

[informal translation from Dutch]

COPY

AMSTERDAM COURT OF APPEAL

Official record of the public hearing of the SECOND THREE-JUDGE CHAMBER for civil matters on Tuesday 24 August 2010 at 10.30 hours.

Attending: W.H.F.M. Cortenraad	(president)
A.D.R.M. Boumans	(judge)
A.H.A. Scholten	(judge)
M. van Vuuren	(clerk)
N. Meijler	(clerk)

IN THE MATTER OF

case number: 200.070.039/01 Petitioners:

1. the legal entity under foreign law SCOR HOLDING (SWITZERLAND) AG, formerly Converium Holding AG, with registered seat in Zurich, Switzerland, counsel: D.F. Lunsingh Scheurleer of Amsterdam,
2. the legal entity under foreign law ZURICH FINANCIAL SERVICES LTD, with registered seat in Zurich, Switzerland, counsel: R.W. Polak of Amsterdam,
3. the foundation STICHTING CONVERIUM SECURITIES COMPENSATION FOUNDATION, with registered seat in The Hague, counsel: J.H. Lemstra of The Hague,
4. the association with full legal capacity VERENIGING VEB NCVB, with registered seat in The Hague, counsel: P.W.J. Coenen of The Hague.

Petitioners will hereinafter respectively be referred to as SCOR Holding, ZFS, the Foundation and VEB.

Persons appearing:

on behalf of SCOR Holding:

- Mr Lunsingh Scheurleer aforementioned,
- Mr G.J. Hacker and Mr J.N. Sacca, both attorneys in New York, United States,

on behalf of ZFS:

- Mr Polak aforementioned,

- Mr J. van der Beek, lawyer of Amsterdam,
- Mr J.E. Richman,
- Ms A.K. Skellet,

on behalf of the Foundation:

- Mr Lemstra aforementioned,
- Mr H.A. Groen, member of the board of the Foundation,
- Mr R.M. Roseman, attorney in Philadelphia, United States,
- Mr D.S. Sommers, attorney in Washington D.C., United States,
- Ms R.F. Hansen,

on behalf of VEB:

- Coenen aforementioned,

The president opens the hearing and establishes who is in attendance.

Mr. Lunsingh Scheurleer reports that at this point in time no names are known of lawyers who will be acting for possible respondents. For this reason, as he wrote to the Court of Appeal in his letter of 10 August 2010, he assumed that only counsel to petitioners needed to be present at the hearing.

The president states the following. This hearing concerns a so-called case management conference, which means that the substance of the petition will not be discussed. The hearing serves to discuss the further course of the procedure. This only concerns matters that can be discussed at this stage, without further interested parties being able to comment on this.

The president establishes that up to the time of this case management conference the Court of Appeal has received the following documents:

- petition in pursuance of Article 7:907 NCC of 9 July 2010, including (inter alia) the agreements for which a binding declaration is being sought;
- amended petition, received on 10 August 2010, undated and not signed by counsel;
- a compare version between the two petitions, showing the differences between the first and second versions;
- letters from I.N. Tzankova dated 7 July 2010 and D.F. Lunsingh Scheurleer dated 9 July 2010 and 10 August 2010 (the last with annexes); both first letters were answered by Ms I. Torn on behalf of the Court of Appeal by letter of 15 July 2010.

When asked, counsel stated to have no need to make introductory remarks.

The president then raised various issues and gave counsel the opportunity to comment. Subsequently, where needed, the president communicates the Court of Appeal's decision.

The president makes it known that the Court of Appeal has a number of preliminary questions and comments on the submitted petition and discusses the following with counsel.

The Court has not yet received a dated and signed definitive version of the petition from counsel. The letter of 10 August 2010 states that the enclosed new petition forms the basis for the request to declare binding, but, according to article 278 NCCP, proceedings brought by petition must be initiated by a petition signed by counsel. Mr Lunsingh Scheurleer explains that the petition of 10 August 2010 was sent to the Court of Appeal for informational purposes and that it cannot be excluded that new facts will be raised and that there may still be some amendments. Also on behalf of the other counsel present, Mr. Lunsingh Scheurleer requests an extension of the deadline for submitting the definitive version. The president thereupon directed that the definitively signed petition must be filed with the Court of Appeal by 24 September 2010 at the latest.

