



\*ENGLISH TEXT BELOW\*

## MAANDELIKSE NUUSBRIEF: MAART 2020

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 / verkeerdelik ontvang het, stel asseblief die versender by [hsagenquiries@gmail.com](mailto: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](http://www.hsaction.co.za) webtuiste die primêre plek waar u HSAG inligting, onderhewig aan die vrywaring daarin vervat (en ook hierop van toepassing) kan bekom.

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

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## 1. **COVID-19 NASIONALE AFSONDERINGSTYDPERK**

Na aanleiding van President Cyril Ramaphosa se afkondiging, sal die hele Suid-Afrika vir 21 dae in afsondering wees in 'n poging om die verspreiding van die Covid-19 virus te bekamp. Die enigste uitsondering vir die afsonderingstydperk is dat sekere noodsaaklike dienste steeds sal voortgaan.

Prokureursfirmas kwalifiseer egter nie as 'n noodsaaklike diens nie, en sal die HSAG se prokureurs, Theron & Vennote, dus nie oop wees nie. Die regsplan sal wel steeds voortgaan om na u belange om te sien, deur van hul tuistes af te werk aan die sake teen Georgiou en andere gedurende hierdie tydperk. U sal dus nie die kantoor telefonies in die hande kan kry nie, maar sal steeds kontak kan maak via e-pos indien die noodsaak ontstaan. Dit is dus belangrik dat u die korrekte e-pos gebruik, andersins kan dit lei daartoe dat u e-pos nie die nodige aandag, of enige aandag, geniet nie. Die korrekte e-pos adresse word weereens teen die einde van die nuusbrieff herhaal vir u gerief.

Daar is aanduidings dat die regulasies wat betrekking het op die howe se werking in hierdie tyd voorsiening daarvoor sal maak dat daar vir minstens die volgende 21 dae slegs aandag gegee sal word aan dringende aangeleenthede, en dat die normale hofreëls wat betrekking het op tye waarin sekere stappe moet plaasvind, nie sal geld nie. Dit beteken ondermeer dat die howe nie oop sal wees vir algemene siviele litigasie (soos die sake gedryf deur die HSAG) nie.

Nieteenstaande, is hierdie 'n tyd waar elkeen van ons moet omsien na onself en ons naastes. Die hele wêreld is tans in dieselfde bootjie.

Mens voel dalk moedeloos en hulpeloos as jy afgesonder is in jou huis, maar die punt is juis dat ons elkeen kan bydrae om die Covid-19 virus te oorwin, deur gehoor te gee aan die President se aanwysings. Deur niks te doen in hierdie tyd nie, doen jy die meeste.

Die HSAG Bestuur en regsplan wens u goeie gesondheid en alle sterkte toe in die komende tyd.

## 2. **HS 21 & 22 GESERTIFISEERDE KLAS-AKSIE**

Die "opt-in" periode vir die gesertifiseerde HS 21 & 22 klas-aksie het reeds op 16 Maart 2020 om middernag gesluit. Daar is dus nou geen verdere geleentheid vir beleggers in HS 21 & 22 om deel te wees van die gesertifiseerde klas-aksie nie. Die HSAG regsplan is gebonde aan Regter Tolmay se hofbevel, en kan geen uitsonderings of vergunnings maak sonder dat dit deur die Hof bekragtig word nie. Dit sal egter onregverdig wees

teenoor die meerderheid persone wat vroegtydig hul kant gebring het, as daar nou enige vergunning of uitstel versoek word om enkele laatkommers te akkommodeer.

Die HSAG regsplan het reeds 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.

Persone wat die "opt-in" opsie uitgeoefen het en skriftelik aansoek gedoen het 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 vanaf die "opt-in" tydperk oopgemaak het, soos vasgestel, betaal is nie, kan daardie persone ongelukkig nie deel wees van die gesertifiseerde klas-aksie ("CCAF") nie.

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 word benodig om uiteindelik 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](mailto:accounts@ccaf.co.za).

