

\*ENGLISH TEXT BELOW\*

## MAANDELIKSE NUUSBRIEF: JULIE 2019

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

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Alhoewel e-posse, HSAG Nuusflitse en HSAG Inligtingsbrokkies van tyd tot tyd uitgestuur word, is die [www.hsaction.co.za](http://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. DIE ANALOGIE VAN DIE APPELKOOSBOOMPIE**

HSAG-lede en buitelanders benader die HSAG dikwels met vroe oor waarom die hofproses nie vinniger afgehandel word of onmiddellike resultate lewer nie.

Die HSAG se klas-aksie en aanverwante prosesse kan vergelyk word met die groeiproses van 'n appelkoosboom.

Die jong boom moet eers behoorlik wortel skiet, gevoed word en tyd gegun word om te groei en sterker te word. Alhoewel die boom na 2 jaar sekerlik gaan begin vrugte dra, is die boom nog nie in volle produksie nie. Die boom sal na ongeveer 5 jaar eers begin voldoen aan sy potensiaal en sy ware waarde begin toon.

Tyd kan in seisoene gemeet word, en so ook die hofproses. In die somer is die boom pragtig en groen en groei in volle dreef. Dan begin dit kouer word, die nagte word langer, die boom raak vaal en sy blare val af. Die boom lyk glad nie meer aantreklik nie en die boer oorweeg self om op te gee op die boom en hom uit te kap.

Wat die onkundige boer nie weet nie, is dat jy nie die boom kan forseer of druk om vrugte te dra nie. Die boom moet die geleentheid gegun word om te floreer in die lenteson, sonder dat die boer opgee op hom in die winter.

So kom en gaan die seisoene, en wanneer die tyd reg is het die boer 'n gevestigde boord en lê die koelkamers vol appelkose.

Soms neem die moedeloosheid oor en raak die geduld van HSAG-lede min. Hulle voel asof dit nie meer die moeite werd is om die boom water te gee nie. Die HSAG wil egter vir elke lojale ondersteuner moed in praat en vra om nie op te gee op hul appelkoosboom voor dit 'n kans gegun word om te floreer nie.

Die HSAG is in sy 5de bestaansjaar, en vir bykans 5 jaar is die HSAG en sy regspraak dag in en dag uit besig om die boom te voed en te beskerm van onvoorsiene hittegolwe en kouefronte. Die HSAG appelkoosboom is beslis nog nie uitgekapt nie, en uiteindelik begin tekens van appelkose duidelik raak soos wat die Aansoek vir Sertifisering van 'n klas-aksie vir HS 21 & 22 nader kruip.

## **2. VOEG DAAD BY WOORD**

Die tyd het aangebreek vir HSAG lede om die daad by die woord te voeg.

Die HSAG-bestuur is van mening dat dit onregverdig is dat sommige HSAG-lede, selfs die wie hul bydraes in kleiner bedrae afbetaal, ander lede dra wie nie bereid is om hul deel te doen nie.

Die getalle is verrassend. 80% van alle HSAG-lede het voor die einde van Desember 2015 aangesluit, en in totaal het 96% van alle HSAG-lede aangesluit voor 31 Desember 2016. Die befondsingsmodel van die HSAG is groepsledebefondsing. Dit is egter skokkend om te berig dat na amper 5 jaar daar slegs 15% van die lede tot op datum volop betaal is en noodsaak hierdie feite ons om drastiese besluite te neem

betreffende lidmaatskap, bydraes en die pad vorentoe. Minder as 3% van alle HSAG-lede het hul lidmaatskap beëindig ingevolge die vereiste metode, naamlik deur die beëdiging van die voorgeskrewe verklaring. Die vereistes om deel te wees van die HSAG en sy strewes om lede se verliese deur 'n geregshof te verhaal, sal nou noemenswaardig vernou word.

Dit beteken dat, indien HSAG-lede nie hul bydraes binne die volgende 6 maande op datum bring of 'n bona fide reëling tref om dit op datum te bring nie, hul uitgesluit kan word van outomatiese beskerming onder die HSAG-sambreel. Die HSAG-bestuur het reeds met hul regsman gekonsulteer en besluit dat die huidige "opt-out" bedeling, soos vervat in die Kennisgewing van Mosie van die Aansoek om Sertifisering van klasse vir HS 21 & 22 beleggers, gewysig sal word na 'n "opt-in" bedeling.

Die Hof sal versoek word dat alle HS 21 & 22 HSAG-lede wie se bydraes op datum is, geag word om outomaties deel te wees van die klas-aksie, sonder om addisioneel positiewe stappe te neem om te "opt-in". HSAG-lede wie nie binne hierdie kategorie val nie sal dus moontlik addisionele stappe moet neem om deel te wees van die klas-aksie na sertifisering.

Die voordeel van sulke bedeling sal wees dat slegs die lede wie gewillig en in staat is om die litigasie moontlik te maak, sal voordeel trek, sonder dat hul lede hoef te dra wie kies om op die kantlyn te sit en kyk en nie die litigasie ten volle te ondersteun nie.

'n Verdere voordeel van 'n geslote klas ("opt-in" bedeling) is dat daar sekerheid sal wees van presies hoeveel Georgiou sal moet betaal, sou die HSAG se eise suksesvol wees, of selfs indien daar skikkingsonderhandelinge moet plaasvind. Voorheen het Georgiou voorgestel om die klas-aksie in geheel te skik aangesien hy nie tussentydse finansiering van finansiële instellings kan verkry terwyl daar hangende klas-aksie litigasie teen hom is nie.

