



AFRIKAANS HIERBO

MONTHLY NEWSLETTER: OCTOBER 2021

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 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 as well as to make sure that the contents of your monthly statements are correct rests on you as HSAG member.

HSAG OFFICIAL NEWSLETTER – CONTENTS

1. INTRODUCTION.....	1
2. THANK YOU VERY MUCH! HSAG FORWARD!.....	2
3. DECA CASE AND COURT DATE	3
4. TO SUE IN CONTRACT OR IN DELICT?	4
5. TOMMY CALDWELL – WHAT ARE YOU UP AGAINST?.....	5
6. CCAF STATEMENTS.....	7
7. THE LEGAL PROCESS OF CLASS ACTION CERTIFICATION.....	7
8. WITHDRAWING ON BEHALF OF INVESTORS BY THIRD PARTIES.....	9
9. CCAF MEMBERS MUST SEND THEIR FICA DOCUMENTS.....	9
10. DIFFERENCES BETWEEN CRIMINAL AND CIVIL LAW	13

11. IMPORTANT: USE OF THE CORRECT EMAIL ADDRESSES	14
12. IMPORTANT GENERAL TERMS AND CONDITIONS	15

1. INTRODUCTION

This month's newsletter contains important information regarding CCAF statements, which process has been amended, as well as the DECA matter and the relevant dates therein.

Kindly refer to the sections of the newsletter concerning the legal process of class action certification and the differences between criminal and civil law for some more general information about your case(s). We believe that this information is essential for all members who wish to play an active role in the success of the class action.

We are still in the process of extracting information regarding the appointment of an executor in the estate late Nic Georgiou. We remain positive that we will receive the information forthwith and we will continue to prod and poke the proverbial bear, until we are provided with the necessary information. We will, of course, provide members with the relevant information when it becomes known to us. Recently many rumours were spread that Mr Georgiou has not passed away but until this has been confirmed such comments remain mere speculation

Finally, we would like to direct your attention to the Tommy Caldwell story. A tale we believe members can draw inspiration from. If everyone persists and continues to maintain some of his tenacity and self-belief, we will overcome all our future hurdles.

We hope that you, and your loved ones, continue to be safe and healthy as we reach the end of the year. Although we have accomplished a lot this year, there is still much to do! We have put months of work into finalising the replying affidavit in the DECA case (which you can read about in this newsletter). The time and energy spend on completing this document is immeasurable but we are confident that we have set out a clear summary of proceedings to the court. We encourage members to read this document when it is placed on the website as active member-engagement is to be encouraged. We hope that

members will do their part and contribute financially as this is a very important leg of the class action journey and we all need to do our part. We need everyone to stand together now more than ever!

2. THANK YOU VERY MUCH! HSAG FORWARD!

Only a relatively small group of people are aware of the incredible cooperation and effort that the HSAG management, public relation officers, legal team and other persons have made in recent months to advance the cause of the HSAG members. At this stage there are two class actions, namely the DECA case, which includes Mr. Georgiou's two sons, Hans Klopper and others and on the other hand, CCAF in which Mr Georgiou and two of his entities are being sued.

The central question in both cases is: What happened to the billions of rands worth of investments in the HS Companies and properties? The legal and forensic experts have already made very good progress and there is a clear line to be followed. The fact of the matter is that several immovable properties were sold and transferred.

Thanks to the extremely reliable immovable property deeds system of South Africa and the credible banking system, the tracing of properties and flow of funds are possible. The DECA case is of utmost importance because many of the Respondents here are committed to the eventual location of the “missing” properties and billions of rands. The HSAG and its legal team, thanks to the good support of its members and other parties, made out a strong case in the Replying Affidavit to the Respondents, especially in respect of Mr Georgiou's sons who now want to distance themselves completely from the affairs of their father, Nic Georgiou.

HSAG members are encouraged to read the court documents on our website at www.hsaction.co.za in order to see what input was required and effort by our teams. Without the support and contributions of our members, we would not have been able to

rise to the occasion and we wish to point out to you that a provisional court date has already been set for the hearing of the DECA case in the first half of next year.

