

VOflG1S

AMSTERDAM COURT

Private Law Department

Case numbers / role numbers: C/13/705132 / HA ZA 21-687, C/13/7 12754 / HA ZA 22-71
and C/13/712812 / HA ZA 22-72

Judgment of November 29, 2023

in Case Cl 13/705132 / HA ZA 21-687 vati

the foundation

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

against

1. The limited liability
company STELLANTIS S.A.,
based in Amsterdam,
2. the private company with limited liability STELLANTIS
NEDERLAND B.V.,
based in Amsterdam,
defendants 1 and 2,
lawyer Mr. A. Knigge in Amsterdam,

and

in Case C/13/71275J / HA ZA 22-71 w i i

the foundation

CAR CLAIM FOUNDATION,
based in Rotterdam, plaintiff,
attorney at law mr. P. Haas in Rotterdam,

against the defendants named above under 1 and 2 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 person under foreign law
GENERAL MOTORS COMPANY,
based in Detroit (Michigan), United States of America, defendants 4
through 10,
Advocate 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 CLOVER 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 at Voorthiizen,

21. the private company with limited liability AUTO VERSTEEG BUURMAN EDE P B.V.,
based in Ede (Gelderland),
22. the private company with limited liability AUTO VERSTEEG BUURMAN ERMELO B.V.,
based in Ermelo,
23. the private company with limited liability AUTO VERSTEEG BUURMAN VEENENDAAL B.V.,
based in Voorthiizen,
24. the private company with limited liability AUTO VERSTEEG BUURMAN VOORTHUIZEN B.V.,
based in Voorthiizen,
25. the private company with limited liability AUTO **VERSTEEG** BUURMAN WAGENINGEN B.V.,
based in Wageningen,
26. the private company with limited liability AUTO VERSTEEG BUURMAN WOUDEBERG B.V.,
based in Woudeberg,
27. the private company with limited liability AUTO VISSCHER I B.V.,
based in Culemborg,
28. the private company with limited liability AUTOBEDRIJF AMBERGEN B.V.,
based in Stadskanaal,
29. the private company with limited liability AUTOBEDRIJF BASTIANS BOZ B.V.,
based in Steenbergen, Noord-Brabant, the Netherlands,
30. the private company with limited liability AUTOBEDRIJF BASTIANS STB B.V.,
based in Steenbergen, Noord-Brabant, the Netherlands,
31. the private company with limited liability AUTOBEDRIJF BOUWMAN OMMEN B.V.,
based in Ommen,
32. the private company with limited liability AUTOBEDRIJF C. VAN DER MAAT B.V.,
based in Blokker,
33. the private company with limited liability AUTOBEDRIJF DIRKS B.V.,
based in Bergeijk,
34. the private company with limited liability AUTOBEDRIJF FRANKEN B.V.,
based in Nunspeet,
35. the private company with limited liability AUTOBEDRIJF GAUKE **HIJLKEMA** B.V.,
based in Drachten,
36. the private company with limited liability 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 at Gerxven,
42. the private company with limited liability JANSSEN KERRES VENLO B.V.,
based in Venlo,
43. the private company with limited liability AUTOBEDRIJF JAN GROET B.V.,
based in Den Helder,
44. the private company with limited liability JANSSEN KERRES HEERLEN B.V.,
based in Heerlen,
45. the private company with limited liability JANSSEN KERRES JYIAASTRICHT B.V.,
based in Maastricht,
46. the private company with limited liability 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 company with limited liability AUTOBEDRIJF LIEWES RODEN B.V.,
based in Roden,
49. the private company with limited liability DRIESSEN AUTO V B.V.,
based in Eindhoven,
50. the private company with limited liability GARAGE A.H. DEN BREEJEN ALMKERK B.V.,
based in Almkerk,
51. the private company with limited liability GARAGE DE BLIEK B.V.,
based in Oostburg,
52. the private company with limited liability 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 company with limited liability JANSSEN
VAN KOUWEN AUTOMOTIVE B.V.,
based in Amsterdam,
62. the private company with limited liability KAMP
TWENTE B.V.,
based in Hengelo (Overijssel),
63. the private company with limited liability LOUWMAN
PB B.V.,
based in 's-Gravenhage,
64. the private limited liability company
LOUWMAN PG B.V.,
based in 's-Gravenhage,
65. the private company with limited liability LOUWMAN
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
ENGINE HOUSE 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 MULDERS
AUTOBEDRIJF NIJMEGEN B.V.,
based in Tiel,
70. the private company with limited liability OPEL
CENTRALE SLIEDRECHT B.V.,
based in Sliedrecht,
71. the private company with limited liability
OPELCENTRALE ALBLASSERDAM B.V.,
based in Papendrecht,
72. the private company with limited liability ORANGE
MOTORS B.V.,
based in Naaldwijk,
73. the private company with limited liability PEEMAN
AND SLOT B.V.,
based in Den Helder,
74. the private company with limited liability 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 company with limited liability VAN DER
BURG AUTOMOTIVE B.V.,
based in Zoetermeer,
81. the private company with limited liability VAN DER
LINDEN VAN SPRANKHUIZEN B.V.,
based in Hoorn (North Holland),
82. the private company with limited liability VAN MILL
DORDRECHT B.V.,
based in Dordrecht,
83. the private company with limited liability VAN
MOSSEL CITROËN B.V.,
based in Amsterdam,
84. the private company with limited liability VAN MOSSEL
OPC B.V.,
based in 's-Hertogenbosch,