Die volgende inligting is baie belangrik vir skikkingsdoeleindes, sou dit daartoe lei:

Die "opt-in" bedeling sal tot Georgiou se voordeel wees sou hy oorweeg om te skik, aangesien hy 'n bepaalde en vaste hoeveelheid eise sal moet skik.

Byvoorbeeld, indien 'n duisend beleggers met 'n gemiddelde eis van R250 000.00 per belegger "opt-in" en onder die klas se sambreel val, sal die totale skikkingsbedrag van sodanige klas bereken kan word as ongeveer R250 000 000.00.

Dit is veel minder as die totale beleggingswaarde van elke belegger in HS 15 tot 22, wat neerkom op ongeveer R4,6 miljard. Die "opt-in" bedeling het dus 'n geweldige invloed op die praktiese gevolge van die litigasie en die bepaalbaarheid daarvan, en kan die verhaal van HSAG-lede se volle kapitaal vergemaklik.

Die ekonomie van skale is, en was nog altyd, van toepassing op die klas-aksie. Dit is die eenvoudige rede waarom die HSAG in staat was om op te tree vir kleiner sindikasie-groepe. Om-en-by die helfte van die HSAG-ledetal het beleggings in HS21 & 22. Dit maak dus eenvoudig net sin dat daardie sindikasies, wie volgens die HSAG advokatuur ook die pad van minste weerstand is, gedryf word. Die Noormahomed uitspraak wat, Georgiou appèlleer, bepaal dat die terugkoopklousule, spesifiek soos

vervat in die HS 21 & 22 prospektusse, ten spyte van die sakereddingsplan en die Art 155-Reëlinskema (Reëlinskema) steeds bindend en afdwingbaar is. Die uitspraak kan dus dien as gesag vir HSAG-lede met eise in HS 21 & 22.

Die bogenoemde beteken egter nie dat die HSAG-bestuur en regsplan hul lojaliteit teenoor lede met eise in HS 15 tot 20 prysgegee het nie.

### **3. SO BERIG DIE MEDIA OOR DIE PIC-BELEGGINGS – DEEL 2**

'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.

In die volgende paar HSAG-Nuusbriefe gaan ons voort om kort en bondige opsommings van die artikels te gee, maar ons wil u graag uitnooi om die artikels, wat op die amptelike HSAG-webblad by [www.hsaction.co.za](http://www.hsaction.co.za) verskyn, te lees.

**DEEL 2** van die reeks artikels: “The peculiar case of the Picvest billions: Part 2” gaan voort om die ingewikkelde geskiedenis van die Hoëveld Sindikasie (HS) skemas sedert hul ontstaan te verduidelik.

Na die implementering van Hans Klopper se ondernemingsreddingsplan (BRP) in Desember 2011, is baie min van die plan se voorwaardes behoorlik geïmplementeer.

Ingevolge die BRP sou alle HS-eiendomme na Orthotouch oorgedra word teen hul markwaarde van R2,6 miljard. Daarbenewens sou Georgiou en verwante entiteite addisionele eiendomme ter waarde van R1,5 miljard na Orthotouch oordra. Die plan het ook verklaar dat, indien Orthotouch eiendom verkoop om finansiering te bekom vir die verbetering van ander eiendomme, daardie opbrengste slegs binne Orthotouch aangewend mag word - dit het eenvoudig nie gebeur nie!

Moneyweb se ontleding van die titelbewyse toon dat, kort voor en na die goedkeuring van die BRP, daar 'n vinnige afverkoop van eiendomme was waarin die oorgrote meerderheid van die voormalige HS-eiendomme direk, of via Orthotouch in opeenvolgende transaksies, aan derde partye verkoop is. Die opeenvolgende transaksies behels 'n transaksie waardeur entiteit A eiendom verkoop aan entiteit B, en entiteit B dit onmiddellik verkoop aan entiteit C sonder om oordrag van die eiendom te neem.

Die mees opsigtelike transaksies was die verkope van sowat 27 eiendomme deur Zephan aan Accelerate deur Orthotouch in 2013.

Orthotouch het nooit eienaarskap van die eiendomme geneem nie en volgens Moneyweb se berekeninge verliese van byna R800 miljoen gely.

Tans besit Orthotouch nie 'n enkele eiendom nie.

### **Artikel 155-Reëlinskema:**

Drie jaar na die aanvaarding van die BRP, en na die verkoop van 'n aansienlike aantal eiendomme, het Orthotouch beleggers ingelig dat sy inkomste onvoldoende was om beleggers ingevolge die BRP te betaal.

'n Artikel 155-Reëlinskema (“Reëlinskema”) is aan beleggers voorgelê as alternatief tot die likwidasië van Orthotouch en die HS-maatskappy. Die Reëlinskema is gesanksioneer deur die Hooggeregshof in November 2014.

Zephan was die finansiële onderskrywer van die skema. Weens die feit dat geen eiendomme na Orthotouch oorgedra is nie, is Orthotouch heeltemal afhanklik van betalings van Zephan om sy verpligtinge teenoor beleggers na te kom.

Kort voor die aanvaarding van die Reëlinskema het beleggers hul ontevredenheid aggressief begin uitgespreek.