The CCAF case will be followed. In view of the forensic nature and external experts involved, the HSAG members who have not yet done their part financially, please bring your contributions up to date.

As a point of departure, we would like to assure members that, as the opportunity arises to claim from the estate of the late Nic Georgiou, we shall do so on your behalf. We have sought feedback from the Georgious and their legal teams concerning the appointment of the executor of the deceased estate, but until now we have not received the required information.

We will continue to seek answers and will inform members of any developments in this matter as soon as we have more information (watch this space in the next newsletter!).

3. DECA CASE AND COURT DATE

We received enquiries regarding the difference between the so-called CCAF (contractual) matter and the DECA (delictual) matter. See hereunder a brief explanation between contractual and delictual claims.

The DECA matter concerns Highveld Syndications 15-22 in the form of a derivative class action. This means that the HSAG members claim from not only Mr Nic Georgiou (his estate) but also his sons, Michael and George Georgiou, as well as Hans Klopper and other relevant parties. Our claim is set out in the papers on our website. Voluminous replies (in particular Mr Hans Klopper's) were received and we shall give you a short summary of what it entails. Briefly however, neither Georgiou nor the other respondents provide any explanations for what happened to the more than R4.6 billion invested by investors, and which was supposed to be paid back to them after 5 years. Besides that, the so-called salvage vehicle, Orthotouch, has no properties registered in its name, with assets of allegedly a mere R327 million, according to the business rescue practitioner of Orthotouch, Du Toit.

Furthermore, Klopper, in his opposing affidavit, startlingly reveals that he was not made aware of R1.3 billion of additional mortgage bonds over properties in the Orthotouch portfolio and this was only learnt by him almost two years after the rescue plan was published. If Klopper is to be believed, it surely implies that the Georgiou's deliberately withheld this information from him. j

We have finalised, and subsequently served our Replying Affidavits in the DECA matter on 28 October, 2021. The document(s) will be placed on our website and can be accessed at <http://www.hsaction.co.za/> once they have been served and filed at court.

As stated before, a preliminary court date has been acquired in the DECA matter, being: 30 May, 2022. We have not received any feedback since obtaining this preliminary date.

4. TO SUE IN CONTRACT OR IN DELICT?

Regarding CCAF, there is unfortunately only three parties that have bound themselves contractually to the others. That is Nic Georgiou, his trust and Zephan. We therefore had to address the other parties (including Nic Georgiou's sons) via delictual means. Despite the aforementioned there are also many more syndications involved.

There has been a longstanding debate in South African law on whether to sue in contract or delict.

The line of division on whether to sue in contract or delict is not always easily drawn.

The defendant's conduct may constitute both a breach of contract and a delict, thus giving a plaintiff a choice of which remedy to pursue.

The test to determine whether or not a party is negligent in delict is the reasonable man test, thus whether a reasonable man in the defendant's position has acted in a negligent manner. There should be foreseeability and prevention of harm.

In terms of contract the innocent party must prove certain requirements:

- There must be a contract between two or more parties
- There must be a breach of contract.

- The innocent party must have endured patrimonial loss.
- There must be a causal connection between the breach and the loss.
- The loss must not be too remote.

The primary purpose of a contractual remedy is to enforce an agreement, or compensate for the non-fulfilment of its terms. A delictual remedy on the other hand, is directed primarily at compensation for the infringement of a legally recognised interest which exists independently from a contractual obligation.

5. TOMMY CALDWELL – WHAT ARE YOU UP AGAINST?

The story of Tommy Caldwell reminds us a lot of what we have come up against in our cases.

Tommy Caldwell (born August 11, 1978) is an American rock climber accomplished in sport climbing, hard traditional climbing, big-wall speed climbing, and big-wall free climbing.

