

## **MONTHLY NEWSLETTER: DECEMBER 2017**

**Dear HSAG Investor / Mr / Mrs / Ms [Customer Name]**

**This newsletter is addressed to you as a member of the Highveld Syndication Action Group (“HSAG”) on account of you having made an investment in the Highveld Syndication Companies 15-22 and your membership and/or support of the HSAG.**

**The [www.hsaction.co.za](http://www.hsaction.co.za) website is the primary place where you will find HSAG information although emails are also sent out from time to time.**

**Please keep us up to date with any changes to your personal and/or contact details.**

**In this newsletter we reiterate the purpose for which the HSAG was formed, the funding of the Class action, the recent developments with the legal actions and feedback on media queries.**

### **1. CHRISTMAS MESSAGE**

The HSAG-management would like to thank each loyal investor for his/her loyal support during 2017 and would like to make use of this opportunity to wish each investor a Merry Christmas and a Prosperous New Year.

We trust that you will enjoy the coming festive season and would like to advise that the offices of Theron & Partners Attorneys will close on 22 December 2017 and reopen on 10 January 2018.

Should you thus have any further queries concerning administrative matters and/or allocations, please contact our offices before or on 22 December 2017.

### **2. OVERVIEW**

As you are well aware, the HSAG was initiated when a group of dissatisfied investors across the Republic of South Africa who invested in the Highveld Syndication Companies (HS15-22), decided to institute a class action against Mr Nic Georgiou and others, for damages and losses they incurred in the failed HS15-22 companies.

In spite of the effort at the end of 2016 of Mr Nic Georgiou to sabotage the HSAG, the process for the application for the certification of the class action and the setting aside of the Scheme of Arrangement is continuing in earnest and we are awaiting a date from the Registrar of the Supreme Court of Appeal for the hearing of the petition. The withdrawal of the aforementioned applications by the erstwhile applicants after they had secretly settled with Mr Georgiou in November 2016 and then appointed other attorneys to withdraw the said applications caused an unnecessary delay.

In 2017 no less than eleven High Court applications were heard in the Pretoria and Johannesburg High Courts of which four relate to the reinstatement of the certification of the class action and the setting aside of the S155 Scheme of Arrangement, as well as the joinder of new applicants by the HSAG. In four other cases the leave to appeal in the certification of a class action, and the setting aside of the S155 scheme of arrangement and the joinder of new applicants were addressed.

Three other applications were also brought of which two by Mr Helgard Hancke who wished to intervene in the proceedings in order to delay same and one by Ms Charlene Jordaan, a former HSAG applicant who wanted to file an affidavit. None of these applications were successful. Two applications by Mr Hancke and Ms Jordaan were withdrawn / dismissed with costs in favour of the HSAG and in the third case, the court did not even entertain or mention Mr Hancke's application in its judgment.

In 2016 Mr Nic Georgiou solemnly undertook to settle the claims of HSAG members who were prepared to accept a 50% settlement. Mr Georgiou did not honour his commitment. For the first months of 2017 the HSAG endeavoured to reach a settlement agreement with Mr Nic Georgiou, but this was suspended and eventually withdrawn from due to the Mr Georgiou's empty promises.

Further in 2017, the High Courts in Pretoria and Johannesburg have referred an important legal question (whether nominal applicants in the certification of the HSAG Class Action may withdraw this application), to the Supreme Court of Appeal (SCA), by granting leave to appeal to the Respondents.

According to Judge Murphy there are compelling reasons, amongst others, to settle new law in South Africa and would similar future withdrawals have far-reaching consequences on all future class actions.

Both Judges Ismail and Murphy acknowledged the importance of the HSAG matter and the possible delays that this referral to the SCA may cause, but stated that the Registrar of the SCA may be approached for a speedy appeal as the normal appeal process may delay the Class Action unnecessarily. Normally, Mr Georgiou and Orthotouch's appeal records were only to be filed at the Supreme Court of Appeal in February 2018. However, Orthotouch's attorneys, as a result of the expedited process, confirmed early in December 2017 that the records will be filed soon.