Dit was amper 'n oorlogvoering tussen twee kampe. In die een kamp was Georgiou, Klopper en Orthotouch; en in die ander spesifieke groeperings van beleggers en makelaars wie die geldigheid van die Reëlinskema uitgedaag het.

Die teenstanders is nooit geïdentifiseer nie.

Die Georgiou-kamp het ook beweer dat hul optrede banke ontmoedig om finansiering te verleen, wat benodig is om die eiendomme op te gradeer en te onderhou, en dat dit weer die skema verhinder om beleggers te betaal wat hul toekom.

### **Uitgebreide litigasie:**

Ten spyte daarvan dat hulle nie genoem is nie, was die teenstanders waarskynlik die groep beleggers en makelaars wie die Highveld Syndication Action Group (“HSAG”) gestig het, wie se regsverteenvoerder, Jacques Theron, beweer dat dit hul die ondersteuning van bykans 7 000 betalende beleggers gekry het en aansoeke geloods het om die Reëlinskema ter syde te stel, en vir die sertifisering van 'n klas-aksie.

Dit was die begin van talle regsgevegte tussen Georgiou / Orthotouch en die HSAG.

Die belangrikste was twee gevalle waar twee Hooggeregshofe gevind het dat Georgiou die HSAG-aansoeke se aansoeke probeer ontspoor het toe hy die ses individuele aansoekers, wie namens al die HSAG-beleggers opgetree het, genader het en hul eise geskik het. In ruil vir die skikking het die applikante agteraf die sertifiserings- en tersydestellings aansoeke, sonder om die HSAG of Theron in te lig, teruggetrek.

Georgiou het teen hierdie uitsprake geappelleer, maar het dit na 'n kort argument voor die Hoogste Hof van Appèl teruggetrek en bestraffende koste aangebied en beweer daarna dat sy regspan nie hul regsargument kon voorlê nie.

Advokaat Louis Bolt, wat 'n aantal individuele HS 21 en 22 beleggers verteenwoordig, het eise namens hulle ingestel op grond van die spesifieke terugkoop-ooreenkomste wat Georgiou ingestem het toe hy die oorspronklike HS-kontrakte geteken het.

Bolt is tot dusver suksesvol met 'n gunstige uitspraak van die Pretoria Hooggeregshof dat die ooreenkomste nagekom moet word. Dit het die deur oopgemaak vir alle HS 21 en 22 beleggers om soortgelyke eise teen Georgiou in te stel, welke eise meer as R2 miljard kan beloop. Georgiou is verlof tot Appèl in die Hoogste Hof van Appèl (HHA) toegestaan.

Bolt het ook 'n aantalle suksesvolle Aansoeke om Verstekvonnisse gebring waarin Zephan beveel is om 'n aantal beleggers terug te betaal. Mettertyd sal daar 'n hangende aansoek vir die likwidasie van Zephan aangehoor word.

### **Nie-betaling van rente:**

Ten spyte van hierdie litigasie is rentebetaling aan beleggers gemaak ingevolge die Reëlinskema. Georgiou beweer 'n totaal van R1,3 miljard is aan beleggers betaal.

In Junie 2018, kort na Georgiou sy appèl in die HHA teruggetrek het, is beleggers ingelig dat rentebetaling aan diegene wat die litigasie van Bolt en die HSAG ondersteun, opgeskort is. Georgiou het in verskeie briewe die opskorting geregverdig en aangevoer dat die regsaksie die skema kan laat ineestort.

Georgiou het bygevoeg dat dit onregverdig is teenoor beleggers wat die Reëlinskema ondersteun as ondersteuners van die litigasie teen hom steeds rentebetaling ontvang. Opskorting van rentebetaling is egter in stryd met die Reëlinskema, aangesien die skema nie Orthotouch diskresie verleen om individuele beleggers selektief te betaal nie. Dit het ook gelei tot Derek Cohen, die ontvanger van die Orthotouch-skema, se bedanking.

Die Moneyweb-ondersoek toon dat Orthotouch tans geen eiendom besit en geen onafhanklike bron van inkomste het nie.

Verder besit Zephan slegs 10 eiendomme.

Die titelaktes van hierdie eiendomme toon dat hulle vir ongeveer R300 miljoen verkry is, wat blyk om skaars genoeg te wees om voldoende opbrengste te lewer om beleggers te betaal ingevolge die Reëlinskema. In die opponerende verklaring van die likwidasie aansoek, bevestig Georgiou dat hy nege onbeswaarde eiendomme ter waarde van sowat R266 miljoen besit.

Orthotouch is dus 'n leë dop en heeltemal afhanklik van Zephan om fondse te voorsien om rente en kapitaal aan beleggers ingevolge die Reëlinskema te betaal.

Die navorsing toon aan dat daar nie veel oor is van die 79 eiendomme wat die 18 700 beleggers vir R4,6 miljard kontant "gekoop" het meer as 'n dekade gelede nie.

Moneyweb het 'n konsep weergawe van die oorspronklike artikel voor publikasie gestuur, en hy het nie reageer daarop nie.

### **\* Vertaal en Verkort**

Kyk gerus uit vir die **DEEL 3** van die reeks 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 klasaksie 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.

Georgiou het op 1 Julie 2019 'n ongetekende Antwoordende Verklaring op die HSAG beteken.

Op 8 Julie 2019 het die HSAG regsman 'n skrywe vir Georgiou se regsman gestuur en hul meegedeel dat die HSAG nie sy ongetekende verklaring aanvaar nie. Op 12 Julie het Georgiou se prokureurs sy getekende verklaring op die HSAG se prokureurs per e-pos beteken.

