



ENGLISH TEXT BELOW

MAANDELIKSE NUUSBRIEF: OKTOBER 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 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 antivirus-programmatuur om virusse en ander kwaadwillige kodes te voorkom. Hierdie sagteware kan egter nie so 'n kode altyd 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.

HSAG AMPTELIKE NUUSBRIEF – INHOUDSOPGAWE:

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3. “OPT-IN”: MAAK SEKER OF JY DEEL IS VAN DIE SAAK, DIS IMMERS JOUNE
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- * **NEEM KENNIS** dat, weens die uitstuur van die spesiale verhoorheffing en bydrae, betalings gemaak die afgelope maand moontlik nie op u Oktober staat verskyn nie. Die betalings word tans geallokeer en sal op u volgende staat verskyn.

Dankie vir u begrip en samewerking.

1. **DIGITALE UURGLAS – BESPREEK NOU JOU PLEK OP DIE BUS!**

Ten einde lede behulpsaam te wees met die oog op die komende Aansoek vir Sertifisering asook moontlike skikkingsonderhandelinge, het die HSAG 'n nuwe digitale uurglas op die HSAG webtuiste aangebring. Hierin word 'n afsnydatum van 31 Januarie 2020 aandui vir lede om hul bydraes en registrasiekoste op datum te bring.

LET WEL:

- Ten einde billik en regverdig te wees teenoor almal wat steeds kan en wil voortgaan met die litigasie was destyds ses maande gracie verleen aan HSAG-lede om hul opvragings op datum te bring.
- Hierdie gracie periode sal ongelukkig streng toegepas word en geen uitsonderings sal gemaak word nie.

Die sperdatum om op datum te kom met u bydraes is 31 Januarie 2020.

DAE VOOR HOFSAAK: 10

2. **WAAROM WORD LEDE VERSOEK OM BYDRAES TE LEWER?**

Die HSAG wil eerstens sy opregte dank uitspreek vir elke persoon wat daarvan deel was en bygedra het tot die suksesse tot dusver bereik om HS beleggers se beleggings te vorder. Diegene sal ook besef dat dit tot dusver geen maklike taak was nie.

Die HSAG regsplan ontvang dikwels navrae om te verduidelik waarom HSAG lede versoek word om verdere bydraes te lewer. Ons verstaan u frustrasie en dat u groot verliese in die gesig staar. Litigasie is egter nie goedkoop nie en die klas-aksie is 'n veel meer bekostigbare manier om die sake van duisende beleggers voor 'n geregshof te bring in vergelyking met die kostes van die instel van individuele eise.

Die vraagstuk vir die individuele HSAG lede is tans of hulle wil volhard deur enkele duisende rande te betaal vir die regsproses ter vordering van hul eie kapitaal, en of hulle ander prosesse en ooreenkomste met Georgiou en Orthotouch buite die howe kan en wil vertrou.

Nodeloos om te meld beskik die HSAG nie oor R4.6 miljard nie en in besonder nie oor die luuksheid en middele om, sonder eie befondsing, die regsproses te dryf nie. In die lig van die ongelukkige geskiedenis en ernstige bewerings van onetiese en oneerlike optrede deur die Respondente, het navrae bevestig en word dit ernstig betwyfel of

enigiemand anders, buiten beleggers en hul naastes, sal bydra tot die befondsing van so 'n saak.

Die HSAG is op sy eie lede se insette en ondersteuning aangewese. Daarsonder kan dit nie voortgaan nie, selfs al is die regsplan baie positief oor die meriete van die saak.

Die HSAG kon voorheen die dienste van 'n senior advokaat bekom weens die groot getalle en finansiële ondersteuning. Tans is dit ongelukkig nie 'n uitgemaakte saak dat ons die luuksheid van 'n senior advokaat kan bekostig nie. Lede word in die volgende tien dae versoek om daadwerklik hul kant bring en finansiële bydraes te maak. Ons sal nader aan die verhoor weet of ons 'n senior advokaat sal kan bekostig, al dan nie.

3. **“OPT-IN”: MAAK SEKER OF JY DEEL IS VAN DIE SAAK, DIS IMMERS JOUNE**

Die HSAG het een kans om die klas-aksie gesertifiseer te kry.

Ons beklemtoon weereens dat alle beleggers in HS 21 & 22 kan deel vorm van die voorgenome klas-aksie, en dit is nie eksklusief vir HSAG lede gereserveer is nie.

Ingevolge die groepslede-befondsingsmodel wat die HSAG volg, en soos in vorige Nuusbriewe uitdruklik gestel, maak die Kennisgewing van Mosie voorsiening daarvoor dat geen voornemende eiser outomaties geag sal wees om deel te wees van die klas-aksie (outomaties “opt-in”) nie, tensy hul opbetaalde HSAG-lede is.

Die Kennisgewing van Mosie kan besigtig word by <http://hsaction.co.za/wp-content/uploads/2019/10/Amended-Notice-of-Motion-Fast-Tracking-of-buyback-claims.pdf>

Persone wat nie die vereiste finansiële bydraes lewer nie, kan ongelukkig nie outomaties deel wees van die gesertifiseerde klas indien ons suksesvol is in die eerskomende versnelde HS21&22 aansoek vir die sertifisering van 'n klas-aksie nie. Hul sal dus addisionele registrasiekostes moet betaal om te “opt-in” en om sodoende ingesluit te word by die gesertifiseerde klas.

