



\*ENGLISH TEXT BELOW\*

## MAANDELIKSE NUUSBRIEF: MEI 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.

### HSAG AMPTELIKE NUUSBRIEF – INHOUDSOPGAWE

- 1 ALGEMENE NAVRAE EN TERUGVOER
- 2 BRP JACQUES DU TOIT OMSENDSKRYWE: ZEPHAN & ORTHOTOUCH IN SAKEREDDING  
– HERHAAL VAN VORIGE NUUSBRIEF
- 3 JAARLIKSE OPVRAGING - 2020
- 4 HS 21 & 22 GESERTIFISEERDE KLAS-AKSIE - LAATKOMMERS
- 5 BELEGGERS MET EISE IN HS 15 TOT 20
- 6 ONLANGS IN DIE MEDIA: SEWE REDES VIR ORTHOTOUCH SE MISLUKKING VERG  
ONDERSOEK
- 7 GEBRUIK VAN KORREKTE E-POS ADRESSE
- 8 BELANGRIKE ALGEMENE TERME EN VOORWAARDES

## 1. ALGEMENE NAVRAE EN TERUGVOER

Die HSAG regsplan ontvang steeds talle navrae in verband met die e-posse wat aan beleggers gestuur is rakende die “opt-in” periode vir beleggers in HS 21 en 22, en hoe dit aansluit by persone wat reeds opbetaalde HSAG lede is.

Die HSAG is 'n vrywillige groep wat bestaan uit 'n groot aantal beleggers in die HS maatskappye wat die litigasie ondersteun as die enigste uitweg om beleggers se miljarde te vorder. Die HSAG Bestuur is die dryfkrag agter die HSAG, tesame met die regsplan, Theron & Vennote.

Die geheim tot die HSAG struktuur, is die ekonomie van skale, wat voorsiening daarvoor maak dat 'n massa-groep beleggers gesamentlik minimale bydraes maak om die litigasie te voer. Individuele litigasie kan honderde duisende rande beloop, en op 'n individuele basis is daar slegs enkele beleggers wat die litigasie vir hulself kan finansier. Die meerderheid beleggers is dus haweloos gelaat en het geen ander keuse gehad as om Georgiou se mislukte skemas en belaglike opsies te aanvaar nie.

Ten einde toegang tot geregtigheid te laat geskied vir daardie hawelose beleggers, is die HSAG met sy groepslede befondsingsmodel gestig. Die doel met die befondsingsmodel is om klas-aksies te loods namens duisende beleggers, om sodoende toegang tot geregtigheid te bewerkstellig op 'n bekostigbare wyse.

Sedert die ontstaan van die HSAG is sy lede dus regsverteenvoerdig teen 'n fraksie van die kostes van individuele regsverteenvoerdiging. Indien dit nie vir die HSAG was nie, sou daar nie 'n gesertifiseerde klas-aksie wees vir lede in HS 21 en 22 nie, en sou daar ook nie 'n klas-aksie uitgereik kon word vir lede met beleggings in HS 15 tot 20 nie.

Met 'n eisoorzaak gebaseer op die veel eenvoudiger spesifieke nakoming remedie (afdwing van kontraktuele verpligting, nl. die terugkoopklousules), kon HS 21 en 22 se eise op 'n bespoedigde basis hanteer word na beide die Hooggeregshof en Hoogste Hof van Appèl beslis het dat daardie terugkoopklousules afdwingbaar is, ten spyte van die Art 155 Reëlinskema.

Die gevolg is dat HS 21 en 22 se klas-aksie in Desember 2019 gesertifiseer is.

Aangesien daar lede was met beleggings in die ander sindikasies wat gevoel het dat dit onregverdig is dat HS 21 en 22 se klas-aksie op 'n bespoedigde basis hanteer word (ongeach van die feit dat daar wel ook 'n klas-aksie uitgereik is namens beleggers met eise in HS 15 tot 20 op grond van bedrog en wanvoorstelling), het die sertifiseringsuitspraak gemeld dat daar nie verder enige HSAG opvragings aangewend mag word ten opsigte

van die gesertifiseerde HS 21 en 22 klas-aksie (“CCAF” – Certified Class Action FastTrack) nie, en dat registrasiefooie dus ’n vereiste moet wees om deel te vorm van die HS 21 & 22 klas-aksie, aangesien dit nie verder sou kon vorder sonder die nodige befondsing nie.

Dit sou egter onbillik wees teenoor getroue en bestaande HSAG-lede met beleggings in HS 21 en 22 om verdere registrasiefooie te betaal, na hul vir jare bygedra het en dit moontlik gemaak het om tot op hierdie punt te kom. Om die onreg te voorkom, is daar verder in die hofbevel bepaal dat opbetaalde HSAG-lede nie registrasiekostes hoef te betaal nie.

Die HS 21 & 22 sertifiseringsuitspraak het verder toegelaat dat alle beleggers in HS 21 en 22, teen betaling van ’n registrasiefooie, kan deel vorm van die HS 21 & 22 klas-aksie, ten einde toegang tot geregtigheid te bewerkstellig, in plaas daarvan dat die klas-aksie net toeganklik is vir HSAG-lede.

Buiten vir die verbod op kruisbefondsing, het die bevel ook ander vereistes daargestel wat verband hou met kennis aan beleggers. Hierdie vereistes is van kardinale belang, aangesien dit verband hou met die wyse waarin beleggers in HS 21 & 22, wat nie opbetaalde HSAG-lede is nie, kennis kry van die gesertifiseerde klas-aksie.

Om aan die kennisgewing-vereiste te voldoen soos in terme van die hofbevel, was daar e-posse en SMSse uitgestuur vanaf beide die HSAG databasis, en ’n databasis wat die sakereddingspraktisyn, Mnr Hans Klopper, opgestel het vir die HS maatskappye. Die kennisgewings is aan almal met beleggings in HS 21 & 22 gestuur, ongeag van hul HSAG-lidmaatskap, maar het wel melding gemaak dat dit nie van toepassing is op opbetaalde HSAG-lede nie.

Die webgebaseerde “opt-in” portaal was dus bedoel vir enige persone met beleggings in HS 21 en/of 22 wat nie opbetaalde HSAG-lede was teen 31 Januarie 2020 nie.

Persone wat deel vorm van die gesertifiseerde HS 21 en 22 klas-aksie, kan egter steeds HSAG-lede wees, veral as hulle verteenwoordig wil word ten aansien van hul beleggings in HS 15 tot 20, en sal hul HSAG-lidmaatskap op die voorgeskrewe wyse moet beëindig indien hul slegs deel wil wees van die gesertifiseerde HS 21 & 22 klas-aksie (“CCAF”).

Dit is waarom persone wat voorheen HSAG-lede was, en nie hul lidmaatskap beëindig het nie, steeds HSAG state ontvang, sowel as Nuusbriewe. Die gesertifiseerde HS 21 & 22 klas-aksie, val dus nie onder die HSAG sambreel nie, en word afsonderlik hanteer in terme van die hofbevel.