Die HSAG is tans besig om hul Repliserende Verklaring voor te berei om dit, ingevolge die ooreengekome tydtabel, op 31 Julie 2019 op Georgiou en Andere te beteken.

Die Aansoek vir Sertifisering word aangehoor vanaf 11 tot 15 November 2019. Sien asseblief punt 6 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](http://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**

Die HSAG gaan nog steeds voort met stappe om beleggers se eise af te dwing. Tydsberekening en die ondersteuning deur die HSAG lede is egter van kardinale belang om sukses te behaal en momentum te behou.

Al is die partye in litigasie dieselfde, berus die eisoor sake van HS 15 tot 20 breedweg op ander feite, omstandighede en regsbeginsels. Byvoorbeeld, onder andere ook bedrog en wanvoorstellings, teenoor kontraktuele eise in HS 21 & 22.

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

Tot op datum was dit 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, nog nie ter sprake is nie.

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

Die HSAG is steeds van voorneme om die Reëlinskema tersyde te stel. Ten einde die 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.

Georgiou se prokureurs van rekord het daarna bevestig dat Georgiou voor of op 30 Julie 2019 hul Antwoordende Verklaring ten opsigte van die HSAG se Aansoek vir Tersydestelling van die Reëlinskema sal beteken en liasseer.

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.

Orthotouch se prokureurs het dieselfde datum aangewys.

Tyd en wyl is Orthotouch in terme van die Reëlinskema verplig om maandelikse rente aan HS-beleggers te betaal.

Georgiou is dus tans besig om die Reëlinskema te minag.

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

Die HSAG is steeds van voorneme om toe te tree in die Noormahomed-appèl aangeleentheid in die Hoogste Hof van Appèl ("HHA") in Bloemfontein. Soos voorheen berig is die uitkoms daarvan van belang vir HS 21 & 22 lede, aangesien die uitspraak waarteen geappelleer word bepaal dat die terugkoopklousules bindend en afdwingbaar is ten spyte van die Reëlinskema wat as verweer geopper is.

Die aansoek om toe te tree as vriend van die Hof is reeds beteken en by die HHA ingedien.

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.

#### **4.4 Van der Sandt se 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 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 bestrawwende kostebevel teen haar toe te staan.

Die HSAG se Opponerende Verklaring is op die HSAG webblad beskikbaar by [www.hsaction.co.za](http://www.hsaction.co.za) en ons versoek u vriendelik om die Verklaring te lees.

## **5. FINANSIERING VAN KLAS-AKSIES**

Klas-aksie litigasie is gereeld kompleks, uitgerek en potensieel duursaam. Die blote beskikbaarheid van die klas-aksie meganisme bring arm en hulpbehoewende potensieële eisers geensins nader aan toegang tot geregtigheid sonder die bestaan van een of ander manier om die litigasie te finansier nie.

Die wêreldwye tendense is dat klas-aksies gefinansier word op gebeurlikheid, deur regshulpklinieke op pro bono inisiatiewe, en deur derdeparty litigasie befondsingsmodelle asook groepsledebefondsing. Die HSAG maak van laasgenoemde model gebruik.

Die befondsingsmodel het tot op datum hiervan gewerk as gevolg van die ekonomie van skale.

Ongelukkig dui ondervinding in Suid-Afrika aan dat daar min, en soms selfs geen, regshulpklinieke of pro-bono organisasies is met die begroting, hulpbronne en kundigheid om 'n groot-skaal klas-aksie te befonds en bestuur nie.

Tot ons medewete is daar geen finansiële instellings of versekeringsmaatskappye wat bereid is om die litigasie teen Georgiou en Andere te befonds nie.

Die afgelope vyf jaar het aangedui dat Georgiou nie 'n enkele klip onaangeraak sal laat om die klas-aksie uit die weg te ruim nie. Hy het selfs tevore gewaarsku dat hy oor die finansies beskik om die sake teen hom so lank as moontlik uit te rek. Dit is dus nie verrassend dat twee Hooggeregshof regters bevind het dat hy oneties en onprofessioneel opgetree het in sy stryd teen die klas-aksies.

Dit is duidelik dat ons huidige bron van finansiering, die beleggers self, uniek en 'n baanbreker is in die Suid-Afrikaanse reg. Die HSAG het die geleentheid om nie net geregtigheid te laat geskied vir sy lede nie, maar om ook vir toekomstige groepe kwesbare en verarmde mense wat te-nagekom is en vir wie ander individuele roetes tot geregtigheid onbekostigbaar sou wees. Of hierdie finansieringsmodel gaan werk is net so afhanklik van die lede soos wat dit is van die HSAG-bestuur en regspan. Sukses is in die balans en dit is nodig dat die HSAG sy regspan en advokatuur toevertrou om die beste moontlike regsverteenvoording te bied.

## 6. BELANGRIKE DATUMS

- **30 Junie 2019** - Georgiou moes sy Opponerende Verklaring ten aansien van die Aansoek vir Sertifisering van HS 21 & 22 beteken en liasseer (Pretoria) (Georgiou het sy getekende verklaring op 12 Julie 2019 op die HSAG beteken);
- **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.

