HSAG'S REPLY TO ORTHOTOUCH MEDIA STATEMENT

Orthotouch has noted recent media reports about the court proceedings in the Supreme Court of Appeal ("the SCA") in Bloemfontein on 8 May 2018 and believe that certain matters need to be clarified so that certainty is given to the scheme participants that the implementation of the scheme of arrangement will proceed unabated in the interest of the participants **(MISLEADING: By law only creditors of Orthotouch, i.e. Highveld Syndications companies 15-22 in business rescue and other creditors e.g. Zelphy and others participate)**. The scheme relates to the compromise of certain claims of those participants.

Two appeals were heard by the SCA. The one related to the withdrawal of an application by a minority of investors **(UNTRUE: Three nominal applicants were nominated by the HSAG to act on behalf of 7 000 HS investors)** in 2015 which sought to set aside the scheme of arrangement and the other related to the withdrawal of the application to certify a proposed class action by four nominal applicants nominated by the HSAG who represent 7 000 HS investors in 2014.

There is a misperception that the Highveld Syndication Action Group ("HSAG") is undertaking a class action to proceed with claims against Mr. Nic Georgiou and Orthotouch. This is incorrect. The HSAG has no claims in its own name and there are no claims against Orthotouch in the class action. HSAG has never been an applicant in any court proceedings and cannot have any findings made in its favour **(MISLEADING - The nominal applicants acted on behalf of 7 000 HSAG members)**.

The outcome of this week's court proceeding is that the certification of the class, which is a preliminary step to be allowed to proceed with any class action can now proceed. No class action can begin before a class is certified by the courts. **(MISLEADING – Prior to certification does not mean that there is no class, as pointed out by Judge Murphy.**

Likewise, the application to set aside the Scheme of arrangement may now proceed in the normal course).

Orthotouch is disappointed that the SCA did not allow its full legal argument to be heard this week and believes that had the Orthotouch counsel been given the opportunity to argue the appeals, the court would have been in a position to give clarity on the rights and obligations of the representative plaintiffs in applications to certify class actions. **(UNTRUE: It is startling to even suggest that 5 judges of the SCA disallowed a party to present its argument/s to the court. If this was the case, it should be a national scandal of historic proportions! The fact is that all counsel was indeed allowed to fully present oral argument – which argument was in any event fully set out in detailed written "Heads of Argument" which were filed at the court and presented to the judges a few weeks before the hearing. The five judges simply made it clear that they were very unimpressed with any of those arguments. To suggest that counsel was silenced or prevented from addressing arguments in any way is simply untrue. This could be attested to by all persons present at the hearing. In any event, it was Orthotouch and Georgiou who themselves withdrew their Appeals before the conclusion of oral arguments)**.

The appeals were consequently withdrawn by the appellants' legal teams to avoid any inference of impropriety being drawn and costs were tendered. There was furthermore no concession that Mr. Georgiou acted unethically and abused the legal system. **(UNTRUE: - No inference was made. Two high court judges (as well as Spilg J) have found in particular impropriety by Georgiou and Orthotouch. A punitive costs order (attorney and client scale) is given only if a party acted in a way that warrants the strongest disapproval or condemnation by the court, i.e. to punish that party. In this case it could only relate to one thing: the impropriety and abuse of the court process on the part of Mr Georgiou and Orthotouch (which was the finding of the two High Court judgements against which the appeal was lodged)–which was clearly stated/supported by the five judges during the hearing, which lasted more than an hour. Immediately after the hearing, Georgiou and Orthotouch in fact**

tendered such costs on the punitive scale, which speaks volumes. The HSAG is of the view that they thereby intended to prevent (and did prevent) the need for the 5 judges to give a scathing written judgment, which would have followed their stern oral observations during the court hearing).

Further allegations were made in the media that Mr. Georgiou and his property companies collected R 4.6 billion from investors. This is not true. Mr. Georgiou has never been involved in Picvest, Bosman & Visser or any of the Highveld Syndication companies ("the HS Companies"). **(UNTRUE: Mr Georgiou effectively controlled these entities though his accolades at all relevant times. This is set out in detail in the investors' founding court papers in the Pretoria High Court, which sets out documentary evidence that Mr Rikus Myburg was Mr Georgiou's "front man" in respect of the Pickvest holding company. Mr Georgiou was (and is) clearly the central and controlling figure in the property investment scheme. To all these allegations, he has to date refused and/or neglected to answer in opposing affidavit. Mr Georgiou also in his personal and representative capacity on behalf of his entities, was involved in the buy back and head leases and was therefore, according to the definition of a promotor in the Consumer Affairs Act, 71/1988 (amended in 2006 by General Notice 459/2006) (Note: why is Orthotouch concerned about Mr Georgiou if it is completely separate from him, as argued by its counsel in the SCA)**.

Zephan Properties (Pty) Ltd ("Zephan") sold certain properties to Bosman & Visser **(MISLEADING: B&V was only a middle man between Georgiou's Zephan and the HS Companies), at market related prices. Bosman & Visser then on-sold these properties to the HS Companies. The HS Companies, in turn, syndicated the properties to the public contrary to what has been reported, Mr. Georgiou has never received, nor been entitled to receive, any payment from the HS Companies *(MISLEADING: Georgiou received the proceeds as Bosman & Visser was only a middle man. The various entities who received the R4.6 billion are controlled, either directly or indirectly, by Mr Georgiou. This is set out very clearly in the founding**

court papers (Pretoria). This is a fact that certain detractors to the scheme of arrangement would like to ignore, as the scheme does not suit their self-serving interests, which are opposed to the interest of the general body of investors.