Daar is wel steeds voordeel aan u HSAG-lidmaatskap, aangesien die HSAG se reeds bestaande infrastruktuur tot u voordeel aangewend word. Dit sluit in die HSAG Whatsapp groepe, Facebook blad en webtuiste waarop voortdurend gekommunikeer word. Verder is die HSAG ook betrokke by die sakereddingsproses van Zephan en Orthotouch, en gee terugvoer en verdere inligting wat verband hou met die proses. Die HSAG het ook 'n teenwoordigheid op die krediteurekomitee van die maatskappye, en tree sodoende dus ook in die belang van sy lede op.

Persone wat die “opt-in” opsie uitgeoefen het en hul registrasiefooie betaal het, is dus deel van die gesertifiseerde HS 21 & 22 klas-aksie.

Die Covid-19 pandemie het nie die klas-aksie omvergewerp nie, maar tog die proses vertraag, aangesien howe nie in normale werking is nie, en die klas-aksies nie in terme van die reg beskou word as dreigend en dringende sake wat noodsaaklik is gedurende hierdie ongekende tye nie.

'n Verdere gevolg van die inperking, is dat die HSAG regsman se kantore vir bykans 'n maand gesluit het, en alhoewel die regsman steeds volstoom aan die werk was vanaf hul tuistes, kon sekere stappe in terme van boekhouding nie teen die normale trant geskied nie. 'n Verder vertraging was dat talle persone nie gehoor gegee het aan die instruksies nie, en hul registrasiefooie in die HSAG trustrekening betaal het, welke betalings ondersoek moes word en oorgeplaas moes word na die CCAF trustrekening. Sulke gevalle hou die regsman se kantore ongelooflik besig.

Die regsman is steeds van voorneme om aan alle persone wat deel vorm van die HS 21 & 22 klas-aksie e-posse te stuur ter bevestiging van hul “opt-in”, en hoop om dit binnekort te kan doen, tesame met 'n staat wat ontvangs van hul registrasiefooie bevestig.

Indien u op die voorgeskrewe webgebaseerde “opt-in” portaal ingeteken het, u inligting behoorlik ingevoer het, en u registrasiefooie betaal het onder die regte verwysing, is u “opt-in” noodwendig suksesvol.

## 2. **BRP JACQUES DU TOIT OMSENDKYWE: ZEPHAN & ORTHOTOUCH IN SAKEREDDING – HERHAAL VAN VORIGE NUUSBRIEF**

Die HSAG ontvang tans talle navrae in verband met 'n skrywe van Jacques du Toit, die sakereddingspraktisyn (“BRP”) vir Zephan en Orthotouch, gedateer 6 Mei 2020, wat beleggers ontvang. Die skrywe verwys na die gepubliseerde sakereddingsplanne vir Zephan en Orthotouch, en versoek dat beleggers binne 7 dae sekere sessie en volmag vorms voltooi.

Die regspraak is van mening dat beleggers nie op die skrywe moet reageer nie, aangesien dit 'n poging is van Du Toit om die sakereddingsplan op 'n onreëlmatige wyse in werking te stel, deur te steun op die nasionale inperkings as 'n regverdiging om die voorgeskrewe prosesse in terme van die Maatskappywet te omseil, sonder dat 'n wetlik vereiste vergadering plaasvind waar beleggers besware kan lewer en wysigings van die plan kan voorstel. Hierdie vergadering word verplig deur die Maatskappywet.

Die feite is as volg: meeste beleggers is bejaarde persone, wat soveel meer kwesbaar is vir die Covid-19 virus. Daardie persone kon dus nie tydens die inperking regsadvies bekom nie, en kon ook nie fisies met hul finansiële adviseurs konsulteer nie, buiten op telefoniese of ander tegnologiese wyses. Dit is dus totaal onredelik om te aanvaar dat beleggers enigsins 'n ingeligte besluit kan maak om te stem vir of teen die plan, sowel as om 'n geleentheid gegun te word om na ander se besware en bekommernisse te luister.

Ongeag van die keuse wat u uitoefen, indien u die vorms invul, kan dit 'n sterk aanduiding skep dat u die onregmatige kortpad proses wat Du Toit probeer volg ondersteun, selfs indien u die blokkie invul wat aandui dat u buite stemming bly. Dus, bly weg, of indien u op advies van finansiële adviseurs of ander persone wil steun, kontak u eie prokureur.

**Die HSAG se standpunt ten aansien van die sakereddingsplanne, soos deurgegee aan Moneyweb, volg hieronder:**

Die twee besigheidsreddingsplanne van Zephan en Orthotouch het presies dieselfde oogmerke ten doel, naamlik, om beleggers in die Hoëveld Sindikasies te intimideer om (a) 'n nóg slegter "terugbetalingsplan" as voorheen te aanvaar; en (b) om die hofgeding en die verhaal van verliese van Georgiou uit te stel.

Ten spyte van voormelde sal Georgiou straks nie slaag nie, aangesien die klas-applikante die Hof versoek dat die klas-aksies teen hom en sy entiteite voortgaan, ondanks die sake-reddings verrigtinge.

Die twee planne maak 'n algehele bespotting van gevestigde beginsels wat sakeredding reguleer ten opsigte van maatskappye wat blykbaar nie eens finansiële state opgestel, gehou of ingedien het nie! Die BRP het 'n wetlike plig om onreëlmatighede te rapporteer wat hy kennelik nie gedoen het nie. Die planne is bloot opgestel om aan te pas by Georgiou se eie belange en nie by beleggers en bona fide krediteure nie.

As die planne byvoorbeeld aanvaar word, poog Georgiou weer om homself, sy familie, Hans Klopper en ander van eise vry te stel. Dit is grof onreëlmstig en benadeel beleggers wesenlik, maar Du Toit het geen redes daarvoor gegee nie.

Die konsep planne onderskei ook nie enigstins tussen die krediteure van die onderskeie ondernemings nie. 'n Gelykgestelde lys van krediteure van albei maatskappye word gegee (soos die geval met die bates). Vreemd genoeg is daar geen finansiële state beskikbaar gemaak nie, en word daar word ook nie in die planne na (of uittreksels) verwys nie.

Die krediteurelys weerspieël daarby ook 'onbekende derde partye' as krediteure ter waarde van R610 miljoen. Dit is absurd, aangesien die ouditeure en direkteure van die maatskappye sekerlik hierdie identiteite ken.

Dit is ook eenaardig waarom die geheimsinnige “derde party” -finansierder, wat die broodnodige fondse vir die terugbetaling van beleggers wil voorsien, nie geïdentifiseer word nie.

Alhoewel die HSAG van mening is dat die planne, selfs as dit aanvaar word, nie die klas-aksie sal beïnvloed nie, word beleggers nietemin gewaarsku en aangeraai om nie sondermeer die voorgestelde stem proses deur wyse van volmagte en sessie vorms (sonder dat daar 'n fisiese vergadering geroep word soos deur die Maatskappyyewet vereis) te ondersteun of aanvaar nie. Deur te stem soos versoek deur Du Toit, selfs indien u aandui dat u teen die plan stem, of buite stemming bly, soos aangedui op die volmagvorm, kan dit gesien word dat die kortpadproses van Du Toit geratifiseer word deur HS beleggers.

As 'n belegger ten gunste van die plan stem, sal hy/sy ongetwyfeld van sy of haar eise en regte teen Georgiou en sy entiteite verloor of afstand doen daarvan.

