ENGLISH TEXT BELOW

MAANDELIKSE NUUSBRIEF: JULIE 2020

Hierdie nuusbrief 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 onmiddellik in kennis by hsagenquiries@gmail.com en vernietig dit. U mag nie 'n e-pos, of enige deel daarvan, wat foutiewelik ontvang aan enigiemand anders stuur, kopieer of openbaar nie. HSAG se webmeester gebruik antivirusprogrammatuur om virusse en ander kwaadwillige kodes te voorkom. Hierdie sagteware kan egter nie so 'n kode altyd voorkom of uitwis nie. Die HSAG of sy verteenwoordigers sal nie aanspreeklik wees vir enige verlies of skade wat voortspruit uit ontvangs of gebruik van hierdie e-pos of andersins, of dit voortspruit uit die nalatigheid van HSAG, sy lede, bestuurskomitee en agente of andersins nie.

Alhoewel e-posse, HSAG Nuusflitse en HSAG Inligtingsbrokkies van tyd tot tyd uitgestuur word, is die www.hsaction.co.za webtuiste die primêre plek waar u HSAG inligting, onderhewig aan die vrywaring daarin vervat (en ook hierop van toepassing) kan bekom.

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

HSAG AMPTELIKE NUUSBRIEF – INHOUDSOPGAWE

1. DIE WIELE ROL: AANSOEKE VIR TWEE SAAKBESTUURDERS!*

Die HSAG regspan (wat dieselfde regspan is wat die CCAF Versnelde Aansoek bring) het van die eerste moontlike geleentheid gebruik gemaak om hul stem te voeg by die HSAG lede wat gevra het waarom hul aangeleenthede nie as dringend beskou word deur die Suid-Afrikaanse regstelsel nie. Ongelukkig gaan die hele wêreld deur ongekende tye en is die Suid-Afrikaanse regstelsel geen uitsondering nie. Die howe het besluit om eers slegs uiters dringende aangeleenthede aan te hoor tydens die inperkings-periode maar het geleidelik begin om voorsiening te maak vir alternatiewe wyses vir die aanhoor van sake en begin om videokonferensies in sekere gevalle te implementeer.

Alhoewel die HSAG nie enige direkte invloed het op watter aangeleenthede deur die regbank as dringend beskou word nie (en val siviele eise vir kapitale bedrae tradisioneel nie binne hierdie kategorie nie) was twee sterk bewoorde skrywes aan die Waarnemende Adjunkregterpresident van die Hooggeregshof in Pretoria gerig waarin daar versoek is vir ’n saakbestuurder in beide die HS21 en 22 Versnelde Aansoek asook die Artikel 165 Afgeleide Aksie vir onder andere HS15-20 se sake.

Die respondente (Mnr. Nic Georgiou, soos bygestaan deur Mnr. Hans Klopper en ander) staan sentraal in albei HSAG aangeleenthede en het tot dusver alles in hul vermoë gedoen om die sake sover as moontlik te probeer belemmer.

Die HSAG het uit ondervinding geleer dat om aansoek te doen vir ‘n saakbestuurder ongetwyfeld vrugte afwerp. ‘n Saakbestuurder is ’n Regter van die Hooggeregshof en sien toe dat nie een van die partye die hofproses misbruik nie en stel ‘n tydtafel vas waaraan albei partye moet voldoen. Dit verplig albei partye om by die hofdae te hou sonder dat daar verdere aansoeke gedoen moet word om partye te verplig, wat nog etlike maande kan neem. In die Versnelde Aansoek was ’n saakbestuurder van groot waarde.

Die HSAG het in die HS 21 & 22 aangeleentheid reeds ‘n sakebestuurvergadering bekom wat per videokonferensie gehou sal word op 12 Augustus 2020. Hierdie vergadering sal plaasvind tussen die onderskeie regsverteenwoordigers voor haar edele die Agbare Waarnemende Adjunkregterpresident Potterill. Na afloop van hierdie vergadering sal Regter Potterill in alle waarskynlikheid besluit of daar wel ‘n saakbestuurder aan hierdie aangeleentheid toegedeel sal word en watter prosedures gevolg moet word. Die regspan is opgewonde en positief oor die vergadering, maar besef dat die hofrolle oorweldig is met soortgelyke versoeke in hierdie onsekere tye .

Die HSAG regspan het insgelyks in die Art 165 Aansoek (Afgeleide aksie) ook ‘n skrywe gerig aan die Waarnemende Adjunkregterpresident waarin daar versoek word dat hierdie

aangeleentheid ook van ‘n saakbestuurder voorsien sal word. Ons verkeer in afwagting om spoedige terugvoer hierin te ontvang.

OPSOMMING VAN HS 21 & 22 SKRYWE AAN DIE WAARNEMENDE ADJUNKREGTERPRESIDENT OM ‘N SAAKBESTUURDER TE VERSOEK.

***Aangesien hierdie skrywe oorspronklik in Engels geskryf is, volg hierna ’n opsomming. indien u egter die oorspronklike skrywe bewoording wil lees, kan u dit gerus in die Engelse weergawe van die nuusbrief lees**

Daar word in die skrywe versoek dat ’n saakbestuurder in die HS 21 & 22 aangeleentheid aangestel word. Daar word spesifiek melding gemaak dat die Respondente (Georgiou en ander) nog geen opponerende eedsverklaring gelewer het nie en dat dit in lyn is met die vertragingstaktieke waarmee die HSAG al te bekend is in hul litigasie teen hierdie spesifieke Respondente.

Die skrywe maak melding van die redes waarom die HSAG hierdie versoek rig. Hierdie redes is die kompleksiteit van die aangeleentheid, die verwagte duur daarvan, die verwagting van tussentydse dispute en die vertragingstaktieke wat tot nou, en in ander litigasie teen dieselfde Respondente, deur die Respondente gebruik is.

Orthotouch is slegs ’n leë dop wat Georgiou gebruik het om sy doelstellings te bereik. Die skrywe maak spesifieke melding van die Artikel 155 Reëlingskema wat Orthotouch voorgestel het om hul verpligtinge af te water en sodoende die proses te misbruik. Daar word daarby genoem dat Orthotouch dit op ‘n bedrieglike manier gedoen het deurdat hulle nie oop kaarte gespeel het om die hof in te lig dat daar ‘n aansoek teen hulle was wat aantygings van ernstige wangedrag teen verskeie entiteite en individue bevat het nie. Hulle het ook versuim om aan die hof bekend te maak dat die Reëlingskema die aanspreeklikheid van hierdie entiteite en individue sal onthef.

Daar word dan verder geskryf oor die aansoek om die Reëlingskema ter syde te stel en die vertragingstaktieke wat daarmee gepaard gegaan het. Die kwaadwillige en opportunistiese strategieë deur Georgiou is legio. Die hof het in twee aparte uitsprake gemeld dat die strategieë, wat Georgiou gebruik het, ‘n misbruik van hofprosedures was en moes Georgiou in ’n appèlhofsaak bestraffende kostes betaal. Dit was gevolglik aan die Waarnemende Adjunkregterpresident uitgewys dat hierdie strategieë weer verwag kan word (en reeds plaasgevind het) in hierdie aangeleentheid.

Die skrywe gaan dan verder om ‘n paar van die vertragings tegnieke te lys. Hierdie tegnieke behels onder andere die ongegronde beweringe van ongerymdhede (asook die

onsuksesvolle hofaansoeke om die “ongerymdhede” ter syde te stel), die aansoeke tot verlof tot appèl en die daaropvolgende petisies na die Hoë Hof van Appèl, die gekonkel deur Georgiou met die destydse nominale applikante in die klas-aksie litigasie deur vir hulle ongeopenbaarde bedrae te betaal (agter die regspan se rug) in ruil daarvoor dat hulle hul aansoek terugtrek en laastens dat hy, nadat die onreëlmatige terugtrekkings ter syde gestel is, daarteen geappelleer het, maar sy appèl terug getrek het op die dag wat dit aangehoor sou word deur die Hoogste Hof van Appél.

(Alhoewel die regspan hulle nie verwerdig het om dit te noem nie, is dit ook welbekend dat die eertydse HSAG bestuurslid, Helgard Hancke, in die geheim en terwyl hy nog trou aan die HS Beleggers verskuldig was, op Georgiou se betaalrol beland het en intussen miljoene rande ontvang het).

Die HSAG se standpunt is dat die aanstel van ‘n saakbestuurder in hierdie aangeleentheid ongetwyfeld kan bydra dat gemelde tegnieke nie meer gebruik sal kan word nie.

Buiten Covid-19 was die aansoek alreeds op 7 Februarie 2020 uitgereik en beteken, maar het die Respondente steeds geen opponerende eedsverklarings beteken of geliasseer nie. Ten einde ’n herhaling te verhoed was dit by voorbaat onder die Regter se aandag gebring. Die regspan het daarteen besluit om die saak op die ongeopponeerde rol te plaas omdat die geskiedenis gewys het dat hulle bloot tot die laaste dag sal wag en dan by die Hof sal opdaag. ’n Saakbestuurder sal nie toelaat dat dit gebeur nie en word dit duidelik gemaak dat hierdie een van die hoofredes is waarom ‘n saakbestuurder in hierdie aangeleentheid benodig word.

Die laaste punt wat die skrywe maak om die Waarnemende Adjunkregterpresident te oortuig om vir hierdie aangeleentheid ‘n saakbestuurder aan te wys is die bykomende oorwegings. Hierdie bykomende oorwegings sluit in dat dit reiskostes sal bespaar aangesien die HSAG se regspan en advokatuur in die Wes-Kaap werksaam is en die aangeleenthede in Pretoria aangehoor word en ‘n saakbestuurder die gebruik van video-konferensies kan promoveer. Daar word uitdruklik genoem dat die meerderheid van HSAG beleggers bejaarde pensionarisse is en dat verdere vertragings in die litigasie vir hulle bitter ongerieflik sal wees en ook nie in die belang van geregtigheid sal wees nie. Daar word ook genoem dat die aansoek uit 222 bladsye bestaan.

Opsomming van die HS 15 – 22 (afgeleide aksie) skrywe aan die Waarnemende Adjunkregterpresident vir versoek om aanstel van ‘n saakbestuurder

Die HSAG regspan het ook ‘n skrywe aan die Waarnemende Adjunkregterpresident gestuur rakende die afgeleide aksie en versoek ook ‘n saakbestuurder in hierdie aangeleentheid. Die HSAG se regspan het egter nog geen terugvoer ontvang nie.