## 7. OPVRAGING VIR BYDRAES 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 HSAG-bestuur het in lig van die omvang, aard en belang van die eerskomende HS 21 & 22 Aansoek vir Sertifisering in November 2019, besluit om van die dienste van 'n senior advokaat gebruik te maak om die HSAG se Applikante te verteenwoordig. Dit sal die beste moontlike regsverteenvoording vir die HSAG verseker, maar sal vir voor die hand liggende redes die finansiële bystand van die HSAG-lede vereis. Georgiou gebruik regdeur die litigasie proses die dienste van 'n senior advokaat en die huidige besluit is nie ligtelik oorweeg nie.

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 ten einde die bes moontlike regsverteenvoording vir die HSAG sake te verseker.

Die jaarlikse bedrag het, nieteenstaande die geweldige prysstygings die afgelope drie jaar, onveranderd gebly. Die HSAG en sy regsverteenvoordigers 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.

## 8. 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](mailto:hsagestates@gmail.com) waarna die HSAG u sal bystaan.

## **9. OPSKORTING VAN HSAG-LIDMAATSKAP**

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 kan word na oorweging van die meriete deur die HSAG-bestuur.

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. Onder die "opt-in" bedeling kan dit ook beteken dat diegene wie se lidmaatskap opgeskort is nie outomaties sal deel vorm van die klas-aksie nie, en addisionele stappe sal moet neem om weer deel te vorm van die HSAG se databasis en e-pos adreslys, asook om ingesluit te word in die klas-aksie, al dan nie.

Indien enigeen wat in hierdie kategorie val sy lidmaatskap wil behou en ingesluit wil bly by die klas-aksie, moet hulle dringend met die HSAG by [hsagregister@gmail.com](mailto: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 besonderhede akkuraat op die HSAG se sisteme verskyn, dat u wel as 'n lid geregistreer is, en dat u registrasiekoste en bydraes op datum is.

## **10. 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, sindikasiennommers en verwysingsnummers (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](mailto:hsactiongroup@gmail.com) vir alle Algemene Navrae (Byvoorbeeld – selfoon of adres veranderinge, betalingsbewyse, kennis van lede wie gesterf het, ensovoorts);
- [hsagenquiries@gmail.com](mailto: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](mailto:hsagregister@gmail.com) vir die Registrasie en Deregistrasie van HSAG- lede;
- [hsagwhistle@gmail.com](mailto:hsagwhistle@gmail.com) vir alle Vertroulike Inligting wat anoniem aan ons gestuur moet word;
- [hsagestates@gmail.com](mailto: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.

## **11. 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](mailto: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](http://www.facebook.com/hsaction) besigtig word.

## **12. 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.

Die HSAG doen dus 'n ernstige beroep op elke HSAG-lid met 'n eis in HS 21 & 22 om sy/haar bydraes op datum te bring ten einde die Sertifisering moontlik te maak. Indien u bydraes op datum is, sal dit verseker dat u sonder verdere stappe onder die HSAG sambreel beskerm word.

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 regsverteenvoordinging moontlik te maak.

### **13. 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 so spoedig moontlik op datum gebring moet word.

#### **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 regskoste 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 registrasiekoste agterstallig is loop die gevaar dat hul lidmaatskap by die HSAG opgeskort gaan word;
- vi. Vanaf einde Februarie 2019 word persone wie se totale eiswaarde/ totale beleggingswaarde per persoon 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 regskostes, mits hul bydraes op datum is.
- vii. Kwytskelding geskied jaarliks en is nie van toepassing op vorige jare se registrasie / administrasie / regskostes / agterstallige fooie en die spesiale opvraging vir HS 21 & 22 lede nie en is steeds betaalbaar.
- viii. Geen registrasie, administratiewe of regsfooie is terugbetaalbaar nie.

Die HSAG geniet die beskerming van 'n regspan 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 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.

#### **14. 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.

**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](mailto: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](mailto: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. Kliek asseblief op die skakel om na die "Customer Zone" te gaan waar u die opvragings vir registrasie-, regskostes 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](mailto:hsactiongroup@gmail.com)

\*AFRIKAANS HIERBO\*

## MONTHLY NEWSLETTER: JULY 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](mailto: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](http://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. THE ANALOGY OF THE APRICOT TREE**

HSAG members and outsiders often approach the HSAG with questions asking why the court process cannot be dealt with quicker or deliver immediate results.

The HSAG's class action and related processes can be compared to the growth process of an apricot tree.

The sapling must first thoroughly take root, be nourished and afforded the time to grow and gain strength. Although the tree will most likely begin to bear fruit after 2 years, it is not nearly in full production yet. The tree will only begin to fulfil its potential and show its true value after approximately 5 years.

Time, as well as the Court process, can be measured in seasons. During summer, the tree is beautiful and green and the growth process is fully underway. Then, it starts to cool down, the nights grow longer, the tree turns pale and its leaves fall off. The tree seems less attractive and the farmer even considers giving up and chopping it down.

What the ignorant farmer does not know, is that you cannot force or pressure the tree into bearing fruits. The tree must be afforded the opportunity to flourish in the spring sun, without the farmer giving up on it during the winter.

And so, the seasons come and go, and when the time is right, the farmer will find that he has an established orchard and the cold rooms are filled with apricots.

Sometimes hopelessness takes over and HSAG members slowly start to lose their patience. They feel like it's not worth their while to water the tree. However, the HSAG would like to motivate every loyal supporter and ask them not to give up on their apricot tree before it has been given a chance to flourish.

