



ENGLISH TEXT BELOW

MAANDELIKSE NUUSBRIEF: FEBRUARIE 2020

Hierdie nuusbrieff word aan u gerig as lid van die Hoëveld Sindikasie Aksiegroep (“HSAG”) op grond van u belegging in die Highveld Sindikasiemaatskappy 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 / verkeerdelik 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 antivirusprogrammatuur 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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1. HS 21 & 22 - "OPT-IN" EN ANDER INLIGTING

Die Hof het beslis dat ALLE HSAG LEDE WIE SE BYDRAES VOOR OF OP DIE AFSNYDATUM VAN 31 JANUARIE 2020 OP DATUM IS, nie registrasiekostes van tussen R4 500 en R6 500 hoef te betaal nie en OUTOMATIES DEEL VORM VAN DIE GESERTIFISEERDE HIGHVELD SYNDICATION 21 LTD EN HIGHVELD SYNDICATION 22 LTD KLAS-AKSIE. Hierdie is die enigste uitsondering wat die Hooggeregshof gemaak het in terme waarvan HSAG lede nie hoef te registreer nie.

Om HSAG-lede behulpsaam te wees, het die regspan talle kennisgewings, SMS's en interim state sedert Desember 2019 en gedurende Januarie 2020 uitgestuur. Weens talle lede wat gedurende die laaste paar dae state versoek het om hul uitstaande betalings op datum te bring, asook probleme met die SEACOM internasionale internetlyne wat vertragings veroorsaak het met allokasies, het die HSAG se prokureurs, Theron & Vennote, op 31 Januarie 2020 tot middernag oopgebly om betalings te allokeer en lede by te staan met hul navrae.

Op grond van navrae wat sedert Vrydag, 31 Januarie 2020, ontvang is het die HSAG Bestuur die volgende besluit geneem vir HSAG lede om opbetaal te wees en aan die Hofbevel te voldoen, naamlik:

Dat alle betalings wat deur of namens HSAG lede gemaak is in terme van die Gautengse Hooggeregshofbevel moet geskied;

Die Hof het gelas dat alle HSAG lede wat opbetaal is teen 31 Januarie 2020, outomaties geag word om te OPT-IN en nie weer registrasiegelde hoef te betaal of geregistreer hoef te word nie;

Weens omstandighede:

- buite die HSAG Bestuur, die HSAG en sy lede se beheer; en
- onder andere die feit dat sommige HSAG LEDE of hul verteenwoordigers fondse van ander finansiële- en bankinstellings as Standard Bank, tot en met die afsnydatum, 'n Vrydag, inbetaal het (selfs van oorsee); en
- weens 'n geweldige onnodige administratiewe las wat op die HSAG Bestuur, HSAG, sy lede en bronne geplaas word;
- koste-, beleid en billikheidsoorwegings; en
- die balans van gerief;

was daar in oorlegpleging met die aangestelde ouditeure, prokureurs en bankinstelling van die HSAG en CCAF, besluit om, sonder uitsondering, vyf (5) besigheidsdae gracie te verleen ná 31 Januarie 2020, vir alle Suid-Afrikaanse inbetalings, om in die HSAG se toegewyde Standard Bank trustrekening te REFLEKTEER, ten einde vir lede om opbetaal en outomaties by CCAF geregistreer te wees.

Vir aansprake op alle betalings wat daarna reflekteer moet die HSAG lid/sy genomineerde skriftelike bewys lewer dat die gelde vóór die afsnydatum van 31 Januarie 2020 oorbetaal was.

Wanneer u betalings maak, is dit uiters belangrik dat u die korrekte verwysings gebruik soos vantevore deurgegee. Talle HSAG-lede het navrae gerig, en soms selfs aanvallende beweringe, in verband met betalings wat nie op hul state aangedui word nie. In die meerderheid van die gevalle is dit die gevolg van 'n verkeerde verwysing, of soms selfs geen verwysing, wat op die betaling aangebring word. Allokasies vind plaas op identifiseerbare inbetalings. Indien u enige navrae het rakende 'n betaling wat nie op u staat verskyn nie, versoek ons dat u die betalingsbewys saam met u navrae stuur na hsactiongroup@gmail.com. Daar is betalings gemaak oor die afgelope vyf jaar wat nie geallokeer is nie aangesien die inbetaler nie opgespoor kan word nie, of dit is bloot weens anonieme persone wat die HSAG ondersteun.

Die HSAG regsplan het verder meegedeel dat die klas-aansoek vir HS 21 & 22 reeds uitgereik en beteken is op die Respondente en dat die normale Hofreëls nou in werking is. Dit beteken ondermeer dat die Respondente 'n geleentheid het om te reageer op die beweringe wat die Applikante maak in die klas-aansoek.

Een van die belangrike volgende stappe wat die regsplan moet neem met betrekking tot die "opt-in" van beleggers in HS 21 & 22, is om die inligting van elke persoon wat "opt-in" (outomaties of deur die portaal en registrasiefooi te betaal) te versamel om sodoende hul identiteit te verifieer. Die inligting sal benodig word om aan FICA (Financial Intelligence Centre Act) vereistes te voldoen. Persone kan dus solank begin om die nodige dokumentasie bymekaar te kry. Die dokumentasie tans benodig is 'n afskrif van u Identiteitsdokument, sowel as 'n bewys van adres (nie ouer as drie maande).

In die tussentyd kan u solank u FICA dokumente stuur na accounts@ccaf.co.za.

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>

Die Hofbevel en uitspraak gelewer deur Regter Tolmay op 10 Desember 2019 kan besigtig word by die volgende skakel:

<http://hsaction.co.za/wp-content/uploads/2020/01/HS2122Order.pdf>

Ons vertrou in u samewerking en sukses in die aangeleentheid.

2. HS 21 & 22 – DIGITALE UURGLAS – SPERDATUM VIR “OPT-IN”

MINDER AS 3 WEKE OOR

Neem kennis dat die periode om te “opt-in” vir beleggers in HS 21 & 22 (alle beleggers wat nie teen 31 Januarie 2020 volopbetaalde HSAG-lede was nie) op 16 Maart 2020 sluit.

Indien 'n HSAG-lid nie opbetaal was teen die afsnydatum nie, moet daardie lid, indien hy/sy deel wil wees van die HS 21 & 22 gesertifiseerde klas-aksie, registreer by die klas-aksie op die aanlyn “opt-in” portaal wat al sedert 1 Februarie 2020 beskikbaar is by www.ccaf.co.za.

Daardie lede sal sondermeer ook die registrasiekoste, soos bepaal deur die Hof, moet betaal. Indien 'n belegger se totale gekombineerde belegging in HS 21 & HS 22 R100 000 of minder beloop, is 'n registrasiefooi van R4 500 betaalbaar. Indien 'n belegger se totale gekombineerde belegging in HS 21 & 22 meer as R100 000 beloop, is 'n registrasiefooi van R6 500 betaalbaar.

Hierdie registrasiefooi is onmiddellik betaalbaar sodra u besonderhede op die “opt-in” portaal ingesleutel is. Neem kennis dat die registrasiefooi nie betaalbaar is in die HSAG trustrekening nie, maar in 'n unieke CCAF trustrekening, soos deur die hof bepaal, welke CCAF trustrekening se besonderhede op die “opt-in” portaal aangedui word.

Die doel van die unieke CCAF trustrekening is om te voldoen aan die hofbevel wat bepaal dat daar nie ongemagtigde kruissubsidiëring plaasvind tussen die HSAG en die gesertifiseerde HS 21 & HS 22 klas-aksie nie.