The HS Companies were placed under voluntary business rescue in 2011 after they ran into financial difficulties and were unable to pay investors their interest on their investments. **(MISLEADING: The HS Companies were placed under Business Rescue because the Georgiou Group/Georgiou's Zelphy (Zephan) failed to transfer the fully paid-up immovable properties in the sum of R3.2 billion to HS 19-22 companies, which caused the financial difficulties. This is also a contravention of the Consumer Affairs Act, 71/1988 (amended in 2006 by General Notice 459/2006) as pointed out by Judge Howie in the Pickvest appeal in the withdrawal of their license. This is fraudulent, as found by Howie J**.

Only after the HS Companies were placed into business rescue, did Orthotouch make an offer to purchase the properties and rights in properties held by the HS Companies at market related prices. **(UNTRUE: Orthotouch also made an offer to purchase before the HS Companies were placed into Business Rescue).**

The offer was published in the Business Rescue Plan, which was accepted by an overwhelming majority of the investors. A real alternative for the HS Companies would have been liquidation where the investors would have lost everything that they had invested (UNTRUE: The HS Investors already had a claim against Mr Nic Georgiou/Zephan). To date, more than R1,3 billion has been paid from Orthotouch **(MISLEADING: Orthotouch only has two adjacent properties / on its website only one)*, as interest, to the investors. *(MISLEADING: If the HS were liquidated, the liquidator would have been able to collect the R3.2 billion which Zelphy was paid but failed to transfer the properties in HS 19-22 and which was also in contravention of the Consumer Affairs Act, 71/1988 (amended in 2006 by General Notice 459/2006))**.

As stated in the HS Companies' Business Rescue Plan and in the interest of the investors, Zephan does not receive any payment until all the investors have been paid in full. **(MISLEADING: In the subsequent S155 Scheme of Arrangement ("SoA") it is stated that R177 million anticipated income was to be paid to Zephan and not Orthotouch)**.

The scheme of arrangement proposed by Orthotouch to buy the properties from the HS Companies **(MISLEADING: Orthotouch bought the properties from the HS Companies/Business Rescue Practitioner, Hans Klopper)** was advertised and public meetings were held in 2014. The scheme of arrangement provided expressly that it would be sanctioned by the court after its acceptance. Investors were advised in the documentation circulated beforehand to seek independent legal advice before casting their votes. **(MISLEADING: In the Johannesburg founding court papers (to which Georgiou has to date, also not answered) detailed facts are presented as to why the court which sanctioned the Scheme of Arrangement was misled, amongst others, given that vital information was omitted, including the serious allegations of fraud and misrepresentation made against Mr Georgiou and others, which allegations already formed part of the issued Pretoria court papers at that stage. The SoA expressly states that the North Gauteng High Court, Pretoria, has jurisdiction but Orthotouch secretively approached another court, Southern Gauteng, Johannesburg, for the sanctioning. Mr Hans Klopper, Business Rescue Practitioner and director of Orthotouch, was requested twice in writing to inform the HSAG, who opposed the sectioning, in the event that they intended to sanction the SoA, but he ignored the requests. The SoA was sanctioned by the court ex parte without any notice to any investors. Orthotouch intentionally did not inform the Court of the pending class action certification application)**.

It was furthermore incorrectly reported that Mr. Georgiou's companies were placed in business rescue. The HS Companies were never his companies. **(MISLEADING: Detailed explanations are given in the founding court papers that Mr Georgiou effectively controls these companies)**.

Mr. Theron, the attorney for the HSAG, is quoted as saying that the class action will claim back the monies of investors from Orthotouch **(UNTRUE: incorrect quotation. Mr Theron did not say this)** and Mr. Georgiou. This is incorrect as no claims are being made against Orthotouch in the proposed class action. The class action, if certified will not affect Orthotouch nor the implementation of the scheme of arrangement.

All that the legal actions taken by Mr. Theron and the detractors from the scheme of arrangement serve to achieve, is to delay the implementation of the scheme of arrangement **(UNTRUE: Scheme of Arrangement ("SoA") has already been implemented)** and to erode the monies which would otherwise have been available to pay the investors. **(UNTRUE: Orthotouch's directors are shifting the blame and evading their responsibilities as directors)**.

Orthotouch still believes that the scheme of arrangement offers the greatest potential for investors to realise value from their investment in the HS Companies. **(UNTRUE: What happened to the R3.2 billion? Orthotouch's directors are evading responsibilities. Orthotouch, being a public company, contravenes the Companies Act in various manners. It does, for instance, not have updated and audited financial statements and also does not comply with the King III principles, as stipulated in the Orthotouch contract. Orthotouch has written off R2.1 billion in value impairment (46% of total property value) which is a contradiction of the King III principles and allowed by SARS. Furthermore, properties were sold to Accelerate at R358 million (27%) below market value)**.

HSAG Management Committee

18 MAY 2018