Holdings) agreed to indemnify ('idemnify') Stellantis for, inter alia, claims for 'certain emissions and product liabilities'. It is further stated that GM Company has given a guarantee to Stellantis that it will guarantee the fulfilment of GM Holdings' obligation to indemnify Stellantis and that this indemnification is subject to certain conditions.

Given this information, it cannot be ruled out that GM Company and GM Holdings remained liable for possible emissions fraud at Adam Opel and Opel Automobile after the transaction with PSA. Stellantis c.s. did not clarify this, whereas it should have done so. On this state of affairs, in view of the principle of summary judgment mentioned above in 5.20, the correctness of SCC and SDEJ's contentions will be assumed.

5.36. Again, the allegations made against Stellantis N.V., GM Company and GM Holdings are different from each other and may go to different legal systems have to be assessed, but are based on the same facts. It will have to be investigated whether Opel Automobile and Adam Opel produced and marketed vehicles with a prohibited manipulation device and which entity (Stellantis N.V., GM Company or GM Holdings) produced and marketed vehicles with a prohibited manipulation device for that purpose after the assets liabilities

transaction between GM Holdings and PSA as parent company can (potentially) be held jointly liable. This means that between the claims of SCC and SDEJ against Stellantis N.V. as PSA's legal successor and the claims of SCC and SDEJ against GM Company and GM Holdings, there is such a connection that reasons of efficiency justify treating them together. This prevents different courts having to answer the same questions from giving conflicting decisions on the liability of Stellantis N.V., GM Company or GM Holdings for the conduct of Opel Automobile and Adam Opel. It was also reasonably foreseeable to GM Company and GM Holdings that they could be sued in the Dutch courts. Indeed, they had to anticipate that they could be sued before a court of a Member State in which the vehicles produced by their former subsidiaries were marketed. The foregoing means that the requirements of Section 7(1) Rv have been met and that, on that basis, the court has jurisdiction to take cognisance of the claims brought by SCC and SDEJ against GM Company and GM Holdings on behalf of Dutch car owners.

5.37. When it comes to the claims brought by SDEJ on behalf of the foreign car owners against GM Company and GM Holdings, the foreseeability requirement has not been met. It was not foreseeable to these defendants that they would be summoned to the court of Stellantis N.V.'s domicile for compensation claims of the foreign car owners. Reference is made to what has been considered above in 5.29.

5.38. This means that for the claims brought by SDEJ on behalf of the foreign car owners against GM Company and GM Holdings, the requirements of Section 7(1) Rv have not been met.

5.39. SDEJ's reliance on Section 6 under e Rv (the place of the harmful event) also fails in this regard. Reference is made to what has been considered above in 5.31.

5.40. Moreover, the court has also not found any other ground for jurisdiction when it comes to the claims brought against GM Company and GM Holdings on behalf of the foreign car owners. The court will therefore decline jurisdiction to hear the claims brought by SDEJ for the benefit of the foreign car owners brought against the GM Company and GM Holdings.

#### *GM LLC*

5.41. The coherence required by Section 7 Rv is lacking when it comes to the Foundations' claims against GM LLC. The Foundations have sued GM LLC solely in part for the - as they themselves argue - unlikely but not inconceivable scenario that some liability was left behind when Opel/Vauxhall was sold to PSA in 2017. However, any concrete point of reference that could provide support for that scenario has neither been made nor shown. For instance, there is no evidence that GM LLC was involved as a contracting party in the sale of Opel/Vauxhall or in the provision of guarantees. Further, the Foundations have not explained how the activities of GM LLC

related to the marketing of Opel and Vauxhall vehicles on the European and Dutch markets with an allegedly prohibited manipulation device. It also does not follow from the information submitted by SDEJ on GM LLC that GM LLC was the parent company of Adam Opel or that it was otherwise involved in these activities. This means that the coherence required by Section 7(1) Rv between the Foundations' claims against Stellantis N.V. and the Foundations' claims against GM LLC cannot be assumed.

5.42. Application of the jurisdiction rule of Section 6(e) Rv cannot benefit the Foundations vis-à-vis GM LLC because the Foundations have not explained what specific wrongful conduct GM LLC is alleged to have committed and what damage their constituents suffered as a result. As a result, there are insufficient leads to determine that the place where the damage occurred (the 'erfolgsort') or the place where the event causing the damage took place (the 'handlungsort') is located in the Netherlands.

5.43. The court will therefore decline jurisdiction over the Foundations' claims against GM LLC.

*Saittenhang between the claims against Stellantis N.V. and the claims against the UK defendants?*

5.44. It must be assessed whether there is coherence as referred to in Section 7(1) Rv between the claims against Stellantis N.V. and the claims against the VK defendants. Only SDEJ brought claims against the UK defendants. The claims against the UK defendants, the court understands, were brought exclusively on behalf of a section of foreign car owners, namely those who bought or leased a vehicle in the UK.

5.45. The UK defendants - Vauxhall Motors, Vauxhall Finance, IBC Vehicles and PSA Retail UK - are engaged in the sale, lease, marketing, distribution and insurance of Vauxhall vehicles and the operation of a car plant in the UK. They are now part of the Stellantis group.

5.46. Stellantis c.s. has argued that the VK defendants are not car manufacturers and are not involved in the conduct alleged by SDEJ. It has pointed out that SDEJ has not alleged a factual situation with regard to the VK defendants and that merely being part of the Stellantis group is insufficient to assume coherence between the claims against Stellantis N.V. and the claims against the VK defendants. There is no question of the same situation in fact and law, no foreseeability that the UK defendants could be sued in the Dutch courts, and no danger of irreconcilable judgments or administration of justice benefiting from a joint hearing of the claims, Stellantis c.s. said.

5.47. The court considered as follows. Stellantis c.s. correctly argued that the UK defendants are not a manufacturer(s) of cars. As to what the role of each of the VK defendants is within the chain alleged by SDEJ and what reproaches are made to each VK defendant in this regard, SDEJ has not made any concrete submissions. Already

for this reason, it cannot be assumed *prima facie* (see 5.20) that there are connected claims warranting joint treatment. For the UK defendants, moreover, it was also not foreseeable that they would be summoned before the court of Stellantis N.V.'s domicile for compensation claims by car owners from the UK. For this, the same applies as considered in 5.29.

5.48. The conditions of Section 7(l) Rv are therefore not met. SDEJ's reliance on Section 6(e) Rv (the place of the harmful event) also fails in respect of the UK defendants. Reference is made to what was stated above in 5.31 considered.

5.49. Nor otherwise has the court found any other ground for jurisdiction when it comes to the claims brought against the UK defendants. The court will therefore decline jurisdiction to hear the claims brought by SDEJ against the UK defendants.

*Misuse of powers?*

5.50. Unlike Stellantis c.s. has argued, bringing the claims on behalf of the Dutch car owners against the EU defendants, GM Holdings and GM Company before the Dutch courts cannot be considered an abuse of the jurisdiction provisions of Article 8 Regulation Brussels I-bis and Article 7 Rv. Grant of the claims against Stellantis N.V. cannot be considered a priori excluded. Therefore, it also cannot be concluded that SCC and SDEJ artificially created the conditions for application of these provisions.<sup>6</sup>

**Appeal to litispendente clan wel cicinhoicling because of sattienhang not foreign procedures**

5.51. In the event that the court were to assume (partial) jurisdiction over claims brought on behalf of foreign car owners, the EU defendants (the Car Manufacturers) and the UK defendants alternatively invoked *lis pendens* or connection with foreign proceedings within the meaning of Articles 29, 30, 33 and 34 Regulation Brussels I-bis and Article 12 Rv. According to the EU Defendants and the UK Defendants, collective and individual proceedings have previously been brought in Germany, Austria and the UK against (part of) the EU Defendants and the UK Defendants.

5.52. The court does not get around to assessing the EU defendants' and the UK defendants' reliance on *lis pendens* or consistency with foreign proceedings. Indeed, it follows from the earlier decisions that there is no jurisdiction over the claims brought by SDEJ on behalf of the foreign car owners against these defendants. When it comes to the foreign car owners, there is jurisdiction only to the extent that claims have been brought on their behalf against Stellantis N.V. Stellantis However, N.V. has not invoked *lis pendens* or consistency with foreign proceedings. Nor has it been stated or shown that Stellantis N.V. (or its legal predecessor

<sup>6</sup> CJEU 21 May 2015, C-332/13. ECLI: EU:C:20 15:335 (*CDC Akzo c.s.* ).

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PSA) is a party to the proceedings in Germany, Austria or the UK. Incidentally, even if the latter were the case, there is no interest in assessing the plea of *lis pendens* or coherence in this case, because the court will rule below in the context of admissibility (see 7.15 below) that SDEJ cannot be received in the claims brought against Stellantis N.V. on behalf of foreign car owners.

### Relative competence

5.53. The District Court of Amsterdam also has relative jurisdiction with respect to Stellantis N.V., Stellantis Nederland B.V. and the Autodealers, insofar as they are established in the district of Amsterdam, pursuant to article 99, paragraph 1 Rv. With regard to the Autodealers not established in the district, they did not rely on relative lack of jurisdiction of this court under section 110(1) Rv. This court therefore also has relative jurisdiction with respect to each of them.

## **6. Applicability of old and/or new collective action law**

6.1. Under Article 10:3 of the Civil Code, Dutch collective action law applies irrespective of the (substantive) law applicable to the claims of the Foundations against the defendants. This is also not in dispute between the parties. What is in dispute, however, is which temporal collective action law applies to the Foundations' claims against the defendants. Which temporal law of action applies determines, *inter alia*, what admissibility requirements are imposed on the Foundations and whether monetary damages can be claimed.

6.2. Until 1 January 2020, the legal regime for mass damage collective actions was regulated by the Act on Collective Mass Claims Settlement<sup>7</sup>, laid down in Articles 3:305a to 3:305d (old) of the Civil Code (hereinafter: the old collective action law'). With effect from 1 January 2020, the Settlement of Mass Claims in Collective Action Act (hereinafter: WAMCA) entered into force." This amended Articles 3:305a to 3:305d of the Civil Code and added Title 14A to Book III of Rv.

6.3. The WAMCA provides a new regime for dealing with collective actions brought on or after 1 January 2020. Based on the associated transitional law (the result of the amendment Van Gent et al.), the provisions of the WAMCA apply (only) to legal actions relating to an event or events (causing damage) that took place on or after 15 November 2016." The explanatory note to the amendment states -

<sup>7</sup> Act of 6 April 1994 regulating the power of certain legal persons to institute legal proceedings to protect the interests of other persons (Stb 1994, 269), which introduced Section **3:305a of the Civil Code**, in conjunction with the Act of 23 June 2005 amending the Civil Code and the Code of Civil Procedure to facilitate the collective settlement of mass claims (Parliamentary Papers **II 2003-2006, 29 414**, Stb **2003, 340**) entered into force on 16 July **2005**, last amended on 13 July 2016.

<sup>8</sup> Act of 20 March 2019, Stb. 130, amending the Civil Code and the Code of Civil Procedure to allow the atonement of mass damages in a collective **action**.

<sup>9</sup> Article 119a paragraph 2 Transitional Act New Civil Code and Article 114 part 2 of the WAMCA.

in summary - the following. On 15 November 2016, the bill was sent to the House of Representatives and, in theory, parties can know that the new law is coming. If someone wants to file a mass tort action because of an event that occurred before 15 November 2016 took place, it can be done on the basis of the law as it applied at the time. In the theoretical case of a series of events that took place both before and after 15 November 2016, the law as in force at the time when the last event to which the claim relates took place will apply. The advantages of this form of transitional law are that it ensures legal certainty and reduces the possibility of duplicate proceedings under different legal regimes.

6.4. In this case, the Foundations' summonses date from after 1 January 2020, i.e. after the WAMCA came into force. The parties disagree as to whether the Foundations' claims relate to a (damaging) event or events that took place before or (on and) after 15 November 2016. The timing of the damaging event or events determines which collective action right applies.

6.5. The foregoing question has been raised before in other cases concerning allegedly prohibited manipulators in diesel vehicles." In those cases, this court has consistently held that the old collective action law applies. In this case too, the court held that Section 3:305a (old) of the Civil Code applies and not the WAMCA. The reasons for this are as follows.

6.6. At the core of their claims, the Foundations have based their claims on the fact that their constituents suffered damages because Stellantis et al introduced vehicles with a prohibited manipulation device into the Dutch and European markets. These vehicles were sold by the Car Dealers. The development of that allegedly prohibited manipulation device is thus the initial, common and all-embracing damaging event. It is true that thereafter other acts took place that were necessary for the harm to occur, such as the marketing, sale and delivery of the vehicles to the car owners, but in this *collective* action against both Stellantis et al. and the Car Dealers, the development of the allegedly prohibited manipulation device is the common and all-embracing harmful event. Without the allegedly prohibited manipulation device, the other acts and events would not be unlawful and the car owners would not have suffered any damages.

6.7. The Euro 5 and Euro 6 emissions standards were introduced on 1 September 2009 and 1 September 2014. This means that the development of the emission control system for the Euro 5 and Euro 6 vehicles in question must have been completed before those dates, otherwise no type approval would have been issued. With this, the (stated)

\*° District Court Amsterdam 30 March 2022, ECU:NL:RBAMS:2022:1541, District Court Amsterdam 30 March 2022, ECU:NL:RBAMS:2022:1542, District Court Amsterdam 22 June 2022, ECU:NL:RBAMS:2022:3386, and District Court Amsterdam 1 February 2023, ECU:NL:RBAMS:2023:468.