Die regsplan bedank diegene wat reeds hul dokumentasie gestuur en hul goeie samewerking tot dusver gegee het.

Die regsplan het verder talle navrae en oproepe ontvang vanaf lede wat bevestiging soek dat hul betalings ontvang is, of dat hul suksesvol die "opt-in" aanlyn vorm voltooi het. Hierdie tipe navrae neem kosbare tyd in beslag en is die posisie as volg:

- Die korrekte bankbesonderhede vir die CCAF en HSAG trustrekening is bekend gemaak, asook die doel van elke trustrekening;
- die instruksies om te "opt-in" is op die HSAG webtuiste en CCAF opt-in portaal aangebring;
- die verskeie CCAF en HSAG e-pos adresse is op die webtuiste beskikbaar en ook in hierdie Nuusbrief;
- die "opt-in" portaal het duidelike instruksies bevat.

Indien u dus die instruksies gevolg het, was u “opt-in” noodwendig suksesvol. Nieteenstaande is daar steeds persone wat nie duidelike instruksies kan volg nie, en wel verkeerde inligting ingesleutel het. Dit is egter enkele gevalle.

Sodra die regspan alle persone se besonderhede op hul sisteem aangebring het, sal daar ’n e-pos gestuur word aan diegene wat deel is van die gesertifiseerde HS 21 & 22 klas-aksie ter bevestiging. Die bevestiging sal egter eers gestuur word na die isolasietydperk.

In die tussentyd, vra ons egter vir u geduld en samewerking hierin.

**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>

### **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 regsverteenwoordigers 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 regspan 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 andere Mnr. Georgiou en van sy familieledede in hul persoonlike hoëdanigheid insluit. Van die ander Respondente is Mnr. Hans Klopper, die sakereddingspraktisyn van die HS maatskappye.

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. ONLANGS IN DIE MEDIA: WAAR IS HANS KLOPPER?**

'n Moneyweb joernalis het onlangs 'n artikel gepubliseer oor sleutelpersone in die Orthotouch-saga, onder andere, veral die sakereddingspraktisyn van die HS maatskappye, Hans Klopper. 'n Vertaling van die artikel volg hieronder.

“'n Bejaarde man in 'n geruite hemp het in die tweede ry van die krediteursvergadering van Orthotouch en Zephan gesit in November verlede jaar.

Hierdie was 'n verpligte vergadering na die voormalige eiendomsmagnaat, Nic Georgiou, beide maatskappye in sakeredding geplaas het. Dit was ook die eerste amptelike geleentheid in jare vir beleggers om enige iemand wat Orthotouch en Zephan verteenwoordig, van aangesig tot aangesig te sien.

Die man het senuweeagtig op die punt van sy stoel gesit, terwyl hy geklou het aan 'n gekrulde 2014 uitgawe van die Noseweek tydskrif .

As sakereddingspraktisyn het Jacques du Toit die verrigtinge begin. Die man het opgestaan en gevra: “Ons was al tevore hier. Ons was al twee keer tevore hier. Waar is Hans Klopper? Is hy hier?”

Du Toit het nie die vraag beantwoord nie. Hy het beleefd die man stil gemaak en gesê dat vrae later geneem sal word.

Soos die man gedienstig sy sitplek ingeneem het, het hy sag gemompel: “Waar is Klopper? Waarom is Klopper nie hier nie?” Hierdie vrae is onbeantwoord gelaat tydens die twee-uur lang vergadering.

Die ou man het per abuis die olifant in die vertrek identifiseer – of liever, sy ontstellende afwesigheid. Klopper, Connie Myburgh en Nic Georgiou se afwesigheid was opvallend. Hulle was die Orthotouch driemanskap wat veronderstel was om die R4.6 miljard, wat ongeveer 18 700 mense belê het in die mislukte Highveld Syndication (HS) maatskappy, te red.