Persone wat “opt-in” en skriftelik aansoek doen om die registrasiefooi oor ses maande af te betaal deur wyse van die voorgeskrewe aansoekvorm, moet hul totale registrasiefooi teen 31 Julie 2020 ten volle betaal om deel te wees van die gesertifiseerde HS 21 & 22 klas-aksie.

Indien die volle registrasiefooi nie binne ses maande, soos vasgestel, betaal is nie, kan daardie persone ongelukkig nie deel wees van die gesertifiseerde klas-aksie (“CCAF”) nie.

Ten aansien van lede wat teen die afsnydatum opbetaal was, wil die HSAG Bestuur graag onder hul aandag bring dat hul steeds e-posse en SMSse sal ontvang wat verwys na die “Opt-In” proses. Hierdie kennisgewings word gestuur aan alle HS 21 & 22 beleggers, ongeag van hul HSAG lidmaatskap. Indien u reeds deel is van die gesertifiseerde klas-aksie kan u die SMSse en e-posse ignoreer en hoef u u nie te bekommer nie.

3. BELEGGERS MET EISE IN HS 15 TOT 20

Indien u nie enige beleggings in HS 21 en/of HS 22 het nie, hoef u nie enige CCAF stappe in hierdie verband met die “Opt-In” proses op hierdie stadium te neem nie. Die HS 15 – 20 sertifiserings-aansoek is reeds uitgereik en beteken op Georgiou en andere en is die onderskeie regsvertegenwoordigers tans besig om stukke uit te ruil.

Die proses verloop nou in terme van die Hofreëls, in terme waarvan daar sekere spertye gekoppel word aan die stappe wat die onderskeie partye moet neem.

Daar het tydens die feesseisoen gerugte die rondte gedoen dat die plasing van Zephan en Orthotouch in sakeredding noodwendig sal beteken dat alle litigasie gestaak word buiten as die sakereddingspraktisyn daartoe toestem. Hierdie misleidende inligting bevat nie die volle waarheid nie. Die Maatskappyewet bepaal uitdruklik dat litigasie teen ’n maatskappy in sakeredding kan voortgaan met die toestemming van die sakereddingspraktisyn of indien die Hof so gelas. Indien die Hof dit gelas, kan daar dus voortgegaan word met litigasie al stem die sakereddingspraktisyn nie in daartoe nie. Die HSAG se regsplan het nog geen sakereddingsplan deur die sakereddingspraktisyn gesien om die nodigheid of meriete van so ’n versoek te oorweeg nie en by voorbaat ’n bede in die aansoekstukke ingevoeg om die Hof se toestemming te verkry.

Die HSAG het ook in die HS 15 tot 20 sertifiserings-aansoek wat in Desember 2019 uitgereik en beteken is die Hof versoek om te gelas dat die litigasie kan voortgaan, ten spyte van sakeredding. Dit is ook belangrik om kennis te neem dat die litigasie nie alleenlik teen Orthotouch of Zephan gevoer word nie, maar dat daar talle Respondente is wat onder ander Mnr. Georgiou en van sy familieleden in hul persoonlike hoëdanigheid insluit. Van die ander Respondente is Mnr. Hans Klopper, die sakereddingspraktisyn van die HS maatskappy.

Die HSAG Bestuur tree in die beste belange van al sy lede op en is steeds van voorneme om, soos voorheen bekend gemaak, namens elke HSAG-lid wat opbetaal is te

onderhandel indien daar enige skikkingsonderhandelinge mag plaasvind. Hierdeur word daar opgetree namens elke lojale lid wat dit vir die HSAG oor die jare moontlik gemaak het om, deur hul ondersteuning, hierdie punt te bereik.

4. SO BERIG DIE MEDIA OOR DIE PICVEST-BELEGGINGS – DEEL 6

’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.

Soos in vorige nuusbriewe, gaan ons steeds 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 verskyn, te lees.

DEEL 6 van die reeks artikels: “**The peculiar case of the Picvest billions: Part 6**” gaan voort om die ingewikkelde geskiedenis van die Hoëveld Sindikase (HS) skemas sedert hul ontstaan te verduidelik.

Hierdie artikel handel oor die verkoop van 31 voormalige HS eiendomme deur Orthotouch aan Accelerate Property Fund Ltd (“Accelerate”). Dit was die grootste enkele verkoop van HS eiendomme sedert die HS maatskappye in besigheidsredding geplaas is.

Alhoewel daar versekering was dat hierdie verkoopstransaksies beleggers in die HS maatskappye sal bevoordeel, het dit eerder tot gevolg gehad dat die HS bates effektiewelik geplunder was.

’n Moneyweb volg-die-geld ondersoek het bevestig dat geen van die 76 HS eiendomme ooit oorgedra was aan die sogenaamde besigheidsreddingsvoertuig, Orthotouch, nie en dat slegs twee van hierdie eiendomme nie verkoop is aan ’n derde party nie.

Die verkoop van die 31 eiendomme aan Accelerate het daartoe gelei dat Orthotouch ’n rekeningkundige verlies van R782 miljoen gelei het, terwyl slegs R30 miljoen van die R1 323 miljard opbrengs na Orthotouch gevloei het. Die balans was aangewend om verbande van die 31 eiendomme, sowel as ander eiendomme wat gekoppel was aan Orthotouch en die Georgiou familie, af te betaal.

Ingesluit in die 31 eiendomme, was 16 hoogs kontroversiële ontwikkelings. Hierdie 16 eiendomme was deel van die 42 wat Nic Georgiou aan HS beleggers in die laat 2000’s vir R3.4 miljard verkoop het. Hierdie eiendomme was egter nooit oorgedra aan die HS maatskappye nie. Hulle was ook veronderstel om oorgedra te word aan Orthotouch in terme van die besigheidsreddingsplan, maar was nooit nie. Die verkoop van hierdie eiendomme aan Accelerate beteken dus dat Georgiou die eiendomme twee keer verkoop het, eerstens aan die HS beleggers en daarna aan Accelerate, ’n onderneming gelei deur sy seun, Michael.

Die nie-oordrag van die HS maatskappy is huidig die onderwerp van 'n strafregtelike ondersoek. Tot op hede is die R3.4 miljard onverklaarbaar.

Uit die Moneyweb ondersoek is dit duidelik dat die HS beleggers geen voordeel getrek het uit die verkoop van die eiendomme aan Accelerate nie. Dit was eerder 'n voortsetting van die afverkoop van voormalige HS eiendomme gekoppel aan Orthotouch aan derde partye. Die beduidende verliese wat Orthotouch gely het, dui ook daarop dat beleggers ernstige finansiële skade gely het.

Die artikel handel dus oor hierdie 31 eiendomme wat oorgedra is aan Accelerate en hoe die opbrengste aangewend is.

Die Accelerate Property Fund

Accelerate Property Fund het op 12 Desember 2013 genoteer op die JSE met 'n portefeulje wat bestaan het uit 51 eiendomme ter waarde van bykans R6 miljard. Michael Georgiou, Nic Georgiou se seun, was en is steeds die maatskappy se Hoof-uitvoerende beampste en grootste aandeelhouer.

Twee noemenswaardige batebestuurders, Stanlib (13%) en Coronation (30%), het ook 'n groot hoeveelheid aandele in Accelerate gekoop.

Accelerate het gespog met 'n indrukwekkende direksie. Tito Mboweni was voorsitter van Accelerate se direksie voor hy sy amp as Minister van Finansies ingeneem het. Dr. Gert Cruywagen, 'n lid van die King Komitee op Korporatiewe Bestuur is, is huidig die interim voorsitter van die direksie.

