



MAANDELIKSE NUUSBRIEF: MAART 2022

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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 asook dat die inhoud van u maandelikse state korrek is.

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1. IS DIE REGBANK STEEDS DIE RUGGRAAT VAN ONSE SAMELEWING?

Die HSAG kry van tyd tot tyd navrae vanaf sy lede wat vra hoe sterk die regsisteem is en of die howe en regters ook gekaap is. Lindiwe Sisulu, die minister van Toerisme, het vroeër dié jaar in 'n opiniestuk vele wenkbroue laat lig deur die Suid-Afrikaanse howe en die regters op die regbank in diepe betwyfeling te trek, sonder enige regverdigbare gronde. Sy het hulle aangekla daarvan dat hulle intellektueel gekoloniseer is en ook bevraagteken watter rol die Grondwet tot dusver daadwerklik gespeel het om die nood van armes die verlig. Haar politieke agenda ongeag, só aanval op die regbank volg a patroon wat ook herken kan word in diegene soos Mnr Julius Malema en Advokaat Dali Mpofu. Die mees onlangse voorval waar dié twee here betrokke was, was by laasmaand se Regterlike Dienskommissie onderhoude vir 'n nuwe Hoofregter. Weereens, *hul* politieke agenda nieteenstaande, die algehele effek van die individue se aksies en woorde is dat hulle 'n saad van wantroue en agterdog in hul volgelinge (waarvan daar miljoene is) se gedagtes plant, waarvan die uiteinde 'n regbank is waarvan elke uitspraak deur die publiek bevraagteken kan word. So word die geloof in die regstelsel en howe oor jare afgebreek, totdat geen uitspraak (selfs die goeie, Grondwetlik gefundeerde, goed nagevorste uitsprake) meer afgedwing sal kan word nie, bloot omdat die publiek nie meer in die oppergesag van die reg sal glo nie.

Die Suid-Afrikaanse regbank het al egter ongegronde aanslae soos hierdie telkemale oorleef en onlangs weereens bevestig dat selfs persone met hoë politieke verbintenisse nie daarin sal slaag om die regstelsel te ontspoor nie. Die waterskeidingsbeslissing in die Suid-Afrikaanse reg was toe die Konstitusionele Hof die eertydse president van die Republiek van Suid-Afrika, Jacob Zuma, tot gevangenisstraf gevonnissen het, vir sy blatante minagting vir die regbank en -stelsel. Daarby is 'n ander voormalige hooggeplaaste politikus onlangs skuldig bevind op aanklagte van meened en staar moontlike gevangenisstraf in die gesig.

Net soos politieke booswigte twyfel in die regbank probeer saai, so probeer die teenkant in ons aangeleentheid twyfel by ons beleggers saai oor die uiteinde en sukses van ons

saak en aksie. Die HSAG het tot dusver geensins afgewyk van sy missie en standpunt nie en is vol vertroue dat geregtigheid in 'n finale uitspraak sal seëvier, hetsy goed of sleg vir die HSAG.

Die HSAG het oor jare bedekte dreigemente ontvang en is gewaarsku dat ons opponente “kontakte in baie hoë posisies” in die politieke bestel, asook ander instansies het en dat dit uiteindelik sy saak in die wiele sou ry. Die bogenoemde nieteenstaande, is ons trots om te kan sê dat slegs een uit die 23 beslissings tot dusver was nie in die HSAG se guns nie. Die teendeel is derhalwe bewys: Ons saak het tot dusver nie net hoë morele grond geniet nie, maar is ook deurentyd gebaseer op goed gefundeerde regsbeginsele. Ons wil egter beklemtoon dat ons nooit regter in ons eie saak kan wees nie en dus nie enige uitsprake of bevindings, hetsy suksesvol of onsuksesvol, kan voorspel nie.

2. BESPREEK WEER JOU PLEK OP DIE BUS

Die HSAG het reeds in vorige nuusbriewe aangekondig dat 'n sperdatum vooraf bepaal is vir alle HSAG-lede om noemenswaardig by 'n sertifisering te kan baat. In internasionale klasaksie-hofsake is dit nie vreemd dat partye skik by die sertifisering van 'n klas, alhoewel dit nie in die vroeëre CCAF-hofsake, toe wyle mnr Georgiou nog gelitigeer het, plaasgevind het nie. Sedertdien is mnr Georgiou egter onverwags oorlede en is nuwe litigante en regspanne tans by die litigasie betrokke. Dit is egter geen waarborg dat sy opvolgers in titel die norm sal volg nie, maar dit is ons plig om HSAG-lede daarop te wys dat, indien die algemene tendens gevolg word, die moontlikheid nie uitgesluit kan word nie.