***Aangesien hierdie skrywe oorspronklik in Engels geskryf is, volg hierna ’n opsomming. indien u egter die oorspronklike skrywe bewoording wil lees, kan u dit gerus in die Engelse weergawe van die nuusbrief lees**

Die skrywe begin deur te verwys dat die HSAG ‘n saakbestuurder versoek met betrekking tot ‘n aansoek om verlof om ‘n klas-aksie in te stel , namens potensieel 18 000 beleggers. Daar word verwys dat die aansoek reeds op 12 Desember 2019 uitgereik is, maar dat geen opponerende eedsverklarings al gelewer is nie. Dit is duidelik in lyn met die geskiedenis van vertragingstaktieke wat deur dieselfde hoof-Respondente gebruik is in ander verwante litigasie teen hulle oor die afgelope 5 jaar.

Die redes wat gegee word vir die aanstel van ‘n saakbestuurder is: die kompleksiteit van die aangeleentheid; die verwagte duur daarvan; die verwagting van tussentydse dispute; en die vertragingstaktieke, en selfs misbruik van die proses, wat tot dusver deur sekere Respondente in verwante litigasie gebruik is.

Daar word genoem dat die aansoek uit 515 bladsye bestaan en ook dat die kompleksiteit gevind kan word deur slegs te kyk na die tipe regshulp wat aangevra word.

Die kompleksiteit van die regshulp aangevra in hierdie aangeleentheid word dan uiteengesit. Daar word eerstens gevra na verlof om ‘n afgeleide aksie te in te stel deur middel van Artikel 165(6) van die Maatskappywet, namens die HS 15 tot 22 maatskappye teen Orthotouch en sekere ander individue wat in die entiteit se sake betrokke was. Die aksie eis vir die terugbetaal van die koopprys (van opgeveer R3 miljard) vir verskeie onroerende eiendomme wat betaalbaar is in terme van ‘n goedgekeurde besigheidsreddingsplan van die Hoëveld Maatskappye.

Tweedens versoek die Applikante in hierdie aangeleentheid die sertifisering van 8 soortgelyke klas-aksies om dan die beleggers in staat stel om die aankoopprys van die Hoëveld maatskappye te bekom (dit is na die koopprys betaal word aan die Hoëveld maatskappye). Derdens versoek die Applikante ook verlof in terme van Artikel 133(1)(b) van die Maatskappywet dat die aangeleentheid mag voortgaan ten spyte van die feit dat Orthotouch en die Hoëveld maatskappye in besigheidsredding geplaas is.

Die skrywe bepaal dat daar in die alternatief tot die bovermelde, en indien daar bevind word dat hierdie eise nie deur die Hoëveld maatskappye afgedwing sal kan word nie, ‘n verklarende bevel aangevra word. Hierdie verklarende bevel sal bepaal dat die individuele Respondente persoonlik aanspreeklik gehou word vir die verliese gely deur die beleggers in terme van die mislukte beleggingskemas en ook vir die terugbetaling van die oorspronklike beleggings in die skemas.

Daar word verder aan die Waarnemende Adjunkregterpresident uitgewys dat daar in hierdie aangeleentheid ‘n Reël 35(12) kennisgewing deur sekere Respondente beteken is. In die kennisgewing het die Respondente dokumente aangevra wat reeds in hul besit is, maklik toeganklik is vir hulle en die onderwerp is van die litigasie. Daar word uitgelig dat die Applikante dus van mening is dat so ‘n Reël 35(12) kennisgewing ‘n voortsetting is van die vertragingstaktieke wat gebruik word deur die Eerste Respondent (Mr Nic Georgiou) en andere in die verwante litigasie teen hulle wat reeds in 2014 begin het, maar waarvan geen van die sake al gefinaliseer of voltooi is nie. Dit is grootliks as gevolg van hul vertragingstaktieke.

Daar word uitgelig dat die hof in twee aparte tussentydse uitsprake gemeld het dat die strategieë, wat Georgiou gebruik het, ‘n misbruik van hofprosedures was. Daar word dus aan die Waarnemende Adjunkregterpresident gestel dat hierdie strategieë weer nie net verwag kan word in hierdie aangeleentheid nie, maar dat dit reeds ervaar word. Daar is byvoorbeeld nog geen opponerende eedsverklaring geliasseer nie alhoewel die aansoek al vir meer as sewe maande gelede uitgereik is.

Daar word uitgewys dat hierdie vertragings, onder andere, die volgende behels: die ongegronde bewerings van ongerymdhede (asook die onsuksesvolle hofaansoeke om hulle ter syde te stel); die aansoeke om verlof tot appèl en die daaropvolgende petisies na die Hoogste Hof van Appèl; die gekonkel deur Georgiou met die destydse nominale applikante in die klas-aksie litigasie deur vir hulle ongeopenbaarde bedrae te betaal (agter die regspan se rug) in ruil daarvoor dat hulle hul aansoek sal terugtrek; en laastens dat hy, nadat die onreëlmatige terugtrekkings ter syde gestel is, daarteen geappelleer het, maar sy appèl terug getrek het op die dag wat dit aangehoor sou word deur die Hoogste Hof van Appèl. Die skrywe noem dus dat die aanstel van ‘n saakbestuurder in hierdie aangeleentheid hopelik sal kan bydra daartoe dat hierdie tegnieke nie meer gebruik sal kan word nie.

Die skrywe gaan verder deur die Waarnemende Adjunkregterpresident se aandag te rig op verskeie hofuitsprake wat verwys het na die gedrag van Georgiou in litigasie tot dusver.

Eerstens word daar verwys na ‘n uitspraak gelewer deur Regter Ismail op 16 Maart 2017 in die Hooggeregshof van Johannesburg. Daar was vermeld dat die gedrag deur Georgiou ‘n slimmigheid was wat gely het tot ‘n misbruik van die proses en dat die gedrag ontwerp was om beleggers te ontneem van hulle regte om voort te gaan met enige aksie wat hulle sou wou instel.

Tweedens is daar verwys na ‘n uitspraak gelewer deur Regter Spilg op 1 September 2016 in die Hooggeregshof van Johannesburg. Die regter het bepaal dat die kwessies, gelig deur Georgiou, simptomaties is van ‘n Stalin verdediging waar onbelangrike kwessies op appèl geneem is met die doel om die aangeleentheid te vertraag en om kostes te laat ophoop vir die leke litigante wie se sakke nie so diep is nie. Die regter het ook bepaal dat dit ‘n klassieke geval was van ‘n party wat wawiele doen om sodoende die meriete, dat die saak op ‘n spoedige wyse aangehoor moet word, te belemmer.

Die derde uitspraak waarna die brief verwys is ‘n uitspraak gelewer deur Regter Murphy op 7 April 2017 in die Hooggeregshof van Pretoria. In die saak was daar bepaal dat die Applikante met Georgiou saamgesweer het in ‘n manier wat slegs as ‘n misbruik van die proses beskryf kan word. Regter Murphy het verder bepaal dat die Applikante se gedrag die mense, wat die litigasie befonds het en in wie se belang die saak gebring is, onbehoorlik benadeel het. Hul gedrag was georkestreer deur die persone teen wie die klas-aksie gemik is (Georgiou en ander Respondente).

Die voorlaaste punt wat die brief bespreek is die vertragings wat in hierdie spesifieke aangeleentheid ervaar word. Daar word weer verwys na die Reël 35(12) waardeur sekere Respondente dokumente aangevra het wat maklik bekombaar is of reeds in hul besit was. Daar word ook verwys daarna dat daar nog nie opponerende eedsverklarings geliasseer is nie ten spyte van die feit dat die aansoek alreeds op 12 Desember 2019 uitgereik is. Dit is heeltemal in lyn met die vertragingstaktieke wat tot dusver deur die Respondente ingespan is. Om die aangeleentheid op die ongeopponeerde rol te plaas sal nie ‘n oplossings bied nie aangesien die Respondente sonder twyfel dan hul opponerende eedsverklarings sal terughou tot net voor die saak aangehoor word. Nog tyd sal dan gemors wees.

Die laaste punt wat die brief maak om die waarnemende Adjunkregterpresident te oortuig om vir hierdie aangeleentheid ‘n saakbestuurder aan te wys is die bykomende oorwegings. Hierdie bykomende oorwegings sluit in dat dit reiskostes sal bespaar aangesien die HSAG se regspan en advokatuur in die Wes-Kaap werkend is en die aangeleenthede in Pretoria aangehoor word en ‘n saakbestuurder sal die gebruik van video-konferensies kan promoveer. Daar word ook genoem dat die meerderheid van beleggers bejaarde pensionarisse is en dat verdere vertragings in die litigasie is vir hulle

bitter ongerieflik sal wees en nie in die belang van geregtigheid sal wees nie. Daar word ook genoem dat die aansoek bestaan uit 515 bladsye.

* Nie alleen die regspan van die HSAG tree ook op in die CCAF Versnelde Aansoek nie, maar is die oorgrote meerderheid van Applikante in die gesertifiseerde klas-aksie ook lede van die HSAG. Ons deel gevolglik graag CCAF sake op hierdie forum!

COVID-19

Die Covid-19 pandemie het glad nie die klas-aksie ontspoor nie, maar slegs tydelik die proses vertraag, hoofsaaklik omdat die howe nie in normale werking is nie. Gewone hofsake (waarby ingesluit klas-aksies) word nie deur die regbank beskou as dringend of noodsaaklike sake gedurende hierdie ongekende tye nie maar dra ons iedere en elke belegger se belange op die hart.

Nieteenstaande die Covid-19 aanslag en vertragings wat die afgelope paar maande ervaar is nie, is die regspan gereed en besig om op volle stoom te kom om sodra die howe weer volskaals in werking is, voort te gaan met die regsake.

Die HSAG Bestuur wil sy lede hartlik bedank vir die volgehoue ondersteuning die afgelope tyd en is dit werklik ’n voorreg om vir ’n groep mense van hierdie kaliber op te tree.

2. **<u>JAARLIKSE OPVRAGING – 2020</u>**

Die oorgrote meerderheid lede verkies om jaarliks hul bydraes te maak en was daar die afgelope jare gepoog om gedurende Februarie / Maart ’n eenmalige gewone jaarlikse opvraging te maak. Weens Covid-19 en ander praktiese oorwegings was dit nie moontlik nie en was daar in die Mei en Junie 2020 nuusbriewe melding gemaak van die opvraging wat nou gedoen is. Sommige lede het navraag gedoen omdat hulle die vorige nuusbriewe gemis het. Hieronder volg ‘n plasing daarvan soos verskyn in die nuusbriewe:

<u>Hierdie afdeling is nie van toepassing op die CCAF of HSAG lede wie reeds hul opvragings betaal het nie.</u>

Die kostes verbonde aan litigasie is enorm, en alhoewel die ekonomie tans tot feitlike stilstand gebring is, moet die HSAG regspan 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 17 maande laas ’n opvraging gedoen en was daar intussen ’n lywige afgeleide klas-aksie vir beleggers in HS 15-18 uitgereik.

