

ENGLISH TEXT BELOW

MAANDELIKSE NUUSBRIEF: JUNIE 2019

Hierdie nuusbrieff word aan u gerig as lid van die Hoëveld Sindikasie Aksiegroep (“HSAG”) op grond van u belegging in die Highveld Sindikasiemaatskappye 15-22 en/of u ondersteuning van die HSAG.

Hierdie e-pos is vertroulik en uitsluitlik vir die geadresseerde bedoel. As u dit per ongeluk / verkeerdlik ontvang het, stel asseblief die versender by hsagenquiries@gmail.com onmiddellik hiervan in kennis en vernietig dit. U mag nie 'n e-pos, of enige deel daarvan, wat foutiewelik ontvang aan enigiemand anders stuur, kopieer of openbaar nie. HSAG se webmeester gebruik antivirusprogrammatuur om virusse en ander kwaadwillige kodes te voorkom. Hierdie sagteware kan egter nie so 'n kode voorkom of uitwis nie. Die HSAG of sy verteenwoordigers sal nie aanspreeklik wees vir enige verlies of skade wat voortspruit uit ontvangs of gebruik van hierdie e-pos of andersins, of dit voortspruit uit die nalatigheid van HSAG, sy lede, bestuurskomitee en agente of andersins nie.

Alhoewel e-posse, HSAG Nuusflitse en HSAG Inligtingsbrokkies van tyd tot tyd uitgestuur word, is die www.hsaction.co.za webtuiste die primêre plek waar u HSAG inligting, onderhewig aan die vrywaring daarin vervat (en ook hierop van toepassing) kan bekom.

Die verpligting rus op u as HSAG lid om ons op hoogte van enige veranderinge van u persoonlike en/of kontakbesonderhede.

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1. INLEIDING

Die HSAG-regspan is volstoom aan die werk om HSAG-beleggers se belange te beskerm!

Daar heers 'n gevoel van opgewondenheid oor dit wat voorlê, veral in die lig van die feit dat die Adjunk-regter-president in die Hooggeregshof in Pretoria op versoek van Regter Tolmay, die Saakbestuurder in Pretoria, 'n voorkeurdatum aan die HSAG gegee het waarop die Aansoek vir Sertifisering van HS 21 & 22 aangehoor sal word.

Die HSAG het voorheen berig dat die wiel van geregtigheid stadig, maar seker draai. Na bykans 4 jaar se harde werk en na verskeie aanslae van die teenkant, word die Aansoek vir Sertifisering van HS 21 & 22 vanaf 11 tot 15 November 2019 gereserveer!

Indien die HSAG suksesvol sou wees, sal dit beteken dat daar 'n klas gesertifiseer word vir HS21&22 beleggers en sal die HSAG kan voortgaan om die beleggers se kontraktuele eise teen Georgiou en Andere af te dwing.

Die aanhoor van hierdie Aansoek sal 'n geweldige positiewe invloed hê (indien die HSAG suksesvol sou wees) op al die ander HS-maatskappye, aangesien dit sal bewys dat die Hof oortuig is dat die Eisers in die klas-aksie as 'n klas 'n eis het teen Georgiou en Andere.

Dit is gevolglik nou die tyd om al u gewig agter die HSAG en sy regspan in te gooi en te ondersteun.

2. IS U IN OF IS U UIT?

Die HSAG is besig om hul te staal vir die bring van die eerste sertifiserings-aansoek. Dit sal behels dat diegene, wie nie binne die gesertifiseerde klas val nie, hetsy uitdruklik, stilswyend of deur hul gedrag, nie deel daarvan kan wees nie.

Die HSAG bestuur, in oorleg met hul regsverteenvoerders, is tans besig om te oorweeg wat die vereistes vir die huidige "opt-out" bedeling moet wees.

Die sertifisering van die "klas" behels dat 'n sekere "klas" persone beskryf en erken word, en dat lede wie onder die unieke beskrywing van die klas val, dus deel is van diegene wie kan voordeel trek uit die uitkoms van die klas-aksie.

Die huidige Kennisgewing van Mosie ten aansien van die sertifisering van 'n klas-aksie maak voorsiening vir 'n "opt-out" bedeling.

Die "opt-out" bedeling beteken dat, waar 'n Hof 'n klas sertifiseer, al die lede van die klas outomaties ingesluit word as eisers in die klas en hul moet dus uitdruklik kennis gee indien hul nie onder die klas ingesluit wil wees nie. Dit vereis dus positiewe of negatiewe optrede vanaf diegene wie nie deel wil wees van die klas nie.

Indien 'n lid nie deel vorm van die klas nie sal hy/sy nie geregtig wees op enige eisbedrag wat uitbetaal mag word, hetsy ingevolge 'n hofbevel of skikkingssooreenkoms nie.

Indien bydraes op datum is, sal u verseker deel vorm van die bedeling wat die beste gevolge inhou vir HSAG-lede

Die huidige vereistes is:

- Daar word met groot eise ('n gemiddelde van R250 000.00 per belegger) gewerk, en die beskerming van ons kliënte se miljarde rande se belange is van kardinale belang. Daar is dus 'n verpligting op die HSAG om seker te maak dat daar nie sonder lede se uitdruklike toestemming persone uitgesluit word van die klas-aksie nie.
- Daar is inderdaad lede wie tot dusver hul bydraes jaarliks getrou gelewer het, en danksy hulle, is die klas-aksie nog op dreef.
- Indien 'n lid wil onttrek, is die huidige vereistes is dat 'n eedsverklaring afgelê word deur die lid, ten einde te verseker dat ongewenste persone nie namens ander HSAG-lede valslik onttrek nie. Tot dusver het minder as 3% van die totale HSAG lede onttrek. 'n Kommissaris van Ede bevestig dat die persoon wie die eed aflê vertrou is met die inhoud van die verklaring en bevestig die identiteit van die persoon. Geen makelaar of ander persoon mag namens 'n HSAG-lid onttrek nie, buiten as hy/sy 'n skriftelike volmag het, welke volmag aangeheg moet word by die eedsverklaring.

Verskeie persone het egter oor jare deur hul gedrag en optrede aangedui dat hul nie behoort te deel in die suksesse en opbrengste van enige sake wat die HSAG bring nie, byvoorbeeld: die 7 applikante wat op 'n agteraf en bedrieglike wyse gepoog het om die klas-aksie te ontspoor; persone wat op die HSAG se bestuur gedien het en op 'n onregmatige wyse die HSAG en sy lede verraai het; persone wie die teenkant ondersteun het in hul opponering van die HSAG se sake; persone wie nie hul registrasie kostes betaal het nie en diegene wie nie getrou hul finansiële bydrae tot die HSAG gelewer het nie.

U word gevolglik hierby vroegtydig ingelig en meegedeel dat, indien u onder enige van bogenoemde kategorieë (en of selfs verdere kategorieë soos vorentoe gekommunikeer) mag val, dit moontlik beskou kan word as 'n outomatiese diskwalifisering van u lidmaatskap, en dat u deur die gemelde optrede en gedrag die sogenaamde "opt-out" keuse (d.i. dat u nie deel wil wees van die klas-aksie nie) uitoefen. Ten einde te verseker dat u nie binne gemelde kategorieë val nie, word u hiermee vriendelik, tog dringend, versoek om asseblief u finansiële bydraes op datum te bring.

3. SO BERIG DIE MEDIA OOR DIE PIC-BELEGGINGS

'n Finansiële joernalis van Moneyweb het 'n reeks artikels geskryf oor die Picvest-saga.

Die gemelde artikels gee vir lesers 'n goeie agtergrond en begrip oor presies wat oor tyd gebeur het in die Picvest-saga, sedert Georgiou betrokke geraak het.

Ons gaan in die volgende paar HSAG-Nuusbriefe 'n kort en bondige opsomming gee van die artikels, maar ons wil u graag uitnoodi om die artikels, wat op die amptelike HSAG-webblad by www.hsaction.co.za verskyn, te lees.

DEEL 1 van die reeks artikels: "The peculiar case of the Picvest billions: Part 1" fokus op die 79 eiendomme wat oorspronklik aan beleggers verkoop is vir R4,6 miljard.

Die HS maatskappye dateer terug na 1998, toe PIC Investments (Picvest) suksesvol bemark is, en sowat 120 eiendomme aan beleggers gesindikeer het.

