IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No.: 26433/2020

In the matter between:

KINGSGATE CLOTHING (PTY) LIMITED	First Applicant
CLEMATIS TRADING (PTY) LIMITED	Second Applicant

and

PIERS MICHAEL MARSDEN	First Respondent
LANCE SCHAPIRO	Second Respondent
EDCON LIMITED (IN BUSINESS RESCUE)	Third Respondent
THE COMPANIES AND INTELLECTUAL PROPRIETIES COMMISSION	Fourth Respondent

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FIRST TO THIRD RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

LANCE SCHAPIRO,

do hereby make oath and state that:

1. I am an adult male practising as a business rescue practitioner at Matuson & Associates (Pty) Limited at Building 2, Oxford & Glenhove, 114 Oxford Road, Houghton Estate, Johannesburg. I am the second respondent herein.

2. The first respondent and I are cited herein in our capacities as the joint business rescue practitioners ("**practitioners**") of the third respondent ("**Edcon**"). The practitioners have taken full management control of Edcon since our appointment and have been involved almost exclusively with Edcon's business rescue proceedings.

3. The first respondent supports the opposition to the application brought by the applicants under the above case number ("**application**") and has authorised me to depose to this affidavit on his behalf.

4. The facts deposed to in this affidavit are within my personal knowledge and belief, save where the context indicates to the contrary, and are furthermore true and correct. Where I refer to information conveyed to me by others, I verily believe such information to be true. Where I make submissions of a legal nature, I do so on the advice of our legal representatives.

5. I have read the founding affidavit deposed to by Yusuf Ahmed Sadek Vahed on behalf of the applicants on 19 June 2020 ("**founding affidavit**") in support of the application. The application was emailed to the practitioners between 15h26 and 16h11 on Friday, 19 June 2020. In terms of the notice of motion, the applicants required the respondents to file their answering affidavit by 09h00 on Sunday, 21 June 2020.

6. I note upfront that the applicants did not obtain the permission of the practitioners to institute these proceedings and have failed to seek the leave of this Honourable Court to institute these proceedings in terms of section 133 of the Companies Act,

71 of 2008 ("**Companies Act**"). It is submitted that the application should fail for this reason alone.

7. The application has been brought as one of extreme urgency. It has been necessary to work on the weekend under extreme pressure to get these papers before this Honourable Court.

8. The application is an abuse of this Honourable Court's process and has been brought in order to steal a march upon the practitioners, in the hope that the practitioners will not be able to file our answering affidavit in time and deal with all of the allegations contained in the founding affidavit. Moreover, the application is littered with factual inaccuracies in regard to the practitioners' purported conduct, failure to produce documents and/or to respond to the applicants' queries and/or requests.

9. I set out briefly the chronology leading up to the application:

    9.1. After the first meeting of creditors on 18 May 2020, the practitioners consulted with the creditors' committee on the business rescue proceedings and development of the business rescue plan on 28 May 2020 and 4 June 2020.

    9.2. The business rescue plan was duly published. Simultaneously with the publication of the business rescue plan, a notice of the meeting to determine the future of Edcon in terms of section 151 of the Companies Act ("**section 151 meeting**") was delivered to all affected persons. A copy of the notice is attached as "**AA1**".

    9.3. In terms of section 151 of the Companies Act, the practitioners must convene and preside over the section 151 meeting within 10 business days after publishing the business rescue plan.

9.4. In terms of the notice of the section 151 meeting, the practitioners set out the date of 22 June 2020 for the section 151 meeting, thereby providing affected persons with the opportunity to consider the business rescue plan within the statutory timeframe of 10 business days from the publication date.

9.5. On 15 June 2020, the practitioners convened another creditors' committee meeting to discuss the business rescue plan and the dividend calculation provided therein, and had a detailed answer and question session with the creditors' committee. This meeting lasted for 2 ½ hours and further financial information was provided to the creditors' committee afterwards (despite allegations to the contrary in the founding affidavit). A copy of the minutes to this meeting is attached as "**AA2**".

10. The applicants have shown a complete disregard for the requirements set out in Rule 6(12) of the Uniform Rules of Court, the practice of this Honourable Court, our rights as litigating parties and the rights of other affected persons of Edcon.

11. In particular, the applicants have not set out any reason why they could not, and did not, comply with the practice directives of this Honourable Court by having papers finalised by a Thursday for a Tuesday. In addition, the applicants have not advanced any reason why redress cannot be obtained in the ordinary course. On the contrary, on the applicants' own version they acknowledge that they have alternative remedies.

12. The applicants' remedies are self-contained in the Companies Act:

12.1. they can attend the section 151 meeting and motion an amendment of the business rescue plan and/or adjournment of the section 151 meeting; and/or

12.2. they can apply to court after the adoption of the business rescue plan to set aside the adoption of the business rescue plan.

13. In addition, the applicants have failed to join or give any consideration to the other affected persons, such as the majority of creditors and employees, who have a clear interest in the section 151 meeting and whether it proceeds on 22 June 2020 or not. I point out that the business rescue plan, as published, contemplates amongst others the saving of thousands of jobs, which are at risk if the section 151 meeting does not proceed on 22 June 2020 and/or the business rescue plan is not adopted.

14. As will be set out below, contrary to the impression created throughout the founding affidavit, the applicants do not represent the concurrent creditors as a body. The applicants' claims comprise less than 0.6% of Edcon's creditors' voting interests. Even if the claims of the additional eleven creditors alluded to in the founding affidavit are taken into account (i.e. with a total value of R200 million), such creditors' claims comprise less than 2.5% of Edcon's creditors' voting interests.

15. The moment that the practitioners convened the meeting as statutorily required and gave notice of the section 151 meeting, other parties gained statutory rights for the section 151 meeting to be held, to be present at the section 151 meeting and to exercise their statutory rights at such meeting. These other parties are the employees' representative/s (having a statutory opportunity to address the meeting) and the other creditors, secured and unsecured creditors, whose number and value are far greater than the applicants.

16. Once other parties have acquired such statutory rights, they are interested parties and should have been joined.

17. The applicants cannot circumvent the provisions of the Companies Act by approaching this Honourable Court for the relief sought to the exclusion of all of the other affected persons.

18. The motive of the applicants in bringing the application on unreasonable time frames, is also an aspect of concern. I point out that on 17 June 2020, the applicants' attorney addressed several letters to the practitioners. In terms of the 21 page letter attached as YV4 to the founding affidavit, the applicants' attorney provided for a deadline of 16h00 on Friday, 19 June 2020, for the production of documents. Despite the aforesaid deadline, the applicants issued and served the application well before their aforesaid deadline.

19. Evidently, the applicants were intent on bringing this application irrespective of the practitioners' response to their aforesaid letter, which, contrary to the allegations in the founding affidavit, was indeed sent before the deadline at 15h33 on Friday, 19 June 2020. The response is attached as "**AA3**".

20. Due to the extreme time constraints, the practitioners do not have time to deal with every allegation contained in the founding affidavit and all of the practitioners' rights to do so in a further affidavit are reserved. In this regard, it is submitted that most of the founding affidavit contains defamatory and emotive allegations designed to sensationalise the applicants' case and mislead this Honourable Court. Numerous attacks are made on the practitioners and their motives. This will be required to be dealt with fully in due course by the practitioners. In the interim, the practitioners record that such allegations are without merit, irrelevant to this application and denied.

21. Consequently, to the extent that I do not deal with any allegation contained in the founding affidavit, if it is inconsistent with what is stated herein, same is denied.

22. For the purposes of this answering affidavit, it is imperative for the practitioners to deal with the section 151 meeting and same proceeding on 22 June 2020.