Die Orthotouch eiendomme

Die volledige 162 bladsy Accelerate voor-noterings verklaring het die 51 eiendomme van Accelerate as "Georgiou's family's unique property portfolio" beskryf. Die amptelike persverklaring wat die notering bekend gemaak het, het ook gesê dat die portefeulje opgebou was deur die Georgiou familie oor die vorige 46 jaar.

Die vlagskip eiendomme was geïdentifiseer as Fourways inkopiesentrum in Johannesburg, die Loch Logan Waterfront inkopiesentrum in Bloemfontein en die Parow sentrum in Kaapstad.

Van besondere belang vir doeleindes van die artikel, is 31 van die 51 eiendomme wat as "Orthotouch Properties" identifiseer is. Hierdie eiendomme is waardeur vir bykans R1.5 miljard en het ongeveer 24% van Accelerate se portefeulje verteenwoordig ten tyde van notering. Wat die voor-noteringsverklaring en persverklaring versuim het om te noem is dat hierdie eiendomme eintlik gesindikeer was aan die 18 000 HS beleggers gedurende die laat 2000's, maar dat hulle nooit oorgedra is deur Nic Georgiou, of sy verwante maatskappye, aan die HS maatskappye nie.

Daar is ook versuim om te openbaar dat hierdie eiendomme oorgedra moes word aan Orthotouch, die reddingsvoertuig wat Hans Klopper op die been gebring het in sy sakereddingsplan. Klopper was ook 'n direkteur van Orthotouch op daardie stadium. Die voor-noterings verklaring het bloot openbaar dat Accelerate die Orthotouch eiendomme sou aankoop vir R1.323 miljard, wat R165 miljoen minder was as die onafhanklike waardasie.

In antwoord op vrae deur Moneyweb het Accelerate, via die prokureursfirma, Glyn Marais, gesê dat hierdie inligting nie geopenbaar is nie aangesien die direksie geadviseer is dat geldige en bindende verkoopsooreenkomste aangegaan is tussen die verskeie partye, waarin die verkoop van die eiendomme aan Orthotouch ooreengekom is, en dat Orthotouch regmatig geregtig was om die eiendomme te verkoop en oor te dra aan Accelerate.

Glyn Marais het ook bevestig dat die Orthotouch direksie, en spesifiek Klopper in sy hoedanigheid as direkteur van Orthotouch, die gesag gehad het om die transaksies goed te keur.

In antwoord op vrae wat in 2018 aan Accelerate gestuur is het Glyn Marais verklaar dat die koopprys wat Accelerate betaal het vir die Orthotouch eiendomme ooreengekom was met Hans Klopper, die sakereddingspraktisyn en direkteur van Orthotouch ten tye van notering. In die drie jaar periode tussen die datum waarin die Orthotouch eiendomme waardeer is vir doeleindes van die sakereddingsplan en die datum van Accelerate se notering, sou daar noodwendig 'n verandering wees in die waardasie van die Orthotouch eiendomme.

Hierdie verandering in waarde het volgens Glyn Marais plaasgevind as gevolg van 'n aantal faktore. Hierdie faktore sluit ondermeer die toestand van die geboue, vakatures, die hoeveelheid kapitale uitgawes vereis, sowel as verskillende huurprofiel in. Vir die doeleindes van die notering, was daar dus 'n onafhanklike waardasie gedoen om die billike markwaarde van die Orthotouch eiendomme en die huurpersele daarop te bepaal.

Hierdie verklaring deur Marais is egter nie in geheel akkuraat nie aangesien die HS eiendomme nooit onafhanklik deur Klopper gewaardeer is tydens die besigheidsreddingsproses nie. In die sakereddingsplan (para 5.1.4.3.3) het Klopper gesê dat 'n bron (wie nie bekend gemaak is nie) hom geadviseer het op die waardes van die eiendomme en dat hy nie tyd of hulpbronne gehad het om die eiendomme onafhanklik te waardeer nie.

Herwaardasie van eiendomme

Dit is interessant om te let dat Accelerate binne slegs vier maande na notering die eiendomme op hul portefeulje herwaardeer het. Hierdie herwaardasie het tot gevolg gehad dat Accelerate se portefeulje met 'n waarde R425 miljoen verhoog het. Moneyweb het ondersoek ingestel en Accelerate gevra of die Orthotouch eiendomme ook herwaardeer was. Accelerate het nie geantwoord nie.

Verkoopstransaksies

Die Moneyweb ondersoek, wat op die verkoopstransaksies in die eiendomme se titelaktes baseer is, het bevind dat Orthotouch 'n verlies van ongeveer R782 miljoen gely het as gevolg van die verkoop van eiendomme aan Accelerate, terwyl hierdie verliese gely is deur Orthotouch, het entiteite, wat aan Georgiou gekoppel is, 'n wins van R881 miljoen gemaak.

Die aard van die transaksies is ook interessant, veral die transaksies rakende die 16 eiendomme wat Nic Georgiou gesindikeer het aan die HS maatskappye, maar nooit oorgedra het nie. Hierdie eiendomme is oorgedra in rug-aan-rug transaksies. Die aard van rug-aan-rug transaksies word verduidelik deur te kyk na die transaksiebesonderhede van een van die eiendomme, 1 Charles Crescent. Die transaksiebesonderhede dui aan dat Zephan, 'n maatskappy wat Nic Georgiou besit, die eiendom bekom het in 2006 vir R41 miljoen (dit was nooit aan HS 22 oorgedra nie alhoewel beleggers R206 miljoen daarvoor betaal het). In 2013, kort voor Accelerate genoteer is, het Zephan die eiendom aan Orthotouch verkoop vir R216.4 miljoen. Orthotouch het dan direk daarna weer die eiendom aan Accelerate verkoop, vir R110.8 miljoen, sonder om ooit eienaarskap daarvan te neem.

Die resultaat van hierdie transaksies was dan dat Zephan 'n wins van R175 miljoen gemaak het, terwyl Orthotouch 'n verlies van R106 miljoen gely het. Dit is nog onduidelik of Orthotouch die kontant gehad het om Zephan die R175 miljoen te betaal. Dit word egter later in die artikel verduidelik dat die R110.8 miljoen nie aan Orthotouch direk betaal is deur Accelerate as vergoeding nie, maar eerder om verbandlenings af te betaal.

Soortgelyke transaksies het plaasgevind vir al 16 eiendomme.

Openbaarmaking van transaksie besonderhede

Glyn Marais het die volgende namens Accelerate geantwoord toe daar gevra is of die Accelerate direksie bewus was dat die eiendomme nooit oorgedra was vanaf die HS maatskappye nie en dat die eiendomme die onderwerp was van 'n strafregtelike ondersoek:

“The board of directors of our client took advice and received legal opinion that the properties syndicated by the Highveld Syndication Companies must not be purchased directly from these companies and that all transactions relating to the Highveld Syndication properties must only be transacted through Orthotouch, as the Business Rescue vehicle. In accordance with the legal advice that the Board received, it dealt with the court approved Business Rescue Practitioner, who had the requisite legal authority and responsibility of implementing the Business Rescue Plan, in respect of the Orthotouch Properties. Our client purchased the Orthotouch Properties at fair market value in terms of arm's length transactions, which were viable and lawful business opportunities for our client to pursue.”

Van Glyn Marais se antwoord kan daar dus afgelei word dat die direksie wel bewus was van die nie-oordrag van die eiendomme, en dat die 16 eiendomme effektiewelik vir 'n tweede keer verkoop is deur Nic Georgiou aan sy seun se maatskappy.

Nie-openbaarmaking van de bedrae wat Orthotouch betaal het nie

Accelerate se voor-noteringsverklaring het ook nie die beduidende verliese wat Orthotouch gely het bekend gemaak nie. Die verklaring het net aangedui wat die entiteite verwant aan Nic Georgiou en die HS maatskappye daarvoor betaal het en wat Accelerate weer daarvoor betaal het. Dit was dus glad nie opsigtelik dat Orthotouch, die reddingsvoertuig gedefinieer in die besigheidsreddingsplan, in die proses 'n verlies gely het van R782 miljoen nie.