The HSAG is in its 5<sup>th</sup> anniversary year and for almost 5 years, the HSAG and its legal team have been nourishing the tree and protecting it against unforeseen heatwaves and cold fronts, day in and day out. The HSAG apricot tree has definitely not been chopped down and finally the first apricots have appeared as the certification of a class-action for HS 21 & 22 approaches.

## **2. PUT YOUR MONEY WHERE YOUR MOUTH IS**

The time has come for HSAG members to put their money where their mouths are.

The HSAG steering committee agree that it is unfair that some members, even some who have paid their contributions in smaller amounts, carry other members who are not willing to do their part.

The figures are startling. 80% of all HSAG members joined before the end of December 2015 and in total, 96% of all HSAG members joined before 31 December 2016. The HSAG funding is based on a group member funding model. It is shocking to report that after almost 5 years, only 15% of members are up to date on their contributions and based on these facts it is necessary that we take drastic decisions



regarding membership, contributions and the way forward. Less than 3% of all HSAG members resigned in the required manner, i.e. by signing the required affidavit. The requirements to form part of the HSAG and its endeavours to recoup their members' losses in a Court of law, will now be narrowed considerably.

This means that, if members do not settle or make bona fide arrangements to settle their outstanding contributions within the next 6 months, they may be excluded from automatic protection under the HSAG umbrella. The HSAG Steering Committee has already consulted with their legal representatives and decided that the current "opt-out" dispensation as contained in the Notice of Motion of the Certification Application for HS 21 & 22 will be amended to "opt-in".

The Court will be requested to certify that all HS 21 & 22 members, whose contributions are up to date, are deemed to be part of the class action, without having to take additional positive steps to "opt-in". HSAG members who do not fall within this category may therefore have to take additional steps to be part of the class-action after certification.

The advantage of such a dispensation is that only those members that are willing and able to make the litigation possible will benefit, without having to carry members who merely watch from the side-lines and do not wish to give their full support.

A further benefit of a closed class ("opt-in" dispensation) is that there will be certainty of exactly how much Georgiou would have to pay, should the HSAG's claims prove successful, or even if settlement negotiations should take place. Previously, Georgiou proposed to settle the class action, as a whole, as he is unable to obtain interim financing from financial institutions while there is pending class-action litigation against him.

Should settlement negotiations ensue, the following information is very important:

The "opt-in" dispensation will be advantageous to Georgiou in the event that he should consider settlement, as he will have to settle a fixed and determinate number of claims.

For example, if a thousand investors with an average claim of R250 000.00 per investor "opt-in" and fall under the umbrella of the class, the total settlement amount of such class would amount to approximately R250 000 000.00.

The above is considerably less than the total investment value of every investor in HS 15 to 22, which amounts to approximately R4,6 billion. The "opt-in" dispensation will therefore have an immense influence on the practical consequences of the litigation and the determinability thereof, it would can also facilitate the recovery of HSAG members' full capital.

The economy of scales is, and always has been, applicable to the class-action. This is simply the reason why the HSAG is able to represent smaller syndication groups. Approximately half of the HSAG members have investments in HS 21 & 22. Therefore, it merely makes sense that those syndications that are, according to the HSAG's counsel, the path of least resistance, be taken. The Noormahomed judgement, that Georgiou has now taken on appeal, determines that the buy-back agreements,

specifically as contained in the HS 21 & 22 prospectus, remain binding and enforceable despite the Business Rescue Plan and sec 155 Scheme of Arrangement (“SOA”). The judgment currently serves as authority for HSAG members with claims in HS 21 & 22.

However, the above does not mean that the HSAG Steering Committee and legal team have abandoned HSAG members with claims in HS 15 – 20.

### **3. WHAT THE MEDIA REPORTS ON PIC-INVESTMENTS – PART 2**

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](http://www.hsaction.co.za).

**PART 2** of the series: “The peculiar case of the Picvest billions: Part 2” proceeds to explain the complicated history of the Highveld Syndication (HS) schemes since its inception.

Following the implementation of Hans Klopper’s business rescue plan (BRP) in December 2011, very few of the plan’s conditions were properly implemented.

Under the BRP, all the HS properties would be transferred to Orthotouch at their deemed market value of R2.6 billion. In addition to this, Nic Georgiou and related entities would transfer additional properties valued at R1.5 billion to Orthotouch. The plan also declared that if the Orthotouch management sold properties to raise finances to improve other properties, such proceeds could only be utilised within Orthotouch – This has simply not happened!

Moneyweb’s analysis of the title deeds shows that shortly before and after the approval of the BRP there was a rapid sell-off of properties which saw the overwhelming majority of former HS properties being sold directly, or via Orthotouch in back-to-back transactions, to third parties. A back-to-back transaction is a transaction through which entity A sells a property to entity B, and entity B then sells it immediately to entity C without taking transfer.

The most notable transactions were the sales of around 27 properties by Zephan to Accelerate via Orthotouch in 2013.

Orthotouch never took ownership of the properties and according to Moneyweb’s calculations incurred losses of nearly R800 million related to the transactions.

Currently, Orthotouch doesn’t own a single property.

### **Section 155 Scheme of Arrangement:**

Three years after the adoption of the BRP, and after the sale of a significant number of properties, Orthotouch informed investors that its income was insufficient to continue paying investors in accordance with the BRP.

Investors were presented with a Section 155 Scheme of Arrangement (SOA) which was held as the only alternative to liquidation of Orthotouch and the HS Companies. This scheme was approved and sanctioned by the High Court in November 2014.