In lieu of the similarity of the two applications for leave to appeal, the parties' legal representatives lodged a request that both the Pretoria and Johannesburg appeals be heard simultaneously. This has in the meantime been confirmed by the Registrar. We are currently waiting for the confirmation of a date for the Appeal to be heard.

The respondents are responsible for the preparation of the bundles for all parties concerned and the indexes of the proposed bundles have already been finalised. With the finalisation of the court bundles, the SCA will announce a date for the hearing of the Appeal and shall our offices inform you as soon as possible when a date has been announced in a future newsletter.

Furthermore in 2017, the HSAG, made an effort to expand the methods of communication with the HSAG investors. Official Afrikaans and English WhatsApp groups were initiated in July 2017 and have we received positive feedback about these WhatsApp groups. These official WhatsApp groups are used to communicate news snippets to investors, as well as to inform investors about the latest development with litigation, the possible potholes that investors must avoid (f. eg. the private settlement with Orthotouch), and so forth.

Investors who want to be added to the aforementioned WhatsApp groups must forward their cell phone numbers, identity numbers, full name(s) and surnames to [hsactiongroup@gmail.com](mailto:hsactiongroup@gmail.com).

Since May 2017, Mr Francois Strauss joined the HSAG Steering Committee. Mr Strauss is a business man/financial advisor from the Western Cape and is also an investor/Applicant in the HSAG matters against Mr Nic Georgiou and others.

In August Mr Helgard Hancke served and filed two Applications (in both the High Courts of Pretoria and Johannesburg) for leave to intervene in the current Applications for Leave to Appeal. These applications were both withdrawn at short notice and had Mr Hancke offered to pay the party-party costs.

Also in August a meeting was held between the HSAG's legal team and the Case Manager, Judge Sharise Weiner, and had Judge Weiner ordered the Respondents to provide all the contact details of the HS Investors to the HSAG. In the light of the aforementioned appeals we are still waiting for the information.

The HSAG is still regularly receiving enquiries concerning the implication of the possible liquidation of Orthotouch. The question of what should happen if Orthotouch were to be liquidated and the possibility that investors would have to refund their monthly payments, was addressed and a written opinion on this legal question was sought from Counsel.

This opinion clearly states that the liquidators would not without ado be able to claim back the monthly rent/income as was paid to HSAG investors.

Here is a summary of Counsel's reasons:

- Monthly payments are made to investors under an obligation by Orthotouch, in the Scheme of Arrangement document, in return for acquiring various fixed properties from the Highveld companies. The payments made by Orthotouch were therefore not made "without value" as meant in section 26 of the Insolvency Act of 1936 ("the Act"), and monies cannot therefore be reclaimed;
- In so far as sections 29 and 30 of the Act are concerned, one creditor (such as an investor) can never be preferred above another as long as payments are made in accordance with the formula set out in the SoA document;
- Payments made by Orthotouch are made in its "ordinary course of business". This is a further reason why the liquidators will not be able to reclaim;
- The creditors of Orthotouch are the Highveld companies. It is the Highveld companies, who upon receipt of payments from Orthotouch, will repay the investors. This means that if Orthotouch were to go into liquidation, the liquidators only have potential claims against the Highveld companies – not against the investors;
- Should the Highveld companies ever be liquidated, the liquidators will not be able to reclaim payments from investors for similar reasons to those mentioned

above. The HSAG is not per se in favour of liquidations and the HSAG has never threatened or attempted to liquidate Orthotouch or the Highveld Companies. If you were to peruse all the previous litigation correspondence you would see that it was only Mr Georgiou and his supporters who made the threats of liquidation. Liquidation would be the last resort of the HSAG.