The Court of Appeal has received from the petitioners the lists with known interested parties, as annexes to the letter of 10 August 2010 (exhibits 12 and 19 to the petition), with the request to consider these to be a file in the meaning of article 1(c) of the Dutch Personal Data Protection Act. The Court of Appeal directs that these lists will indeed be considered to be a file in the meaning of article 1(c) of the Dutch Personal Data Protection Act and therefore will in principle not be made accessible to third parties.

The Court of Appeal has not received a Dutch translation of the agreement of which the binding declaration is being sought. The president asks petitioners whether this can be supplied after all, given that the language of the law is Dutch. Mr. Lunsingh Scheurleer responds to this that no translations have been made yet; the complexity of the agreements means that high costs are involved, and as the negotiations were conducted in English, interested parties will have little need of a translation. Mr. Lunsingh Scheurleer requests the Court of Appeal to allow petitioners to not submit a Dutch translation. After adjourning the hearing, the president states that the Court of Appeal desires the submission of a Dutch translation of the agreements, in which an as accurate as possible translation that corresponds in substance to the purport of the English texts will suffice. The translation is preferably to be submitted together with the definitive petition on 24 September 2010.

Certain information is lacking in the petition about petitioners and interested parties. The Court of Appeal request that petitioners provide further - written - elucidations of (i) the relationship between the Foundation on the one side and SCOR Holding and ZFS on the other side, (ii) the organisation of the supervision on the activities of the Foundation, (iii) the staffing of the "Dispute Resolution Body" that is mentioned in the agreement and its relationship to the Foundation, (iv) a description of all "Participants" who are "Participants" in the meaning of the Foundation's articles of association and (v) copies of the signed "Participation Agreements" between these participants and the Foundation. A mere specification of the names of the Participants and submission of a model participation agreement will not suffice. In response to a question by Mr Lemstra the

president indicates that it is up to petitioners themselves to give shape to the elucidation requested. This elucidation can be included in the definitive petition.

The petition mentions USD 58,400,000 as total settlement payment, which amount is to be less 20% Principal Counsel's fees, Foundation Expenses, Administration Expenses and possible Taxes (all terms as meant in the petition and the agreements). The Foundation approved counsel's fees by resolution of 21 September 2009. The Court of Appeal requests that petitioners provide a detailed and reasoned statement of all costs to be deducted from the total settlement payment, per type of costs, as well as written commentary on the level of the counsels' fee, the latter in any case on the basis of the explanation that Principal Counsel gave to the board of the Foundation according to part 7.46 of the petition.

The Court of Appeal further requests it be informed about any imposed administrative or criminal sanction imposed on Converium or ZFS by any instance for cause of the events that caused damage. The same applies with respect to judgments by a civil court in any pending proceedings, anywhere in the world, insofar as not already described in the petition. All of this is being asked, inter alia, on the basis of article 22 NCCP.

The Court of Appeal additionally wishes to be further informed of the relationship between the agreements put to the Court of Appeal and the parallel "U.S." settlement agreements, including the conditional or otherwise nature of the agreements submitted to the Court of Appeal and including a comparison of the damages to be paid out per share (pro rata) and of the amounts available for U.S. and Non-U.S. Exchange Purchasers. In response to a comment by Mr Polak, the Court of Appeal directs that estimates may suffice, provided they are sufficiently explained and substantiated.

The president then addresses the assessment of the Court of Appeal's jurisdiction to hear the petition. Various possibilities in this regard are put to petitioners:

- (i) assessment of the jurisdiction issue at the same time as the substantive treatment of the petition, i.e. after notification of interested parties, with the judgment thereon to be given in the decision rendered after the notification and substantive review;
- (ii) a provisional judgment, in advance of the substantive hearing and the notification of interested parties, if the provisional judgment would read "there is jurisdiction"; in this case a "provisional judgment" is appropriate in connection with the principles of audi et alterem partem and 'equality of arms'; interested parties, after having been notified, will then still have opportunity to argue on jurisdiction;
- (iii) a definitive judgment on the basis of the documents, without the substantive review and notification of interested parties, if the judgment were to read "no jurisdiction"; in this event there will be a final decision, which in principle is eligible for a Supreme Court appeal in cassation.

