



\*ENGLISH TEXT BELOW\*

## **MAANDELIKSE NUUSBRIEF: NOVEMBER 2020**

Hierdie nuusbrieff word aan u gerig as lid van die Hoëveld Sindikasie Aksiegroep (“HSAG”) op grond van u belegging in die Highveld Sindikasiemaatskappye 15-22 en/of u ondersteuning van die HSAG.

Hierdie e-pos is vertroulik en uitsluitlik vir die geadresseerde bedoel. As u dit per ongeluk / verkeerdlik ontvang het, stel asseblief die versender onmiddellik in kennis by [hsagenquiries@gmail.com](mailto: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](http://www.hsaction.co.za) webtuiste die primêre plek waar u HSAG inligting, onderhewig aan die vrywaring daarin vervat (en ook hierop van toepassing) kan bekom.

Die verpligting rus op u as HSAG lid om ons op hoogte van enige veranderinge van u persoonlike en/of kontakbesonderhede asook dat die inhoud van u maandelikse state korrek is.

### **HSAG AMPTELIKE NUUSBRIEF – INHOUDSOPGAWE**

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1. **AANSTELLING VAN 'N SAAKBESTUURDER IN DIE AFGELEIDE AANSOEK (HS 15-20 (insluitende HS 21 & 22))**

Na 'n lang wagperiode gedurende Covid-19 en talle navrae, is dit aangenaam om u hiermee te verwittig dat, die Agbare Regter Nicoline Janse van Nieuwenhuizen van die Gautengse Hooggeregshof op 13 November 2020 aangestel is om op te tree as saakbestuurder in die bogenoemde saak.

Nadat die agbare regter aangestel was, het sy vinnig opgetree deur 'n saakbestuurvergadering, soos hieronder uiteengesit, te reël. Die doel van 'n saakbestuurder is onder andere om te verseker dat die regsprosesse vlot verloop ten einde te bewerkstellig dat 'n saak binne 'n redelike tyd aangehoor word. Die saakbestuurder is 'n belangrike rolspeler in die regsproses, veral waar dit ingewikkeld is en/of meerdere partye behels, soos in ons geval. 'n Saakbestuurder sal egter nie noodwendig die regter wees wat uiteindelik die saak sal aanhoor nie.

Drie saakbestuurders is tot dusver aangestel in die HSAG sake, naamlik:

- In die twee versnelde HS21 & 22 (“CCAF”) sake, is daar 'n saakbestuurder in elke saak aangestel (Aansoek vir Sertifikasie - regter Tolmay en in die Gesertifiseerde Aansoek, Waarnemende Adjunk-Regterpresident Potterill).
- In die HS 15 – 20 Afgeleide Aansoek, een saakbestuurder (Regter Janse van Nieuwenhuizen). Hierdie aansoek was reeds in Desember 2019 uitgereik en grootliks gedurende 2020 deur Covid-19 vertraag.

'n Afgeleide aksie is 'n uitsondering tot die algemene reël dat 'n maatskappy bevoeg is om te dagvaar en 'n regsgeeding te in te stel in sy eie naam. 'n Afgeleide aksie is 'n aksie wat gebring word deur 'n aandeelhouer van 'n maatskappy of ander applikante (insluitend 'n direkteur van 'n maatskappy of geregistreerde vakbond) namens die maatskappy ten einde die regsbelange van die maatskappy te beskerm. Die afgeleide aksie word gereeld gebruik waar 'n persoon, wat wederregtelike daade teen 'n maatskappy pleeg, dieselfde maatskappy se besluitneming beheer en dan sy beheer gebruik om die genoemde maatskappy te weerhou daarvan om regstappe te neem teen die oneerlike persoon/maatskappy. Dit kan opgesom word as 'n aksie geneem deur 'n aandeelhouer van 'n maatskappy, teen 'n oortreder waar die maatskappy misluk het daarin om regstappe in te stel teen die oortreder. Hierdie tipe van aksie ontstaan gereeld wanneer daar bedrog, wanbestuur, selfhelp en/of oneerlikheid is wat deur die beamptes en Direksie van 'n maatskappy geïgnoreer word.

Dit is waarom die Afgeleide Aansoek behels dat 'n aansoek gebring word namens beleggers van alle sindikasies aangesien almal van hulle daardeur geraak was, en die HS maatskappye misluk het daarin om regstappe in te stel om hul belange, wat bestaan uit hul kapitaal en eiendomme, te beskerm wat dus effektiewelik die maatskappye en dus die aandeelhouers sonder opsies gelaat het.