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common damaging event before 15 November 2016. The circumstances that the emission control system was (allegedly) further developed thereafter, that the development would be a continuous process and that updates would have taken place, does not make a series of damaging events within the meaning of transitional law. Nor do those circumstances qualify as new common, independent damaging events. Indeed, further development and updates are inextricably linked to the allegedly prohibited manipulation device.

6.8. Moreover, the purpose and thrust of transitional law is that the same rules of civil law apply across the board in a single matter. The transitional law seeks to avoid having to adjudicate some of the legal claims under the WAMCA and some under the old collective action law. By adhering to the development of the allegedly prohibited manipulation instrument, all legal claims (both the different claims against one defendant and similar claims against the different defendants) are adjudicated under one collective action regime, which is, according to the Van Gent et al. amendment, the intention of the legislator.

6.9. Contrary to what the Foundations have argued in the alternative, there is no reason to apply partly the old and partly the new collective action law. The Foundations' comparison with the Vattenfall case" is not valid, because there a different situation (the continuous charging of a certain fee) was at issue.

6.10. The conclusion is therefore that Article 3:305a (old) of the Civil Code applies to this collective action. As a result, the court does not get around to assessing the following (conditional) requests and claims of the Foundations:

- to appoint an Exclusive Interest Advocate (claim 1 by SEC, claims 2 and 3 by SCC and claim III by SDEJ),
- determine the narrowly defined group within the meaning of section 1018d Rv (SDEJ's claim II),
- determine the requirements for 'opt-in' or 'opt-out' within the meaning of section 1018f(1) and (5) final sentence of the Code of Civil Procedure (claim 4 of SCC and claim IV of SDEJ),
- determine the terms and conditions of collective claim settlement (claim 12 of SCC and claim IX of SDEJ),
- order the defendants to pay the costs incurred by the Exclusive Advocate (claims 13.iii and 13.iv by SCC and claim X.c by SDEJ),
- order the defendants to pay the costs of settlement (claim X.d. of SDEJ),
- make an order for costs under section 10181(2) Rv (claim 5 (in part) of SEC and claim X.b. (in part) of SDEJ).

The **defence** of Stellantis et al. and the Car Dealers that the Foundations' collective claims would be summarily unsound within the meaning of Section 1018(5) opening words and under (c) of the Code of Civil Procedure also does not need to be assessed, as that provision does not apply under the old collective action law.

<sup>1</sup> Amsterdam District Court 1 February 2023, ECLI:NL:RBAMS:2023:403.

6.11. In case the court should rule that the old collective action law applies, SEC and SCC requested to be given the opportunity to amend their claims (and their grounds). The court sees no reason to do so, as SEC and SCC could already have (and did) take that outcome into account in the wording of their claims. Moreover, they did not explain **why** the court's decision would require (further) adjustment.

## **7. The admissibility of the Foundations under Article 3:305a (old) of the Civil Code**

7.1. The question whether the Foundations are admissible must - as has been ruled above - be answered on the basis of the old collective action law (Article 3:305a (old) of the Civil Code).

7.2. Article 3:305a paragraph 1 (old) of the Dutch Civil Code stipulates that a foundation (i) may bring an action to protect the similar interests of other persons (the similarity requirement), (ii) insofar as it promotes these interests pursuant to its articles of association (the articles of association requirement). Paragraph 2 provides that an interest group is inadmissible if (iii) it has not made sufficient efforts in the circumstances to achieve the claimed objective by conducting consultations with the defendant(s) (the consultation requirement) or if (iv) the legal action does not sufficiently safeguard the interests of the persons for whose benefit the legal action is brought (the safeguard requirement).

7.3. The Foundations bear the burden of proof in relation to the requirements mentioned in Article 3:305a(1) (old) of the Civil Code. After all, these are the two conditions for being able to bring a legal action as a collective action organisation. Conversely, in principle, the defendants bear the burden of proof that there is a situation as referred to in Article 3:305a paragraph 2 (old) of the Civil Code. After all, these situations are an exception to paragraph 1 and it is the defendants who rely on their existence.

7.4. There is no dispute between the parties that the Foundations meet the statute requirement and the consultation requirement. The court also has no indications to assume that the Foundations do not meet these two requirements. The parties do differ on whether the similarity requirement and the guarantee requirement have been met. Those two requirements will be dealt with successively in 7.7 et seq. and 7.75 et seq. below.

### *No damages in zelJ*

7.5. Article 3:305a(3) (old) of the Civil Code stipulates that the claim cannot extend to monetary damages. Insofar as the claims of the Foundations are aimed at payment of monetary damages, they cannot therefore be brought in these collective proceedings. SEC is therefore declared inadmissible in claim 4 and SDEJ in claims VII and VIII. SCC's claims 8 and 11 and SDEJ's claim VI.e are dropped.

7.6. Stellantis c.s. and the Car Dealers have argued that Article 3:305a(3) (old) of the Dutch Civil Code also precludes the claimed declarations of liability for damages. The court agreed with the defendants that



such declarations of law are not possible under Article 3:305a(3) (old) of the Civil Code. To that extent, SEC is partially inadmissible in its claim 3.

*The similarity requirement*

7.7. The issue here is whether the actions brought by the Foundations seek to protect similar interests of other persons. According to settled case-law of the Supreme Court, the requirement of similarity is satisfied if the interests which the actions seek to protect lend themselves to bundling, so that efficient and effective legal protection can be promoted for the benefit of the interested parties. The claims lend themselves to bundling if they can be adjudicated on in one procedure without looking at the special circumstances of the individual interested parties.\* Sufficient similarity of interests does not necessarily imply that the positions, backgrounds and interests of those for whose benefit the claims are directed have to be equal. of whom a collective action is brought are identical or even predominantly the same. In a collective action, therefore, some abstract scrutiny is appropriate.<sup>12</sup>

7.8. The defendants have put forward several arguments why there are no sufficiently similar interests that lend themselves to bundling. The court will first address a number of issues relevant to multiple claims of the Foundations and then discuss the individual claims.

*OncluiJal achterbcin?*

7.9. Stellantis et al. and the Car Dealers first argued that it is unclear which interested parties the Foundations represent. The composition of the group of interested parties on whose behalf the Foundations act under their statutes depends on whether the vehicle purchased or leased by the interested parties is equipped with an allegedly prohibited manipulation device. That is not a clearly delineated group, as it thereby depends on a legal or technical assessment, Stellantis et al and the Car Dealers said.

7.10. This defence does not succeed. The Foundations' contentions assume that a prohibited manipulation device is present in the vehicles. This will indeed have to be assessed first at the substantive stage, given the defendants' challenge, but the lack of a substantive judgment on this point at this stage of the proceedings, which is inherent in this stage of the proceedings, does not make it insufficiently clear which interested parties the Foundations are defending.

*Meen:lere differences*

7.11. According to Stellantis c.s. and the Car Dealers, the foundations' approach to the proceedings makes a collective assessment impossible. In that regard, they pointed to several differences. The court will address the differences alleged below.

- See HR 26 February 2010, ECLI:NL:HR:2010:BK5736, Baas in Eigen Huis v Plazacasa.  
- " Compare HR 27 November 2009. ECLI:NL:HR:2009:BH2162. WorldOnline, para 4.8.

*\* Difference in composition cichterban and difference in applicable law*

7.12. Stellantis and the Car Dealers have argued that there are such factual and legal differences between the members of the alleged constituencies of the Foundations that these cannot be abstracted from in this collective action. Differences, according to Stellantis c.s. and the Car Dealers, include the context in which an affected vehicle was acquired, what information was provided in the process, whether an affected **vehicle** was resold and whether the affected vehicle was purchased or leased. In addition, Stellantis c.s. has argued that the Foundations' claims are governed by at least 30 legal systems that differ from each other in numerous respects. Therefore, no common judgment can be given on the Foundations' claims for the entire constituency.

7.13. The court considers as follows. The circumstance that different groups can be distinguished within the foundations' constituencies that are dissimilar on different factual and/or legal points does not take away from the fact that certain interests within those groups are sufficiently similar to be assessed in a collective action. In any event, the members of the Foundations' constituencies have in common that they own or have owned by purchase or lease a vehicle in which, according to the Foundations' contentions, a prohibited manipulation device is or was present. To **that extent**, the aforementioned differences do not in themselves preclude bundling. Moreover, if necessary, specific differences may be taken into account in the assessment. Whether specific differences preclude a collective assessment will be assessed in relation to the concrete claims (see 7.23 below).

7.14. For possible differences in the law applicable to the claims, the following applies. It will be held below under 8.2 that the law applicable to the claims of the Foundations is the law of the country where an interested party bought or leased the vehicle, because that is where the damage is suffered. Thus, for injured parties who bought or leased the vehicle in the Netherlands (the Dutch car owners), Dutch law applies to the claims brought on their behalf. The same legal system therefore applies to the group of Dutch car owners.

7.15. The above is different for SDEJ's claims against Stellantis N.Y. on behalf of the foreign car owners. They suffered (the alleged) damages in other European jurisdictions (including the UK). The claims for the benefit of the foreign car owners against Stellantis N.V. do not, as Stellantis c.s. rightly argued, adequately protect similar interests. After all, those claims are always governed by the law of the country where that interested party bought or leased the vehicle. This means that in the case of foreign car owners, a distinction would have to be made into a large number of different subgroups, depending on the country where they bought or leased their vehicle. This then leads to a range of applicable legal systems for foreign car owners, i.e. a separate legal system for each subgroup, with each system having its own merits. This makes the claims so disparate to the extent that it is not efficient and effective for the foreign car owners in this case to have these claims adjudicated in a single proceeding. That SDEJ partly bases its claims on violation of European law, such as the Emissions Regulation,

does not alter the foregoing. Indeed, in addition to the Emissions Regulation, other legal issues governed by applicable foreign law will also be at issue. SDEJ will therefore be declared inadmissible in its claims against Stellantis N.V. insofar as those claims are brought on behalf of the foreign car owners.

*\* Different types of vehicles*

7.16. Stellantis et al and the Car Dealers have argued that the claims brought by the Foundations relate to a large collection of diesel vehicles. That collection consists of different vehicle models and versions thereof from different manufacturers, with different engines and engine sizes. Each model and **version**, according to Stellantis et al. and the Car Dealers, requires a separate type approval or at least a separate part certificate before it is put into production and marketed. Moreover, the technology developed by PSA differs from that of the General Motors group. The Foundations will therefore have to prove on a make-by-make, model-by-model and version-by-variant basis that impermissible emission control systems and engine control software have been developed and deployed by the relevant car manufacturer. A generic and collective assessment of that - common - question is not possible, because deciding that question will always require looking at the specific circumstances regarding that type of vehicle. Bundling of alleged constituency interests in a collective action is neither effective nor efficient, according to Stellantis et al. and the Car Dealers.

7.17. The court considers that the circumstance that there are different types of vehicles with different types of diesel engines does not make these proceedings not lend themselves to collective assessment. All claims are based on the assertion that the vehicles contain a prohibited manipulation device, so the claims on this point are aimed at protecting similar interests that can be assessed collectively. In assessing whether there is a prohibited manipulation device, if there were grounds to do so, it would be possible to differentiate by, for example, type of vehicle, make, model and/or version.

*\* Yerschtlende groups of defendants*

7.18. Stellantis c.s. argued that there is disparity on the part of the defendants. Within the heterogeneous group of defendants, covered by Stellantis c.s., there are, according to Stellantis c.s., differences between them which preclude a collective assessment of the Foundations' claims. As a result of the differences between them, the defendants are in a different factual and legal relationship with the interested parties on whose behalf the Foundations claim to act. When assessing the claims and legal bases, Stellantis et al. argue that those differences must always be taken into account, which prevents a collective assessment and decision on the claims.

7.19. The Car Dealers have also argued that they are a heterogeneous group. To this end, they have argued the following. They differ in size, turnover and activities. Not all car dealers have vehicles of the brands Peugeot, Citroën and

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Opel sold. Each of the Car Dealers is in a particular legal relationship only to its own customers, while there are also major differences between those individual legal relationships. Some of the Car Dealers merely act as agents of another car dealer. In that case, the buyer's contractual counterparty is not the agent, but the car dealer for whom that agent acts. There are about 12 agents in total. All these differences entail that for the assessment of SCC's and SDEJ's claims, it is necessary to assess which car dealer is involved in each transaction. As a result, SCC's and SDEJ's claims cannot be dealt with collectively.

Moreover, the Car Dealers themselves do not engage in leasing activities, so SCC and SDEJ should in any event be declared inadmissible in their contractual claims brought against the Car Dealers on behalf of lessees. Thus becoming the Car Dealers.

7.20. The court ruled on Stellantis et al's argument as follows. That there are differences between the defendants falling within the Stellantis group, that they have different roles and that they are not always in the same relationship to an interested party, does not preclude a collective assessment. If necessary, those differences can be taken into account when assessing the claims. The defendants are essentially accused of putting vehicles into circulation that did not comply with the applicable regulations by producing, marketing and trading in vehicles with a prohibited manipulation device, so to that extent the same factual events are involved. Whether sufficient allegations have been made for a successful claim against each of the defendants is not an issue at this stage of the proceedings.