Verder, is Orthotouch en Zephan in sakeredding geplaas en moet die HSAG regspan van kundige advies gebruik maak ten einde die proses te monitor en deel te neem ten einde lede se belange te beskerm. Beleggers is reeds in die verlede in ’n blik gedruk deur die HS sakeredding en gevolglike Art 155 Reëlingskema, en is die regspan bedag daarop dat beleggers in ’n strik kan trap wanneer hul stem ten gunste van sodanige planne en skemas, en gevolglik afstand doen van hul eise.

Die HSAG Bestuur neem dus die nodige stappe om ’n herhaling van geskiedenis te voorkom. 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, is dit nodig om ’n opvraging in 2020 teen lede se state, soos hierby aangeheg, te hef.

Vir die jaar 2020 was die heffing soos gewoonlik geskeduleer vir FEBRUARIE 2020 (soos u weet het daar per abuis heffings deurgegaan aan verskeie lede) maar dit was vanjaar teruggehou tot ‘n latere stadium. Een van die redes hiervoor was dat daar op daardie stadium ook ’n behoefte was om te voldoen aan die vereistes soos neergelê in die HS 21 & 22 hofbevel en gevolglik duidelikheid te kry oor watter lede opbetaal was teen 31 Januarie en verligting aan daardie lede te gee. Die heffing is dus eers in Julie 2020 gelaai. Daar was voor hierdie 2020 heffing laas ’n jaarlikse heffing in Februarie 2019 (17 Maande gelede).

Die regspan, in oorlegpleging met die HSAG Bestuur, sal binne die volgende paar maande koppe bymekaar sit ten ’n besluit te neem rakende enige versoeke vir bydraes vir 2021 en hoe die getroue HSAG-lede weer in ag geneem kan word.

U sal dus merk dat op 3 Julie 2020 ‘n bedrag van R2 000 op u staat gelaai is (met die datum 2/2/20). Dit is nie nodig om u te bekommer oor die feit dat die state toon dat betalings 120 dae “agterstallig” sou wees nie. Dit is bloot die rekenaarprogram wat, toe die state uitgestuur moes word, outomaties begin het om die dae te tel. Die HSAG-bestuur is weldeeglik bewus van voormelde en sal geen lid as gevolg daarvan benadeel word nie. Die R2 000 opvraging vir 2020 is betaalbaar deur:

1. Alle HSAG-lede met beleggings is HS15-22.

2. Alle lede aan wie daar kwytskelding toegestaan was sedert die ontstaan van die klas-aksie.

3. Alle opbetaalde HS 21 & 22 lede wat wil deel bly van die HSAG (wat outomaties deel uitmaak van die gesertifiseerde klas-aksie en dus outomatiese CCAF lede is). U moet daarop let dat HS 21 & 22, as ’n ekstra veiligheidsmeganisme en in die lig van die Orthotouch en Zephan mislukkings, ook deel vorm van die Artikel 165 Klas-aksies.

Enige navrae deur HSAG lede sal op ’n *ad hoc* basis hanteer word. Die 2020 opvraging is nie van toepassing op die volgende persone nie (hulle is egter ongelukkig ook nie sondermeer geregtig op die voordele van die HSAG nie):

1. HS 21 & 22 HSAG lede (wat nie volop betaal was voor 31 Januarie 2020 nie) en wat die kortpad roete van betaling geneem het en die “opt-in” opsie gekies het.

2. Nie-HSAG lede wat aangesluit het deur middel van die “opt-in” opsie. Hierdie twee groepe beleggers vorm die CCAF.

Die HSAG werk nie op ’n finansiële boekjaar soos by besighede nie en word opvragings binne ’n kalender jaar gedoen. Die meerderheid van lede betaal binne 2 tot 3 maande en sal dit waardeer word indien dit steeds die geval kan wees en dat die 2020 heffing gevolglik so spoedig moontlik op datum gebring sal word.

3. HOE VERSKIL HSAG LEDE VAN CCAF LITIGANTE

3.1 Volopbetaalde Hoëveld Sindikasie beleggers, teen 31 Januarie 2020, wat HSAG aansoekvorms geteken het met beleggings in enige van die HS 21 &22 sindikasies vorm, sonder enige verdere betalings deel van die versnelde gesertifiseerde klas-aksie (“CCAF”) teen Mnr. Nic Georgiou, sy trust en Zephan. Die HS beleggers se gelde word hier kontraktueel van hierdie partye geëis.

3.2 Opbetaalde HSAG lede is die lojale persone wat jaarliks (of soos wanneer nodig) ‘n trustopvraging vir regs- en/of admin koste betaal en tot dusver verseker het dat die aksies teen Mnr. Georgiou en ander voortgaan.

3.3 HSAG lede ontvang maandelikse nuusbriewe, sms’e en/of Whatsapps en rekeningstate per epos.

3.4 HSAG lede (met beleggings in HS 21& 22) wat volop betaal was teen 31 Januarie 2020 vorm in terme van ’n Hofbevel outomaties deel van die gesertifiseerde HS 21 & 22 saak en hoef nie die aanlyn CCAF “Opt-In” aansoekvorms te voltooi of enige registrasie stappe te neem nie.

3.5 Die onus rus egter altyd op die HSAG lede self om hul maandelikse state noukeurig deur te gaan en seker te maak dat hulle inderdaad opbetaal was.

3.6 HSAG lede het ander voordele deurdat hulle (outomaties) ingesluit was in al die ander sake wat die HSAG gedryf het, die nuwe HS15-22 Artikel 165- saak (2019) en die HS 21 & 22 gesertifiseerde klas-aksie (soos hierbo vermeld).

3.7 HSAG lede kry eerstehands en deurlopend inligting en toegang tot ander aangeleenthede byvoorbeeld die Besigheidsreddingsaangeleenthede van Orthotouch en Zephan.

3.8 HSAG lede het toegang tot die toegeweide HSAG PR / skakelbeamptes asook HSAG Bestuurslede.

3.9 HSAG lede trek voordeel uit die poel van letterlik duisende beleggers wat kragte saamspan om die teenkant in die klas-aksies aan te vat. Indien dit nie vir hierdie lede was nie, sou die klas-aksie nie kon voortgaan nie.

3.10 Die HSAG lede word verteenwoordig deur prokureurs en advokatuur wat reeds sedert die begin, in 2014, by die HSAG klas-aksie betrokke is en ook deur die Hooggeregshof van Suid-Afrika geskik verklaar om die klas-aksie namens duisende beleggers te dryf.

3.11 HSAG lede wat opbetaal is, sal deel vorm van enige skikkingsonderhandelinge wat met die teenkant gevoer mag word en sal die HSAG Bestuur poog om hul eise te skik.

3.12 Die HSAG volg die litigasie roete deur die howe waar daar nie bloot lukraak kontrakte met Georgiou (of sy agente soos Hancke) geteken word, wat dit dan bloot later met allerlei verskonings nie eerbiedig word nie. Hofbevele verjaar nie maklik nie en is vir 30 jaar van krag. Dit word deur middel van die Balju van die Hooggeregshof uitgevoer en kan die partye teen wie dit gegee word nie agter ander persone skuil nie.

3.13 Die Artikel 165 afgeleide (HS15 – 22) aansoek is teen meer Respondente wat dus die net wyer span indien kapitaal ingevorder moet word.

3.14 Die HSAG se Artikel 165 (HS15 – 22) aansoek sal heelwaarskynlik dieselfde prosedures moet volg as die CCAF aansoek. Om deel te wees van die klas-aksie, nadat dit gesertifiseer is, sal lede dus soos voorheen moet “opt-In”, alternatiewelik sal hulle volopbetaalde HSAG lede moet wees. Ons vermoed dat om opbetaal te bly uiteindelik veel goedkoper is as die registrasiefooi wat benodig sal word om te “opt-in”. Dit is ook vir HSAG lede makliker om om elke jaar te begroot om ‘n bydrae te lewer as om ‘n groot eenmalige bedrag te betaal.

3.15 Die HSAG vangnet span wyd, Indien die HSAG lede se gelde byvoorbeeld nie verhaal kan word uit die CCAF Respondente sal die HSAG voortgaan teen al die ander Respondente in die Art 165 aansoek om die meeste moontlike skades te delg en te verseker dat reg en geregtigheid geskied.

4. KWYTSKELDING EN GEBEURLIKHEID

Die HSAG-bestuur het besluit om geen kwytskelding toe te staan vir 2020 nie. Die rede hiervoor is dat daar lede is wat sedert hul registrasiekoste kwytgeskeld is en geen verdere bydraes gemaak het nie. Die HSAG doen opvragings soos wat die fondse nodig word en is daar die afgelope jaar aansienlike kostes aangegaan om die Artikel 165 (HS 15 – 20) afgeleide aksie uit te reik en die HS 21 & 22 sertifiserings aansoek te behartig. Daar word egter voorspel dat daar weer in 2021 kwytskelding sal wees. Die beleggingswaarde wat vir kwytskelding sal kwalifiseer sal ook moontlik hoër wees as die historiese waardes. Daar word benadruk dat kwytskelding slegs toegestaan sal word op vooraf skriftelike versoek en dat die HSAG-bestuur volle diskresie het rakende goedkeuring daarvan al dan nie.

Ons benadruk ook dat die HSAG-regspan nie op gebeurlikheid werk nie. Hierdie tipe versoeke kan dus nie toegestaan word nie. Billike skriftelike reëlings vir afbetalings kan met die HSAG-bestuur aangegaan word, mits dit absoluut getrou nagekom word, indien eenmalige betalings van die jaarlikse opvraging geensins moontlik is nie. Lede word egter versoek om, sover moontlik, die volle bedrag eenmalig te betaal, omdat afbetalings die administrasie en koste van die saak aansienlik verhoog.

Gebeurlikheidsooreenkomste is onderhewig aan die Wet op Gebeurlikheid wat vereistes daarstel wat nie die befondsingsmodel van die HSAG, wat reeds deur die Hof goedgekeur is, vir litigasie van hierdie aard, ondersteun nie. Die duisende HSAG lede betaal verder ’n

fraksie van wat enkele individue moet betaal. In ‘n geval van gebeurlikheid moet kostes ook terugbetaal word aan die regsverteenwoordiger indien die kliënt vroegtydig onttrek. Dit is dus geensins prakties moontlik of haalbaar nie.

5. ONLANGS IN DIE MEDIA: ORTHOTOUCH, ZEPHAN SE BESIGHEIDSREDDINGS-PLANNE MISLUK DAARIN OM TE VERDUIDELIK WAT VERKEERD GEGAAN HET

’n Finansiële joernalis van Moneyweb het onlangs dié artikel gepubliseer. Soos in vorige nuusbriewe gaan ons voort om ’n vertaalde en verkorte weergawe van die artikel te gee, maar ons wil u graag uitnooi om die amptelike artikel in Engels te lees op die Moneyweb webtuiste. ‘n Skakel na die oorspronklike artikel volg onder hierdie vertaalde weergawe.