Additionally, the president notes that petitioners' admissibility to bring their petition must be assessed after the substantive review, because both the notification of interested parties and other aspects may play a role there.

Mr Lemstra requests the Court of Appeal for some time to consider this, as he wishes to discuss the various options with his clients, before taking on a position.

After an adjournment the president states the following. Petitioners are given the time to 10 September 2010 (close of business) to inform the Court of Appeal whether they do or do not want the decision on jurisdiction at the same time as the substantive review. To this end, they are to direct a letter to court clerk Ms M. van Vuuren. Additionally, the president states that if parties wish to have a decision in advance of the substantive review, the Court of Appeal will make an effort to render judgment by 15 November 2010 at the latest.

With respect to determining the date of the hearing, the president raises the following. A date no earlier than six months after sending the last notice has been requested. Mr. Lunsingh Scheurleer indicates that the notification of the (former) Swiss shareholders involved must (also) take place in accordance with the applicable service rules, with the consequence that these notices can at the earliest be sent in December 2010. After conferring with petitioners, the Court of Appeal directs that a hearing date will be reserved in the second half of June 2011 and, for the event that the notifications take place less expediently than planned, a hearing date in September 2011. Additionally, a consecutive day will be reserved for if proceedings run over time.

When asked, Mr. Lunsingh Scheurleer answers that for now there is no need to move to a larger location for the hearing, as at this point in time virtually no respondents are known and not many interested parties are expected. Petitioners do not know how many of the approximately 12,000 Non-U.S. Exchange Purchasers are unknown. In response to this president states that for the time being the Court of Appeal assumes that the hearing can take place in the Palace of Justice in Amsterdam. Should cause arise, petitioners will inform the Court of Appeal that a larger venue is required, which in such case petitioners will have to arrange for.

At the request of the president, after an adjournment, Mr Lunsingh Scheurleer states the dates, also on behalf of the other counsel, for the scheduling of the oral hearing: a date is possible between 15 and 28 June 2011 and additionally each date situated between 7 and 21 September 2011. In consultation with petitioners the president directs that the deadline for filing statements of defence and any petitions in counterclaim will be set at no less than six weeks prior to the date of the hearing.

The president discusses the manner of notification with petitioners. The president emphasises that the notification is to be taken care of by petitioners. The known interested parties residing in the Netherlands may be sent the notice by regular letter; the known interested parties residing abroad must be served notice in accordance with the applicable service conventions, respectively the EC service convention. Mr Polak raises the issue that it following the Hague Service Convention will provide logistic problems for judicial process server and requests the Court of Appeal if the judicial process server may suffice by only personalising the writ, while attaching to this writ a standard, non-personalised notice.

After adjourning the hearing, the president communicates the following. The writ must be personalised, but the notification itself does not need to bear the name and address of the addressee, provided

- the notice is attached to the writ;

- in advance of the hearing the Court of Appeal is provided with an ex-officio statement by the judicial process server which demonstrates that he indeed did offer (or have offered) the notices together with the personalised writs.

The president also lets it be known that two weeks in advance of the hearing petitioners must submit a written statement demonstrating that the notice was served in the manner as directed by the Court of Appeal, supported by documentary evidence, in which copies of advertisements in newspapers and suchlike will suffice, specifying the dates of publication.

The Court of Appeal additionally directs that the advertisement in the newspapers and websites mentioned in 11.13 of the provisional petition is approved, provided they are published in the language of the newspaper concerned.