7.21. On the argument of the Autodealers, the court ruled as follows. Even if the correctness of the mutual differences alleged by the Autodealers is assumed, those differences do not preclude a collective assessment. The Car Dealers are all official dealers of the car brands Peugeot, Citroën, DS and Opel. According to SCC and SDEJ, at least hundreds of thousands of Peugeot, Citroën, DS and Opel vehicles with an allegedly prohibited manipulation device sold or leased. In any case, since the Car Dealers have in common that they all dealt in vehicles of one or more of the aforementioned car brands and the contention is that each of those car brands produced vehicles with an allegedly prohibited manipulation device, it can be assumed that they were also dealt in by each of the Car Dealers. If a car dealer believes that it did not sell or act as an agent for any Peugeot, Citroën, DS or Opel vehicles during the relevant period, it has the opportunity to argue and substantiate that at the substantive stage. For now, the Car Dealers can be seen as the same group.

7.22. However, SCC and SDEJ will be declared inadmissible in their claims against the Autodealers in so far as they are aimed at defending the interests of (legal) persons who, during the relevant period, were provided with a Peugeot, Citroën, DS and/or Opel diesel vehicle by means of a leasing arrangement ('lease drivers'). The Car Dealers explained that they do not enter into leasing agreements and that leasing activities are housed in separate companies. To this, SCC and SDEJ did not respond. On this state of affairs, SCC and SDEJ have not sufficiently substantiated that the claims against the Car Dealers, insofar as they have been brought on behalf of lease drivers, extend to similar interests. As a result, SCC and SDEJ have also failed to sufficiently demonstrate that there is a group of lease drivers who will ultimately benefit from

the class action as the claims against the Car Dealers are upheld. SCC and SDEJ will therefore be declared inadmissible in these claims.

*The individual claims*

7.23. Below, we will assess for each claim whether that claim concerns interests that can be sufficiently generalised. The starting point here is whether the particulars of individual cases can (sufficiently) be abstracted from when assessing collective claims (see above under 7.7).

*\* The claims on account of wrongful death against Stellantis N.V., Stellantis Nederland B.V., the Auto Manufacturers, GM Company and GM Holdings*

7.24. The Foundations claim - in summary - declarations of law that each of the defendants they summoned acted unlawfully towards the car owners and that those defendants are jointly and severally liable for the damages suffered and to be suffered by the atit owners as a result. These are SEC's claims under 2 and 3, SCC's claims under 6.i. to 6.iv and SDEJ's claim under V.f.i."

7.25. In summary, SEC based the requested declarations of law on the fact that the legal predecessors of Stellantis N.V. committed large-scale emission fraud by evading the statutory emission standards with prohibited manipulation devices. As an importer, (the legal predecessors of) Stellantis Nederland B.V. have their own obligation to verify that the diesel vehicles comply with the applicable emission standards. To the extent that (the legal predecessors of) Stellantis Nederland B.Y. were not aware of the fraud, they are risk liable for it. They are also co-responsible for advertising and marketing statements, the SEC said.

7.26. SCC and SDEJ based their claims, in summary, on the fact that Stellantis c.s. acted unlawfully by knowingly marketing vehicles that exceeded emission standards. Stellantis et al used prohibited manipulation devices to conceal that. This violated the Emissions Regulation, the Framework Directive and unwritten standards of care.

7.27. Stellantis et al. argued that these claims, insofar as they are based on violations of unwritten standards of care and misleading advertising, cannot be assessed collectively. By their nature, those legal grounds require individual assessment. The first question to be answered is whether an interested party's type of diesel vehicle complies with the Emissions Regulation and the Framework Directive. This cannot be determined generically, but will have to be assessed for each type of vehicle. According to Stellantis c.s., it cannot be determined in general terms whether an interested party has acted unlawfully without also taking into account the special circumstances of each individual interested party.

" See the claims as set out in Annexes I to III to this judgment.

7.28. In the District Court's opinion, the declarations of law claimed that Stellantis et al. acted unlawfully towards car owners serve to protect similar interests, so that these claims can be assessed collectively. Given what the Foundations have based these declarations of law on, the substantive phase will have to assess whether the Euro 5 and Euro 6 diesel vehicles, which were put on the Dutch market from 1 September 2009 and were subsequently bought or leased by car owners, contained prohibited manipulation devices. Thus, when assessing whether unlawful action was taken, special circumstances on the side of the car owners can be abstracted from. Those circumstances are relevant only in questions of, for example, damages scope and causal link. Those questions are not yet before us in these proceedings and may arise in individual follow-up proceedings after a given illegality judgment. The fact that differences exist between car owners therefore does not detract from this. The interests of the car owners who claim to have been adversely affected by the alleged conduct are similar on this point and are therefore bundleable.

7.29. Thus, in this class action, a judgment of alleged illegality can be rendered in general terms. This also applies to declarations of law that defendants are jointly and severally liable.

*\* The claims vcin SDEJ in capital tort against the Car Dealers*

7.30. This concerns SDEJ's claims under V.f.i. and V.f.ii.

7.31. SDEJ based these claims on the fact that the Car Dealers failed to ascertain, or insufficiently ascertained, whether the content of the Certificate of Compliance was correct. Whether the Autodealers were aware that that certificate was incorrect is irrelevant, according to SDEJ. To the extent that knowledge would have been required, SDEJ took the view that the Car Dealers should have known, as their business operations are largely, if not entirely, dependent on the sale of the affected diesel vehicles. The Auto Dealers did not sufficiently investigate whether the vehicles met the desirable requirements and stated specifications.

7.32. The Car Dealers have argued the following. Each dealer has a different legal position against each of the interested parties. Against each of the dealers, it will have to be assessed separately whether unlawful conduct was committed. It is also unclear exactly what SDEJ accuses the Car Dealers of acting unlawfully.

7.33. The court finds that SDEJ's claims under V.f.1. and V.f.ii. can be assessed collectively. SDEJ's allegations in this regard are sufficiently clear and focused on whether and to what extent the Car Dealers had a duty to investigate. The correctness of the allegations made by SDEJ does not require an individual enquiry but can be assessed collectively.

*\* SDEJ's claim 2ifi on account of group liability*

7.34. This concerns SDEJ's claim under V.f.iii.

7.35. SDEJ sought a declaratory judgment that Stellantis N.V., Stellantis B.V., the Car Manufacturers and the Car Dealers were guilty of unlawful group acting. To this end, SDEJ argued that the aforementioned defendants collectively form a chain and are to be regarded as a group within the meaning of Section 6:166 of the Civil Code. Several participants of the group committed an unlawful act. The likelihood of damage arising as a result of the group act should have deterred the members of the group from participating in the group act. Each of the defendants, as an essential part of the chain, was in a position to prevent the tort and should have done so, SDEJ said.

7.36.' The question of whether the defendants named by SDEJ as a group within the meaning of Article

6:166 BW can only be answered once insight has been gained into whether and what unlawful conduct of the individual defendants took place. It was held above at 7.28 that the declarations of law aimed at establishing unlawful conduct of each of the defendants are sufficiently similar. It follows that, to that extent, the interests are sufficiently bundleable.

It follows that the question whether the defendants as a group have acted unlawfully within the meaning of Section 6:166 of the Civil Code and can be held jointly and severally liable for this can also be examined in a collective action. SDEJ is therefore admissible in this claim.

*\* SDM's claims in respect of unfair commercial practices*

7.37. This concerns SDEJ's claimed declarations of entitlement under V.b.i. to V.b.iv. Linked to this is also the claimed declaratory judgment under V.a. (reflex effect of consumer protection for small self-employed persons).

7.38. SDEJ took the position that Stellantis N.V., Stellantis B.V. and the Car Dealers were guilty of unfair trade practices, as well as that the conduct of the aforementioned defendants was also imputable to the Car Dealers. SDEJ relies on Section 6:1939 opening words and under a, d and i of the Civil Code and Section 6:193c (1) opening words and under b of the Civil Code. These four provisions regulate the provision of incorrect, incomplete or otherwise unjustified information regarding a specific product.

7.39. Stellantis c.s. took the view that these claims do not stand up to collective assessment. To this end, it has submitted the following. Over the entire period, the information on each type of vehicle will have to be assessed in the Netherlands. Since the members of the various constituencies, spread over a period of ten years, all concluded individual agreements independently at different times, with different counterparties and in respect of a collection of different vehicles, it is not possible to assess collectively whether an unfair commercial practice existed in all those transactions and thus vis-à-vis all interested parties. Indeed, that assessment will always look to the specific situation of

relevant stakeholder should be considered. After all, every car owner has been informed about his or her vehicle at a different time in his or her jurisdiction.

7.40. The Car Dealers have taken the position that these claims do not lend themselves to a collective assessment and argued the following to that effect. The provisions relied on by SDEJ deal with the provision of information in relation to the specific product purchased by the consumer. The question of what information was provided by a car dealer to an interested party can only be answered individually. The Car Dealers further point out that Section 6:193j(3) of the Civil Code - which states that a contract concluded as a result of an unfair commercial practice is voidable - requires that an individual would not have entered into the contract had he known about the alleged unfair commercial practice. The question of whether that is the case can only be answered on an individual basis. Therefore, Section 6:193j(3) of the Civil Code also does not lend itself to a collective action for nullification.

7.41. The court considers the interests of the injured parties to be similar insofar as reproaches about the installation and the concealment of a prohibited manipulation device are concerned. SDEJ's claim under V.b.i. is therefore admissible to that extent. SDEJ's claim under V.b.iii to set aside the agreements on this ground can also be assessed collectively. The same applies to the question of joint and several liability (claim V. b. iv.).

As far as information provided by defendants about the vehicles is concerned, the situations of the alleged injured parties vary so much that the allegations relating to them do not lend themselves to bundling.

7.42. Taking into account what has been considered above, the interests of the aggrieved parties are also similar insofar as they relate to conduct of the Car Manufacturers and Stellantis B.V. allegedly imputable to the Car Dealers (SDEJ's claim under V.b.ii.). What SDEJ senses about why conduct of the Car Manufacturers and Stellantis N.V. is imputable to the Car Dealers, namely because of the role of an importer and a car dealer in the production and sales process and society's views on it, does not require an individual assessment per car dealer, but applies to all car dealers. To that extent, therefore, this claim is admissible.

7.43. Claim V.a. of SDEJ, which concerns the reflex effect for small self-employed persons, cannot be assessed collectively. To answer the question whether a self-employed person can invoke the protection due to consumers under the Unfair Commercial Practices Act, the individual circumstances of the person concerned are important, including whether the vehicle was bought partly for private use. In claim V.a. SDEJ is thus inadmissible.

7.44. SEC and SCC have not formulated separate claims in respect of unfair commercial practices, but they do base their tort claims partly on acts contrary to the Unfair Commercial Practices Act. In that case, the same applies as considered above. This also means that SCC is inadmissible in its claim 5 (declaration that small self-employed persons are to be regarded as private individuals).



\* *Claims by SCC and/or SDEJ Jie are based on non-conformity and non-performance.*

7.45. These are SCC's claims under 7.i. to 7.iii and 9. From SDEJ, these are the claims under V.d.i. to V.d.iv. To these, SEC and SDEJ have essentially based their claims that the affected vehicles are non-compliant due to the presence of the alleged prohibited manipulation device. To this they then attach the right to (partial) rescission, price reduction and/or case replacement. These claims are mainly based on Article 7:17 et seq. of the Civil Code.

#### Declarations of right non-conformity

7.46. Firstly, SCC and SDEJ seek declarations of law that the affected vehicles do not possess the properties required for normal use (non-conforming).

7.47. The Car Dealers have argued that the non-conformity claims do not lend themselves to bundling. To this end, they have argued the following. In a non-conformity claim, the specific communications made by the Car Dealers must be taken into consideration. The question of what communications the Autodealers made to each interested party and what characteristics each interested party was entitled to expect under the contract concluded with him or her can only be determined on an individual basis. This is because there are all sorts of differences in the statements made by the dealers and the content of the individual agreements. Therefore, the question of whether the vehicles have the properties that different purchasers were entitled to expect on the basis of the Car Dealers' statements or the content of the agreement cannot be answered in general terms.

7.48. The court considers that if the alleged allegation about the presence of a **prohibited manipulation device is established, the positions of the car owners will then** coincide on that (essential) point (see 7.41). The court further considers that it cannot be excluded beforehand that the alleged circumstance, that a vehicle is fitted with a prohibited manipulation device and therefore does not comply with the applicable regulations, should be qualified as non-compliant. Whether this is so is a question that can be answered in general terms. In this context, it is also significant that nothing was communicated to car owners about the presence of the alleged prohibited manipulation device. In any case, the information that was provided by Car Dealers, which may indeed have varied from case to case, did not have the purport of warning of the presence of a prohibited manipulation device or informing that the vehicle did not comply with the applicable regulations. Therefore, to that extent, the differences in what was communicated to the buyers and lessees do not preclude bundling. This means that SCC is admissible in its claim under 7.i. and SDEJ in its claim under V.d.i.