Die sakereddingsprosesse van Orthotouch en Zephan bied 'n moeilike keuse vir die 18 700 beleggers wat bykans R5 miljard van hul spaargeld in die mislukte Highveld Syndication (HS) -beleggings belê het.

Indien die beleggers vir die finale skikkingsvoorstel (dus vir die besigheidsreddingsplan) stem, sal hulle 'n paar sent in die rand ontvang en die hele sage van die afgelope nege jaar agter hulle kan plaas. Hulle sal egter nooit weet of enige onbehoorlike optrede bygedra het tot die ineenstorting van Orthotouch en Zephan nie, aangesien hulle hul eise aan 'n onbekende derde party sal sedeer.

Alternatiewelik, as hulle teen die plan stem en Orthotouch en Zephan gaan in likwidasie, kan dit moontlik 'n Artikel 417-ondersoek tot gevolg hê. Dit sal die gebeure ondersoek wat gelei het tot die mislukking van die maatskappye. Indien die ondersoek aan die lig bring dat enige ongerymdhede plaasgevind het, kan dit lei tot die ondersoek en vervolging van diegene wat verantwoordelik is. Dit sal ook moontlik die verkoop van hul bates tot gevolg hê om beleggers terug te betaal. Hierdie proses kan egter etlike jare duur.

Desnieteenstaande, indien die Artikel 417-ondersoek geen ongerymdhede onthul nie, sal beleggers minder ontvang as wat die finale besigheidsreddingsplan aanbied. Dit sal ook jare neem om uit te betaal.

Die keuse wat beleggers dus het is om nou ‘n paar sent in die rand te aanvaar of om teen die plan te stem en ‘n proses te tot stand te laat kom wat moontlik sal vasstel of daar ongerymdhede was of nie.

Besigheidsreddingsplanne

In hierdie konteks is die Orthotouch en Zephan besigheidsreddingsplanne baie belangrik. (Die planne is eenders en sal voortaan na verwys word as die Du Toit plan, aangesien hulle opgestel is deur die Besigheidreddingspraktisyn (“BRP”) Jacques du Toit.)

Die Maatskappywet bepaal in Artikel 150(2) dat ‘n ondernemingsreddingsplan al die inligting moet bevat wat redelikerwys benodig word om geaffekteerde persone te help besluit of hulle die plan moet aanvaar of verwerp.

Daarom sou dit redelik wees vir beleggers om te verwag dat hulle 'n omvattende en deursigtige oorsig sou ontvang rakende die redes waarom Orthotouch en Zephan finansiële probleme ervaar het en nie beleggers kan terugbetaal soos beoog nie.

Die plan behoort 'n gedetailleerde finansiële verslag te bied van wat verkeerd geloop het.

Ongelukkig misluk Du Toit se plan daarin.

Dit bied baie min finansiële inligting om die beleggers van insig te voorsien rakende die redes waarom die maatskappye misluk het na die implementering van die HS-besigheidsreddingsplan en die daaropvolgende Artikel 155 Reëlingskema.

Dit is noodsaaklik om die mandaat te bepaal wat Du Toit gehad het in terme van sy ondersoek.

Die mandaat begin by die implementering van die HS besigheidsreddingsplan

Orthotouch het op 14 Desember 2011 die middelpunt geword van die reddingspogings van die mislukte HS-ondernemings toe beleggers die HS-besigheidsreddingsplan ,wat Hans Klopper voorgestel het, oorweldigend goedgekeur het.

Die positiewe reaksie van die beleggers was nie sonder goeie rede nie.

Die grootste trekpleister was Nic Georgiou. Hy was destyds 'n multi-miljoenêr eiendomsmagnaat uit Bloemfontein en was wyd beskou as een van Suid-Afrika se voorste eiendoms deskundiges. Hy is gesien as die ridder op die wit perd met die finansiële hulpbronne, kundigheid en die vermoë om die ambisieuse plan uit te voer en beleggers terug te betaal.

Daarom is daar met Klopper se plan se goedkeuring 'n lyn getrek onder die historiese (oor)waardasies van eiendomme, twyfelagtige verkoopstransaksies waarby verskeie entiteite soos Bosman & Visser betrokke was, en die kommissies betaal aan finansiële adviseurs.

Orthotouch het 'n skoon leisteen verteenwoordig waaruit beleggers ingevolge die nuwe besigheidsreddingsplan terugbetaal sou word. Dit is waar Du Toit se ondersoek moes begin het.

Ponzi Skema

Dit is daarom eienaardig dat Du Toit dit nodig geag het om die gebeure, wat gelei het tot die HS-besigheidsreddingsproses, in detail te hersien. Dit was immers Klopper se verantwoordelikheid, wat hy nie nagekom het nie, om hierdie verwikkelinge na te gaan en alle geagte onreëlmatighede aan te meld.

In hierdie konteks lewer Du Toit die eienaardige uitspraak in paragraaf 66.6 van die plan: “The only conclusion I can draw from the above [sy weergawe van gebeure wat gelei het tot die mislukking van die HS-ondernemings] is the fact that some of the investors’ money was used to repay interest to investors up to such time that no new investors could be obtained to make payments.”

Hierdie is ‘n klassieke beskrywing van ‘n bedrieglike Ponzi (piramiede) skema en moet gerapporteer word aan owerhede om ondersoek te word.

Apart daarvan dat hy dit nie gerapporteer het nie, verdedig Du Toit die feit dat Klopper dit nie gedoen het nie twee paragrawe later: “My conclusion is that Hans Klopper only had 43 days to present a Business Rescue Plan to creditors. It was envisaged in terms of the Klopper BR Plan that the HS Investors would be paid in full as was the case in HS Companies 1 to 14. As a result, no further investigations were necessary and were as such conducted by Hans Klopper insofar as the actions of the directors of the HS Companies were concerned.”

Soos sake blyk, is beleggers nie ten volle betaal nie.

Du Toit se verantwoordelikheid

Du Toit se hoof verantwoordelikheid as BRP van Orthotouch en Zephan moet sekerlik wees om die gebeure te ondersoek wat gely het tot die mislukking van Orthotouch en Zephan na die implementering van die besigheidsreddingsplan op 14 Desember 2011.

Klopper se 2011 reddingsplan het beloof dat eiendom, gewaardeer teen R2.6 Miljard (asook eiendom gewaardeer teen R1.5 Miljard van Georgiou), oorgedra sou word aan Orthotouch. Nie net was hierdie eiendomme nie oorgedra nie, maar is dit ook verkoop in ‘n flits verkoping. Vandag, byna nege jaar later, wys Du Toit se plan dat die oorblywende eiendomme in die portefeulje se waarde R327 miljoen beloop. Hierdie bates sluit ‘n eis in teen die Delta Property Fund van R165 miljoen, dit beteken dat die werklike oorblywende eiendomme se waarde slegs R162 miljoen is.

Die enigste insette met betrekking tot hoe die waarde van die eiendomme gedaal het, kom voor in ‘n tabel in paragraaf 6.71. Dit toon dat Orthotouch verliese van R127.6 miljoen gely het met betrekking tot die “verkoop van eiendomme”.

Die R127.6 miljoen verlies is nie gerekonsilieer of gesegmenteer in enige wyse nie.

Dit blyk dat die enigste “beduidende” ondersoek, wat Du Toit onderneem het, was om ‘n alternatiewe verduideliking aan te bied tot die bevindinge van Moneyweb (wat gebaseer is op amptelike titelaktes van die eiendomme), wat bevind het dat Orthotouch verliese van om-en-by R782 miljoen gely het as gevolg van die verkoop van 16 eiendomme in rug-aan-rug transaksies via Orthotouch aan Accelerate.

Du Toit het Moneyweb se ondersoek geëtiketteer as ‘n “desktop investigation” en het gesê dat sy analise geen onbehoorlikhede gevind het nie. Hy het dit aan die lig gebring dat die oordragsprokureurs die verkoopspryse verkeerd geliasseer het, wat ‘n valse sin van onbehoorlikheid geskep het.

Du Toit se ondersoek word opgesom in Aanhangsel 5 en Aanhangsel 6 van die plan, maar dis vreemd dat dit nie ‘n behoorlike rekonsiliasie insluit wat verduidelik hoe die R127.6 miljoen verlies plaasgevind het nie.

Dit bied ook nie enige inligting rakende hoe die winste uit die eiendomme gebruik is nie. Dit is belangrik aangesien van die eiendomme se verbande af betaal is met hierdie winste.

Du Toit het ook aan Moneyweb bevestig dat hy nie die verkoop van 15 eiendomme deur entiteite verwant aan Georgiou via Orthotouch aan Delta Property Fund ondersoek het nie. Hierdie verkoopstransaksies het tot ‘n R314 miljoen verlies vir Orthotouch gely. Sy plan verwys glad nie na enige van hierdie transaksies nie.

Operasionele prestasie

Du Toit se plan gee ook geen betekenisvolle inligting rakende die operasionele prestasies van Orthotouch en Zephan nie. Die enigste insigte rakende operasionele prestasie kom voor in tabel 6.71, wat verwys na die kontantvloei van die eiendomme.

Proposed Business Rescue Plan **31 March 2020**

Orthotouch (Pty) Ltd and Zephan (Pty) Ltd			
Information			
Detail		**At BRP**	
BRP			
Orthotouch Liability as at HS Companies Business Rescue	1	R -4,754,900,000.00	
Property Value	2	R 2,598,013,768.00	
Default Value		R -2,156,886,232.00	
Current			
Orthotouch Liability as at HS Companies Business Rescue	3	R -3,922,041,832.00	
Property value and claims	4	R 327,000,000.00	
		R -3,595,041,832.00	
Investors Settled	5	R -832,858,168.00	
Running Expenses	6	R -420,000,000.00	
Loss on sale of property	7	R -127,579,599.00	
Interest paid	8	R -1,214,522,709.00	
Notes:			
Nr1 - As per BRP at December 2011			
Nr2 - As per BRP valuation at December 2011 clearly indicating the liability against the value available			
Nr3 - Option 1 investors remaining. Investors to the value of R565,608,572 accepted the APF offer from Third Party.			
Nr4 - As per schedule attached here to as Annexure 7.2			
Nr5 - Investors settled, including option 2 and 3 investors as per SOA.			
Nr6 - Legal costs, Office rentals, Salaries, Consulting fees, Computer Expenses, Netrofile, Insurance, Printing and Stationery, travelling expenses, telephone costs			
Nr7 - Difference between property value at start of BRP and actual selling price as per schedule			
Nr8 - Interest paid since March 2011 till September 2018			

Die tabel toon lopende uitgawes van ‘n presiese bedrag van R420 miljoen. Hierdie uitgawes bevat klaarblyklik regskostes, salarisse, konsultasie fooie en ander administratiewe kostes.

