

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

Case number : 93417/19

In the matter between

<b>HENRY ARDEN SMITH</b>	First Applicant
<b>ANDRE HANEKOM</b>	Second Applicant
<b>CHRISTOFFEL STEYN HOFFMANN</b>	Third Applicant
<b>DOREEN BYRAM ABAN VAN DER BERG</b>	Fourth Applicant
<b>ADRIAAN DE KLERK STEYN</b>	Fifth Applicant
<b>JUDITH ANNE HUTCHINGS</b>	Sixth Applicant
<b>JACOBA ELIZABETH STRAUSS</b>	Seventh Applicant
<b>THERESA ALICE HODGETTS</b>	Eight Applicant
<b>ELIZABETH CARYL HENRICO</b>	Ninth Applicant
<b>NICOLE GURTSCHMANN</b>	Tenth Applicant
<b>ESTHER MARIE ROUSSEAU</b>	Eleventh Applicant
<b>CHRISTINA JACOBA HELENA LAUBSCHER</b>	Twelfth Applicant

and

<b>NICOLAS GEORGIU</b>	First Respondent
<b>MICHAEL GEORGIU</b>	Second Respondent
<b>GEORGE NICOLAS GEORGIU</b>	Third Respondent
<b>JOHANNES FREDERICK KLOPPER N.O.</b>	Fourth Respondent
<b>JOHANNES FREDERICK KLOPPER</b>	Fifth Respondent
<b>CORNELIUS FOURIE MYBURGH</b>	Sixth Respondent
<b>PANOGIOTIS KLEOVOULOU</b>	Seventh Respondent
<b>ZEPHAN PROPERTIES (PTY) LTD</b>	Eight Respondent
<b>ORTHOTOUCH LIMITED</b>	Ninth Respondent
<b>ORTHOTOUCH (PTY LIMITED</b>	Tenth Respondent

<b>NICOLAS GEORGIU N.O.</b>	Eleventh Respondent
<b>MAUREEN LYNETTE GEORGIU N.O.</b>	Twelfth Respondent
<b>JOSEPH CHEMALY N.O.</b>	Thirteenth Respondent
<b>DEREK PERDOE COHEN</b>	Fourteenth Respondent
<b>HIGHVELD SYNDICATION NO 15 LIMITED</b>	Fifteenth Respondent
<b>HIGHVELD SYNDICATION NO 16 LIMITED</b>	Sixteenth Respondent
<b>HIGHVELD SYNDICATION NO 17 LIMITED</b>	Seventeenth Respondent
<b>HIGHVELD SYNDICATION NO 18 LIMITED</b>	Eighteenth Respondent
<b>HIGHVELD SYNDICATION NO 19 LIMITED</b>	Nineteenth Respondent
<b>HIGHVELD SYNDICATION NO 20 LIMITED</b>	Twentieth Respondent
<b>HIGHVELD SYNDICATION NO 21 LIMITED</b>	Twenty-First Respondent
<b>HIGHVELD SYNDICATION NO 22 LIMITED</b>	Twenty-Second Respondent

**Applicants' Reply to Eighth & Tenth Respondents' Notice in terms of Rule  
35(11), (12) & (14) dated 14 October 2020**

**WHEREAS** the Eighth Respondent (“Orthotouch”) and Tenth Respondent (“Zephan”) – both herein represented by the business rescue practitioner Mr Jacques du Toit – already have the “*complete details of all the investors*” (as referred to in paragraph 1 of the above notices) in its possession (or in the case of Zephan having immediate and ready access thereto);

**AND WHEREAS** – given that Orthotouch has been making monthly interest payments to investors in terms of the sanctioned Scheme of Arrangement of November 2014 – such information/details about the investors that are in Orthotouch and Zephan’s possession are of a more detailed and accurate/updated nature compared to the information in possession of Applicants - save, possibly, for the details of investors who have “opted in” for purposes of the class application under case number 9272/20 in this court;

**AND WHEREAS** Applicants are of the view that the said notices in terms of rule 35(11), (12) & (13) are irregular for the reasons stated below;

**AND WHEREAS**, in any event, none of the documents sought/requested in terms of the said notices are necessary or required by Orthotouch and Zephan, for purposes of pleading and/or filing of opposing affidavits;

**AND WHEREAS**, in addition, Applicants are of the view that the said notices are filed simply to delay proceedings and/or to cause additional legal costs for Applicants;

**APPLICANTS ARE HOWEVER NEVERTHELESS prepared to provide - and hereby do provide** in electronic format to Orthotouch and Zephan the database (in the form of a Excel spreadsheet) of the details of investors that it has in its possession.