Indien u nie outomaties ingesluit word nie, en ook nie “opt-in” in die vereiste metode nie, mag dit ook beteken dat u in die toekoms nie 'n eis sal kan instel nie.

Ons beklemtoon dat die “opt-in” bedeling se doelwit dus nie is om enige persone met moontlike eise uit te sluit nie, en laat dit 'n moontlikheid vir selfs nie-HSAG lede om deel te vorm van die klas-aksie, terwyl opbetaalde HSAG-lede natuurlik outomaties ingesluit sal word omdat hul deur middel van hul lidmaatskap en bydraes aandui dat hul ingesluit wil word by die klas-aksie.

Dit plaas dus 'n verantwoordelikheid op eisers (wie wil voortgaan met hul eise) om stappe te neem ten einde deel te vorm van die HSAG se doelwitte.

4. **SPESIALE VERHOORHEFFING EN BYDRAE – HS 21 & 22**

Die versnelde HS21 & 22 saak gaan voort op 11-15 November. Die regspraak is onverpoosd besig om daarvoor voor te berei (sien verder op die webtuiste en in vorige nuusbriewe). Die versnelde saak fokus op sekere kontraktuele eise in terme waarvan Georgiou en sy entiteite aanspreeklik gehou word. 'n Groot aantal HSAG-lede het ten volle of gedeeltelik in HS21&22 belê.

In gemelde lig, noodsaaklikheid- en billikheidsoorwegings, asook die befondsing van die verhoor, het die HSAG Bestuur besluit om spesiale verhoorheffings by alle HS21&22 lede te vorder. Hierdie heffing word gehef van alle lede wie in daardie sindikasies belê het. Lede met eise van R100 000 en hoër sal ook 'n addisionele nominale heffing betaal, bereken volgens hul eisbedrae.

Die HSAG regspraak se personeel is tans besig om die uiters belangrike spesiale verhoorheffing op u state aan te bring.

Dit neem egter tyd en lede wat nog nie dié staat ontvang het nie sal dit mettertyd ontvang. Diegene wat die HSAG getrou ondersteun, se state sal eerste opgedateer en uitgestuur word.

Die staat sal vir u aandui wat die bedrag is wat u moet betaal.

In die tussentyd kan u, indien u nog nie u staat ontvang het nie, 'n e-pos rig aan die kantoor na hsagenquiries@gmail.com ten einde die bedrag van u spesiale verhoorheffing te bekom.

In u e-pos moet u asseblief melding maak van u volle naam, ID nommer, asook die bedrag(e) wat u in HS 21 en/of HS 22 belê het.

Die HSAG regspraak sal u dan per kerende e-pos antwoord en u verwittig van die heffing wat op u staat sal verskyn.

U betalingsverwysing moet asseblief u voorletters, van en HS nommers (sindikasies waarin u belê het) aantoon.

5. **KAN HSAG-LEDE SE EISE STEEDS GESKIK WORD?**

Die HSAG voel sterk oor sy meriete en dat 'n Hof in sy lede se guns sal beslis. Uiteraard kan geen waarborge oor die uitslag verskaf word nie. Skikkingsonderhandelinge is daarby altyd moontlik maar verg dit ongelukkig dat beide partye daartoe ter goede trou optree en dat daar 'n meganisme is om te verseker dat hul ooreenkomste nagekom word. Tot dusver het dit ongelukkig duidelik geblyk dat Georgiou in die afgelope dekade nie by 'n enkele ooreenkoms gehou het nie en is die HSAG ook nie bereid om sy lede ooreenkomste sonder streng voorwaardes met 'n hofbevel wat afdwinging daarvan sal verseker te laat aangaan nie.

By klas-aksies, veral in lande waarin die klas-aksie meganisme langer bestaan, is dit nie ongewoon dat die partye kort voor (of na) die sertifisering van 'n klas-aksie in skikkingsonderhandelinge betrokke raak nie, omdat 'n negatiewe beslissing in litigasie,

in meeste van die gevalle vir die spreekwoordelike Goliat, miljoene of miljarde rande se werklike en reputasieskade kan besorg.

Indien daar dus skikkingsonderhandelinge is, wil die HSAG ook bemagtig wees om namens ander opbetaalde lede (wat nie in HS21&22 is nie) te onderhandel. In effek sal dit neerkom dat, indien 'n skikking bereik word, alle hofsake en litigasie tot 'n einde gebring word. Dit sal ook vir die teenkant 'n einde aan uitmergelende litigasie wees.

Op hierdie stadium lyk dit egter steeds asof slegs een uit vyf HSAG lede hiervoor sal kwalifiseer en sal dit 'n hartseer saak wees indien die Respondente wegkom met 'n skikking, al sou dit 100% kapitaal, rente en koste wees vir daardie enkele lede wat deel van die klas-aksie is.