Glyn Marais het in antwoord hierop die volgende gesê dat die koopsom waarteen Orthotouch die Orthotouch eiendomme bekom het, en die koopsom wat gereflekteer word in die titelakte waarna verwys word in die Moneyweb brief waarop hy reageer, ooreenkomstig die koopsom was wat aangebied en aanvaar was op grond van die besigheidsreddingsplan, in welke proses Accelerate nie betrokke was nie. Die verwysing na "current owner" geopenbaar in die voor-noteringsverklaring, verwys na die destydse eienaar van die Orthotouch eiendomme.

Accelerate het ook verskil met Moneyweb se berekening dat Orthotouch 'n rekeningkundige verlies van R782 miljoen gely het, maar het nie enige verdere inligting verskaf om dit te substansieer nie.

Klopper se reaksie

Klopper het geweier om enige spesifieke vrae te beantwoord rakende die verkoop van eiendomme aan Accelerate. Hy het egter al in vorige briewe aan beleggers melding gemaak van hierdie verkoopstransaksies.

In 'n brief gedateer 3 Augustus 2018 het Klopper reageer op bewerings wat in 'n HSAG nuusbrief gemaak is. In sy brief het hy bevestig dat die eiendomme verkoop is vir R1 323 440 540 en bygevoeg dat Orthotouch 'n totaal van R1 707545 560 ontvang het vanuit die Accelerate transaksie, 'n bedrag van R157 miljoen meer as wat Orthotouch kontraktueel geregtig was om te ontvang. In kort, was die vervreemding van bates volgens Klopper tot die direkte voordeel van beleggers.

Hierdie "voordeel" het nie na beleggers gevloei nie. Minder as 'n jaar na die Accelerate transaksie het die sakereddingsplan misluk en was dit geherstruktureer deur 'n Art 155 Reëlinskema. In hierdie skema het Georgiou armoede gepleit en die betalings aan beleggers is verder verminder.

Een van die redes vir die mislukking moet wees dat beleggers nie die opbrengs van die 31 eiendomme ontvang het nie. Die R1. 323 miljard opbrengs was gebruik om verbande

af te betaal. Die 31 eiendomme se verbande was betaal, maar ook die verbandlenings van eiendomme wat nie deel was van die 31 Orthotouch eiendomme nie (welke ander eiendomme besit of beheer word deur entiteite verwant aan die Georgiou familie).

Hierdie het gebeur binne slegs 'n paar jaar na HS beleggers bykans R5 miljard belê het om 76 onbeswaarde eiendomme te bekom. In een transaksie is bykans helfte van die eiendomme verkoop en die opbrengs gebruik om verbande te betaal, wat nie veronderstel was om ooit daar te wees nie.

Geen bedoeling deur Orthotouch om ooit Accelerate aandele te hou nie

Accelerate se voor-noteringsverklaring het bepaal dat daar geen voorneme is om aandele in Accelerate aan Orthotouch uit te reik as betaling vir die eiendomme nie. Ten spyte van gereelde verwysings in die verklaring dat Accelerate aandele en kontant sal uitreik om die R1 323 miljard koopsom te betaal, het die verklaring dit ook duidelik gemaak dat daar nooit enige bedoeling was vir Orthotouch om aandele te ontvang nie.

Weggesteek op bladsy 128 in Aanhangsel 12, van die voor-noteringsverklaring, word daar bepaal dat Orthotouch afstand sal doen van enige aandele wat dit sou ontvang deur hierdie transaksie aan die Michael Family Trust. Geen verdere inligting word voorsien nie.

Glyn Marais het wel aan Moneyweb bevestig dat geen aandele aan Orthotouch uitgereik was nie en dus was daar geen aandele afgestaan aan die Michael Family Trust nie. Glen Marais het egter nie die vraag beantwoord waarom Orthotouch in die eerste plek afstand gedoen het van die aandele nie.

Volgens Marais is die rede daarvoor dat Orthotouch se bestaande finansierders nie sou instem tot die vrystelling van die Orthotouch eiendomme vanaf die onderskeie verbande nie, buiten en totdat al die bedrae dan verskuldig aan die bestaande finansierders ten volle betaal is nie, insluitend die skikking van bedrae verseker deur die verbandlenings oor grond en verhuringsondernemings wat nie deel gevorm het van die Orthotouch eiendomme gekoop deur Accelerate vir die notering nie.

Marais het verder gesê dat, as gevolg van die bogenoemde, die oorblywende eiendomme in Orthotouch se portefeulje wat nie deel gevorm het van die Orthotouch eiendomme in die Accelerate notering nie, die voordeel ontvang het dat hul leunings ten volle betaal is en dat hul dus onbeswaar geraak het. Indien Accelerate aandele uitgereik was aan Orthotouch, sou Orthotouch nie die kapitale hulpbronne gehad het om die bedrae verskuldig aan Orthotouch se finansierders te betaal nie, of om die verbande geregistreer teen die eiendomme te kanselleer nie, insluitend die Orthotouch eiendomme. Volgens Marais het die Michael Familie Trust ooreengekom om betalings van die volle bedrag (om die Orthotouch fasiliteite te delg) te betaal. Aandele in Accelerate is toe uitgereik aan die Michael Familie Trust in ruil vir die betaling.

Marais het verder openbaar dat 'n bykomende bedrag van ongeveer R157 miljoen betaal is deur die Michael Familie Trust om die uitstaande verbandlenings te delg.

Dit is interessant dat, ten spyte daarvan dat Marais in sy antwoord genoem het dat aandele uitgereik is aan die Michael Familie Trust in stede van die R157 miljoen, Marais later ontken het dat sulke aandele uitgereik is in 'n latere brief aan Moneyweb.

Afbetaling van verbandlenings

Die aanwending van die opbrengs van die verkoop van die 31 eiendomme aan Accelerate om die verbandlenings van die 31 Orthotouch eiendomme, sowel as ander ongenoemde eiendomme, verdien verdere analise.

Vanuit Marais se antwoord is dit duidelik dat die opbrengs aangewend is om verbandlenings van talle Orthotouch eiendomme, sowel as die van ander eiendomme, af te los.

Marais het later namens Accelerate bevestig dat hul nie bewus is van die identiteit van die ander eiendomme nie, maar het wel genoem dat die eiendomme verwant is aan Orthotouch.

Accelerate het gesê dat hierdie afbetalings noodgedwonge was aangesien die banke volle afbetalings van die verbandlenings geëis het. Selfs verbandlenings verwant aan eiendomme in wat nie deel was van die Orthotouch eiendomme nie.

Glyn Marais het bevestig dat Accelerate R1.3 Miljard betaal het aan Rand Merchant Bank en Investec om die verbandlenings ten volle af te los. Daar was ook 'n addisionele R332 miljoen betaal aan Investec om verbande af te betaal wat nie deel was van die Orthotouch eiendomme nie.

Klopper het verwys na die aflos van die verbandlenings in 'n brief aan aandeelhouers gedateer 14 Februarie 2014. In die brief het Klopper bevestig dat die notering Orthotouch in staat gestel het om alle bankskulde oor al die eiendomme wat aangewys is vir oordrag na die Orthotouch portefeulje af te los en, op grond van die notering, die waarde van die portefeulje van onbeswaarde eiendomme wat Orthotouch 'n reg het om eienaarskap van te neem ongeveer R3 miljard beloop. Klopper noem verder in die skrywe dat die proses om die portefeulje in Orthotouch te registreer nou aanvang sal neem, ingesien dat net eiendomme wat Orthotouch in die langtermyn wil behou oorgedra sal word.

