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Our ref.: J FURSTENBERG/ka/H080327
Your ref.: N Lubbe/MAT2508

3 August 2018

Messrs NLA Legal Inc
NORTH RIDING

PER EMAIL: natalie@natalielubbe.co.za

Dear Sir/Madam

**Re: PAYMENT TO CERTAIN HIGHVELD INVESTORS/ORTHOTOUCH / DP
COHEN & HANS KLOPPER**

1. Your letter dated 12 July 2018 refers.
2. In your letter, written on behalf of Orthotouch, its directors and Mr Klopper, it is stated that your aforesaid clients fully intend to comply with the terms of the Scheme of Arrangement (“SoA”).
3. Your letter then continues in paragraph 7 thereof, that Orthotouch’s ability to perform in terms of the SoA depends completely on Zephan Properties (Pty)

Ltd ("Zephan"), and that for so long as Zephan enables Orthotouch to perform, it will do so.

4. However, in terms of definition clause 1.12 of the Arrangement ("capital sum"), read with clause 1.26 ("the financial proposer"), Zephan is only liable for the eventual payments of the "capital sum". The said capital sum is defined in clause 1.12 as payments that are to be made to so-called trade creditors under the SoA (ironically, Zephan is the only trade creditor (see annexure "H" of the SoA).
5. As you know, the payments which are relevant for current purposes are *interest* payments to the Highveld investors, not *capital* payments which are to be made.
6. Under the SoA, capital payments are clearly distinguished from interest payments. In this regard, the distinction between clause 2.2.3 (arrangement with Trade Creditors) and clause 2.2.4 of the SoA (arrangement with the Highveld Investors) is very clear, apart from the distinct definitions appearing from the definition clauses in the first few pages of the SoA document.
7. Orthotouch's liability to make monthly interest payments therefore do not depend at all on payment being received from Zephan. The position of your clients is therefore mistaken, and urgent clarity of your client's position is hereby sought given the true state of affairs as pointed out herein.
8. We also mention that Orthotouch admits in your letter that it is receiving funding in order to make interest payments. Details thereof, including the source thereof, are also requested with the view to obtain clarity about your client's position.
9. Our clients intend approaching the High Court urgently for, amongst others, payment to be enforced under the SoA and also declaratory relief, in so far as may be necessary, that payment is still due to all investors despite some of them supporting the litigation against your client and Mr Georgiou (who is also

effectively your client given that he controls Orthotouch). In our view, it is clear that payments to investors cannot be withheld simply because of the pending litigation. An investor does not waive his or her right under the SoA to receive payment simply because he or she is involved (or supports) litigation concerning the SoA.

10. For such purposes, we urgently require clarification of your client's position regarding its obligations and its ill-advised reference to (and dependence on) Zephan **within three days of receipt** hereof, failing which we shall be obliged to urgently approach the court despite the confusing stance or approach taken by your clients.

We look forward to hearing from you urgently.

Yours faithfully
THERON & PARTNERS

PER:


J FURSTENBERG