#### Declarations for right reasonable time to repair or replace

7.49. SCC's claims under 7.ii. and SDEJ's claims under V.d.ii. concern declarations that the reasonable time to repair or replace the (alleged) defects in the affected vehicles had expired unused. Underlying this

laid that independent repair by the Car Dealers is not (technically) possible in this case and that the Car Dealers did not respond to a request from SCC of 21 October 2021 to proceed to recovery. The correctness of these contentions, which apply to all car owners, can, in the court's view, be assessed without considering individual circumstances. SCC is therefore admissible in its claim 7.ii and SDEJ in its claim V.d.ii.

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7.50. SCC claims that the court should declare partial rescission of the purchase agreements between the Car Dealers and car owners (claim 9). SDEJ seeks a declaratory judgment that car owners have the power to rescind their contracts (claim V.d.iv.)

7.51. According to the Car Dealers, the claims in respect of rescission pursuant to Article 6:265 of the DCC are not amenable to collective assessment, because both the question whether there is a default and the question whether the alleged default justifies rescission depend on the individual circumstances of each individual car owner. Similarly, rescission under Section 7:22(1)(a) of the Civil Code does not lend itself to collective application for similar reasons, as this provision has an equivalent to the default requirement (namely, the duty to complain from Section 7:23 of the Civil Code) and also requires that the defect justifies rescission. Furthermore, according to the Car Dealers, no claim for impairment of legal acts can be honoured under the old collective action law.

7.52. The court has already ruled above (in 7.48) that the claimed declarations of law with respect to non-conformity are similar. The claimed declarations of rights with regard to dissolution are an extension of this, because dissolution is one of the remedies in the event of non-conformity (see Article 7:22 paragraph 1 under a of the Civil Code). On the basis of Article 7:22(1)(a) of the Civil Code, it must be assessed whether a vehicle involved that has a prohibited manipulation device complies with the agreement. Whether a vehicle in question containing a prohibited manipulation device constitutes a deviation from what was agreed, which justifies the consequences of dissolution, can, it seems, be answered in general terms. Individual circumstances need not be taken into account in this judgment. Nor is it excluded a priori that the default requirement has been met in this case on a basis that applies to all car owners given the nature of the alleged defect in performance. The question whether the Car Dealers can invoke the "unless formula" of Section 6:265 of the Civil Code may be raised in individual follow-up proceedings following a collective judgment of non-conformity. This means that SCC is admissible in claim 9 and SDEJ in claim V.d.iv.

Reduction of the purchase price

7.53. SCC seeks a declaratory judgment that certain car owners are entitled to reduce the purchase price on partial rescission (claim 7.iii).

7.54. The Car Dealers took the position that in assessing this claim, as with the other claims in relation to dissolution, individual circumstances must be taken into account in each case, so that this claim cannot be assessed collectively.

7.55. The court does not follow the Car Dealers in that position. In the event that the Foundations' allegations are justified, the question of whether a purchase price reduction is warranted in a partial rescission based on the alleged non-conformity can be answered in general terms. Moreover, it cannot be ruled out that in this case, the extent of a purchase price reduction due to the alleged presence of a manipulation device (which circumstance would apply to all car owners) can also be judged in general terms. In that case, individual circumstances can be abstracted from. SCC is therefore admissible in claim 7.iii. In line with this, SCC is also admissible in claim 7.vi. which relates to the owing of statutory interest on a price reduction. Indeed, the question of whether statutory interest is due can also be answered in general terms.

#### Case replacement

7.56. SDEJ seeks a declaratory judgment that the car owners are entitled to claim replacement of the vehicle from Stellantis B.V. or the relevant car dealer (claim V.d.iii.).

7.57. SDEJ based that claim on the following. As the cars are non-compliant, there is a shortcoming and the buyers are entitled to replacement of the vehicles under Section 7:21(c) of the Civil Code. The deviation from the agreement justifies the replacement, while, moreover, this is a consumer purchase so that the seriousness of the deviation does not play a role under paragraph 4 of Section 7:21 of the Civil Code. Possible recall actions do not outweigh case replacement, as it is unknown and not plausible that these will provide relief.

7.58. Stellantis c.s. submitted the following against this. In the absence of a contractual relationship, it is unclear on what basis SDEJ is claiming for its constituencies that Stellantis c.s. should replace the cars. In addition, this claim (also) does not allow for a generic and collective assessment. When answering the question whether the Car Manufacturers and the Importer are obliged to take back the affected vehicles and replace them with a new one without being entitled to compensation, all specific circumstances concerning the type of vehicle should always be considered. Combining alleged constituency interests in a collective action is therefore neither effective nor efficient.

7.59. The Car Dealers argued that SDEJ should be declared inadmissible in this claim. According to them, this claim fails the similarity requirement.

7.60. The court has already ruled above (7.48) that the claimed declarations of law regarding non-conformity are similar. The claimed declaration

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for law in relation to matter replacement is an extension of this, as replacement is one of the remedies in the event of non-conformity. To the extent that non-conformity is based on the circumstance that a vehicle contains a prohibited manipulation device, it can in principle be answered in general terms whether that circumstance then entitles to replacement of the vehicle. Individual circumstances need not be taken into account to that extent. This means that SDEJ is admissible in claim V.d.iii.

The question of the financial impact of case substitution is addressed below in 7.67 and onwards.

*\* Progress of SCC and SDEJ based on dwciling*

7.61. These concern SCC's alternatively claimed declarations of law under 7.iv. and 7.v., as well as the alternatively claimed partial annulment under 10. For SDEJ, these include the claimed declarations of law under V.c.

7.62. SCC and SDEJ based this on the following. The agreements between the car owners and the Car Dealers are voidable (in part) on the grounds of error. The car owners assumed incorrectly that the vehicles complied with the law and were not fitted with a prohibited manipulation device. SCC added that it was also misled about the green character' of the vehicles. These were wrongly touted as eco-friendly. Both the (non-)compliance with the law and the environmental (un)friendly character concern an essential feature. According to SCC and SDEJ, there was (in any case) a mutual mistake (Section 6:228(1)(c) of the Dutch Civil Code). SCC further argued that incorrect or incomplete information had been provided (Article 6:228(1)(a) and (b) of the Civil Code). In the event of a correct representation, the agreements would not have been concluded, at least not on the same terms, SCC and SDEJ argued.

7.63. The Car Dealers have taken the view that a collective assessment of the claim of error is not possible. To this end, they submitted the following. The causal link between the misrepresentation and the legal act entered into can, in principle, only be answered on an individual basis. The only situation in which a collective assessment might be possible is if the property about which one errs is so essential that no right-thinking person would have entered into the contract if the facts had been correctly presented. This is not the case here, even if it were established that the emission control systems did not meet the legal requirements. The degree of environmental awareness varies from one individual to another. Therefore, it cannot be collectively held that no car owner would have purchased the vehicle under the 'correct' representation made by SCC and SDEJ. Other questions involved in a claim of error, which by definition can only be answered individually, include: i) which car dealer was involved, ii) what knowledge was assumed by the car dealer involved, iii) what knowledge did the buyer or lessee involved have, iv) what information was provided and how could that provided information be understood by the buyer or lessee and vi) at what times were the vehicles purchased. A claim of error also requires a timely complaint under Section 7:23 of the Civil Code. Whether a timely complaint was made can only be determined on an individual basis.

7.64. The court considered as follows. In general, a reliance on error requires an assessment of individual circumstances on the part of the interested party and their influence on the formation of the will. In this case, however, all car owners are concerned with exactly the same circumstance, namely the unawareness of the (alleged) presence of a prohibited manipulation device at the time of purchase of the vehicle and the consequent failure to comply with the applicable Dutch and European laws and regulations. It cannot be ruled out beforehand that this circumstance carries so much weight that it could lead to the granting of the requested declaratory judgment even without additional individual circumstances. The same applies to car owners' unfamiliarity with the (possibly) less environmentally friendly performance of the vehicles. The interests of the car owners are therefore sufficiently similar to that extent to be assessed in a collective action. Whether the presence of a prohibited Manipulation Device and/or the less environmentally friendly performance of a vehicle are such essential characteristics that no right-thinking buyer would buy the vehicle in question upon knowledge thereof will be assessed at the substantive stage of the proceedings. Whether a timely complaint was made may possibly be answered in general terms if it were established that the alleged defect (the presence of a prohibited manipulation device) could not reasonably have been discovered by an individual buyer.

7.65. In conclusion, SCC's subsidiary claims under 7.iv. and 10, as well as SDEJ's claim under V.c., are bundleable.

7.66. SCC has also taken the view that the car owners are entitled to a price reduction as a result of the alleged error (on grounds of partial annulment). This claim is also bundleable, so that SCC is also admissible in its subsidiary claim 7.v. When it comes to the extent of the price reduction following a successful reliance on partial annulment, the same applies as considered in 7.55.

*VorJeringeri of SDEJ ntet provision on compensation for non-use or depreciation*

7.67. This relates to SDEJ's claims (primary, subsidiary and more subsidiary) under V.e. VI.a. to VI.d. All these claims seek a finding that the car owners are not liable to pay any compensation in connection with the use of the vehicle or its depreciation in value to the Car Manufacturers, Stellantis B.V. or the Car Dealers in the event of destruction, dissolution or case replacement. According to SDEJ, it is wrong and unreasonable in all cases to award a use or value fee because of the deliberate and structural deception by the Car Manufacturers attributable to each of the defendants.

7.68. Stellantis c.s. and the Car Dealers have argued that the claims about whether or not a user fee should be established require an individual assessment. Indeed, this requires an assessment of whether the purchaser who has used a vehicle over several years has been enriched thereby, or the party to whom the vehicle is being returned thereby impoverished and whether compensating damages for unjust enrichment is reasonable. This will vary from case to case. The question of whether a user fee is

due thereby depends on individual circumstances, such as the number of years the vehicle has been used and how many kilometres it has been driven. It is clear that the differences in number of years and degree of use between the interested parties are huge, Stellantis et al and the Car Dealers said.

7.69. The court considered as follows. Only SDEJ's position, that it is wrong and unreasonable in all cases to award any use or value compensation because of the deliberate and structural deception by the Car Manufacturers that would be attributable to each of the defendants, can be assessed in its generality. Indeed, that position is based on the premise that the specific circumstances of the individual car owner do not matter because of the intentional deception. To that extent, SDEJ's claims based thereon lend themselves to bundling.

7.70. For the rest - that is, to the extent that it is held in the main action that the aforementioned position of SDEJ is not followed - the aforementioned claims do not lend themselves to collective assessment. After all, if it is established that, in determining the consequences of a (partial) annulment, rescission or case replacement, the defendants do have a claim for compensation in connection with the use of the vehicle and/or its diminution in value, then the determination of its amount, the individual circumstances of car owners, such as the condition of the vehicle, are taken into account.

7.71. In conclusion, taking into account what has been considered above, the interests are sufficiently bundleable. To that extent, SDEJ is admissible in its claims V.e. and VI.a. to VI.d.

*\* Do the Bovag terms and conditions preclude a collective assessment of ele claims against the Car Dealers?*

7.72. In the context of bundling claims, the Car Dealers finally pointed to the difference in contractual relationships between consumers and business drivers. The Car Dealers took the position that the legal relationships between the Car Dealers and individual business drivers are governed by the Bovag Terms and Conditions Business Market 2008 and later the Bovag Terms and Conditions Business Market 2017. According to the Autodealers, those general terms and conditions contain provisions that prevent a collective assessment of claims against the Autodealers. These include a limitation of liability for damages, the exclusion of reliance on non-conformity, a short complaint period and a rejection of any general terms and conditions of the business buyer or client's own. It should also be assessed on an individual basis whether the general terms and conditions have been made available by the car dealer and apply to the contract.

7.73. In what the Car Dealers have argued about the Bovag conditions, the court sees insufficient reason to declare SCC or SDEJ inadmissible in one or more of their claims. When it comes to the limited compensation obligation, the extent of damages is not an issue in these proceedings because of the applicability of the old collective action law. Furthermore, it will have to be assessed in the main proceedings whether (also) the corporate buyers can exercise the rights granted to them by law in the event of non-

conformity. It will be possible to assess that at least in part collectively. When it comes to the time limit within which a complaint must be filed, it is not excluded that general questions must also be answered for that purpose, such as the question whether a complaint can be required. Thus, the Car Dealers' reliance on the Bovag conditions does not mean that the assessment of one or more claims is necessarily and entirely limited to an assessment of the individual circumstances of a person concerned.

*The conclusion on the similarity requirement*

7.74. In conclusion, the Foundations' claims - with the exception of those seeking payment of monetary damages - lend themselves, for the most part, to collective assessment in these proceedings.

*The guarantee requirement*

7.75. Article 3:305a paragraph 2 (oiid) of the Civil Code stipulates, among other things, that an interest organisation is inadmissible if the legal action does not sufficiently safeguard the interests of the persons for whose benefit the legal action is brought. This so-called safeguard requirement aims in particular to bar incompetent organisations or organisations with impure motives. The requirement provides the court with a handle to critically assess the admissibility in a collective action in case of doubt about the motives for bringing the action.

The question of whether the collective action adequately safeguards the interests of the persons concerned must be assessed on the basis of the facts and circumstances of the specific case. That test must take place on the basis of the situation as it stands ('ex nunc'). In doing so, according to the legislative history, two central questions must be answered in the event of a dispute:

1. to what extent those affected will ultimately benefit from the collective action if the claim is upheld; and
2. To what extent can the claimant organisation be trusted to have sufficient knowledge and skills to conduct the proceedings.