Sindikasies (HS 1 tot 14) was suksesvol en alle beleggers is ingevolge die ooreenkomste betaal vir R723 miljoen, en is in 2007 aan die prominente sakeman en eiendomsmagnaat, Mnr. Nic Georgiou van Bloemfontein, verkoop vir R892 miljoen. Georgiou en sy maatskappy Zephan, voorheen genaamd Zelphy, en ander entiteite wat met hom verband hou, sal later 'n beduidende aantal eiendomme aan die verdere sindikasies verkoop.

Tussen 2005 en 2011 bemark Picvest die HS 15 tot 22 sindikasies aan beleggers, 79 geboue vir R4 644 925 000 (dit sluit nie die bedrag van R132 miljoen in wat na bewering aan beleggers oerverkoop is nie).

Rentekoerse van tot en met 12,5% is betaal aan beleggers vir 'n minimum van vyf jaar, waarna die eiendomme veronderstel was om verkoop te word en die kapitaal aan beleggers terugbesorg moes word.

HS 21 & 22 sindikasies was effens anders as HS 15 tot 20 en bevat spesifieke terugkoop-ooreenkomste ingevolge waarvan Georgiou, of entiteite wat verwant is aan hom, die beleggers se aandele na vyf jaar moet terugkoop.

Waardasies van die eiendomme in die sindikasiestelsels was uiters hoog. Onafhanklike waardeerders van die HS 21 & 22 sindikasies, het ook hul waardasies van die eiendomme onttrek.

Baie eiendomme waar entiteite verwant aan Georgiou eiendomme in 2006 gekoop het, is in 2010 vir massiewe winste aan die HS-maatskappye verkoop.

Drie jaar later is die eiendomme verkoop aan Accelerate Property Fund Ltd ("Accelerate"), 'n maatskappy wat deur Georgiou se seun, Michael Georgiou, bestuur word.

Moneyweb het titelaktes van 27 eiendomme ontleed wat aan Accelerate verkoop is. Die totale sindikasiewaardes was R1,8 miljard, sowat R700 miljoen meer as die R1,1 miljard wat vir hierdie eiendomme betaal is.

HS 15 tot 18 se eiendomme is ingevolge die prospektusse verkry en oorgedra aan die sindikasiemaatskappye, maar dit was nie die geval vir HS 19 tot 22 nie. Ten spyte van

beleggers wat die kollektiewe R3,5 miljard-sindikasiewaarde betaal het, is die eiendomme nie na die onderskeie sindikasiemaatskappye oorgedra nie.

Bosman & Visser ("B&V") het opgetree as 'n middelman tussen Georgiou se hoof maatskappy, Zephan, en die HS-maatskappye.

Die maatskappy het die eiendomme vanaf Zephan gekoop, herstel en dan aan die HS-maatskappye teen 'n hoër prys verkoop.

Hierdie struktuur is gebruik vir een eiendom in HS 17 en al die eiendomme van HS 18 tot 22.

In 2009 het 'n beweerde geskil ontstaan tussen Zephan en B&V. Zephan het beweer dat B&V 'n bedrag van R883 miljoen kort betaal het, 'n eis wat B&V destyds geweier het. Nietemin het Zephan hierdie geskil gebruik om die oordragte van alle eiendomme aan HS 19 tot 22 op te skort, ondanks die feit dat beleggers reeds die volle koopprys betaal het.

Dit is ook onduidelik waarom Eugene Kruger, die oordragsprokureur wat die R3.5 miljard van beleggers ontvang het, die geld uit sy trustrekening vrygestel het voor die oordrag van die eiendomme.

Zephan het nooit vir B&V gedagvaar vir die R883 miljoen nie.

Bo en behalwe die kort-betaling van R883 miljoen, is die oorblywende R2,6 miljard van die totale R3,5 miljard belegging nog steeds 'n onverklaarbare raaisel.

Georgiou het nie reageer op Moneyweb se vrae wat verband hou met die dispuut en die nie-oordrag van eiendomme nie, en hy beweer in 'n beëdigde verklaring wat ter verdediging van 'n onlangse likwidasië-aansoek teen Zephan ingedien is, dat hy nooit geld direk van Kruger of die HS-maatskappye ontvang het nie.

Die HS-sprokie het in 2011 tot 'n einde gekom. In 'n poging om die situasie reg te stel, het Georgiou die 'Orthotouch-voorstel' gekonseptualiseer welke voorstel 'n voorgestelde herstrukturering van die sindikasies om likwidasië te verhoed sou bewerkstellig.

Onder dié voorstel sou al die eiendomme van die HS-maatskappye oorgedra word in 'n nuwe maatskappy genaamd Orthotouch, onder beheer van Georgiou.

Die eiendomme moes binne Orthotouch bestuur word en beleggers sou verminderde rentebetaling ontvang.

Dit het ook voorsiening gemaak vir die kansellasië van die hoofhuur- en terugkoop-ooreenkomste, waarop baie beleggers hul oorspronklike beleggingsbesluit gebaseer het - die voorstel is nie geïmplementeer nie.

Hans Klopper is aangestel as die ondernemingreddingspraktisyn (en is ook op 9 Januarie 2012 by die Orthotouch-direksie aangestel) van die HS-maatskappye, en voorsien 'n ondernemingreddingsplan (BRP) wat feitlik identies is as Georgiou se oorspronklike Orthotouch-voorstel van Desember 2011 wat nie gerealiseer het nie.

Klopper versuim ook om die geskil en die nie-oordrag van eiendomme te ondersoek, sowel as om regstappe te neem om die R3,5 miljard te verhaal.

Kyk gerus uit vir die **DEEL 2** van die reeks artikels in die volgende HSAG-Nuusbrief.

4. HUIDIGE STAND VAN SAKE

4.1 Versnelde Sertifikasie Aansoek (HS 21 & 22)

Die Aansoek vir Sertifisering van HS 21 & 22 word in twee dele aangehoor, naamlik:

- Gedeelte A – Waar die HSAG suksesvol vir die Hof gevra het om 'n bevel, wat bepaal het dat Georgiou en Andere nie Opponerende verklarings hoef te liasseer nie, te wysig sodat die saak kan voortgaan.
- Gedeelte B – Waar die HSAG die Aansoek bring vir die Sertifisering van 'n klas-aksie vir HS 21&22.

Sukses in voormelde sertifisering sal ongetwyfeld ook tot voordeel van die ander HSAG lede wees, omdat 'n Hof dan 'n klas sal sertifiseer asook oor die meriete van daardie sake sal beslis wat op sy beurt weer momentum aan die HSAG en sy lede sal gee.

Die kantore van die ARP het bevestig dat die Aansoek vir Sertifisering aangehoor kan word tussen vanaf 11 tot 15 November 2019.

Sien asseblief punt 7 van die HSAG Nuusbrief wat handel oor belangrike datums. Die Kennisgewing van Mosie, asook die verklaring ter ondersteuning van die Kennisgewing van Mosie, is op die HSAG se webblad by www.hsaction.co.za geplaas en ons nooi u uit om dit deur te lees.

4.2 Beleggers met eise in HS 15 tot 20

Eise in ander HS-maatskappye is tans definitief nie verlore of in gedrang nie. Die HSAG gaan nog steeds voort met stappe ten einde die beleggers se eise af te dwing. Tydsberekening asook die ondersteuning deur al die HSAG lede is egter van kardinale belang om sukses te behaal.

Al is die partye in litigasie dieselfde, berus die eis-oorsake van HS 15 tot 20 ongelukkig breedweg op ander feite, omstandighede en regsbeginsels. Byvoorbeeld, onder andere ook bedrog en wanvoorstellings, en is die eis-oorsake van hierdie eise gevolglik anders as in die kontraktuele eise van HS 21 & 22.

Beleggers in HS 19 tot 20 se eise is reeds ingestel deur middel van die Sertifikasie-Aansoek en stuit hierdie aansoek die verjaring van eise.

Tot op datum was nog nie nodig om beleggers in HS 15 tot 18 se eise in te stel deur middel van die Sertifikasie-Aansoek nie aangesien verjaring, op advies van ons advokatuur, ten aansien van HS 15 tot 18 nog nie ter sprake is nie.

Sou beleggers ingevolge die Sakereddingsplan veronderstel wees om op 15 Desember 2016 hul kapitaal te ontvang, sal verjaring op daardie eise (sonder inagneming van enige ander faktore) bloot op sigwaarde tipies eers in Desember 2019 van toepassing raak.

Die Sertifikasie-Aansoek ten aansien van HS 15 tot 18 sal derhalwe uitgereik en beteken word sodra die HSAG se advokatuur adviseer dat dieselfde gedoen word ten einde onnodige kostes te bespaar. Die HSAG beplan dus sy prioriteite fyn en werk sistematies daarvolgens.