### **Wie is hierdie mense?**

Klopper is die sakereddingspraktisyn van die HS maatskappy. Myburgh is 'n korporatiewe prokureur en voormalige direkteur van Orthotouch. Hy was die prokureur wat die HS beleggers op die Orthotouch direksie verteenwoordig het. Hy is ook die voorsitter van die Nova Eiendomsgroep, die reddingsvoertuig van die mislukte Sharemax beleggingskema.

Interessant, in 'n onlangse Artikel 417 verslag is verdoemende aanbevelings gemaak na aanleiding van die optrede van Klopper en Myburgh in die sakeredding en likwidasiëproses van die onverwante maatskappy, Harrison & White.

Die verslag het 'n noemenswaardige plundering van bates gevind voor die maatskappy finaal gelikwedeer is, en aanbeveel dat verskeie regulerende liggame Klopper en Myburgh se optrede moet ondersoek.

Die verslag het selfs aanbeveel dat die Meester van die Hooggeregshof Klopper se optrede verwys na die Nasionale Vervolgingsgesag vir verdere ondersoek.

Die verslag het gevind dat Klopper “ernstig nalatig was in die uitoefening van sy funksies” as 'n sakereddingspraktisyn deur toe te laat dat die sakereddingsproses voortduur vir meer as drie jaar. Klopper het enige oortreding ontken. Myburgh het nooit reageer op die meriete van die aanbevelings vervat in die verslag nie.

Die optrede van Georgiou verg ook ondersoek.

Hy was die sogenoemde beskermheer of koningspeld agter die reddingskemas, en skynbaar die HS maatskappy in geheel. Hy het nie net amper al die eiendomme in die HS maatskappy gedurende die sindikasie fase verkoop nie, maar het ook 'n sleutelrol gespeel in die verkoop van die meerderheid van die eiendomme en die uitgebreide litigasie teen beleggers.

Dit sal wys wees om eers Klopper se optrede te ondersoek. Hy was die voorloper vir waarskynlik die mees rampspoedige sakereddingsproses ooit in Suid-Afrika.

### **Wie is Hans Klopper?**

Voor Klopper se optrede verder analiseer word, moet ons eers 'n draai in die verlede maak.

Klopper was aangestel as sakereddingspraktisyn van die HS maatskappye in September 2011. Toe hy sy pos ingeneem het, het hy beheer oorgeneem van 79 onbeswaarde kommersiële eiendomme waarvoor beleggers R4.6 miljard betaal het.

Vandag, naastenby tien jaar later, is elke eiendom, buiten twee (daar is beweringe dat dit vier mag wees), van die 79 eiendomme verkoop aan derde partye, insluitend Accelerate Property Fund – Georgiou se seun, Michael, se genoteerde maatskappy. Baie min, indien enige, van die opbrengste het gevloei na beleggers.

Dit is nooit verduidelik waarom die eiendomme verkoop is nie.

Interessant, die sakereddingsproses van die HS maatskappye was waarskynlik die eerste noemenswaardige proses van sy soort in Suid-Afrika; dit het eers 'n realiteit geword toe die nuwe Maatskappyewet gepromulgeer is vier maande vroeër, in Mei 2011. Dié sakereddingsproses duur al vir 9 jaar, en is die land se langste lopende sakereddingsproses.

Klopper se aanstelling as sakereddingspraktisyn moes tog gerusstelend wees vir sommiges, aangesien hy wyd geag was as een van die spesialiste in die veld. Hy was 'n ervaringryke prokureur, 'n voormalige vennoot by prokureursfirma Hofmeyer Prokureurs (nou bekend as Cliffe Dekker Hofmeyr). Klopper was 'n direkteur van die Suid Afrikaanse Herstrukturering en Insolvensie Praktisyne Vereniging vanaf 2005 en was die voorsitter van die herstrukturering subkomitee by die wetsgenootskap van die Noordelike Provinsies.

Hy was daarna ook betrokke in talle hoëprofiel sakereddingsprosesse, insluitend dié van CNA, die Westwood en Romansbaai gholfoorde, Liviero Konstruksie en Esor Konstruksie.