23. The section 151 meeting must statutorily proceed and the applicants, together with all of the other affected persons, can exercise their statutory rights in terms of section 152 of the Companies Act during the section 151 meeting. In this regard, the applicants have been advised that affected persons will be afforded an opportunity to make motions in terms of section 152 of the Companies Act in writing during the section 151 meeting (annexure AA3). Such motions include motions to amend and adjourn the section 151 meeting.

24. The applicants cannot take the stance that because they are not satisfied with the information provided, they are therefore entitled to demand an adjournment of the section 151 meeting to the exclusion of the rights and interests of every other affected person in the section 151 meeting proceeding.

25. As set out above, although repetitive use of the term "*Concurrent Creditors*" is made throughout the founding affidavit, such reference is not to Edcon's general concurrent creditors or creditors' committee. It is limited to the applicants. Although vague reference is made in paragraph 19 of the founding affidavit to eleven concurrent creditors being represented by the first applicant on the creditors' committee (with claims allegedly comprising approximately R200 million, including the applicants' claims of approximately R42.5 million), no supporting affidavits have been filed by such other creditors in support of the application. The applicants cannot allege, as they did in paragraph 21 of the founding affidavit, that latitude in regard to hearsay

evidence in urgent applications relating to supporting and/or confirmatory affidavits of the other creditors can be afforded in this instance.

26. The use of the term "*Concurrent Creditors*" by the applicants is misleading in that it creates the impression that the entire body of concurrent creditors hold the same views as the applicants and/or support the application. This is simply not the factual position.

27. The total amount owed to Edcon's creditors is approximately R8.1 billion, comprising secured creditors' claims of approximately R3.8 million and concurrent creditors' claims of approximately R4.3 billion. The applicants' claims comprise approximately R42.5 million. Even if the other concurrent creditors vaguely referred to in the founding affidavit did support the application, they represent less than 2.5% of the total creditors' voting interests.

28. The proxy forms received to date reflect an overwhelming support for the adoption of the business rescue plan (over 85% of the proxy forms received are in favour of the adoption of the business rescue plan). Ultimately the decision for or against the adoption of the business rescue plan will be influenced by what is motioned and discussed during the section 151 meeting.

29. The applicants show a disregard for the statutory requirements and restrictions of time for the section 151 meeting and peremptory provisions of section 152 of the Companies Act.

30. Notwithstanding the personal attacks on the practitioners, the applicants do not take issue with the fact that Edcon is in business rescue, that we have been appointed as the practitioners and that we have to act in accordance with the provisions of the Companies Act. They also do not take issue with the publication of the business

rescue plan, the timeous notification of the section 151 meeting and that the business rescue plan complies with the provisions of the Companies Act (other than making a vague and unsubstantiated reference to a "*host of irregularities*").

31. The applicants effectively take issue with the information provided to them, or purported lack thereof, and the time that they contend they require to consider the business rescue plan.

32. The practitioners, having published the business rescue plan in terms of section 150 of the Companies Act, in respect of which no issue has been taken by the applicants, are obliged to follow the prescripts of section 151 of the Companies Act, which says that the practitioners must convene the section 151 meeting within 10 business days of publication of the business rescue plan, and deliver a notice of such meeting at least 5 business days before the section 151 meeting is held.

33. This was done and the section 151 meeting has been convened for 22 June 2020.

34. Insofar as the applicants request a postponement, it is completely improper to agree to such postponement in the context of section 152 of the Companies Act and the statutory requirements. Nothing stops the applicants from seeking the adjournment at the section 151 meeting. They may persuade the other holders of voting interests or they may not.

35. The appropriate forum to raise a request for information and to discuss the contents of the business rescue plan is at the section 151 meeting. At the section 151 meeting, the practitioners are present, other affected persons are present and a fair and pragmatic process is provided for affected persons to deal with any issues in the business rescue plan. This allows for other affected persons to be involved and provide their input, and for the practitioners to deal with and explain any

repercussions of motions to amend the business rescue plan and/or adjourn the section 151 meeting. Ultimately, the section 151 meeting allows for an informed decision to be made by affected persons. It is inappropriate for the applicants to expect this Honourable Court, on an extremely urgent basis, to consider and understand what exactly is required within the context of Edcon's business rescue proceedings, to the exclusion of all other affected persons and in circumvention of the statutory provisions.

36. In relation to the business rescue plan, the practitioners are seeking to rescue Edcon by achieving a better return and balancing the interests of all affected persons, as contemplated in section 7(k) of the Companies Act. It is not just a question of the interests of a limited number of affected persons, it is all affected persons.

37. It is for all of the creditors to decide if they want to adopt or reject the business rescue plan, or if they want it to be amended. Employees must also have their opportunity to make a presentation at the section 151 meeting.

38. The practitioners have been working under enormous pressure to get to the point of the publication of the business rescue plan. It is necessary to reiterate what has been advised to affected person, including the creditors committee, throughout the business rescue process and in the business rescue plan:

38.1. Edcon does not have any post-commencement finance. To this extent, stock has been purchased on a cash on delivery basis. Edcon also has to pay for other operational and employment costs. Edcon can only continue with this model for a short period and no further due to it not being sustainable.

38.2. Any proposal to rescue Edcon would have to be implemented without delay. It is imperative that the accelerated sales process proposed in the business

rescue plan yields a favourable result prior to the end of June 2020 in order to provide sufficient lead time for supplier negotiations to be finalised and for summer stock to be purchased.

38.3. If stock is not purchased, Edcon will run out of inventory and its businesses are likely to fail in the summer season due to a lack of product to sell. This will completely jeopardise any prospect of selling the businesses as going concerns and will result in thousands of employees facing the risk of losing their employment.

38.4. There is accordingly a very small window period for the sales to be concluded. If no offers are received or the businesses are not sold in July 2020, then all affected persons will be prejudiced with less value being received and tens of thousands of employees facing the risk of retrenchment (Edcon has already started with the consultation process in terms of section 189 of the Labour Relations Act).

38.5. Edcon does not have the luxury of time for an adjournment for a week, without addressing any other questions or motions which other affected persons may have and statutorily entitled to make, and then the possibility of another adjournment during the section 151 meeting due to questions or motions made by other affected persons to amend the business rescue plan. If this were to happen, interested purchasers will not proceed further (i.e. without an adopted business rescue plan, alternatively, if there is a failed business rescue plan).

39. The applicants, together with all other affected persons, will be afforded an opportunity to raise questions and make motions in terms of section 152 of the

Companies Act during the section 151 meeting. There is nothing that stops the applicants from asking for an adjournment during the section 151 meeting.

40. From the practitioners' side, it would be preferable to proceed with the vote on the adoption or rejection of the business rescue plan, but this is something which is up to the creditors to decide during the section 151 meeting, after having fully dealt with the questions raised and being fully informed of the repercussions of any motions.

41. Insofar as the applicants take issue with the information provided and further information sought, the business rescue plan complies with the provisions of section 150 of the Companies Act and affected persons have been provided with all of the information reasonably required to facilitate them in deciding whether or not to accept or reject the business rescue plan.

42. In addition, the applicants fail to disclose that the practitioners have in fact provided the following additional information (i.e. in addition to what is required to be contained in the business rescue plan):

    42.1. A further document explaining the business rescue dividend calculation prepared by the practitioners (not by Deloitte as alleged in the founding affidavit). This document, together with the cash flow forecast, contains the calculation of the anticipated business rescue dividend and the anticipated costs of business rescue;

    42.2. Edcon's income statement and balance sheet for the 2016 to 2020 financial years (Edcon's financial year end is March); and

    42.3. Edcon's balance sheet for April 2020, with supporting schedules thereto. In this regard, and as recorded in annexure AA2, the creditors' committee was

advised that the annual financial statements for March 2019 and the draft annual financial statements for March 2020 were available, however, the April 2020 balance sheet would be more accurate as it was more recent.