Die HSAG is steeds van voorneme om die Art 155 Reëlinskema tersyde te stel. Ten einde die tersydestellings proses te bespoedig het die HSAG op 9 Mei 2019 'n skrywe aan Regter Weiner (die Saakbestuurder in die Hooggeregshof in Johannesburg) gestuur ten einde aanwysings te vra ten aansien van die lewering van Antwoordende Verklarings deur mnr Georgiou en Andere.

Regter Weiner tree tans op as 'n Regter van die Hoogste Hof van Appèl en word 'n aansoek eers verwag wanneer haar termyn daar afgeloop is.

Georgiou se prokureurs van rekord het na aanleiding van ons skrywe aan Regter Weiner skriftelik bevestig dat Georgiou, voor of op 30 Julie 2019 hul Antwoordende Verklaring ten opsigte van die HSAG se Aansoek vir die Tersydestelling van die Art 155 Reëlinskema sal beteken en liasseer.

Orthotouch se prokureurs het dieselfde datum aangewys.

Orthotouch is egter in terme van die Skema verplig om maandelikse rente aan HS-beleggers te betaal.

Georgiou is dus tans besig om sy eie reëlinskema te minag wat soveel te meer rede is om die Art 155 Reëlinskema tersyde te stel.

Nie-lede van die HSAG loop egter 'n risiko dat hul eise waarskynlik deur 'n verweer van verjaring begroet mag word.

4.3 Aansoek om as vriend van die Hof toe te tree in die Noormahomed Appèl Aansoek

Na konsultasie met die advokatuur van die HSAG, het die HSAG-bestuur besluit om toe te tree as vriend van die Hof in die Appèl aangeleentheid van Mev. Noormahomed.

Georgiou en Andere Appèlleer teen 'n uitspraak wat in die guns van Mev Noormahomed gegee was en wat onder andere bepaal het dat Georgiou en Andere die Terugkoopklousule (wat in HS21&22 vervat is) moet nakom.

Hierdie Terugkoopklousule het onder andere bepaal dat 'n belegger (wat in HS21&22 belê het) gewaarborg is van 100% kapitaalgroei oor 'n termyn van 5 jaar, en dat Zephan (of sy genomineerde) die aandele na die termyn sal terugkoop.

Soos te verwagte, het Zephan nie die ooreenkoms nagekom nie en is die destydse besigheidsredding en die huidige Art 155 Reëlinskema geopper as verweer.

Die Hof van eerste instansie het bogenoemde verweer verwerp.

Ingevolge die Hofreëls kan 'n party op twee wyses as vriend van die Hof toetree:

- As al die partye tot die geding toestem tot 'n derde party se toetrede;
- By wyse van 'n Hofaansoek.

Die HSAG se regsplan het aan die partye tot die litigasie 'n versoek gerig om toe te tree, maar Georgiou se prokureur het aangedui dat hulle nie toestem tot die HSAG se versoek nie. Dit het die HSAG se regsplan met geen ander keuse gelaat as om 'n Aansoek te bring nie.

Die Aansoek is reeds beteken en by die Hoogste Hof van Appèl ingedien en wag ons tans op 'n Aanwysing.

Sou die HSAG se Aansoek suksesvol wees, sal die HSAG (as 'n vriend van die Hof) 'n Hoofde van Betoog kan lewer en ook die geleentheid gegun word om die Hof toe te spreek.

Die belangrikheid en relevansie van hierdie saak vir die HSAG is dat, indien die Hof Georgiou se appèl van die hand wys, dit tot voordeel van al die HSAG-eisers in HS21&22 sal wees.

4.4 Aansoek om Tussenbeidetrede

'n Opponerende Verklaring is op 6 Junie 2019 op Van der Sandt se prokureurs van rekord beteken.

Die HSAG is van voorneme om die Van der Sandt aansoek vroeër te laat aanhoor deur die saakbestuurder, Regter Tolmay.

Die HSAG is van voorneme om Regter Tolmay, die saakbestuurder in die Hooggeregshof in Pretoria, te nader ten einde Aanwysings te vra ten aansien van die Aanhoor van Van der Sandt se Aansoek.

Indien die HSAG suksesvol sou wees met die opponering van Van der Sandt se nuutste Aansoek vir Tussenbeidetrede in die Aansoek vir Sertifisering van HS 21 & 22, sal ons vir die Hof vra om 'n bestawwende kostebevel teen haar toe te staan.

Die HSAG se Opponerende Verklaring is op die HSAG webblad en versoek ons u vriendelik om die Verklaring te lees.

5. WAT IS DIE VERSKIL TUSSEN 'N KLAS EN 'N KLAS-AKSIE?

Nadat 'n Hof 'n aansoek vir die sertifisering van 'n klas toegestaan het, bestaan daar 'n erkende klas (wat bestaan uit 'n groep eisers). Die klas (Eiser) kan dan sy eise as 'n klas (en nie as individue) teen 'n Verweerder afdwing.

'n Klas (Eiser) kan sy eis op twee manier afdwing: by wyse van 'n aksie- of aansoekprosedure.

- Indien die klas (Eiser) 'n aksie instel, sal die proses as 'n klas-aksie beskryf word.
- Indien die klas (Eiser) 'n aansoek uitreik ten einde sy eise af te dwing, sal die proses beskryf word as 'n klas-aansoek.

'n Klas-aksie is dus 'n prosedurele meganisme wat eisers toelaat om 'n regsgeding namens 'n groter groep, met 'n gemeenskaplike belang in 'n saak, in te stel.

Die meganisme laat Howe toe om regsgedinge aan te hoor wat andersins onhanteerbaar sou wees, aangesien dit sou behels dat elke lid van die klas (individue wat dieselfde onreg gely het aan die hand van die Verweerder(s)) gevoeg moes word tot die regsgeding in hul persoonlike hoedanigheid as Eisers.

6. WAT GEBEUR NÁ SERTIFIKASIE VAN HS 21 & 22?

Geleelte B van die Versnelde Aansoek (waar die HSAG vra vir die sertifikasie van HS 21 & 22) is geskeduleer vir aanhoor gedurende November 2019.

Indien die HSAG suksesvol sou wees met die Aansoek, beteken dit dat daar 'n klas (vir HS 21 & 22) gesertifiseer word en dat die individuele beleggers dus as 'n klas kan voortgaan om hul eise teen Georgiou af te dwing. Die presiese vastelling van die klas en wie geregtig sal wees om te eis, gaan nou belangrik raak.

Die klas se eise word normaalweg deur middel van 'n klas-aksie ingestel wat beteken dat daar 'n Dagvaarding op Georgiou en Andere beteken moet word waarin die klas se eis uiteengesit word.

Na die betekening van die Dagvaarding is daar sekere formele prosesse wat gevolg moet word waarna die aksie sal uitloop op 'n formele verhoor.

Op advies van die HSAG se advokatuur, gaan die HSAG heel waarskynlik aansoek doen dat die klas se eise by wyse van 'n klas-aansoek afgedwing word. In beide sake waar die Regters beslis het in die guns van HS-beleggers, het die Hof dit nie nodig gevind om 'n lang hofsak te voer nie en summier die eise toegestaan.

Bogenoemde roete sal heel waarskynlik die vinnigste roete wees aangesien die HSAG se aansoek basies reeds opgestel is. By 'n aansoek is daar ook nie 'n formele verhoor nie en sal die HSAG se saak bloot op die aansoek-stukke bereg word.

Die "normale" proses ten aansien van 'n aansoek-prosedure sal daarna gevolg word, naamlik:

- Die HSAG (Applikante) beteken 'n Aansoek op Georgiou en Andere (Respondente) waarin daar kennis gegee word dat die Applikante van voorneme is om op 'n sekere datum 'n Aansoek te bring;

- Indien daar geen opponering is nie, sal die Aansoek op die ongeopponeerde Hofrol geplaas word en aangehoor word waarna die Aansoek toegestaan sal word indien die Regter tevrede is;
- Indien enige van die Respondente die Aansoek wil opponeer, moet daardie Respondente binne 'n sekere tyd kennis gee van hul voorneme om die Aansoek te opponeer;
- Sodra die Applikante die Kennisgewing van Verneme om te Opponeer vanaf die Respondente ontvang, word die Aansoek vanaf die ongeopponeerde Hofrol verwyder.
- Die Respondente wat die Aansoek opponeer moet binne 15 Hofdae (nadat 'n Kennisgewing van Verdediging beteken is) Opponerende Verklaring(s) beteken en liasseer;
- Die Applikante het daarna die geleentheid om 'n Repliserende Verklaring, in antwoord op die Respondente se Opponerende Verklaring, te beteken en te liasseer;
- Daarna moet die Applikante hul Hoofde van Betoog beteken en liasseer waarna die Respondente se Hoofde van Betoë beteken en geliasseer moet word;
- Nadat alle Verklarings en Hoofde van Betoë beteken en geliasseer is, kan die Applikante die Aansoek plaas vir aanhoor.
- Beleggers moet steeds die volgende in gedagte hou:
- By beide 'n klas-aksie en 'n klas-aansoek is daar sekere voorgeskrewe wetlike vereistes en reëls met tydperke wat nagekom moet word (waaroor die HSAG-regspan nie beheer het nie);
- Enige party kan (indien hy/sy onsuksesvol is in 'n Hofgeding) appèlleer teen 'n uitspraak wat gegee is.