As a young boy with a fanatical mountain-guide father who was determined to instil toughness in his son, he grew into a teen whose obsessive nature drove him to the top of the sport-climbing circuit. Caldwell's affinity for adventure then led him to the vertigo-inducing and little understood world of big wall free climbing. But his evolution as a climber was not without challenges; in his early twenties, he was held hostage by militants in a harrowing ordeal in the mountains of Kyrgyzstan. Similarly, HS investors held hostage by various individuals and threatened with liquidation and other perils which may deprive them of their investments.

Soon thereafter, he lost his left index finger in an accident. Later his wife, and main climbing partner, left him. Caldwell emerged from these hardships with a renewed sense of purpose and determination.

We also lost two steering committee members as they were paid-off financially and walked over to the Georgiou. Our applicants who we trusted and who were the representatives of the HS members left the group and settled in secret with Nic Georgiou.

The HSAG also time and again emerged from these hardships with a renewed sense of optimism.

He set his sights on free climbing El Capitan's biggest, nearly vertical, steepest, blankest face—the 3,000-foot Dawn Wall.

This was also the case with the HSAG when it set its sights to take on one of the biggest and wealthiest private property owners in South Africa.

This epic assault took more than seven years of planning and preparation. It took the HSAG also 7 years to get where it is currently: one action being certified, and another in the process thereof.

Tommy made the first ascents of some of the hardest sport routes in the U.S. On 14 January 2015, along with his partner, Kevin Jorgeson they summited the first free climb of the Dawn Wall of El Capitan in Yosemite National Park. At the time, their 19-day ascent was considered by some as the hardest successful rock climb in history. Tommy's odds-defying feat was the culmination of an entire lifetime of endurance, risk, courage and pushing himself to his limits as an athlete.

The HSAG class action and related processes are comparable with Tommy's achievements. The HSAG is in its 7th year and the legal team have been making careful and strategic moves up each "pitch of blank wall". The HSAG class action is unique and the "first of its kind" to take place in South Africa. It has been a lengthy process thus far, however, with 23 court cases (pitches as they are known to climbers) completed, the HSAG is making steady progress to the summit.

Despite the unforeseen challenges that were encountered along this journey, the HSAG is redefining the class action law and each one of its loyal members is taking part in writing history!

To quote Tommy: "Hardship makes us feel more deeply and the ability to truly feel, creates passion! And passion is what leads us to defy the odds."

We can draw inspiration from Tommy - the fruits of our eventual success lie in overcoming fear and doubt, persevering through the challenging times and supporting one another to the end.

6. CCAF STATEMENTS

CCAF Members may have noticed that the September CCAF statements were only sent to certain members. CCAF members who had a zero balance on their account did not receive their September invoices due to the administrative burden of sending such statements. We understand that this has caused considerable confusion among members and have instructed the auditors to send out the October statements to all members once more, including those who have a zero balance.

Due to the fact that we, as a general rule, only charge once a year, it would mean that if you were paid up you would not receive an invoice. We therefore requested the auditors to change the manner of accounting and therefore sent accounts to all HSAG members.

October CCAF statements were sent out on Friday 22 October 2021. All CCAF members should have received their statements. Kindly take note that CCAF statements have not been sent to HSAG members as this is a separate class action. Members who are not sure about the differences between CCAF and the HSAG are advised to read the February 2021 newsletter.

7. THE LEGAL PROCESS OF CLASS ACTION CERTIFICATION

There are currently two active class actions being pursued, namely a contractual one (CCAF) and a delictual one (DECA).

Given the HSAG's pending certification application we deem it prudent to repeat an extract from a previous newsletter hereunder.

The South African legal system requires that one must obtain leave from the court to institute a class action, which results in certification of the class.

Certification is therefore an integral part of our class action –and indeed every class action- and as such is a very time-consuming process. The certification of CCAF was a victory for investors and the legal team alike.

The HSAG’s DECA matter is still in the process of certification. The Case Manager, Judge Janse van Nieuwenhuizen directed that the matter be set down for hearing on 30 May 2022.