Die HSAG het nog altyd vir sy lojale lede hoë agting gehad en is dit destyds deur die hof bevind dat sodanige lede by sertifisering voordeel moet ontvang omdat hulle juis opbetaalde lede is. Gedurende vorige skikkingsonderhandelinge was dit 'n voorvereiste van Mnr Georgiou dat hy slegs met geldige eisers sal onderhandel en die vereiste deur hom gestel was dat hy net met opbetaalde lede sal skik. Dit is geensins bekend dat, selfs al sou skikkingsonderhandelinge plaasvind, gemelde vereiste gestel word nie, maar is dit

dienlik om die moontlikheid daarvan uit te lig. Daarom is dit belangrik om op die HSAG bus te wees!

Die HSAG-prokureurs is vir jare nie ten volle betaal vir hul dienste gelewer nie, maar streef die HSAG-bestuur steeds daarna om die bes toegeruste regsman (insluitend junior en senior advokate, indien hoegenaamd moontlik) en deskundiges te gebruik. Hiertydens is slegs 'n klein persentasie lede ongelukkig opbetaal, maar as almal hul kant bring, sal die krygskas van die HSAG gevul wees. Persone wat nie hul bydrae maak by die befondsingsmodel van die HSAG nie kan ongelukkig nie verwag om deel te wees van die regsproses of enige suksesse daarin nie, en kan moontlik deur die regsproses teleurgestel wees. Aangesien die saak reeds sewe jaar aankom, weet almal reeds of hulle kan of wil deel wees van die proses.

3. EKSEKUTEUR GEVOEG TOT VERRIGTINGE

Die wyle Mnr Nic Georgiou se eksekuteur het ingestem tot sy voeging in die verrigtinge en het ontvangs erken van alle eise teen die boedel. Die HSAG-regspan het lede se eise op 'n ooreengekome wyse ingedien teen die boedel van die bestorwe Nic Georgiou, onder andere in die DECA- en CCAF-aangeleenthede.

4. DU TOIT – AANGELEENTHEID

In die tong-in-die-kies Peekaboo (Now you see me now you don't) saak, waar die HSAG-regspan aanvanklik gesitêr is as eerste respondent, en toe weer sonder enige kennis van die kopstukke as eerste respondent verwyder is, het ons verneem dat die saak intussen uitgestel is weens die feit dat Mnr Jacques Du Toit buitenstyd hofstukke gelyasseer het wat ongeveer 1 200 stukke beloop het, wat uiteraard die gevolg gehad het dat dit nie aangehoor kon word nie. By nagaan van die stukke het dit geblyk dat Du Toit 'n magdom dokumentasie bymekaar geflans het wat tot hierdie omvangryke stukke gelei het, en die saak nie aangehoor kon word nie.

Aangesien Du Toit nog nie formeel, in terme van die hofreëls, sy saak teruggetrek en die gebruiklike kostes met die terugtrekking aangebied het nie, is gemelde prokureurs steeds deel van die verrigtinge en ontvang hulle stukke daarin.

5. KOMMUNIKASIE MET LEDE

Benewens die nuusbriewe en inligting op die webwerf, is daar ook twee gesoute skakelbeamptes wat aktief die werk van die HSAG bevorder en betrokke is by alle HSAG WhatsApp-groepe (Afrikaans en Engels). Die werk wat hierdie dames vir die HSAG doen, is baie belangrik, want dit bevorder nie net die werk wat die HSAG doen nie, maar hulle moet ook sekere belangrike vrae en navrae uitklaar waarvan die oorgrote meerderheid relevant is en in die nuusbriewe oor jare bespreek is. Nietemin moet alle moeilike of uitdagende navrae deur die skakelbeamptes aan die HSAG-bestuurskomitee gekommunikeer word, wat dit dan sal bespreek of regsadvies sal inwin om dit uit te klaar. Dit is belangrik om te noem dat die basiese beginsel van litigasie van klasaksies oor die algemeen nie verskil van litigasie tussen twee individue nie, naamlik, dat daar 'n eiser, eisoorzaak en 'n verweerder is en dat daar 'n bedrag geëis word. Daar is egter 'n groot verskil tussen litigasie tussen individue en 'n klasaksie teen een of meer individue. Een van die belangrikste uitdagings van klasaksie-litigasie is kommunikasie tussen prokureur en kliënt(e) sowel as die finansiële gesondheid van die aangeleentheid.

Tyd het gewys dat sommige van die opponente so ver gegaan het om sommige individue te betaal om die groepsaksie te destabiliseer, deur hoofsaaklik lede te ontmoedig om die saak finansiël te ondersteun. Die belangrikste vorm van kommunikasie tussen ons bestuurskomitee, die prokureurs en kliënte is via HSAG-nuusbriewe, telefoniese gesprekke, elektroniese kommunikasie en veral WhatsApp-groepe. Daarom wil ons HSAG-lede waarsku en ontmoedig om op enige manier betrokke te raak by en deel te neem aan nie-HSAG WhatsApp-groepe. Genoemde groepe word nie net deur sekere individue met hul eie onbekende agendas bestuur nie, maar is ook nie bevorderlik vir ons saak en doelwitte nie. Daar word van mense soos Helgard Hancke, Hans Klopper en Jacques Du Toit verwag om weer alles in hul vermoë te doen in die aanloop tot ons

komende DECA-saak om die HSAG verdag te maak en te probeer ontspoor. Indien enige sodanige inligting (van watter bron ook al) na vore kom, versoek ons dat u dit onmiddellik na hsagwhistle@gmail.com stuur, sodat die aard en oorsprong van gemelde oorsprong opgevolg kan word.