7. BELANGRIKE DATUMS

- **30 Junie 2019** - Georgiou moet sy Opponerende Verklaring ten aansien van die Aansoek vir Sertifisering van HS 21 & 22 beteken en liasseer (Pretoria);
- **30 Julie 2019** - Georgiou se prokureurs het onderneem om sy Opponerende Verklaring ten aansien van die HSAG se Aansoek vir Tersydestelling te beteken en te liasseer (Johannesburg);
- **31 Julie 2019** - Die HSAG moet 'n Repliserende Verklaring in antwoord op Georgiou se Opponerende Verklaring beteken en liasseer (Pretoria);
- **15 Augustus 2019** - Georgiou se prokureurs van rekord moet hul Hoofde van Betoog beteken en liasseer (Pretoria);
- **15 September 2019** - Die HSAG se prokureurs van rekord moet hul Hoofde van Betoog beteken en liasseer (Pretoria);
- **11 – 15 November 2019** – Aanhoor van Gedeelte B van die Aansoek vir Sertifisering van HS 21 & 22.

8. OPVRAGING VIR BYDRAE TOT REGS- EN ADMINISTRASIEKOSTE – 2019

Die jaarlikse bydrae tot regs- en administrasiekoste wat gehef word bly sedert 2017 onveranderd in 'n bedrag van R2 000.00 per persoon ongeag die hoeveelheid sindikasies waarin 'n persoon belê het. Daarby is daar sedert 2016 kwytskeldings vir beleggers met kleiner eise.

Die jaarlikse bedrag het, nieteenstaande die geweldige prysstygings die afgelope drie jaar, onveranderd gebly. Die HSAG en sy regsverteenwoordigers doen alles in hul vermoë om die saak so bekostigbaar moontlik te doen. Indien BTW, bankkoste en ander kostes afgetrek word, is die netto bedrag wat beskikbaar is veel minder en is die gemoedsrus waarvoor die HSAG beleggers betaal om te veg vir 100% van hul eise, plus rente, uiteindelik minder as R5 per dag. Die gemiddelde eise per persoon beloop ongeveer R250 000.

Die HSAG oorweeg deurgaans watter graad van regsverteenwoordiging bekom moet word in die Hofsake aanverwant. Elke geval moet op sy eie meriete beoordeel word en sal die eerste prys altyd wees om die beste moontlike verteenwoordiging by die hoof te kan hê. Die HSAG benodig die dienste van 'n senior advokaat by die eerskomende sertifisering-aansoek.

Ons versoek u dus vriendelik om so spoedig as moontlik toe te sien dat u bydrae tot regs-en administrasiekoste op datum gebring en/of betaal word, word ten einde die bes moontlike regsverteenwoordiging vir die HSAG sake te verseker.

9. ALGEMENE BOEDEL NAVRAE

Indien u algemene boedelnavrae het met betrekking tot boedels en die eise van HSAG-lede, is u welkom om 'n e-pos te stuur na hsagestates@gmail.com waarna die HSAG u sal bystaan.

10. OPSKORTING VAN HSAG-LIDMAATSKAP

Die status van HSAG-lede se lidmaatskap gaan vorentoe 'n baie belangrike rol speel in die litigasie wat gaan volg.

HSAG lede wat volop betaal is (of wat getrou hul agterstallige regs- en administrasiekostes maandeliks afbetaal) is dit eens dat die HSAG nie meer HSAG-lede moet akkommodeer wat nie hul kant finansiëel bring nie.

Dit is onregverdig dat opbetaalde HSAG-lede die klas-aksie se litigasiekostes namens ander moet dra terwyl nie-betalende lede steeds die beskerming van die HSAG geniet.

Tydens 'n vorige vergadering het die HSAG-bestuur besluit dat HSAG-lede wie nie hul **2014 / 2015 registrasiekoste** vóór of op **31 Desember 2018** op datum bring nie, se lidmaatskap aan die HSAG opgeskort gaan word.

Die gevolge van hierdie opskorting is verreikend:

- Lede wie se lidmaatskap opgeskort is, sal nie meer geregtig wees op enige voordele van die HSAG se suksesse nie en sal ook nie deel vorm van enige toekomstige skikkings wat met die teenkant beklank mag word nie;

- Dit beteken ook ondermeer dat daardie HSAG-belegger se eis teen Orthotouch/ Mnr. Georgiou straks verjaar het. In die huidige bedeling van die klas-aksie aansoek kan dit ook beteken dat diegene wie se lidmaatskap opgeskort is, nie weer sal deel vorm van die HSAG klas-aksie nie en is dit ook moontlik dat hul van die HSAG se databasis en e-pos adreslys verwyder word.

Indien enigeen wat in hierdie kategorie val sy lidmaatskap wil behou, moet hulle dringend met die HSAG by hsagregister@gmail.com in verbinding tree.

LET WEL:

- Lede wie op die e-poslys is, kan spesiaal versoek dat hul name behou word en hul agterstallige betalings op datum bring.
- Die blote feit dat 'n persoon 'n e-pos ontvang, beteken egter nie dat hy/sy sonder meer kwalifiseer om deel te wees van die HSAG klas-aksie nie. Maak dus seker dat u bydraes opbetaal is.

11. GEBRUIK VAN KORREKTE E-POS ADRESSE EN VERWYSINGS

Die korrekte gebruik van e-pos adresse (soos vervat op ons webtuiste en e-posse) asook HSAG lede se voorletters en van, sindikasionommers en verwysingsnommers (bv. identiteitsnommer ens.)) vir alle kommunikasie, is uiters noodsaaklik en verpligtend.

Die amptelike en bestaande e-pos adresse vir die HSAG, is as volg:

- hsactiongroup@gmail.com vir alle Algemene Navrae (Byvoorbeeld – selfoon of adres veranderinge, betalingsbewyse, kennis van lede wie gesterf het, ensovoorts);
- hsagenquiries@gmail.com vir Spesifieke Navrae (Byvoorbeeld – navrae rakende besonderhede van 'n spesifieke belegger, navrae rakende kwytstelling van 'n spesifieke belegger, ensovoorts);
- hsagregister@gmail.com vir die Registrasie en Deregistrasie van HSAG- lede;
- hsagwhistle@gmail.com vir alle Vertroulike Inligting wat anoniem aan ons gestuur moet word;
- hsagestates@gmail.com vir alle Boedel navrae.

Indien 'n belegger of enige persoon 'n epos na die verkeerde adres sou stuur sal dit daartoe lei dat daardie e-pos nie spoedig of enigsins die nodige aandag geniet nie.

Indien u nie verder enige verdere e-posse wil ontvang nie, stel ons ook asseblief skriftelik in kennis daarvan.

12. HSAG SE AMPTELIKE WHATSAPP-GROEPE

Dit is 'n groot uitdaging om spoedige kennisgewings, nuusbrokkies of belangrike boodskappe aan bykans 7 000 individue oor te dra.

Ons versoek dus HSAG-lede om aan te sluit by die HSAG se amptelike WhatsApp-groepe om kennisgewings, nuusbrokkies of nuusflitse per WhatsApp te kan ontvang.

Deur by een van die HSAG se amptelike WhatsApp-groepe aan te sluit sal u gereeld op hoogte gehou word van die nuutste verwickelinge met betrekking tot u saak.

Stuur bloot u Selfoonnommer; Identiteitsnommer; Volle Naam en Van, na hsactiongroup@gmail.com waarna u op die groepe gelaai sal word.

Direkte kontak kan ook gemaak word met die Administrateurs van die onderskeie WhatsApp-groepe by 079 635 4165 (Afrikaans) en 082 450 8854 (Engels).