Die Afgeleide Aansoek moet onderskei word van die HS 21 & 22 ("CCAF") klasaksie. Die laasgenoemde is uitsluitlik gebaseer op die afdwinging van die kontraktuele Terugkoopvooreenkomste teen mnr. Nic Georgiou, en twee van sy entiteite. Verskeie ander respondente is gesitêr in die Afgeleide Aansoek, insluitende mnr. Nic Georgiou en sy familie, die besigheidsreddingspraktisyn van die HS Maatskappye, mnr. Hans Klopper, die direksie en ontvanger van Orthotouch, mnr. Derek Cohen en ander. Dit word aangevoer dat die persone wat die maatskappy beheer het, nagelaat het om hul regspligte en verpligtinge teenoor die maatskappye na te kom en ook nie opgetree het in die beste belang van die maatskappy nie.

Alle beleggers in HS 15 -22 was slagoffers van die mislukte maatskappye en skema en is geregtig om te eis teen diegene wat verantwoordelik is.

Indien u meer wil leer oor Regter Janse van Nieuwenhuizen, kan u gerus gaan luister na 'n onderhoud met haar op die womanity.africa webtuiste. Die skakel tot hierdie onderhoud is: <https://womanity.africa/2018/12/06/judge-nicoline-janse-van-nieuwenhuizen-north-gauteng-high-court/>

## 2. **VORDERING IN DIE HS 15-20 (insluitend HS 21 & 22) SAAK**

Nadat die HSAG regsplan verneem het van Regter Janse van Nieuwenhuizen se aanstelling as saakbestuurder, is hulle ingelig dat die eerbare Regter 'n saakbestuurvergadering gereël het. Die doel van so 'n vergadering is om vas te stel wie die partye is, wat die geskilpunte is, en sodat die saakbestuurder 'n skedule kan vasstel waarvolgens die partye sekere hofstukke moet lewer.

Die saakbestuurvergadering was oorspronklik geskeduleer vir 19 November 2020, maar mnr. Johan Victor, die prokureur van Jacques du Toit, die besigheidsreddingspraktisyn ("BRP") van Zephan en Orthotouch, het die ander partye ter elfde uur ingelig dat sy regsplan nie die vergadering kan bywoon nie weens ander geskeduleerde verpligtinge en het dus versoek dat dit uitgestel word. Die HSAG regsplan het daarna 'n brief aan alle betrokke partye gerig waarin hulle die uitstel van hierdie vergadering sterk teengestaan het weens die verdragings wat hierdie aangeleentheid reeds ondervind het en verder sal ondervind weens oorvol hofrolle.

Na oorweging van die feite het die Saakbestuurder die vergadering met 'n kort datum uitgestel tot 24 November 2020, welke vergadering inderdaad wel plaasgevind het. Die HSAG regsman is tevrede met die uitkoms daarvan. Tydens die vergadering het Regter Janse van Nieuwenhuizen gelas dat die Respondente hul antwoordende stukke op onderskeidelik 15 Desember 2020 en 15 Januarie 2021 na die feesseisoen moet liasseer. Die BRP moet Orthotouch en Zephan se stukke teen 15 Februarie 2021 liasseer en die HSAG die Applikant se repliserende stukke 20 hofdae later, waarna 'n verdere saakbestuurvergadering versoek sal word in afwagting van 'n aanwysing tot hoe die saak gefinaliseer en uiteindelik aangehoor sal word.

### 3. **DIE VERSKIL TUSSEN 'N SIVIELE-AANGELEENTHEID TEENoor STRAFREGTELIKE AANGELEENTHEID**

Sommige HSAG lede het navraag gedoen oor die verskil tussen siviele en kriminele sake en ons wil graag hieronder 'n vereenvoudiging daarvan voorsien.

Die eise gedryf deur die HSAG en CCAF vir verhaling van beleggers se kapitaal is siviele eise, en behels die verhaling van geld. Hierdie is nie krimineel oftewel strafregtelike aangeleentede nie.

Huidig word daar verskeie berigte in die media gesirkuleer waar regsaksie geneem word in die vorm van privaatvervolging deur seker burgerregtelike-organisasies. Ons wens graag daarop te wys dat sodanige sake kriminele sake is waar die Staat weier of nagelaat het om te vervolg. Ongelukkig word strafregtelike en siviele aangeleentede nie op dieselfde basis hanteer deur die howe nie en is die uitkomste en gevolge daarvan ook verskillend.

In strafregtelike sake vervolg die Nasionale Vervolgingsgesag ("NVG") gewoonlik 'n persoon vir 'n kriminele oortreding wat hy/sy gepleeg het. Die staat is 'n party in die aangeleentheid en 'n staatsaanklaer tree op as verteenwoordiger van die staat. Die hoofdoel van strafregtelike vervolging is om 'n misdadiger te straf en nie om die mense wat skade gely het, as gevolg van sy misdaad, te vergoed nie.