43. The applicants were also advised in annexure AA3 that the practitioners will furnish the following additional documents:

43.1. minutes of the other committee meetings, where taken; and

43.2. the report prepared by Deloitte in respect of the liquidation calculation upon signature of a document.

44. The practitioners never provided the advice referred to in paragraph 2.1 of the notice of motion and it is also denied that there was any form of embarrassment in regard to the question raised during the creditors' committee on 15 June 2020 as to whether the offices of Matuson & Associates had any prior involvement in Edcon. The prior involvement of the offices of Matuson & Associates is recorded in annexure AA2 and raises no concerns with regard to the independence and appointment of the practitioners, same being appointments in their personal capacities.

45. It is also submitted that the historical information has no impact on the decisions to be made on the business rescue plan. The applicants were advised in annexure AA3 that the practitioners will conduct the necessary and statutory investigations in regard to Edcon's affairs, business, property and financial position and take the necessary steps pursuant to same.

46. It is submitted that the further information is not reasonably required to facilitate affected persons in deciding whether or not to accept or reject the business rescue plan.

47. Notwithstanding the aforesaid, to the extent that the applicants maintain the view that the additional information sought is necessary, this can be raised during the section 151 meeting, during which all affected persons will be afforded an opportunity to make motions and submit questions in terms of section 152 of the Companies Act in writing.

CONCLUSION

48. The practitioners are statutorily obliged to proceed with the section 151 meeting on 22 June 2020.

49. Other affected persons have a statutory right to attend the section 151 meeting and exercise their rights in terms of section 152 of the Companies Act.

50. The applicants' remedies are self-contained in the Companies Act in that they will be entitled to raise their questions and make motions in terms of section 152 of the Companies Act during the section 151 meeting.

51. The applicants have also failed to set out any basis for the granting of the relief referred to in paragraph 3 of the notice of motion.

52. It is accordingly respectfully submitted that the application should be dismissed with costs, including those consequent upon the employment of two counsel.

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LANCE SCHAPIRO

I certify that:

I. the Deponent acknowledged to me that :
   a. He knows and understands the contents of this declaration;
   b. He has no objection to taking the prescribed oath;

c. He considers the prescribed oath to be binding on his conscience.

II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".

III. the Deponent signed this declaration in my presence at the address set out hereunder on 21 June 2020.

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COMMISSIONER OF OATHS

EDCON LIMITED

T: +27 (0) 11 495 6000
P.O.Box 100, Crown Mines, 2025
Edgardale, 1 Press Avenue, Crown Mines, Johannesburg, 2025
www.edcon.co.za

To all Affected Persons

8 June 2020

NOTICE OF MEETING OF CREDITORS AND OTHER HOLDERS OF A VOTING INTEREST IN TERMS OF SECTION 151 OF THE COMPANIES ACT 71 OF 2008, AS AMENDED ("THE COMPANIES ACT")

1. Notice is hereby given to all affected persons of Edcon Limited (in business rescue) ("the Company") of the meeting to determine the future of the Company in terms of section 151 of the Companies Act ("S151 Meeting") to be held as follows:

   Date: 22 June 2020

   Time: 14:00

   The Section 151 Meeting will be held electronically. A hyperlink providing access to the Section 151 Meeting will be circulated prior to the 22 June 2020.

2. In terms of section 151 and 152 of the Companies Act, the agenda for the S151 Meeting is as follows:

   2.1. An introduction of the proposed Business Rescue Plan ("the Plan") for consideration by creditors and a presentation of the salient terms and conditions of the Plan.

   2.2. Confirmation that the Joint Business Rescue Practitioners ("the BRPs") continue to believe there remains a reasonable prospect of the Company being rescued as contemplated in the Companies Act.

   2.3. The consequences for creditors if the Plan is adopted or rejected.

   2.4. A presentation by the employees' representative if they should wish to make such presentation.

   2.5. Discussions and the conduction of a vote on the following motions:

      2.5.1. To amend the Plan, in any manner moved and seconded by holders of creditors' voting interests, and satisfactory to the BRPs; or

      2.5.2. Directing the BRPs to adjourn the meeting in order to revise the Plan for further consideration.

2.6. Determination of the vote for preliminary approval of the Plan (as amended if applicable) pursuant to an adjournment.

2.7. Results of the preliminary vote.

2.8. Report on the outcome of the vote for the adoption of the Plan.

3. Summary of rights of Affected Persons to participate in and vote at the Meeting:

3.1. Creditors, other holders of a voting interest and employees of the Company are referred to sections 144, 145 and 146 of the Companies Act, and are encouraged to seek independent legal advice in respect of their rights.

3.2. In terms of section 145 of the Companies Act, Employees –

3.2.1. Are entitled to be present at the S151 Meeting and make a submission before a vote is conducted on the Plan; and

3.2.2. Are entitled to vote with creditors on a motion to approve the Plan to the extent that the employee is a creditor of the Company; and

3.2.3. If the Plan is rejected, are entitled to propose the development of an alternative plan or present an offer to acquire the interests of other creditors as provided for in section 153 of the Companies Act.

3.3. In terms of section 145 of the Companies Act, Creditors –

3.3.1. Have a right to vote to amend, approve or reject the Plan;

3.3.2. If the Plan is rejected, have a further right to propose the development of an alternative plan or present an offer to acquire the interests of other creditors as provided for in section 153 of the Companies Act; and

3.3.3. Whether secured or unsecured creditors, having a voting interest equal to the value of the amount owed to that creditor by the Company.

3.4. In terms of section 146 of the Companies Act, the Shareholder –

3.4.1. Is not entitled to vote to approve or reject the proposed Plan as it does not alter the rights associated with the class of securities held by the shareholder; and

3.4.2. If the proposed Plan is rejected, is entitled to propose the development of an alternative plan or present an offer to acquire the interests of other creditors as provided for in section 153 of the Companies Act.

4. Creditors should please note that should they for any reason be unable to attend the electronic meeting, they are entitled to exercise their vote by proxy form, which proxy form must be forwarded to BRPs prior to 17:00 on 19 June 2020.

5. **Affected Persons are requested to provide any further questions and/or proposed amendments to the BRPs prior to the S151 Meeting so that the BRPs can consider and address same prior to the S151 Meeting to plan@edconbr.co.za.**

6. Completed forms of proxy must be emailed to **creditors@edconbr.co.za.**

Regards

Piers Marsden

Business Rescue Practitioner

Lance Schapiro

Business Rescue Practitioner

"AA2"

MINUTES OF A MEETING OF THE CREDITORS' COMMITTEE OF EDCON LIMITED HELD VIA MICROSOFT TEAMS ON MONDAY 15 JUNE 2020 AT 5.30 PM

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1. The meeting commenced with a welcome from chairperson of the committee, Juliette de Hutton (**De Hutton**). De Hutton confirmed that various questions/concerns had been raised by the committee and that she had provided a memorandum summarising these to the practitioners.

2. De Hutton handed over to the practitioners to deal with the various queries.

3. Piers Marsden (**Marsden**) proceeded to explain the balance sheet of Edcon Limited (**Edcon**) as at the end of April 2020.

4. Marsden explained that although the balance sheet reflects assets of almost R11 billion, this is misleading. The balance sheet is prepared on a going concern basis, which does not reflect realisable values in a liquidation or wind-down scenario.

5. Marsden proceeded to explain the various line items in the balance sheet commencing with non-current assets. The first line item of note is that of "Right of use assets" in the amount of approximately R4.1 billion. This is purely an accounting entry. It is balanced out in the liabilities section of the balance sheet by the finance lease liability of R3.34 billion under non-current assets and the finance lease liability of R1.8 billion under current liabilities. This is therefore not a real asset that can be converted into cash.