The question has also been raised as to what will become of the payment of interest, should Orthotouch be liquidated? In such a case the liquidator will be obliged, as far as possible, to fulfil the obligations of Orthotouch. In order to do this, all the assets of Orthotouch, including the guarantees and “securities” given by third parties in compliance with the obligations of Orthotouch, will be sold and called up in order to pay the investors’ interest (and capital).

It had also come to the HSAG’s attention that the HSBF (a Nic Georgiou initiative campaigned by Mr Helgard Hancke) had once again, in a calculated manner, postponed the promised payment relating to the so-called HSBF’s 55% Settlement Offer.

Individuals who successfully apply for the HSBF Settlement (that closed on 31 October 2017) will now, according to Mr Hancke, only receive their first payment on 7 March 2018.

The HSAG wants to emphasise the fact that a Settlement through the HSBF with Mr Nic Georgiou / Orthotouch does not provide any guarantee that any payment will ultimately realise. In fact, we are being informed that persons who settled with Mr Georgiou, through Helgard Hancke (50%), at the beginning of the year, had up to date, only received **one** payment, and since that payment, nothing else.

The HSAG is not opposed to settling with Mr Nic Georgiou / Orthotouch, but would **only** do so if the interests of the HSAG members are being protected, and if provision is made for the possibility that should Mr Georgiou / Orthotouch does not adhere to the agreement, investors can continue as members of the HSAG Class Action. This is undoubtedly not the case with the settlement agreement of Mr Helgard Hancke (through the HSBF) on behalf of Mr Nic Georgiou / Orthotouch, as the investors would **most certainly** compromise their rights.

The HSAG members are once again warned to be very cautious (and even to obtain legal advice from their own attorneys) when conducting business or settling with Mr Nic Georgiou / Orthotouch outside of the HSAG, as this could be to the detriment of their rights and be very risky.

### **3. MOTIVES AND OBJECTIVES OF THE HSAG**

The main objective of the HSAG is still to approach the High Court of South Africa by means of an application to obtain court orders on behalf of investors in HS15-22, ordering the bringing of a Class Action(s) against Mr Nic Georgiou, his sons, their entities and other Respondents, for the recovery of damages and losses incurred by investors in the failed Highveld Syndication Companies 15-22. The dissatisfied investors feel that Mr Nic Georgiou has not once fulfilled any of his agreements since

becoming involved with the Highveld Syndication Companies and that justice must take its course.

The two immediate cases that the HSAG is involved in is the certification (registration) of the Class Action, as well as the setting aside of the Scheme of Arrangement in terms of Section 155 of the Companies Act. The Scheme of Arrangement (SoA) provides that Mr Nic Georgiou, his sons, their entities and other Respondents have been released and indemnified of any personal liability. The HSAG asserts that the court-sanctioned SoA was obtained in a covert manner and should be set aside so as to continue with the recovery process against the individuals.

#### **4. MEMBERSHIP CONTRIBUTIONS AND REGISTRATION COSTS**

Funding of a case with a protectable interest of R4 600 000 000 is, and will probably always be, one of the most difficult challenges of an action group. Many persons feel grieved and wronged because they have been deprived of their lifesavings. They are also furious because they are of the opinion that the government's mechanisms and machinery are not in place to protect them from damages and losses such as this, and that they now have to pay their way to claim back the money that they lost

It is of the utmost importance that the HSAG members ensure that their registration and legal costs are paid up to date as soon as possible, for the HSAG attorneys to continue with the case on their behalf.

Members are requested to continue showing their support to the HSAG and its process of recovering the enormous investor losses by diligently making annual financial contributions to the HSAG.. Although it places a burden on the administration of the HSAG, these can even be paid in instalments.

We can give you the assurance that all membership contributions are dealt with in a diligent manner and that all funds received in connection with the HSAG are paid into a separate trust fund for *inter alia* legal costs, disbursements and the administration of the HSAG, which group consists of approximately 7 000 individuals.

