

District Court Oost-Brabant
Creditors' meeting of 3 October 2014
Bankruptcy number: F12/578

Public report pursuant to section 73a of the (Dutch) Bankruptcy Act

in the case of:

Pfleiderer Finance B.V.

having its registered office in Vught

bankruptcy trustee: C.A.M. de Bruijn

Your Honor,

1. In the bankruptcy proceedings of Pfleiderer Finance B.V. (PF) all the assets have been converted into cash. The various issues regarding these bankruptcy proceedings have been discussed in extensive detail in the previous public reports and notes to these public reports. I refer to these public documents. In this public report, I will briefly address the following issues:
 - (a) The changes in relation to the filed lists of creditors;
 - (b) The position of the Finance Parties;
 - (c) The position of the Security Holders;
 - (d) The amount receivable by PF from Pfleiderer AD (PAG);
 - (e) The amount receivable by PF from Declam Flooring AB;
 - (f) The bank balance with ABN Amro bank;
 - (g) The appeal proceedings against the imposed corporate income tax assessment;
 - (h) The available options (if any) to invalidate the contracts concluded by PF;
 - (i) The current accounts payable balance.

2. After the lists of creditors of Pfleiderer Finance B.V. had been made available for inspection, the following changes were made:

List of net asset creditors (*boedelcrediteuren*)

Unchanged.

List of provisionally allowed preferred creditors

Unchanged.

List of provisionally allowed unsecured creditors

- The claim of Spielman is increased to the amount of €9,673,19. The amount included on the list of provisionally contested unsecured claims is hereby deleted.
- The claim of Mr. Nolle is increased at his request with the amount of €1,500 so that he is included on the list for €158,421,72.

List of provisionally contested unsecured creditors

- | | | |
|----------------|------------|--|
| • Mario Körösi | €1,298.37 | Withdrawn in email of 11 June 2014. |
| • Steinberger | €19,398.83 | Withdrawn in email of 15 September 2014. |
| • Spielman | €1,665.51 | This amount has been allowed. |

List of provisionally allowed subordinated creditors

The following *changes* have been made to this list:

- Delta Alternative Management on behalf of the fund Delta Prime. The claim was corrected to €3,000,000.
- The address of Thomas Finke was corrected.
- Mr. Schechinger has been removed from this list at his request. He only represented the creditor and did not have a claim of his own.
- Spielmann: the claimed interest has been added.
- Margotti: the address was amended as the attorney had informed us not to be representing Margotti.

Added to the list are:

- | | |
|----------------------|----------|
| • Johan Diemair | €100,000 |
| • Sophie Jonas | €100,000 |
| • Michael Lutz | €100,000 |
| • Elmar Bob | €100,000 |
| • Timur Ashfindiarov | €200,000 |
| • Rainer Raeth | €63,349 |
| • Vandromme | - |
| • Goebel | - |

Deleted from the contested list and included on the list of allowed subordinated creditors are:

- City Merchants High Yield Trust €1,400,000
- Irene and Carsten Preis €50,000
- Heinz Evers €50,000
- Hans Jürgen Kottmann €150,000
- Gernot Rüttler €350,000
- Axel Rüttler €50,000
- Marvin Engesser €50,000

List of provisionally contested subordinated creditors

Removed from this lists are the creditors that were included on the list from Euroclear or Clearstream Banking but who had not presented a claim for validation. It was assumed that that these creditors may yet present their claims for validation after these lists of creditors were made available for inspection. As they have failed to come forward to present their claim for validation (lack of proof of claim) they cannot continue to be included on the list of contested subordinated claims as they do not contest a claim. After all, no claim was presented for validation by or on behalf of them.

- Banca Monte Dei Di Siena SPA -
- Banco Popolare -
- Richard and Ursula Herlinger €50,000
- KESHIG GmbH -
- Rainer Nordmann €350,000

The next creditor has *withdrawn* her claim:

- Anneliese Urban-Quirin €700,000

The aggregate amount of the remaining twenty-one subordinated claims is €2,655,700. These claims are all contested claims because these creditors have failed to submit a 'Statement of Holding'. That 'Statement of Holding' must be submitted under §14(d) of the Terms & Conditions of the Securities. I have discussed with the clearing systems (Clearstream in Luxembourg and Euroclear in Brussels) about the manner in which these requirements could be met.