Die HSAG het ook 'n amptelike facebook-blad, en kan by www.facebook.com/hsaction besigtig, ge-“like” en kommentaar op gelewer word.

13. SPESIALE OPVRAGING: HS 21 & 22

Die HSAG-regspan het gedurende Junie 2018 'n Aansoek vir Sertifisering uitgereik ten opsigte van HS 21 & 22.

'n Geweldige hoeveelheid werk en voorbereiding het die uitreiking van die Aansoek voorafgegaan en het die HSAG-bestuur gevolglik besluit om 'n spesiale opvraging ten aansien van HS 21 & 22 in November 2018 te doen.

Gedeelte A van die Aansoek is op 29 April 2019 suksesvol afgehandel. Gedeelte B, wat die Sertifisering van 'n klas ten aansien van HS 21 & 22 behels, word tussen 11 en 15 November 2019 aangehoor in die Hooggeregshof, Pretoria.

Daar is 'n groot aantal HS 21 & 22 beleggers wat nog nie hulle kant ten aansien van kostes gebring het nie, wat die voortsetting van die Aansoek vir Sertifisering bemoeilik.

Die HSAG doen dus 'n ernstige beroep op elke HS 21 & 22 belegger om sy/haar kant finansiëel te bring ten einde die Sertifisering moontlik te maak.

Die HSAG se saak behoort aan elke HSAG-lid. Dit is die finansiële ondersteuning van die HSAG-lede wat die voortsetting van die litigasie en die volgehoue regsverteenvoording moontlik te maak.

14. LEDE BYDRAES EN REGISTRASIEKOSTE

Ignoreer asseblief hierdie punt indien u registrasie- en regskostes reeds ten volle vereffen is.

Dit is van uiterste belang dat enige uitstaande registrasie- en regskostes, waarvan sommige só lank gelede as 2014 reeds uitstaande is, so spoedig moontlik op datum gebring moet word. Bykans vier jaar sedert die totstandkoming van die HSAG is dit uiters onbillik teenoor getroue lede van die HSAG dat persone wie regsverteenvoording verlang in 'n saak waar die gemiddelde eisbedrag

R250 000.00 is, nie bereid of gewillig is om die nominale bydrae vir registrasie en/of regs-kostes te betaal nie.

Let asseblief op die volgende:

- i. 'n Eenmalige registrasiekoste van R1 500 per sindikasie word gehef en behoort so op u staat te verskyn
- ii. Vanaf 2016 was regs-koste van R1 000 per sindikasie aangevra;
- iii. Vanaf Mei 2017 was 'n verdere jaarlikse opvraging vir bydraes tot regs- en administrasiekoste van R2 000 per persoon per jaar gemaak;
- iv. In November/Desember 2018 was 'n spesiale opvraging tot regs- en administrasiekoste vir HSAG-lede in HS 21 & 22 van R500 per persoon gemaak;
- v. Lede wie se registrasiekostes steeds agterstallig is, loop die gevaar dat hul lidmaatskap by die HSAG sonder verdere kennisgewing opgeskort word;
- vi. Vanaf einde Februarie 2019 word persone wie se totale eiswaarde R60 000,00 of minder beloop, deur middel van 'n vooraf skriftelike versoek aan die HSAG se prokureurs (hsagenquiries@gmail.com), kwytsgekeld van die 2019 administratiewe- en regs-kostes, mits hul bydraes op datum is.
- vii. Kwytskelding geskied jaarliks en is nie van toepassing nie op vorige jare se registrasie / administrasie / regs-kostes / agterstallige fooie en die spesiale opvraging vir HS 21 & 22 lede en is steeds betaalbaar.
- viii. Geen registrasie, administratiewe of regsfooie is terugbetaalbaar nie.

Die HSAG geniet die beskerming van 'n regs-span wat bestaan uit prokureurs, junior en senior advokate wat reeds 'n lang pad saam gestap het om voornemende eisers onder die sambreel van die HSAG te beskerm. In die lig van die feit dat die HSAG nou voortgaan met die sertifisering van 'n klas-aksie en die proses wat nou gevolg gaan word ten einde die Art 155-Reëlinskema tersyde te stel, versoek ons dat al die HSAG-lede hul kant te bring ten einde die aangeleenthede suksesvol af te handel. Almal se samewerking word vereis.

15. STAAT VIR DEELNAME AAN DIE HSAG

Die HSAG en hul prokureurs, Theron & Vennote, wil u graag bedank vir u volgehoue en lojale ondersteuning aan die HSAG. Die HSAG-saak behoort aan elke individuele belegger, daarom wil ons u versoek om u eie saak te ondersteun ten einde die nagenoeg R4.6 miljard van Orthotouch en andere te eis.

Vind asseblief hiertoe aangeheg u bydraestaat vir u deelname aan die HSAG, let asseblief op die volgende:

- i. Indien geen opvraging ten aansien van registrasie-, regs- of administrasiekoste of 'n krediet op u staat verskyn nie, beteken dit dat u waarskynlik in 'n groep val wat nie geprosesseer en / of geallokeer is nie, en sal dit, indien dit onder ons aandag kom of gebring word, op 'n latere staat verskyn;
- ii. Indien 'n staat 'n kredietbedrag toon, is u 'n geregistreerde lid van die HSAG, maar het ons nog nie u voltooide aansoekvorm ontvang nie. Geliewe die aansoekvorm

af te laai vanaf ons webwerf, of rig 'n versoek aan ons daarvoor per e-pos by hsagregister@gmail.com

- iii. Die HSAG-beleggers se inligting wat gebruik word was aanvanklik verkry vanaf die aansoekvorms wat HSAG-lede ingevul het. Indien u aansoekvorm gevolglik foutief, onduidelik of onvolledig is, sal u moontlik geen state of e-posse ontvang nie
- iv. Die verpligting rus op u as belegger om ons op hoogte te hou van enige veranderinge van u persoonlike en/of kontakbesonderhede deur in te skakel of om 'n e-pos te stuur na hsagregister@gmail.com
- v. Weens die voortdurende groot hoeveelheid navrae, registrasies, wysigings van persoonlike besonderhede en allokasies, is dit moontlik dat sommige betalings en/of registrasies nie op die aangehegte Staat sal verskyn nie, maar eers op 'n latere Staat.
- vi. Klik asseblief op die skakel om na die "Customer Zone" te gaan waar u die opvragings vir registrasie-, reghoofskostes en u betalings kan sien, geoutomatiseerde state word van tyd tot tyd (gewoonlik gedurende 'n maand) uitgestuur word, maar u skakel na die "Customer Zone" sal deurentyd aktief bly en u kan ter enige tyd u betalings en transaksies daarop sien, soos wat dit geallokeer word.

Vriendelike groete

HSAG-Bestuurskomitee

Kontak die HSAG en prokureurs by:

Tel: (021) 887 7877

hsactiongroup@gmail.com

AFRIKAANS HIERBO

MONTHLY NEWSLETTER: JUNE 2019

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/or support of the HSAG.

This email is confidential and is exclusively meant for the addressee. If you have received it in error/ wrongly, please notify the sender immediately at hsagenquiries@gmail.com and delete it. You may not copy, disclose or deliver any email received in error or any part of it to anyone else. HSAG’s webmaster uses antivirus software to prevent viruses and other malicious code. However, such software cannot prevent or eradicate all such code. The HSAG or its representatives will not be liable for any loss, harm or damage whatsoever arising from receipt or use of this email or otherwise, whether arising through negligence of the HSAG, its members, steering committee, and agents or otherwise.

The www.hsaction.co.za website is the primary place where you will find HSAG information, subject to the disclaimer contained therein (and also applicable hereto), although emails are also sent out from time to time.

The obligation to keep us up to date of any changes to your personal and/or contact details rests on you as HSAG member.

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1. INTRODUCTION

The HSAG legal team is working full steam ahead to protect the interests of HSAG investors!

A feeling of excitement prevails for what lies ahead, especially in light of the fact that the Deputy Judge President in the Pretoria High Court, by request of the case manager in Pretoria, Judge Tolmay, provided a preferred date to the HSAG on which the Application for Certification of HS21&22 will be heard.

The HSAG previously reported that the wheels of justice turn slowly but surely. After almost 4 years of hard work and numerous onslaughts from the opposition, the Application for Certification of HS 21 & 22 has been reserved for 11 to 15 November 2019.

If the HSAG is successful, it will mean that a class is certified for HS 21 & 22 investors and the HSAG will be able to continue to enforce investors' contractual claims against Georgiou and Others.