In siviele sake, soos gedryf deur die HSAG, verskaf die staat slegs die infrastruktuur (howe) vir die sake om aangehoor te word. Die staat is nie 'n party in die HSAG klasaksies wat gevoer word tussen twee of meer private persone of entiteite nie. Die groot verskil, wat ook belangrik is vir lede van die HSAG, is dat die hoofdoel van ons aangeleentede is om die HS-beleggers wat skade gely het as gevolg van die verweerder/respondent se

dade, te vergoed vir die vermoënskade wat hulle gely het. Nieteenstaande bogenoemde kan ons steeds bevestig dat kriminele sake steeds deur die NVG ondersoek word.

#### 4. **HSAG SE ANTWOORD OP DIE BRP SE KENNISGEWING EN SKRYWE**

Soos gerapporteer in die nuusbrieff van Oktober 2020, het Zephan en Orthotouch verdere dokumente van die applikante in die Afgeleide Aksie versoek en ook in 'n opvolgende brieff aan HS beleggers daarna gedateer 30 Oktober 2020. Hierdie versoekte dokumente sluit ondermeer in die identiteite (insluitend kopieë van identiteitsdokumente) en beleggingswaardes van alle beleggers wat deur die HSAG verteenwoordig word.

Die HSAG-regspan het die versoeke deur mnr. Jacques du Toit, die BRP, nie alleen as opportunisties nie, maar ook as onreëlmatig en nie in terme van die Uniforme Hofreëls nie, geag. Mnr. du Toit was reeds in besit van die aangevraagde lys. Orthotouch het reeds voorheen die lys van alle beleggers in HS 15 – 22 aan die HSAG verskaf in terme van 'n hofbevel teen dit toegestaan.

Orthotouch en Zephan - beide onder beheer van die BRP, mnr. Jacques du Toit – het duidelik die “volledige besonderhede van al die belegger” in sy besit gehad en was die versoek 'n duidelike vertragingstaktiek aan sy kant.

Orthotouch het verder maandelikse rentebetelings aan beleggers in terme van die gesanksioneerde reëlinskema, solank gelede as 2014, gemaak. Hoe kan dit gedoen word sonder om in besit te wees van beleggers se besonderhede?

Geen van die dokumente versoek of aangevra in terme van die kennisgewings van die BRP is nodig of 'n vereiste vir Orthotouch en Zephan om hul in staat te stel om te pleit en/of antwoordende verklarings te liasseer nie.

Die HSAG is van mening dat die bogenoemde kennisgewings geliasseer was bloot om verrigtinge te verdraag en/of om addisionele regskoste vir die Applikante te veroorsaak;

Die HSAG-prokureurs was desnieteenstaande, net om die vermorsing van tyd en kostes te voorkom, bereid om die databasis (in die vorm van 'n Excel-spreivel) in elektroniese formaat aan Orthotouch en Zephan te voorsien met die besonderhede van beleggers wat dit al jare in sy besit het.

[Hierdie databasis/spreivel - wat die name en besonderhede van ongeveer 17302 beleggers in Hoëveld 15 tot 22 bevat - is ironies genoeg een wat van Orthotouch self verkry is ingevolge 'n bevel wat op 25 Mei 2016 deur Mnr. Regter Spilg onder

saaknommer 42334./14 gemaak is in die Gautengse Plaaslike Afdeling (Johannesburg), welke bevel Orthotouch (en sy aangestelde sakereddingspraktisyn Klopper) verplig het om die persoonlike besonderhede van beleggers aan die HSAG se prokureurs van rekord te voorsien.

Die hof het nie beveel dat enige dokumentasie verskaf moet word deur die HSAG nie en Uniforme Hofreël 35 (11) is nie van toepassing nie. Enige versoek wat ingevolge sodanige subreël gerig word is onreëlmatig. Applikante is dus nie verplig om dokumente onder sodanige subreël te lewer nie en het dus geweier om sodanige dokumente beskikbaar te stel.

#### 5. **ONLANGS IN DIE MEDIA: “MONEYWEB HET SY PLIG AS VIERDE GESAG NAGEKOM”- WAARNEMENDE ASSISTENT PERS-OMBUD**

'n Finansiële joernalis van Moneyweb het onlangs dié artikel gepubliseer. Soos in vorige nuusbriewe gaan ons voort om 'n vry-vertaalde en verkorte weergawe van die artikel te gee om sodoende verslag te gee aan beleggers wat nie Engelsmagtig is nie. Ons wil u graag uitnoui om die amptelike artikel in Engels te lees op die Moneyweb webtuiste. 'n Skakel na die oorspronklike artikel volg onder hierdie vertaalde weergawe.