The 'Statement of Holding' has not yet been submitted for these twenty-one remaining subordinated claims.

It is expected that no payments will be made to the subordinated creditors as not enough cash has been converted, in that regard, from the assets.

If these claims remain contested, claim validation proceedings must be conducted which would mean an increase in the costs and a delay in time.

I recommend the bankruptcy judge to provisionally allow these claims under section 125 of the (Dutch) Bankruptcy Act for the amounts as presented, on condition that if payment of these claims turns out to be possible, the creditors must submit a 'Statement of Holding' at that stage.

3. Pfliederer Finance B.V. (PF) forms part of the Pfliederer Group. With its registered office traditionally and mainly in Germany, this group was a global player in the field of the production and trade in dressed wood and laminate. The group was headed by PAG. For a number of years, the Pfliederer Group made several attempts to increase its market share by acquiring various companies, such as the Pergo Group. The object of these acquisitions was to gain access to the East-European and North-American markets. PF was a financing company in the group.

The liabilities

4. There are two large liability items in these bankruptcy proceedings
 - The debts to the bank consortium (hereinafter referred to as: "the Finance Parties").
 - The debts to the Security Holders.

The obligations in respect to the Finance Parties

5. There were the following obligations in respect to the Finance Parties as at the date of the bankruptcy:

Senior Credit Agreements

- a. Facilities Agreements of 5 December 2006, most recently amended on 8 January 2010:
 - €400,000,000 (most recently increased to €534,163,335)
 - €268,710,000
- b. Bilateral Credit Agreements
 - €10,000,000 of 22/29 December 2009
 - €15,000,000 of 8 January 2010
 - SEK 350,000,000 of 25 March 2008

c. Certificates of Indebtedness Credit Agreements

- €31,000,000 of 24 June 2008
- €26,500,000 of 24 June 2008
- €79,500,000 of 24 June 2008
- €18,000,000 of 24 June 2008
- €10,000,000 of 24 June 2008

all of them most recently amended on 8 January 2010.

Restructuring Credit Facilities Agreement

€139,966,127 of 12 May 2011

Starting in 2006, PF guaranteed (was jointly and severally liable for) the fulfilment of the obligations ensuing from the Senior Credit Agreements (with the exception of the Bilateral Credit Agreement) and the Restructuring Credit Facilities Agreement.

6. As additional security for the fulfilment of its obligations by reason of the guarantee and as third-party cover for the financing arrangements provided by the Finance Parties to PAG and its group companies, PF provided security as described below. In December 2010, the Finance Parties and PAG and its group companies agreed on a Standstill Agreement where the Finance Parties demanded for additional securities be provided. Insofar as relevant, the following securities were granted:

a. Security Assignment Agreement

In the instrument of assignment of 21 December 2010, PF assigned as security its intercompany receivables to the Commerzbank Aktiengesellschaft Filiale Luxembourg as standstill security agent. Included in the Security Assignment Agreement was a waiver of any rights of recourse and claims on account of subrogation.

b. Subordination Agreement

On 21 December 2010 a subordination agreement was concluded between PF, Pfeiderer Sweden AB (hereinafter referred to as: PSAB) and the Commerzbank AG Filiale Luxembourg as standstill security agent in which it was agreed that the Senior Claims precede in rank the Junior Claims. Senior Claims are (briefly put) all the existing and future amounts receivable and claims of each of the Finance Parties against each of the PAG group companies. Junior Claims are all (existing and future) claims of PF against PSAB

c. Pledge of bank accounts in the Netherlands created under Dutch law

In the deed of pledge of 31 January 2011, PF concluded a security agreement pledge of bank accounts with the Commerzbank AG Filiale Luxembourg as standstill security agent.

PF waived its claims of recourse it may have in these agreements.