6. The next line item is "Properties, fixtures, equipment and vehicles" of R1.1 billion. This can be broken down further into land and buildings, leasehold improvements, fixtures and fittings, computer equipment and software and machinery and vehicles. The biggest of these, fixtures and fittings (R690 million), refers to items such as shelving and other custom made fixtures and fittings in stores. In a store that continues to operate they may have value but in a store that discontinues they have virtually no value. In regard to computers and software, these have very little value in the market, if any. Leasehold improvements are amounts which have been expended on leased property. In a liquidation one receives no value for these.

7. The next line item in the balance sheet is "Investments in subsidiaries" (R369 million). It can be broken into three main components, namely Jet Supermarkets Botswana Proprietary

Limited, Edgards Stores (Namibia) Limited and Edgards Stores Swaziland Limited. Whether any value can be realised from these depends on whether there are buyers interested in these stores. Edcon is merely the shareholder of these entities. If there is no interested buyer they will be liquidated.

8. In summary, all the non-current assets in the total amount of R5.579 billion have very little value in a business rescue or liquidation scenario.

9. In regard to current assets, the main asset is "Inventories" in the amount of R2.4 billion. This is the asset that will lead to the largest recovery from the perspective of creditors. Creditors needs to be aware that of this there is a significant amount that is either consignment stock or subject to reservations of ownership. Consequently, of this R2.4 billion a significant amount will not flow through to creditors.

10. Marsden was asked about representations made by Grant Pattison (**Pattison**) on 26 March 2020 to the effect that Edcon held R3.2 billion in stock. Marsden was asked how R800 million of this had disappeared by the time the practitioners took over given that there was no trading due to lockdown. Lance Schapiro (**Schapiro**) confirmed that the R2.4 billion reflected on the balance sheet is cost value. He was not able to comment in regard to Pattison's alleged representation to the effect that R3.2 billion in stock was held. Marsden confirmed that the intention was to sell this stock / inventory in an accelerated sale process. They would not be able to sell the full range of stock and therefore the recovery would be lower than the R2.4 billion set out in the balance sheet.

11. In regard to "Amounts owing by Group companies and related parties", this referred to loan accounts owing primarily by subsidiaries operating in Ghana, Mozambique and Zambia. There was not likely to be any recovery from these operations, in particular Zambia (already in liquidation) and Ghana (loss making). A comment was, however, made by Louise Wiggett (**Wiggett**) to the effect that she would be able to assist with the repatriation of funds from Mozambique.

12. In regard to the line item "Sundry receivables and prepayments" these were prepayments on leases, rebates etc and the only hard asset that was recoverable was the RCS receivable in the amount of approximately R80 million.

13. As regards "Cash and cash equivalents", by the time the practitioners took over this cash had already been spent, primarily on salaries and related expenses such as PAYE. There was therefore not cash in the bank when they took over and there is no cash remaining on

the balance sheet. Even if it had been, this cash would have been covered by the cession in place in favour of the secured creditors.

14. In the circumstances there are assets worth R11 billion. The R4.1 million relating to "Right of use assets" must be ignored. The "Properties, fixtures, equipment and vehicles" will not realise anything close to the R1.1 billion reflected on the balance sheet and the "Investments in subsidiaries" is also largely unrealisable.

15. During the explanation of the balance sheet Yusuf Vahed (**Vahed**) indicated that there was a vast amount of information he required from the practitioners that had not yet been provided. This included financial statements for previous years. Marsden indicated that he could not see the purpose of providing information in relation to the past. However, the March 2019 annual financial statements were available and there were also March 2020 annual financial statements although the latter had not yet been audited as the business rescue process interrupted this. The balance sheet under discussion was as at the end of April 2020 and therefore the numbers are more accurate than those that would be in the balance sheet as at the end of March 2020. In Marsden's view the need was to focus on getting a plan through. Creditors needed to park their rights in regard to what happened in the past. They would not be foregoing these rights and would be able to pursue them in due course, if appropriate. It was not correct to suggest that any information was being hidden by the practitioners. There is currently a window of opportunity to save the business, but stakeholders need to act quickly and at this stage there is little merit in wasting time looking backwards.

16. In summary, the only real asset available to creditors from a recovery perspective is the inventory. In the plan the practitioners have apportioned this is on a *pari passu* basis between concurrent and secured creditors. Ultimately, the recovery by secured creditors will be higher as they have security over other assets, including cash deposits and accounts receivable (including the second look book in the amount of approximately R500 million).

17. Marsden then proceeded to explain the recovery waterfall (**waterfall**). A copy of the schedule in this regard was provided at the meeting and would be emailed to creditors after the meeting. Marsden explained that it included both a high and low estimate in a liquidation scenario as well as an estimate in a trade-out scenario. The challenge faced by the practitioners is that in order to continue to trade and sell inventory they need to incur substantial costs, including rental and employee costs. In a business rescue scenario the employee costs include severance costs. The waterfall therefore refers to net recoveries

after these expenses. As reflected in the waterfall, in a trade-out scenario the net recovery in respect of inventory is estimated to be R1.328 billion. Built into this are items such as the 6% turnover rental currently being paid, employee costs and utility costs. After adding net recoveries from properties, fixtures, equipment and vehicles as well as trade receivables, inter-group receivables and other receivables the total estimated net recovery is R1.9 billion. From this must be subtracted retrenchment costs of R597 million and rental PCF amounts of R408 million, leaving a total available for creditors of R895 million. Marsden clarified that only 6% turnover rental is currently being paid. The remainder is accruing as PCF and will need to be paid to landlords as a repayment of PCF.

18. The inventory will be sold over the period June and July. Initially it would be sold at a high margin, but it is anticipated that discounts will increase over time. Marsden pointed out that the net recovery of R1.9 million in a trade-out scenario is substantially higher than even the highest liquidation estimate (R939 million).

19. Marsden indicated that the total value of the secured creditors' claims is R3.8 billion and that of concurrent creditors is R4.3 billion. The ratio is therefore 54% concurrent creditors to 46% secured creditors. The assets subject to the general notarial bond (**GNB**) will be apportioned in the same proportion. Secured creditors will then get 100% of the proceeds of the other assets secured in their favour. The amount available for distribution to creditors from the realisation of inventory is the R1.328 billion net recovery less retrenchment costs of R597 million and PCF rental of R408 million, leaving the amount available for distribution of R324 million. Using the relevant ratios, R150 million will be attributable to the secured creditors and R174 million to concurrent creditors. This results in a recovery of approximately 4c in the Rand for concurrent creditors. The secured creditors will ultimately receiver 19c in the Rand if the figures reflected in the waterfall materialize.

20. Marsden went through the list of questions sent to him by De Hutton (which had been the result of a previous meeting of the creditors' committee). A copy is attached as "**A**".

21. Schapiro and Marsden confirmed that a list of creditors reflecting vendor codes is being tidied up and will be provided to creditors. Shapiro indicated that he would let De Hutton know as soon as this list is available on the website.

22. In response to question 2.2 Marsden confirmed that the apportionment was *pari passu* and therefore concurrent creditors would get a proportionately great allocation than the secured creditors. Wiggett requested an explanation as to why a *pari passu* approach had been

adopted. Why had secured creditors been allocated any of these funds? Marsden explained that if the secured creditors had perfected their GNB they would have a right to all the proceeds of these assets. As they had not perfected it, they rank equally with the concurrent creditors in regard to these assets. The negotiation with secured creditors in this regard was as a result of the fact that they wanted to claim a disproportionate share of these assets. The practitioners pushed back on this and would not agree. It should be noted that in a liquidation scenario the secured creditors would be preferent in respect of the GNB assets even if they had not perfected the GNB. In a liquidation scenario the concurrent creditors would not receive anything. Marsden clarified that the amount of approximately 19c in the Rand to be paid to secured creditors was a result of approximately 4c being received in respect of the GNB assets and a further approximately 16c in respect of other assets secured in their favour.