[This database/spreadsheet – which comprises the names and details of some 17302 investors in Highveld 15 to 22 – is, ironically similar, without affecting the main point at issue, to one that was obtained from Orthotouch itself pursuant to an order made on 25 May 2016 by Mr Justice Spilg under case number 42334/14 in the Gauteng Local Division (Johannesburg), which order obliged Orthotouch (and its appointed business rescue practitioner Klopper (Fourth Respondent herein)) to provide the personal details of investors to Applicants' attorney of record, which attorneys were also the attorneys of record in such Johannesburg case].

**WHEREFORE THE APPLICANTS – WHILST PROVIDING THE AFORE-  
MENTIONED INFORMATION / DATA-BASE IN REPLY TO SUCH NOTICES –  
FURTHER REPLY FORMALLY AS FOLLOWS TO THE EIGHT AND TENTH  
RESPONDENTS' ABOVE NOTICES:**

1. Insofar as any purported notice given under rule 35 (11) is concerned:

1.1 Since the court has not ordered the production of any documents, rule 35(11) is not applicable – and any request made under such subrule is irregular. Applicants are therefore not obliged to produce any documents under such subrule and therefore refuse to make available such documents.

1.2 Nevertheless, Applicants, in further reply to the such notice, refer to the comments in paragraph 3.1 to 3.4 below.

2. Insofar as any purported notice given under rule 35(14) is concerned:

2.1 Since subrule 35(14) only applies to actions, and since, in any event, the documents sought is not essential or necessary for Eighth or Tenth Respondents to “plead” in the matter, any request made under such subrule is irregular. Applicants are therefore not obliged to produce any documents under such subrule.

2.2 Nevertheless, Applicants, in further reply to the said notice, refer to the comments in paragraph 3.1 to 3.4 below.

3. Insofar as any notice given under rule 35(12) is concerned:

3.1 Ad paragraph 1.1 of the said notices (ID documents and/or drivers licenses of each investor):

(a) No reference is made in the founding papers to the investors' identity documents or their driver's license as meant in sub rule 35(12). The provision thereof is in any event not necessary, and are therefore refused;

(b) In any event, Applicants do not have the identity document or driver's license of each investor. Applicants' attorneys of record have however obtained the identity documents of some investors at this stage (approximately 400) and are in the process of obtaining such documents of more investors for purposes of the class application under case number 9272/19 in this court.

3.2 Ad paragraph 1.2 of the said notices (*"the exposition and calculation of the amount of each investor's/claimant's claim"*):

Such exposition and/or calculation is not a "document referred to" in the application papers as meant under any of the sub-rules under rule 35 referred to - and is something which will be presented and/or dealt with in due course in the litigation. In any event, investors' claims would be calculated with direct reference to the extent (amount) of their investments.

3.3 Ad paragraph 1.3 of the said notices (*"the underlying buyback agreements and/or supporting documentation for each claim"*):

(a) The buyback agreements are not relied upon for any claim envisaged in the application herein.

(b) In any event, such agreements are incorporated in the respective Highveld the prospectuses which are already in the possession of Orthotouch and Zephan. Nevertheless, copies thereof accompany this reply (and will thus be so provided (in electronic format) to the attorney of record of the business rescue practitioner of Orthotouch and Zephan).

(c) Insofar as "supporting documentation" for claims are concerned, such documentation are attached to the founding affidavit of First Applicant forming part of the issued court papers.

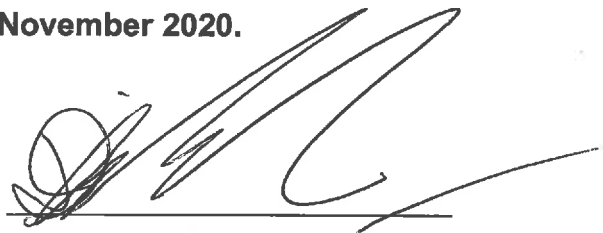
3.4 Ad paragraph 1.4 of the said notices ("proof of claims submitted [to the business rescue practitioner of Orthotouch and Zephan]"):

(a) Applicants are not in possession of such claims (if any such claims have been submitted);

(b) Applicants in any event assume that - should investors themselves have claims directly against Orthotouch or Zephan (other than in terms of the buyback agreements which are not relied upon in the instant application) - such claims would or should be reflected, in accordance with prudent bookkeeping principles, in the books of Zephan and/or Orthotouch, irrespective of formal claims being lodged or not with the business rescue practitioner.

3.5 Insofar as necessary, Applicants point out that Tenth Respondent has already filed a rule 35(12) Notice dated 12 February 2020 (by attorneys NLA Legal Inc) and it is not entitled to file a second (such) notice without leave of the court. Such second notice on behalf of Tenth Respondent is therefore irregular also for this reason.

DATED AT PRETORIA ON THIS 20<sup>th</sup> DAY OF November 2020.



**Geyser & Coetzee Attorneys**

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**To: THE REGISTRAR OF THE NORTH GAUTENG HIGH COURT  
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**AND TO: KYRIACOU INC**  
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