The hearing of this Application will have an immensely positive influence (if the HSAG is successful) on all claims in the other HS companies, as it will prove that the Court is convinced that the Claimants in the class action has a claim as a class against Georgiou and Others.

Consequently, now is the time to throw all your weight behind the HSAG and its legal team with your support.

2. TO BE OR NOT TO BE?

The HSAG is currently preparing for the first certification application. It will entail that those who do not fall within the certified class, whether expressly, tacitly or through their conduct, cannot be part thereof.

The HSAG Steering Committee, in consultation with their legal representatives, are currently considering what the requirements for the current "opt-out" dispensation will be.

The certification of the class entails that 'n certain class of persons will be described and recognised, and that members who fall under the unique description of the class will be part of those who may benefit from the outcome of the class action.

The current Notice of Motion regarding the certification of a class action provides for an "opt-out" dispensation.

The "opt-out" dispensation entails that, where a Court certifies a class, all the members of the class will automatically be included as claimants in the class and they must therefore expressly notify if they do not wish to be included in the class. It therefore requires the positive or negative conduct of those who do not want to be part of the class.

If a member does not form part of the class, he or she will not be entitled to any claim amount that may be paid out, whether in terms of a court order or settlement agreements.

In the event that your contributions are up to date, you will most certainly form part of the dispensation that will have the most beneficial consequences for HSAG members.

The current requirements are:

- We work with considerable claims (an average of R250 000 per investor) and the protection of our clients' investments worth billions of rands are of upmost importance. The HSAG is therefore obligated to ensure that persons are not excluded from the class action without their express consent.
- There are indeed members who have until thus far, loyally made their annual contributions and thanks to them the class action remains on track.
- If a member wants to withdraw their membership, the existing requirement is that they withdraw by way of an affidavit to ensure that unauthorised persons are not able to falsely withdraw on behalf of HSAG members. Less than 3% of the total HSAG members have withdrawn thus far. A Commissioner of Oaths confirms that the person making the written statement is familiar with its contents and also confirms the identity of such person. No broker or other person may withdraw on behalf of a HSAG member, except if he or she has written authority to do so, which authority must be attached to the affidavit.

Numerous people have over the years indicated through their behaviour and conduct that they should not form part of the successes and yields of any of the HSAG upcoming cases; for example: the 7 applicants who tried to derail the class action in a covert and fraudulent manner; persons who served on the HSAG Steering Committee and betrayed the HSAG and its members in an unlawful manner; persons who supported the opposition in their opposing of the HSAG's cases; persons who did not pay their registration costs and those who do not faithfully make their financial contributions to the HSAG.

Consequently, you are hereby timeously informed that, in the event that you fall under the abovementioned categories (or even further categories as will be communicated in the future), it may be regarded as an automatic disqualification of your membership, and that you choose to exercise the so called "opt-out" option (i.e. that you do not want to be part of the class action). To ensure that you do not fall within the mentioned categories, you are herewith kindly, yet urgently, requested to bring your financial contributions up to date.

3. WHAT THE MEDIA REPORTS ON THE PIC-INVESTMENTS

A Moneyweb financial journalist wrote a series of articles covering the Picvest saga.

The articles provide readers with a comprehensive background and understanding of the precise events that took place in the Picvest saga, ever since Georgiou became involved.

We will provide you with a short and concise summary of the articles in the following few HSAG Newsletters. However, we invite you to read the articles on the official HSAG website at www.hsaction.co.za.

PART 1 of the series: “The peculiar case of the Picvest billions: Part 1” focuses on the 79 properties that were originally sold to investors for R 4,6 billion.

The HS companies date back to 1998 when PIC Investments (Picvest) was successfully marketed and approximately 120 properties were syndicated to investors.

Syndications (HS 1 to 14) were successful and investors were paid R723 million in terms of the agreements and they were sold in 2007, to the prominent businessman and property magnate, Mr Nic Georgiou from Bloemfontein, for R892 million. Georgiou and his company, Zephan, formerly Zelphy, and other entities that are related to him, will later sell a considerable number of properties to later syndications.

Between 2005 and 2011 Picvest marketed the HS 15 to 22 syndications to investors 79 buildings for R4 644 925 000, (which does not include the R132 million that was allegedly oversold to investors).

Interest rates of up to 12.5% were paid to investors for a minimum of five years, after which the properties were supposed to be sold, and the capital paid back to investors.

HS 21 & 22 syndications were slightly different to HS 15 to 20 and contained specific buy-back clauses/agreements in terms of which Georgiou, or entities related to him, were supposed to buy-back investors' shares after five years.

Valuations of the properties in the syndications systems were extremely high. Independent valuers of the HS 21 & 22 syndications also withdrew their valuations of the properties.

Numerous properties which were bought in 2006 by entities related to Georgiou properties, were sold to the HS companies in 2010 for massive profits.

Three years later the properties were sold to Accelerate Property Fund Ltd (“Accelerate”), a company of which Georgiou’s son, Michael Georgiou, is the CEO.

Moneyweb analysed the title deeds of 27 properties that were sold to Accelerate. The total syndication values were R1,8 billion, approximately R700 million more than the R1,1 billion that was paid for these properties.

HS 15 to 18’s properties were acquired in terms of the prospectuses and transferred to the syndication companies, but this was not the case for HS 19 to 22. Despite investors paying the collective R3,5 billion syndication value, the properties were never transferred to the respective syndication companies.

Bosman & Visser (“B&V”) acted as a middleman between Georgiou’s main company, Zephan, and the HS companies.

The company bought the properties from Zephan, restored it, and then sold them to the HS companies at a higher price.

This structure was utilised for one property in HS 17 and all the properties in HS 18 to 22.

In 2009 an alleged dispute arose between Zephan and B&V. Zephan alleged that B&V paid an amount of R833 million short, a claim that B&V denied at the time. Nevertheless, Zephan exploited this dispute to suspend the transfer of all properties to HS 19 to 22, despite investors already having paid the full purchase price.

It is also unclear why Eugene Kruger, the conveyancer who received the R3.5 billion from investors, released the funds from his trust account before transfer of the properties.

Zephan never sued B&V for the R883 million.

Over and above the short payment of R833 million, the remaining R2,6 billion of the total R3,5 billion investment remains an inexplicable mystery.

Georgiou did not respond to Moneyweb's questions pertaining to the dispute and the non-transfer of properties and he alleged in a sworn affidavit, which was filed in defence of a recent liquidation application against Zephan, that he never received money directly from Kruger or the HS companies.

The HS fairy tale ended in 2011. In an attempt to resolve the situation, Georgiou conceptualized the "Orthotouch-proposal", which would suggest a proposed restructuring of the syndications to prevent liquidation.

According to this proposal all the properties would be transferred from the HS companies to a new company, named Orthotouch, under the control of Georgiou.

The properties would be managed within Orthotouch and investors would receive reduced interest payments.

It also provided for the cancellation of the main lease- and buy-back agreements on which many investors based their initial decision to invest. This proposal was never implemented.

Hans Klopper was appointed as the business rescue practitioner of the HS companies, (and was also appointed to the Orthotouch board of directors on 9 January 2012) and furnished a business rescue plan ("BRP") that was virtually identical to Georgiou's original "Orthotouch-proposal" of December 2011 which never materialised.

Klopper neglected to investigate the dispute and non-transfer of property, as well as to take legal steps to recover the R3,5 million.

Look out for **PART 2** of the series of articles in the next HSAG Newsletter.

4. CURRENT STATE OF AFFAIRS

4.1 Fast Track Application (HS 21 & 22)

The Application for Certification will be heard in two parts, namely:

- Part A – Where the HSAG successfully asked the Court to for an order compelling Georgiou and others to file Opposing Affidavits for the case to proceed.
- Part B – Where the HSAG will bring an Application for the Certification of a class action for HS21&22.

Success in the said certification will undoubtedly also be to the benefit of the other HSAG members, because the Court will certify a class and consider the merits of those cases, which will in turn, certainly give momentum to the HSAG and its members.

The offices of the DJP confirmed that the application will be heard from 11 to 15 November 2019.

Kindly see point 7 of the HSAG Newsletter which covers important dates. The Notice of Motion, as well as the affidavit in support thereof, is available on the HSAG website at www.hsaction.co.za, and we invite you to read through it.

4.2 Investors with claims in HS 15 to 20

Claims in other HS companies are definitely not lost or in jeopardy and the HSAG will still proceed with steps to enforce these investors' claims. Timing, as well as the support by all the HSAG members, is of utmost importance to achieve success.