Tolmay J, in the fast track (“CCAF”) application, referred to the landmark case of *Children’s Resource Centre Trust and Others v Pioneer Food (Pty) Ltd & Others*, where the factors that should be considered in the event of a proposed class action were effectively set out. According to the judgment, certification requires firstly the definition of a class; secondly, the identification of some common claim or issue that can be determined by way of a class action; thirdly, some evidence of the existence of a valid cause of action; fourthly, the court being satisfied that the representative is suitable to represent the members of the class; and finally, the court being satisfied that a class action is the most appropriate procedure to adopt for the adjudication of the underlying claims. Justice Tolmay believed that the CCAF application satisfied all of these requirements and also referred to the legal team’s “commitment to and ability to conduct the litigation”.

The HSAG is seeking a similar conclusion in the DECA matter. If we can convince the court that we satisfy the abovementioned requirements, as we did in the CCAF matter, then we will be able to obtain certification. If that happens then we will be well on our way towards reaching finality. Once a class has been certified, the matter will proceed by way of trial action. This is what our opposition are trying to prevent us from doing.

We hope that this clarifies any questions some of you may have had.

8. WITHDRAWING ON BEHALF OF INVESTORS BY THIRD PARTIES

Generally, there are strict rules applicable in South Africa in respect of representation and the HSAG is no exception. Certain individuals cannot withdraw on behalf of various parties. The HSAG's claim comprises of billions of Rands.

Agents or third parties on behalf of HSAG members are reminded that they are not permitted to withdraw others' membership without following the prescribed methods. Unfortunately, given the risks associated with modern technology, we cannot take any chances. We have the utmost respect for members' cyber security, and as such will not accept the termination of membership purely based on emails from people who claim to represent them.

The prescribed procedures regarding withdrawal from the class action have been fully set out and members are of course free to withdraw should they wish to do so.

Members can rest assured that they will not be withdrawn from the class action via nefarious forces. We have, and will continue to, demand completion of the required affidavit.

9. CCAF MEMBERS MUST SEND THEIR FICA DOCUMENTS

The HSAG members of HS 21 & 22, who are in CCAF that still have not e-mailed their FICA documents to the HSAG legal team, must kindly do so before 31 December 2021. These documents have been requested multiple times in the past months. The furnishing of FICA documents is a general requirement of the Financial Intelligence Centre Act ("FICA Act") that determines that clients of accountable institutions (for example banks and law firms) must furnish these documents if they want to make use of these institutions' services. These documents give the institutions enough information to verify their clients. The aim of the act is, amongst other things, to prevent fraud particularly where the payment of sums of money is involved. It is therefore not just a formality but a requirement.

To determine which documents, you have to hand over to the legal team for FICA purposes you can study the list hereunder again:

INDIVIDUALS:

1. Copy of ID document (SA Citizens) / Passport (Foreign Nationals);
2. Proof of address less than three months old (for example utility bill, store account statement, bank statement with address, DSTV account, municipal letter)
3. Should you not have proof of address in your name, you may provide a declaration by a third party confirming that you share an address with them and provide the third party's proof of ID and proof of address (less than three months old).

NON-RESIDENT INDIVIDUAL:

1. Copy of foreign ID / passport
2. Proof of address less than three months old
3. Should you not have proof of address in your name, you may provide a declaration by a third party confirming that you share an address with them and provide the third party's proof of ID and proof of address (less than three months old).