Hoe volhoubaar en suksesvol ons aksies sal wees, sal van ons lede afhang, maar nieëstaande die onbekende terreine van klasaksies, besigheidsredding en ander ingewikkelde kwessies is ons steeds positief om suksesvol te wees in ons aansoeke van etlike miljarde rande.

6. “OPT-IN” VS “OPT-OUT”

Tot dusver, in sy Kennisgewing van Mosie, het die HSAG die Hof versoek om die sogenaamde “opt-out” metode van klasaksies te volg. “Opt-out” beteken dat “lede wat andersins oorweeg sou word om in die klas te val, geregtig sou wees om van die klas te “opt-out”, deur 'n voorgeskrewe prosedure te volg (Du Plessis, Max, et al., eds. *Class action litigation in South Africa*. Claremont: Juta, 2017, bl 12). Daarteenoor beteken “opt-in” dat “potensiële klaslede spesifiek moet aandui dat hulle instem om deur die voorgestelde klasverteenvoerders gebonde te word en deur die voorgestelde klasverteenvoerders verteenwoordig te word, deur op een of ander voorgeskrewe wyse hul voorneme aan te dui om klaslede te word.” (Du Plessis, Max, et al., eds. *Class action litigation in South Africa*. Claremont: Juta, 2017, bl 12).

Ongelukkig in die HSAG-saak, onder andere weens verskeie faktore, bv. die lang tydperk, wye publikasie, swak finansiële ondersteuning, asook billikheidsoorwegings, in ag geneem, kan die HSAG se huidige befondsingsmodel nie meer die “opt-out” bedeling ondersteun nie.

Die HSAG-bestuur oorweeg dit gevolglik om die regsplan opdrag te gee om die huidige bedeling van “opt-out” tot “opt-in” te wysig. Hierdie bedeling is voorheen deur die

Hooggeregshof goedgekeur met sertifisering van die CCAF-saak, waarin 'n groot aantal feite en omstandighede presies dieselfde is as in die DECA-saak.

Dit kan beteken dat almal die geleentheid sal kry om deel te wees van die klasaksie maar, soos voorheen versoek, teen betaling van 'n registrasiefooi en/of 'n bedrag wat oorweeg sal word met bedrae wat opbetaalde lede reeds die afgelope jare betaal het.

7. (WANNEER, HOEVEEL EN) WAARVOOR?

Ons het reeds in ons vorige nuusbrief kort en kragtig die beleggers se vrae uitgestippel (sien Januarie en Februarie 2022) en kry ons van tyd tot tyde enkele vrae oor waarvoor ledegedeltes ingespan word. Hierdie vrae is telkemale, reeds sedert 2015, beantwoord en het al selfs voor die hooggeregshof gedien.

Die onderwerp is deur die jare deeglik bespreek en die HSAG-befondsingsmodel het reeds voor 'n hof gedien – en is goedgekeur. Dit is geen geheim dat ons teenstanders die HSAG-befondsingsmodel probeer ondermyn nie, maar die wedersydse vertroue tussen die HSAG-bestuurskomitee en hul regsman hou die saak steeds op koers.

Interessant genoeg, en elke keer as ons op pad hof toe is, is daar een of twee persone wat weereens wil vasstel hoe die befondsingsmodel werk. Mnr Georgiou het ook gepoog om met die sertifisering van die CCAF alles in sy vermoë te doen om die model te bevog, maar het die hof uiteindelik in die guns van die HSAG-model bevind en het selfs redes daarvoor verskaf. Vanaf aanvang was die HSAG nog altyd 'n vrywillige organisasie en het sy lede vrywillig daartoe bygedra om daarvan 'n sukses te maak. As dit nie vir hierdie kerngroep lede was wat nie alleen in hul eie saak geglo het nie, maar ook die HSAG, sy regsman en alle betrokkenes in sy stryd ondersteun het nie, sou die saak nooit vanaf die grond gekom het en gevorder het tot waar dit nou is nie.

Die HSAG was nog altyd deursigtig gewees maar sal ons uiteraard nooit ons streng vertroulike sake aan die buitewêreld uitbasuin en selfs kliënte se inligting bekendmaak of

op enige platforms bespreek nie. Dit is een van die groot onbekende faktore waarmee ons opponente te doen het kort na aanvang van die saak.