Ongelukkig is hierdie inligting nie in enige detail gesegmenteer nie. (Dit sou byvoorbeeld van kritieke belang wees om te sien hoeveel Orthotouch spandeer het om meer as 20 hofsake te beveg, en aan wie dit betaal is.)

Die bron van die inligting in die tabel word ook nie blootgelê nie. Dit is kommerwekkend aangesien Du Toit verklaar dat Zephan laas in 2009 geouditeerde state gepubliseer het, en Orthotouch laas in 2015.

Dit is van kritiese belang dat Du Toit se plan inligting weglaat rakende Orthotouch en Zephan se huurinkomste, eiendomsverwante uitgawes en operasionele kontantvloei.

Dit is beduidend aangesien die eiendomsportefeulje, met Georgiou aan die stuur, 'n beduidende huurinkomste kon oplewer. As daar byvoorbeeld aanvaar word dat die eiendomme van R2,6 miljard, wat na Orthotouch oorgedra sou word, teen 'n opbrengs van 8% bestuur is, moes Orthotouch huurinkomste van meer as R200 miljoen per jaar ontvang het.

Hierdie weglating is ook verdag aangesien dit voorkom dat Du Toit toegang gehad het tot sulke inligting. In ‘n brief wat Du Toit aan die krediteure gestuur het, na die publikasie van die besigheidsreddingsplan, onthul hy nog ‘n bedrag wat betrekking het tot oënskynlike handelsverliese van R567 miljoen wat gely is, bykomend tot die R420 miljoen.

In die brief meld Du Toit dat hierdie verliese betrekking het op alle huurinkomste en uitgawes wat verband hou met eiendom.

Die minste wat die Orthotouch en Zephan besigheidsreddingsplanne moes bereik, was om voormalige HS-beleggers van geouditeerde, deursigtige en gedetailleerde boekhouding te voorsien van elke rand en sent wat die twee ondernemings verdien en bestee het.

Dit kan ook van kritiese belang wees in die konteks dat die oorgrote meerderheid van die eiendomme voor 2015 aan derde partye verkoop is. Daar kan dus afgelei word dat Orthotouch en Zephan vyf jaar gelede in ernstige finansiële moeilikheid was, dit mag dus daarop dui dat ‘n besigheidsredding of likwidasie proses baie vroeër ingestel moes word.

Suksesfooi

Met die voordeel van nadenke is dit ook moontlik dat die besigheidsreddingsproses moontlik nie die ideale struktuur was om uit te vind wat met beleggers se geld gebeur het nie.

Die vergoedingstruktuur wat in die reddingsplanne geopenbaar is, spoor Du Toit grootliks aan om die besigheidsreddingsplanne goedgekeur te kry. Du Toit sal 'n “suksesfooi” van 2,5% van die finale skikkingsbedrae ontvang indien krediteure die plan goedkeur. Hierdie bedrag kan meer as R5 miljoen beloop. Dit is benewens die bedrag van R2 000 per uur tot 'n maksimum van R25 000 per dag wat hy al verdien het sedert hy op 14 November 2019 die BRP geword het.

Alhoewel suksesfooie wettig is en gereeld aangebied word tydens besigheidsreddingsverrigtinge, bly dit 'n gebrekkige stelsel omdat dit duidelik nie 'n onpartydige besluit, om moontlike onreëlmatighede te ondersoek, aanspoor nie, aangesien dit die BRP se vergoeding kan beïnvloed.

Moeilike besluit

Op grond van die beperkte inligting in die besigheidsreddingsplanne, is dit te betwyfel of dit 'n belegger of ‘n ander belanghebbende in staat stel om Du Toit se gevolgtrekking te bevestig dat daar geen ongerymdhede was in verband met die verkoop van eiendomme of op operasionele vlak nie.

Dit mag ook debatteerbaar wees of Du Toit tot hierdie gevolgtrekking sou kon kom aangesien daar geen opgedateerde geouditeerde finansiële state van Zephan en Orthotouch was nie.

Beleggers staan dus voor ‘n moeilike besluit: of hulle stem vir die plan en ontvang ‘n paar sent in die rand as ‘n finale skikking, óf hulle stem teen die plan wat moontlik ‘n Artikel 417 ondersoek tot gevolg sal hê wat sal bepaal of daar enige onreëlmatighede was.

Die laasgenoemde opsie sal waarskynlik beteken dat hulle dalk vir baie jare geen finale betaling, indien enige, sal ontvang nie.

Hierdie is ’n vertaalde en verkorte 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 17 Junie 2020 en die amptelike weergawe is beskikbaar by:
https://www.moneyweb.co.za/in-depth/investigations/orthotouch-zephan-rescue-plans-fail-to-reveal-what-went-wrong/

6. 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, sindikasienommers en verwysingsnommers (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 kwytskelding 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;
- **hsagestates@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.

7. BELANGRIKE ALGEMENE TERME EN VOORWAARDES

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

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

Vriendelike groete
HSAG-Bestuurskomitee
Kontak die HSAG en prokureurs by:
Tel: (021) 887 7877
hsactiongroup@gmail.com

AFRIKAANS HIERBO

MONTHLY NEWSLETTER: JULY 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.

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

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

HSAG OFFICIAL NEWSLETTER –CONTENTS

1. THE WHEELS ARE TURNING: APPLICATION FOR TWO CASE MANAGERS

The HSAG legal team (which is the same legal team bringing the CCAF Fast Track application) took the first possible opportunity, to add their voice to the HSAG members who asked why their matters were not considered urgent by the South African legal system. Unfortunately, the whole world is experiencing unprecedented times and the South African legal system is no exception. The courts decided to hear only extremely urgent matters during the lockdown period but gradually began to provide for alternative ways of hearing cases and began to implement video conferencing in certain cases.

Although the HSAG does not have any direct influence on which matters are considered urgent by the judiciary (and civil claims for capital amounts traditionally do not fall into this category), two strongly worded letters were written to the Acting Deputy Judge President of the High Court in Pretoria wherein a case manager was requested for both the HS 21 and 22 Fast Track application as well as the Section 165 Application (Derivative action) for certification of, inter alia, the HS15-20 cases.

The respondents (Mr Nic Georgiou, assisted by Mr Hans Klopper and others) are central in both HSAG matters and have so far done everything in their power to try to thwart matters as far as possible.

The HSAG has learned from experience that applying for a case manager will undoubtedly pay off. A case manager is a Judge of the High Court and ensures that neither party abuses the court process and establishes a timetable that both parties must comply with. It obliges both parties to adhere to the court days without having to make further applications to compel parties to do same, which may take several months. In the Fast Track application, a case manager was of great value.

The HSAG has already obtained a case management meeting for the HS 21 & 22 class application, which will be held via video conference on 12 August 2020. This meeting will take place between the various legal representatives before the Honourable Acting Deputy Judge President Potterill. Following this meeting, Judge Potterill will decide whether a case manager will be assigned to this matter and which procedures should be followed. The legal team is excited and positive about the meeting, but realises that court rolls have been overwhelmed with similar requests during these uncertain times.

The HSAG legal team also wrote a letter in the Section 165 Application (Derivative action) to the Acting Deputy Judge President requesting that a case manager also be appointed for this matter. We are awaiting prompt feedback.

The letters are repeated hereunder for your perusal as it sets out the salient features and facts of both matters.

LETTER SENT TO THE ACTING DEPUTY JUDGE PRESIDENT WITH REGARDS TO THE HS 21 & 22 ("CCAF") MATTER:

RE: REQUEST FOR CASE MANAGEMENT
MATTER: WAXHAM A.O. VS GEORGIOU AND FOUR OTHERS (CASE NUMBER 9272/20 GP ("*THE APPLICATION*")

1. We refer to the above matter.

2. We hereby respectfully request that the above class application be placed under case management in terms chapter 6.4 of the Practice Manual.

3. We act for the five (nominal) Applicants and for the class of investors involved. The application was issued on 7 February 2020 pursuant to an order by the honourable Mrs Justice Tolmay of 10 December 2019, in terms of which she issued a certificate allowing the Applicants to commence such class litigation.

4. No opposing affidavit has even been filed yet, which is in keeping with the history of delaying tactics deployed by the same Respondents in related litigation against them, as set out later below.

5. The reason for the request are as follows:

   a) The complexity of the matter;

   b) The expected duration thereof;

   c) The anticipation of interlocutory disputes;

   d) The delaying tactics deployed – and even abuse of the process – thus far by some Respondents in the class action litigation until now *and* in the related litigation involving the same Respondents.

A. Complexity of matter and background of litigation (reflecting various delaying tactics):

6. The claim which forms the subject matter of the application is based on so-called buy-back agreements between investors and Respondents. It took Applicants five years to obtain the said certificate for leave to proceed (issued by Tolmay J) with this current class application. Similar delaying tactics are expected in this current application.

7.

7.1 This is so since as far back as 31 October 2014, the class action litigation commenced under case number (80811/14), in which leave was sought to institute four separate but related class actions on behalf of about 9000 investors who have bought shares in one or more of four separate property syndication schemes.

7.2 The claims based on the aforementioned buyback agreements were *included* in the various grounds set out in such 2014 application.

7.3 These syndication schemes are known generally as the "Highveld syndication schemes" or also as the "Pickvest property schemes".

7.4 The intended claims referred to in such papers are against various directors and individuals involved in the said property syndication schemes based on, amongst others, alleged fraudulent and reckless dealings and misrepresentation. The main role player was First Respondent ("*Georgiou*"). More than R3,6 billion was invested by members of the public (the investors) in the syndication schemes.

(The said syndication schemes were conducted through four companies with related names, being "Highveld Syndication No 19 Ltd" to Highveld Syndication No 22 Ltd – which have in the meantime all been placed under Business Rescue).

7.5 Again, the buyback agreements – in respect of which the class application has now been issued – formed part of the above prospectuses.

8. The Scheme of Arrangement:

8.1 One of the reasons why the class action litigation (issued in 2014) in this court is being delayed, is that a Scheme of Arrangement under section 155 of the Companies Act of 2008 ("*the Arrangement*") was proposed in November 20104. The terms of the Arrangement purport to thwart the class action claims by absolving all the syndication companies and individuals concerned from liability for the failed scheme.

8.2 The Arrangement was proposed after the eight Highveld companies (No 15 – 22) were earlier, in 2012, placed under Business Rescue. The business rescue plan ('*the Plan*") entailed that a new company, Orthotouch Ltd, which is controlled by Georgiou, would acquire all properties and then assume some of the obligations, which were

reduced, of the Highveld companies towards investors, albeit scaled down.