23. Gideon Bochedi (**Bochedi**) asked whether certain assets described as "Properties, fixtures, equipment and vehicles" did not also fall under the GNB and therefore should be shared amongst secured and unsecured creditors in the same manner. (This question was asked at point 2.3 of annexure A). Marsden confirmed that this was the case and that the waterfall calculation would be revised. [This revised calculation was then shared with creditors after the meeting and is mentioned below].

24. In regard to trading out the stock, Marsden confirmed that the book value is R2.4 billion. Trading would run for two months. On day one they would sell at good margins, but as the stock decreased and incomplete ranges were available they would start discounting stock. This would mean that by the last week of trading there would be approximately 90% discounts offered in order to sell all the stock before premises needed to be handed back to landlords. He emphasised that this scenario was based on the assumption that there were no buyers for the business.

25. Wiggett pointed out that R895 million available to creditors from the trade-out scenario is less than what would be available in a liquidation at the high end of values. She asked what would be saved in respect of retrenchment payments if the businesses could be sold. Marsden confirmed that this depends on how many stores are taken over and how much of the head office staff is taken over. If one assumes that half of the retrenchment cost is saved (which would probably be a fair assumption) this would result in approximately another R250 million being available for distribution to creditors. Additionally, a higher amount may be realised for the inventory in a sale of the businesses (i.e. higher than R1.3 billion). Consequently, the practitioners do anticipate an increase in the dividend if they are able to

sell the businesses. They did not publish these increased figures in the plan as there was concern that the potential buyers would be able to work back these figures to arrive at estimated offer prices of the various bidders. This would decrease the practitioners' ability to negotiate with potential buyers.

26. De Hutton indicated that she had queried the extent to which the dividend could increase if the businesses were sold and was told by Schapiro that it would not be substantial and that creditors should moderate their expectations in this regard. Marsden confirmed that the dividend would not go up to anything like, for example, 20c in the Rand, but it might perhaps go up from 4c to 7 or 8c. He could not guarantee this, but there would be some increase in the dividend.

27. Marsden also confirmed that the rental PCF, although generally a fixed number, is one they are trying to reduce wherever possible by cancelling leases in respect of stores where trading would cease in any scenario. The stock in those stores could be moved to nearby stores. The obligation to pay rental would be suspended in terms of section 136 of the Companies Act. However, it was not possible to reduce severance costs in relation to the relevant employees as it is not possible to retrench employees immediately, even where stores are to be closed. A minimum 60 day consultation period is required in terms of the Labour Relations Act.

28. In regard to question 2.5 Marsden indicated that the sale process is at a sensitive stage. They have received expressions of interest and are engaging with potential purchasers. It would be difficult for a private equity firm or a finance house to come in as a buyer as they would not be able to eliminate head office costs. All of the potential purchasers are retailers well known to all of us. He cannot disclose the names of the purchasers, but they are all large and have the financial ability to conclude this transaction. They are credible and can re-capitalise the business as required and will provide good homes to the trade creditors. Marsden confirmed that they are mostly clothing retailers, some being clothing adjacent. The failure to disclose the identities of the potential purchasers is not due to an absence of transparency but rather because he does not want to muddy the waters or compromise the sale process. They are all South African retailers. He cannot disclose the range of purchase prices offered. Marsden confirmed that the details of purchasers have been disclosed to De Hutton and that she is able to confirm to the committee that they are all credible purchasers.

29. Arthur Lambouris (**Lambouris**) expressed concern that as existing retailers all potential purchasers would have their own infrastructure and suppliers in place and therefore an

ongoing trading partner was possibly not a "carrot" for this group of creditors. Marsden confirmed that there is no guarantee that there will be the possibility of ongoing trading. From the perspective of services such as IT there would always need to be a transitional period during which services are required by the new owners, but thereafter some buyers may not need those services. Lambouris also asked about Competition Commission approval due to the fact that all of the potential buyers are existing retailers. He wanted to know whether creditors would have a right to object during the competition approval process. Marsden confirmed that they would have such a right. Marsden confirmed that they are trying to expedite the process with the Competition authorities and using a failing firm defence. He also pointed out that if a sale is not approved by Competition authorities and there is no buyer then the market dominance of existing players in the market will automatically increase in any event. Marsden also mentioned that if there are two equal offers from different parties and one raises fewer competition considerations this might be a factor leading them to select that party. Marsden confirmed that there are still multiple bidders in both processes (i.e. Edgars and Jet).

30. Wiggett asked what prevents purchasers from waiting for a liquidation and then "picking up the pieces" more cheaply. Why would they pay more through a business rescue process? Marsden confirmed that this is a risk and therefore during competitive bidding process they do not want to push buyers too far. Many thought retailers would allow Edcon to fail and would pick up the market share themselves. In terms of advantages of business rescue: there have, for example, already been lease terminations by landlords in respect of stores that Edcon would prefer to keep (and buyers would be interested in obtaining). The business is able to continue to trade in business rescue far easier than in a liquidation scenario. A liquidation process is very disjointed. It takes time for a liquidator to be appointed and time to get an extension of powers. A liquidator has limited ability to continue to trade. He must pay rental, employees etc and would generally require an indemnity to do so. It is not unfair to say that a liquidator would probably be unable to continue to trade and would simply sell off stock in an auction or similar process. If there is no prospect of ongoing business the landlords would have a hypothec which they would exercise. There would then be nothing for liquidators to sell and zero recovery for anyone. There would be no chance of a going concern sale. Liquidation is therefore not a realistic alternative.

31. In regard to question 2.6 Marsden emphasised that creditors should not make assumptions and must obtain confirmation that current supply is regarded as PCF. In regard to those

who have made arrangements to be paid on seven day terms, they clearly have made the appropriate arrangements.

32. In terms of question 2.7 Marsden confirmed that rights against directors would survive by operation of law. There is no compromise of claims recorded in the plan and all claims against directors would be retained. By voting in favour of a plan creditors would not be stepping back from their rights.

33. In regard to question 2.8 Marsden confirmed that buyers have different timeframes (between 3 to 9 months) for getting off Edcon systems (such as IT) and onto new systems. As long as Edcon needs these services they must pay for them. He anticipates that new purchasers will engage with service providers to determine what is required going forward. If service providers demonstrate an ability to add value they may be retained in the long-term. On the downside, it is likely that various long-term contracts will be required to be terminated in terms of section 136 of the Companies Act. This would be by mean of court applications which creditors can oppose. Damages claims would arise if contracts were terminated. As regards voting interests, no creditor has a vote until they have a liquidated claim and it was not anticipated that any liquidated claims would be in place as at the date of voting on adoption of the plan.

34. As regards litigation against Prime Logistics (question 2.10), Marsden confirmed that this has been settled. He also confirmed that the stock that had been held by Prime Logistics was included in the dividend calculation as it was stock held by Edcon as at 30 April 2020. He confirmed that a settlement amount was paid to Prime Logistics. This was calculated based on the value of the lien claim by Prime Logistics and weighing this up against the value of the inventory held by them. He could not say how much was paid as this may be subject to confidentiality in terms of the settlement agreement. He could, however, confirm that it was not the total amount owed to them. The practitioners had considered whether it was to their benefit to settle and had decided to do so. That stock is now going into the stores to be sold.

35. In regard to the litigation brought by Pan African Shop Shopfitters (question 2.11), Marsden confirmed that this was set down for hearing on Thursday, 18 June 2020.

36. In regard to creditors' queries that had not been responded to (question 2.12) he could only apologise. He will provide whatever creditors are entitled to and, to the extent that creditors are not entitled to information he will provide information that he believes advances the

process. He will be doing this because it is the responsible thing to do, not because he is obliged to do so.