Wat eksterne befondsing aanbetref, het die HSAG wel tussen 2015 en 2017 daarna gekyk of daar nie finansiële instellings was, of dalk selfs groot rolspelers, wat betrokke wou raak nie, maar het niemand belanggestel nie. Die rede; dat niemand enige risiko's wil neem teen 'n privaat individu met 'n swak baanrekord nie.

8. LOS KANON OP DIE DEK?

Die HSAG het weereens sydelings ter sprake gekom in 'n nuusbrief wat ene Mnr Deon Pienaar aan sy ondersteuners gerig het. Ons wil dit baie duidelik stel dat die HSAG die grootste respek en agting vir Mnr Deon Pienaar se motiewe en doelstellings het, wie as 'n leek, sonder enige leiding van 'n regspraktisyn of -span, sy saak teen verskeie respondente (onder andere die Reserwe Bank en ander instellings en persone) voer. Hy is egter geensins deel of verbonde aan die HSAG nie en distansieer ons onself algeheel van sy verrigtinge en uitsprake.

Nieteenstaande sy absolute geloof in sy saak en deursettingsvermoë, is daar egter sekere ernstige vrae wat gevra moet word op die wyse waarop dit gedryf word. 'n Tekort aan behoorlike regsbystand kan maklik daartoe lei dat 'n applikant met 'n verdienstelike saak onbewustelik met dodelike ammunisie in die verkeerde rigting skiet, en sodoende nie alleen homself nie maar ook onskuldige partye skade berokken.

Daarbenewens word 'n potensiële goeie saak verydel en uiteindelik deur prosedurele rompslomp van die tafel gevee en kan sodoende nie tot sy reg kom nie. Die vraag is al gevra of handeling soos hierdie nie maar uiteindelik maar dieselfde uitwerking kan hê as 'n los kanon op die dek van 'n oorlogskip nie.

Die HSAG het homself tot dusver nie bemoei om direk by hierdie gevegte betrokke te raak nie, maar is dit uit die hofstukke baie duidelik dat die respondente in gemelde saak

geen doekies omdraai nie. Stellings is gemaak, soos byvoorbeeld, dat die applikant 'n wesentliche struikelblok in die gesig staar; dat die kanse op sukses in die hofverrigtinge uiters gering is, en dat daar 'n daadwerklike moontlikheid bestaan dat Mnr Pienaar gedwing sal kan word om alle regskostes te betaal. Dit is welbekend dat Mnr Pienaar oor jare aansienlike bates en sy besigheid verloor het weens die ongelukkige voorvalle en het hy al ons simpatie daarvoor.

In sy nuusbrieff verwys Mnr Pienaar na die sogenaamde PICKVEST-sage. Dit dien vermeld te word dat daar verskeie groepe en individue in sake aangaande Pickvest opgetree het en is dit nie uit die nuusbrieff seker of hy na die HSAG verwys nie, maar wel na die CCAF en DECA sake. Indien hy die CCAF hofuitspraak gelees het, sou hy gemerk het dat die hof juis onderskei het tussen CCAF en die HSAG, asook die feit dat daar slegs 1800 lede by CCAF is, wat beteken dat die HSAG se ledetal nie verander het nie. Dit blyk ook dat Mnr Pienaar ongelukkig geen insig het om die dinamika van die HSAG te verstaan nie en dat hy van mening is dat slegs opbetaalde lede verteenwoordig word. Die hof het ook daarvoor uitspraak gelewer en het beslis dat, alhoewel daar aansienlike voordele vir opbetaalde lede is, dit nie enige ander persone uitsluit nie.

Ons het voorheen reeds berig oor die bekende uitdrukking van "You cannot fight City Hall" (sien Augustus 2020), waarin ons nie net na die felle kritiek van die hof verwys nie, maar ook die ontevredenheid van die respondente in Mnr Pienaar se aangeleentheid.

Gevolglik kan die HSAG ongelukkig geen gewig aan enige opmerkings (wat in elk geval foutief is) deur Mnr Pienaar gemaak, heg nie, en sal ons nie daarop kommentaar lewer nie.

9. VORDERING IN DECA-SAAK

Die tydsverloop in die voeging van die eksekuteur as party in die verrigtinge het afgeloop en het die eksekuteur geen besware aangeteken om deel te vorm van die verrigtinge nie. In effek beteken dit eenvoudig dat die saak voortgaan asof die eksekuteur in die skoene

van wyle Mnr Georgiou staan. Dit is dus duidelik dat die eksekuteur die dieselfde sloeringstaktieke toepas as wat sy voorganger in titel het nie. Ons vertrou dat die saak sy volle gang kan gaan en afgehandel kan word, soos beoog. Dit sal immers nie alleen in belang van die HSAG nie, maar ook die erfgename en familie van die oorledene wees dat die saak eerder vroeër as later afgehandel kan word.