The position of the Security Holders

7. The other major item under accounts payable concerns a debt to the "Security Holders". On 25 April 2007, PF issued undated subordinated Securities to the amount of €275,000,000. According to the information in the Prospectus, PF had issued the Securities to pay off the bridge credit taken out for the purchase of the Pergo shares and, to a smaller extent, for providing operational capital. The Terms and Conditions as included in the Prospectus apply to the Securities.
8. It is explicitly provided in § 2 of the Terms and Conditions that the claims of the Security Holders are fully subordinated to all present and future subordinated and unsubordinated debt obligations of PF. Also included in § 2 in so many words is that no payment will be made to the Security Holders in the event of bankruptcy proceedings until all other subordinated and unsubordinated debt obligations of PF are paid off in full.
9. In addition to this, PF issued an unconditional and irrevocable subordinated guarantee to the Security Holders.

The assets

10. The following assets were found in the bankruptcy:
 - The amount receivable by PF from PAG.
 - The amount receivable by PF from Declam Flooring AB (formerly PSAB).
 - The bank balance with ABN Amro bank.
 - The corporate income tax refund for the preceding years.

The amount receivable by PF from PAG

11. There was an Intercompany Account Agreement between PF and PAG on the basis of which PAG was indebted to PF for the amount of €70,102,869.
12. This debt was assigned to the Finance Parties under the Security Assignment Agreement of 21 December 2010.
13. As it is known, the court in Düsseldorf issued a so-called "*Eigenverwaltung*" on 17 April 2012. In the letter of 20 June 2012, the PF bankruptcy trustee received confirmation from the court

in Düsseldorf that the claim of PF was contested by the administrator (Piepenburg) and the creditors (the Finance Parties) in the “*Eigenverwaltung*” of PAG. It was explained in the accompanying letter that in the absence of composition with the PF bankruptcy trustee and the creditors contesting the claim of PF, claim validation proceedings had to be conducted within a period of two weeks starting on the day after the publication date of the distribution list. The claim of PF was contested because the administrator and the Finance Parties were of the opinion that this claim had been assigned to the Finance Parties as a result of which the PF bankruptcy trustee did not have the right to present the claim for verification or to cast a vote on the “*Insolvenzplan*”.

14. On 12 September 2012, a vote was held at the creditors’ meeting in Düsseldorf on the PAG “*Insolvenzplan*”. Under the statutory “*Eigenverwaltung*” regulation, the creditors may submit their objections to the plan under the following conditions:
 - (a) The objections must be made known not later than on the date of the creditors’ meeting;
 - (b) The creditor must have voted against the plan;
 - (c) The creditor must make a plausible case that his position would significantly be more at a disadvantage as a result of the insolvency plan than without that plan and that this disadvantage cannot be overcome by payment from funds specifically set aside for that purpose in that plan.
15. Conditions (a) and (b) could only be met if and insofar a contested creditor has voting rights at the creditors’ meeting. The situation is not clear in that regard.
16. The most important issue, however, is condition (c): would the position of PF be significantly more at a disadvantage with that *Insolvenzplan* than without it. Included in schedule I.F.1¹ is a comparison made between the situation where the *Insolvenzplan* is implemented and the situation where the company is liquidated. It follows from that comparison that in the event of liquidation the unsecured and unsubordinated creditors would in all likelihood receive a payment of 1%².

¹ Anlage I.F.1 zum *Insolvenzplan* PAG: Vergleich zur Regelinsolvenz gem. par. 251 InsO.

² That 1% could only be achieved if a number of assumptions would turn out to be true:

1. A complete collapse of the Pfeleiderer Group as a result of the bankruptcies of the subsidiary companies is averted. An additional condition is for the banks, in the event of a liquidation scenario, to be willing to abandon selling under execution the operational companies and the banks must also be prepared to maintain [an adequate] level of liquid assets.
2. If only PAG is declared bankrupt and no agreements are made about the percentage or amount to be paid for work done to the trustee in his capacity as administrator of the assets of the bankrupt company (*boedelbijdrage*), the bankrupt PAG has no net assets and that 1% cannot be paid.