Sedert Accelerate se notering and die aflos van die verbandlenings, is geen eiendomme oorgedra na Accelerate toe nie. Alle oorblywende eiendomme is kort daarna verkoop aan onverwante derde partye, insluitend Delta Property Fund. Dit is nie duidelik hoe hierdie transaksie beleggers kon bevoordeel nie.

Oorblywende eiendomme na Accelerate se notering

Moneyweb het ook gekyk na die eiendomme wat na Orthotouch oorgedra moes word wat nie ook aan Accelerate verkoop is nie. Dit was die volgende eiendomme:

	Eiendomme nie verkoop aan Accelerate	BRP waardasie
1	Panorama	R77 820 848
2	Nedcor Building – Germiston	R12 768 975
3	Spar Plaza Potgietersrus	R27 776 318
4	Banbury Cross Village shopping centre	R57 401 110
5	Standard Bank building – Nelspruit	R26 065 755
6	Riverview	R17 723 310
7	Bosveld Pick n Pay Centre	R79 921 480
8	Edgars Kroonstad	R34 623 120
9	Saveways	R464 159 510
10	Capital Protea	R24 768 730
		R823 029 156

Nog 27 eiendomme, wat nie oorspronklik aan die HS beleggers gesindikeer was nie, ter waarde van bykans R1.2 miljard wat ingesluit was in die besigheidsreddingsplan en oorgedra moes word aan Orthotouch, was ook verkoop. Die meerderheid is verkoop aan Delta Property Fund in 2016.

Onafhanklike forensiese ondersoek

Die gebeure hierbo toon duidelik dat 'n onafhanklike forensiese ondersoek nodig is om die natuur van die verkoop van die 31 eiendomme aan Accelerate te ondersoek, en ook hoe dit die Georgiou familie en die 18 000 voormalige HS beleggers bevoordeel het.

Uit Moneyweb se perspektief, en gebaseer op die opinies van verskeie eiendomsprokureurs, rekenmeesters en forensiese rekenmeesters, sal die verlies van R782 miljoen wat Orthotouch gely het, Orthotouch insolvent laat.

Die transaksies het ook duidelik die Georgiou familie bevoordeel, veral as die 16 eiendomme wat nooit oorgedra is aan die HS beleggers nie vir 'n tweede keer verkoop is deur entiteite verwant Georgiou aan Accelerate via Orthotouch. Die uitvoerige proses waardeur HS beleggers omseil is, en nooit oordrag geneem het van die eiendomme waarvoor hul betaal het nie, en ook nie die opbrengs daarvan nie, laat ernstige vrae opduik.

Die opbrengs was ook aangewend om verbandlenings van die eiendomme af te los. Selfs eiendomme wat nie in die Accelerate transaksies ingesluit was nie, se verbandlenings is afgelos en dan weer aan derde partye verkoop. Die verkope het ook geen duidelike voordeel vir beleggers gehad nie. Dit is ook kommerwekkend dat Nic Georgiou alle rentebetelings aan beleggers wat regstappe teen hom en Orthotouch neem en ondersteun, gestaak het.

Die verkoop van eiendomme aan Accelerate kan ook gesien word as die effektiewe plundering van die HS maatskappy en Orthotouch, die sakereddingsvoertuig, se bates, voor Orthotouch self se likwidasië. (Orthotouch is tans in sakeredding.)

Die enigste verloorders is dus die 18 000 ongelukkige HS beleggers wat eiendomme gekoop het, betaal het daarvoor, en niks het om vir hulle geld te wys nie, terwyl Nic Georgiou en Accelerate voordeel getrek uit hierdie transaksies. Dringende ingryping word benodig om sodoende te poog om ten minste van die beleggers se geld te red.

Artikel 417 verslag

Dit is van kritiese belang om te let na die identiteit van die direkteure van Orthotouch wie die voorwaardes van die verkoop van die eiendomme moes goedkeur. Buiten Klopper was korporatiewe prokureur en huidige voorsitter van die Nova Property Group, Connie Myburgh, Nic Georgiou en Panagiotis Kleovoulou die direkteure van Orthotouch.

Beide Klopper en Myburgh was onlangs genoem in 'n Artikel 417 verslag vir wangedrag gedurende die tydperk voor die likwidasië van 'n maatskappy genaamd Harrison and White. Die hoof uitgangspunt van die verslag was dat die likwidasië van die maatskappy vertraag is en dat dit 'n plunder van die bates van die maatskappy toegelaat het, wat baie min nagelaat het vir krediteure na likwidasië.

Klopper het in kommunikasie aan familie en vriende aangedui dat hy die Artikel 417 verslag sal laat hersien, terwyl Myburgh beweer dat hy nie die verslag gesien het nie aangesien dit vertroulik is.

***VERTAAL EN AANGEPAS EN DIE AKKURAAKTHEID VAN DIE VERTALING WORD NIE GEWAARBORG NIE.**

Sien die amptelike artikel by: <https://www.moneyweb.co.za/in-depth/investigations/the-peculiar-case-of-the-picvest-billions-part-6/>

5. BELANGRIKE ALGEMENE TERME EN VOORWAARDES

Die algemene en herhalende terme, voorwaardes en ander algemene inligting wat voorheen in die Nuusbrief vervat was, word nou beskikbaar gestel op die HSAG se webtuiste by www.hsaction.co.za en kan direk besigtig word by die volgende skakel: <http://hsaction.co.za/wp-content/uploads/2020/01/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: FEBRUARY 2020

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.

HSAG OFFICIAL NEWSLETTER –CONTENTS

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1. **HS 21 & 22 - "OPT-IN" AND OTHER INFORMATION**

The Court decided that ALL HS 21 and HS 22 HSAG MEMBERS WHOSE CONTRIBUTIONS ARE UP TO DATE ON OR BEFORE 31 JANUARY 2020, do not have to pay the registration costs of R4 500 or R6 500 and will AUTOMATICALLY BE PART OF THE CERTIFIED HIGHVELD SYNDICATION 21 LTD AND HIGHVELD SYNDICATION 22 LTD CLASS ACTION. This is the only exception that the High Court made in terms of which HSAG members do not have to register.

To be of assistance to HSAG members, the legal team sent out numerous notices, SMSes and interim statements from December 2019 and during January 2020. Due to numerous statement requests from members who wanted to bring their outstanding contributions up to date, as well as delays caused by problems with the SEACOM global internet cables, the HSAG's attorneys, Theron & Partners, kept their offices open until midnight on 31 January 2020 to allocate payments and assist members with their queries.

On the basis of enquiries received since Friday, 31 January 2020, the HSAG Management has made the following decision for HSAG members to be paid up and comply with the Court Order, namely:

That all payments made by or on behalf of HSAG members must be made in terms of the Gauteng Supreme Court order;

The Court has directed that all HSAG members paid up by 31 January 2020 are automatically deemed to be OPT-IN and do not have to pay or re-register, registration fees;

Due to circumstances:

- outside the HSAG Management, the HSAG and its members' control; and
- among other things, the fact that some HSAG MEMBERS or their representatives have deposited funds from financial and banking institutions other than Standard Bank, up to and including the cut-off day, on Friday (even from overseas); and
- due to a tremendous unnecessary administrative burden placed on the HSAG Management, HSAG, its members and resources;
- cost, policy and equity considerations; and
- the balance of convenience;

It was decided, in consultation with the appointed auditors, attorneys and banking institution of the HSAG and CCAF, to grant, without exception, five (5) business days after 31 January 2020, for all South African payments, to be included in the HSAG's Dedicated Standard Bank trust account, in order for members to be paid up and automatically registered with CCAF.