The president discusses the further time periods as are to be stated in the notices. The statements of defence must be filed no less than six weeks in advance of the date of the hearing. At the hearing, respondents will be given a speaking time of no more than thirty minutes, unless longer time has been requested and granted. Petitioners will in principle be allotted speaking time in accordance with the Procedural rules for the courts of appeal on proceedings initiated by petition in civil and insolvency matters, unless longer speaking time has been requested and allowed. Announcements stating (i) to wish to attend the hearing, (ii) to wish to speak at the hearing and (iii) to wish to obtain more than thirty minutes; speaking time must be made to the clerk no less than four weeks before the date of hearing. The statement of defence against any counterclaim petitions must be submitted no later than two weeks before the hearing date, with a copy to counsel of the counterclaim petitioners). Any further documents to be submitted pertaining to possible minor changes and/or supplements to the petition or the agreements must at the latest be submitted on the fifth business day prior to the hearing. In principle, any major changes and supplements must be implemented before the notification. Amendments and supplements in the agreements and/or the petition must be made in the shape of a document that is identifiable as such and accessible to interested parties/respondents and not in the shape of an "informal" letter to the Court of Appeal.

The president goes through the course of affairs at the hearing with petitioners. At the hearing, Petitioners will be able to elucidate their petition and may answer any statements of defence. The same applies for the respondents. Petitioners shall indicate no later than two weeks prior to the date of hearing how much speaking time they desire or expect to need if this is longer than as provided for by the Procedural rules on proceedings initiated by petition. If necessary, interested parties who desire so and have indicated this in advance, will be heard in person. Interested parties in principle have the right to be heard in person, but in order to perform acts of procedure they will require counsel. After the first round, there will be occasion for reply and rejoinder. After the hearing, the Court of Appeal will render a decision on the petition.

The president additionally raises the following.

In connection with the right to peruse and obtain copies from the registry of the Court of Appeal, applicants are requested to provide for this as much as possible and assist the court registry where necessary. On behalf of the petitioners Mr Lunsingh Scheurleer

offers to keep five extra copies of the documents available for the court registry and if necessary to supplement these. Additionally, petitioners would like the file to be published for perusal on www.rechtspraak.nl, also to take pressure off the court registry. Mr Lunsingh Scheurleer offers to provide the Court of Appeal with PDF files for this. With respect to the petition the president points out that in reviewing the petition the Court of Appeal is expected to take active (non-passive) role and that the Court of Appeal will act in accordance with this in its substantive review. The Court of Appeal will conduct an ex officio review of the representativeness of the Foundation and VEB on the basis of article 7:907 (3)(f) NCC; this is a different issue than the review of the Foundation's objective as required by article 7:907(1) NCC. The president requests that petitioners further elucidate and substantiate this point at the hearing, also on the basis of the additional information requested with respect to the "Participants".

With respect to the agreements, the president notes that they have not been drafted in line with the structure of article 7:907 NCC et seq., which does not benefit the clarity of the agreements. The Court of Appeal request that at the hearing petitioners follow the structure of the Dutch statute, for instance by giving a commentary per article or subsection of law referencing the provisions in the agreement. Additionally, at first sight, the agreements do not contain an explicit description of the "event or events" that caused the damage for which they (in part) wish to provide compensation for. The Court of Appeal would also like further clarification on this point.

Petitioners also need to think about, if the Court of Appeal were to decide to declare binding, about the text of the announcement and publication of the binding declaration - which is then to be drawn up.

The president discusses the texts of the draft notice and the draft advertisement. The Court of Appeal agrees in main part with the texts, provided they are completed with dates and a few changes. The president then goes through the passages to be amended with petitioners and orally instructs in what manner this is to be done.

When asked, petitioners declare they have no further comments.

Lastly, the president lets it be known that an official record will be made of the hearing. The Court of Appeal will strive to have petitioners receive this official record no later than 24 September 2010. All possible further correspondence, documents and suchlike must be addressed to Amsterdam Court of Appeal, Commercial Section, Second Three-Judge Chamber, attn: Ms M. van Vuuren.

The president closes the hearing.

Of which record,

[signed]

the clerk the president

[Stamp: for true copy, registrar of Court of Appeal Amsterdam]