



\*AFRIKAANS HIERBO\*

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

The obligation to keep us up to date of any changes to your personal and/or contact details 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. INTRODUCTION**

Dear HSAG members and those members who are also in CCAF, this is the final comprehensive newsletter of the year (excluding a short and concise December Newsletter as you have become accustomed to). As such we would like to extend our sincere gratitude for everyone's contributions, support and feedback during the past year. Many positive productive conversations took place and we have valued all of your letters, positive thoughts and motivation.

Although we have made positive strides this year and the two separate class actions are in full steam. However, forming and establishing new law and legal principles takes time and patience, and requires the continuous support of all our members. The sudden death of Mr Nic Georgiou has raised new legal possibilities and has undeniably had an effect on the class actions. The steering committee and legal team have remained steadfast and true to their commitments, as their loyalty to their convictions and to you as members once again came to the fore. There has not been a day that has passed since the inception of these cases that they have not been discussed, worked on, advanced and evaluated.

The past year has not been without its trials and tribulations but seeing the great progress of the class actions up to this point, makes it all worthwhile.

We would however be remiss if we did not mention that HSAG members' contributions seems to have waned. Although we understand that it has been a difficult year for many, we would like to encourage members to support their class actions as the legal team and steering committee are representing you and your fellow members. Without your contributions it will be impossible to assist you with lodging your claims or advancement of the matters. One of the integral aspects of a class action such as this, is the need for all parties to contribute and to comply with the group member funding model as approved by the court. The success of our matters is dependent on each aspect of the class - be it the representatives, the legal team or the members themselves – fulfilling their respective responsibilities. As discussed below, your immediate support is vitally important.

Despite many stumbling blocks due to Covid, we trust that you all had a year filled with blessings, good health and happiness and our sincere condolences to those who lost loved ones. We look forward to continuing this journey with you in 2022. All of our progress and success can be attributed to the loyalty and support of the HSAG members.

## **2. PROGRESS OF THE 2 CLASS ACTIONS**

The year 2021 is coming to an end. During December 2019 we were all excited because our matters were moving forward. Since then, positive things have happened but there have also been less positive aspects! Here is an abridged version of proceedings.

### **2019 (December)**

1. CCAF (HS 21 & 22) class was certified.
2. DECA (HS 15 – 22) was brought before court

### **2020**

1. Automatic participation of CCAF - end of January 2020
2. Opt-in CCAF participation March – September 2020
3. The Covid-19 pandemic hits the world - different levels of lockdown begin in March. Thereafter further waves of Covid strikes with associated restrictions world-wide which continues up to 2021.
4. Our opponents try to side track the CCAF matter by again lodging rule 30 applications to isolate those members in HS 21B.

### **2021**

1. Case managers are appointed in both DECA and CCAF cases.
2. Preliminary Court date for DECA case reserved for May 2022.
3. Death of Nic Georgiou Friday, 10 September 2021.
4. DECA court documents submitted – October 2021.
5. Pending - executors' appointment in Nic Georgiou's estate.- November 2021.
6. Courts / State institutions close as usual 15 December 2021 to 15 January 2022.

The wheels of justice are turning slowly but surely. The long arm of justice which punishes the guilty may sometimes take a frustrating amount of time, but thanks to our perseverance and solid legal system, we can already see light at the end of the tunnel.

We must all continue to show faith and more perseverance lest we will lose hope. All of us, including our professional team, experience the same frustrations but we dare not lose heart.

Be brave! Believe in law and justice! Trust in our Heavenly Father.

Where there is hope, there is Life!

### **3. THROUGH THE WINDOW: THE STORY OF PERSEVERANCE**

What follows is a story we found and adapted from the internet.

The world outside is full of amazing perseverance stories that can inspire us to achieve more.

One always wonders...Why do so many people give up on their hopes, dreams, and goals so easily? Why don't more people persevere?

It's a question we ask because we see it so frequently. Friends, co-workers, and even people we meet on our path openly admit to giving up.

Why is it so many people choose to go the easy route and give up?

We try to live our lives the opposite way, that being without regret. The regret of not knowing what we could have accomplished, but didn't because we were scared, didn't work hard enough or gave up when it got tough.

Whether it's a fitness goal, business idea, sports or another challenge in life we should always try to see it through. In our legal battle this is what the HSAG and legal team prides itself on and holds at the core of its being, namely perseverance.

Giving up is easy, finishing a goal is hard. The HSAG has in its sight as a primary goal, to recover its members' hard-earned money, which they invested in the failed HS

companies 15 – 22. One relevant story that sprung to mind when considering perseverance is that of the founder of Starbucks, Mr Howard Schultz.

Everyone around the world knows Starbucks. It is one of the most recognizable symbols next to the crucifix, McDonalds, and Superman. But its rise to prominence was not without its hurdles. Without perseverance the coffee giant would never have existed.

Howard Schultz, the founder of Starbucks went to over 200 banks looking for his original loan. 242! This means that he had to knock on over 200 doors to acquire the assistance and outcome he initially planned.