\*Vierde gesag definisie: In die volksmond, naas Regsprekende, Wetgewende en Uitvoerende gesag, word die pers beskou as die vierde gesag.

#### **“Moneyweb het sy plig as vierde gesag nagekom”- Waarnemende Assistent Pers-ombud**

Na afloop van verskeie klagtes wat deur Nova se voorsitter ingedien is by die Pers-ombud.

Vir die afgelope paar maande het die Nova Eiendomsgroep 'n oorlog teen Moneyweb gevoer. Die HSAG se sake en belange was hierby betrek en is daarom relevant vir die HSAG-lede.

Nova het deur middel van sy voorsitter Mnr. Connie Myburgh ses hoofklagtes, bestaande uit talle subklagtes, by die Pers-ombud ingedien. Die klagtes handel oor verskeie artikels wat deur MoneyWeb se redakteur Ryk van Niekerk en die joernalis Roy Cokayne geskryf is.

Die beslissings oor die klagtes en die artikels waarop die klagtes betrekking het, verskyn hieronder:

Klag 7792: Irba reports Nova to SARS and CIPC

Klag 7795: "Where is Hans Klopper?"

Klag 7804: Seven reasons Orthotouch's dismal failure must be investigated

Klag 7828: Covid-19 halts Sharemax auditors' disciplinary

Klag 7829: Three former Sharemax auditors, 413 improper conduct charges

Klag 7830: Nova: Insolvent, or in a sound financial position?

Waarnemende Assistent Pers-ombud, Mnr. Johan Retief, het al die klagtes behalwe een van die hand gewys en in 'n spesiale addendum tot sy uitspraak geskryf dat Moneyweb gelukgewens moet word met sy billike en gebalanseerde verslaggewing.

Die enigste ongunstige uitspraak teen Moneyweb was 'n vlak 2-oortreding omrede dit in 'n subopskrif van die artikel 'Irba reports Nova to Sars and CIPC' dit as 'n feit gestel het dat die Nova-groep deur die Kommissie vir Maatskappye en Intellektuele Eiendom (CIPC) en die Suid-Afrikaanse Inkomstediens (SAID) ondersoek sou word. Die artikel is wel gewysig om aan te dui dat Nova die onderwerp mag wees van 'n ondersoek deur die CIPC en die SAID. Moneyweb het ook 'n verskoning gepubliseer vir hierdie oorsig.

### **'Insulting language, and deeply insulting'**

Die proses het etlike maande geduur, met die indiening van omvangryke dokumente en antwoorde deur beide partye.

Die beoordelingsproses is gedeeltelik vertraag deur die besluit van Retief om al Myburgh se klagtes van die hand te wys weens die "unacceptable language" wat hy in sy voorleggings gebruik het en die aanvang van "personal attacks" op Van Niekerk se integriteit. "In my opinion, sir, your complaints are deeply insulting (to say the least) – to such an extent, that I believe the Complaints Procedures do not allow me to entertain them," het Retief in sy brief aan Myburgh geskryf waarin hy hom ingelig het oor die besluit om sy klagtes te verwerp.

Myburgh het egter teen hierdie beslissing geappelleer en regter Bernard Ngoepe, voorsitter van die appèlpaneel, het beslis dat Nova en Myburgh toegelaat moet word om hul voorleggings weer in "acceptable language" in te dien, wat hulle daarna gedoen het.

Retief het toe al die klagtes beoordeel en van die hand gewys, behalwe vir die oortreding wat verband hou met die subopskrif waarna hierbo verwys word.

Myburgh en Nova het aansoek gedoen tot verlof tot appèl, maar dit is deur regter Ngoepe geweier.

## **Memorandum**

In 'n seldsame verwikkeling het Retief 'n spesiale addendum geskryf, wat verband hou met sy uitsprake, waarin hy perspektief op die saak verskaf.

In hierdie addendum verwys hy breedvoerig na Myburgh se taalgebruik. “Myburgh’s insulting language, ad infinitum, aimed at the editor, is regrettable”, het Retief geskryf. “I want to repeat what I have said all along: His criticism of Van Niekerk has crossed the border – not only was it aimed at his reportage, but he also attacked the editor’s character. For this reason, I initially declined to adjudicate his complaints.”

“There comes a time when the office of the SA Press Council not only has to protect the public from the media, but also protect the media from the public. This was such a time.”

Retief het ook Moneyweb geprys omdat dit voortdurend probeer om kommentaar van Orthotouch, Nova en ander partye in te win, alhoewel dit selde gebeur het. “I have previously, in a different context, referred to the danger of a 007-syndrome on the part of the media. Some journalists seem to think they have a ‘licence to kill’ once they have identified who they believe is a dubious subject – and in that process throw some or all journalistic standards and ethical norms overboard. Then, anything goes. To its credit, Moneyweb has resisted this temptation.”