17. On p.68 of the *Insolvenzplan* is concluded that the *plan quote* of 9.7% - as provisionally estimated at that time – in which the banks did not participate with their secured claims was the better option in any realistic execution sale scenario than the so-called “*Regelinsolvenz*”. Even to the extent that the PF bankruptcy trustee would have had voting rights at the creditors’ meeting of the *Eigenverwaltung* of PAG, then on the basis of the *Insolvenzplan* there was no good reason to vote against the plan.
18. It should be noted with regard to the above, however, that PF had assigned its amount receivable from PAG to the Finance Parties. Therefore, PF did not have any voting rights in the *Eigenverwaltung*. If the vote had been in favor of liquidation, the proceeds of that claim against PAG would not have accrued to PF.
19. The PF bankruptcy trustee is of the opinion that there were no grounds to successfully challenge the validity of the assignment of the amount receivable from PAG (of which more anon). This means that the bankruptcy trustee did not have voting rights at the creditors’ meeting of the *Eigenverwaltung*.
20. Suppose for an instant that the bankruptcy trustee could indeed have been successful in challenging the validity of the Security Assignment Agreement, then that would have had as its consequence that the amount receivable from PAG was to be released to form part of the net assets of PAG. That would have meant for PF to have an unsecured claim in the *Eigenverwaltung* of PAG³.
21. The first question that must then be asked is whether the Finance Parties would still have been prepared to cooperate with the implementation of the *Eigenverwaltung* or that, in that case, the liquidation scenario would have taken effect and that the unsecured creditors would only have been paid 1% at best under the *Insolvenzplan*.⁴ In the latter situation, a maximum amount of €700,000 would have become part of PF’s net assets.
22. If the Finance Parties would nevertheless have been willing to cooperate with the liquidation of the *Eigenverwaltung* under the same conditions if PF had been able to present a claim for the debt payable by PAG after having conducted the required legal proceedings, (a maximum of) 97% of the claim against PAG would have become part of the net assets of PF under the *Insolvenzplan*. This amount (a mere €7,000,000) would then have become available to

³ This is a purely hypothetical situation as there were no grounds to successfully challenge the validity of the security assignment agreement.

⁴ That 1% is based on the aggregate amount of the unsecured claims excluding the amount receivable of €70,000 by PF from PAG. If that amount receivable were also to form part of the unsecured claims than the distribution percentage would become even lower.

unsecured creditors in the PF bankruptcy proceedings. If that had been the case, the Finance Parties would not have relinquished their unsecured debts under the guarantees issued by PF in 2006 on the basis of the Senior Credit Agreement, being an amount of approximately €835,000,000. Even in that situation there would have been insufficient means to make payments to the subordinated creditors.

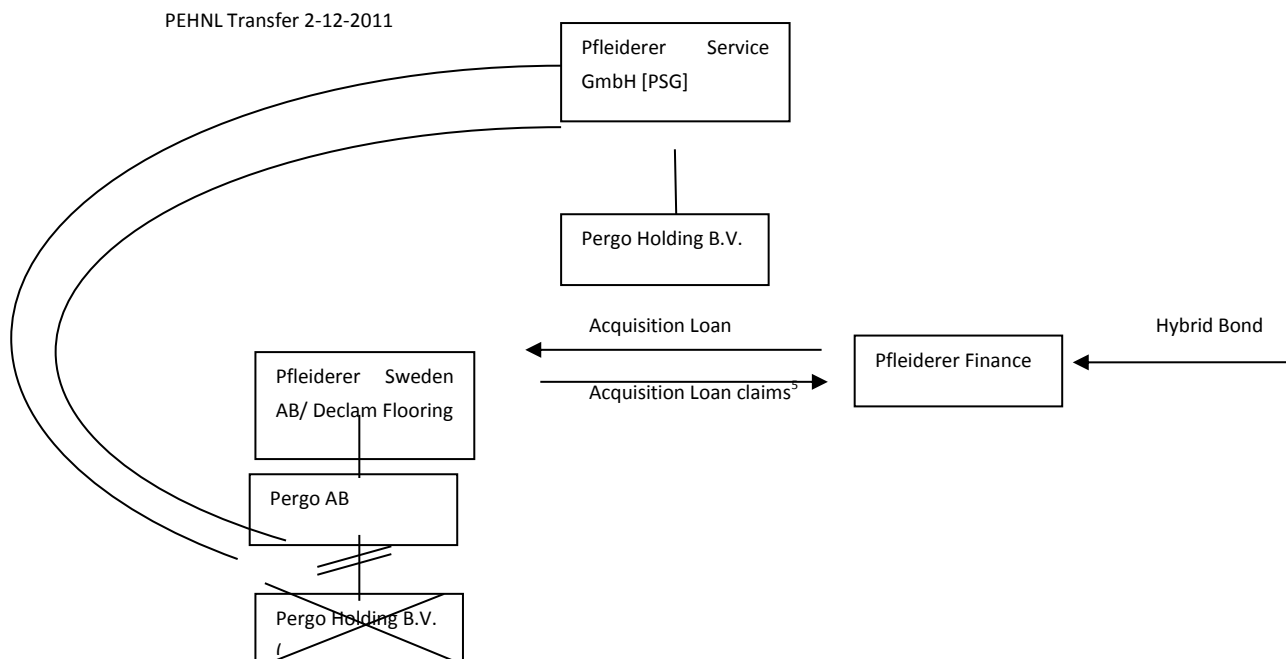
23. The bankruptcy trustee in the PF bankruptcy proceedings did not have any grounds to challenge in law the claim of the [administrator] and the Finance Parties in order to subsequently vote against the *Insolvenzplan* at the creditors' meeting, at least to object against the adoption of the plan. There is no scenario whatsoever in which the subordinated creditors (the bond holders) would have received any payment. On 12 September 2012, the *Insolvenzplan* was adopted by the creditors with a large majority.