### **In kort, is die HSAG Bestuur se standpunt dus dat:**

1. beleggers nie die BRP (Du Toit) aanbod moet aanvaar nie;
2. die aanbod net nog 'n poging is om beleggers bang te maak (Du Toit dreig met likwidasië en die terugbetaling van rente);
3. die dreigement bangmaak stories is sonder enige regsgronde;
4. daar 'n groot risiko is dat indien beleggers die aanbod aanvaar deur 'n opsie te kies, hul regte en eise herskik word en Georgiou en ander wegloop met jou geld; en

5. dat die BRP se skrywes ignoreer moet word (moenie enige van hul briewe voltooi nie).

Die HSAG gaan volstoom voort met die relevante hofsake.

Ten einde die gemelde bekommernisse en tekortkoming in die huidige proses wat gevolg word onder Du Toit se aandag te bring, het die HSAG op 12 Mei 2020 'n skrywe na Du Toit as BRP gestuur waarin die volgende punte aangeraak word:

- Die omsendskrywe met aangehegde volmag en sessie vorms wat gestuur is;
- die misleidende dekbriëf wat die skyn skep dat Du Toit bloot 'n aanduiding wil kry of persone die (onregmatige) proses ondersteun;
- die HSAG se voorneme om die Hooggeregshof te nader indien die wetlike proses nie gevolg word nie;
- die onaanvaarbaarheid en onregmatigheid van die huidige voorgestelde proses wat Du Toit poog om te volg;
- die kwytskelding van Georgiou en ander direkteure indien die plan aanvaar word;
- die onbekende identiteit van die derde party befondser wat kommerwekkend is;
- die belang van 'n fisiese vergadering waarop daar gestem kan word vir of teen voorgestelde wysigings, en/of die finale sakereddingsplan;
- Du Toit se versuim om onreëlmatighede aan die onderskeie owerhede te rapporteer; en
- die feit dat Du Toit poog om twee afsonderlike entiteite basies onder dieselfde plan te red, en daardeur 'n enkele gemengde lys van krediteure te voorsien, wat onder andere 'n krediteur van R610 miljoen se identiteit geheim hou.

Indien u die HSAG se skrywe wil lees, kan u dit besigtig by: <http://hsaction.co.za/wp-content/uploads/2020/05/LettertoDuToit20200512.pdf>

Sedert die aanvang van vlak 4 van die regulasies is Theron & Vennote se kantore oop ten einde essensiële regsdienste te lewer. U sal dus die kantoor weer telefonies kan skakel.

### **3. JAARLIKSE OPVRAGING – 2020**

Hierdie afdeling is nie van toepassing op CCAF lede nie (daardie persone wie slegs deel is van die gesertifiseerde HS21 en 22 klas-aksie).

Die kostes verbonde aan litigasie is enorm, en alhoewel die ekonomie tans tot feitlike stilstand gebring is, moet die HSAG regspraak en advokatuur steeds hul onverwylde aandag gee aan beleggers se saak/e.

Buiten vir die spesiale voorverhoorheffing betaalbaar deur lede met beleggings in HS 21 en 22, het die HSAG 18 maande laas 'n jaarlikse opvraging gedoen en was daar intussen 'n lywige afgeleide klas-aksie vir beleggers in HS 15 tot 20 uitgereik.

Verder, is Orthotouch en Zephan in sakeredding geplaas en die HSAG regspraak moet van kundige advies gebruik maak ten einde die proses te monitor en deel te neem ten einde lede se belange te beskerm. Dit behels onder andere 'n deeglike ondersoek na die sakereddingsplanne vir Zephan en Orthotouch, en die oorweging van talle moontlike stappe wat geneem kan word ten einde beleggers se belange te beskerm.

In lig van bogenoemde, sal dit nodig wees dat 'n opvraging in 2020 teen lede se state gehê word.

Die regspraak, in oorlegpleging met die HSAG Bestuur, sal binne die volgende paar maande 'n besluit neem rakende enige versoeke vir bydraes vir 2021.

#### **4. HS 21 & 22 GESERTIFISEERDE KLAS-AKSIE – LAATKOMMERS**

Die “opt-in” periode vir die gesertifiseerde HS 21 & 22 klas-aksie het reeds op 16 Maart 2020 om middernag gesluit. Die HSAG regspraak is gebonde aan Regter Tolmay se hofbevel, en kan geen uitsonderings maak sonder die Hof se toestemming nie.

Die Covid-19 pandemie het egter 'n noemenswaardige impak op ieder en elk se finansies, sowel as toeganklikheid tot finansiële instellings, finansiële- en regsadviseurs sowel as pos- en rekenaardienste. Hierdie omstandighede, sowel as die HSAG se derdeparty rekeningkunde diensverskaffer wat die opdatering van state tydens Februarie en Maart 2020 vertraag het, het die HSAG Bestuur genoodsaak om die afsluiting van die “opt-in” periode, soos bepaal deur die Hof, te oorweeg.

**Dit het onder die HSAG Bestuur se aandag gekom dat daar enkele beleggers is wat steeds sou wou deel wees van die HS 21 & 22 gesertifiseerde klas-aksie, maar dat dit weens bovermelde omstandighede nie moontlik was om betyds aan te sluit nie.**

In 'n poging om daardie persone by te staan, is die HSAG regspraak bereid om 'n lys saam te stel van sodanige persone, onderhewig daaraan dat hul onmiddellik hul registrasiekoste van R4 500 of R6 500 betaal (R4 500 vir 'n totale gekombineerde



belegging in HS 21 & 22 van R100 000 en minder, en R6 500 vir 'n totale gekombineerde belegging van meer as R100 000), met die doel om die Hof te nader om te versoek dat daardie persone ook deel vorm van die klas beleggers wat die “opt-in” opsie uitgeoefen het.

Die HSAG regspraak kan egter geen waarborgs gee dat laatkommers se insluiting deur die Hof goedgekeur gaan word nie, en sal dit op beleggers se eie risiko wees.

Persone wat van hierdie geleentheid wil gebruik maak, moet sulke versoek rig na [admin@ccaf.co.za](mailto:admin@ccaf.co.za).

**In die versoek moet u asseblief die volgende besonderhede voorsien:**

- Volle naam en van
- Identiteitsnommer
- Woonadres
- Selfoonnommer
- e-pos adres
- Verteenwoordiger (indien van toepassing)
- Waarde van belegging in HS 21 en/of HS 22
- Rede waarom u nie teen 16 Maart die “opt-in” vorm kon voltooi nie

U sal 'n antwoord ontvang wat aandui wat die registrasiefooi is wat u moet betaal, sowel as die verwysing wat u moet gebruik wanneer u die betaling maak.

Beleggers wat reeds 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 binne 6 maande vanaf die datum waarop hul die opt-in vorm voltooi het, 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, soos vasgestel, betaal is nie, sal daardie persone ongelukkig nie deel kan wees van die gesertifiseerde klas-aksie (“CCAF”) nie.

U word weereens daaraan herinner (indien u dit nog nie gedoen het nie) om solank u FICA dokumente stuur na [accounts@ccaf.co.za](mailto:accounts@ccaf.co.za).