37. Marsden confirmed that if reference was had to the balance sheet and the liabilities then the position is that Edcon is indeed technically insolvent.

38. At this stage various creditors expressed their anger and frustration. They confirmed that they had been "*led down the garden path*" by Edcon. They supplied in good faith based on the assurances of the CEO and senior management that Edcon was financially sound. This business rescue and the losses suffered are now destroying their businesses. They will not be able to rely on old management if they are retained in the new businesses. The trust has been broken. They will not be able to trust the business under new owners or to extend credit. Marsden confirmed that business rescue does not decrease the ability of creditors to seek redress. There is no compromise of their claims or waiver of their rights. He and his fellow practitioner were appointed to try and see what is possible based on the facts as at the date of their appointment. In a liquidation scenario there is zero prospect of jobs, there will be zero stores that survive and zero chance of ongoing trading with a trade partner that continues to exist. Creditors will also get zero by way of recovery. The alternative is the possibility of the brand surviving and creditors still having the choice whether or not to trade with the new trading partner/s. There will be no obligation to do so. A vote in favour of a plan is not a vote against looking back and pursuing directors, if necessary. However, in Marsden's view the most important thing at this stage is to get a plan through and new owners in place.

39. Marsden was asked once again about the possibility of converting debt to equity. He confirmed that this has been considered. The problem is that new cash is still needed to run the business. It will need right sizing, which includes retrenchments and cancelling leases, and these come at a cost. In addition, suppliers will not provide goods on terms and the upshot of all of this is the cash in the amount of approximately R500 million to R1 billion would be required for ongoing trading. On top of this the secured creditor exposure will then remain.

40. Marsden was questioned as to whether the new owners will not pay more than currently offered. Marsden confirmed that he is trying to create a competitive environment and therefore secure the best possible price. However, purchasers will be taking on staff and leases and a body of angry creditors. They need to capitalise the business going forward.

There is the acquisition price and then there is still a big investment required by way of working capital for the stores to get to December.

41. Marsden then proceeded to discuss the meeting that will take place to vote on the plan. He confirmed that it will not be a physical meeting but on a virtual platform. Proxies must be provided to the practitioners by Friday, 19 June. They will need to reconcile these over the weekend. The meeting will be on Monday, 22 June. At the meeting they will go through the statutory requirements and employee representatives will be able to address the meeting. At that stage the practitioners will then either look at the proxies and count the votes or adjourn to deal with amendments to the plan. In the latter case they would then reconvene the meeting in order to assess votes on an amended plan.

42. In regard to the sale process, binding offer are required to be submitted by the end of June. They will announce the successful purchaser soon thereafter – probably in the first week of July.

43. In regard to information still required by creditors such as Vaher and Lambouris, it was requested that a final list should be provided to the practitioners that evening. [A list was subsequently received from Vaher].

44. Vaher indicated that he would like an independent third party to review the calculation of the votes to approve the plan. Marsden suggested the company's auditors (Deloitte) but Vaher indicated that in his view they were not independent. Wiggett suggested that Marsden is professional and independent and they can trust him. Marsden indicated that he would be happy to utilize De Hutton to independently review the calculation of votes and the examination of proxies.

45. De Hutton emphasized that all questions must reached the practitioners before the meeting.

46. As regards discrepancies between amounts claimed by creditors and amounts reflected in the company ledger, Marsden confirmed that as a long as both were in the same ballpark they would accept the value reflected in the creditor's proxy for voting purposes. If there was a big difference this would need to be investigated.

47. Marsden confirmed that no-one has the name of the bidders for the businesses (i.e. neither the landlords nor the secured creditors nor anyone else). The information has only been disclosed to De Hutton so that she can verify to the committee that they are all credible parties.

48. Questions were asked about the independence of Deloitte in attending to the liquidation calculation. Marsden confirmed that there was value in using the auditors as they know and understand the group and its structure and the nature of the assets. In his view they are independent.

49. Benjy Duchen asked why they could not wait to vote until after buyers had been selected. Marsden indicated that (i) there is urgency to publish and vote on the plan due to the stance adopted by unions that retrenchments cannot begin until the plan is actually approved not simply published and (ii) in engaging with buyers they have indicated that the practitioners do not yet have a mandate to sell the businesses. They are concerned that creditors may reject the plan. It is therefore important to get the plan approved. In regard to not disclosing the identity of bidders Marsden referred, by way of illustration, to the fact that the landlords want a buyer to take more rather than less stores. They are not concerned as to the price that is paid. However, secured creditors are only interested in the price that is paid. Different stakeholders therefore have different imperatives and would seek to interfere with the process. The practitioners would lose control of the process. The stakeholders need to have some faith in what is a fragile process where buyers can easily be scared off. De Hutton confirmed that it is not unusual not to know who a buyer is in advance. Many plans anticipate the sale of assets without knowing who the buyer is going to be.

50. Lambouris confirmed that in his view creditors should not make an emotional decision and vote against the plan simply because they do not know who the buyer is going to be. This would be to their detriment.

51. Vaher asked whether Matuson & Associates had any involvement with Edcon prior to taking the business rescue appointment. Marsden confirmed that in the 2019 restructure they had attended to the liquidation calculation to see what lenders would receive in a liquidation scenario. Additionally, one member of the Matuson team had assisted Mike Pienaar and the property team at Edcon in dealing with landlords and the rental reduction process that was part of the 2019 restructure.

52. Ronnie Herr asked whether there had been sufficient pushback from the practitioners to secure a better offer. Marsden confirmed that this had been done. They were not simply accepting the offers and were engaging in a competitive process. He was confident that pencils would be sharpened before binding offers were received.

53. Marsden confirmed that if the plan is not adopted this will either lead to liquidation or the publication of an amended plan. Which of these ensued was likely to depend on why the initial plan failed. In his view it is hard to pass a plan once it has initially failed. If some parties want more then others are automatically receiving less. A failed plan therefore tends to end in liquidation.

54. Creditors emphasized that it must be made clear to all creditors that proxies must be provided before the meeting. Marsden agreed.

55. In regard to the questions as to whether it was worth engaging with the secured creditors to negotiate a bigger share of the unencumbered assets, Marsden expressed the view that the chance of a concession by them is remote. In fact, they are asking for a large shares themselves.

56. Various questions were posed about the proxy form and how to complete it. Marsden confirmed that they would review it to make it more user friendly. The proxy form would need to be completed in favour of the practitioners because there will be no actual attendees at the meeting.

57. Marsden confirmed that the waterfall would be amended to correct the position regarding assets other than inventory falling under the GNB.

58. The meeting adjourned at approximately 8pm.

Postscript: The waterfall calculation has since been revised to take account of other assets that fall under the GNB. The revised calculation was emailed to creditors by De Hutton. It reflects the fact that the estimated recovery for concurrent creditors will now be 6% (up from 4%). The recovery for the secured creditors reduces to 17% (from 19%).

"AA3"

Fiona Cowley

Subject: FW: EDCON LIMITED IN BUSINESS RESCUE

From: Letitia Field
Sent: 19 June 2020 03:32 PM
To: 'Sivi@patherandpather.co.za' <Sivi@patherandpather.co.za>
Cc: Gary Oertel <goertel@ENSafrica.com>
Subject: EDCON LIMITED IN BUSINESS RESCUE

Dear Sirs

Please see attached letter for your attention.