Klopper is huidig aan die leisels van die herstrukturering afdeling van die internasionale audit en konsultant firma, BDO. BDO het herhalend gesê dat Klopper sy pligte as sakereddingspraktisyn van die HS maatskappye in sy persoonlike kapasiteit uitvoer het, en kon nie kommentaar lewer op sy optrede nie.

Op Klopper se eie webtuiste verwys hy na homself as 'n "globale leier in die veld" weens sy verskyning in Who's Who Legal Restructuring & Insolvency.

Hierdie verwysings beklemtoon duidelik Klopper se ervaring as 'n sakeredding spesialis.

Wat het dan verkeerd gegaan?

Die volgende artikel sal sewe verwickelinge beklemtoon wat ondersoek verg.

- \* **Hierdie is 'n vertaalde weergawe van die oorspronklike artikel, en die akkuraatheid van die vertaling word nie gewaarborg nie. Die oorspronklike artikel is geskryf deur**

**Ryk van Niekerk, die besturende redakteur van Moneyweb. Hierdie artikel is gepubliseer op 4 Maart 2020 en die amptelike weergawe is beskikbaar by: <https://www.moneyweb.co.za/in-depth/investigations/where-is-hans-klopper/>**

## **5. BELANG VAN DIE NUUSBRIEWE**

Dit kom dikwels voor dat HSAG-lede die regspan, Theron & Vennote, se kantore skakel om uit te vind wat die stand van sake is met betrekking tot die hofsake, liever as om te lees wat in die nuusbriewe staan.

Die nuusbriewe word opgestel in oorlegpleging met die regspan en HSAG Bestuur, en spreek dikwels die kwessies en vrae van beleggers in e-posse en navrae aan. Dit is soms so dat daar nie groot veranderinge is nie, maar dit is eenvoudig omdat hofsake in die Hooggeregshof nie oornag plaasvind nie. Dit is 'n tydsame proses en daar is dus nie altyd nuwe verwickelinge om weer te gee nie.

Sommige bekommernisse en vrae van beleggers word juis in die Nuusbriewe aangespreek in plaas van in persoonlike e-posse, omdat talle beleggers dieselfde bekommernisse het, en dikwels dieselfde tipe vrae vra. Dit is dus meer tyd en koste-effektief om dit in 'n enkele nuusbriewe aan te spreek, liever as om elke individu persoonlik te kontak.

Diegene wat nie gehoor gee hieraan nie, en die kantore nader omdat hulle nie die Nuusbriewe wil lees nie, is dus besig om ander getroue lede te benadeel, en ontnem die litigasieproses van kosbare hulpbronne, wat nou aangewend moet word liever om sekere individue "spesiale aandag" te gee.

Lees asseblief die nuusbriewe, SMSse, nuusflitse en Whatsapp boodskappe voor u die kantoor skakel. Dit is die onselfsugtige ding om te doen.

Bring jou kant, dan is dit makliker om jou te help. Dit is tog immers jou geld wat geëis word.

## **6. KENNISGEWING RAKENDE AMPTELIKE HSAG WHATSAPP GROEPE**

Na aanleiding van talle klagtes rakende die aanhoudende misbruik van die Whatsapp-groepe vir doeleindes anders as amptelike kommunikasie, het die HSAG Bestuur besluit dat persone wat boodskappe stuur wat nie relevant is tot die HSAG of sy doelwitte nie (soos gestel op die HSAG se amptelike webtuiste), en persone wat vals gerugte en inligting versprei, 'n laaste waarskuwing sal ontvang voor hul summier verwyder sal word en geplaas word op 'n groep waar slegs die administreer van die groepe amptelike nuusflitse en inligting brokkies kan plaas.

Maak seker dat u kommunikasie dus in lyn is met die voorwaardes.



Ons vra u asseblief vir u samewerking hierin.