Navraag is gedurende middel-Maart by die eksekuteur gedoen ten aansien van sy vorige versoek om eers tyd gegun te word om met die regsman en familie te vergader. Die eksekuteur het geantwoord dat hy eers op Vrydag 19 Maart met sy regsvertegenwoordiger, Mnr Tintinger sou vergader en sien ons uit om vorentoe op hoogte gebring te word van verrigtinge. Tot datum hiervan het ons geen sodanige terugvoer ontvang nie en is 'n opvolg skrywe gestuur.

Ons is nog vol vertroue dat die saak op 30 Mei 2022 aangehoor sal word. Een van die respondente het aangedui dat hy graag die aspek rakende die HS21-B aandeelhouers vroeër wil aanhoor tydens 'n saakbestuurvergadering, en is twee datums reeds daarvoor gereël. Ongelukkig het die datum nie almal gepas nie en sien ons uit dat die aangevraagde saakbestuurvergadering eersdaags sal plaasvind.

10. VORDERING IN THE CCAF-SAAK

Die CCAF-regspan het 'n besige en produktiewe maand gehad ten opsigte van die prosedurele aangeleentheid wat die boedel van wyle Mnr Nicolas Georgiou betrek. Omdat Mnr Georgiou oorlede is, sal die litigasie verrigtinge teen mnr Georgiou se boedel voortgaan. Die CCAF-regspan was deurlopend in kontak met die Eksekuteur se Agent, en ons bevestig dat die Eise in die CCAF-aangeleentheid formeel teen die Boedel ingedien is.

Die CCAF-regspan het ook 'n Kennisgewing ingevolge Reël 15(2) aan die Eksekuteur van die boedel wyle mnr. Nicolas Georgiou beteken om die Eksekuteur van die boedel, mnr. Joseph Victor Chemaly NO, te vervang as die nuwe Eerste Respondent in die saak.

Die Eksekuteur wat ten opsigte van die boedel van wyle Mnr Nicolas Georgiou aangestel is, Mnr Victor Joseph Chemaly. Die tyd is nou verstreke in terme van die Hofreëls vir die betrokke partye om beswaar te maak teen die Kennisgewing en dus is Mnr Victor Joseph Chemaly N.O. formeel die (nuwe) eerste respondent in die saak. Die saak sal voortgaan teen die boedel van wyle Mnr Nicolas Georgiou en alle partye wat tans deel vorm van die verrigtinge. Die Eksekuteur sal dus ingesluit en ingeteken word by die CaseLines-stelsel van die Gautengse Hooggeregshowe.

Neem verder kennis dat die lys van eise formeel teen die boedel van wyle mnr Nicolas Georgiou ingedien is. Die CCAF-regspan het die Eise formeel ingedien en die Eksekuteur se Agent, Mnr Luke Saffy, het ontvangs van die Eise wat ingedien is bevestig en bevestig dat hulle die Eise sal volg en mettertyd na ons sal terugkeer.

In die lig van die feit dat die Eise formeel teen die Boedel ingedien is, wil ons die belangrikheid beklemtoon dat lede tot hul eie saak bydra om hul saak en hul kanse op sukses te versterk. Tydens die onderhandelinge met wyle mnr Nicolas Georgiou het hy dit duidelik gemaak dat hy slegs bereid was om met opbetaalde lede van die HSAG te onderhandel, en ons verwag dat hierdie standpunt ook gevolg sal word deur sy titelopvolgers met betrekking tot onderhandelinge van Eise teen die boedel ingedien. Die rasionaal agter hierdie benadering deur die Eksekuteur sal eenvoudig wees deurdat hulle slegs bona fide HSAG-eise sal vermaak wat nie voorgeskryf is nie.

Noudat die Eksekuteur formeel deel vorm van die verrigtinge, sal die CCAF-regspan mettertyd 'n saakbestuursvergadering met al die partye tot die verrigtinge reël, nou ook die Eksekuteur van die Boedel.

11. ALGEMENE NAVRAE

'n Navraag wat ons gereeld kry is aangaande oordrag van die aandele, na 'n geliefde se afsterwe. Ons wil almal graag herinner dat dit deur Orthotouch gedoen word. Hulle is die

maatskappy wat die aandele se oordrag behartig en dit is eers ná ons 'n dokument, deur hulle uitgereik, wat aandui dat die aandele in 'n nuwe naam oorgedra is, ontvang het, wat ons dit op ons stelsel kan verander. Ons is ook bewus van die feit dat hulle in Sakeredding is – dit behoort egter geen impak op hul werksverrigting te hê nie een ons vra dat almal hulle op dié epos kontak:

admin@orthotouch.co.za

12. **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 verwysingsnummers (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;
- **hsagstates@gmail.com** vir alle Boedel navrae.