Not only was he desperately trying to secure a loan, his wife was pregnant with their first child. After a year of rejections, he was able to secure the \$400,000 needed from a doctor and two other individual investors.

Starbucks Stats ([via Business Insider](#)):

- 16,850 Starbucks locations in 40 countries
- As of 2010, Starbucks employed 137,000 people — twice the population of Greenland
- Starbucks adds two new stores on a daily basis since 1987

. The Starbucks story can be compared to our own HSAG story where we fight to recover R4.6 Billion of our members' and HS Investors money. The HSAG stands for the same principles – being perseverance and courage in the face of adversity. Not less than 26 times we have already knocked on the doors of the courts, each knock bringing us one step closer to the end result.

Because Starbucks was a completely new concept and nobody else knew or supported it outright, the task was made all the more difficult. Mr Schultz had to knock on 242 doors before he became successful and people were prepared to 'let him in'. Despite all those stumbling blocks, he (as us) persevered and continued to believe in his own case, whether other people could see its merits or not. The HSAG's perseverance is certainly comparable to this story.

The same principles apply to Thomas Edison where he tried 10 000 times before he 'saw the light'. His answer to that was: "I have not failed. I have just found 10 000 ways that won't work". It is unfortunately the path a pioneer must follow. Never give up, no matter how hard it might seem. If Howard and Edison had not persevered the world wouldn't know one of the most iconic brands ever nor one of the world's greatest inventions. If the HSAG does not persevere then justice will not be done.

. We believe that members may value the above stories and the lessons hereunder regarding perseverance:

1. Success isn't supposed to be easy.
2. Success is expected to be difficult, challenging, and exhausting otherwise success would be the norm.
3. Don't quit when obstacles arise. The HSAG has had many obstacles over the years.
4. Persist, trust yourself, your faith, and your vision until you've accomplished your goals.
5. This perseverance story as well as others show that human beings are capable of anything with perseverance, hard work, their faith, and belief in themselves.
6. Never give up on your dreams, keep going, keep striving, and keep persisting. If you give up on something you really care about you'll end up quitting just before the try line.
7. Learn how to push through your fears and achieve your biggest goals and dreams.

#### **4. UPDATE ON APPOINTMENT OF EXECUTOR**

The HSAG is in possession of the official and completed J190 Acceptance of Trust as Executor form, as well as the Estate number and the Master's reference number and offices where the estate of Mr Nic Georgiou was reported on the 24<sup>th</sup> of October 2021. The Act specifically states that an estate must be reported within 14 days. As soon as the letter of executorship has been received, the executor must place a notice in the

Government Gazette as well as a local newspaper in the district of Johannesburg. In such notice all persons with claims against the estate to lodge such claims within a period of at least 30 days, but not more than 3 months, of the date of publication, with the executor. Our correspondents are following developments closely.

In light of the above it is extremely important that the HSAG members bring their contributions to the HSAG up to date before 31 December 2021 to assist with the submission of their claims to the executor of the estate. See your account attached hereto. If you have any queries regarding the aforesaid, kindly contact the HSAG or the legal representatives of the HSAG. Contact information can be found below.

On the expiry of the relevant period, the executor shall satisfy him as to the solvency of the estate and, if the estate is found to be insolvent, then he shall report by written notice the position of the estate to the creditors, They (the majority in number and value) as the creditors shall instruct him (the executor) in writing to surrender the estate, alternatively to realise the assets in the estate in accordance with the law.

As has been established, VJ Chemaly was nominated as the Executor of the late Mr. Nic Georgiou's estate. Mr Chemaly, and the agent appointed to assist him in administering the estate, have informed us that no letter of executorship has been issued yet. Once the letter of executorship has been issued, the Executor/Agent will advertise to creditors and debtors of the estate. We have instructed our correspondent attorneys to enquire from the Master of the High Court how far the process of appointment is and to monitor the progress of the estate

We will inform members of any news as and when it becomes available to us.

## **5. FROM THE DECA COURT PAPERS**

One of the questions raised with regards to the DECA matter is whether the case has prescribed as this matter has been going on for a considerable amount of time. We have addressed the above matter in our Replying Affidavit and therefore insert same hereunder. The HSAG legal team trusts that this case did not prescribe as this application was timeously issued. The HSAG further wish to emphasise that all cases now instituted

on the same merits by people outside of the HSAG will unfortunately, most probably be met with the defence of prescription by the Georgious, and therefore this matter driven by the HSAG is vital as it may be the last and only option for individuals to regain the investments.