Die HSAG Bestuur wil dit baie duidelik stel dat die hofsake oor minder as drie weke plaasvind en dat mense, na 'n verloop van vyf jaar se nominale bydraes nie hul lot kan bekla indien hulle nie deel van die HSAG se sake of onderhandelinge is nie.

6. **UIT DIE PEN VAN 'N OPBETAALDE BELEGGER, FINANSIËLE ADVISEUR EN HSAG BESTUURSLID – UITTREKSEL VAN SEPTEMBER 2019 NUUSBRIEF**

In die September Nuusbriëf was daar 'n uittreksel: "Uit die pen van 'n opbetaalde belegger, finansiële adviseur en HSAG Bestuurslid".

In bogenoemde was daar berig dat meeste HSAG lede en nie-lede nie die voor- en nadele van die klas-aksie besef nie. Mense wie nie opbetaald is nie, en ook wie nie die HSAG getrou ondersteun nie, het 'n geweldige invloed op die finansiële bestuur van die litigasie. Daarom is daar nou basies drie finale opsies:

- 1) Aanvaar Orthotouch se Accelerate Property Fund aandele aanbod, in welke geval 'n belegger aandele sal ontvang wat, in terme van die huidige markwaarde, ongeveer 6% van u oorspronklike kapitale belegging werd is. (Indien u R100 000 belê het, sal die Accelerate aandele (aangebied op 25% van u oorspronklike belegging, teen 'n Netto Bate Waarde van R7.50 per aandeel) teen vandag se markwaarde ongeveer R6 000 werd wees)
- 2) 'n Spesiale verhooropvraging word gehef teen lede met beleggings in HS 21 & 22 se state.
- 3) Indien onvoldoende finansiële ondersteuning ontvang word, sal ons gedwing wees om onmiddellik alle litigasie te staak.

7. **SO BERIG DIE MEDIA OOR DIE PICVEST-BELEGGINGS – DEEL 5**

'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, soos in die afgelope vier, steeds voort om vertaalde 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 verskyn, te lees.

DEEL 5 van die reeks artikels: “The peculiar case of the Picvest billions: Part 5” gaan voort om die ingewikkelde geskiedenis van die Hoëveld Sindikasie (HS) skemas sedert hul ontstaan te verduidelik.

'n Vorige Moneyweb artikel het die verkoop van 21 eiendomme voor die HS maatskappye in sakeredding geplaas is in 2011 analiseer. Moneyweb het nou, gebaseer op 'n analise van die titelaktes van die eiendomme, openbaar dat die vervreemding van eiendomme aan derde party bespoedig is na die aanvang van die sakereddingsproses in Desember 2011.

Die ondersoek het gevind dat ten minste 50 van die eiendomme wat aanvanklik gesindikeer is as deel van die HS skemas verkoop is kort na aanvang van die sakereddingsproses.

Bykans al die eiendomme is verkoop in 2013, alhoewel vyf daarvan (gesamentlik gewaardeer teen R328 miljoen in die sakereddingsplan) verkoop is binne ses maande na aanvang van die sakereddingsproses.

Die verkoop van die eiendomme is sterk teenstrydig met die bepalings van die sakereddingsplan, saamgestel deur sakereddingspraktisyn, Hans Klopper, wat ook 'n direkteur van Orthotouch was.

Sakereddingsplan en Artikel 155 Reëlinskema

Om die transaksies in konteks te sien, is dit nodig dat die aanvanklike bedoeling van die sakereddingsplan oorweeg word.

Die uitgangspunt van die sakereddingsplan was dat alle historiese HS eiendomme, sowel as ander, aan Orthotouch oorgedra word. 'n Ervare span sou dan die eiendomme bestuur om die inkomste te genereer wat benodig word om beleggers terug te betaal.

Die direkteure van Orthotouch was Georgiou, Panagiotis Kleovoulou, Klopper en Connie Myburgh (ook die voorsitter van die Nova Property Group, die reddingsvoertuig van die mislukte Sharemax beleggingskema).

Die sakereddingsplan het aan die direksie die gesag verleen om eiendomme wat nie presteer nie te verkoop om daardie opbrengste aan te wend vir die onderhoud en opgradering van sekere ander primêre sentrums om sodoende die opbrengste aan beleggers te vermeerder. Ten spyte van die bepalings in die sakereddingsplan, is die primêre eiendomme, en ander handel en kommersiële eiendomme, verkoop kort na aanvaarding van die sakereddingsplan.

Drie van hierdie eiendomme is verkoop binne ses maande, die eerste daarvan (Southdale Inkopiesentrum) is terugverkoop aan Georgiou se maatskappy, Zephan, minder as 'n maand na aanvaarding van die sakereddingsplan.

Geen reaksie vanaf Klopper of Georgiou

Moneyweb het vrae in verband met hierdie artikels aan Georgiou en Klopper gestuur, maar het geen reaksie daarop gekry nie.

Die Reëlinskema wat drie jaar na die mislukking van die sakereddingsplan geïmplementeer is, het 'n verduideliking gegee. Die Reëlinskema bepaal dat die eiendomme nie oorgedra is nie, aangesien Orthotouch nie befondsing vanaf finansiële institusies kon kry nie. Hierdie was weens die optrede van sogenaamde “teenstanders” (“detractors”) wat probeer om die mislukking en ondergang van die HS maatskappye teweeg te bring (“*sought to bring about the failure and demise of the HS companies*”).