Die amptelike en bestaande e-pos adresse vir CCAF (gesertifiseerde HS 21 & 22 klas-aksie), is as volg:

- **accounts@ccaf.co.za** vir betalingsbewyse
- **admin@ccaf.co.za** vir die amptelike versoek vir afbetaling-vorm
- **enquiries@ccaf.co.za** vir ander CCAF navrae

Indien 'n belegger of enige persoon 'n epos na die verkeerde adres sou stuur sal dit daartoe lei dat daardie e-pos nie spoedig of enigsins die nodige aandag geniet nie. Indien u nie verder enige verdere e-posse wil ontvang nie, stel ons ook asseblief skriftelik in kennis daarvan.

13. 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 MARCH 2022

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

This email is confidential and is exclusively meant for the addressee. If you have received it in error/ wrongly, please notify the sender immediately at hsagenquiries@gmail.com and delete it. You may not copy, disclose or deliver any email received in error or any part of it to anyone else. HSAG’s webmaster uses antivirus software to prevent viruses and other malicious code. However, such software cannot prevent or eradicate all such code. The HSAG or its representatives will not be liable for any loss, harm or damage whatsoever arising from receipt or use of this email or otherwise, whether arising through negligence of the HSAG, its members, steering committee, and agents or otherwise.

The www.hsaction.co.za 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. IS THE JUDICIARY STILL THE BACKBONE OF OUR SOCIETY?

From time to time, the HSAG receive enquiries from its members about how solid the legal system is and whether the courts and judges have also been captured. Tourism Minister Lindiwe Sisulu raised eyebrows in an opinion piece earlier this year by casting deep doubt on the South African courts and the judges populating the judiciary. However, without any justifiable grounds. She accused them of being intellectually colonized and also questioned what role the Constitution had so far actually played in alleviating the plight of the poor. Regardless of her political agenda, such an attack on the judiciary follows a pattern that can also be recognized in those like Mr Julius Malema and Advocate Dali Mpofu. The most recent incident involving these two gentlemen was at last month's Judicial Service Commission interviews for a new Chief Justice. Again, *their* political agenda notwithstanding, the overall effect of the individuals' actions and words is that they are accused of planting a seed of distrust and suspicion in the minds of their followers (of which there are millions). The end of the aforesaid will be that the court whose every verdict can be questioned by the public and the faith in the legal system and courts will be broken down over the years, until no verdict (even the good, Constitutionally grounded, well-researched rulings) can be enforced anymore, simply because the public will no longer believe in the rule of law.

However, the South African judiciary has repeatedly survived unwarranted attacks like these and recently reaffirmed that even people with high political affiliations will not succeed in derailing the justice system. The watershed decision in the South African law was when the Constitutional Court sentenced the former President of the Republic of South Africa, Jacob Zuma, to prison for his blatant contempt for the judiciary and system. In addition thereto, another former high-ranking politician was recently convicted on charges of perjury and facing possible imprisonment.

Just as political villains try to sow doubt in the judiciary, so the opposition in our case over years tried to sow doubt in the minds of our investors about the end and success of our case and action. The HSAG has so far not deviated in any way from its mission and

position and is confident that justice will prevail in a final verdict, whether good or bad, for the HSAG.

The HSAG received covert threats and had been warned over the years that our opponents had “contacts in very high positions” in the political order, as well as other institutions, and that this would ultimately jeopardize its cause. The above notwithstanding, we are proud to say that only one of the 23 rulings so far had not been favourable to the HSAG. The opposite has therefore been proven: Our case has so far not only enjoyed the moral high ground, but has also been consistently based on well-founded legal principles. However, we want to stress and emphasize that we can never be a judge in our own case and therefore cannot predict any outcomes or court orders, whether successful or not.

2. RESERVE YOUR SEAT ON THE BUS AGAIN!

The HSAG has previously announced in newsletters that a deadline has been set in advance for all HSAG members to be able to benefit from a class action certification in a noteworthy manner. In international class action court cases, it is not unusual for parties to settle at the stage of certification of a class, although this did not occur in the earlier CCAF court case, when the late Mr Georgiou still litigated. Since then, however, Mr Georgiou unexpectedly passed away and new litigants and legal teams are currently involved in the litigation. However, it is no guarantee that his successors in title will follow the norm, but it is our duty to point out to HSAG members that, if the general trend is followed, such possibility is not ruled out.

The HSAG always had high regard for its loyal members and it was also found by the court at the time that such members should benefit from certification because they were paid up members. During previous settlement negotiations, it was furthermore a prerequisite of Mr Georgiou that he would only negotiate with valid claimants, and the requirement was set by him that he would only settle with paid-up members. This does not mean that, even if settlement negotiations take place, the said requirement will be

applicable. It is prudent to highlight the possibility thereof. That's one of the reasons why it is important to be on the HSAG bus!