Retief het ook geskryf dat hy "cannot agree with Myburgh’s consistent allegation that the editor of Moneyweb was malicious".

“(He repeatedly alleges ‘utmost malice, to create maximum damage’ on the editor’s part.)”

“The word ‘malice’ implies a deliberate attempt to cause someone harm. Indeed, Merriam-Webster defines malice as, ‘the desire to inflict injury, harm, or suffering on another, either because of a hostile impulse or out of deep-seated meanness’. Given the reasonableness of the reporting, throughout, and consistently having based it on credible evidence, I have no reason whatsoever to declare malice on the editor’s part, or on the part of his publication. On the contrary, I see a publication committed to its duty as the Fourth Estate.”

"In the end, Moneyweb needs to be congratulated on its fair and balanced reportage, and to be encouraged in its efforts to continue holding public figures accountable to society – which is the reason for the existence of the media in the first place."



## UKKSA klagte

In Februarie vanjaar het Myburgh ook 'n klag by die Uitsaai Klagte Kommissie van Suid-Afrika (UKKSA) ingedien oor kommentaar wat Van Niekerk tydens 'n RSG Geldsake-uitsending in 2014 gelewer het.

Myburgh het voor die verhoor gevra dat geen media, insluitend Van Niekerk, toegelaat word om die verhoor by te woon nie. Die UKKSA het hierdie versoek van die hand gewys. Myburgh het ook tydens die virtuele verhoor geweier om vrae van Van Niekerk te beantwoord.

Die UKKSA Tribunaal het bevind dat die uitsending bestaan het uit kommentaar wat eerlike menings uitgespreek het oor feite wat werklik vermeld of billik aangedui is. Daar is bevind dat daar geen oortreding van die kode was nie, en die klag is van die hand gewys.

**Hierdie is 'n vry-vertaalde en verkorte weergawe van die oorspronklike artikel, en die akkuraatheid van die vertaling word nie gewaarborg nie. Die oorspronklike artikel is geskryf deur Moneyweb. Hierdie artikel is gepubliseer op 30 Oktober 2020 en die amptelike weergawe is beskikbaar by: <https://www.moneyweb.co.za/in-depth/investigations/moneyweb-committed-its-duty-as-the-fourth-estate-acting-assistant-press-ombud/>**

## 6. **BELANGRIK: GEBRUIK VAN KORREKTE E-POS ADRESSE**

Die korrekte gebruik van e-pos adresse (soos vervat op ons webtuiste en e-posse) asook HSAG-lede se voorletters en van, sindikasiennommers en verwysingsnommers (bv. identiteitsnommer ens.) vir alle kommunikasie, is uiters noodsaaklik en verpligtend. Versuiming om hieraan te voldoen kan die gevolg hê van onnodige vertraging of dat u geen antwoord sal ontvang nie.

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

- **hsactiongroup@gmail.com** vir alle Algemene Navrae (Byvoorbeeld – selfoon of adres veranderinge, betalingsbewyse, kennis van lede wie gesterf het, ensovoorts);
- **hsagenquiries@gmail.com** vir Spesifieke Navrae (Byvoorbeeld – navrae rakende besonderhede van 'n spesifieke belegger, navrae rakende kwytstelling van 'n spesifieke belegger, ensovoorts);

- **hsagregister@gmail.com** vir die Registrasie en Deregistrasie van HSAG- lede;
- **hsagwhistle@gmail.com** vir alle Vertroulike Inligting wat anoniem aan ons gestuur moet word;
- **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](http://www.hsaction.co.za) en kan direk besigtig word by die volgende skakel: <http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf>

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

**Vriendelike groete**

**HSAG-Bestuurskomitee**

Kontak die HSAG en prokureurs by:

Tel: (021) 887 7877

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



\*AFRIKAANS HIERBO\*

## MONTHLY NEWSLETTER NOVEMBER 2020

This newsletter is addressed to you as a member of the Highveld Syndication Action Group (“HSAG”) on account of you having made an investment in the Highveld Syndication Companies 15-22 and/or support of the HSAG.

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The obligation to keep us up to date of any changes to your personal and/or contact details as well as to make sure that the contents of your monthly statements are correct rests on you as HSAG member.

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1. **APPOINTMENT OF A CASE MANAGER IN THE DERIVATIVE APPLICATION (HS 15-20 (including HS 21 & 22))**

After a long waiting period during Covid-19 and numerous enquiries, it is with great pleasure that we can confirm that a case manager, the Honourable Judge Nicoline Janse van Nieuwenhuizen of the Gauteng High Court, has been appointed on 13 November 2020 to act as case manager in the above matter.