ESTATE LATE:

1. Copy of death certificate
2. Copy of ID
3. Bank details of estate late account
4. Resolution (if more than one executor)

From the **executor/s** we require the following:

5. Copy of ID
6. Copy of Letter of Executorship / Authority

7. Proof of address (less than three months old)

TRUST:

1. Copy of Trust deed (if applicable, any deeds of amendment of Trust Deed)
2. Copy of Letter of Authority
3. Copy of SARS document confirming Income tax / VAT registration number for trust
4. Resolution signed by all Trustees nominating authorised signatory /representative
5. Copy of bank statement confirming trust account banking details (less than three months old)

From the authorised signatory/representative, each trustee, beneficiary and founder of the trust we require the following:

6. Copy of ID
7. Proof of address (less than three months old)

COMPANY:

1. Company registration documents
2. Certificate of Incorporation
3. CM2- Memorandum of Association
4. CM22- Notice of Registered Office
5. If applicable, CM9 or Certificate of Recognition (CoR) (CoR 18.1 and 18.3 for conversion from CC and CoR 15.1 for name changes)
6. Latest CM29 - Contents of Registrar of Directors, Auditors and Officers Business name if different from registered name
7. Proof of address (less than three months old)

8. Copy of SARS document confirming Income tax / VAT registration number for company
9. Resolution on company letterhead signed by all directors nominating authorised signatory /representative
10. Copy of bank statement confirming company banking details (less than three months old)

From the authorised signatory/representative and / or CEO, each director and each person or corporation with shareholding of 25% or more in the company, we require the following:

11. Copy of ID
12. Proof of address (less than three months old)

CLOSE CORPORATION:

1. Copy of Founding Statement (CK 1) and Certificate of Incorporation (if applicable, CK2 for any amendments to the Founding Statement)
2. Business address if different from registered address
3. Proof of address of the company (less than three months old)
4. Copy of SARS document confirming Income tax / VAT registration number for the CC
5. Resolution on the CC letterhead signed by all members nominating one signatory/Representative
6. Copy of bank statement confirming bank details of the company (less than three months old)

From the authorised signatory / representative and each member we require the following:

7. Copy of ID

8. Proof of address (less than three months old)

10. DIFFERENCES BETWEEN CRIMINAL AND CIVIL LAW

Criminal law seeks to punish for an offence. Civil law seeks to achieve a remedy such as compensation for the injured party.

Other important distinctions include:

- By handing out a punishment or penalty, criminal law aims to deter offenders and others in society from offending.
- Criminal law has the ultimate aim of maintaining the stability of the state and society.
- Civil law aims to deal with disputes between individuals or organisations
- Civil law cases generally involve compensation or an agreement or judgement relating to finances.
- Civil law cases are filed by private parties, while criminal cases are usually filed by the state.
- The decision of the court in a criminal case is guilty or not guilty.
- In a civil court, the decision is whether a defendant can be held liable or not liable.

The outcome of civil cases where one party is found liable is usually the awarding of compensation, while for criminal cases, a guilty verdict means conviction and punishment in the form of a custodial sentence, fine or community service.

When it comes to appeals, any party can appeal in a civil case. In a criminal case, only the defendant can appeal the decision of the court.

In criminal cases the prosecuting authorities have the higher burden of proof of all the elements of the crime, namely: criminal act, criminal intent, concurrence, causation, harm, and attendant circumstances, all of which must be proven. In a civil case the burden of proof is on a balance of probabilities.

The Criminal Procedure Act 51 of 1977 (the CPA), as amended, makes provision for the awarding of compensation to victims of crime, who have suffered damages because of the criminal conduct of an accused. This only occurs in a fraction of all cases. This approach is intended to afford the accused an opportunity to raise the money in order to pay the compensation.

In a civil cases the Plaintiff can sue on both a delictual (unlawful) basis for damages as well as on contractual terms, and damages. In criminal cases instituted by the prosecuting authorities (SAPS / Hawks), the case is funded by the state but in a private prosecution, the complainant must fund the case out of his own pocket.

Criminal proceedings usually end with the death of the accused but in this case, there are multiple persons involved. We would like to make it clear that this is not the end of the road for the civil case.

11. 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 enquires

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.

If you have a question regarding your monthly newsletter or statement, do not reply to the e-mail from **admin3@theronlaw.co.za** but use the correct email address as set out above.

12. IMPORTANT GENERAL TERMS AND CONDITIONS

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

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

Kind regards

HSAG Steering Committee

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