Daar is persone wat aangedui het dat hul nie bereid is om hul FICA dokumente te voorsien nie, aangesien hul met hul aansluiting reeds sekere dokumente voorsien het. Daar was egter 'n lang tydsverloop sedertdien, en moet daardie persone ongelukkig steeds hul dokumente voorsien vir doeleindes van FICA verifikasie.

Die dokumentasie tans benodig is 'n afskrif van u Identiteitsdokument, sowel as 'n bewys van adres (nie ouer as drie maande).

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

**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>

## **5. BELEGGERS MET EISE IN HS 15 TOT 20**

Die HS 15 – 20 sertifiserings-aansoek is reeds uitgereik en beteken op Georgiou en andere, en is die onderskeie regsverteenvoerders tans besig om stukke uit te ruil. Huidig is die regspan besig om op die teenkant te wag.

Weens die Covid-19 inperking is sekere hofprosesse tydelike gestaak, en is dit ongelukkig buite die hande van die regspan. Sodra die nuwe regulasies bekendgemaak word, sal die regspan dit evalueer ten einde te bepaal welke stappe geneem kan word om die proses te dryf.

Die gerugte wat die rondte gedoen het dat die plasing van Zephan en Orthotouch in sakeredding sal beteken dat alle litigasie gestaak sal word, is nie waar nie. Die Maatskappywet 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 daartoe in nie.

Dit is ook belangrik om kennis te neem dat die litigasie nie alleenlik teen Orthotouch of Zephan gevoer word nie, maar dat daar talle ander 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 poog om te alle tye in die beste belang van al sy lede op te tree en is steeds van voorneme om, soos voorheen bekend gemaak, namens elke HSAG-lid wat

opbetaal is te onderhandel indien daar enige skikkingsonderhandelinge sou 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.

## **6. ONLANGS IN DIE MEDIA: ZEPHAN & ORTHOTOUCH SAKEREDDINGSPLANNE**

'n Finansiële joernalis van Moneyweb het onlangs 'n artikel gepubliseer oor Orthotouch se mislukking.

Soos in vorige nuusbriewe gaan ons voort om 'n kort en bondige opsomming van die artikel te gee, maar ons wil u graag uitnoui om die amptelike artikel te lees.

### **Sewe redes waarom Orthotouch se mislukking ondersoek moet word**

Dit is van kritiese belang dat die rol en gedrag van die besluitnemers ondersoek moet word.

Orthotouch en Zephan is laat in 2019 in sakeredding geplaas. Dit het effektiewelik die 'reddingsproses' van die mislukte Hoëveld Sindikasie skemas beëindig. Alhoewel daar nie nog nie besigheidsreddingsplan gepubliseer is nie (ten tyde publikasie van die artikel), is dit duidelik dat die 18 700 meestal bejaardes wat R4,6 miljard in die skemas belê het, moontlik net kan verwag om 'n paar sent in die rand te ontvang.

Die besigheidsreddingsproses van die HS-maatskappye is gelei deur Hans Klopper, die huidige hoof van herstrukturering by die internasionale audit- en konsultasiefirma, BDO. Hy is bygestaan deur verskeie individue, insluitend die korporatiewe prokureur, Connie Myburgh. Myburgh is ook die voorsitter van die Nova Eiendom Groep, die reddingsvoertuig van die mislukte Sharemax beleggingskema.

Gedurende die afgelope 18 maande het Moneyweb 'n volg-die-geld ondersoek gevoer rakende transaksies verwant aan die 79 eiendomme wat oorspronklik gesindikeer is as deel van die Hoëveld Sindikasies.

Die bovermelde ondersoek het die afverkoop van bykans al hierdie eiendomme ontbloom, sonder dat veel, indien enige, van die opbrengste daarvan gevloei het na beleggers. Daarom is dit van krities belang dat die rolle en gedrag van die besluitnemers, veral Nic Georgiou, die skamelbout van die skemas, Klopper en Myburgh ondersoek word.

Moneyweb het sewe aspekte geïdentifiseer wat ondersoek vereis.

## **'n Forensiese ondersoek moet fokus op sewe ontwikkelinge**

### **1. Die nie-oordrag van eiendomme na die HS maatskappye**

Die mees blatante ontwikkeling wat ondersoek moet word, is die nie-oordrag van 42 eiendomme wat Georgiou, of entiteite verwant aan hom, aan HS beleggers verkoop het.

Beleggers het R3,4 miljard vir die onbeswaarde eiendomme betaal, maar dit is eenvoudig nooit oorgedra aan die HS-maatskappye waarin die beleggers aandeelhouers is nie. Die R3,4 miljard is steeds onverklaarbaar.

Klopper het, ná sy aanstelling as sakereddingspraktisyn, versuim of nagelaat om dit te ondersoek. Hy het in sy besigheidsreddingsplan aangevoer dat so 'n ondersoek te duursaam sou wees. (Die besigheidsreddingsplan was feitlik 'n afskrif van die vorige aanbod wat Georgiou gemaak het, wat deur die beleggers verwerp is. Die aanbod is dus deur middel van die besigheidsreddingsproses geïmplementeer.)

In realiteit, inaggenome die aard van die bates en die omset wat die oordragte tot gevolg gehad het, sou dit nie te moeilik wees om te ondersoek nie.

Beleggers se R3,4 miljard was in die trustrekening van prokureur Eugene Kruger betaal, wat die geld blykbaar uitbetaal het voor voordat die eiendomme oorgedra is. 'n Analise van bankstate sal sekerlik wys waar die geld beland het.

Kruger se uitbetaling van die R3,4 miljard voor die oordrag, strook nie met algemene praktyke in verband met oordrag van eiendomme nie, en moet beslis ondersoek word.

Klopper se versuim om hierdie aangeleentheid te ondersoek, het tot gevolg dat Georgiou, sowel as die entiteite verwant aan hom, nooit aanspreeklik gehou is vir die nie-oordrag van die eiendomme aan Orthotouch nie.

### **2. Die verkoop van die 42 eiendomme aan derde partye**

Benewens die feit dat die eiendomme nie oorgedra is nie, soos vermeld in punt een hierbo, het Georgiou die 42 eiendomme aan derde partye verkoop. Dit beteken dat Georgiou die eiendomme twee keer verkoop het: eerstens aan beleggers deur die suksesvolle sindikasie van die eiendomme, en tweedens aan derde partye, onder andere sy seun se genoteerde maatskappy, Accelerate.

Hierdie transaksies het ook die gevolg gehad dat Orthotouch groot rekeningkundige verliese gely het. Dié verliese is nooit aan beleggers verduidelik nie. Dit is ook nie duidelik waarvoor die winste aangewend is nie.

Klopper en Myburgh het, as Direkteure van Orthotouch, hierdie transaksies goedgekeur.

### **3. Die verkoop van 31 eiendomme aan Accelerate**

Klopper en Myburgh het ook die verkoop van 31 eiendomme in Desember 2013 aan Accelerate, die genoteerde entiteit van Nic Georgiou se seun, Michael, goedgekeur. Hierdie eiendomme is verkoop vir R1.3 miljard.

Hierdie verkooptransaksies het tot gevolg gehad dat slegs R30 miljoen na Orthotouch gevloei het. Volgens Moneyweb se berekeninge het Orthotouch 'n verlies van R782 miljoen gely in die proses.