Die teenstanders is nooit genoem nie, maar was beskuldig dat hul finansiële instellings beïnvloed om die befondsing aan die groep te verleen nie.

Die Reëlinskema het egter melding gemaak dat Georgiou groot moeite gedoen het om befondsing vanaf verskeie finansiële institusies te kry, 'n proses wat maande sou neem. Die Reëlinskema dui egter nie aan waarom die meerderheid van die geïdentifiseerde “primêre eiendomme” verkoop is binne 'n paar maande nie.

'n Paar van die verkoopstransaksies verg verdere analise.

Southdale

Die Southdale Inkopiesentrum was die juweel eiendom in HS17 en is gesindikeer vir R205.5 miljoen. Dit was daardie tyd die grootste enkele eiendom ooit gesindikeer deur enige HS maatskappy.

Die sakereddingsplan het ook die sentrum as een van die hoof-inkopiesentrums aangewys waarin verder belê sou word om die omsetpotensiaal van die sentrum te verhoog, maar dit het nooit materialiseer nie, en die eiendom is verkoop minder as 'n maand na implementering van die sakereddingsplan.

Die eiendom is deur middel van rug-aan-rug transaksie verkoop deur Orthotouch aan Zephan, wat dit toe verkoop het aan Serica Investments. Die transaksie het gelei na 'n R26 miljoen profyt vir HS 17, maar ook 'n noemenswaardige verlies van R57 miljoen vir Orthotouch. Zephan het 'n profyt van R33 miljoen gemaak uit die transaksie.

The Piazza/Randview

Dit is nie net die Southdale Inkopiesentrum wat verkoop is aan Zephan nie. Die Randview Inkopiesentrum is oorspronklik gesindikeer as deel van HS16 en is gewaardeer in die sakereddingsplan teen 'n waarde van R105 miljoen. Die bron van die sakereddingsplan waardasies is nooit geopenbaar nie. Die eiendom is verkoop in rug-aan-rug transaksies aan Orthotouch vir R160.9 miljoen, en toe dadelik verkoop

aan Zephan vir R105 miljoen. Die transaksie het nie daar gestop nie, en Zephan het dit onmiddellik verkoop aan Moxicorp vir R148 miljoen. Georgiou was ten tyde publiserings van die artikel die enigste direkteur van Moxicorp.

Ethos

Hierdie eiendom is in 2007 gesindikeer aan beleggers vir R115 miljoen, maar is nooit oorgedra na HS 22 nie. Zephan, wat die eiendom in 2006 bekom het vir R45.9 miljard, het dit verkoop aan Annuity vir R46 miljoen in 2012, teen bykans R14 miljoen minder as die sakereddingsplan waardasie.

Accelerate

Moneyweb se ondersoek het gevind dat 'n totaal van 27 uit die 50 eiendomme verkoop is aan Accelerate in Oktober 2013. Hierdie transaksies behels die grootste enkele afverkoop van HS eiendomme na die HS maatskappye in sakeredding geplaas is.

Moneyweb het bevind dat nie 'n enkele eiendom oorgedra is aan die sogenaamde sakereddingsvoertuig van die HS maatskappye, Orthotouch, nie.

Die verkoop van eiendomme aan Accelerate het ook daartoe gely dat Orthotouch 'n rekeningkundige verlies van omtrent R 782 miljoen gely het, terwyl slegs R 30 miljoen van die R 1 323 miljard opbrengs na Orthotouch gevloei het. Die balans is aangewend om verbande af te betaal, nie net op die 31 eiendomme self nie, maar ook die van ander eiendomme wat verwant is aan Orthotouch en die Georgiou familie.

Deel 6 van die Moneyweb ondersoek sal fokus op die transaksies verwant aan Accelerate.

***Vertaal en verkort**

Kyk gerus uit vir **DEEL 6** van die reeks in die volgende HSAG-Nuusbrief.

8. HUIDIGE STAND VAN SAKE

8.1 Versnelde Sertifikasie Aansoek (HS 21 & 22)

Die Aansoek vir Sertifisering van HS 21 & 22 word op 11 tot 15 November 2019 in Pretoria aangehoor.

Die HSAG se Kennisgewing van Mosie, asook die verklarings 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 te lees.

8.2 Beleggers met eise in HS 15 tot 20

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

Die HSAG regsman en advokatuur is tans in die proses om die stukke te finaliseer vir HS 15 tot 18 se aansoek om sertifisering van 'n klas-aksie en dit sal betyds uitgereik word sodat verjaring nie 'n probleem sal wees nie. Die hofstukke sal op die HSAG se webtuiste verskyn sodra dit uitgereik en beteken is op die Respondente.

Die HSAG is steeds van voorneme om die Reëlinskema tersyde te stel omdat dit onder andere vir Georgiou en ander respondente vrywaar van eise teen hulle.