Zephan was the financial underwriter of the scheme. Due to the fact that no properties were transferred to Orthotouch, Orthotouch became entirely dependent on payments from Zephan to meet its obligations to investors.

Shortly before the adoption of the SOA investors began to aggressively voice their dissatisfaction.

It was almost open warfare between two distinct camps. In the one camp was Georgiou, Klopper and Orthotouch; and in the other, specific groupings of investors and brokers who challenged the validity of the SOA.

The Georgiou camp also alleged that their actions discouraged banks from providing funding to allow for the upgrading and maintenance of the properties, which in turn prevented the scheme from paying investors their dues.

### **Extensive litigation:**

Despite not being named, the “detractors” that were never identified were most probably the group of investors and brokers who founded the Highveld Syndication Action Group (HSAG). The HSAG, whose legal representative is Jacques Theron of Theron and Partners, claimed it garnered the support of nearly 7 000 paying investors and launched applications to have the SOA rescinded and for the certification of a class action.

This was the start of numerous legal battles between Georgiou/Orthotouch and the HSAG.

The most notable were two cases where two High Courts found that Georgiou tried to derail and sabotage the HSAG applications when he secretly approached the six individual applicants who acted on behalf of all the HSAG investors and settled their claims. In exchange for the settlement, the applicants stealthily withdrew the class action certification and rescission applications, without informing the HSAG or Theron.

Georgiou appealed these judgments, but withdrew his appeal after a short argument before the Supreme Court of Appeal (“SCA”). Georgiou also tendered punitive costs to the HSAG and claimed afterwards that his legal team was not allowed to present its legal argument.

Another legal process is being driven by Advocate Louis Bolt, who represents a number of individual HS 21 and 22 investors. He instituted claims on their behalf based

on the specific Buy-back Agreements that Georgiou had agreed to when signing the original HS contracts.

Bolt has so far been successful, with the Pretoria High Court finding that Georgiou must honour the agreements. This opened the door for all HS 21 and 22 investors to institute similar claims against Georgiou – claims that could amount to more than R2 billion. Georgiou was granted leave to appeal in the SCA.

Bolt also won several default judgments through which Zephan was ordered to repay a number of investors. There is also a pending liquidation application of Zephan that will be heard in due course.

### **Non-payment of interest:**

Despite these legal challenges, interest payments to investors were made in terms of the SOA. Georgiou claims a total of R1.3 billion has been paid to investors.

In June 2018, shortly after Georgiou withdrew his appeal in the SCA, investors were informed that interest payments to those supporting Bolt and the HSAG litigation had been suspended. Georgiou justified this suspension in several letters and said the legal action could cause the SOA to collapse.

Georgiou added that it was unfair to investors who support the SOA if investors who support the legal challenges continue to receive interest payments. However, it appears that the suspension of interest payments is in contravention of the SOA, as the SOA does not afford Orthotouch the discretion to selectively pay individual investors. This also led to the resignation of Derek Cohen, the receiver of the Orthotouch scheme.

The Moneyweb investigation shows that Orthotouch doesn't currently own any properties and has no independent source of income.

Furthermore, Zephan owns only 10 properties.

The title deeds of these properties indicate that they were acquired for around R300 million, which scarcely appears adequate to deliver returns to repay investors in terms of the SOA. In defence of the liquidation application, Georgiou confirms in his affidavit that he owns nine unencumbered properties valued at around R266 million.

Orthotouch is therefore an empty shell and completely dependent on Zephan to provide the funds to pay interest and capital to investors in terms of the SOA.

The investigation reveals that there is not much left of the 79 properties that the 18 700 investors 'bought' for R4.6 billion cash more than a decade ago.

Moneyweb sent a draft version of this article to Georgiou prior to publication. He did not respond

**\* Shortened**

Look out for **PART 3** of the series of articles in the next HSAG Newsletter.

#### **4. CURRENT STATE OF LITIGATION**

##### **4.1 Fast Track Application for Certification (HS 21 & 22)**

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

- Part A – Where the HSAG successfully asked the Court 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 HS 21 & 22.

Success in the said certification will undoubtedly also be to the benefit of 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.

On 1 July 2019 Georgiou served an unsigned Answering Affidavit on the HSAG.

On 8 July 2019 the HSAG legal team sent a letter to Georgiou's legal team, advising them that the HSAG would not accept the unsigned affidavit. On 12 July Georgiou's attorneys served a signed affidavit on the HSAG via email.

The HSAG is currently preparing its Replying Affidavit, which will be served on Georgiou and others on 31 July 2019, in terms of the agreed time table.

The Certification Application will be heard from 11 to 15 November 2019. Kindly see point 6 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](http://www.hsaction.co.za), and we invite you to read through it.

##### **4.2 Investors with claims in HS 15 to 20**

The HSAG will still proceed with steps to enforce these investors' claims. Timing, as well as support by all the HSAG members, is of utmost importance to achieve success and maintain momentum.

Although the parties in litigation are the same, the claims of HS 15 to 20 are broadly based on different facts, circumstances and legal principles. For example, fraud and misrepresentation and the contractual claims of HS 21 & 22.

Investors with claims in HS 19 to 20 have already been instituted by way of the Application for Certification and this application suspends the running of prescription.

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

To save costs, the Application for Certification in relation to HS 15 to 18 will therefore be issued and served as soon as the HSAG's counsel advises same. The HSAG determines its priorities and proceeds systematically according to it.