Viewpoints that may play a role here in a general sense include<sup>5</sup> :

- a. What other work has the organisation done to advocate for the interests of stakeholders and has the organisation actually been able to achieve objectives in the past and,
- b. if it is an ad hoc organisation, it has been set up by a pre-existing organisation that has successfully represented the interests of those affected in the past,
- c. how many injured parties are affiliated with the organisation and to what extent they support the collective action; and
- d. Whether the organisation complies with the principles in the Claims Code.

7.76. The Claim Code as referred to in point of view d, is a document drafted by the Claim Code Committee in 2011 and revised and supplemented in 2019, which elaborates principles that organisations acting, like the Foundations, under article 3:305a (old) of the Civil Code must comply with. The Claim Code is a form of self-regulation by

<sup>5</sup> Parliamentary Papers 11 2011-2012, 33 126. no. 3 (MoT), p.12-13

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involved market parties, intended to prevent proliferation of legal entities acting in accordance with Article 3:305a (old) of the Dutch Civil Code and to ensure that the interests of injured parties are safeguarded and not the (commercial) interests of the founders of these legal entities. Compliance with the principles of the Claim Code is not a legal condition for admissibility, but since 1 July 2013, the Claim Code has an indirect anchorage in the law, via Article 3:305a(2), last sentence, (old) Civil Code. When answering the question whether and to what extent it may be relied upon that the claimant organisation has sufficient knowledge and skills to represent the interests of the persons for whom it claims to act, an indication may be that the organisation complies with the 'principles' contained in the Claim Code. Compliance or non-compliance with the principles of the Claim Code is therefore an important viewpoint when assessing whether the interests of aggrieved persons are sufficiently safeguarded. Deviation from the principles and elaborations of the Claim Code may be justified under special circumstances.

7.77. Stellantis c.s. took the view that the Foundations were inadmissible because none of them met the guarantee requirement. Stellantis c.s., in addition to points of view a to d, also pointed to two factors mentioned in the legislative history: i) whether the Foundations act as interlocutor for the government or as a mouthpiece in the media and ii) whether the Foundations have a possible be able to effectively enforce convicting judgments against foreign defendants. It further argued, inter alia, that none of the Foundations is representative. The Auto Dealers joined Stellantis et al's position and its substantiation, insofar as it concerns the admissibility of SCC and SDEJ.

7.78. The court will assess below on the basis of the points of view whether the Foundations meet the guarantee requirement.

*Viewpoints a and b (track record and ad hoc organisation)*

7.79. The Foundations have argued - very briefly - that they have sufficient experience and expertise to engage in advocacy.

7.80. Defendants have argued that SEC and SDEJ have little or no track record yet and that the Foundations are ad hoc organisations.

7.81. The court finds that testing against these viewpoints does not prevent any of the Foundations from meeting the guarantee requirement. The circumstance that the Foundations were set up specifically to carry out collective actions does not mean that the Foundations do not meet the guarantee requirement. After all, it is allowed to establish organisations with the (main) purpose of conducting collective action.

7.82. A track record is recommended but is not a prerequisite for filing a class action. Both SEC and SDEJ have been conducting several class actions for some time. So both do have experience in conducting these kinds of proceedings. That SEC and SDEJ do not have a track record, in the sense that the other collective actions they have



have not yet been completed, does not mean that they do not satisfy the guarantee requirement. The same applies to the fact that SEC was declared inadmissible at first instance in one of those other proceedings because the time limit under Section 1018d Rv was exceeded.

7.83. SCC already has a demonstrable track record. It has conducted proceedings against Volkswagen, among others, which led to a final judgment.<sup>16</sup>

7.84. The rest argued by the Foundations shows that in addition to conducting these proceedings, they are sufficiently committed to the interests of their constituents, including through cooperation with consumer organisations.

*Viewpoint c (representativeness)*

7.85. As a starting point, Article 3:305a (old) of the Civil Code, unlike the current Article 3:305a(2) of the Civil Code, does not require the interest organisation to be sufficiently representative to be admissible in a collective action. However, (the degree of) representativeness (or lack thereof) of an interest organisation can be taken into account when assessing whether the guarantee requirement has been met. The legislative history emphasises that the number of injured parties affiliated with an interest group is not a formal requirement. However, it does constitute an important indication that the guarantee requirement has been met. Furthermore, if the group of persons on whose behalf the claim has been brought is of such a size that named litigation is easy to achieve, bringing a collective action is not efficient and effective.

7.86. The court finds that the Foundations are sufficiently representative in the context of the guarantee requirement, having regard to the assessment framework set out at 7.75 to 7.77 and 7.85 above, and to this end considers the following.

7.87. The Foundations explained that the Dutch constituency they represent consists of hundreds of thousands of aggrieved people. In the relevant period, around 310,000 and over **300,000** diesel vehicles were sold (or registered as new 'Affected Vehicles') in the Netherlands, respectively, according to SDEJ and SCC. SEC has estimated the number of affected persons at 394,000. Given these numbers, there is no doubt that the group of persons on whose behalf the Foundations have brought the claims is so large that individual litigation is not easily achievable and, on the contrary, bringing a class action is efficient and effective.

7.88. Furthermore, SEC, SCC and SDEJ explained at the hearing that, at that time, 5,000, 8,000 and 12,000 Dutch data subjects, respectively (rounded up), had registered or notified themselves as injured parties. The defendants objected that the Foundations mentioned numbers of applications for the first time at the hearing. Those numbers were not substantiated and the Foundations did not provide participation agreements or affiliation agreements, so it cannot be determined how many and which end-users support the collective actions, the defendants said. The court sees no reason to doubt the stated numbers.

\*<sup>o</sup> Amsterdam District Court. 14 July 2021, ECLI:NL:RBAMS:2021:3617.

Also in view of the fact that each of the Foundations has a generally accessible website and is thus easy to find, it is plausible that a substantial number of car owners have reported to the Foundations. The fact that Stellantis c.s. and the Car Dealers - as they claim - have so far not received any (emission-related) complaints from users of diesel vehicles themselves, needless to say does not mean that those involved have not reported to the Foundations. The court therefore assumes that there is a concrete constituency that would benefit from and actually support this collective action.

Moreover, the submission of participation agreements or aansluit agreements is not a **requirement** for admissibility. The Foundations are bringing this collective action in their own name to represent the interests of third parties. They are not acting as legal representatives of those others. The Foundations are therefore not required to document who joined them.

7.89. Unlike Stellantis c.s. and the Car Dealers have argued, it is sufficiently clear which stakeholders each of the Foundations represents. Reference is made to 5.9. Finally, the Car Dealers argued that the Foundations have not stated anything about the composition of their constituency, so that it is unclear whether and how many alleged interested parties have purchased a vehicle through a car dealer. The court considered that in the context of representativeness, concrete numbers are not necessary on this point and it is therefore not necessary to determine how many alleged interested parties have bought a vehicle from an (individual) car dealer. In view of the circumstance that it is undisputed that the sued Car Dealers constitute the entire Peugeot, Citroën, DS and/or Opel dealer/distribution network in the Netherlands, it is obvious that a large proportion of (Dutch) car owners bought their vehicle from a sued Car Dealer. That is enough.

7.90. Stellantis c.s. and the Auto Dealers have further argued that there is no evidence that SEC, SCC and SDEJ have acted as interlocutors with the government or as mouthpieces in the media. Nor, according to the defendants, have the Foundations made it clear how any judgment against the foreign defendants could be enforced.

7.91. On the first point, acting as an interlocutor of the government or as a mouthpiece in the media, these are circumstances mentioned in the Explanatory Memorandum<sup>17</sup> as a possible indication that the guarantee requirement has been met. Of course, the reverse does not follow from this, namely that if these are not present, the guarantee requirement has not been met. The enumeration in the Explanatory Memorandum is not cumulative. Admissibility does not require that all the points of view formulated by the legislator be satisfied. Even if certain points of view are deviated from, the representation of interests by the interest organisation may be sufficiently guaranteed. To the extent that one or more of the Foundations does not currently act as an interlocutor with the government and/or as a mouthpiece in the media, this does not weigh heavily for the court. On the second point, it is very important that any convicting judgment can be enforced, as otherwise those involved will not benefit. In this

<sup>17</sup> Parliamentary Papers 11, 2011/12, 33126, 3, p. 13 (MoT).

proceedings also involve defendants domiciled in the EU and the US. Concrete insurmountable problems in the recognition and enforcement of any convicting judgment in this case (and in individual follow-up proceedings) in the European member states or the US are not known to the court, nor has Stellantis et al. concretised them.

*Viewpoint d (the principles of the Claitticode)*

7.92. Defendants argue that the Foundations do not comply with principles II, III, IV and VII of the 2019 Code of Claims.

7.93. Principle II concerns the non-profit representation of collective interests and reads as follows: "(...) *It is clear from the statutory objective, the actual work ciciniiniation and the governance of the interest organisation that the interest organisation and the (legal) persons directly or indirectly associated with the interest organisation have no profit motive bf ele exercise vcin their activities.*"

7.94. Principle III concerns external funding and reads as follows: "*The interest organisation may enter into an agreement itiet a solid external fincancier for the benefit of its statutory work. The board ensures that individual directors and members of the supervisory board, as well as the coordinators or other service providers engaged by the interest organisation, are independent and autonomous from the external financier and the (legal) persons directly or indirectly affiliated with it, and that the external financier and the (legal) persons directly or indirectly affiliated with it are independent from the counterparty in the collective action. The overeeiikoitst provides fii an arrangement that ensures ele independence and autonomy referred to in the previous sentence. The board shall ensure that the financing conditions (including the receipt and system of compensation to be agreed upon) do not reasonably conflict with the collective interest of ele (legal) persons for whose benefit the interest organisation acts pursuant to its statutory objective.*"

7.95. Principle IV concerns independence and avoidance of conflict of interest. This principle reads as follows: "*The board is santated so that the members can operate independently and critically in relation to each other, the supervisory board, any external financier and stakeholders in ele interest organisation.*"

7.96. Principle VII concerns the supervisory board and reads as follows: "*The stjChting has a racid of supervision, consisting of at least three natural persons, no more than one of whom is benoentd on the nomination of any financier. The task of the supervisory board is to supervise the policy and strategy of the board and the general course of affairs within the foundation. Hfer also includes financial supervision and the exercise of those duties and powers assigned to the Supervisory Board in this code and the foundation's articles of association. The Supervisory Board provides solicited and unsolicited advice to the Executive Board on all important matters and, in' the performance of its duties, focuses on the interests defined in the foundation's statutory objectives.*"

7.97. The court first notes that each of the Foundations has committed itself to the provisions of the Claims Code according to its own articles of association. Each of the Foundations also undertook to account for its governance structure in relation to the requirements of the Claims Code (including through so-called Claims Code compliance documents published on its website).

*\* Objections by Stellantis c.s. itethe governance vcin SEC*

7.98. According to Stellantis et al, there is a conflict of interest in SEC governance because of the influence of the US law firm Hagens Berman Sobol Shapiro LLP (hereinafter: Hagens Berman), which acts as a financier of SEC. Stellantis et al **pointed** to the influence of Steve Berman, who is founder, managing partner and shareholder of Hagens Berman and is also a member of SEC's supervisory board. Since Hagens Berman receives 25% of any compensation to be realised, Berman has a personal financial interest in the outcome of these proceedings. The position of Berman is thus, according to Stellantis et al, also in violation of Articles 10.2 and 10.3 of SEC's own articles of association. Moreover, SEC erred in failing to disclose Berman's multiple capacities on its website.

In addition, according to Stellantis et al, several of SEC's directors also have roles with the financier. To this end, it submitted the following. The board of SEC is also formed by Sergei Purewal (bestutirs chairman), George Bisnought and Michael Gallagher. Purewal and Bisnought are employed by a company affiliated to Hagens Berman and are therefore not independent and autonomous. They also have an interest in maximising the financial benefit to Hagens Berman. Gallagher sits on both the SEC board and that of an affiliate of the funder, so he too has a conflicting secondary function.

7.99. SEC refuted at the hearing that Purewal and Bisnought had been employed by Hagens Berman or an affiliated company in the past. According to SEC, Purewal and Bisnought performed work through their companies only on an assignment basis. That was for a lender-affiliated company (Hagens Berman EMEA LLP). Incidentally, Purewal did join Hagens Berman with effect from 1 March 2023 and for that reason he resigned as a director at the SEC's board meeting of 23 February 2023. Bisnought also resigned with effect from that date. With this, the SEC board now consists of three rather than five people. Three directors are sufficient under the articles of association. Regarding Gallagher, SEC pointed out that Gallagher had never been a director of SEC, but only had a facilitating role and had been appointed as a 'non-voting and non-paid board member foundation director'. SEC now no longer uses the services of Gallagher. The SEC says Berman's position is in line with the Claims Code and to the extent that it would not be, the SEC is free to depart from the Claims Code on this point.