Once appointed, the honourable judge responded swiftly, as set out hereunder, to arrange a case management meeting. The purpose of a case manager is, amongst other things, to ensure that the legal proceedings run smoothly and also to ensure that a case is heard within a reasonable time. The case manager is an important roleplayer in the legal process, especially when it is complex and/or involves multiple parties, as in our case. However, a case manager will not necessarily be the presiding judge at the hearing of such application.

Three case managers have been appointed thus far in the HSAG matters, namely:

- In the two fast-tracked HS 21 & 22 (“CCAF”) matters, a case manager in each case (Application for Certification - Judge Tolmay and in the Certified Application, Acting Deputy Judge President Potterill).
- In the HS 15 - 20 Derivative Application, one case manager (Judge Janse van Nieuwenhuizen). This application was already issued in December 2019 but mostly delayed during 2020 as a result of Covid-19.

A derivative action is an exception to the general rule that a company is capable of suing and bringing a lawsuit in its own name. A derivative action is an action brought by a shareholder of a company or other applicant (including a director of the company or a registered trade union) on behalf of the company to protect the legal interests of the company. The derivative action is often utilised where a person who commits wrongdoings against a company controls decision making within that company and uses his or her control to prevent the said company from instituting legal proceedings against that miscreant person/company. It can be summarised as an action taken by a shareholder of the company against a wrongdoer where the company failed to institute legal action against a wrongdoer. This type of suit often arises when there is fraud, mismanagement, self-dealing and/or dishonesty which are being ignored by officers and the Board of Directors of a company.

This is why the Derivative Application involves an application brought on behalf of investors in all syndications because all of them were affected, and the HS companies failed to institute legal proceedings to protect its interests, being its capital and properties, effectively rendering the companies, and thereby its shareholders, destitute.

The Derivative Application should be distinguished from the HS 21 & 22 (“CCAF”)

class action. The latter is based solely on the enforcement of the contractual Buyback Agreements against Mr Nic Georgiou and two of his entities. Various other respondents are cited in the Derivative Application, including Mr Nic Georgiou and his family, the business rescue practitioner of the HS Companies, Mr Hans Klopper, the board of directors and receiver of Orthotouch, Mr Derek Cohen and others. It is submitted that the persons who controlled the company failed to fulfil their fiduciary duties and obligations towards the companies and did not act in the best interests of the company

All investors in HS 15 to 22 were victims of the failed companies and scheme and are entitled to claim against those responsible.

If you want to learn more about Judge Janse van Nieuwenhuizen, you can listen to an interview with her on the Womanity Africa website. The link to this interview is: <https://womanyity.africa/2018/12/06/judge-nicoline-janse-van-nieuwenhuizen-north-gauteng-high-court/>

## 2. **PROGRESS IN THE HS 15-20 CASE (including HS 21 & 22)**

As soon as the HSAG legal team was informed about Judge Janse van Nieuwenhuizen's appointment as case manager, they were informed that the honourable Judge has called for a case management meeting to be held to establish who the parties are, what the issues are, and assist in directing a schedule for the delivery of court documents.

The case management meeting was initially scheduled for 19 November 2020, but Mr Johan Victor, attorney for Jacques du Toit, business rescue practitioner ("BRP") of Zephan and Orthotouch, informed the other parties at the eleventh hour that his legal team will not be able to attend the meeting due to other scheduled responsibilities and requested a postponement. The HSAG legal team thereafter directed a letter to all parties involved in which a postponement, which could lead to a long delay due to overburdened court rolls, was strongly opposed.

After considering the facts, the Case Manager postponed the meeting for a short period until 24 November 2020. The meeting was then held and the HSAG legal team is satisfied with the outcome. At the meeting Judge Janse van Nieuwenhuizen directed the Respondents to file their answering affidavits on respectively 15 December 2020 and 15 January 2021, after the festive season. The BRP must file Orthotouch's and Zephan's papers by 15 February 2021 and the HSAG the Applicant's replying papers 20 court days later, whereafter a further case management meeting will be requested in anticipation of a directive on how the matter will be finalised and ultimately heard.

### 3. **THE DIFFERENCE BETWEEN A CIVIL MATTER AS OPPOSED TO A CRIMINAL MATTER**

Some HSAG members enquired about the difference between civil and criminal cases and we wish to provide a simplification thereof.

The claims driven by the HSAG and CCAF for recovery of investors' capital are civil claims and involve the recovery of money. These are not criminal matters.

Currently, a number of reports have been circulating in the media where legal action is being taken in the form of private prosecution by certain civil rights organisations. We wish to point out that those legal processes are criminal cases where the State refused or neglected to prosecute. Unfortunately, criminal and civil matters are not dealt with by the courts on the same basis and the outcome and consequences are also different.