Although the parties in litigation are the same, the claims of HS 15 to 20 are unfortunately broadly based on different facts, circumstances and legal principles. For example, amongst other things, fraud and misrepresentation, and the requirement of action for these claims differ from the contractual claims of HS 21 & 22.

Claims of investors in HS 19 to 20 have already been instituted by way of the Application for Certification and this application suspends the running of prescription of HSAG members' claims.

To date it has not been necessary to institute a certification application on behalf of HS 15 to 18 investors as prescription is, according to the HSAG's counsel, not yet of concern.

The claims of investors, who should have received their capital amounts on 15 December 2016 in terms of the Business Rescue Plan (without considering any other factors), will on the face of it typically only prescribe in December 2019.

To save costs, the certification application in relation to HS 15 to 18 will therefore be issued and served as soon as the HSAG's counsel advises the same is done. The HSAG determines its priorities accordingly and proceeds systematically.

The HSAG still intends to set aside the Sec 155 Scheme of Arrangement. In order to expedite the process, the HSAG sent a letter to Judge Weiner (the Case Manager in the Johannesburg High Court) on 9 May 2019, asking for directions in respect of the delivery of Answering Affidavits by Mr Georgiou and Others.

Judge Weiner is currently acting as a Judge of the Supreme Court of Appeal and an application is only expected when her term has run its course.

Following our letter to Judge Weiner, Georgiou's attorneys of record confirmed in writing that Georgiou will submit his Answering Affidavit, in the HSAG's Application to Set Aside the Section 155 Scheme of Arrangement, on or before 30 July 2019.

Orthotouch's attorneys indicated the same date.

Orthotouch is however, in terms of the Scheme of Arrangement, obliged to make monthly interest payments to HS investors.

Georgiou is therefore currently in contempt of his own Scheme of Arrangement, which gives even more reason to set Section 155 Scheme of Arrangement aside.

Non-HSAG members, however, may run the risk of having their claims met by a defence of prescription.

4.3 Application to intervene as a friend of the Court (*amicus curiae*) in the Noormahomed Appeal Application

After consultation with the HSAG's counsel, the HSAG Steering Committee decided to intervene as a friend of the Court in the Appeal matter of Mrs. Noormahomed

Georgiou and Others are appealing a judgement, given in favour of Mrs. Noormahomed, which determined that Georgiou and Others have to comply with the Buy-Back clause contained in HS21&22.

The Buy-Back agreement determined, among other things, that an investor who invested in HS21&22 is guaranteed a 100% capital growth over a term of 5 years, and that Zephan (or its nominee) will buy back the shares after the term.

As expected, Zephan did not honour the agreement and raised the former business rescue and current Sec 155 Scheme of Arrangement as defence.

The Court of first instance rejected this defence.

According to the Court Rules, parties may intervene as a friend of the Court in two ways:

- If all the parties consent to the intervention by a third party;
- By means of a Court Application.

The HSAG legal team directed requests to the parties involved in the litigation to consent to the HSAG's intervention, but Georgiou's attorneys indicated that they

did not consent to the request. This left the HSAG legal team with no choice other than to bring an Application.

The Application has already been submitted to the Supreme Court of Appeal and we are currently waiting for a directive.

If the HSAG is successful, the HSAG (as a friend of the Court) will submit Heads of Argument and will also be afforded the opportunity to address the Court.

The importance and relevance of this case to the HSAG, is that if the Court dismisses Georgiou's appeal, it would be to the advantage of all the claimants in HS21&22.

4.4 Application to Intervene

An Opposing Affidavit was served on Van der Sandt's attorneys of record on 6 June 2019.

The HSAG intends to have Van der Sandt's Application heard earlier by the case manager, Judge Tolmay.

The HSAG intends to approach Judge Tolmay, the case manager in the High Court Pretoria, in order to obtain directives regarding the hearing of Van der Sandt's Application.

If the HSAG were to be successful in opposing Van der Sandt's latest Application to Intervene in the Application for Certification of HS21&22, we will ask the Court to grant a punitive cost order against her.

The HSAG's Opposing Affidavit is available on the HSAG website and we kindly request you to read it.

5. WHAT IS THE DIFFERENCE BETWEEN A CLASS AND A CLASS ACTION?

After the Court has granted the Certification Application, a recognised class (which consists of a group of claimants) comes into existence. The class (Claimant) may then enforce its claims against the Defendant as a class (and not as individuals).

A class (Claimant) may enforce its claims in two ways: by means of an action or application procedure.

- If the class (Claimant) institutes action proceedings, the process will be described as a class action.
- If the class (Claimant) brings an application to enforce its claims, the process will be described as a class application.

A class action is therefore a procedural mechanism that allows claimants with common interests to institute legal proceedings on behalf of a larger group.

This mechanism allows Courts to hear legal disputes that would otherwise be unmanageable, as it would have entailed that every member of the class (individuals who suffered similar injustices at the hand(s) of the Defendant(s)) would have to be joined to the proceedings in their personal capacity as Plaintiffs.

6. WHAT HAPPENS AFTER CERTIFICATION OF HS 21&22?

Part B of the Fast-Track Application (where the HSAG asks for the certification of HS 21&22) is scheduled to be heard during November 2019.

If the HSAG were to be successful in the Application, it would mean that a class (for HS 21&22) is certified and that individual investors would be able to proceed with enforcing their claims against Georgiou as a class. The exact determination of the class, and who will be entitled to claim, will now become important.

A class' claims is normally instituted through a class action, which means that Summons in which the class' claims are set out in have to be served on Georgiou and Others.

After service of the Summons, there are certain formal procedures that have to be followed, after which the action will lead to a formal trial.

On the advice of the HSAG's counsel, the HSAG will most likely bring an application that the class's claims are enforced by means of a class application. In both cases where the Judges decided in favour of HS investors, the Court deemed it unnecessary to run lengthy trials and summarily awarded the claims.

The above route will likely be the quickest, as the HSAG's Application is basically already drafted. In application proceedings there is not a formal trial and the HSAG's case will be adjudicated merely on the Application documents.

The "normal" process in respect of Application procedures will then follow, namely:

- The HSAG (Applicants) serve their Application on Georgiou and Others (Respondents) in which they are given notice of the Applicants intention to bring an application on a certain date.
- If there is no appeal, the Application will be placed on the unopposed Court role and will be heard, after which, the Application will be granted, if the Judge is satisfied.
- If any of the Respondents wish to oppose the Application, those Respondents have to give notice of their intention to oppose the Application.
- As soon as the Applicants have received the Notice of Intention to Oppose from the Respondents, the Application will be removed from the unopposed Court roll.
- The Respondents who oppose the Application have to file and serve their Opposing Affidavit's within 15 Court days (after serving their Notice of Intention to Oppose)

- Thereafter, the Applicants are afforded the opportunity to file and serve a Replying Affidavit in answer to the Respondent's Opposing Affidavit.
- The Applicants then have to file their Heads of Argument, after which the Respondents have to file their Heads of Argument.
- After all Affidavits and Heads of Arguments are filed and served, the Applicants will set the Application down for hearing.
- Investors must still bear the following in mind:
- In both a class action and class application, there are certain prescribed statutory requirements and rules with time limits that have to be met (over which, the HSAG legal team have no control),
- Any party may (in the event that he/she is unsuccessful in Court) appeal the judgement that was given.

7. **IMPORTANT DATES**

- **30 June 2019** – Georgiou has to serve and file his Opposing Affidavit in the Application for Certification of HS 21 & 22 (Pretoria);
- **30 July 2019** – Georgiou's attorneys undertook to file and serve his Opposing Affidavit in the HSAG's Application for Setting Aside the Sec 155 Scheme of Arrangement (Johannesburg);
- **31 July 2019** – The HSAG has to serve and file a Replying Affidavit in response to Georgiou's Opposing Affidavit (Pretoria);
- **15 August 2019** – Georgiou's attorneys of record have to serve and file their Heads of Argument (Pretoria);
- **15 September 2019** – The HSAG's attorneys of record have to serve and file their Heads of Argument (Pretoria);
- **11 – 15 November 2019** – Hearing of Part B of the Application for Certification of HS 21 & 22.

8. **CONTRIBUTION TOWARDS LEGAL AND ADMINISTRATIVE COSTS– 2019**

The annual contributions towards legal and administration costs for 2019 remain unchanged since 2017 in the amount of R2 000.00 per person, which will be levied irrespective of the number of syndications that an investor has invested in. In addition, thereto, exemptions were made for investors with smaller claims since 2016.