8.3 When Orthotouch Ltd did not meet its obligations under the Plan, the Scheme of Arrangement was proposed which further watered down the obligations towards investors.

9. Shortly after the issuing of the 2014 (main) application herein, Orthotouch obtained an *ex parte* order in the Johannesburg High court whereby the Arrangement was sanctioned under section 158(7) of the Companies Act of 2008.

10. In approaching the Johannesburg court *ex parte* for such sanctioning, Orthotouch failed to disclose to the court various facts, including the fact that the main (2014) application in this court was issued shortly before (in which allegations of serious misconduct on the part of the various individuals and entities are made). Orthotouch also failed to disclose that the Arrangement purports to absolve all such persons from liability.

11. Application to set aside the Scheme of Arrangement:

With regard to the application to set aside the Arrangement, and the delays thereto, I mention the following:

11.1 Given the circumstances under which the order for the sanctioning was obtained, and given the fact that the Arrangement purports to absolve all entities and individuals from liability, it was decided to first apply to set aside the order by which it was sanctioned, alternatively for leave to appeal against such sanctioning.

11.2 Therefore such application – to which I shall refer to as "*the setting aside application*" – was issued in March 2015 in the Johannesburg court by like-minded investors who support the class action. They are all members of the Highveld Syndication Action Group ("HSAG") – a voluntary group of investors who support and drive the intended class action litigation.

11.3 At that stage, it was envisaged that such setting aside application could be finalised within a few months, which contributed to the decision to first try and set aside the Arrangement before continuing with the main application in this court.

11.4 No opposing affidavits have however been filed in the setting aside application due to the opportunistic and even *male fide* stratagems employed by Georgiou to frustrate and delay it. In two separate interlocutory judgments (one in this court and one in Johannesburg High court) it was held that ploys by Georgiou executed in both courts amount to "*an abuse of the court process*", which is referred to in the issued interlocutory application.

11.5 These delaying tactics are highly relevant, we submit, as similar delaying tactics could be expected in the class application.

11.6 From the last few paragraphs of the founding affidavit to the so-called fast track application referred to below, it will be noted that such delays involved, amongst others, the following:

- Ill-founded claims of irregularities (and unsuccessful court applications to set them aside);

- the applying for leave to appeal against such dismissals and, subsequently, the petitioning of the SCA;

- conspiring by Georgiou with the then nominal applicants in the class action litigation (in both said courts) to pay them undisclosed amount of money behind the back of this firm in return for them "withdrawing", the litigation;

- then, after such irregular withdrawals have been successfully set aside on behalf of investors, Georgiou appealed but, on the day of the hearing before the SCA, withdrew such appeal tendering costs, as sought, on a punitive scale.

11.7 These delaying tactics, as expected, are already employed by Georgiou and his co-Respondents in the current (class) application, as described below. This is in keeping with the overall strategy by Georgiou and others to frustrate and delay matters as much as possible. A case manager we submit could assist to avoid such tactics from being employed.

<u>The application to fast track the buy-back claims:</u>

12. As stated, amongst the various grounds for the claims in the 2014 proposed class action proceedings, are the claims based on the buyback agreements. These buyback agreements were entered into with all investors that invested in Highveld 21 and 22, which involve a few thousand investors.

13. As stated above, it was initially decided to first set aside the Arrangement before continuing with the issued (2014) main application in this court.

14. Given, amongst others, the delays and stalling of the application to set aside the Scheme of Arrangement, it was decided to issue an interlocutory application on 26 July 2018 seeking the leave to proceed with "part of" the intended class action, i.e. the claims in relation to the buyback agreements (and which claims are not affected by the Scheme of Arrangement). It is that application that resulted in Tolmay J granting leave to commence the class application.

15. Various delaying tactics were also employed by Georgiou and others in such so-called fast track application – but eventually Tolmay J heard the matter by December 2019 and granted leave to proceed with the current class application.

16. Delays experienced in the current application:

Despite the fact that the application was issued on 7 November 2020, no opposing affidavit have been filed yet, which is in keeping with the delaying tactics of Respondents in the past, as set out above. To place the matter down on the unopposed roll will just result in an opposing affidavit filed soon before the hearing, given that Respondents will no doubt file an opposing affidavit at some stage when push comes to shove. That is, for example, one of the many reasons why we believe the matter needs to be case managed.

B. Further Considerations:

17. As a further relevant consideration, we point out that we (and our counsel) are situated in the Western Cape, making it expensive and impractical to travel to Johannesburg frequently for postponements or other unnecessary interlocutory disputes. A Judge managing the process is likely to obviate unnecessary travels and appearances – especially if such pre-trial meetings could be conducted via video conferencing facilities as has become common place during the so-called lock down periods.

18. The majority of the investors are elderly pensioners, many with limited or no funds. Further delays in concluding any litigation on their behalf is highly inconvenient and not in the interest of justice.

19. The issued court application comprises 222 pages including annexures.

20. This letter will be forwarded, as required by the practice note, to the legal representatives of all five respondents – who are all represented by Kyriacou Incorporated from Melrose North.

21. We look forward to hearing from you at your earliest convenience.

LETTER SENT TO THE ACTING DEPUTY JUDGE PRESIDENT WITH REGARDS TO THE HS 15 - 22 MATTER (DERIVATIVE ACTION):

RE: REQUEST FOR CASE MANAGEMENT
MATTER: SMITH A.O. V GEORGIOU AND OTHERS (CASE NUMBER 93417/19 GP) ("THE APPLICATION")

1. We refer to the above matter.

2. We hereby respectfully request that the above application be placed under case management in terms chapter 6.4 of the Practice Manual.

3. The application is for leave to institute a class action on behalf of, potentially, 18,000 investors.

4. We act for the twelve (nominal) Applicants who seek to ultimately represent the classes concerned in the anticipated class actions.

5. The application was issued on 12 December 2019 – yet no opposing affidavits have even been filed yet, which is in keeping with the history of delaying tactics deployed by the same (principal) Respondents in related litigation against them over the past five years as set out later below.

6. The reason for the request for case management are as follows:

    a) The complexity of the matter;
    b) the expected duration thereof;
    c) the anticipation of interlocutory disputes;
    d) the delaying tactics deployed – and even abuse of the process – thus far by some Respondents in related litigation.

A. Complexity of matter and background of litigation (reflecting various delaying tactics):

7. The application papers comprise 515 pages (including annexures).

8. The application is complex simply from considering the type of relief sought.

8.1 Applicants firstly seek leave to bring a derivative action, under section 165(6) of the companies Act 2008 ("the Act"), on behalf of each of the eight so-called Highveld Syndication companies (Fifteenth to Twenty Second Respondents) against Orthotouch Ltd (Ninth Respondent) and certain other individuals (Respondents) involved in its affairs, including Mr Nic Georgiou (First Respondent), his sons and the current and erstwhile directors of Orthotouch Ltd – for payment of the purchase prices of various immovable properties which are due in term of an approved business rescue plan ("*the Plan*") of the Highveld companies.

8.2 They secondly seek leave to institute (i.e. certification of) eight separate but similar class actions on behalf of the various investors (over 18,000 of them) in each of the eight Highveld companies against the Highveld companies for payment of the "proceeds" of the said claim by the Highveld companies under the said derivative action.

(The recovery of approximately R3 billion is sought by means of the envisaged class actions).

8.3 Applicants also seek leave, in terms of section 133(1)(b) of the Act, that the proceedings commence despite the fact that Orthotouch and the Highveld companies are under business rescue.

8.4 In the alternative to the above relief – and in the event of it being held that such claims by the Highveld companies are not enforceable – that Applicants be granted leave to institute eight separate class actions on behalf of the investors (in each of the eight respective Highveld companies) for a declaratory order that the said individuals referred to are personally liable to the investors for:

(i) The losses incurred by the investors under the failed said investment schemes and repayment of their initial investments in the scheme/s;

(ii) Alternatively, for the amounts due resulted from the non-performance by Orthotouch of its obligations in terms of the said Business Rescue Plan - and that such debt (claim) be paid to investors in accordance with their respective shareholding in a particular Highveld company.

9. Related litigation, amongst others, is a pending application to set aside an order of 26 November 2014 of the High Court (Johannesburg) under case number 42334/14 (by which the Scheme of Arrangement in respect of Orthotouch was sanctioned) – in order to be able proceed with further related litigation, namely an application issued in October 2014 under case number (80811/14) for leave to (also) institute a class action against parties of which many are current

Respondents in the instant matter – and which class action is based on slightly different grounds but involving the same Highveld Syndication investment scheme (but only relating to four of the said eight Highveld Syndication companies.

10. Since the issuing of the (instant) application, some Respondents filed rule 35(12) Notices – in respect of documentation which are either already in their possession or are the subject matter of the related litigation or are easily accessible by them. Applicants are, therefore, of the view that such rule 35(12) notices is a continuance of the delaying tactics employed by First Respondent (Mr Nic Georgiou) and others in the related litigation against them which commenced in 2014 but none of which have been finalised or completed largely due to such delaying tactics.

11. In two separate interlocutory judgments in the earlier 2014 class action application (one in this court and one in the Pretoria High court) it was held that the stratagem employed by Georgiou and other Respondents executed in both courts amounted to "*an abuse of the court process*". This firm represented the applicants in all the aforesaid litigation.

12. These delaying tactics are highly relevant, we submit, as similar delaying tactics are not only expected in the current litigation but are already experienced (for example no opposing affidavits have been filed for more than seven months since issuing of the application).

13. For example, from the last few paragraphs of the founding affidavit in the so-called "Fast Track application" (which was interlocutory to the said October 2014 class action application and in which most of the current Respondents were also respondents) it will be noted that such delays involved, amongst others, the following:

    i) IIll-founded claims of irregularities (and unsuccessful court applications to set them aside);

    ii) the applying for leave to appeal against such dismissals and, subsequently, the petitioning of the SCA;

    iii) conspiring by Georgiou with the then nominal applicants in the class action litigation (in both said courts) to pay them undisclosed amount of money behind the back of this firm in return for them "withdrawing", the litigation;

    iv) then, after such irregular withdrawals have been successfully set aside on behalf of investors, Georgiou appealed but, on the day of the hearing before

the SCA, withdrew such appeal tendering costs, as sought, on a punitive scale.

14. In numerous judgements remarks were made about the conduct of Georgiou in the litigation thus far:

14.1 In a judgment handed down by Ismail J on 16 March 2017 in the Johannesburg High Court under case number 42334/2015, it was held that the conduct by Georgiou was a stratagem amounting to an abuse of process and that the conduct was designed to deprive investors of their rights to proceed with any intended action they may have.