For claims on all subsequent payments, the HSAG member must provide written proof that the fees were paid before the cut-off date of 31 January 2020.

When making payments, it is extremely important that the correct references are used. Numerous HSAG members directed enquiries, and sometimes even offensive assertions, relating to payments made that were not reflected on their statements. In the majority of instances it is the result of an incorrect reference, or sometimes even no reference, reflected on the payment. Allocations are made on identifiable payments. If you have any queries relating to 'n payment not reflected on your statement we request that you send proof of such payment with your query to hsactiongroup@gmail.com. There are payments received over the previous five years that have not been allocated as the depositor cannot be traced, or it is merely due to anonymous people supporting the HSAG.

The HSAG legal team further to informed that the class application for HS 21 & 22 has already been issued and served on the Respondents and that the normal Court Rules now apply. This means, amongst others, that the Respondents now have an opportunity to respond to the allegations made by the Applicants in the class application.

One of the most important steps to be taken by the legal team relating to the opt-in of investors in HS 21 & 22, is to collect the information of every person that opted-in (automatically or by means of the portal and payment of the registration fee) to verify their identity. This information will be required to comply with FICA (Financial Intelligence Centre Act). In the meantime, you may therefore start collecting the necessary documentation. This documentation currently required consists of a copy of your Identity Document, as well as proof of residence (not older than three months).

In the meantime, you may send your FICA documentation to accounts@ccaf.co.za.

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>

The Court order and judgment delivered by Judge Tolmay on 10 December 2019 can be viewed at the following link:

<http://hsaction.co.za/wp-content/uploads/2019/12/HS21and22judgment.pdf>

We trust in your cooperation and success in the matter.

2. HS 21 & 22 - DIGITAL TIMER – DUE DATE FOR OPT-IN!

LESS THAN 3 WEEKS REMAINING

Take notice that the opt-in period for investors in HS 21 & 22 (all investors who were not fully paid-up HSAG members at 31 January 2020) closes on 16 March 2020.

If a HSAG member was not paid-up by 31 January 2020, that member has to register with the class action on the online opt-in portal that has been available since 1 February 2020 at www.ccaf.co.za to be part of the HS 21 & 22 certified class action.

Those members will also have to pay a registration fee, as ordered by the court. If an investor's total combined investment in HS 21 & HS 22 amounts to R100 000 or less, a registration fee of R4 500 will be payable. If an investor's total combined investment in HS 21 & HS 22 amounts to more than R100 000, a registration fee of R6 500 will be payable.

This registration fee is immediately payable as soon as your details have been entered on the opt-in portal. Take further notice that the registration fee is not to be paid to the HSAG trust account, but to a unique CCAF trust account, as determined by the Court order, which CCAF trust account details will be indicated on the opt-in portal.

The purpose of the unique CCAF trust account is to comply with the Court order that determined that no unauthorised cross-subsidising may occur between the HSAG and the certified HS 21 & HS 22 class-action

Persons who opt-in and apply to pay the registration fees over six months by completing the prescribed form, have to pay their registration fees in full by 31 July 2020 to be part of the certified HS 21 & 22 class action.

If the full registration fee is not paid within six months, as determined, those persons will unfortunately not be part of the certified class action ("CCAF").

The HSAG Steering Committee wishes to inform members who were paid-up by the cut-off date that they may still receive emails and SMSes that refer to the Opt-In process. These notices are sent to all HS 21 & 22 investors, irrespective of their HSAG membership. If you are already part of the certified class action you may ignore these SMSes and emails and you do not have to be concerned.

3. INVESTORS WITH CLAIMS IN HS 15 TO 20

If you do not have any investments in HS 21 and/or HS 22, you do not have to take any CCAF steps regarding the “Opt-In” process at this stage. The HS 15 – 20 certification application has already been issued and served on Georgiou and others and the respective legal representatives are in the process of exchanging court papers.

The process will now run in terms of the Court Rules, in terms of which certain timeframes are applicable to the steps that the respective parties have to take.

During the festive season rumours were spread that the business rescue of Zephan and Orthotouch will definitely entail that all litigation will cease, unless the business rescue practitioner agrees that it continues. This misleading information is not entirely true. The Companies Act expressly determines that litigation against a company in business rescue may continue with the business rescue practitioner’s consent, **or** with leave of Court. If the Court grants leave, litigation may thus be continued with, without the business rescue practitioner’s consent. The HSAG legal team has not seen a business rescue plan by the business rescue practitioner to consider the necessity or merits of such a request and included a prayer to obtain leave from Court in the application in advance.

In the HS 15 to 20 certification application that was issued and served in December 2019, the HSAG requests the Court to grant leave to continue with litigation despite business rescue. It is also important to take note that the litigation is not solely against Orthotouch and Zephan, but against numerous Respondents which include Mr. Georgiou and some of his family members in their personal capacities. One of the other Respondents is Mr. Hans Klopper, the business rescue practitioner of the HS companies.

The HSAG Steering Committee acts in the best interests of all its members and still intends to, as previously disclosed, negotiate on behalf of each and every paid-up HSAG member if any settlement negotiations ensue. Through this there will be acted on behalf of each loyal member who has over years made it possible, with their support, to reach this point.

4. WHAT THE MEDIA REPORTS ON PICVEST-INVESTMENTS – PART 6

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 since Georgiou became involved.

As in past 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 6 of the series: “**The peculiar case of the Picvest billions: Part 6**” proceeds to explain the complicated history of the Highveld Syndication (HS) schemes since its inception.

This article related to the sale of 31 former HS properties through Orthotouch to Accelerate Property Fund Ltd (“Accelerate”). These transactions represent the single largest sell-off of HS properties since the HS companies were put into business rescue.

Although there were assurances that the sale transactions will be to the benefit of investors in the HS companies, it instead resulted in the effective looting of the historic HS assets.

A Moneyweb follow-the-money investigation has found that none of the 76 HS properties were ever transferred to the so-called business rescue vehicle of the HS companies, Orthotouch, and that only two of these properties were not sold to third parties.

The sale of 31 properties to Accelerate lead to Orthotouch suffering an accounting loss of R782 million, while only R30 million of the R1 323 billion proceeds flowed to Orthotouch. The balance was used to settle the mortgage bonds of the 31 properties, as well as other properties that were linked to Orthotouch and the Georgiou family.

Included in the 31 properties, were 16 highly controversial developments. These 16 properties formed part of the 42 properties that Nic Georgiou sold to HS investors in the late 2000s for R3.4 billion. These properties were however never transferred to the HS companies. They were also supposed to be transferred to Orthotouch in terms of the business rescue plan, but were never. The sale of these properties to Accelerate therefore means that Georgiou sold the properties twice, first to HS investors, and thereafter to Accelerate, a venture led by his son, Michael.

The non-transfer of the HS companies is currently the subject of a criminal investigation. To date, the R3.4 billion remains unaccounted for.

From the Moneyweb investigation it is clear that the HS investors received no benefit from the sale of the properties to Accelerate. Rather, it was a continuation of the sell-off of former HS properties linked to Orthotouch and third parties. The significant losses suffered by Orthotouch suggests that investors were severely harmed financially.

This article therefore focusses on the sale of the 31 properties to Accelerate and how the proceeds were used.

The Accelerate Property Fund

Accelerate Property Fund listed on the JSE on 12 December 2013 with a portfolio of 51 properties valued at nearly R6 billion. Michael Georgiou, Nic Georgiou's son, was and still is the company's CEO and largest shareholder.

Two noteworthy asset managers, Stanlib (13%) and Coronation (30%), also bought a significant shareholding in Accelerate.