7.100. The court found that the original filling of the SEC board was at odds with the Claims Code and SEC's own bylaws because of Purewal's and Bisnought's board membership and Gallagher's role within SEC, on the one hand, and their work for and role with the lender, or at least affiliates, on the other. Meanwhile, Gallagher is no longer involved in SEC and make

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Purewal and Bisnought are also no longer part of the SEC board. This makes their role, whatever else may be said about it, moot. At the hearing, Stellantis c.s. pointed out that the Chamber of Commerce register still lists Purewal and Bisnought as directors. In response, SEC said that it could be that the resignation has not yet been processed at the Chamber of Commerce, as the board meeting of 23 February 2023 took place recently. SEC's lawyers stated at the hearing that they had been present at the board meeting and they confirmed that Purewal and Bisnought had stepped down. Given that statement, the court assumes that Purewal and Bisnought are no longer directors. They were also, it is not in dispute, no longer listed on the SEC's website at the time of the hearing.

7.101. Regarding Berman's role, the court finds that his position is not incompatible with the requirements of sound governance. Berman is a member of SEC's supervisory board and also has an influential position with SEC's financier as a director and shareholder of Hagens Berman (and its affiliates). Berman also has a personal interest in the outcome of these proceedings, as he communicates through Hagens Berman if these proceedings result in a positive outcome for (SEC's supporters). However, Berman's position does not mean that SEC's governance is inadequate. Indeed, the Claims Code allows (only) in respect of the supervisory board that one of its members (other than the chairman) be appointed on the recommendation of the funder (see principle VII, elaboration 3, of the Claims Code). Thereby, the Code of Claims allows a limited form of participation on the part of the funder. The parties differ on whether the Claim Code leaves room for the appointment of (someone from) the funder itself to the supervisory board (instead of the appointment of a third party nominated by the funder to the supervisory board). The court does not see a substantial difference here, as the degree of control from the financier is the same, as it may be assumed that a third party nominated by the financier also speaks on behalf of the financier. There is no decisive or unacceptable influence or control from the funder in this case with Berman's membership of the supervisory board. In fact, in addition to Berman, the supervisory board consists of three more people, all of whom are independent of the funder. Nor is Berman the chairman of the board of supervision. Furthermore, the SEC board is in charge of managing the foundation. The role of the supervisory board is limited to supervising the board's policy and strategy. SEC's (current) directors are independent of the funder.

Moreover, SEC explained that its funding agreement with Hagens Berman provides that control over the litigation and settlement strategy lies solely with the interest group. It follows from the above that SEC can operate sufficiently independently from its external funder. The court therefore concludes that the interests of the injured parties are sufficiently safeguarded by SEC's governance.

*\* Objections by Stellantis c.s. and the Car Dealers tnet relativfng rot the governance of SCC*

7.102. With regard to SCC, Stellantis c.s. and the Car Dealers argued that (i) SCC is not transparent about its external financing and that (ii) the independence of SCC's management and supervisory board members is not verifiable. This creates a violation of principles 11, III, IV and VII of the Claims Code. This has been refuted by SCC.

7.103. The court ruled as follows. Contrary to what Stellantis c.s. and the Car Dealers have argued, it is clear who SCC's financier is. Its summons states that Fortress is its financier and SCC has not stated otherwise. The defendants have thus wrongly assumed that Labaton would be SCC's financier and they have raised a variety of objections against Labaton. Those objections can remain unchallenged. It was subsequently explained at the hearing by SCC that the financing agreement was concluded with an operating entity under Fortress, CF ND Car Ltd, based in the Cayman Islands. This also makes it sufficiently clear how the financing took place. In response, Stellantis c.s. argued that it cannot assess SCC's governance because, under applicable Cayman Islands law, the operating entity can, for example, issue bearer shares allowing shareholders to remain anonymous. In this way, it is uncontrollable whether directors or supervisory directors of SCC themselves have a financial interest through an interest in the funder, Stellantis c.s. The court considers that Stellantis c.s. has not sufficiently substantiated that the directors or shareholders of the funder have ties with SCC. The fact that the funding entity can issue bearer shares does not mean that it did so in this case. Stellantis c.s. has not provided any concrete evidence in this regard. SCC has stated that the financier has not nominated any members for the supervisory board or board of directors and that there are no impermissible relationships with the financier from within SCC's management or supervisory board. As Stellantis c.s. did not further substantiate its claims, the court sees no reason to question SCC's statement, which is in line with its articles of association.

*\* Objections by Stellantis c.s. and the Autocleclers tnei regarding ele governance of SDEJ*

7.104. In relation to SDEJ, Stellantis c.s. and the Car Dealers argued, inter alia, that there was a conflict of interest in governance because of Gregory Coleman's influence. As it emerged at the hearing that Coleman has stepped down as a member of the supervisory board, the court will not discuss the objections to his various roles.

7.105. Furthermore, Stellantis c.s. and the Autodealers have pointed to the involvement of Orlando Kadir, one of the directors of Corpocon Legal/Letselenschadeclaim.nl B.V. That company is one of the founders of SDEJ's financier, Consumer Justice Network B.V. (hereinafter: CIN). According to Stellantis c.s. and the Car Dealers, Kadir is highly controversial, but in the court's view, it remained unclear whether Kadir's position would give him influence or control over SDEJ. As influence or control has not been shown, the court ignores the contention of Stellantis c.s. and the Autodealers.

7.106. In addition, Stellantis et al and the Car Dealers argued at the hearing that CIN, as a funder of SDEJ, has a far-reaching influence on SDEJ's litigation and settlement strategy. They based this view on a funding agreement between CIN and lus Omnibus - a Portuguese claims organisation - submitted in a Portuguese class action on alleged diesel emissions fraud. That financing agreement, which Stellantis c.s. sent prior to the hearing, included provisions, which, according to Stellantis c.s. and the Car Dealers, meant that the Portuguese

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claim organisation may not enter into a settlement without consulting CIN, that the claim may not be reduced without CIN's consent and that CJN must give permission for an attorney change.

7.107. SDEJ countered that the funding agreement between SDEJ and CIN does not have the same content as the funding agreement between the Portuguese claim organisation and CIN. According to SDEJ, the decision-making power on the litigation and settlement strategy lies solely with it, while the funder only has a consultation right. The funding agreement with SDEJ does not state that the funder must consent to a lawyer change, nor does it state that no settlement may be entered into without the funder's consent, SDEJ said.

7.108. The court considered that although the funding agreement between CIN and the Portuguese claim organisation was a different agreement from the funding agreement between CIN and SDEJ, since it was the same funding party, it did raise the question of whether CIN, as the funding party, had negotiated the same or similar terms towards SDEJ regarding the litigation and settlement strategy. It follows from principle III of the Claims Code that control over the litigation and settlement strategy should lie with (the board of) the interest group. In view of the reasoned position taken by *Stellantis c.s. and the Car Dealers*, in this case it is for SDEJ to (further) substantiate its dispute that its financing agreement with CIN has a different content on this point.

7.109. Since *Stellantis c.s. and the Autodealers* did not raise this issue until the hearing, SDEJ will be given the opportunity to introduce the relevant provisions of its financing agreement with CIN by deed and to explain (in more detail) on the basis thereof that the control over the litigation and settlement strategy lies exclusively with (the board of) SDEJ. The relevant provisions mean all provisions in the financing agreement that contain anything about the control (in the broadest sense) of SDEJ, as well as all provisions that contain anything about the rights and powers (in the broadest sense) of the funder, always in relation to the litigation and settlement strategy.

*\* Objections not related to remuneration for Foundations*

7.110. Finally, *Stellantis c.s. and the Car Dealers* have argued that the Foundations are not sufficiently transparent about the fees paid to the external funders and that it is not clear what part of the percentage they retain in the event of final compensation is used to reimburse costs incurred.

7.111. The Foundations have included in their participation agreements with their participants that they are (under circumstances) entitled to compensation for costs incurred by them (if they fail to make the costs they have incurred part of a settlement or court judgment). SDEJ is the only one applying a **fee** of up to 27.5%, which is 2.5% **more** than SCC and SEC. The maximum fee charged by SCC and SEC is equal to the upper limit of the 10% to 25% range previously adopted in case law (see Amsterdam Court of Appeal 13 July 2028, ECLI:NL:GHAMS:2018:2422), as also included in the

notes to the Claims Code. The fee for SDEJ is even above that. SDEJ provided a summary explanation for this when asked. The court is not yet convinced that a percentage of 27.5% is justified. The higher the percentage of the fee to be charged by a claims foundation, the more difficult it may be to reach a settlement. This is not in the interest of SDEJ's supporters. Moreover, it is unclear what part of the percentage that the Foundations will deduct from any compensation will be used to reimburse costs incurred by them. At this stage, however, this is not yet a reason for declaring SDEJ or the other Foundations inadmissible, as this issue will only be fully addressed when declaring a possible settlement agreement generally binding in WCAM proceedings (Article 7:907-910 BW and 1013-1018a Rv). In WCAM proceedings, it can still be ruled that the interests of the Foundations' supporters are insufficiently safeguarded for the reasons mentioned above. The court will not draw any consequences from this in these proceedings, in which the collective claims of the Foundations, due to the applicability of the old collective action law, concern declarations by right and not monetary damages. The court does recommend that SDEJ bring its compensation in line with the range previously adopted in case law.

#### *Conclusion on admissibility*

7.112. The conclusion from the foregoing is that SEC and SCC are admissible as interest groups. The decision on the admissibility of SDEJ is stayed pending further information to be provided by it on the content of its funding agreement with CJN (see 7.109).

### **8. Applicable law**

8.1. In accordance with the established procedural order, the question of the applicable law to the Foundations' claims against the foreign defendants also arises at this stage of the proceedings. In view of the foregoing, that leaves the claims brought by SCC and SDEJ on behalf of Dutch car owners against the EU defendants, GM Holdings and GM Company. Those claims, in brief, are based on the fact that the aforementioned defendants acted unlawfully.

8.2. The applicable law to an alleged tort must be determined by reference to Regulation Rome II." When interpreting concepts used in the Rome II Regulation, the court is free to use the conceptual system of the Brussels I bis Regulation and the related case-law of the CJEU".

8.3. Under Article 4(1) Regulation Rome II, the law of the country where the damage occurs applies.

\*1 Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II') (OJEU 2007, L 199/40; hereinafter: Regulation Rome II).

\*1 Supreme Court 3 June 2016, ECLI:NL: HR:2016: 1054, roy 3.7



8.4. In its judgment of 9 July 2020<sup>0</sup>, the CJEU ruled that Article 7(2) of Regulation Brussels I-bis must be interpreted as meaning that, where vehicles have been unlawfully fitted with software manipulating emissions data by their manufacturer in a Member State before being purchased from a third party in another Member State, the place where the damage occurs is in the latter Member State. Thus, the place where the car was purchased is the place where the harmful event occurred. It follows that the place of the alleged damage of car owners who bought their car in the Netherlands is the Netherlands. This means that Dutch law applies to the claims against the EU defendants, GM Holdings and GM Company brought on behalf of Dutch car owners. By analogy with the above, in the court's opinion this also applies to the claims brought against the EU defendants, GM Holdings and GM Company for the benefit of Dutch car owners who leased their vehicle in the Netherlands.

## **9. Applications under section 22 Rv and SDEJ's change of claim**

### *Application by SCC and SDEJ under section 22 Rv*

9.1. SCC asks the court, should the court find or suspect that the defendants are flouting Section 21 Rv, to use its powers under Section 22 Rv at the earliest possible stage of the proceedings.

SDEJ, relying on Section 22 Rv, asked the court to order the Automobile Manufacturers (and or also the other defendants) to provide information and, to the extent necessary, the production of evidence in relation to a number of issues (found at paragraph 348 of SDEJ's summons).

9.2. Stellantis c.s. argued against this that an information request at this stage of the proceedings falls outside the procedural order determined by the court. Stellantis c.s. therefore does not yet express an opinion on these requests at this stage of the proceedings and reserves the right to defend itself on this point.

9.3. At this stage, the court sees no reason to exercise its jurisdiction under Section 22 Rv in anticipation of the substantive submissions of Stellantis c.s. and the Car Dealers.

### *SDEJ's claim increase*

9.4. SDEJ increased (the basis of) its claim at the hearing, in that it adjusted the relevant period and extended the end date of that period to the date of the final judgment to be delivered in this case. This claim increase was made in good time and was not contrary to the requirements of due process. Defendants may respond in substance to this increase in claim in their Statement of Reply.

<sup>0</sup> ECJ EU 9 July 2020, C-343/19, ECLI:EU:C:2020:534 (Verein für Konsumenteninformation/Volkswagen AG)

## **10. Conclusions**

10.1. The court has jurisdiction to hear the claims against the Dutch defendants (Stellantis N.V., Stellantis B.V. and the Autodealers) and the claims brought on behalf of Dutch car owners against the EU defendants (PSA Automobiles, Peugeot, Citroën, Opel Automobile and Adam Opel), GM Company and GM Holdings.

10.2. The court does not have jurisdiction over the Foundations' claims against GM LLC. Nor does the court have jurisdiction over SDEJ's claims against the UK defendants (Vauxhall Motors, Vauxhall Finance, IBC Vehicles and PSA Retail UK). The same applies insofar as SDEJ brought claims on behalf of foreign car owners against the EU defendants (PSA Automobiles, Peugeot, Citroën, Opel Automobile and Adam Opel), GM Company and GM Holdings.

10.3. The Foundations' claims are subject to the old collective action law, i.e. the action law as it applied until 1 January 2020.

10.4. SCC and SDEJ cannot be entertained in their claims against the Car Dealers to the extent that those claims seek to represent interests of lease drivers. Further, SDEJ is inadmissible in its claims against Stellantis N.V. insofar as those claims are brought on behalf of foreign car owners.