The annual amount has remained unchanged despite the huge price increases over the past three years. The HSAG and its legal representatives are doing everything in their power to make the case as affordable as possible. However, if VAT, bank charges and other costs are deducted, the net amount available to use is much less. The investors pay less than R5 a day for the peace of mind to have 100% of their claims plus interest pursued. The average claim per person amounts to approximately R250 000.00.

The HSAG continuously considers the degree of legal representation that must be obtained in the court cases and related matters. Every case will be decided on its own merits and the first prize will always be to have the best possible representation at Court. The HSAG requires the services of a senior advocate during the coming certification application.

We therefore kindly request that you see to it that your contribution to legal and administrative costs are brought up to date and/or paid in order to ensure the best possible legal representation for the HSAG cases.

9. GENERAL ESTATE ENQUIRIES

If you have any general estate related enquiries regarding the estates and claims of HSAG members, you are welcome to send an email to hsagestates@gmail.com whereafter the HSAG will assist you.

10. SUSPENSION OF HSAG MEMBERSHIP

The status of an HSAG member's membership will play a very important role in the litigation that is to follow.

HSAG members who have paid in full (or who loyally pay off their legal and administrative costs monthly) agree that the HSAG should no longer accommodate members who do not play their part financially.

It is unfair that fully paid up HSAG members have to bear the costs of litigation on behalf of others, while non-paying members continue to enjoy the protection of the HSAG.

The HSAG Steering Committee decided at a previous meeting that members, who do bring their **2014 / 2015 registration costs** up to date before or on 31 December 2018, will have their memberships to the HSAG suspended.

The consequences of this suspension is far-reaching:

- Members whose membership is suspended, will no longer be entitled to any of the benefits of the HSAG's successes, and will also not form part of any future settlements that may be agreed to with the opposition.
- It also means amongst other things, that an HSAG member's claim against Orthotouch / Mr. Georgiou will prescribe. In the current dispensation of the class action application, it may also mean that a member whose membership has been suspended, will not form part of the HSAG class action and it is possible such members may be removed from the HSAG's database and email address list.

If anyone who forms part of the abovementioned category wishes to retain their membership, they must contact the HSAG urgently at hsagregister@gmail.com.

TAKE NOTE:

- Members who are on the email list may specifically request that their details are retained and bring their arrear payments up to date.
- The mere fact that a person receives an email, does not necessarily mean that he/she no longer qualifies to be part of the HSAG class action. Thus, make sure that your contributions are up to date.

11. USE OF THE CORRECT EMAIL ADDRESSES AND REFERENCES

The correct use of e-mail addresses (as stipulated on our website and e-mails) as well as HSAG members' initials and surnames, syndication numbers and reference numbers (e.g. identity number, etc.) for all communications are essential and obligatory.

The official and existing e-mail addresses for the HSAG are as follows:

- hsactiongroup@gmail.com for all General Enquiries; (For Example - to change contact details, Proof of Payments, Death of a Member etc.)
- hsagenquiries@gmail.com for Specific Enquiries; (For Example requesting information/statements regarding a specific member, exemption queries for a specific member)
- hsagregister@gmail.com for the registration and deregistration of HSAG members;
- hsagwhistle@gmail.com for all Confidential Information that you would like to send to us anonymously or interest not paid;
- hsagestates@gmail.com for all estate related questions.

If an investor or any person sends an email to the wrong address, it will result in the email not receiving the speedy or necessary attention, if any.

If you do not wish to receive any further emails, please inform us thereof in writing.

12. HSAG'S OFFICIAL WHATSAPP GROUPS

It is a huge challenge to promptly convey notices, news snippets or important messages to almost 7 000 individuals.

We therefore request HSAG members to join the HSAG's official WhatsApp Groups to receive notices, news snippets or news flashes per WhatsApp.

By joining one of the HSAG's official WhatsApp groups, you will be informed of the latest developments regarding your case on a regular basis.

Simply send your mobile number; identification number; full name and surname, to hsactiongroup@gmail.com after which you will be uploaded to the groups.

You can also contact the administrators of the respective WhatsApp groups directly at 079 635 4165 (Afrikaans) and 082 450 8854 (English).

The HSAG also has an official Facebook page, and can be viewed, “liked” and commented on at www.facebook.com/hsaction.

13. SPECIAL CONTRIBUTION: HS 21 & 22

During June 2018 the HSAG legal team issued a certification application in respect of HS 21 & 22.

An immense volume of work and preparation preceded the application and the HSAG Steering Committee consequently decided to request a special contribution in respect of HS 21 & 22.

Part A of the Application was successfully concluded on 29 April 2019. Part B, which entails the certification of a class in respect of HS 21 & 22, will be heard between 11 and 15 November 2019 in the Pretoria High Court.

There are a large number of HS 21 & 22 investors who has not played their part in respect of paying their costs, which complicates the continuation of the Certification Application.

The HSAG therefore seriously appeals to every HS 21 & 22 investor to play their part financially in order make the Certification possible.

The HSAG’s case belongs to every HSAG member. It is the financial support of the HSAG members who enable the continuation of litigation and legal representation.

14. MEMBERSHIP CONTRIBUTIONS AND REGISTRATION COSTS

Please ignore this point if your registration and legal costs have already been settled and are up to date.

It is of utmost importance that any outstanding registration and legal costs, of which some are outstanding as far back as 2014 should be settled as soon as possible. Almost four and a half years have elapsed since the HSAG came into being and it is extremely unfair towards loyal HSAG members that persons who seek legal representation in a case where the average claim amounts to R250 000.00 are not willing to make a nominal contribution towards registration and / or legal costs.

Kindly take note of the following:

- i. A once-off registration fee of R1 500 per syndication is charged and should reflect on your statement accordingly;
- ii. Legal costs since 2016 was R1 000 per syndication;
- iii. From May 2017 a further annual requisition for a contribution towards legal and administration costs of R2 000 per person was made;

- iv. In November 2018/December 2018 a special contribution request of R 500.00 per person was made towards legal- and administration costs for HSAG members who invested in HS 21 & 22;
- v. Members whose registration costs are still outstanding, run the risk that their membership will be suspended by the HSAG without further notice.
- vi. From the end of February 2019 persons with a total claim value of R60 000 or less whose contributions are paid up to date, together with a prior written request to the HSAG' attorneys (hsagenquiries@gmail.com), will be exempted from 2019's administrative -and legal costs;
- vii. Exemption is not applicable to previous years registration / administration costs and legal costs, overdue fees and the special contribution of HS 21 & 22 members are still payable;
- viii. No registration, administration or legal fees are refundable.

The HSAG enjoys the protection by way of a legal team consisting of attorneys, junior and senior advocates who have already gone a long way towards protecting the prospective plaintiffs under the umbrella of the HSAG. In light of the fact that the HSAG will now proceed with the certification of a class action for HS 21-22 and the rescission of the Sec 155 Scheme of Arrangement, we request that all HSAG members to give their cooperation in order to successfully complete these matters. Everyone's cooperation is required.

15. STATEMENT FOR PARTICIPATION IN THE HSAG

The HSAG and its attorneys, Theron & Partners, would like to thank you for your continued and loyal support of the HSAG. The HSAG's case belongs to each individual investor, and we would therefore like to ask you to support your own case in order to claim approximately R4.6 billion from Orthotouch and others.

Please find attached your contribution statement for participation in the HSAG, kindly take note of the following:

- i. If no trust requisition regarding registration, legal or administration costs, or if a credit appears on your statement, it means that you are in a group which has not yet been registered, processed and/or allocated and could the amount reflect on a later statement;
- ii. If a credit balance appears on your statement, it confirms that you are a registered member, but we have not received your completed application form. Kindly download same from our website or request same from hsagregister@gmail.com;
- iii. The HSAG members' information on our records was gathered from the application forms completed by the HSAG members. If your application form is faulty, vague or incomplete, there is a possibility that you may not receive statements or emails from us
- iv. The obligation rests on you as investor to inform us of any changes to your personal and / or contact details either telephonically or by e-mail to hsagregister@gmail.com;

- v. Due to the continuous high volume of enquiries, registrations, the amendment of personal information and allocations it is possible that your payment/s and / or registration/s will not yet appear on the attached statement but rather on a later statement.
- vi. Please click on the email link at the bottom of the newsletter to enter the “Customer Zone” where you will see all your trust requisitions for registration and legal costs, as well as all payments made, automated statements are sent from time to time (usually during a month), but your link to the “Customer Zone” will be continuously active, enabling you to view your payments and transactions, as it is allocated, at any time.

Kind regards

HSAG Steering Committee

Contact the HSAG's attorneys at:

Tel: (021) 887 7877

hsactiongroup@gmail.com