16 van die 31 eiendomme het deel gevorm van die 42 eiendomme wat nooit aan Orthotouch oorgedra is nie.

### **4. Botsing van belange?**

Kort nadat Klopper aangestel is as die sakereddingspraktisyn van die HS maatskappye, is hy aangestel tot die Orthotouch direksie, oënskynlik om na die beleggers se belange om te sien. Hy het dus 'n dubbele vertrouensplig gehad wat behels het dat hy die beleggers verteenwoordig en omsien na hul belange, terwyl hy sy pligte as direkteur nagekom het, wat hoofsaaklik behels het dat hy die volledige implimentering van die sakereddingsplan, en gevolglike Reëlinskema, moes verseker.

#### **Hy het beide hierdie pligte misluk.**

Hierdie dubbele vertrouensplig kon lei tot 'n botsing van belange, wat potensiaal die onhoudbare situasie tot gevolg gehad het waar Klopper nie sy vertrouenspligte as sakereddingspraktisyn en as direkteur van Orthotouch kon nakom nie. Byvoorbeeld, as Klopper regstappe teen Orthotouch in sy hoedanigheid as sakereddingspraktisyn moes neem vir die nie-implimentering van die sakereddingsplan of die Art 155 Reëlinskema, sou hy effektiewelik regstappe teen homself as direkteur van Orthotouch moes neem.

Die strekking van die botsing, indien enige, sal duidelik raak as Klopper se vergoeding gedurende die proses analiseer word.

Klopper het tot op hede nie verklaar hoeveel hy betaal is as direkteur van Orthotouch of as sakereddingspraktisyn nie.

In nog 'n voorbeeld wat op Klopper se gedrange posisie kan dui, het Klopper en Myburgh geen stappe teen Zephan as die onderskrywer van die skema geneem (toe Zephan, eensydig en teenstrydig die Artikel 155 Reëlinskema, alle rentebetelings aan beleggers wat die wettige prosesse teen Georgiou en verwante partye ondersteun het, gestaak het) nie.

## **5. Die verkoop van eiendomme aan die Delta eiendomsgroep**

In die artikel 155 Reëlinskema het Georgiou “onderneem” om 14 eiendomme wat nie deel van die oorspronklike 79 gesindikeerde eiendomme aan Orthotouch was nie, aan Orthotouch oor te dra. Dit is voorgehou as 'n bewys van Georgiou se toewyding tot die skema.

Nie net het dit nie gebeur nie, Georgiou het die eiendomme 'n jaar later aan die Delta eiendomsgroep verkoop.

Volgens Moneyweb se ondersoek het hierdie transaksies 'n verlies van R272.9 miljoen tot gevolg gehad vir Orthotouch. Klopper en Myburgh het hierdie transaksies goedgekeur as direkteure van Orthotouch.

## **6. Hoekom is die HS maatskappye nie in likwidasie nie?**

Ondanks die bogenoemde ontwikkelinge, wat oënskynlik beleggers benadeel het, het Klopper nog die HS-maatskappye in likwidasie geplaas nie. Selfs na Orthotouch en Zephan in Desember 2019 in sakereddingsreëding geplaas is, bly die HS-maatskappye steeds in sakereddingreëding.

Uit Moneyweb se ondersoek is dit duidelik dat bykans alle eiendomme wat die HS-maatskappye besit het in verdagte omstandige verkoop is aan derde partye, en dat 'n artikel 417 ondersoek in verband met Klopper, Myburgh en Georgiou se gedrag aangewese sal wees.

'n Artikel 417 ondersoek word gedoen om die gebeure voor die likwidasie van 'n maatskappy te ondersoek. Dit word gebruik om te bevestig of daar enige bates geplunder of gestroop is voor likwidasie.

## **7. Klopper het vir Jacques du Toit genader om die sakereddingspraktisyn van Zephan en Orthotouch te word**

Jacques du Toit het tydens die krediteurevergadering van Zephan en Orthotouch bevestig dat Klopper een van die partye was wat hom genader het om as sakereddingspraktisyn op te tree vir die maatskappye. Georgiou se prokureur, Mario Kyriacou, het ook as Du Toit se raadgewer opgetree tydens hierdie vergadering. Du Toit se onafhanklikheid, sowel as onpartydigheid, kan dus bevraagteken word. Die laaste ding wat beleggers nodig het is 'n sagte benadering met betrekking tot die bovermelde gebeure sowel as die rolle wat Georgiou, Klopper en Myburgh gespeel het.

Dit is ook krities dat die nuwe sakereddingspraktisyn sy eie sakereddingsplan opstel, en nie Klopper se voorbeeld volg om 'n sakereddingsplan te publiseer wat gebaseer is op 'n vorige plan wat Georgiou aan beleggers gebied het nie, wat verwerp was.

Volgens Moneyweb sou die belange van HS beleggers beter gedien word en sal geregtigheid kan seëvier, alhoewel laat, as Orthotouch gelikwideer word en 'n Art 417 ondersoek geloods word.

Een ding wat beleggers in gedagte moet hou is dat die spore gelaat deur eiendomme en groot bedrae geld altyd gevolg kan word.

**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 28 April 2020 en die amptelike weergawe is beskikbaar by: <https://www.moneyweb.co.za/in-depth/investigations/seven-reasons-the-tragic-conclusion-of-the-hs-schemes-must-be-investigated/>**

## **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: MAY 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](mailto:hsagenquiries@gmail.com) and delete it. You may not copy, disclose or deliver any email received in error or any part of it to anyone else. HSAG’s webmaster uses antivirus software to prevent viruses and other malicious code. However, such software cannot prevent or eradicate all such code. The HSAG or its representatives will not be liable for any loss, harm or damage whatsoever arising from receipt or use of this email or otherwise, whether arising through negligence of the HSAG, its members, steering committee, and agents or otherwise.

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

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

### **HSAG OFFICIAL NEWSLETTER –CONTENTS**

- 1 GENERAL ENQUIRIES AND RESPONSES
- 2 BRP JACQUES DU TOIT CIRCULAR: ZEPHAN & ORTHOTOUCH IN BUSINESS RESCUE  
– REPEAT FROM PREVIOUS NEWSLETTER
- 3 ANNUAL CONTRIBUTION - 2020
- 4 HS 21 & 22 CERTIFIED CLASS ACTION – LATE JOINERS
- 5 INVESTORS WITH CLAIMS IN HS 15 TO 20
- 6 RECENTLY IN THE MEDIA: ZEPHAN & ORTHOTOUCH BUSINESS RESCUE PLANS
- 7 USE OF THE CORRECT EMAIL ADDRESSES
- 8 IMPORTANT GENERAL TERMS AND CONDITIONS

## 1. **GENERAL ENQUIRIES AND RESPONSE**

The HSAG legal team still receives a lot of enquiries with regards to e-mails that were sent to investors which pertained information with regards to the “opt-in” period for investors in HS21 and 22 and how this “opt-in” period affects investors that are paid up members of the HSAG.

The HSAG is a voluntary group comprised of a large number of investors who invested in the HS companies. These investors support litigation as the only route in which they will regain their billions. The HSAG Management, together with the legal team, Theron & Partners, is the driving force behind the HSAG.