Georgiou se prokureurs het intussen hul antwoordende verklaring ten opsigte van die HSAG se Aansoek vir Tersydestelling van die Reëlinskema beteken en liasseer. Die antwoordende verklaring het ook gepaardgegaan met 'n voorwaardelike teenaansoek in terme waarvan Georgiou nou die Tersydestelling van die Reëlinskema ondersteun. Sy voorwaardes bepaal egter onder andere dat die HSAG se applikante die aansoek namens al 18 300 HS beleggers bring, en dat alle beleggers die rentes wat hul in terme van die Reëlinskema ontvang het, terugbetaal! Die HSAG sal dit teenstaan en alles tot sy beskikking gebruik om sy lede se belange te beskerm, maar sal ongelukkig nie vir persone wat nie kwalifiseer kan optree nie.

Tot tyd en wyl is Orthotouch in terme van die Reëlinskema verplig om maandelikse rente aan HS-beleggers te betaal, maar doen dit nie. Georgiou is steeds besig om die Reëlinskema te minag en is hy nou die enigste direkteur van Orthotouch.

8.3 Van der Sandt se aansoek om tussenbeidetrede

Die HSAG Bestuur het aangedui dat Van der Sandt se tussenbeidetrede nie meer geopponeer gaan word nie ten einde enige risiko te vermy dat die komende Sertifikasie-aansoek uitgestel word en onnodige kostes aangegaan word.

Die HSAG se opponering is gevolglik teruggetrek en Van der Sandt word toegelaat om tussenbeide te tree met voorbehoud van al die HSAG se regte.

Desnieteenstaande beloop Van der Sandt se hofstukke ongeveer 400 bladsye wat uiteraard die kostes aansienlik verhoog. 'n Spesiale bestraffende kostebevel gaan teen haar versoek word.

Intussen het Van der Sandt se prokureur aangedui dat hy en sy firma van die saak gaan onttrek omdat hy volgende jaar op 'n sabbatsjaar met verlof gaan en nie meer verder vir haar kan optree nie. Sy firma het ook nie die kapasiteit om haar behulpsaam te wees nie.

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

Die griffier van die Hoogste Hof van Appèl ("HHA") het die HSAG regsman meegedeel dat die HSAG se aansoek om as vriend van die Hof toe te tree weens 'n administratiewe oorsig nie betyds geprosesseer is nie. Die oorsig het 'n té kort tyd gelaat vir die HSAG om sy voorleggings vir die Hof behoorlik voor te berei.

Gevolgtik het die HSAG regspraak die griffier meegedeel dat daar nie meer voortgegaan word met die aansoek nie en is die HSAG ten volle gefokus op die eerskomende sertifiserings-aansoek.

9. **BELANGRIKE DATUMS**

- **21 Oktober 2019** – Georgiou moet sy Hoofde van Betoog beteken en liasseer (Pretoria);
- **11 – 15 November 2019** – Aanhoor van Gedeelte B van die Aansoek vir Sertifisering van HS 21 & 22.

10. **BELANGRIKE ALGEMENE TERME EN VOORWAARDES:**

Die HSAG het verskeie versoeke ontvang om die nuusbriewe korter te maak. Dit is egter nie altyd moontlik nie maar word die algemene en herhalende terme, voorwaardes en ander algemene inligting wat voorheen in die Nuusbriewe vervat was, nou beskikbaar gestel op die HSAG se webtuiste by www.hsaction.co.za onder die September 2019 kennisgewings. In die alternatief kan dit besigtig word by die volgende skakel:

<http://hsaction.co.za/wp-content/uploads/2019/09/HSAGTsCs.pdf>

Die HSAG Bestuur wil iedere en elke lid alle voorspoed en sukses toewens met die afsienbare toekoms.

Vriendelike groete

HSAG-Bestuurskomitee

Kontak die HSAG en prokureurs by:

Tel: (021) 887 7877

hsactiongroup@gmail.com



AFRIKAANS HIERBO

MONTHLY NEWSLETTER: OCTOBER 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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* **TAKE NOTE** that, due to the sending out of the special trial levy and contributions, it may occur that payments made during the past month do not appear on your October statement. The payments are currently being allocated and will appear on your next statement.

Thank you for your understanding and cooperation

1. **DIGITAL TIMER – BOOK YOUR SEAT ON THE BUS NOW!**

In order to assist members with the upcoming Application for Certification as well as possible settlement negotiations, the HSAG has added a new digital hourglass to the HSAG website. This indicates the cut-off date of 31 January 2020 for members to bring their outstanding contributions and registration fees up to date.

TAKE NOTE:

- To be fair and reasonable towards everyone who still wishes to proceed with the litigation, a 6-month grace period was afforded to HSAG members to bring their outstanding contributions up to date.
- This grace period will unfortunately be strictly enforced and no exceptions will be made.

The deadline for bringing your contributions up to date is 31 January 2020.

DAYS BEFORE COURT CASE: 10

2. **WHY ARE MEMBERS REQUESTED TO CONTRIBUTE?**

The HSAG would first like to express its sincere gratitude to every person that has been part of and contributed to the successes achieved thus far, in claiming HS investors' capital. These persons will also realise that it has not been an easy task.

The HSAG legal team is often asked to explain why HSAG members are requested to make further contributions. We understand your frustration and that you face substantial losses. Litigation is however not inexpensive and the class-action is a far more affordable manner of bringing the cases of thousands of investors before a court of law in comparison to the costs of instituting individual claims.