The following was stated under oath by our HSAG Applicants in the DECA matter:

*Insofar as prescription is concerned:-*

- (a) The earlier dissatisfaction and complaints of investors around 2014 when the Scheme of Arrangement was adopted was based on the position at that stage, namely that properties had not been transferred and that the business rescue plan was failing.*
- (b) This current application, however, relates to the much more recent actions on the part of Orthotouch and the individuals concerned, namely the dissipation of properties by Orthotouch, and the decimation of value within Orthotouch. This is something that was only learned much more recently.*
- (c) The grounds for this application are therefore not the same grounds upon which earlier litigation was contemplated on behalf of Highveld 15 to 18 which was never instituted.*
- (d) Had Orthotouch taken transfer of all the properties earmarked for transfer, and had Orthotouch kept such properties (or even the proceeds), the current grounds for action would clearly not have existed.*
- (e) In any event, it is clear that investors were deliberately kept in the dark about what was happening. Under those circumstances, it is improper for the individual responsible to try and rely on prescription on the basis*

*that we should have known about the causes of action at an earlier stage.*

*(f) Furthermore, I submit that the liability of the individuals concerned is contingent upon the non-payment by Orthotouch of its debt – and that the running of prescription of the claims against Orthotouch (and hence the claims against the individuals) has in any event been effectively suspended in terms of section 133(3) of the Companies Act of 2008, since 7 November 2019 being the commencement of the current business rescue proceedings of Orthotouch.*

*(g) This is also relevant to the claim against the Sixth Respondent who has recently simply filed a notice under rule 6(5)(d)(iii) raising a question of law only (being prescription of the claim against him).*

## **6. CCAF – HS 21B**

With regards to the HS 21 and HS 22 Certified class action and the Rule 30 application instituted by the Respondents regarding HS 21B, our replying affidavit has been commissioned, filed and served on the opposition in both the ‘Waxham’ case (Case No: 9272/2020) as well as the ‘Vlok’ case (Case No: 80811/2014). These two matters run concurrently as it could be important for them to stay synchronized. The replying affidavit is a response to the Respondents’ answering affidavit and addresses all of the opposition’s concerns in so far as required both factually and legally. The opponent’s answering affidavit and in turn, our replying affidavit, primarily concerns the 21B investors and whether they form part of the HS 21 & 22 group of investors. Everyone has always maintained that the 21B Investors form part and parcel of HS 21 & 22 and that their claims fall squarely within the ambit of the certification order of Judge Tolmay. This is the concurring view of our legal team as well

This was also conveyed in a previous newsletter (see May 2021 Newsletter). As with all litigation, there are risks involved but the legal team and counsel are not convinced with the opposition’s bona fides and as such trust that the court will, as is the factual position,

keep HS 21B as part of the certified class action. Time will tell what the outcome will be and we shall keep our members posted and informed.

## **7. HSAG AND CCAF MEMBERSHIP (INCLUDING HS 21B)**

As stated above, it is important to highlight to all HSAG and CCAF members (in particular those persons who invested in HS21B) of the fact that they have joined the proceedings freely and voluntarily. The HSAG will simultaneously give them the assurance that it and its legal team shall endeavour to support them as far and as comprehensively as possible. The HS21B members who Opted-In, did so in following Judge Tolmay's order in the HSAG certification class action. They braved and risked the stormy waters of a court case because they earnestly believe in their own case as well as being driven by their passion for righteousness.

The CCAF matter was certified by Judge Tolmay on 10 December 2019. These investors have supported and associated themselves fully with the HSAG's certified class action and will receive the support of the HSAG and CCAF legal team. Although no outcome can be guaranteed by anyone nor our legal team, we are confident that they had reasons to throw their weight behind, and make contributions towards the said legal proceedings. These investors unequivocally consider themselves to be a part of the Fast Track Certified class action, considering the fact that the court needs to decide on the application, alternatively the conditional counter applications before the court can confirm their inclusion or not. We do not want to speculate about the outcome and will deal with it once we have received confirmation by the court.

Members can read the Judgment of Tolmay J (Pretoria High Court, 10 December 2019) in the HS 21 & 22 Certification Application by using the following link: <http://hsaction.co.za/wp-content/uploads/2020/05/HS21and22judgment.pdf>

## **8. TRANSFER OF SHARES – HS 21 AND 22 (CCAF)**

Kindly take note that transfer of shares in the CCAF certified class action (HS 21 and 22) seemingly cannot be done at the moment due to the fact that Orthotouch is currently in business rescue.

Members are therefore advised to contact Orthotouch.

## **9. ADMINISTRATIVE BURDEN AND OTHER CHALLENGES**

We would like to remind members to avoid causing an unnecessary administrative burden by sending emails to incorrect addresses and writing cumbersome emails not related to the issues at hand. Needlessly adding all HSAG and/or CCAF email addresses also creates an unnecessary burden by filling up numerous inboxes and raising costs for the time spent determining to which address the email should have been sent to. Not to mention the time and energy spent by multiple members of staff reading the same emails. Each newsletter devotes a section towards the end indicating to which address emails should be sent to. Kindly familiarise yourselves with this section of the newsletter, as this will ensure that less time will be spent on administrative issues.

Withdrawal of HSAG members can only take place by way of receipt of the necessary affidavit, as provided by the HSAG's legal team. If, however, a member requests to be removed from the HSAG on the WhatsApp groups, such person shall immediately be removed from the relevant HSAG WhatsApp group. He or she will still receive their newsletters per email which will keep him/her updated until such time as he/she has completed the necessary affidavit.

## **10. 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.

## **11. 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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