## **7. GEBRUIK VAN KORREKTE E-POS ADRESSE**

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

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

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

Die amptelike en bestaande e-pos adresse vir CCAF (gesertifiseerde HS 21 & 22 klas-aksie), is as volg:

- **accounts@ccaf.co.za** vir betalingsbewyse
- **admin@ccaf.co.za** vir die amptelike versoek vir afbetaling-vorm
- **enquiries@ccaf.co.za** vir ander CCAF navrae

Indien 'n belegger of enige persoon 'n epos na die verkeerde adres sou stuur sal dit daartoe lei dat daardie e-pos nie spoedig of enigsins die nodige aandag geniet nie. Indien u nie verder enige verdere e-posse wil ontvang nie, stel ons ook asseblief skriftelik in kennis daarvan.

## **8. BELANGRIKE ALGEMENE TERME EN VOORWAARDES**

Die algemene en herhalende terme, voorwaardes en ander algemene inligting wat voorheen in die Nuusbrieff vervat was, word nou beskikbaar gestel op die HSAG se webtuiste by [www.hsaction.co.za](http://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](mailto:hsactiongroup@gmail.com)



\*AFRIKAANS HIERBO\*

## MONTHLY NEWSLETTER: MARCH 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.

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

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## **1. COVID-19 NATIONAL LOCKDOWN**

In terms of President Cyril Ramaphosa's announcement, the entire South Africa will be in isolation for 21 days in an attempt to curb the spread of the Covid-19 virus. The only exception for the lockdown period is that certain essential services will continue to be operational.

Law firms however do not qualify as an essential service, and the HSAG's lawyers, Theron & Partners, will thus not be open. The legal team will however continue to look after your interests by working on the cases against Georgiou and others from home. You will therefore not be able to contact the offices telephonically, but will still be able to contact the offices via e-mail, should it be absolutely necessary. It is therefore of utmost importance that the correct e-mail addresses are used, otherwise it may lead to your e-mail not receiving the necessary attention, if any. The correct email addresses are once more repeated closer to the end of this Newsletter for your convenience.

There are indications that the regulations concerning the status of courts in this time will provide that, for at least the following 21 days, only urgent matters will be heard, and the normal Court Rules that relate to timeframes in which certain steps are to be taken, will not apply. This means, amongst others, that Courts will not be open for normal civil litigation (like the cases being driven by the HSAG).

Notwithstanding, this is a time in which every single one of us must look after ourselves and our relatives. The entire world is currently in the same predicament.

You may feel hopeless and despondent while being isolated in your home, but the point is that we can all play our part in beating the Covid-19 virus by adhering to the President's directives. By doing nothing during this time, you are doing all that you can.

The HSAG Steering Committee and legal team wishes you good health and strength during the coming times.

## **2. HS 21 & 22 CERTIFIED CLASS ACTION**

The opt-in period for the certified HS 21 & 22 class action ended at midnight, 16 March 2020. There are therefore no further opportunities for investors in HS 21 & 22 to be part of the certified class action. The HSAG legal team is bound to Judge Tolmay's order, and no exceptions or indulgences are possible without the Court's approval. It will however be unfair towards the majority of persons, who did their part timeously, if any indulgence or extension is sought to accommodate latecomers.

The HSAG legal team already informed that the class application for HS 21 & 22 has 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.

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 after the opt-in period commenced, as determined, those persons will unfortunately not be part of the certified class action (“CCAF”).

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](mailto:accounts@ccaf.co.za).

The legal team thanks those who have already shared their documentation.

The legal team further received numerous enquiries and calls from members who want confirmation that their payments have been received, or that they have successfully completed the opt-in online form. These type of enquires consume precious time and the position is as follows:

- The correct banking details for the CCAF and HSAG trust accounts have been shared, as well as the purpose of the respective trust accounts;
- the instructions to opt-in were indicated on the HSAG website and CCAF opt-in portal;
- the respective CCAF and HSAG email addresses are available on the website and also in this Newsletter;
- the opt-in portal contained clear instructions.

If you therefore followed the instructions, your opt-in should necessarily be successful. Notwithstanding, there are still persons who are not able to follow clear instructions, and completed the wrong information. These are however only single instances.

As soon as the legal team has added all the particulars to their system, an email will be sent to all persons who are part of the HS 21 & 22 class action as confirmation. Such email will only be sent after the lockdown period.