Currently, the important question for individual members is whether they want to persevere by paying single thousands of rands for a legal process to recoup their capital, or do they want to trust other processes and agreements with Georgiou and Orthotouch outside the courts.

Needless to say, the HSAG does not have R4.6 billion, and in particular does not have the luxury and means of external funding at its disposal, to drive the legal process. In light of the unfortunate history and serious allegations of unethical and dishonest

conduct by the Respondents, inquiries confirmed and it is seriously doubtful whether anyone other than investors and their relatives, will contribute to the funding of such a case.

The HSAG is reliant on the input and support of its members, without which we will not be able to continue, even if the legal team is very positive about the merits of the case.

As a result of large numbers and financial support, the HSAG was previously able to utilise the services of a senior advocate. Currently, it is unfortunately not set in stone that we will have the luxury of affording a senior advocate. Members are requested to actively do their part and make their financial contributions during the following ten days. We will only know if we are be able to afford senior counsel closer to the trial.

3. **“OPT-IN”: MAKE SURE THAT YOU ARE PART OF THE CASE, IT IS INDEED YOURS**

The HSAG has one opportunity to certify the class action.

Again, we emphasise that all investors in HS 21 & 22 will be able to form part of the proposed class action, and it is not exclusively reserved for HSAG members.

In terms of the group member funding-model followed by the HSAG, and as expressly mentioned in previous Newsletters, the Notice of Motion provides that no proposed claimants will automatically be regarded as being part of the class action (automatically opt-in), unless they are paid-up HSAG members.

The Notice of Motion is available at:

<http://hsaction.co.za/wp-content/uploads/2019/10/Amended-Notice-of-Motion-Fast-Tracking-of-buyback-claims.pdf>

Persons who do not make the required financial contributions will unfortunately not automatically be part of the class if we are successful in the upcoming Fast Track HS 21 & 22 certification application. Thus, they will have to pay additional registration costs to “opt-in” and be included in the certified class.

If you are not automatically included, and then also neglect to “opt-in” in the prescribed manner, it may also entail that you will not be able to institute a claim in the future.

We emphasise that the “opt-in” dispensation’s objectives are not to exclude any persons with potential claims, and the possibility of being part of the class-action remains, even for non-HSAG members, while paid-up HSAG members will indeed automatically be included, as they have indicated their intention by virtue of their membership and contributions.

It therefore places an obligation on claimants (who want to continue with their claims) to take steps to be part of the HSAG’s objectives.

4. **SPECIAL TRIAL LEVY AND CONTRIBUTION – HS 21 & 22**

OFFICIAL HSAG NEWSLETTER

The HS 21 & 22 Fast Track application will continue on 11 –15 November. The legal team is in constant preparation for this (see further on the website and in previous newsletters). The Fast Track application focuses on enforcing certain contractual claims in terms of which Georgiou and his entities are being held accountable. A large number of HSAG members invested in HS 21& 22, partially or in full.

In light of the aforementioned, necessity and fairness considerations, as well as funding of the trial, the HSAG Steering Committee decided to request a special trial levy from all HS21 & 22 members. This will be levied against all members who invested in those syndications. Members with claims of R100 000 or more will also pay an additional nominal contribution calculated according to their claim amounts.

The HSAG legal team's staff are currently adding the very important special trial levy to your statements.

However, it does take time and members who have not yet received their statement will receive it in due course. The statements of those who loyally support the HSAG will be updated and sent out first.

The statement will indicate the amount that will be due by you.

In the meantime, if you have not yet received a statement, you may e-mail the office at hsagenquiries@gmail.com to obtain the amount for your special trial levy.

In your e-mail, please state your full name, ID number, as well as the amount(s) you have invested in HS21 and/or HS22.

The HSAG legal team will then reply to you via email and notify you of the amount that will appear on your statement.

Your payment reference must as usual, please reflect your initials, surname and HS numbers (syndications in which you invested).

5. **CAN HSAG MEMBERS' CLAIMS STILL BE SETTLED?**

The HSAG feels strongly about the merits and believes that a Court will decide in favour of its members. Unfortunately the result cannot be guaranteed. Settlement negotiations are always possible, but it unfortunately requires that both parties conduct themselves in good faith and that a mechanism is in place to ensure that the agreements are honoured. It has unfortunately become clear that Georgiou has not honoured a single agreement in the past decade and the HSAG is also not willing to lead its members into concluding agreements without strict conditions, as well as a Court order, that will ensure enforcement of the agreements.

In class actions, especially in countries where the class action mechanism has existed for some time, it is not unusual for parties to become involved in settlement negotiations shortly before (or after) certification of a class action as a unfavourable

decision in litigation (in most cases for the proverbial Goliath) may result in millions or billions of rands worth of real and reputational damages.

Therefore, in the event that there are settlement negotiations, the HSAG wants to be able to negotiate on behalf of other paid-up members (that are not in HS21 & 22). It entails that if a settlement is reached, all court cases and litigation will be brought to an end. It will also be the end of gruelling litigation for the opposition.