14.2 In a judgment handed down by Spilg J on 1 September 2016 in the Johannesburg High Court under case number 42334/2014 it was held that the issues raised by Georgiou were symptomatic of a Stalingrad defence where side issues were taken on appeal simply to delay the matter and build up costs for lay litigants against those who have deep pockets. It was also held that it was a classic case of a party performing cart wheels with no purpose other that to frustrate the merits of the case being dealt with expeditiously.

14.3 In a judgment handed down by Murphy J on 7 April 2017 in this Court under case number 80811/14, it was held that the erstwhile applicants in the matter colluded with Georgiou in a matter that can only be described as an abuse of the court process. Murphy J furthermore held that erstwhile applicant's conduct improperly prejudiced the people who had funded the litigation and in whose interest, it was brought. Their conduct was orchestrated by the persons at whom the class action was aimed (Georgiou and other Respondents).

15. <u>Delays experienced in the current application:</u>

15.1 As stated above, since the issuing of the application, some Respondents filed rule 35(12) Notices – in respect of documentation which are either already in their possession or are the subject matter of the related litigation or are easily accessible by them.

15.2 Despite the fact that the application was issued on 12 December 2019, no opposing affidavit have been filed yet, which is in keeping with the delaying tactics of Respondents in the past, as set out above. To place the matter down on the unopposed roll will just result in an opposing affidavit being filed soon before the hearing, given that Respondents will no doubt file an opposing affidavit at some stage when push comes to

shove. That is, for example, one of the many reasons why we believe the matter needs to be case managed.

B. <u>Further Considerations:</u>

16. As a further relevant consideration, we point out that we (and our counsel) are situated in the Western Cape, making it expensive and impractical to travel to Johannesburg frequently for postponements or other unnecessary interlocutory disputes. A Judge managing the process is likely to obviate unnecessary travels and appearances – especially if such pre-trial meetings could be conducted via video conferencing facilities as has become common place during the lock down periods.

17. The majority of the investors are elderly pensioners, many with limited or no funds. Further delays in concluding any litigation on their behalf is highly inconvenient and not in the interest of justice.

18. The issued court application itself comprises 515 pages including annexures, as already mentioned earlier.

19. This letter will be forwarded, as required by the practice note, to the legal representatives of all Respondents.

20. We look forward to hearing from you at your earliest convenience.

***Not only does CCAF have the same legal representatives, but the overwhelming majority of the Applicants in the certified class action are also HSAG members. We therefore gladly also share CCAF cases on in the HSAG Newsletter.**

<u>COVID-19</u>

The Covid-19 pandemic didn't derail the class action in any way, but has nonetheless slowed down the process, mainly because courts are not in normal operation. Ordinary court cases (including class actions) are not considered in terms of the law as urgent or necessary cases during these unprecedented times but we continue to have the interests of each and every investor at heart.

Notwithstanding the Covid-19 onslaught and delays that have been experienced the past few months, the legal team is ready and set to proceed with the legal matters as soon as courts are fully operational.

Die HSAG Steering Committee wishes to thank its members for their continued support in recent times and sees it as a big privilege to represent a group of this calibre.

2. **ANNUAL CONTRIBUTION – 2020**

The vast majority of members prefer to make their contributions annually and in recent years an attempt has been made to make a usual once-off annual requisition during February / March. Due to Covid-19 and other practical considerations, this was not possible and in the May and June 2020 newsletters, mention was made of the contributions now being requested. Some members enquired because they missed the previous newsletters. Below is a repetition of the relevant extracts from the previous newsletters:

***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 17 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. In the past investors were “coerced” by the HS business rescue and subsequent Sec 155 Scheme of Arrangement, and the legal team is weary of investors walking into a trap when voting in favour of such plans and schemes, and consequently waiving their claims.

The HSAG Steering Committee therefore takes all steps necessary to prevent a repeat of history. This entails, 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.

For the year 2020, the levy was, as usual, scheduled for FEBRUARY 2020 (as you know some were sent to several members prematurely by mistake) however, it was withheld until a later stage this year. One of the reasons for this was that at that stage there was also a need to comply with the requirements as laid down in the HS 21 &

22 court order and consequently to obtain clarity on which members were paid-up by 31 January and to provide relief to those members. The contribution was therefore only levied in July 2020. Before this 2020 contribution, the previous annual contribution was in February 2019 (17 Months ago).

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 and how the faithful HSAG members can again be reconsidered and accommodated.

You will therefore notice that on 3 July 2020 an amount of R2 000 was levied to your statement (with the date 2/2/20). It is not necessary to worry about the fact that the statements show that payments are 120 days "overdue". It is simply the computer program that, when the statements had to be sent out, automatically started counting the days. The HSAG Steering Committee is well aware of the aforesaid and no member will be penalised as a result. The R2 000 contribution for 2020 is payable by:

1. All HSAG members with investments in HS15-22.

2. All members who have been granted an exemption since the inception of the class action.

3. All fully-paid HS 21 & 22 members who wish to remain part of the HSAG (who are automatically part of the certified class action and therefore automatic CCAF members). You should note that HS 21 & 22 as an extra safety mechanism and in the light of the Orthotouch and Zephan business failures, also form part of the Section 165 Derivative Action.

Any enquiries by HSAG members will be dealt with on an *ad hoc* basis. The 2020 contribution does not apply to the following persons (unfortunately, they are also not automatically entitled to the benefits of the HSAG):

1. HS 21 & 22 HSAG members (who were <u>not</u> paid in full before 31 January 2020) and who took the shortcut route of payment and chose the “opt-in” option.

2. Non-HSAG members who have joined through the “opt-in” option. These two groups of investors form the CCAF.

The HSAG does not work on a financial book year as businesses do and contributions are made within a calendar year. The majority of members pay within 2 to 3 months and it will be appreciated if this will still be the case and that the 2020 fees will consequently be paid as soon as possible.

3. HOW DO HSAG MEMBERS DIFFER FROM CCAF LITIGANTS

3.1 Paid-up Highveld Syndication investors by 31 January 2020, who have completed HSAG application forms, with investments in HS 21 & 22 syndications, without any further payments, form part of the Certified Class Action Fast track ("CCAF") against Mr. Nic Georgiou, his trust and Zephan. The HS investors' investments are contractually claimed from these parties.

3.2 Paid-up HSAG members are the loyal persons who annually (or as when necessary) pay contribution to legal and/or admin costs and have ensured that the claims against Mr. Georgiou and others have continued thus far.

3.3 HSAG members receive monthly newsletters, SMSs and/or WhatsApps and contribution statements via email.

3.4 HSAG members (with investments in HS21 & 22) who were paid-up by 31 January 2020 in terms of the Court order, automatically form part of the certified HS21 & 22 case and do not have to complete the online CCAF "opt-in" application forms or take any registration steps.

3.5 However, as always, the onus rests on HSAG members to go through their monthly statements carefully and make sure that they are indeed fully paid up.

3.6 HSAG members have other benefits in that they were (automatically) included in all the other matters driven by the HSAG, the new HS15-22 Section 165 Derivative action (2019) as well as the HS 21 & 22 certified class action ("CCAF") (as mentioned above).

3.7 HSAG members receive first-hand and ongoing information and access to information pertaining to other matters, for example the Business Rescue Affairs of Orthotouch and Zephan.

3.8 HSAG members have access to the dedicated HSAG PR / liaison officers as well as HSAG Steering Committee members.

3.9 HSAG members benefit from the pool of literally thousands of investors joining forces to take on the opposing party in class actions. If it were not for these members, the class actions would not have been able to continue.

3.10 The HSAG members are represented by lawyers and advocates that have been involved in the HSAG class action since the beginning, in 2014 and have also been declared suitable by the High Court to conduct the class action on behalf of thousands of investors.

3.11 HSAG members who are paid-up will form part of any settlement negotiations that may be entered into with the opposing party and the HSAG Steering Committee will attempt to settle their claims.

3.12 The HSAG follows the litigation route through the courts where random contracts are not signed with Georgiou (or his agents like Hancke), which are then later simply not honoured with all sorts of excuses. Court orders do not easily prescribe and are in force for 30 years. It is carried out by means of the Sheriff of the High Court and the parties against whom it is given, cannot hide behind other persons.

3.13 The Section 165 derivative action (HS15 - 22) is against added Respondents which therefore spans the net wider if claims have to be collected in the event of judgment against the Respondents.

3.14 The HSAG's Section 165 derivative action (HS 15 - 22) will most likely have to follow the same procedures as the CCAF application. To be part of the class action, after it has been certified, members will therefore have to "opt-in" as before, alternatively they will have to be fully paid-up HSAG members. We suspect that remaining a paid-up HSAG member is ultimately much cheaper than the registration fee that will be required to “opt-in”. It is also easier for HSAG members to budget each year to make a contribution than to pay a large lump sum.

3.15 The HSAG catch net spans a wide range. If, for example, the HSAG members' fees cannot be recovered from the CCAF Respondents the HSAG will proceed against all the other Respondents in the Section 165 Derivative action to compensate the most possible damage and ensure that justice is done.

4. EXEMPTION AND CONTINGENCY

The HSAG Steering Committee has decided not to grant an exemption from contributions and fees for 2020. The reason for this is that there are members who have been exempted since paying their initial registration costs and have not made any further contributions. The HSAG requests contributions as the funds are required and significant costs have been incurred in the past year to issue the Section 165 derivative action (HS 15 to 22) and to conduct the HS 21 & 22 certification application. However, it is predicted that there will be an exemption in 2021. The investment value that will qualify for exemption will also likely be higher than the historical values. It is emphasised that exemption will only be granted on prior written request and that the HSAG Steering Committee has full discretion regarding its approval or not.

We also emphasise that the HSAG legal team does not work on a contingency basis. These types of requests can therefore not be granted. Fair written arrangements for

payment in installments can be made with the HSAG Steering Committee, provided it is faithfully adhered to and once-off payments of the annual contributions are by no means possible. Members are however, requested to pay, as far as possible, the full amount, as installments significantly increase the administration costs of the case.

Contingency agreements are subject to the Contingency Act which sets requirements that do not support the HSAG's funding model, which has already been approved by the Court, for litigation of this nature. Furthermore, the thousands of HSAG members pay a fraction of what some individuals have to pay. In a case of contingency, costs must also be reimbursed to the legal representative if the client withdraws early. It is therefore by no means practically possible or feasible.

5. RECENTLY IN THE MEDIA: ORTHOTOUCH, ZEPHAN RESCUE PLANS FAIL TO REVEAL WHAT WENT WRONG

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 at: https://www.moneyweb.co.za/in-depth/investigations/orthotouch-zephan-rescue-plans-fail-to-reveal-what-went-wrong/ In this instance, the article will be repeated verbatim to ensure its accuracy.