The HSAG attorneys have still not been paid in full for their services for many years. Despite this, the HSAG management still aspires to get enough support to use the best-equipped legal team (including junior and senior counsel, if possible) and expert witnesses. Currently, only a small percentage of members are unfortunately paid up, but if everyone abided by the rules, the war chest of the HSAG would be filled. Unfortunately, people who do not make their contribution to the HSAG funding model might be disappointed in the legal process, nor share in any in the successes thereof. As the case has been on-going for seven years, everyone already knows if they can or want to be part of the process.

3. EXECUTOR SUBSTITUTED IN PROCEEDINGS

The late Mr Nic Georgiou's executor agreed to his substitution to the proceedings and acknowledged receipt of all claims against the estate. The HSAG legal team submitted members' claims in an agreed manner against the estate of the deceased Nic Georgiou, inter alia in the DECA and CCAF matters.

4. DU TOIT - MATTER

In the tongue-in-cheek Peekaboo (Now you see me now you dont) case, where the HSAG legal team was initially cited as first respondent, and then again without any knowledge removed as first respondent from the court documents, we have learned that the case has in the meanwhile been postponed due to the fact that Mr Jacques Du Toit belatedly filed court documents, amounting to about 1 200 pieces, which obviously resulted in it not being heard. Upon reviewing the pieces, it appeared that Du Toit had put together a wealth of documentation that led to these extensive pieces, and the case could not be heard.

Since Du Toit has not yet formally, in terms of the court rules, withdrawn his case and offered the usual costs with the withdrawal, said attorneys are still part of the proceedings and receive their documents therein.

5. COMMUNICATION WITH MEMBERS

Apart from the newsletters and information on the website, there are also two seasoned liaison officers who are actively promoting and involved in all HSAG WhatsApp groups (Afrikaans and English). The work these ladies do for the HSAG is very important because not only do they enhance and promote the work the HSAG does, but they must also clarify certain important questions and queries of which the vast majority are relevant and had been discussed in the newsletters over years. However, all the difficult or challenging queries should be directed through them to the HSAG steering committee, who will then discuss same or take legal advice to clarify same. It is important to mention that the basic principle of litigation by way of class action is generally no different to litigation between two individuals, namely a plaintiff, cause of action, a defendant and, mostly, the amount claimed. However, there is a huge difference between litigation between individuals and a class action against one or more individuals. One of the paramount challenges of class action litigation is communication between attorney and client(s) as well as the financial health of the matter.

Time has shown that some of opponents went so far as to pay some individuals to destabilise the class action, by mainly dissuading members from supporting the matter financially. The most important form of communication between our steering committee, the attorneys and clients are via HSAG-newsletters, telephonic, electronic and in particular, WhatsApp groups. That is why we would like to warn and discourage HSAG members from becoming involved in and participating in non-HSAG WhatsApp groups in any way. Mentioned groups are not only run by certain individuals with their own unknown agendas, but are also not conducive to our cause and objectives. The likes of Helgard Hancke, Hans Klopper and Jacques Du Toit are expected once again to do everything in

their power in the run-up to our upcoming DECA case to make the HSAG suspicious and try to derail it. Should any such information (from any source) come to light, we request that you send it immediately to hsagwhistle@gmail.com, so that the nature and origin of such message can be traced.

How sustainable and successful our actions will be, will depend on our members, but despite the unfamiliar area of class action, business rescue and other complex issues, we are still positive about being successful in our multi-billion-rand applications.

6. “OPT-IN” VS “OPT-OUT”

So far, in its Notice of Motion, the HSAG requested the Court to follow the so-called opt-out method of class actions. “Opt-out” means that “members who would otherwise be considered to fall into the class would be entitled to “opt-out” of the class, by following a prescribed procedure (Du Plessis, Max, et al., eds. *Class action litigation in South Africa*. Claremont: Juta, 2017, p 12). Opposed thereto, “opt-in” means that “potential class members specifically need to indicate that they consent to be bound by the judgement and to be represented by the proposed class representatives, by in some prescribed manner indicating their intention to become class members” (Du Plessis, Max, et al., eds. *Class action litigation in South Africa*. Claremont: Juta, 2017, p 12).

Unfortunately in the HSAG case amongst other things due to various factors, eg., the long period of time, wide publication, poor financial support, as well as fairness considerations, taken into account, the HSAG with its group members' funding model can no longer carry and support the Opt-Out dispensation.

The HSAG management is accordingly is considering instructing the legal team to amend the current dispensation from opt-out to Opt-In. This dispensation was previously approved by the High Court upon certification of the CCAF case, in which a large number of facts and circumstances are exactly the same as in the DECA case.

This may mean that everyone will have the opportunity to be part of the class action but, as requested before, against payment of a registration fee and/or an amount that will be considered with amounts that paid-up members have already paid in recent years.

7. (WHEN, HOW MUCH AND) WHY?