The secret to the HSAG structure is the economics of scale, which allows for a mass group of investors to make minimal contributions to fund litigation. Individual litigation can amount to hundreds of thousands of Rands and there are only a few investors who can finance the litigation on their own accord. Therefore, the majority of investors were left destitute and had no choice but to accept Georgiou's failed schemes and ridiculous options.

In order to allow access to justice for those destitute investors the HSAG, established its group member funding model with the aim of launching class actions on behalf of thousands of investors. This model was established to give the optionless access to justice in an affordable manner.

Therefore, since the inception of the HSAG, its members have been legally represented at a fraction of the costs of individual legal representation. If it were not for the HSAG, there would not be a certified class action for members in HS 21 and 22, nor would a class action be issued for members with investments in HS 15 to 20.

With a claim based on the much simpler specific enforcement remedy (enforcement of a contractual obligation, namely the buyback clauses), the HS 21 and 22's claims were able to be dealt with on an expedited basis after both the High Court and Supreme Court of Appeal ruled that the buyback clauses are enforceable, despite the Section 155 Scheme of Arrangement.

These above-mentioned rulings had the consequence that the HS 21 and 22 class action could be certified in December 2019.

As there were members with investments in other syndications who felt it was unfair that HS 21 and 22's class action was handled on an expedited basis (regardless of the fact that a class action was also issued on behalf of investors with claims in HS 15 to 20 on the basis of fraud and misrepresentation), the certification ruling nevertheless stated that no HSAG funding may be used in respect of the certified HS 21 and 22 class action ("CCAF" - Certified Class Action FastTrack). The court further ruled that registration fees should be a requirement to be part of the HS 21 & 22 class action, as it would not be able to proceed without the necessary funding.

The requirement of registration fees would however have been unfair to loyal and existing HSAG members with investments in HS 21 and 22 as they contributed for years and made it possible to get to this point. In order to prevent this injustice, the

court order further stipulated that paid-up HSAG members do not have to pay registration fees.

The HS 21 & 22 certification ruling further allowed all investors in HS 21 and 22 to gain access to justice by being part of the HS 21 & 22 class action with the requirement that they pay a registration fee, rather than allowing only HSAG members to participate.

In addition to the prohibition on cross-funding, the order also set other requirements related to notifications to investors. These provisions are crucial as they relate to the manner in which investors in HS 21 & 22, who are not HSAG paid-up members, are notified of the certified class action.

In order comply with the notification requirement, e-mails and SMSs were sent from both the HSAG database and a database provided, in terms of the court order, by the business rescue practitioner for the HS companies, Hans Klopper. These notifications were sent to everyone with investments in HS 21 & 22, regardless of their HSAG membership. It however did mention that it does not apply to paid up HSAG members.

The goal of the web-based opt-in portal was therefore to give access to all HS 21 and/or 22 investors who were not paid up HSAG members on the 31<sup>st</sup> of January 2020.

Persons who are part of the certified HS 21 and 22 class action may still be HSAG members, especially if they wish to be represented in respect of their investments in HS 15 to 20.

Such persons will however have to end their HSAG membership in the prescribed manner if they only want to be part of the certified HS 21 & 22 class action (“CCAF”).

This is why persons who were previously HSAG members, and did not terminate their membership, continue to receive HSAG statements, as well as Newsletters.

The certified HS 21 & 22 class action, therefore does not fall under the HSAG umbrella, and is handled separately in terms of the court order.

Your HSAG membership does however still carry benefits, as the HSAG's existing infrastructure is utilized to your advantage. This includes the HSAG Whatsapp groups, Facebook page and website through which communication takes place. Furthermore, the HSAG is also involved in the business rescue process of Zephan and Orthotouch, providing feedback and further information related to the process. The HSAG also has a representative on the creditors' committee of the companies, and thus acts in the interests of its members.

Investors who exercised the opt-in option and paid their registration fees are therefore part of the certified HS 21 & 22 class action.

The Covid-19 pandemic did not hinder the class action, but delayed the process, as courts are not in normal operation and class actions are not considered threatening and urgent matters in terms of the law during these unprecedented times.

A further consequence of the above-mentioned restriction is that the HSAG legal team's offices have been closed for almost a month. Although the legal team was still working full time from their homes, certain steps in terms of accounting could not be done in the normal way. A further cause of delay was that many investors did not obey the instructions, and paid their registration fees into the HSAG trust account, these payments had to be investigated and transferred to the CCAF trust account. In such cases, the legal team's offices are incredibly delayed.

The legal team still intends to send e-mails to all persons who form part of the HS 21 & 22 class action to confirm their "opt-in", and hope to do so soon. They will also attach a state confirming receipt of their registration fees.

If you have subscribed to the prescribed web-based "opt-in" portal, entered your information properly, and paid your registration fee under the correct reference, your "opt-in" will be successful.

2. **BRP JACQUES DU TOIT CIRCULAR: ZEPHAN & ORTHOTOUCH IN BUSSINESS RESCUE – REPREAT FROM PREVIOUS NEWSLETTER**

The HSAG legal team is currently receiving numerous enquiries regarding a letter from Jacques du Toit, the business rescue practitioner ("BRP") of Zephan & Orthotouch, dated 6 May 2020. The letter refers to the published business rescue plans for Zephan and Orthotouch, and requests that investors complete the cession and proxy forms within 7 days.

The legal team is of the opinion that investors should not react or reply to the letter, as it is an attempt by Du Toit to have the business rescue plan implimented in an unlawful manner by relying on the national lockdown period as a justification for circumventing the prescribed processes in terms of the Companies Act, without convening a statutory required meeting where investors can voice objections and propose amendments to the plan. This meeting is mandatory in terms of the Companies Act.

The facts are as follows: Most investors are elderly people who are much more vulnerable to the Covid-19 virus. These persons are therefore unable to obtain legal advice during the lockdown or cannot physically consult their financial advisers, except via telephone or other technological means. It is therefore completely unreasonable to assume that investors can make any informed decision to vote for or against the plan. They will also not be given an opportunity to listen to the objections and the concerns of others.

Regardless of the choice you make, if you complete the forms it can create a strong impression that you support the unlawful shortcut process that Du Toit tries to follow. Even if you vote "no" or complete the box indicating that you abstain from voting, the same deduction can be made. Therefore, stay away, or if you want to rely on the advice of a financial advisor or other person, contact your own attorney.

**The HSAG's position relating to the business rescue plans, as provided to Moneyweb, follows hereunder:**

The two business rescue plans of Zephan and Orthotouch have exactly the same objectives, namely to intimidate Highveld Syndication investors into (a) accepting an even worse "repayment" plan than before; and (b) to delay the class action litigation and recovery of losses from Georgiou.

Despite this, Georgiou will not succeed, as the class applicants seek orders that the class actions against Georgiou and his entities continue, despite the business rescue proceedings.

The two plans make a complete mockery of established principles regulating business rescue in respect of companies that apparently didn't even prepare, keep or file financial statements! The BRP has a statutory duty to report irregularities which he admittedly did not do. The plans were clearly drafted to suit Georgiou's own interests and not those of the investors and bona fide creditors.

For instance, Georgiou once again attempts to exempt himself, his family, Hans Klopper and others from claims if the plans are adopted. This is highly irregular and prejudicial to investors but no reasons for it were given by Du Toit.