In the meantime, we ask for your patience and cooperation herein.

**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>

### **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. RECENTLY IN THE MEDIA: WHERE IS HANS KLOPPER?**

A Moneyweb journalist recently published an article about key persons in the Orthotouch saga, amongst others, especially the business rescue practitioner of the HS companies, Hans Klopper. The article follows below:

The conduct of key players in the Orthotouch saga demands a forensic investigation.

“An elderly man in a chequered shirt sat in the second row of the creditors’ meeting of Orthotouch and Zephan in November last year.

This was an obligatory meeting after former property magnate Nic Georgiou put both companies into business rescue. It was also the first official opportunity in years for investors to see anyone representing Zephan or Orthotouch face to face.

The man nervously sat on the edge of his chair, clutching a curly-paged copy of a 2014 edition of Noseweek magazine.

As business rescue practitioner (BRP) Jacques du Toit opened proceedings, the man rose and asked: “We have been here before. We have been here twice before. Where is Hans Klopper? Is he here?”

Du Toit did not answer the question. He politely silenced the man and said questions would be taken later.

As the man submissively sat down, he softly mumbled: “Where is Klopper? Why is Klopper not here?” These questions remained unanswered during the two-hour meeting.

Inadvertently, the elderly man had identified the elephant in the room – or rather, its startling absence. Klopper, Connie Myburgh and Nic Georgiou were conspicuous in their absence. They were the Orthotouch triumvirate who were supposed to save the R4.6 billion that around 18 700 people invested in the failed Highveld Syndication (HS) schemes.

#### **Who are these people?**

Klopper is the business rescue practitioner of the HS companies. Myburgh is a corporate lawyer and a former director of Orthotouch. He was the attorney representing HS investors on the Orthotouch board. He is also the chairman of the Nova Property Group, the rescue vehicle of the failed Sharemax investment scheme.

Interestingly, a recent Section 417 report made damning recommendations following the conduct of Klopper and Myburgh in the business rescue and liquidation process of an unrelated company, Harrison & White.

The report found significant looting of assets occurred before the company was finally liquidated, and recommended that various regulatory bodies investigate Klopper and Myburgh’s conduct.

The report even recommended to the Master of the High Court that Myburgh's conduct be referred to the National Prosecuting Authority for further investigation.

The report found Klopper was "gravely remiss in the exercise of his functions" as a business rescue practitioner by allowing the business rescue process to continue for more than three years. Klopper denied any wrongdoing. Myburgh has never responded to the merits of the recommendations contained in the report.

The conduct of Georgiou also demands scrutiny.

He was the so-called patron or kingpin behind the rescue schemes, and seemingly the HS syndications as a whole. He not only sold virtually all the properties in the HS companies during the syndication phase, but also played a key role in the sale of the majority of the properties and the extensive litigation against investors.

It would be prudent to first investigate Klopper's conduct. He was the point man for arguably the most disastrous business rescue process ever in South Africa.

### **Who is Hans Klopper?**

Before Klopper's conduct is analysed further, we need to revisit a bit of history. Klopper was appointed the BRP of the HS companies in September 2011. When he took up his duties, he assumed control of 79 unencumbered commercial properties for which investors paid R4.6 billion.

Today, nearly 10 years later, all but two (there are claims that it may be four) of the 79 properties were sold to third parties, including to Accelerate – Georgiou's son Michael's listed company. Very little, if any, of the proceeds flowed to investors. It has never been explained why these properties were sold.

Interestingly, the business rescue process of the HS companies was probably the first significant such process in South Africa; it only became a reality when the new Companies Act was promulgated four months earlier, in May 2011. At nine years and counting, it is also the country's longest-running business rescue process.

Klopper's appointment as BRP should have provided some comfort at the time, as he was widely regarded as one of the specialists in this field. He was an experienced lawyer, a former partner at law firm Hofmeyr Attorneys (now called Cliffe Dekker Hofmeyr). Klopper had been a director of the South African Restructuring and Insolvency Practitioners Association since 2005 and he was chairman of the Restructuring Subcommittee at the Law Society of the North Provinces.