10.5. With the exception of claims based on the WAMCA, such as claims seeking payment of monetary damages, the Foundations' claims largely lend themselves to collective adjudication in these proceedings.

10.6. SEC and SCC meet the guarantee requirement: the interests of the persons on whose behalf the Foundations act are sufficiently safeguarded. With regard to SDEJ, a deed exchange will first take place in the context of the guarantee requirement.

10.7. The substantive assessment of claims shall be governed by Dutch law.

## **11. Litigation costs**

11.1. Solely in connection with the jurisdictional decisions to be included in the operative part, a decision on costs in that regard will now be made.

11.2. When it comes to jurisdiction over the EU defendants, GM Company and GM Holdings, the parties are partly in the right and partly in the wrong. With regard to the lack of jurisdiction over GM LLC, the Foundations are to be considered the unsuccessful party. With regard to the lack of jurisdiction against the UK defendants, SDEJ is to be regarded as the unsuccessful party. Since GM LLC and the UK Defendants have put forward their views together with (the other entities within) Stellantis c.s., while the jurisdictional issues in respect of GM LLC and the UK Defendants are a relatively limited part

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formed part of the debate so far, to that extent, there is no evidence that GM LLC and the UK defendants incurred costs separately.

11.3. In view of the foregoing, there is no reason to award costs against the Foundations or SDEJ in favour of Stellantis c.s. Those costs will therefore be offset, in the sense that each party will bear its own costs.

## **12. Continuation of proceedings**

12.1. Since Section 3:305a (new) of the Dutch Civil Code does not apply, the cases brought by the Foundations will be continued as three separate cases (under the following case and role numbers: C/13/705132 / HA ZA 21-687, C/13/712754 / HA ZA 22-71 and C/13/712812 / HA ZA 22-72). However, it will be noted in the roll records that these three cases are related. The cases will therefore (purely administrative) will be joined on the roll ("joinder of rolls"). The defendants in the cases brought by SCC and SDEJ will therefore also still be charged separate court fees.

12.2. As three partly identical proceedings may be conducted side by side, Stellantis c.s. has proposed that only one proceedings be continued for the time being and that the remaining proceedings be stayed pending the course (and outcome) of the proceedings to be continued. The Court urges the Foundations to take this proposal of Stellantis et al. to heart, also in the interest of their supporters. After all, the Foundations represent largely the same supporters and one procedure will be much less costly and faster than three procedures. Only if agreement is reached between the parties concerned does the court wish to be informed of this; in that case, a joint request to stay one or more proceedings can be made.

12.3. The case in which SDEJ is the plaintiff will be referred to the roll of 13 September 2023 for a deed referred to in 7.109. Thereon, Stellantis et al. and the Auto Dealers may respond by reply deed four weeks thereafter. As the deeds relate exclusively to the provisions of 7.109, the content of the (reply) deed to be taken by the parties may not exceed five pages. After the deed exchange, the court will pass judgment.

12.4. The two cases in which SEC and SCC, respectively, are plaintiffs, pending the exchange of instruments in SDEJ's case and in view of what has been stated above in r.o. 12.2 considered, will not be continued at this time. In order to ensure that the three proceedings joined on the roll are as parallel as possible, the cases in which SEC and SCC, respectively, are the plaintiffs will resume after the court has ruled on SDEJ's admissibility in SDEJ's case. The cases of SEC and SCC, as well as - depending on the outcome of the further exchange of documents - the case of SDEJ, will thereafter be referred for submissions of reply on the part of Stellantis c.s. (in all cases) and the Autodealers (in the case of SCC and in that of SDEJ), in accordance with the procedural order previously established, on a period of 12 weeks. Contrary to Stellantis c.s.'s request, the court sees no reason to schedule a pre-trial hearing prior to the substantive phase.

12.5. Any further decision will be reserved.

13. The decision

The court

in all three cases:

13.1. declares lack of jurisdiction to hear the claims of SEC, SCC and SDEJ against GM LLC.

13.2. compensate the litigation costs between SEC, SCC and SDEJ on the one hand and GM LLC on the other hand, in the sense that each party bears its own costs.

further in the case with number C/13/712812 / HA ZA 22-72 of SDEJ:

13.3. declares itself without jurisdiction to hear the claims of SDEJ against Varihall Motors, Varihall Finance, IBC Vehicles and PSA Retail UK,

13.4. declares itself obliged to take Lennis of the claims brought for the benefit of foreign car owners by SDEJ against PSA Automobiles, Peugeot, Citroën, Opel Automobiles, Adm Opel, GM Company and GM Holdings,

13.5. Compensates the legal costs between SDEJ on the one hand and the EU defendants, the UK defendants and GM Company and GM Holdings on the other, in that each party bears its own costs,

13.6. refers the matter to the roll **13 September 2023** for a deed by SDEJ as referred to in 7.109, against Stellantis c.s. and the Car Dealers may respond thereto by reply deed four weeks thereafter (all deeds not exceeding five pages).

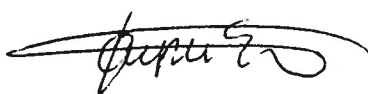
further in the case with number C/13/705132 / HA ZA 21-687 of SEC and in the case with number C/13/712754 / HA ZA 22-71 of SCC:

13.7. refers the cases to the roll of **22 November 2023** for decision on continuing proceedings,

further in all three cases:

13.8. reserves any further decision.

This judgment was delivered by Mr J.T. Kritis, Mr M.C.H. Broesterhuizen and Mr M. Wouters, Judges, assisted by Mr P. Palanciyan, Registrar, and pronounced in open court on 16 August 2023.



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## **ANNEX I**

### **SEC claims**

"It pleases your Court to grant by judgment, so far as possible enforceable in part.

#### **Application for designation of Exclusive Advocate**

1. To the extent that the WAMCA applies to the present claims; to designate the Foundation as Exclusive Advocate within the meaning of Section 1018e(1) Rv;

#### **Statements for justice**

2. Declare that each of the Defendants acted unlawfully towards the Defendants;

3. Declare that Defendants are jointly and severally liable for damages suffered by Defendants as a result of their wrongful acts and are liable to compensate such damages;

#### **Claim for damages and reimbursement of costs of proceedings**

4. Order the Defendants jointly and severally to compensate the damages suffered by the Defendants;

5. Order the defendants jointly and severally to pay the costs of these proceedings, including the follow-up costs, or at least - insofar as the WAMCA is applicable and your court gives judgment pursuant to section 1018i Rv - the reasonable and proportionate costs incurred by the Foundation in connection with instituting these proceedings as referred to in section 10181(2) Rv, to be determined by your court, and all these costs to be increased by the statutory interest from the day of the delivery of the judgment to be given in these proceedings until the day of payment in full."

## **ANNEX II**

### **Progress of SCC**

"That it please the court by judgment, so far as possible enforceable: Admissibility and exclusive advocate

1. rule that Car Claim is admissible in this collective action procedure;
2. if and to the extent that SDEJ is also admissible, to designate SDEJ as exclusive advocate within the meaning of article 1018e paragraph 1 Rv and to provide that Car Claim will be allowed to carry out independent procedural acts, all to the extent possible coordinated with the exclusive advocate;
3. if and to the extent that SDEJ is inadmissible or will not be designated as exclusive advocate, designate Car Claim as exclusive advocate within the meaning of section 1018e(1) Rv;

### Opt out

4. To provide that:
  - i. any Car Claim owner domiciled or resident in the Netherlands may, for a period of three months after the announcement of the judgment designating Car Claim as exclusive representative of his interests, notify the court registry in writing that he wishes to withdraw from the representation of his interests in this collective claim (opt-out, article 1018f paragraph 1 Rv);
  - ii. each Car Claimant without residence or domicile in the Netherlands may, for a period of three months after the announcement of the judgment designating Car Claim as exclusive representative of his interests, notify the registry of the court in writing that he wishes to withdraw from the representation of his interests in this collective claim (opt-out, article 1018f paragraph 5 final sentence Rv);

### Statements for justice

5. rule that natural persons working as self-employed persons without staff and sole proprietorships with only one employee shall also be deemed to be Private Parties in the judgments to be delivered in these proceedings;
6. rule that:
  - i. PSA et al and Stellantis Netherlands acted unlawfully towards the Car Owners;
  - ii. PSA et al. and Stellantis Netherlands are jointly and severally liable for compensation for the damages suffered and to be suffered by the Car Owners;
  - iii. the damage suffered by Car Owners is at least equal to the price reduction under 7(iii) and 7(v), respectively, to be determined by the court in good faith;
  - iv. PSA c.s. and Stellantis Nederland shall be liable to pay statutory interest on the compensation to be paid to the Car Owners from the date the relevant Car Owners paid the purchase price, lease price or addition, to be made out by state and settled according to law, if necessary;

7. rule that:

*primary*

- i. the Affected Vehicles do not possess the properties required for normal use, or at least that the Affected Vehicles possess properties other than those determining use that do not comply with the Agreements;
- ii. the Traders' reasonable period of time to repair and/or replace the defects in the Affected Vehicles has expired unused;
- iii. Private Parties A and B and Business Parties A and B are authorised to reduce the amounts paid by them for the Affected Vehicles under the Purchase Agreements by virtue of partial termination in a manner to be determined by the Court;

*subsfdiair*

- iv. the defects and omissions to the Affected Vehicles referred to under 7(i) are so essential that, on a correct representation of the facts, right-thinking purchasers would not have entered into the Agreements, or at least not on the same terms;
- v. Private Parties A and B and Business Parties A and B are authorised to reduce the amounts paid by them for the Affected Vehicles under the Purchase Agreements on the basis of partial cancellation in a manner to be determined by the court;

*primarily and alternatively*

- vi. the respective Dealers shall owe statutory interest on the price reduction under 7(iii) and (v) to Private Parties A and B, and statutory commercial interest to Business Parties A and B from the date on which the respective Car Owners have paid the purchase price to the respective Dealers;

Claim for undoing, restitution and damages Towards PSA c.s. and Stellantis Netherlands

8. order PSA c.s. and Stellantis Netherlands jointly and severally to compensate the Car Owners for the damage they have suffered, by paying them damages to be further determined by the court, plus statutory interest, to be made up by state and settled according to law, if necessary;

Towards Traders

*primary*

9. declare the partial termination of the Purchase Agreements between the Private Parties A and B and Business Parties A and B and the relevant Traders;

*alternatively*

10. declare the partial annulment of the Purchase Agreements between Private Parties A and B and Business Parties A and B and the relevant Traders;

*primarily and alternatively*

11. order the respective Dealers to pay to Private Parties A and B and Business Parties A and B that part of the purchase price that these Car Owners overpaid to the respective Dealers for the Affected Vehicles (the price reduction), in the case of Private Parties to be increased by statutory interest

and, in the case of Business Parties, statutory commercial interest, from the date the relevant Car Owners have paid the purchase price, to be made out by state and settled according to law, if necessary;

Collective claim settlement

12. if and to the extent that Car Claim will be appointed as exclusive representative of interests, order that all compensation owed by Defendants to Car Claim shall be paid to Car Claim under terms of collective redress to be determined by the court with due regard to the provisions of section 1018i(2) Rv;

Extrajudicial costs and (legal) costs (art. 6:96 BW and art. 10181 paragraph 2 Rv)

13. Order the defendants jointly and severally to pay compensation to Car Claim of:

- i. the full extrajudicial costs incurred by Car Claim, to be increased by the statutory interest from the date of the final judgment to be given in these proceedings until the day of full payment, to be made out by statement of account if necessary and to be settled in accordance with the law;
- ii. Car Claim's full legal costs, including the costs of its litigation financier, plus interest at the statutory rate from the date of the judgment to be delivered in these proceedings until the day of payment in full, to be incurred by state and settled in accordance with the law, if necessary;
- iii. if and to the extent Car Claim will be appointed as exclusive advocate, the costs that Car Claim will incur in connection with the acts that Car Claim will be deemed to perform in its capacity as exclusive advocate until the final judgment, including but not limited to costs pursuant to article 1018f paragraph 3 of the Civil Code;
- iv. if and to the extent that Car Claim is to be appointed as exclusive representative, the full costs incurred by Car Claim in connection with the settlement of the claim as from the final judgment to be given in these proceedings, plus interest at the statutory rate from the date of the final judgment to be given in these proceedings until the date of payment in full, to be made up as necessary by statement of account and to be settled in accordance with the law; and
- v. the costs to be incurred by Car Claim in determining the damage and liability, plus statutory interest from the date of the final judgment to be given in these proceedings until the day of payment in full, to be made up as necessary by statement of account and settled in accordance with the law;

all on the understanding that if and to the extent that the court finds that the underlying factual complex is subject to the collective action law as it applied prior to the enactment of the Mass Tort Claims Settlement Act in a Collective Action, then it shall apply that the claims under 2, 3, 4, 8, 11, 12, 13(iii) and (iv) of this petition shall lapse."



### **ANNEX III**

#### **Progress of SDEJ**

"That it please the Court by judgment, so far as possible enforceable: Admissibility and exclusive advocate

I. Rule that the Foundation is admissible in this collective action procedure;

II. To determine that this collective action concerns the following groups of persons and legal entities within the meaning of section 1018d Rv: (collectively: the **Closely Defined Group**):

**Private Parties A:** Natural persons, not acting in the exercise of a profession or business, who had their usual place of residence in the Netherlands at the time when the relevant Agreement(s) was (were) entered into, and who purchased a new Affected Vehicle from a Dealer or obtained use through a Dealer by means of a lease construction.