The HSAG still intends to set aside the SOA. 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.

Thereafter, Georgiou's attorneys of record confirmed that they will serve and file Georgiou's Answering Affidavit, regarding the Application to set aside the SOA, on or before 30 July 2019.

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

Orthotouch's attorneys indicated the same date.

In terms of the SOA, Orthotouch is, at least for the time being, obligated to make monthly interest payments to the HS-investors.

Georgiou is currently in contempt of the SOA.

#### **4.3 Application to intervene as a friend of the Court in the Noormahomed Appeal Application**

The HSAG still intends to intervene as a friend of the Court in the Appeal matter of Mrs. Noormahomed in the SCA in Bloemfontein. As previously reported, the outcome of this matter is of importance to HS 21 & 22 members, since the judgement, which has been appealed, stipulates that the buy-back clauses are binding and enforceable, despite the SOA, which has been raised as a defence.

The application to intervene as friend of the Court has already been served and filed with the SCA.

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

#### **4.4 Van der Sandt's Application to Intervene**

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

The HSAG intends to approach Judge Tolmay, the case manager in the Pretoria High Court, to ask for directions 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 HS 21 & 22, the HSAG will ask the Court to grant a punitive cost order against her.

The HSAG's Opposing Affidavit is available on the HSAG website [www.hsaction.co.za](http://www.hsaction.co.za) and we kindly request you to read it.

## **5. FUNDING OF A CLASS ACTION**

Class action litigation is often complex, extensive and potentially very expensive. The class action procedure can only provide poor and vulnerable people with access to justice if a mechanism to fund such litigation is implemented.

The worldwide tendency is to finance class actions on a contingency basis by legal aid clinics as part of a pro bono initiative, by third party funding or by group member funding. The HSAG makes use of the last-mentioned funding model.

This model of funding has to date been successful as a result of the economy of scales.

Unfortunately, experience in South Africa indicates that there are very few, and sometimes no, legal aid clinics or pro bono institutions with the budget, resources and expertise required for the management and funding of large-scale class actions.

To our knowledge there are not any financial institutions or insurance companies who are willing to provide funding for the litigation against Georgiou and others.

The past five years have shown that Georgiou has not left a single stone unturned in his efforts to prevent the class action. He has previously even warned that he has the financial means to delay the matters against him for as long as possible. It is therefore not surprising that two High Court judges have found his actions, in his fight against the class action, to be unethical and unprofessional.

It is clear that our current source of finance, the investors themselves, is a unique and pioneering way of funding in the South African law. The HSAG has the opportunity not only to allow justice for its members, but also for future groups of vulnerable and impoverished people who have been neglected and for whom other individual routes to justice would be unaffordable. Whether this funding model will work is just as dependent on the members as it is on the HSAG Steering Committee and Legal team.

Success is in the balance and it is necessary for the HSAG to entrust its Legal Team and Counsel to provide the best possible legal representation.

## **6. IMPORTANT DATES**

- **30 June 2019** – Georgiou had to serve and file his Opposing Affidavit in the Application for Certification of HS 21 & 22 (Pretoria) (Georgiou served his signed affidavit on the HSAG on 12 July 2019);
- **30 July 2019** – Georgiou's attorneys undertook to file and serve his Opposing Affidavit in the HSAG's Application for Setting Aside the 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.

## **7. CONTRIBUTIONS 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 HSAG Steering Committee has considered the degree and scope of legal representation required for the upcoming Certification Application in November 2019, and accordingly decided that a senior counsel should be briefed to represent the HSAG’s Applicants. This will ensure the best possible representation for the HSAG’s Applicants, but will, for obvious reasons, require the financial support of HSAG members. Georgiou has, throughout the litigation process, used the services of senior counsel, and the recent decision was not considered lightly.

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.

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 of having 100% of their claims plus interest pursued. The average claim per person amounts to approximately R250 000.

## **8. 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](mailto:hsagestates@gmail.com) for assistance.

## **9. SUSPENSION OF HSAG MEMBERSHIP**

After consideration of the merits, the HSAG Steering Committee decided at a previous meeting that members’, who do not settle their **2014 / 2015 registration costs** before or on 31 December 2018, will have their HSAG memberships suspended.

The suspension has far-reaching consequences:



- 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 negotiated with the opposing side.
- 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 that such members may be removed from the HSAG's database and email address list. Under the "opt-in" dispensation, suspended membership could also mean that such persons will not automatically form part of the class action, and additional steps will be necessary to ensure that you form part the class action and the HSAG's database and 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](mailto: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.
- However, 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. Therefore, make sure that your details appear accurately on the HSAG system, you are a registered member, and that your registration costs and contributions are up to date.

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

## **11. 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](mailto: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](http://www.facebook.com/hsaction).

## **12. 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, in November 2018.

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

The HSAG therefore seriously appeals to every HS 21 & 22 investor to play their part financially in order make the certification possible. If your membership contributions have been settled, it will ensure that you are protected under the HSAG, without any further steps required.

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

## **13. 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 some of which are outstanding from as far back as 2014 should be settled as soon as possible.

**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/ total investment value per person 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 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 Application for Certification and the rescission of the SOA, we request that all HSAG members to do their part in order to successfully complete these matters. Everyone's cooperation is required.

**14. 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](mailto:hsagregister@gmail.com);
- iii. The HSAG members' information on our records were 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](mailto: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](mailto:hsactiongroup@gmail.com)