He has subsequently also been involved in many high-profile business rescue processes, including those of CNA, the Westwood and Romansbaai golf estates, Liviero Construction and Esor Construction.

Klopper currently heads up the restructuring division of the international auditing and consulting firm BDO (BDO has repeatedly stated that Klopper performed his HS business rescue duties in his personal capacity and could not comment on his conduct).



On Klopper's own website, he refers to himself as a "global leader in the field" due to his listing in Who's Who Legal Restructuring & Insolvency.

These references clearly highlight Klopper's pedigree and experience as a business rescue specialist.

What then, went wrong?

The next article will highlight seven developments worthy of investigation.

- \* **The author of this article is Ryk van Niekerk, Managing Editor for Moneyweb. This article was published on 4 March 2020 and is available at: <https://www.moneyweb.co.za/in-depth/investigations/where-is-hans-klopper/>**

## 5. **IMPORTANCE OF THE NEWSLETTERS**

It often seems that HSAG members contact the legal team, Theron & Partners, to find out what the current state of affairs are in the Court cases, rather than reading the newsletter.

The newsletters are drafted in consultation with the legal team and HSAG Steering Committee, and often address matters and questions of investors contained in emails and other enquiries. It does sometimes happen that no big changes are contained in the newsletter, but that is merely a result of court cases in the High Court not being something that can be concluded overnight. It is a timely process and there are not always substantial developments to report on.

Some concerns and questions of investors are indeed addressed in the Newsletters, rather than in personal emails, as many investors share concerns and often ask similar questions. It is therefore more time and cost efficient to address it in a single newsletter, than contacting every individual personally.

Those persons who do not adhere, and who contact the offices because they do not want to read the newsletter, are busy prejudicing other loyal members, and deprive the litigation process of precious resources, that now have to be utilised to give "special attention" to certain individuals.

Please read the newsletters, SMSes, newsflashes and Whatsapp messages before contacting the offices. It is the unselfish thing to do.

Do your part, it will then be easier to assist you. It is your capital being claimed.

## 6. **NOTICE REGARDING OFFICIAL HSAG WHATSAPP GROUPS**

In light of complaints regarding the continuous misuse of the WhatsApp groups for communication other than official HSAG communication, the HSAG Steering

Committee decided that persons who send messages on the groups that are not relevant to the HSAG or its objectives (as set out on the official HSAG website), and persons who spread false rumours, will receive a final warning before being summarily removed from the group and moved to a group where only the administrator is able to post official newsflashes and information snippets

Ensure that your communication adheres to the conditions.

We kindly request your cooperation herein.

## 7. USE OF THE CORRECT EMAIL ADDRESSES

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

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

- **hsactiongroup@gmail.com** for all General Enquiries; (For Example - to change contact details, Proof of Payments, Death of a Member etc.);
- **hsagenquiries@gmail.com** for Specific Enquiries; (For Example requesting information/statements regarding a specific member, exemption queries for a specific member);
- **hsagregister@gmail.com** for the registration and deregistration of HSAG members;
- **hsagwhistle@gmail.com** for all Confidential Information that you would like to send to us anonymously;
- **hsagstates@gmail.com** for all estate related questions.

The official and existing e-mail addresses for CCAF (HS 21 & 22 certified class action) are as follows:

- **accounts@ccaf.co.za** for proof of payments
- **admin@ccaf.co.za** for the official request to pay registration fees over 6 months - form
- **enquiries@ccaf.co.za** for all other CCAF questions and enquiries

If an investor or any person sends an email to the wrong address, it will result in the email not receiving the speedy or necessary attention, if any. If you do not wish to receive any further emails, please inform us thereof in writing.

## 8. 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](http://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**

Contact the HSAG's attorneys at:

Tel: (021) 887 7877

**[hsactiongroup@gmail.com](mailto:hsactiongroup@gmail.com)**