At this stage, it does however appear that only one out of five HSAG members will qualify and it will be unfortunate if the Respondents get away with a settlement, even if it will be a recoupment of 100% of an investors' capital with interest and costs for those few members who are part of the class action.

The HSAG Steering Committee wants to clearly state that the court case will take place in less than two weeks and that people cannot, after five years of nominal contributions, complain about their fate if they are not part of the HSAG's cases or negotiations.

6. **FROM THE PEN OF A PAID-UP INVESTOR, FINANCIAL ADVISOR AND HSAG STEERING COMMITTEE MEMBER – EXTRACT FROM SEPTEMBER 2019 NEWSLETTER**

An extract: "From the Pen of a paid-up investor, financial advisor and HSAG Steering Committee member" featured in the September Newsletter.

In the abovementioned it was reported that most HSAG members, and non-members, do not realise the advantages and disadvantages of the class action. Members who are not paid-up and also those who do not loyally support the HSAG have an immense influence on the financial management of the litigation. Therefore, there are now basically three final options:

- 1) Accept Georgiou's Accelerate Property Fund share offer, in terms of which an investor will receive shares that are worth approximately 6% of their original capital investment, based on the current market value.

(If you invested R100 000, the Accelerate shares (offered on 25% of your original investment at a Net Asset Value of R7.50 per share) will be worth approximately R6 000.)
- 2) A special trial contribution is levied against the statements of members with investments in HS 21 & 22.
- 3) If insufficient financial support is received, we will be forced to immediately cease all litigation with immediate effect.

7. **WHAT THE MEDIA REPORTS ON PICVEST-INVESTMENTS – PART 5**

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 exact events that took place in the Picvest saga, ever since Georgiou became involved.

As in the past four HSAG Newsletters, we continue to provide you with a short and concise summary of the articles. However, we invite you to read the articles on the official HSAG website at www.hsaction.co.za.

PART 5 of the series: “The peculiar case of the Picvest billions: Part 5” proceeds to explain the complicated history of the Highveld Syndication (HS) schemes since its inception.

A previous Moneyweb article analysed the sale of 21 properties before the HS companies were placed into business rescue in 2011. Based on an analysis of the title deeds of the properties, Moneyweb can now reveal that the disposal of properties to third parties accelerated after the commencement of the business rescue process in December 2011.

It was found that at least 50 properties that were originally syndicated as part of the HS schemes were sold shortly after the commencement of the business rescue proceedings.

Virtually all the properties were sold in 2013, although five, collectively valued at R328 million in the business rescue plan, were sold within six months of the HS companies going into business rescue at the end of 2011.

The sale of these properties is in stark contradiction to the provisions of the business rescue plan penned by Hans Klopper (business rescue practitioner and a director of Orthotouch).

Business Rescue Plan and Section 155 Scheme of Arrangement

The original intent of the business rescue plan needs to be revisited to view the sale transactions in context.

The premise of the business rescue plan was to transfer all historic HS properties, as well as a few others, to Orthotouch. An experienced team would then manage the properties to generate the required income to repay investors.

The directors of Orthotouch were Georgiou, Panagiotis Kleovoulou, Klopper and Connie Myburgh (also chairman of Nova Property Group, the rescue vehicle of the failed Sharemax investment scheme).

The business rescue plan gave the board the authority to sell “non-performing” properties and use the proceeds to maintain, upgrade and improve certain other “primary” centres to “maximise” investment returns for investors. Despite these provisions in the business rescue plan the primary properties, and other retail and commercial properties, were sold shortly after adoption of the plan.

Three of these properties were sold within six months, the first (Southdale Shopping Centre) was sold back to Georgiou's company, Zephan, less than a month after adoption of the business rescue plan.

No response from Klopper or Georgiou

Moneyweb sent questions relating to this to Georgiou and Klopper, but neither responded.

The Scheme of Arrangement implemented three years after the failure of the business rescue plan offered an explanation. The Scheme of Arrangement stated that the properties were not transferred as Orthotouch was not able to acquire funding from financial institutions. This was due to the actions of so-called "detractors", which "sought to bring about the failure and demise of the HS Companies".

The detractors were never named, but were accused of influencing financial institutions against providing funding to the group.

The Scheme of Arrangement did however highlight that Georgiou went to great lengths to acquire funding from various financial institutions, a process that would have taken several months. The Scheme of Arrangement does not explain why the majority of the identified "primary properties" were sold within a few months.

A few of these sale transactions deserve further analysis.

Southdale

The Southdale Shopping Centre was the flagship property in HS17 and was syndicated to investors for R205.5 million. At that time it was the largest single property ever syndicated by any HS syndication.

The business rescue plan also cited the centre as one of the "primary" shopping centres destined to receive additional investment to increase its revenue potential, but this never materialised and the property was sold less than a month after implementation of the business rescue plan.

The property was sold via a back-to-back transaction from Orthotouch to Zephan, which then sold it to Serica Investments. This transaction resulted in a profit of R26 million for HS 17, but a significant loss of R57 million for Orthotouch. Zephan earned a profit of R33 million from the transaction.