85. the private company with limited liability VAN
MOSSEL WEST B.V.,
based in Amsterdam,
86. the private company with limited liability VAN OORD
LEIDSCHE RIJN B.V.,
based in Maarsse,
87. the private company with limited liability VAN OORD
MAARSEN B.V.,
based in Maarsse,
88. the private company with limited liability VAN OORD-
BOLL ZEIST B.V.,
based in Maarsse,
89. the private limited liability company
VAN VLIET PGH B.V.,
based in Woerden,
90. the private company with limited liability WASSINK
AUTOGROEP C B.V.,
based in Doetinchem,
91. the limited liability company law
WASSINK AFJTO GROUP 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 company with limited liability WENSINK
AUTOMOTIVE B.V.,
based in Apeldoorn,
96. the private company with limited liability WIJNAND'S
AUTO SERVICE BUNSCHOTEN B.V.,
based in Bunschoten,
97. the firm AUTOMOBILE
COMPANY BOUWMAN
h.o.d.n. AUTOBEDRIF M.C. BOUWMAN,
office located in Ommen,
98. the private limited liability company
CAR COMPANY MULDER B.V.,
based in Zwolle,
99. the private company with limited liability
AUTOBEDRIJF MULDER BALK B.V.,
located in De Fryske Marren,
100. the private limited liability company
AUTOBEDRIJF MULDER DORDRECHT B.V.,

based in Dordrecht,

101. the private company with limited liability
AUTOBEDRIJF NIJS B.V.,

based in Someren,

102. the private company with limited liability
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 company with limited liability
AUTOBEDRIJF TINEKE GROET B.V.,

based in Schagen,

105. the private company with limited liability
AUTOBEDRIJF VAN FRAASSEN B.V.,

based in Goes,

106. the private company with limited liability AUTOBE
DRIJF VAN JAARSVELD 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 WOORDEN ALMERE B.V.,

based in Almere,

109. the private company with limited liability
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 company with limited liability
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 company with limited liability 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 company with limited liability
AUTOMOBIELBEDRIJF 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 Middle Drenthe,
121. the private company with limited liability
AUTOMOBIELBEDRIJF VAN SPLUNDER B.V.,
based in Ridderkerk,
122. the private company with limited liability 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 company with limited liability 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 company with limited liability 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 company with limited liability DELSINK
AUTO'S B.V.,
based in Renkum,
135. the private limited liability company
DRIESSEN AUTO I B.V.,
based in Eindhoven,
136. the private company with limited liability AUTOBEDRIJF
NOTEBOOM ROTTERDAM NOORD B.V.,
based in Rotterdam,
137. the private company with limited liability CARABAS
B.V.,
established in Papendrecht,
defendants 11 to 137,
attorney at law Mr. M.J. van Joolingen in 's-Hertogenbosch,

and

In ele zciak C/13 712812 / HA ZA 22-72 of

the foundation
DIESEL EMISSIONS JUSTICE FOUNDATION,
based in Amsterdam, plaintiff,
attorney at law Mr. L.C.M. Berger in Amsterdam,

against the defendants listed above at 1 through 137.

Plaintiffs will hereinafter be referred to individually as SEC, SCC and SDEJ. Collectively, they will be referred to as the Foundations. Defendants 1, 2 and 4 through 10 will hereinafter be collectively referred to as Stellantis et al. Defendants 11 through 137 will hereinafter be collectively referred to as the Aitodealers.

1. The **procedure**

in ele zcuik C/13'712812 / HA ZA 22-72

- 1.1. The course of the proceedings is evidenced by:
- the interlocutory decree dated August 16, 2023 (hereinafter, the interlocutory decree) with the procedural documents referred to therein,
 - the remedial judgment of Sept. 20, 2023,
 - SDEJ's deed submission relevant provisions process funding agreement, with one production,
 - the reply deed provisions litigation funding agreement of Stellantis et al,
 - Autodealers' reply deed provisions process funding agreement.

- 1.2. Finally, judgment was again rendered.

in ele zcicik C 13' 705132 HA ZA 21-687 and in ele search C/13'7127Ed / HA ZA 22-71

- 1.3. The course of the proceedings is evidenced by the tiissen judgment of August 16, 2023, with the procedural documents cited therein, and the restorative judgment of September 20, 2023. Thereafter, it was determined that a decision on continued litigation will be made.

2. The **further review**

in zciak C713!712812 / HA ZA 22-72

- 2.1. In the tiissen judgment, among other things, the admissibility of SDEJ was assessed. In that context, SDEJ was given the opportunity to bring the relevant provisions of the financing agreement with its litigation financier, CIN, into the proceedings by deed and, on the basis thereof, to (further) explain that 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 the word) of SDEJ, as well as all provisions that contain anything about the rights and powers (in the broadest sense of the word) of the funder, always in relation to the litigation and settlement strategy.