Further, the draft plans do not distinguish between the creditors of the respective companies in any manner. A mere combined list of creditors of both companies are given (as is the case with assets). Strangely, no financial statements have been made available, nor are they (or extracts) referred to in the plans.

The creditors list also reflects "undisclosed third parties" as creditors to the value of R 610 million. This is absurd, as surely those identities are known to the accountants and directors of the companies.

It is also peculiar why the mysterious "third party" funder, who is to provide the much needed funds for repayment of investors, is not identified.

Although the HSAG is of the view that the plans, even if accepted, will not affect the class action, investors are nevertheless cautioned and advised without a doubt not to support the proposed voting process (without a physical meeting being convened as prescribed by the Companies Act) to vote against the business rescue plan (or to ignore the voting process). By voting as requested by Du Toit, even if you indicate that you vote against the plan or that you abstain from voting as indicated on the proxy form, it may be held that HS investors ratify Du Toit's the shortcut process.

If an investor votes in favour of the plan, he/she may lose (waive) certain claims and rights against Georgiou and his entities.

**In short, the HSAG Steering Committee's position is therefore that:**

1. investors must not accept the BRP's (Du Toit's) offer;
2. the offer is just another attempt to scare investors (Du Toit threatens with liquidation and repayment of interest received);
3. the threats and scare tactics are without legal basis;

4. there is a substantial risk that investors' claims and rights may be rearranged and that Georgiou and others will walk away with your money if the offer is accepted; and
5. that the BRP's circulars should be ignored (do not complete any of their forms).

The HSAG will continue with the relevant Court cases, full steam ahead.

To bring the concerns and shortcomings to Du Toit's attention, the HSAG sent a letter to Du Toit as BRP on 12 May 2020, in which letter the following points are discussed:

- The circular with attached proxy and cession forms that was sent;
- the misleading cover letter that creates the perception that Du Toit merely wants an indication that investors support the (unlawful) process;
- the HSAG's intention to approach the High Court if the lawful process is not followed;
- the impermissibility and unlawfulness of the current proposed process that Du Toit attempts to follow;
- the exemption of Georgiou and other directors from liability for claims in the event that the plans are adopted;
- the unknown identity of the third party funder that is troubling;
- the importance of convening a physical meeting of creditors at which it can be voted for or against proposed amendments, and/or the final business rescue plan;
- Du Toit's neglect to report irregularities to respective authorities; and
- the fact that Du Toit attempts to rescue two separate entities in basically the same plan, and thereby provides a single mixed list of creditors that includes, amongst others, a creditor of R610 million whose identity is kept a secret.

If you would like to read the HSAG's letter, you can view it at: <http://hsaction.co.za/wp-content/uploads/2020/05/LettertoDuToit20200512.pdf>

### 3. **CONTRIBUTION TOWARDS LEGAL AND ADMINISTRATIVE COSTS – 2020**

This section does not apply to CCAF members (those who are only part of the certified HS 21 & 22 class action).

The costs associated with litigation are enormous, and although the economy is currently at a standstill, the HSAG legal team and advocacy still have to pay close attention to investors' case/s.

Save for the special trial levy only payable by investors in HS 21 and 22, the HSAG last conducted an annual request for contributions 18 months ago, and in the meantime a voluminous derivative class action was issued for investors in HS 15 to 20.

Furthermore, Orthotouch and Zephan were placed in business rescue and the HSAG legal team must make use of expert advice to monitor and participate in the process in order to protect members' interests. This includes, amongst other things, a thorough investigation into the business rescue plans for Zephan and Orthotouch, and the

consideration of numerous possible steps that can be taken to protect investors' interests.

In light of the above, it will be necessary to request an annual contribution against members' statements in 2020.

The legal team in conjunction with the HSAG Steering Committee will make a decision within the next few months with regards to any request for contributions for 2021.

#### 4. **HS 21 & 22 CERTIFIED CLASS ACTION – LATE JOINERS**

The opt-in period for the certified HS 21 & 22 class action already closed at midnight on March 16, 2020. The HSAG legal team is bound by Judge Tolmay's court order, and are not allowed to make any exceptions without the Court's consent.

However, the Covid-19 pandemic has a significant impact on each and every person's finances, as well as access to financial institutions, financial and legal advisors as well as postal and computer services. These circumstances, as well as the third party accounting services provided that delayed the updating of statements during February and March 2020, necessitated the HSAG Steering Committee to reconsider the close of the opt-in period as determined by Court.

**It has come to the attention of the HSAG Management that there were some investors who still wanted to be part of the HS 21 & 22 certified class action, but that due to the above circumstances, it was not possible to register in time.**

In an effort to assist those persons, the HSAG legal team is prepared to compile a list of such persons, subject to those persons immediately paying their registration costs of R4 500 or R6 500 (R4 500 for a total combined investment in HS 21 & 22 of R100 000 or less, and R6 500 for a total combined investment in HS 21 & 22 of more than R100 000). The goal is to approach the Court to requests that those persons also form part of the class of investors who exercised the "opt-in" option.

However, the HSAG legal team can make no guarantees that latecomers' inclusion will be approved by the Court. It will therefore be at the investor's own risk.

Persons wishing to utilise this opportunity should direct such request to [admin@ccaf.co.za](mailto:admin@ccaf.co.za).

#### **In the request please provide the following details:**

- Full name and surname
- Identity number
- Home address
- Cellphone number
- Email address
- Representative (if applicable)
- Value of investment in HS 21 and / or HS 22

- Reason for not completing the opt-in form by 16 March

You will receive a reply indicating the registration fee that you will have to pay. The message will also contain the reference that you must use when making the payment.

Investors who have already exercised the "opt-in" option and applied in writing to pay the registration fees over six months by means of the prescribed application form, must pay their total registration fee within 6 months after submission of the opt-in form. Their account must be paid in full to be part of the certified HS 21 & 22 class action. Unfortunately, if the full registration fee is not paid within six months of the opt-in period, as determined, those persons will not be part of the certified class action (CCAF).

Once again you are reminded (if you have not already done so) to send your FICA documents to [accounts@ccaf.co.za](mailto:accounts@ccaf.co.za).

Some people have indicated that they are not prepared to provide their FICA documents as they have already provided certain documents when they joined. However, a long period of time has passed since then and unfortunately those persons still have to submit their documents for FICA verification purposes.

The current required documentation is a copy of your Identity Document, as well as a proof of address (not older than three months).

The legal team thanks those who have already submitted their documentation and have given their good cooperation so far.

**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>

**5. INVESTORS WITH CLAIMS IN HS 15 TO 20**

The HS 15 - 20 certification application has already been issued and served on Georgiou and others and the various legal representatives are currently exchanging documents. The legal team is currently waiting on the opposition.

Due to the Covid-19 lockdown, certain court processes have been temporarily halted and this is unfortunately out of the hands of the legal team. Once the new regulations are announced, the legal team will evaluate them to determine what steps can be taken to drive the process.

The rumours that have been circulated that the placement of Zephan and Orthotouch in business rescue will not mean that all litigation will be stopped. The Companies Act



expressly provides that litigation against a company in business rescue may proceed with the consent of the business rescue practitioner or if the Court so directs. Therefore, if the Court gives consent, litigation can be continued even if the business rescue practitioner does not agree to it.