Accelerate boasted an impressive board. Tito Mboweni was chairman of Accelerate's board before his appointment as Minister of Finance. Dr Gert Cruywagen, a member of the King Committee on Corporate Governance, is currently the interim chair of the company.

The “Orthotouch Properties”

The comprehensive 162-page pre-listing statement of Accelerate described the portfolio of 51 properties as the “Georgiou family's unique property portfolio”. The official press release announcing the listing also said the portfolio was “built up by the family over the preceding 46 years”.

The flagship properties were identified as Fourways Mall in Johannesburg, the Loch Logan Waterfront shopping centre in Bloemfontein and the Parow Centre in Cape Town.

Of particular interest are the 31 of the 51 properties labelled the “Orthotouch Properties”. These properties were valued at nearly R1.5 billion and represented approximately 24% of Accelerate's portfolio at the listing. What the pre-listing statement and the press release did not disclose was that the majority of these properties were syndicated to the 18 000 HS investors during the late 2000s, but were never transferred by Nic Georgiou or his related companies to the HS companies.

It was also not disclosed that these properties were to be transferred to Orthotouch, the rescue vehicle set up by business rescue practitioner Hans Klopper in his business rescue plan. Klopper was also a director of Orthotouch at the time. The pre-listing statement merely states that Accelerate procured the Orthotouch properties for R1 323 billion, which was R 165 million less than the independent valuation.

In response to Moneyweb questions, Accelerate said via attorney Glyn Marais, that this information was not disclosed as “as the board had been advised that valid and binding sales agreements had been entered into between the various parties, agreeing [to] the sale of these properties to Orthotouch and that Orthotouch was lawfully entitled to sell and transfer these properties to our client [Accelerate].”

Glyn Marais also confirmed that the Orthotouch board, and specifically Klopper in his capacity as director of Orthotouch, had the authority to approve the transactions.

In response to questions sent to Accelerate in 2018, Marais stated: “The consideration paid by our client for the Orthotouch Properties was agreed with Mr Johannes Frederick Klopper, the Business Rescue Practitioner, who, at the time of the listing, was a director of Orthotouch. In the three-year period between the date upon which the Orthotouch Properties were valued for the purposes of the Business Rescue

Proceedings and the date of listing, there would necessarily have been a change in the valuation of the Orthotouch Properties.”. “This resulted from a number of factors including but not limited to the state of the buildings, vacancies, the amount of capital expenditure required, differences in rental profiles and the like. For the purposes of the listing therefore, an independent valuation process was undertaken to establish the fair market value of the Orthotouch Properties and the letting enterprises conducted thereon.”

This statement by Marias is however not entirely accurate as the HS companies were not independently valued by Klopper during the business rescue process. In the business rescue plan (para 5.1.4.3.3) Klopper stated that an unnamed source “advised” him of the values of the properties and that he did not have the time or resources to have the properties independently valued.

Revaluation of properties

It is also interesting to note that Accelerate revalued its property portfolio less than four months after its listing. This revaluation resulted in Accelerate’s portfolio value increasing by R425 million. Moneyweb asked Accelerate whether the Orthotouch properties were also revalued but no such information was forthcoming.

Sale transactions

The Moneyweb investigation, which is based on the sale transactions in the properties’ title deeds, found that Orthotouch suffered a loss of approximately R782 million as a result of the sale of the properties to Accelerate, while Georgiou-linked entities profited to the tune of R881 million.

The nature of these transactions is also interesting, especially the transactions involving the 16 properties Nic Georgiou syndicated to the HS companies, but which were never transferred. The properties were sold in back-to-back transactions. The nature of these back-to-back transactions is explained by looking at the transaction details of one property, 1 Charles Crescent. The transaction details indicate that Zephan, a company owned by Nic Georgiou, acquired the property in 2006 for R41 million (it was never transferred to HS 22 despite investors paying R206 million cash for it.) In 2013, shortly before Accelerate listing, Zephan sold the property to Orthotouch for R216.4 million. Orthotouch thereafter directly sold the property to Accelerate for R110.8 million, without taking ownership of the property.

The result of these transactions was that Zephan earned a profit of R175 million, while Orthotouch suffered a loss of R106 million. It is unclear whether Orthotouch had the cash to pay Zephan the R175 million, but as explained below, the R110 million was not paid to Orthotouch as compensation, but rather to settle the mortgage bonds.

Similar transactions took place for all 16 properties.

Disclosure of transaction details

In response to a question as to whether the Accelerate board was aware that these properties were not transferred to the HS companies and are the subject of a criminal investigation, Glyn Marais provided the following answer on behalf of Accelerate:

“The board of directors of our client took advice and received legal opinion that the properties syndicated by the Highveld Syndication Companies must not be purchased directly from these companies and that all transactions relating to the Highveld Syndication properties must only be transacted through Orthotouch, as the Business Rescue vehicle. In accordance with the legal advice that the Board received, it dealt with the court approved Business Rescue Practitioner, who had the requisite legal authority and responsibility of implementing the Business Rescue Plan, in respect of the Orthotouch Properties. Our client purchased the Orthotouch Properties at fair market value in terms of arm’s length transactions, which were viable and lawful business opportunities for our client to pursue.”

From this answer, it can be deduced that the board was aware of the nature of the non-transfer of the properties, and that the 16 properties were effectively sold for a second time by Nic Georgiou to his son’s company.

Non-disclosure of amounts Orthotouch paid

Accelerate’s pre-listing statement also did not disclose the significant losses suffered by Orthotouch. The statement only listed the acquisition prices the entities related to Nic Georgiou and the HS companies originally paid for the properties, and the amount Accelerate paid. It was therefore totally unapparent that Orthotouch – the rescue vehicle defined in the business rescue plan – suffered a loss of R782 million in the process.

In response, Marais said that: “The prices at which Orthotouch acquired the Orthotouch Properties, and which is reflected in the title deeds referred to in your letter under reply, were in accordance with the prices offered and accepted pursuant to the Business Rescue Plan, in which process our client was not involved. The reference to the ‘current owner’ disclosed in Annexure 16 of the Pre-Listing Statement refers to the then registered owner of the Orthotouch Properties.”

Accelerate also “disagreed” with Moneyweb’s calculation that Orthotouch suffered a loss of R782 million, but did not provide any additional information to substantiate this disagreement.

Klopper’s response

Klopper refused to answer specific questions related to the sale of the properties to Accelerate. He has however referred to the disposal of the properties to Accelerate in various letters to investors.

In a letter date 3 August 2018, Klopper responded to allegations made in an HSAG newsletter. In his letter, he confirmed that the properties were sold for R1 323 440 540 and added that Orthotouch received a total of R1 707 545 560 from the Accelerate transaction, an amount more than R157 million in excess of what it was contractually entitled to receive. In short, he said, “the disposition of assets was to the direct benefit of investors”.

This “benefit” did not flow to investors. Less than a year after the Accelerate transaction, the business rescue plan failed and was restructured through a Section 155 Scheme of Arrangement. In this plan Nic Georgiou pleaded poverty and payments to investors were further reduced.

One of the reasons for this failure must be that investors did not receive the proceeds from the sale of the 31 properties. The R1.323 billion proceeds were used to settle the mortgage bonds of the 31 properties, as well as other properties not forming part of the Orthotouch properties but owned or controlled by entities with links to the Georgiou family.

This happened only a few years after the HS investors invested nearly R5 billion to procure 76 unencumbered properties. In one transaction, nearly half of the properties were sold and the proceeds used to repay mortgage bonds that were never supposed to be there.