The amount receivable by PF from Declam Flooring AB (formerly PSAB)

24. The proceeds of the Securities issue were used for financing the acquisition of the Pergo Group. PF had re-lent these proceeds to Pfeleiderer Sweden AB (PSAB). PSAB had funded with this loan the acquisition of the Pergo Group. As at the date of the bankruptcy, there was an outstanding amount payable by PSAB of €288,978,037, being the Acquisition Loan.
25. PSAB and its Swedish subsidiary company Declam AB (formerly Pergo AB, hereinafter PESE) have been in a state of "voluntary liquidation" since 13 and 19 December 2011. Mr. Björn Nicolai is the Swedish administrator. The claim against PSAB was presented at the voluntary liquidation. The Swedish administrator made it known that it was highly unlikely that there would be any payment for the creditors as the most important asset (namely the purchase price for the PESE shares, of which corporate structure the Pergo Group forms part) is pledged to the Finance Parties.

Valuation amount receivable from PSAB

26. On 31 August 2012, Duff & Phelps GmbH issued a report on the valuation of this amount receivable, namely the "fair market value"(FMV)
27. The facts are schematically reproduced in the report as follows:



28. Under the Subordination Agreement of 21 December 2010 the amount receivable by PF from PSAB was made subordinate to the other claims the Finance Parties had against PSAB. PF accepted the obligation in the Subordinate Agreement not to claim payment from PSAB or to take any other steps to enforce payment of its claim under the Acquisition Loan Agreement.
29. It was further stipulated in the Subordination Agreement that in the event of an insolvency of PSAB, only the Finance Parties had the right to present their claim for verification and also to take every step necessary to achieve collection of the outstanding debt. Under this Subordination Agreement, PF was not free to claim or receive any payment on account of the Acquisition Loan Agreement, unless the Finance Parties had been paid in full.
30. Furthermore, the Finance Parties put forward that the claim of PF against PSAB had been assigned to the Finance Parties under the Security Assignment Agreement of 21 December 2010 as a result of which PF was no longer the legal owner of the claim.
31. The most important asset of PSAB was the shares in Pergo AB (PESE). PESE held the shares in Pergo Holding B.V. and sold these shares to Pfeleiderer Service GmbH.

⁵ Subordinated: All claims of the standstill finance parties rank ahead of the claims of PF against PSAB.

32. The purchase price of the Pergo shares, however, was assigned to FP so that the amount of the purchase price (according to the report of Duff & Phelps €26,600,000) did not have a positive influence on the valuation of the PESE shares.
33. It was therefore the conclusion of Duff & Phelps that the claim on account of the Acquisition Loan Agreement could only then have a positive market value if all the debts of the Pfeleiderer Group could be paid in full to the Finance Parties. In order to assess whether there could be a realistic possibility of paying all the debts to the Finance Parties from the proceeds of the assets, Duff & Phelps compared the liquidation value of all the assets of the Pfeleiderer Group with the total debt exposure of the Pfeleiderer Group to the Finance Parties. Duff & Phelps found that there could not be any full payment to the Finance Parties on the basis of the liquidation value of the group's assets.