- 2.2. SDEJ provided an explanation by deed, referring to provisions from the financing agreement with CIN that it submitted.

- 2.3. Stellantis et al. and the Atitodealers have taken the position in their anti-harassment briefs that SDEJ should be declared inadmissible. To this end, they argued, in summary, the following. It is not verifiable whether SDEJ provided access to all relevant provisions of the financing agreement. Nor is it verifiable whether the texts submitted by SDEJ actually originate from the financing agreement concluded between SDEJ and CIN. The provisions submitted further show that the decision-making power over the litigation and settlement strategy does not lie exclusively with SDEJ. Indeed, CIN can influence SDEJ's decision-making, Stellantis et al. and the Auto Dealers say.

2.4. The court considers the following. SDEJ's attorneys have expressly stated in the deposition that they are bringing into evidence as production 149 all provisions of the financing agreement that meet the court's description (see supra 2.1). Also in view of that statement, the court assumes that the production 149 submitted by (the lawyers of) SDEJ contains all relevant provisions of the financing agreement between SDEJ and CIN and that the provisions included in that production also originate from that financing agreement. There are no concrete leads to doubt this, so the argument of Stellantis c.s. and the Auto Dealers in this regard is dismissed.

2.5. It must then be assessed whether control of the litigation and settlement strategy rests with (the board of) SDEJ.

2.6. It follows from principle III of the 2019 Claim Code that individual directors and members of the supervisory board should be independent of the external funder and that control over the litigation and settlement strategy should lie with (the board of) the interest group. The elaboration of principle III (under point 3) of the 2019 Claims Code reads as follows: "The agreement stipulates that control over the litigation and settlement strategy rests exclusively with the interest organization."

2.7. Article 2.1 of the funding agreement between SDEJ and CIN reads as follows: "The decision power regarding the litigation and settlement strategy rests exclusively with the funder." This fulfills (the elaboration under point 3 of) Principle III of the 2019 Claim Code. The further content of the Financing Agreement also shows that the decision power regarding the litigation and settlement strategy rests with SDEJ. The articles of the funding agreement cited by Stellantis et al. and the Auto Dealers do not affect SDEJ's control. After all, the fact that the funder has, for example, the right to be informed about the progress of the proceedings and a possible settlement or the right to be consulted about, among other things, a possible settlement, does not yet give the funder control and does not alter the fact that that control is vested in SDEJ. The comparison that Stellantis c.s. and the Aitodealers make in this regard with a judgment of the District Court of The Hague (ECLI:NL:RBDHA:2023:14036) does not stand up. In that ruling, the court's opinion that the interest organization in question did not meet the guarantee requirement was based on several circumstances. That the interest group had insufficient control over the legal claim in that ruling was based, among other things, on the circumstance that two of the three members of the supervisory board had ties to the funder. That is not the case in SDEJ.

2.8. It is concluded that SDEJ meets the requirements of the 2019 Claim Code and the ivaarborg requirement of Article 3:305a(2) (old) of the Civil Code. Thus, SDEJ is admissible as an advocacy organization.

in all three cases

2.9. Now that the assessment of the admissibility of the Foundations has been completed, the following applies to the further course of the proceedings. Proceedings will in principle be continued in the three separate cases (unless the parties reach agreement as referred to in recital 12.2 of the interlocutory judgment). Proceedings will be continued in accordance with the previously established procedural order. This means that the cases will be referred for submissions of reply on the side of Defendants 1 and 2 (in HA ZA 21-687), on the side of Stellantis c.s. (in HA ZA 22-71 and HA ZA 22-72) and on the side of the Car Dealers (in HA ZA 22-71 and HA ZA 22-72) on a period of twelve weeks.

2.10. The court directs defendants to divide their briefs in response into a general section, which relates to all cases and is identical for all cases, and a special section, which applies exclusively to the case in question. In their pleadings to date, the Auto Dealers have consistently indicated the extent to which they agree with Stellantis et al. In addition, they have put forward specific positions on behalf of the Auto Dealers. The court would appreciate it if the Auto Dealers would maintain that practice so as to avoid repetition of positions.

2.11. Any further decision will be stayed.

2.12. For organizational reasons a change has taken place in the composition of the Chamber. For that reason, this judgment is also rendered by Mr. N.C.H. B[ankevoort].

3. The decision

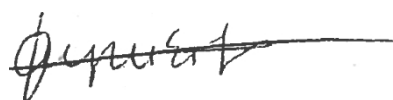
The court

in all three cases

3.1. refers the cases to the roll of February **21, 2024** for submissions of reply on the part of Defendants 1 and 2 (in HA ZA 21-687), on the part of Stellantis et al. (in cases HA ZA 22-71 and HA ZA 22-72) and on the part of the Auto Dealers (in HA ZA 22-71 and HA ZA 22-72),

3.2. reserves any further decision.

This judgment was rendered by Mr. J.T. Kruis, Mr. N.C.H. Blankevoort and Mr. M. Wouters, Judges, assisted by Mr. P. Palanciyan, Registrar, and publicly pronounced on November 29, 2023.



RM