In criminal matters the National Prosecuting Authority (NPA) usually prosecutes a person for a crime that he/she committed. The State is a party to the case and a state prosecutor acts as a representative of the state. The main purpose of criminal prosecution is to punish a criminal and not to compensate the people who have suffered damages as a result of the crime.

In civil matters, like those driven by the HSAG, the state only provides the infrastructure (courts) for matters to be heard. The state is not party to the HSAG class actions which are conducted between two or more private persons or entities. The major difference, which is also important for members of the HSAG to observe, is that the main purpose of our matters is to compensate the HS Investors for those damages suffered as a result of the defendant's/respondent's actions. Notwithstanding this, we can confirm that criminal matters are still being investigated by the NPA.

### 4. **HSAG'S REPLY TO THE BRP'S NOTICE AND LETTER**

As reported in the newsletter of October 2020, Zephan and Orthotouch requested further documents from the applicants in the Derivative Application and also in a subsequent letter to HS Investors dated 30 October 2020. The documents requested include the identities (also including copies of identity documents) and investment values of all investors represented by the HSAG.

The HSAG legal team regarded the requests by Mr Jacques du Toit, the BRP, not only as opportunistic but also irregular and not in terms of the Uniform Rules of Court. Mr Du Toit was already in possession of the requested list. Orthotouch previously provided the list of all investors in HS 15-22 to the HSAG, after a Court Order was granted against it in terms of which Orthotouch was to provide the details and investment values of HS investors.

Orthotouch and Zephan – both under control of the BRP, Mr Jacques du Toit – clearly had the “complete details of all the investors” in its possession and the request was purely a delaying stratagem on his side.

Orthotouch also made monthly interest payments to investors in terms of the sanctioned Scheme of Arrangement (“SoA”) since 2014. How could this be done without being in possession of investors’ details?

None of the documents sought/requested in terms of the said notices by the BRP are necessary or required by Orthotouch and Zephan for purposes of pleading and/or filing of opposing affidavits.

The HSAG is of the view that the said notices are filed simply to delay proceedings and/or to cause additional legal costs for the Applicants;

The HSAG attorneys were nevertheless, purely to prevent a waste of costs and time, prepared to provide in electronic format to Orthotouch and Zephan the database (in the form of an Excel spreadsheet) of those details of investors that it has had in its possession for many years.

[This database/spreadsheet – which comprises the names and details of some 17302 investors in Highveld 15 to 22 – is, ironically, one that was obtained from Orthotouch itself pursuant to an order made on 25 May 2016 by Mr Justice Spilg under case number 42334/14 in the Gauteng Local Division (Johannesburg), which order obliged Orthotouch (and its appointed business rescue practitioner Klopper) to provide the personal details of investors to HSAG attorneys of record].

The court has not ordered the production of any documents by the HSAG and Uniform Rule 35(11) is not applicable. Any request made under such subrule is irregular. Applicants are therefore not obliged to produce any documents under such subrule and therefore refused to make available such documents.

5. **RECENTLY IN THE MEDIA: “MONEYWEB COMMITTED ITS DUTY AS THE FOURTH ESTATE” – ACTING ASSISTANT PRESS OMBUD**

A financial journalist from Moneyweb recently published this article. 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/moneyweb-committed-its-duty-as-the-fourth-estate-acting-assistant-press-ombud/>. In this instance, the article will be repeated verbatim to ensure its accuracy.

## **‘Moneyweb committed its duty as the Fourth Estate’ – Acting Assistant Press Ombud**

Follows numerous complaints Nova’s chairman filed with the Press Ombud.

Over the past few months, the Nova Property Group has waged a war against Moneyweb.

Nova, through its chairman Connie Myburgh, lodged six main complaints, consisting of numerous sub-complaints, with the Press Ombud regarding various articles written by Moneyweb editor Ryk van Niekerk and journalist Roy Cokayne.

The rulings on the complaints and the articles the complaints pertain to, appear below:

Complaint 7792: Irba reports Nova to Sars and CIPC

Complaint 7795: ‘Where is Hans Klopper?’

Complaint 7804: Seven reasons Orthotouch’s dismal failure must be investigated

Complaint 7828: Covid-19 halts Sharemax auditors’ disciplinary

Complaint 7829: Three former Sharemax auditors, 413 improper conduct charges

Complaint 7830: Nova: Insolvent, or in a sound financial position?

Acting Assistant Press Ombud Johan Retief dismissed all but one of the complaints and wrote in a special addendum to his ruling that Moneyweb should be “congratulated on its fair and balanced reportage”.

The only adverse ruling against Moneyweb was a tier 2 offence for stating in a subheadline of the article ‘Irba reports Nova to Sars and CIPC’ as fact that the Nova group would be investigated by the Companies and Intellectual Property Commission (CIPC) and the South African Revenue Service (Sars). The article was changed to reflect that Nova may be the subject of an investigation by the CIPC and Sars. Moneyweb also published an apology for this oversight.