This account that were opened specifically for this purpose by the HSAG attorneys, are properly audited by independent auditors. The HSAG attorneys only request funds and disbursements as and when it is required and only after the work had been done. Notwithstanding the huge amount of some billion rands involved in the case, as well as the large amount of time and energy that this case demands, outside of office hours and even during weekends, the attorneys have to date only claimed their nominal legal fees and are only paid up until the end of March 2015 for services.

You are thus urgently requested to make an effort to bring your membership contributions up to date, in order to take this matter forward.

#### **5. 2017 HSAG INFORMATION SESSIONS**

During October 2017, at the request of members of the HSAG, the HSAG Management decided to host information sessions on a trial base in different regions to establish whether there is a need therefor and whether these are practically feasible. This would also serve as an opportunity to inform the investors about the history of the HS companies and to explain the legal procedure of the HSAG class action.

Three information sessions were held on 2, 3 and 24 November 2017 in Port Elizabeth (Eastern Cape), Mossel Bay and Paarl (Western Cape) respectively. The sessions were successful and the attendance of the first two sessions exceeded our expectations.

At these sessions it was broadly explained what the class action is about, that it entails new law and that we are dealing with an exceptionally large claim and many claimants. The pros and cons as well as the legal position of class actions in general, were explained.

The investors were informed of the structure of the legal team of the HSAG. This team consists of Theron & Partners Attorneys, Senior and Junior Advocates and correspondents with excellent experience in law.

The process of business rescue and why this step was necessary, was highlighted, and within this scenario the goals of the HSAG were discussed. Reference was made to the facts and merits of the case as well as the rights of the HSAG.

As many investors enquired about the length of the matter, reference were made to the duration of the court case and to important happenings within the process. Investors were informed that progress was indeed made and that many issues had been attended to in court. Reasons were also provided for the proposed settlement and eventual withdrawal from the settlement negotiations. The dangers of the proposed HSIF settlement were also highlighted.

Amidst threats of the HSIF, a Georgiou platform, that Orthotouch and the HS Companies may possibly be liquidated, the subject of liquidation as well as the possible results thereof for the HSAG investors were discussed with reference to the HSAG advocate's opinion as was requested by the HSAG management committee.

After having presented the trial information sessions, and due to the substantial interest in the meetings and attendances thereof, the HSAG management decided to postpone the planned HSAG information sessions and to ascertain what the specific requirements of the HSAG members are for the presentation of further HSAG information sessions to be scheduled for 2018. The HSAG Steering Committee would consider the success of the information sessions against the costs thereof and will give feedback about the proposed sessions for 2018 early in the new year.

## **6. SURVEY MONKEY RESULTS**

The HSAG appreciates everybody who took the time to complete the latest HSAG Survey. The HSAG Survey is an important tool used by the HSAG to establish its members' opinions from time to time.

Herewith a short summary of the latest results:

- 99.50% of HSAG Members believe that justice for the HS Investors will only be served through legal action in a Court of Law.
- 81.54% of HSAG Members are aware that the buy-back claims by HS 21 and 22 are also covered by the HSAG's intended Class Action.
- 95.48% of HSAG Members know that the HSAG is claiming 100% of its members' capital and interest from Mr Nic Georgiou and other Respondents.