The balance of the ABN Amro bank account

34. At the time when PF was declared bankrupt, the balance of the bank account held with the ABN Amro bank was €190,50.69.
35. PF created a right of pledge on the bank account held with the ABN Amro bank for the benefit of the Finance Parties by deed of pledge of 31 January 2011.
36. It is settled case law that an undisclosed pledge (*bezitloos pandrecht*) may only be created in future debts to be incurred directly from a legal relationship that existed at the time of the pledging.
37. A disclosed pledge may also involve a pledge on a future balance in a bank account. The Financial Parties put forward that they had informed the ABN Amro bank of the right of pledge on 2 February 2011.
38. Insofar a legally valid disclosed pledge had been created, it is the opinion of the bankruptcy trustee that it is stipulated in the general terms and conditions of ABN Amro bank that the claims a client has against the bank cannot be subject to transfer or pledge to any other person or entity but the bank, except for prior written permission from the bank.

39. The bankruptcy trustee relied on that prohibition on pledging in respect to the Finance Parties and put forward the argument that this prohibition on pledging has property-law consequences and that it may therefore be also invoked against the Finance Parties⁶.
40. In order to resolve this dispute, it had been agreed with the Finance Parties that the bank balance becomes an unencumbered part of the net assets.

The appeal proceedings against the imposed corporate income tax assessment

41. The PF tax attorney was consulted about the expense involved with and the likelihood of successful appeal proceedings against the imposition of corporate income tax assessments for the period 2008-2011. The tax attorney rated the changes at 1% for a successful appeal and the best possible outcome.
42. Following deduction of the incurred tax consultancy fees, the appeals made against the tax assessments resulted in a net gain for the net assets of €175,814.50.

The available options to invalidate the contracts concluded by PF

43. Options were explored during the bankruptcy proceedings whether the obligations PF had entered into were legally valid. We specifically looked into the following agreements to see whether they could be declared void on account of prejudicing creditors (*actio pauliana*):
 - The Senior Credit Agreements of 5 December 2006 up to and including 8 January 2010;
 - The Security Assignment Agreement of 21 December 2010;
 - The Subordination Agreement of 21 December 2010.
44. The Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (hereinafter: the European Insolvency Regulation) provides in article 3 that the courts of the Member State within the territory of which the center of a debtor's main interest is situated have jurisdiction to open insolvency proceedings. The center of main interest (COMI) for legal entities is assumed to be the location where they have their registered office. The Dutch courts have jurisdiction to declare PF bankrupt on the basis of this European Regulation.
45. Article 4(2)(m) of the European Insolvency Regulations also provides that the *lex concursus*⁷:

⁶ The (Dutch) Supreme Court recently found in its judgment *Coface / Intergamma* (HR 21 March 2014, *JOR* 2014, 151) that the property-law consequences of a prohibition of assignment or on pledging is no longer the basic assumption, unless it can be concluded from the wording of such prohibition that property-law consequences were the intended effect.

“(…) determines the conditions for the opening of those proceedings, their conduct and their closure. It determines in particular:

(…)

(m) the rules relating to the voidance, voidability or unenforceability of legal acts detrimental to all creditors”.

46. Under the provisions of the European Insolvency Regulation, the question whether the legal acts referred to above can be invalidated must be answered under Dutch law.
47. However it is established case law of the Dutch Supreme Court that where the legal act itself is governed by the laws of another country (*lex causae*) the *actio pauliana* challenge must not only be assessed under the *lex concursus* but also under the *lex causae* so that an action brought on the basis of the *actio pauliana* will only be allowed if the requirements of both the *lex concursus* as well as the *lex causae* are met. In this case, the *lex concursus* is Dutch law and the *lex causae* is German law.
48. A legal act can only be voided under Dutch law on account of it being detrimental to creditors if it meets three criteria:
- (a) A voluntary legal act;
 - (b) Detrimental to creditors;
 - (c) Knowledge of prejudicing creditors on the part of both the debtor (PF) as well as the other party (the Finance Parties).
49. An *actio pauliana* challenge fails the third criterion. Under case law of the (Dutch) Supreme Court, the knowledge of prejudicing creditors criterion is only met if the bankruptcy and the deficit in the net assets were foreseeable to both the Finance Parties and PF at the time when they performed the legal act⁸. The (Dutch) Supreme Court also held that if the debtor knows or ought to know that the legal act would make it likely that one or two creditors would be put at a disadvantage, it does not constitute sufficient grounds to void the legal act⁹
50. The aforementioned legal acts fail to meet this criterion. When, back in 2006, the Senior Credit Agreements were concluded, the bankruptcy of PF and the deficit in its net assets were absolutely not foreseeable. The Senior Credit Agreements cannot be declared void on account of prejudicing creditors.