Regards

ENSafrica
The MARC | Tower 1
129 Rivonia Road Sandton
Johannesburg South Africa 2196
P O Box 783347 Sandton South Africa 2146
Docex 152 Randburg
tel +2711 269 7600
info@ENSafrica.com

Pather & Pather Attorneys
By email

L Field our ref
your ref
19 June 2020 date

Dear Sirs

RE: EDCON LIMITED (IN BUSINESS RESCUE) ("Edcon")

1. We confirm that we act on behalf of the business rescue practitioners of Edcon, who have furnished us with your 21 page letter dated 17 June 2020 ("17 June letter") and your letter dated 18 June 2020 ("18 June letter") for reply.

2. We do not propose dealing with all of the allegations contained in your letters and all of our clients' rights to do so at a later stage, should same become necessary, are reserved.

Legal and Factual Position

3. The Companies Act, 71 of 2008 ("Companies Act") is clear in regard to:

 3.1. our clients' powers, duties and obligations as the business rescue practitioners of Edcon;

 3.2. the rights of all affected persons; and

 3.3. the contents of the business rescue plan and voting rights in respect thereof.

4. Our clients have been, and will continue, exercising their statutory powers, duties and obligations throughout the business rescue proceedings of Edcon.

5. In regard to the rights of and participation by creditors:

 5.1. Section 145 of the Companies Act sets out the rights of creditors to:

  5.1.1. notice and participation;

  5.1.2. form a committee, and through that committee are entitled to be consulted by the business rescue practitioners during the development of the business rescue plan; and

  5.1.3. vote to amend, approve or reject a proposed business rescue plan in the manner contemplated in section 152 of the Companies Act.

Edward Nathan Sonnenbergs Incorporated | registration number 2006/018200/21
M.M. Katz (chairman) M. Mgudlwa (chief executive) M.W. Matlou (chief operating officer) Y.A. Mendelsohn (chief operating officer)
a list of directors is available on our website ENSafrica.com/letterheadSA
level 1 BBBEE rating

5.2. Section 149 of the Companies Act sets out the functions, duties and membership of committees of affected persons, which is limited to consultation and the receipt and consideration of reports. Notably, this section specifically prohibits the committees from directing or instructing the business rescue practitioners.

6. In regard to the business rescue plan, section 150 of the Companies Act deals with the proposal of the business rescue plan and details the information and documentation which must be provided to affected persons. In particular, this section provides that the business rescue plan "*must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan, and must be divided into three Parts…, which must include at least - …*" (emphasis added).

7. After consultation with the respective committees, our clients prepared and published a business rescue plan. The published business rescue plan:

7.1. complies with section 150 of the Companies Act; and

7.2. seeks to rescue Edcon in a manner that balances the rights and interests of all relevant stakeholders (i.e. not just one category of affected persons), as contemplated in section 7(k) of the Companies Act.

8. The published business rescue plan clearly provides that the proposal to rescue Edcon is to achieve a better return through the implementation of the Sales Process. This is what creditors have been requested to approve and affected persons have been provided with all of the information reasonably required to facilitate them in deciding whether or not to accept or reject this proposal.

9. Moreover, since the publication of the business rescue plan, our clients have consulted with the respective committees to clarify any questions and, although not required for purposes of voting on the business rescue plan, have provided additional information and documentation. In this regard, we are instructed that our clients have furnished a further document explaining the business rescue dividend calculation as well as Edcon's income statement and balance sheet for the 2016 to 2020 financial years and Edcon's balance sheet as at 30 April 2020 together with supporting schedules.

10. Against the aforesaid legal and factual position, we deal below with the matters raised in your respective letters.

17 June letter

11. Role of the business rescue practitioners and purported lack of information (paragraphs 5 to 12):

11.1. We have already recorded the factual and legal position above.

11.2. To the extent that your clients hold the view that additional information and responses must be furnished to meet "*their expectations*", we reiterate that the Companies Act is clear in regard to

what the business rescue plan must contain and does not require individual expectations to be met for the purposes of such compliance.

11.3. The additional financial information and documentation which your clients seek are not necessary for the purposes of facilitating affected persons in deciding whether or not to accept or reject the business rescue plan, which, as set out above, proposes to rescue Edcon through the implementation of the Sales Process. Indeed, no explanation is furnished as to why your clients view this information as reasonably required to facilitate them in deciding whether or not to accept or reject the business rescue plan.

12. Capacity as the business rescue practitioners (paragraphs 13 to 16):

12.1. The physical location of a business rescue practitioner, particularly in light of the current COVID-19 pandemic, is irrelevant. The exercise of a business rescue practitioner's statutory powers, duties and obligations is a factual and legal enquiry. As recorded above, our clients have been, and will continue, exercising their statutory powers, duties and obligations throughout the business rescue proceedings. To the extent that it has not become clear throughout the numerous meetings held with both of our clients and the contents of the business rescue plan, our clients have indeed effectively taken over the management of Edcon and we note that no allegations to the contrary have been made in your letters.

12.2. In regard to our clients' fees, and as stated above, our clients have provided a further document explaining the calculation of the business rescue dividend. The anticipated receipts and expenses (including the costs of business rescue), based on the Wind-Down Process, are included in the business rescue dividend calculation.

12.3. In regard to the agreement for increased remuneration, the business rescue plan states that the increase is in accordance with market related hourly rates. This proposal is far less than what many business rescue practitioners propose in the form of a percentage or set amount based on the conclusion of sale agreements and/or realisation proceeds.

12.4. The contents of paragraph 16 are misplaced and appear to be based on a misunderstanding of the comparison being made in the business rescue plan. The comparison of fees which are likely to arise in a liquidation and the fees which are likely to arise in a business rescue is not "*self-serving*", it is a factual comparison based on the prescribed liquidators' fees in a liquidation and the anticipated business rescue practitioners' fees in the business rescue. There is also no suggestion in the business rescue plan that our clients would be appointed as liquidators should Edcon be wound up.

13. Reservation of ownership (paragraphs 17 to 24):

13.1. There is no need to deal specifically with reservation of ownership claims in the business rescue plan. Claims are dealt with in terms of the provisions of the business rescue plan and any

suppliers who have proved a reservation of ownership over stock are dealt with in terms of section 134 of the Companies Act and the provisions of agreements concluded with such suppliers in regard to ongoing sales during the business rescue.

13.2. Your surprise and allegations in paragraphs 18, 21, 22, 23 and 24 are unfounded as our clients have invited creditors to submit their claims since the first meeting of creditors and have repeatedly recorded that those creditors asserting a retention of ownership must follow a process of proving the existence of the reservation of ownership and thereafter identifying the stock subject to the reservation of ownership and reaching an agreement with our clients in regard to the further treatment of such stock. Our clients have also provided the contact details of the relevant person in the business rescue team dealing specifically with reservation of ownership claims. The minutes of the respective meetings clearly record the aforesaid.

13.3. In the circumstances, those of your clients who are asserting a reservation of ownership must immediately notify our clients accordingly so that the necessary steps can be taken to establish whether there is indeed a valid reservation of ownership.

13.4. Please clarify which clients you are referring to in paragraph 19.

14. Current inventory and cash balance and trading from 1 May 2020 to 1 June 2020 (paragraphs 25 to 31):

14.1. We have already dealt with what the business rescue plan is required to contain and the information and documentation to which your clients are entitled for purposes of voting on the business rescue plan.

14.2. As set out above:

14.2.1. Your clients have been furnished with additional documentation and information, which is not required for purposes of voting on the business rescue plan.

14.2.2. Your letter fails to set out why the further information and documentation is necessary for the purposes of voting on the business rescue plan.

15. Alleged misrepresentations (paragraphs 32 to 38):

15.1. These paragraphs fail to take into account that Edcon recently commenced business rescue.

15.2. Our clients are well aware of their statutory duties, including their duties in terms of section 141 of the Companies Act, and will duly exercise same.

15.3. Our clients have already started investigating the concerns raised in these paragraphs and your clients will be advised of the outcome of our clients' investigations.