- 95.98% of HSAG Members believe that the HSAG should continue to claim 100% from Mr Nic Georgiou, his family and his financial empire.
- 91.88% of HSAG Members are aware that if you're not registered with the HSAG, there is a risk that your claim for HS 19-22 and on the buy-back agreements may be dismissed by the Court because the claim has prescribed.
- 90.00% of HSAG Members know that you may be excluded from the HSAG Class Action if you're not a registered member and that the "Opt-Out" option was changed to a closed group of HSAG members only.
- 96.97% of HSAG Members think that the Georgious will only pay if a Superior Court orders them to pay the HS Investors' claims.
- 84.26% of HSAG Members do not think that Mr Nic Georgiou / Orthotouch will honour a commercial settlement.
- 78.94% of HSAG Members are aware that Orthotouch is in financial distress (trouble) and regulated by a S155 Scheme of Arrangement.
- 93.43% of HSAG Members know that if you settled with Orthotouch, you have signed away your claims against Mr Nic Georgiou and other Respondents.
- 86.36% of HSAG Members know that the so-called "HSIF/HSBF"-website was initiated by Mr Nic Georgiou to divide the HSAG and its supporters.
- 91.92% of HSAG Members know that Helgard Hancke, Elna Visagie and Herman Lombaard support/work for Orthotouch/Mr Nic Georgiou.
- 94.67% of HSAG Members have not received their full payment in terms of Orthotouch's Option 2 (40%).
- 78.35% of HSAG Members are members of an Official HSAG Information WhatsApp Group.
- 60.51% of HSAG Members are able to pay the current required yearly contribution of R2 000 (once off).
- 77.44% of HSAG Members would be interested to attend a HSAG Information Session in their region.
- 82.83% of HSAG Members were aware that registration with the HSAG closed on 30 November 2017.
- 52.36% of HSAG Members do not believe that HSAG membership should be suspended if HSAG members have not paid up their Registration Costs since 2014.
- The HSAG believes "Unity is Strength". 98.99% of HSAG Members are of the opinion that with all the support and assistance of the thousands of HSAG Members, the HSAG can be successful in its litigation (court case) against Mr Nic Georgiou and Others.
- 97.97% of HSAG Members did not complete the "Petition Form" that was circulated on instruction of Mr Nic Georgiou by the so-called "HSIF/HSBF".

## **7. COSTS**

We have informed HSAG members from the outset that, depending on the support and co-operation from Prospective HSAG Claimants, it can be expected that annual trust contributions will be requested from HSAG members. Registration, administration

and legal costs is payable from time to time and is not refundable. The costs for 2018 will again be R2 000 per person. Some requests were received that persons with large investments must contribute in addition to the normal contributions and will this be discussed early in 2018.

## **8. WHAT TO EXPECT IN 2018**

In 2018 the Supreme Court of Appeal in Bloemfontein must consider the important legal question of whether a Nominal Applicant (in other words an investor who is basically a “placeholder” and who are representing thousands of other investors) in a class action can on his/her own accord withdraw an application for the certification of a class action or for the setting aside of the Scheme of Arrangement of Orthotouch.

The aforementioned legal question has never before been considered in South African law and would the decision of the SCA thus have far reaching consequences for all future class actions.

Should the SCA decide to ratify the decisions of Judges Ismail and Murphy, the HSAG could continue with the application to certify the class action, as well as to apply for the setting aside of the Scheme of Arrangement.

As already mentioned in paragraph 4 hereof, we are currently waiting for a date approved by the SCA for the hearing of the petitions of Mr Nic Georgiou and Orthotouch.

Furthermore the HSAG is in the process of implementing a debit order system to the benefit of investors who are in arrears with their payments and would investors be informed hereof early in 2018.

Information sessions are planned for 2018, and should the HSAG Steering Committee continue with the information sessions, investors will be notified of possible new dates in our January 2018 newsletter. Meantime, please stay abreast of any new developments concerning the information sessions on our website at [www.hsaction.co.za](http://www.hsaction.co.za).

## **9. LATE APPLICATIONS FOR HSAG REGISTRATION**

**Late applications shall be considered on a strictly *ad hoc* basis. Registration forms are available on our website at [www.hsaction.co.za](http://www.hsaction.co.za) or can be requested from us at [hsagregister@gmail.com](mailto:hsagregister@gmail.com). All requests and completed registration forms must be sent to [hsagregister@gmail.com](mailto:hsagregister@gmail.com).**

Kind regards

HSAG Steering Committee

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