It is also important to note that the litigation is not only being brought against Orthotouch or Zephan, but that there are numerous other Respondents, among others, Mr. Georgiou and some of his family members in their personal capacity as well as Mr. Hans Klopper, the business rescue practitioner of the HS companies.

The HSAG Management attempts to act in the best interest of all its members at all times and still intends, as previously mentioned, to negotiate on behalf of each paid up HSAG member should settlement negotiations occur. This is done on behalf of every loyal member who has made it possible for the HSAG over the years, through their support, to reach this point.

## 6. **RECENTLY IN THE MEDIA: ZEPHAN & ORTHOTOUCH BUSINESS RESCUE PLANS**

A financial journalist from Moneyweb recently published an article about the failure of Orthotouch.

As in previous newsletters, we continue to provide the article, but wish to invite you to read the official article.

### **Seven reasons Orthotouch's dismal failure must be investigated**

Orthotouch and Zephan were put into business rescue late last year, effectively bringing an end to the 'rescue process' of the failed Highveld Syndication (HS) schemes. Although a business rescue plan has not been published, it is clear that the 18 700 mostly elderly people who invested R4.6 billion in the schemes may expect to receive only a few cents in the rand.

The business rescue process of the HS companies was led by Hans Klopper, the current head of restructuring at the international auditing and consulting firm BDO.

He was assisted by various individuals, including corporate lawyer Connie Myburgh. Myburgh is also the chairman of the Nova Property Group, the rescue vehicle of the failed Sharemax investment scheme.

Over the past 18 months, Moneyweb conducted a follow-the-money investigation into transactions related to the 79 properties which were originally syndicated as part of the Highveld Syndication (HS).

### **A forensic investigation should focus on seven developments**

#### **1. The non-transfer of properties to the HS companies**

The most blatant development to be investigated is the non-transfer of 42 properties which Georgiou, or entities related to him, sold to HS investors.

Investors paid the R3.4 billion for the unencumbered properties, but they were simply never transferred to the HS companies in which the investors were shareholders. This R3.4 billion remains unaccounted for.

Klopper failed or neglected to investigate this after his appointment as business rescue practitioner (BRP). He stated in his business rescue plan that such an investigation would have been too costly. (The business rescue plan was virtually a carbon copy of the previous offer Georgiou made to investors, which was rejected by investors. It was therefore implemented via the business rescue process.)

Investors' R3.4 billion was paid into the trust account of attorney Eugene Kruger, who released the monies, apparently before transfer took place. An analysis of bank statements would surely reveal where the money ended up.

Kruger's release of the R3.4 billion before transfer is not consistent with the usual practice when it comes to transfers and should be investigated.

Klopper's failure to investigate the matter means Georgiou, and entities related to him, have never been held accountable for the non-transfer of the properties to Orthotouch.

## **2. The sale of the 42 properties to third parties**

In addition to the non-transfer of properties referred to in point one above, Georgiou sold the 42 non-transferred properties to third parties. This means Georgiou sold the properties twice: first to investors through the successful syndication of the properties, and second to third parties, including his son's listed company, Accelerate.

These transactions also resulted in significant accounting losses at Orthotouch, and have never been explained to investors. It is also not clear how the proceeds were used.

Klopper and Myburgh, as directors of Orthotouch, authorised these sales transactions.

## **3. The sale of 31 properties to Accelerate**

Klopper and Myburgh also approved the sale of 31 properties in December 2013 to Accelerate, the listed entity of Georgiou's son Michael, for R1.3 billion.

The sale resulted in only R30 million flowing to Orthotouch. According to Moneyweb's calculations, Orthotouch suffered a loss of R782 million in the process.

Sixteen of the 31 properties formed part of the 42 properties that were never transferred to Orthotouch.

## **4. Conflict of interest?**

Shortly after Klopper was appointed HS business rescue practitioner, he was appointed to the Orthotouch board, ostensibly to support and protect the interests of investors. He therefore had a double fiduciary duty which was to represent and protect the interests of investors while performing his duties as a director mainly to ensure full implementation of the business rescue plan and subsequently the Scheme of Arrangement under Section 155

He failed in both these responsibilities.

This may well have resulted in a conflict of interest, potentially creating an untenable scenario where Klopper could not fulfil his fiduciary duties as BRP and director of Orthotouch. For example, if Klopper took legal action against Orthotouch in his capacity as BRP for the non-implementation of the business rescue plan or the Section 155 SOA, he would in effect have taken legal action against himself as a director of Orthotouch.

Klopper has never disclosed how much he was paid as a director of Orthotouch or as BRP.

In another example of what may point to Klopper's compromised position, Klopper and Myburgh did not take action against Zephan, as the underwriter of the scheme, when Zephan unilaterally and in contravention of the Section 155 SOA terminated all interest payments to investors who supported the legal processes against Georgiou and related parties.

## **5. Sale of properties to the Delta Property Group**

In the Section 155 SOA, Georgiou "pledged" to transfer 14 properties which did not form part of the original 79 syndicated properties to Orthotouch. It was mooted as proof of Georgiou's commitment to the scheme.

Not only did this not happen, but Georgiou sold the properties a year later to the Delta Property Group.

These sale transactions resulted, according to the Moneyweb investigation, in an R272.9 million loss for Orthotouch. Klopper and Myburgh, as directors of Orthotouch, approved the transactions.

## **6. Why are the HS companies not in liquidation?**

Despite the developments listed above, which were to the apparent detriment of investors, Klopper has not put the HS companies into liquidation. Even after Orthotouch and Zephan were put into business rescue in December last year, the HS companies remain under business rescue.

From Moneyweb's investigation, it is clear that virtually all the properties in the HS companies were sold to third parties in questionable circumstances, and that a Section 417 investigation into the conduct of Klopper, Myburgh and Georgiou seems warranted.

A Section 417 inquiry is aimed at investigating events leading up to the liquidation of a company to ascertain whether any assets were stripped or looted.

## **7. Klopper approached Jacques du Toit to become BRP of Zephan and Orthotouch**

Jacques Du Toit confirmed during the Orthotouch and Zephan creditors' meeting that Klopper was one of the parties who approached him to become the business rescue practitioner of the companies. Georgiou's lawyer, Mario Kyriacou, also acted as Du Toit's advisor during the meeting. Du Toit's impartiality and independence may therefore be open to question. The last thing investors need is a soft approach on developments listed above and the roles played therein by Georgiou, Klopper and Myburgh.

It is also critical that the new business rescue practitioner draft his own business plan, and not follow Klopper's example to publish a business rescue plan that was based on a previous plan Georgiou put to investors, but which was rejected.

The interests of the HS investors would, in Moneyweb's view, be better served and justice may finally prevail albeit late if Orthotouch is liquidated and a Section 417 Inquiry is held.

One thing investors should bear in mind is that the trail of properties and such vast sums of money can always be traced.

**This article was published on 05 March,2020 and the official version is available at: <https://www.moneyweb.co.za/in-depth/investigations/seven-reasons-the-tragic-conclusion-of-the-hs-schemes-must-be-investigated/>**

## **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;
- **hsagestates@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**