15.4. Your allegations that our clients have "*fobbed off*" the concerns raised by your clients are accordingly without merit and denied.

16. Reliance on Deloitte (paragraphs 39 to 43):

16.1. Paragraph 40 of your letter correctly points out that the Companies Act does not prescribe that an independent party must calculate the probable dividend.

16.2. Notwithstanding this, the liquidation calculation was prepared by Deloitte, which, despite being Edcon's auditors, remains an external and independent third party.

16.3. The anticipated business rescue dividend was calculated by our clients.

16.4. Our clients have carefully considered the asset and liability position of Edcon and are satisfied with the probable dividend indicated in the business rescue plan to be received by creditors if Edcon were to be placed in liquidation.

17. Apparent favouring of secured/preferred creditors (paragraphs 44 to 50):

17.1. The allegations contained in these paragraphs are denied for the reasons already set out herein.

17.2. Our clients have and will continue to act in the interests of all stakeholders.

17.3. The amounts reflected in the list of creditors are amounts reflected in Edcon's records as at the commencement date. As recorded in the plan, all creditors will still be required to prove their claims to the satisfaction of our clients.

18. Alleged secured/preferred creditors (paragraphs 51 to 55):

18.1. The contents of these paragraphs are noted and we will address you separately in regard to the provision of these documents.

19. Additional enquiries/information and documents (paragraphs 56 to 71):

19.1. The Sales Process proposed in the business rescue plan is not "*unprecedented and audacious*".

19.2. Insofar as your clients raise concerns with the Sales Process, we reiterate that the business rescue plan specifically records that our clients will convene meetings with the respective committees to discuss:

19.2.1. the binding offers received and the acceptance of one of more of the binding offers in the Accelerated Sales Process; and

19.2.2. updates on the Wind-Down Process.

19.3. Your clients will accordingly be fully appraised of developments throughout the different stages of the Sales Process and will have an opportunity to address any concerns and/or views in regard to same during such meetings. Our clients will carefully consider the views of the respective committees and will act in the best interests of all Affected Persons.

19.4. As stated above, our clients will conduct the necessary investigations in regard to Edcon's affairs, business, property and financial position and take the necessary steps pursuant to same.

19.5. The loans to lenders have not been subordinated.

19.6. In regard to:

19.6.1. Paragraph 63, the increased anticipated dividend was explained during the meeting, which is due to the allocation of proceeds from unencumbered assets.

19.6.2. Paragraph 64, the business rescue plan sets out the proposed allocation of proceeds to the respective creditors. Creditors have been requested to approve this allocation of proceeds.

19.6.3. Paragraph 65, value in regard to mobile related income has been included in the forecasts.

19.6.4. Paragraphs 66 and 68, please explain why such information is required by your clients.

19.6.5. Paragraph 67, we have already dealt with the list of creditors and treatment of claims above.

19.6.6. Paragraph 69, our clients will make the report prepared by Deloitte available to your clients upon signature of a "*no harm document*".

19.6.7. Paragraph 70, our clients calculated the business rescue dividend and have already provided the calculations in support thereof.

19.6.8. Paragraph 71, our clients will provide the minutes of the respective meetings, where such minutes were taken.

20. Concerns with meeting procedure (paragraphs 72 to 76):

20.1. As set out in the business rescue plan, the advent of COVID-19 has resulted in the meeting in terms of section 151 of the Companies Act ("section 151 meeting") having to be held electronically. As you are aware, Edcon has numerous affected persons and our clients have attempted to make the section 151 meeting as accessible as possible (arguably more accessible

than in person meetings). Contrary to your allegations, proper consideration has been given to the "*mechanics of holding*" the section 151 meeting.

20.2. Our clients are satisfied that paragraph 11.5 of the plan provides effective compliance with the provisions of the Companies Act and provides creditors with a proper and fair opportunity to provide proxy forms and to change same prior to the announcement of the final outcome of the vote. Moreover, the reason for the adjournment provided for in paragraph 11.5 is to deal with any queries and/or motions and verify the votes received.

20.3. Creditors will be afforded an opportunity to address any queries and submit any motions contemplated in terms of section 152 of the Companies Act in writing during the section 151 meeting.

20.4. In regard to enquiries about proxy forms, creditors are being reminded to submit their proxy forms as soon as possible.

20.5. The allegations contained in paragraph 76 are denied. Our clients are in a position to convene and conduct a legitimate and lawful meeting.

21. Role of independent chairperson (paragraphs 77 to 87):

21.1. The involvement of our clients' offices in another matter as well as the chairperson's involvement in another matter are irrelevant.

21.2. Our clients are appointed in their individual representative capacities as the business rescue practitioners of Edcon, not their offices. We note, however, that these paragraphs do not take this issue further but rather challenge the appointment of the independent chairperson based on a perception of your clients. These paragraphs do not set out any facts justifying the perception of your clients, or whether the same the perception is held by other members of the committee.

21.3. In the circumstances, our clients will address this issue at the next creditors' committee meeting to ascertain if the committee wishes to appoint another chairperson.

22. Urgency (paragraphs 88 to 93):

22.1. It is denied that there is "*indecent haste*" and that our clients are "*trying to steamroll*" the business rescue plan. your clients are also not being "*cajoled into a vote*". You are well aware that your clients can exercise their votes on the business rescue plan as they deem fit.

22.2. Our clients have set out the reasons why it is imperative for the section 151 meeting to be held on 22 June 2020. We reiterate what has been advised before, being that the proposal to rescue Edcon is to achieve a better return through the implementation of the Sales Process. This is what creditors have been requested to approve.

22.3. You will appreciate that before our clients can proceed further with such process, our clients and interested parties require confirmation that the Sales Process has been approved by creditors in terms of the plan.

22.4. As set out above, to allay any concerns which your clients may have in regard to the Sales Process and our clients' discretion in regard to the business rescue proceedings, in particular, the determination of the final binding offer/s in the Accelerated Sales Process and implementation of the Wind-Down Process, we confirm that our clients will consult with creditors throughout the business rescue process on these aspects.

23. Conclusion (paragraphs 94 to 101):

23.1. The section 151 meeting is a statutory meeting which our clients are obliged to convene within the stipulated statutory timeframe. The legal options available to your clients are to exercise their voting rights in terms of section 152 of the Companies Act at the section 151 meeting. As stated above, affected persons will be afforded an opportunity to make motions and submit questions in terms of section 152 of the Companies Act in writing during the section 151 meeting.

23.2. Consequently, there is no legal basis to approach the court, let alone seek any punitive costs order against our clients for complying with their statutory obligations. Any attempt to do so will be opposed by our clients and the appropriate costs order will be sought.

23.3. Moreover, and as is evident from what has been set out herein, our clients have properly consulted with all affected persons and provided additional information and documentation, over and above what is reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan.

18 June letter

24. The queries raised in this letter have been dealt with above.

Conclusion

25. We reiterate that our clients:

25.1. have developed a business rescue plan which seeks to rescue Edcon in a manner that balances the rights and interests of all relevant stakeholders;

25.2. have provided affected persons with all of the information reasonably required to facilitate them in deciding whether or not to accept or reject the business rescue plan;

25.3. have been, and will continue, exercising their statutory powers, duties and obligations throughout the business rescue proceedings of Edcon; and

25.4. will continue to consult with the respective committees throughout the business rescue process.

26. In addition, your clients:

26.1. will be afforded an opportunity to make motions and submit questions in terms of section 152 of the Companies Act in writing during the section 151 meeting; and

26.2. are entitled to exercise their voting rights in terms of the business rescue plan as they deem fit by way of submitting their completed proxy forms.

27. All of our clients' rights are reserved.

Yours faithfully
Edward Nathan Sonnenbergs Inc.
Per:
Letitia Field
[Sent electronically without signature]