⁷ The law of a Member State in which the bankruptcy is declared

⁸ HR 22 December 2009, NJ 2010/273 *ABN Amro / Van Dooren q.q.*

⁹ HR 1 October 1993, NJ 1994/257 *Ontvanger / Pellicaan*

51. Also on 21 December 2010 the bankruptcy of PF and the deficit in its net assets were not foreseeable in any manner whatsoever by PF and the Finance Parties. PSAB and its Swedish subsidiary Pergo AB entered into a voluntary liquidation a year later (13 and 19 December 2011). Although there were financial problems in December 2010, the parties involved were convinced that the restructuring would solve these problems. As PAG guaranteed (as subordinated guarantor) the obligations of PF where the Bonds were concerned, attempts were made in 2011 to arrive at a settlement with the Bond Holders in the form of a Debt for Equity Swap. This arrangement was accepted by a large majority of the Bond Holders. But when the *Oberlandesgericht* ruled as late as in March 2012 that the resolutions of the creditors' meeting could not be implemented, it was end of story. However, this was not known back in 2010. All efforts were geared towards saving the group.

The implementation of the *Insolvenzplan* conditions

52. The *Insolvenzplan* could only be implemented following confirmation by the court in Düsseldorf. This confirmation could only be given after all the so-called *Insolvenzplan* conditions had been fulfilled. Included in the *Insolvenzplan* were five conditions that had to be met before the plan could be confirmed.
53. One of these conditions related to the restructuring of the Pfeleiderer Group. As part of that process, the bankruptcy trustee was asked to cooperate with the fulfillment of the *Insolvenzplan* conditions.
54. The bankruptcy trustee agreed to the restructuring in the Determination Agreement under the conditions that the bank balances of the ABN Amro bank (and also of the Nordea Bank AB and UniCredit Bank AG) were released and that the Finance Parties would relinquish their claim against PF which concerned an amount of €967,873,335¹⁰.
55. The following agreements were concluded under those conditions:
- (a) The Consent Declaration;
 - (b) The Debt Restructuring Agreement;
 - (c) The Cross Collateral Suspension Agreement
56. In no scenario whatsoever would the proceeds of the only two assets, namely the amounts receivable by PF from PAG and/or from Declam Flooring AB have become part of the net assets of PF and therefore to the benefit of the (subordinated) creditors of PF. If the

¹⁰ On the understanding that parties had agreed to keep intact the fiduciary assignment of the claim against PAF and DeclamFlooring as well as the Subordinated Agreement.

bankruptcy trustee had not cooperated with the aforementioned contracts, the Finance Parties could have requested the bankruptcy judge in the PF bankruptcy proceedings to order the bankruptcy trustee to cooperate with these transactions. In that case the bankruptcy trustee would not have any reasonable interest to deny that cooperation.

57. If the restructuring had not gone ahead then the Finance Parties would not have relinquished their claim on account of the guaranteed obligations as a result of which the net assets of the bankrupt PF would have been in even more dire straits than they are at present. The balance of the ABN Amro bank account would not have been released by the Finance Parties. There would not have been a single asset left in the net assets of PF and the liabilities would have been increased with the amount payable to the Finance Parties. The amounts receivable by PF from Declam Flooring AB would still have been assigned to the Finance Parties as part of providing them security and be converted into cash on those grounds. The amounts receivable by PF from PAG would still have been assigned to the Finance Parties. There were no more or any other items left. No substantive items in the net assets of PF were relinquished when these agreements were concluded; on the contrary.

Situation of the net assets

58. Based on the current situation of the net assets, it is expected that following payment of the net assets creditors and the preferred creditors, payment can be made to the unsecured creditors of approximately 3% of their claim.

Boxtel 3 October 2014

C.A.M. de Bruijn, bankruptcy trustee