No intention for Orthotouch to ever hold Accelerate shares

The pre-listing statement also reveals that there was no intention from Accelerate to issue shares to Orthotouch as payment for the properties. Despite frequent references in the pre-listing statement that Accelerate would issue shares and cash to Orthotouch to settle the R 1.323 billion acquisition price, the pre-listing statement also made it clear that there was never any intention for Orthotouch to receive any shares.

Hidden away on page 128 in Annexure 12 of the pre-listing statement it states that Orthotouch will renounce any shares it would receive through the transaction to the Michael Family Trust.

No additional information is provided.

In response to Moneyweb questions regarding the number of shares that were issued to Orthotouch, and why these shares were promptly renounced to the Michael Family Trust, Glyn Marais reveals that not a single share was transferred to Orthotouch, and that therefore, not a single share was renounced. (However, Glyn Marais did not answer the question of why Orthotouch renounced the shares in the first place.)

Glyn Marais stated: “The reason for this is that Orthotouch’s existing financiers would not agree to release the Orthotouch Properties from the operation of their respective mortgage bonds unless and until all of the amounts then owing to the existing

financiers had been paid in full, including the settlement of amounts secured under the mortgage bonds passed by Orthotouch over land and letting enterprises which did not form part of the Orthotouch Properties purchased by our client for the listing.

“As a result, the balance of the properties forming part of the Orthotouch portfolio, which did not constitute the Orthotouch properties forming part of the listing, received the benefit of having their loans to the aforesaid banks paid in full and being unencumbered. If Orthotouch was issued shares in our client’s company, then Orthotouch would not have had the cash resources to settle the amounts due to Orthotouch’s financiers and/or to cancel the existing mortgage bonds registered against its properties, including the Orthotouch Properties.”

“For this reason, The Michael Family Trust agreed to make payment to the financiers of the full amount required to settle the Orthotouch facilities. Shares in our client’s company were then issued to the Michael Family Trust in exchange for making this payment.”

Marias also disclosed that an additional amount of approximately R157 million was paid by the Michael Family Trust to settle the outstanding mortgage loans. Interestingly, despite stating in the answer above that shares were issued to the Michael Family Trust in lieu of the R157 million, Marais denied that such shares were issued in a subsequent letter to Moneyweb.

Settlement of Mortgage bonds

The use of the proceeds of the sale of the 31 properties to Accelerate to settle the mortgage bonds of the 31 Orthotouch Properties, as well as other unnamed properties, deserves further analysis.

From Marais’s response, it is clear that the proceeds were used to settle the mortgage bonds of many Orthotouch Properties, as well as the mortgage bonds of “other” properties not forming part of the transaction.

Glyn Marais later, on behalf of Accelerate, confirmed that it did not know the identity of the other properties, but said these properties were linked to Orthotouch.

In response to questions, Accelerate attributed this to banks demanding full repayment of all mortgage bonds due to them, even mortgage bonds related to properties that did not form part of the Orthotouch Properties.

Glyn Marais confirmed that Accelerate paid R1.3 billion to Rand Merchant Bank and Investec to settle mortgage bonds, as well as an additional R332 million to Investec to settle the bonds linked to properties that did not form part of the Orthotouch Properties.

Klopper alluded to the settlement of mortgage bonds in a letter to shareholders dated February 14, 2014 (paragraph 19). In the letter, Klopper confirmed that the listing “enabled Orthotouch to clear substantially all bank debt over all the properties earmarked for transfer to the Orthotouch portfolio and, pursuant to the listing, the value of the portfolio of unencumbered properties that Orthotouch has the right to take transfer of, is approximately R3 billion. The process of registering the portfolio in the

name of Orthotouch will now be embarked upon, bearing in mind that only such properties that Orthotouch wish to retain in the long term, will be transferred”.

However, since Accelerate’s listing and the settlement of the mortgage bonds, no properties have ever been transferred to Orthotouch. In fact, virtually all remaining properties were sold shortly thereafter to unrelated third parties, including the Delta Property Group. It is not clear how these transactions benefitted investors.

Properties remaining after Accelerate’s listing

The Moneyweb investigation set out to establish which properties were destined to be transferred to Orthotouch were not acquired by Accelerate. The following properties were identified:

Moneyweb het ook gekyk na die eiendomme wat na Orthotouch oorgedra moes word wat nie ook aan Accelerate verkoop is nie. Dit was die volgende eiendomme:

	Properties not sold to Accelerate	BRP valuation
1	Panorama	R77 820 848
2	Nedcor Building – Germiston	R12 768 975
3	Spar Plaza Potgietersrus	R27 776 318
4	Banbury Cross Village shopping centre	R57 401 110
5	Standard Bank building – Nelspruit	R26 065 755
6	Riverview	R17 723 310
7	Bosveld Pick n Pay Centre	R79 921 480
8	Edgars Kroonstad	R34 623 120
9	Saveways	R464 159 510

10	Capital Protea	R24 768 730
		R823 029 156

Another 27 properties not originally syndicated to HS investors valued at nearly R1.2 billion – which were not included in the business rescue plan and were supposed to be transferred to Orthotouch – were also sold. The majority were sold to the Delta Property Fund in 2016.

Independent forensic investigation

The events described above clearly show that an independent forensic investigation is needed to investigate the nature of the sale of the 31 properties to Accelerate and how this benefitted the Georgiou family and the 18 000 former HS investors.

From Moneyweb's perspective, and based on opinions from several property attorneys, accountants and forensic accountants, the loss of R782 million Orthotouch suffered would leave the company insolvent.

The transactions also clearly benefitted the Georgiou family, especially as the 16 properties that were never transferred to the HS investors were sold for a second time by entities linked to Georgiou to Accelerate via Orthotouch. The elaborate process whereby the HS investors were bypassed, and never received transfer of the properties that they paid for, nor the proceeds of selling them, raises serious questions.

The proceeds were also used to settle the outstanding mortgage bonds on the properties. Even mortgage bonds on properties not included in the Accelerate transactions were settled and were sold later to third parties with no apparent benefit to investors. It is also concerning to note that Nic Georgiou has terminated all interest payments to investors who support legal challenges against himself and Orthotouch.

The sell-off of the properties to Accelerate may also be seen as effectively the looting of the property assets of the HS companies and their business rescue vehicle, Orthotouch, prior to Orthotouch itself being put into liquidation.

The only losers are the 18 000 hapless HS investors who bought and paid for properties but have nothing to show for their money, while Nic Georgiou and

Accelerate have benefitted from the sale by Georgiou to Accelerate “of the Georgiou’ family’s unique property portfolio ... built up by the Georgiou family over the preceding 46 years”. Intervention is desperately needed to save at least some of the monies owed to the HS investors.

Section 417 report

It is also critical to note the identity of the persons who served as directors of Orthotouch and who would have had to approve the conditions of the sale of the properties. Apart from Klopper, corporate lawyer Connie Myburgh, the current chairman of the Nova Property Group, Nic Georgiou himself and Panagiotis Kleovoulou were directors.

Both Klopper and Myburgh were recently cited in a Section 417 report for misconduct during the period prior to the liquidation of a company called Harrison and White. The main premise of the report was that the liquidation of the company was delayed and this allowed the looting of assets, leaving very little for creditors post-liquidation.

Klopper has indicated in a communication to family and friends that he will take the Section 417 report on review, while Myburgh claims he has not seen the report as it is regarded as confidential.

***ADAPTED AND SHORTENED**

See the official article at: <https://www.moneyweb.co.za/in-depth/investigations/the-peculiar-case-of-the-picvest-billions-part-6/>

5. IMPORTANT GENERAL TERMS AND CONDITIONS

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 and can directly be accessed via the following link: <http://hsaction.co.za/wp-content/uploads/2020/01/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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