### **‘Insulting language, and deeply insulting’**

The process took several months, with the filing of lengthy documents and responses by both parties.

The adjudication process was partly delayed by Retief’s decision to reject all Myburgh’s complaints due to the “unacceptable language” he used in his submissions and the launching of “personal attacks” on Van Niekerk’s integrity. “In my opinion, sir, your complaints are deeply insulting (to say the least) – to such an extent, that I believe the Complaints Procedures do not allow me to entertain them,” Retief wrote in his letter to Myburgh informing him of the rejection decision.



However, Myburgh appealed against this decision and Judge Bernard Ngoepe, chairman of the Appeals Panel, ruled that Nova and Myburgh should be allowed to resubmit their submissions in “acceptable language”, which they subsequently did.

Retief then proceeded to adjudicate and dismiss all the complaints, barring the offence related to the subheadline referred to above.

Myburgh and Nova then applied for leave to appeal, but this was denied by Judge Ngoepe

### **Memorandum**

In a rare act, Retief wrote a special addendum related to his judgments in which he provided some perspective on the case.

In this addendum, he refers extensively to Myburgh’s use of language. “Myburgh’s insulting language, *ad infinitum*, aimed at the editor, is regrettable,” he wrote. “I want to repeat what I have said all along: His criticism of Van Niekerk has crossed the border – not only was it aimed at his reportage, but he also attacked the editor’s character. For this reason, I initially declined to adjudicate his complaints.

“There comes a time when the office of the SA Press Council not only has to protect the public from the media, but also protect the media from the public. This was such a time.”

Retief also commended Moneyweb for continuously trying to get comment from Orthotouch, Nova and other parties despite rarely receiving a reply. “I have previously, in a different context, referred to the danger of a 007-syndrome on the part of the media. Some journalists seem to think they have a ‘licence to kill’ once they have identified who they believe is a dubious subject – and in that process throw some or all journalistic standards and ethical norms overboard. Then, *anything goes*. To its credit, Moneyweb has resisted this temptation.”

Retief also wrote that he “cannot agree with Myburgh’s consistent allegation that the editor of Moneyweb was malicious”.

“(He repeatedly alleges ‘utmost malice, to create maximum damage’ on the editor’s part.)

“The word ‘malice’ implies a deliberate attempt to cause someone harm. Indeed, Merriam-Webster defines malice as, ‘*the desire to inflict injury, harm, or suffering on another, either because of a hostile impulse or out of deep-seated meanness*’. Given

the reasonableness of the reporting, throughout, and consistently having based it on credible evidence, I have no reason whatsoever to declare malice on the editor's part, or on the part of his publication. On the contrary, I see a publication committed to its duty as the Fourth Estate.

“In the end, Moneyweb needs to be congratulated on its fair and balanced reportage, and to be encouraged in its efforts to continue holding public figures accountable to society – which is the reason for the existence of the media in the first place.”

### **BCCSA complaint**

In February this year Myburgh also lodged a complaint with the Broadcasting Complaints Commission of South Africa (BBCSA) regarding comments Van Niekerk made during a 2014 RSG Geldsake broadcast.

Prior to the hearing, Myburgh requested that no media, including Van Niekerk, be allowed to attend the hearing. The BCCSA rejected this request. Myburgh also refused to answer any questions from Van Niekerk during the virtual hearing.

The BCCSA Tribunal found that the broadcast consisted of comments that were honest expressions of opinion made on facts truly stated or fairly indicated. No contravention of the code was found, and the complaint was dismissed.

**This article was written by Moneyweb and was published on 30 October 2020, the official version is available at: <https://www.moneyweb.co.za/in-depth/investigations/moneyweb-committed-its-duty-as-the-fourth-estate-acting-assistant-press-ombud/>**

### **6. IMPORTANT: 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. Failure to comply herewith may lead to unnecessary delays or any reply at all.

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

- **hsactiongroup@gmail.com** for all General Enquiries; (For Example - to change contact details, Proof of Payments, Death of a Member etc.);
- **hsagenquiries@gmail.com** for Specific Enquiries; (For Example requesting information/statements regarding a specific member, exemption queries for a specific member);

- **hsagregister@gmail.com** for the registration and deregistration of HSAG members;
- **hsagwhistle@gmail.com** for all Confidential Information that you would like to send to us anonymously;
- **hsagestates@gmail.com** for all estate related questions.

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

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

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

## 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](http://www.hsaction.co.za) and can directly be accessed via the following link: <http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf>

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

**Kind regards**

**HSAG Steering Committee**

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