The Piazza/Randview

It was not only the Southdale Shopping Centre that was sold back to Zephan. The Rand Shopping Centre was originally syndicated as part of HS16 and valued in the business rescue plan for R105 million. The source of the valuations that feature in the business rescue plan was never disclosed. The property was sold in a back-to-back transaction to Orthotouch for R160.9 million, and then immediately to Zephan for R105

million. The transaction did not stop there and Zephan sold it to Moxicorp for R148 million straight after that.

Georgiou was the only director of Moxicorp at the time the article was published.

Ethos

This property was syndicated to investors in 2007 for R115 million, but was never transferred to HS 22. Zephan, which acquired the property in 2006 for R45.9 million, sold it to Annuity for R46 million in 2012 – at nearly R14 million less than the business rescue plan valuation.

Accelerate

Moneyweb's investigation found that a total of 27 of the 50 properties were sold to Accelerate in October 2013. These transactions represent the largest single sell-off of HS properties after the companies were placed into business rescue.

Moneyweb found that not a single property was transferred to the so-called business rescue vehicle of the HS companies, Orthotouch.

The selling of 31 properties to Accelerate also resulted in Orthotouch suffering an accounting loss of about R782 million, while only R30 million of the R1 323 billion proceeds flowed to Orthotouch. The balance was utilised to pay off mortgages, not only on the 31 properties, but also that of other properties related to Orthotouch and the Georgiou family.

Part 6 of the Moneyweb investigation will focus on the transactions related to Accelerate.

***Shortened and adapted**

Look out for **PART 6** of the series of articles in the next HSAG Newsletter.

8. THE CURRENT STATE OF LITIGATION

8.1 Fast Track Certification Application (HS 21 & 22)

The Certification Application for HS 21 & 22 will be heard in Pretoria from 11 to 15 November 2019.

The HSAG's Notice of Motion, as well as the affidavits in support thereof, is available on the HSAG website at www.hsaction.co.za, and we invite you to read it.

8.2 Investors with claims in HS 15 to 20

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, amongst

other things, also fraud and misrepresentation (delictual claims) as opposed to the contractual claims in HS21 & 22.

The HSAG legal team and counsel are currently in the process of finalising the papers for HS 15 to 18's application for certification of a class action and it will be issued in due course and prescription will therefore not be a problem. The court papers will be available on the HSAG website as soon as they are issued and served on the Respondents.

The HSAG still intends to set aside the Sec 155 Scheme of Arrangement as it, amongst others, indemnifies Georgiou and other Respondents from claims against them.

Georgiou's attorneys of record subsequently served and filed his answering affidavit in relation to the Application to Set Aside the Scheme of Arrangement. The answering affidavit was accompanied by a conditional counter application in terms of which Georgiou now supports the Setting Aside of the Scheme of Arrangement. His conditions are however, amongst others, that the HSAG's applicants bring the application on behalf of all 18 300 HS investors, and that all interest payments received by investors in terms of the Scheme of Arrangement are paid back! The HSAG will oppose this and utilise everything at its disposal to protect its members, but will unfortunately not be able to act on behalf of persons who do not qualify.

In the meantime, Orthotouch is still obliged to make monthly interest payments to investors in terms of the Scheme of Arrangement. Georgiou remains in contempt of the Scheme of Arrangement and is now the sole director of Orthotouch.

8.3 Van der Sandt's Application to Intervene

The HSAG Steering Committee indicated that Van der Sandt's intervention will no longer be opposed to prevent any risk of postponement of the coming certification application and incurring of unnecessary costs.

The HSAG's opposition was consequently withdrawn and Van der Sandt is allowed to intervene with reservation of all the HSAG's rights.

Despite this, Van der Sandt's court papers amount to about 400 pages, which will obviously increase the costs considerably. The HSAG will request a special punitive cost order against her.

In the meantime, Van der Sandt's attorney indicated that he and his firm will withdraw from her case as he will be on leave next year for a sabbatical, and that he will no longer be able to represent her. His firm also does not have the capacity to assist her.

8.4 Application to be admitted as friend of the Court in the Noormahomed Appeal Application

The registrar of the Supreme Court of Appeal ("SCA") informed the HSAG legal team that the HSAG's application to be admitted as a friend of the SCA was not processed

timeously due to an administrative oversight. This oversight allowed too little time for the HSAG to properly prepare its submissions to the SCA.

Consequently, the HSAG legal team informed the registrar that it will no longer proceed with the application and the HSAG is fully focused on the upcoming certification application.

9. **IMPORTANT DATES**

- **21 October 2019** – Georgiou has to file and serve his Heads of Argument (Pretoria);
- **11 – 15 November 2019** – Hearing of Part B of the Application for Certification of HS 21 & 22 (Pretoria).

10. **IMPORTANT GENERAL TERMS AND CONDITIONS**

The HSAG received numerous requests to shorten the newsletters. This is not always possible, however the general and repetitive terms, conditions and other general information that was previously contained in the Newsletter, is now available on the HSAG website at www.hsaction.co.za under the September 2019 Notices. In the alternative, it can be directly accessed via the following link: <http://hsaction.co.za/wp-content/uploads/2019/09/HSAGTsCs.pdf>

The HSAG Steering Committee wishes prosperity and success to each and every member for the foreseeable future.

Kind regards

HSAG Steering Committee

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