Orthotouch, Zephan rescue plans fail to reveal what went wrong

Investors have a difficult decision to make.

The Orthotouch and Zephan business rescue processes present a difficult choice for the 18 700 investors who invested nearly R5 billion of their savings in the failed Highveld Syndication (HS) companies.

If the investors vote for the final settlement proposal (for the business rescue plan), they will receive a few cents in the rand and will be able to put the whole saga of the past nine years behind them. However, they will then never know whether any improper conduct contributed to the implosion of Orthotouch and Zephan, as they will cede all their claims to an unknown third party.

On the other hand, if they vote against the plan and Orthotouch and Zephan go into liquidation, it may trigger a Section 417 investigation into the events leading up to the failure of the companies. If the inquiry reveals that any improprieties occurred, it may lead to the investigation and prosecution of those responsible, and possibly the sale of their assets to repay investors. However, this process may take several years.

Having said this, if a Section 417 inquiry reveals no improprieties, investors may receive less than the final settlement offer, and it will take years to be paid out.

The choice facing investors is to take a few cents in the rand now, or vote against the plan and initiate a process that may reveal whether there were any improprieties or not.

Business rescue plans

In this context, the Orthotouch and Zephan business rescue plans are critical. (The plans are similar and will henceforth be referred to as the Du Toit plan, as they were penned by the business rescue practitioner Jacques du Toit.)

The Companies Act states in Section 150 (2) that a "business rescue plan must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan".

It may, therefore, be reasonable for investors to have expected a comprehensive and transparent overview of why Orthotouch and Zephan fell into financial difficulty and are unable to repay investors as envisaged.

The plan should offer a detailed financial account of what went wrong. Unfortunately, Du Toit's plan fails to do this.

It offers desperately little financial information to provide any investor insights into why the companies failed subsequent to the implementation of the HS business rescue plan and the ensuing Section 155 Scheme of Arrangement.

It is therefore essential to frame the mandate Du Toit had in terms of his investigation.

The mandate starts at the implementation of the HS business rescue plan

Orthotouch became the centre of the rescue efforts of the failed HS companies on December 14, 2011, when investors overwhelmingly approved the HS business rescue plan proposed by the HS business rescue practitioner (BRP), Hans Klopper.

The positive response from investors was not without good reason.

The main attraction was Nic Georgiou. At the time, he was a multibillionaire property magnate from Bloemfontein and widely regarded as one of South Africa's top property experts. He was seen as the white knight with the financial resources, expertise and ability to execute the ambitious plan and repay investors.

Therefore, with the adoption of Klopper's plan a line was drawn below the historic (over)valuations of properties, dodgy sales transactions involving various entities such as Bosman & Visser, and the commissions paid to financial advisors.

Orthotouch represented a clean slate from which investors would be repaid in terms of the new business rescue plan. This is where Du Toit's investigation should have started.

Ponzi scheme

It is therefore peculiar that Du Toit deemed it necessary to revisit events leading up to the HS business rescue process in any detail. It was after all Klopper's responsibility to scrutinise these developments and report any deemed irregularities, which he did not do.

In this context, Du Toit makes the most peculiar statement in paragraph 66.6 of the plan: "The only conclusion I can draw from the above [his account of events leading up to the failure of the HS companies] is the fact that some of the investor's money was used to repay interest to investors up to such time that no new investors could be obtained to make payments."

This is a classic description of a fraudulent Ponzi scheme and should be reported to authorities for investigation.

But apart from not reporting it, Du Toit jumps to the defence of Klopper for not doing so two paragraphs later: "My conclusion is that Hans Klopper only had 43 days to present a Business Rescue Plan to creditors. It was envisaged in terms of the Klopper BR Plan that the HS Investors would be paid in full as was the case in HS Companies 1 to 14. As a result, no further investigations were necessary and were as such conducted by Hans Klopper insofar as the actions of the directors of the HS Companies were concerned."

As things turned out, investors were not paid in full.

Du Toit's responsibility

Du Toit's core responsibility as BRP of Orthotouch and Zephan must surely have been to investigate the events that caused the failure of Orthotouch and Zephan after the implementation of the business rescue plan on December 14, 2011.

Klopper's 2011 rescue plan promised that properties valued at R2.6 billion (and properties valued at R1.5 billion from Georgiou) would be transferred to Orthotouch. These properties were not only not transferred, but sold off in a fire sale. Today, almost nine years later, Du Toit's plan shows that the remaining assets in the portfolio amount to R327 million. These assets include a claim against Delta Property Fund of R165 million, which means the actual remaining properties are worth only R162 million.

The only insights related to how the value of the property portfolio shrank appear in a table in paragraph 6.71, which shows that Orthotouch suffered losses of R127.6 million related to the “sale of properties”.
The R127.6 million loss is not reconciled or segmented in any way.

It seems the only ‘significant’ investigation Du Toit undertook was to offer an alternative explanation for the findings of a Moneyweb investigation (based on official title deeds of the properties), which found that Orthotouch suffered losses of around R782 million as a result of the sale of 16 properties in back-to-back transactions via Orthotouch to Accelerate.

Du Toit labelled Moneyweb’s investigation a “desktop investigation” and said his analyses found no improprieties. He revealed that the transferring attorneys had filed incorrect sales prices with the deeds office, which created a “false sense of impropriety”.

Du Toit’s investigation is summarised in Annexure 5 and Annexure 6 of the plan but strangely does not include a proper reconciliation to reflect how the R127.6 million loss was incurred.

It also does not offer any information related to how the proceeds of the properties were used, which is important as the mortgage bonds of some properties were settled with the proceeds.

Du Toit also confirmed to Moneyweb that he did not investigate the sale of 15 properties by entities related to Georgiou via Orthotouch to the Delta Property Fund, which resulted in a loss of R314 million for Orthotouch. In fact, his plan does not refer to these transactions at all.

Operational performance

Du Toit’s plan also does not contain any meaningful information related to the operational performances of Orthotouch and Zephan. The only insights into the operational performance appear in the table in paragraph 6.71 (see below), which refers to cash flows from the properties.

Orthotouch (Pty) Ltd and Zephan (Pty) Ltd			
Information			
Detail		**At BRP**	
BRP			
Orthotouch Liability as at HS Companies Business Rescue	1	R -4,754,900,000.00	
Property Value	2	R 2,598,013,768.00	
Default Value		R -2,156,886,232.00	
Current			
Orthotouch Liability as at HS Companies Business Rescue	3	R -3,922,041,832.00	
Property value and claims	4	R 327,000,000.00	
		R -3,595,041,832.00	
Investors Settled	5	R -832,858,168.00	
Running Expenses	6	R -420,000,000.00	
Loss on sale of property	7	R -127,579,599.00	
Interest paid	8	R -1,214,522,709.00	
Notes:			
Nr1 - As per BRP at December 2011			
Nr2 - As per BRP valuation at December 2011 clearly indicating the liability against the value available			
Nr3 - Option 1 investors remaining. Investors to the value of R565,608,572 accepted the APF offer from Third Party.			
Nr4 - As per schedule attached here to as Annexure 7.2			
Nr5 - Investors settled, including option 2 and 3 investors as per SOA.			
Nr6 - Legal costs, Office rentals, Salaries, Consulting fees, Computer Expenses, Netrofile, Insurance, Printing and Stationery, travelling expenses, telephone costs			
Nr7 - Difference between property value at start of BRP and actual selling price as per schedule			
Nr8 - Interest paid since March 2011 till September 2018			

The table shows “running expenses” of an exact amount of R420 million. These expenses apparently include legal fees, salaries, consulting fees and other administrative costs.

Unfortunately, this information is not segmented in any detail. (For example, it would have been critical to see how much Orthotouch spent fighting more than 20 legal cases, and to whom it was paid.)

The source of the information in the table is also not disclosed, which is concerning as Du Toit states that Zephan last published audited statements in 2009 and Orthotouch in 2015.

Critically, Du Toit's plan omits information related to Orthotouch and Zephan's rental income, property-related expenses and operational cash flows.

This is telling as the property portfolio, with Georgiou at the helm, could have generated significant rental income. For example, if it is assumed that the R2.6 billion properties, which were set to be transferred to Orthotouch, were managed at an 8% yield, Orthotouch should have received rental income of more than R200 million a year.

Its omission is also curious because it seems Du Toit had access to such information. In a letter Du Toit sent to creditors after the publication of the rescue plans, he discloses another amount related to apparent "trading losses" of R567 million that were incurred in addition to the R420 million.

In the letter Du Toit states that these losses refer to all rental income and property-related expenses.

The very least the Orthotouch and Zephan business rescue plans should have achieved was to offer former HS investors an audited, transparent and detailed accounting of every rand and cent earned and spent by the two companies.

This may also be critical in the context that the overwhelming majority of the properties were sold to third parties prior to 2015. It is therefore conceivable that Orthotouch and Zephan were in severe financial difficulty five years ago, which may suggest that a business rescue or liquidation process should have been initiated much earlier.

'Success fee'

With the benefit of hindsight, it is also possible that the business rescue process may not have been the ideal structure through which to try to get to the bottom of what happened with investors' money.

The remuneration fee structure disclosed in the rescue plans greatly incentivises Du Toit to have the business rescue plans approved. Du Toit is set to receive a "success fee" of 2.5% of the final settlement amounts if creditors approve the plan. This amount may exceed R5 million. This is in addition to the R2 000-an-hour to a maximum of R25 000-a-day fee he has earned since becoming the BRP on November 14, 2019.

Although success fees are lawful and commonly offered during business rescue proceedings, this remains an imperfect system since it clearly does not incentivise a

totally impartial decision to investigate potential irregularities, as doing so may influence the BRP's remuneration.

Difficult decision

Based on the limited information in the business rescue plans, it is doubtful whether they enable an investor or other stakeholder to verify Du Toit's conclusion that there were no improprieties related to the sale of properties, or at an operational level.

It may also be debatable whether Du Toit could come to this conclusion in the absence of up-to-date audited financial statements of Zephan and Orthotouch.

Investors are therefore facing a tough decision: either vote for the plan and receive a few cents in the rand as final settlement, or vote against the plan and possibly trigger a Section 417 investigation to assess whether there were any irregularities.

The latter option will most probably mean they may not receive any final payment for many years, if at all.

This article was published on 17 JUNE 2020 and the official version is available at: https://www.moneyweb.co.za/in-depth/investigations/orthotouch-zephan-rescue-plans-fail-to-reveal-what-went-wrong/

6. 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 enquries

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.

7. IMPORTANT GENERAL TERMS AND CONDITIONS

The general and repetitive terms, conditions and other general information that was previously contained in the Newsletter, is now available on the HSAG website at www.hsaction.co.za and can directly be accessed via the following link: http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf

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

Kind regards
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