**Private Parties B:** Natural persons, not acting in the exercise of a profession or business, who had their usual place of residence in the Netherlands at the time when the relevant Agreement(s) was (were) entered into, and who purchased a second-hand Affected Vehicle from a Dealer or obtained use through a Dealer by means of a lease construction.

**Private Parties C:** Natural persons, not acting in the exercise of a profession or business, who had their usual place of residence in the Netherlands at the time the relevant Agreement(s) were entered into, and who have purchased a new or used Affected Vehicle from, or by means of a lease construction have been put into use through a party other than a Dealer, for example in a private transaction, with an occasion dealer or other leasing company.

**Private Parties D:** Natural persons, not acting in the exercise of a profession or business, who, at the time they purchased or leased an Affected Vehicle, had their usual residence outside the Netherlands but within the EU, and who purchased a new Affected Vehicle from an official dealer of one of the Car Manufacturers established within the EU or leased through an official dealer of one of the Car Manufacturers established within the EU.

**Private Parties E:** Natural persons not acting in the course of business of a profession or business, who, at the time they bought or leased an Affected Vehicle, had their usual residence outside the Netherlands but within the EU, and who bought a second-hand Affected Vehicle from an official dealer of one of the Automobile Manufacturers established within the EU, or obtained the use of an Affected Vehicle through an official dealer of one of the Automobile Manufacturers established within the EU by means of a leasing arrangement.

**Private Parties F:** Natural persons, not acting in the course of a profession or business, who, at the time they purchased an Affected Vehicle or

lease members had their habitual residence outside the Netherlands but within the EU, and who purchased a new or second-hand Affected Vehicle from, or obtained its use through a leasing arrangement through a party other than an official dealer of the Car Manufacturers established within the EU, for example in a private transaction, from a used car dealer or other leasing company.

**Business Parties A:** Non-Private Parties who, at the time the relevant Agreement(s) was/are entered into, had their usual place of residence in the Netherlands, and who have a new Affected Vehicle of a Merchant have purchased or have been provided with use through a Merchant through a leasing arrangement.

**Business Parties B:** Non-Private Parties who had their usual place of residence in the Netherlands at the time when the relevant Agreement(s) were entered into, and who purchased a second-hand Affected Vehicle from a Dealer or obtained use through a Dealer by means of a lease construction.

**Business Parties C:** Non-Private Parties who, at the time the relevant Agreement(s) was/are entered into, had their usual place of residence in the Netherlands, and who have a new or used Affected Vehicle have purchased from, or been provided with use through a leasing arrangement through a party other than a Dealer, for example in a private transaction, from an occasion dealer or another leasing company.

**Business Parties D:** Non-Private Parties who, at the time they purchased or leased an Affected Vehicle, had their usual residence outside the Netherlands but within the EU, and who purchased a new Affected Vehicle from an official dealer of one of the Car Manufacturers located within the EU or through an official dealer of one of the car manufacturers through a leasing arrangement.

**Business Parties E:** Non-Private Parties who, at the time they bought or leased an Affected Vehicle, had their usual place of residence outside the Netherlands but within the EU, and who bought a second-hand Affected Vehicle from an official dealer of one of the

Car manufacturers have purchased or have been provided with use through an official dealer of one of the Car manufacturers located within the EU through a leasing arrangement.

**Business Parties F:** Non-Private Parties who, at the time they bought or leased an Affected Vehicle, had their usual residence outside the Netherlands but within the EU, and who bought a new or used Affected Vehicle from, or by means of a leasing arrangement, put it into use through a party other than an official dealer of one of the Car Manufacturers established within the EU, e.g. in a private transaction, with a used vehicle dealer or another leasing company.

III. To provide that:

*primary*

the Foundation will be designated as exclusive advocate; and

***Sifbsidious***

in the event that the Foundation is inadmissible or will otherwise not be designated as EB, Car Claim will be designated as exclusive advocate under the provision that the Foundation will remain authorised to take independent procedural steps in those proceedings as then;

Opt out and opt in

IV. To provide that:

- a. any Car Owner domiciled or resident in the Netherlands belonging to the Closely Defined Group (the Dutch Parties) may, for a period of three months after the announcement of the judgment in the manner referred to in Section 101 8f, subsection 3 Rv, notify the registry of the court in writing that he wishes to withdraw from the representation of his interests in this collective claim (opt-out, Section 1018f, subsection 1 Rv);
- b. any Car Owner without residence or domicile in the Netherlands who belongs to the Closely Related Group (the Foreign Parties), primarily during a period of three months after the announcement of the judgment in the manner referred to in art. 10 18f (3) of the Dutch Code of Civil Procedure, notify the registry of the court in writing that he withdraws from the representation of his interests in this collective claim (opt-out, article 1018f (5) final sentence of the Dutch Code of Civil Procedure), or alternatively during a period of six months after the announcement of the judgment in the manner referred to in Section 1018f(3) of the Dutch Code of Civil Procedure, may notify the registry of the court in writing that they agree to the representation of their interests in this collective claim (opt-in, Section 1018f(5) first sentence of the Dutch Code of Civil Procedure);

Statements for justice

V. Declare for justice that:

- a. natural persons working as self-employed persons without staff and sole proprietorships with only one employee, shall also be deemed to be Private Parties in the judgments to be awarded in these proceedings;
- b. regarding unfair commercial practices:
  - i. the conduct of the Car Manufacturers and the Importer described in the body of this summons qualify as an unfair trade practice; and provided that it is therefore unlawful towards the Private Parties, or at least towards the Dutch Private Parties;
  - ii. the conduct of the Car Manufacturers and the Importer as described in the body of this summons is imputable to the Traders so that the unfair trade practices can also be imputed to the Traders and their conduct is unlawful towards the Private Parties, at least towards the Dutch Private Parties;
  - iii. the Contracts concluded - at least before 14 June 2014 - between Dutch Private Parties on the one hand and the Importer or Traders on the other hand as a result of the aforementioned unfair trade practices are voidable;
  - iv. the Dealers, the Car Manufacturers and the Importer are jointly and severally liable for damages in view of the unfair commercial practices towards the Private Parties, or at least towards the Dutch Private Parties.

c. Regarding error:

i. the Car Owners are authorised to annul the Agreements.

d. with regard to conformity and non-performance:

i. that the Affected Vehicles do not comply with the Agreements, or at least that the Affected Vehicles do not possess the properties required for normal use, or at least that the Affected Vehicles possess properties other than those determining use that do not comply with the Agreements;

ii. that the reasonable period to repair or replace the defects in the Affected Vehicles has expired unused;

iii. that the Car Owners, or at least the Dutch Parties, are entitled to demand from the Importer or the relevant Dealer replacement of the present Affected Vehicle to the extent they still have their Affected Vehicle in their possession;

iv. that the Car Owners, or at least the Dutch Parties, have the power to terminate their respective Agreements with the Importer or the relevant Dealer.

e. with regard to unfair commercial practices, error, non-conformity and breach of contract:

i. that the Motor Vehicle Owners, or at least the Dutch Parties, who, on the basis of the claims to be granted in the context of this petition, including declarations in law, annul or dissolve the Agreement with the Importer or relevant Dealer claim, or case replacement, if granted, no compensation for the use of the relevant Affected Vehicle shall be due;

f. Regarding tort:

i. that each of the Car Manufacturers, the Importer and the Dealers, or at least one or more of them, acted unlawfully towards the Car Owners, or at least towards the Dutch Parties;

ii. that the unlawful conduct of the Car Manufacturers and the Importer towards the Car Owners, at least towards the Dutch Parties, can also be held against the Dealers;

iii. That each of the Car Manufacturers, the Importer and the Dealers, or at least one or more of them, shall undertake towards the Car Owners, or at least towards the Dutch

Parties, have been guilty of unlawful group action within the meaning of Section 6:166 of the Civil Code;

Actions for annulment, dissolution, substitution and damages

VI. In respect of the Car Owners, or at least the Dutch Parties, who are still in possession of their vehicles at the time of the judgment to be rendered in these proceedings and who have not expressed their desire to retain their Affected Vehicle prior to the final judgment to be rendered in these proceedings, rule as follows:

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a. primary:

i. declare the Agreement between the Car Owners, or at least the Dutch Parties, and the Dealer in question null and void, order the Dealer in question to refund the entire purchase price of the Affected Vehicle, without claiming any compensation in connection with the use of the Affected Vehicle or its depreciation.

b. in the alternative:

i. to order the relevant Dealer from whom the Car Owner, or at least the Dutch Parties, purchased the Affected Vehicle to take back the Affected Vehicle and replace it with a new one of a Comparable Type, without being entitled to any compensation in connection with the use of the Affected Vehicle or its depreciation.

alternatively

ii. order the Automobile Manufacturers and the Importer jointly and severally, or at least the Automobile Manufacturers, to take back the Affected Vehicle and replace it with a new one of a Comparable Type, without being entitled to any compensation in connection with the use of the Affected Vehicle or its decrease in value.

c. In the further alternative:

i. **To rule that the Agreements concluded by the Car Owners, or at least the Dutch Parties, with the relevant Dealers have been dissolved and that the latter are obliged to repay the purchase price to the relevant Private Parties and the Business Parties, without the latter being able to claim compensation in connection with the use of the Affected Vehicle or its depreciation;**

d. In the further alternative:

i. To rule that the Agreements which the Car Owners, or at least the Dutch Parties, have entered into with the relevant Dealer at the first request of a Car Owner, or at least the Dutch Parties, shall be deemed to be annulled or, in the alternative, terminated, whereupon the relevant Dealer shall be obliged to repay the purchase price to the relevant Car Owner, without the latter being able to claim compensation in connection with the use of the Affected Vehicle or its diminished value, or that the relevant Car Owners are entitled to reduce the amounts paid by them for the Affected Vehicles under the Agreements on the grounds of partial destruction or dissolution by an amount to be determined by the Court.

e. In the further alternative:

i. order the Car Manufacturers and the Importers and Dealers jointly and severally, or at least the Car Manufacturers jointly and severally, to compensate the Car Owners, or at least the Dutch Parties, for the damage they have suffered through:

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1. if the Car Owner so chooses and so requests - compensation other than in cash, namely by replacement of the Affected Vehicle with a new one of a Comparable Type, without the Car Manufacturers and/or the Importer and/or the Dealers thereby being able to claim compensation in connection with the use of the Affected Vehicle or its depreciation;
2. compensation, as to be further determined by the Court.

VII. In respect of the Car Owners who, at the time of the judgment to be rendered in these proceedings, are no longer in possession of their Affected Vehicle or who, prior to the final judgment to be rendered in these proceedings, have expressed a desire to retain their Affected Vehicle:

order the Car Manufacturers, the Importer and the Dealers jointly and severally to compensate the Car Owners, or at least the Dutch Parties, for the damage they have suffered, as to be further determined by the Court.

#### Statutory interest

VIII. In all cases where a monetary claim is awarded on the basis of the above claims, such claim to be increased by statutory interest from the moment the Defendants, or one or more of them, **are in default, with** the Foundation claiming statutory commercial interest for the benefit of the Business Parties within the meaning of Section 6:119a of the Dutch Civil Code.

#### Collective claim settlement

IX. To stipulate that all compensation owed by Defendants to Auto Owners shall be paid to the exclusive representative to be appointed on terms of collective redress to be determined by the court with due regard to the provisions of section 1018i(2) Rv;

#### Extrajudicial costs and (litigation) costs (art. 6:96 BW and art. 10181 paragraph 2 Rv)

X. Order the defendants jointly and severally to reimburse the Foundation for:

- a. the full extrajudicial costs incurred by the Foundation, to be increased by the statutory interest from the date of this summons, or at least the judgment to be given in these proceedings, until the day of payment in full, to be made up by statement of account if necessary and to be settled in accordance with the law;
- b. the full legal costs of the Foundation, including the costs of its litigation financier (the Funder), and including, if applicable, the reasonable and proportionate costs referred to in Section 10181(2) Rv incurred by the Foundation for the purpose of the proceedings, as further to be determined by the Court, to be increased by the statutory interest from the date of the final judgement until the day of full satisfaction, to be recorded by statement if necessary and to be settled in accordance with the law;
- c. the costs that the Foundation will incur in connection with the actions that the Foundation, in its capacity as (co-)exclusive advocate, will be expected to carry out until the final judgment, including but not limited to costs pursuant to art. 1018f paragraph 3 Rv;
- d. the full costs of the Foundation to be incurred by it in connection with the settlement of damages from the final judgment to be given in these proceedings, plus statutory interest from the date of the final judgment to be given in these proceedings until

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the day of full satisfaction, to be made out by statement, if necessary, and to be settled in accordance with the law; and

e. the costs to be incurred by the Foundation in determining the damage and liability, plus statutory interest from the date of the final judgment to be delivered in these proceedings until the day of payment in full, to be made out by statement of account if necessary and to be settled in accordance with the law.

f. all on the understanding that, to the extent that the court finds that the underlying factual complex is subject to the collective action law as it applied prior to the entry into force of the Settlement of Mass Damage in a Collective Action Act, then the claims under subsections VI.e. and IX of this Petition shall lapse."