We have already in our previous newsletter briefly outlined the investors' questions (see January and February 2022) and from time to time we also receive enquiries about what membership fees are used for. These questions have been answered thoroughly and repeatedly, since 2015, and have even served before the High Court.

The subject has been repeatedly discussed over the years and the HSAG funding model has already been submitted to court – and approved. It's no secret that our opponents are trying to take advantage of it to undermine the HSAG funding model, but, the mutual trust between the HSAG steering committee and their legal team is still keeping the matter on track.

Curiously enough, and every time we are on our way to court, there are one or two people who want to determine once again how the funding model works. Mr Georgiou also tried to do everything in his power with the CCAF certification to fight the model, but the court eventually found in favour of the HSAG model and even provided reasons for it. From the outset, the HSAG has always been a voluntary organisation and its valued members have voluntarily contributed to making it a success. If it were not for this core group of members who not only believed in their own cause, but also supported the HSAG, its legal team and all those involved in its struggle, the matter would never have come from the ground up and progressed to where it is not now.

The HSAG has always been transparent but will obviously never trumpet our strictly confidential matters to the outside world and even disclose or discuss clients' information

on any platforms. This is one of the big unknown factors that our opponents are dealing with shortly after starting the case.

In terms of external funding, the HSAG did enquire between 2015 and 2017 to see if there were any financial institutions, or perhaps even major players, who wanted to get involved, but none were interested. The reason: that no one wants to take any risks against a private individual with a poor track record.

8. LOOSE CANNON ON DECK?

The HSAG has once again been mentioned in a newsletter that one Mr Deon Pienaar addressed to his supporters. We would like to make it very clear that the HSAG has the greatest respect and esteem for Mr Deon Pienaar's motives and objectives, who, as a layman, without any guidance from a legal practitioner or team, has his case against several respondents (including the Reserve Bank and other institutions and persons). However, he is in no way part of or affiliated with the HSAG and we distance ourselves entirely from his proceedings and statements.

Despite his absolute belief in his cause and perseverance, however, there are certain serious questions that need to be asked about the way it is driven. A lack of proper legal assistance can easily lead to an applicant with a meritorious case unknowingly firing lethal ammunition in the wrong direction, thereby harming not only himself, but also innocent parties.

In addition, a potential good cause is thwarted and eventually swept off the table by procedural red tape and thus cannot come to its rightful place. The question has been asked whether actions like these could not ultimately have the same effect as a loose cannon on the deck of a warship.

The HSAG has so far not bothered to get directly involved in these fights, but it is very clear from the court documents that the respondents in the said case do not turn a blind

eye. Statements have been made, such as, for example, that the applicant (Mr Pienaar) faces a material obstacle; that the chances of success in the court proceedings are extremely small, and that there is a real possibility that Mr Pienaar will be forced to pay all legal costs. It is well known that over the years Mr Pienaar has lost significant assets and his business due to the unfortunate incidents and he has all our sympathy for it.

In his newsletter, Mr Pienaar refers to the so-called PICKVEST saga. It should be noted that several groups and individuals have acted in matters concerning Pickvest and it is not certain from the newsletter whether he is referring to the HSAG, but rather to the CCAF and DECA matters. If he had read the CCAF court ruling, he would have noticed that the court precisely distinguished between CCAF and the HSAG, as well as the fact that there are only 1800 members in ranks of CCAF, which means that the HSAG's membership has not changed. It also appears that Mr Pienaar unfortunately has no insight into understanding the dynamics of the HSAG and that he is of the opinion that only paid-up members are represented. The court also ruled on this and ruled that, although there are significant benefits for paid-up members, it does not exclude any other persons.

We have previously reported on the well-known expression of “You cannot fight City Hall” (see August 2020), in which we refer not only to the fierce criticism of the court, but also to the disdain of the respondents in Mr Pienaar's matters.

Consequently, the HSAG can unfortunately not attach any weight to any remarks (which are in any case erroneous) made by Mr Pienaar, and we will not comment on them.

9. PROGRESS IN DECA CASE

The lapse of time in the joining of the executor as a party to the proceedings has expired and the executor has not lodged any objections to form part of the proceedings. In effect, it simply means that the case continues as if the executor is in the shoes of the late Mr

Georgiou. It is therefore clear that the executor does not apply the same procrastination tactics as his predecessor in title. We trust that the case can go its full course and be settled, as intended. After all, it will not only be in the interest of justice and the HSAG, but also the heirs and successors in title, that the case can be settled sooner rather than later.

Inquiries were made to the executor during mid-March regarding his previous request to first be given time to meet with the legal team and family. The executor replied that he would only meet with his legal representative, Mr Tintinger, on Friday 19 March and we look forward to being informed of proceedings in the future. To date, we have not received any such feedback and a follow-up letter has been sent.

We are still confident that the case will be heard on 30 May 2022. One of the respondents indicated that he would like to have clarity about some aspects regarding the HS21-B shareholders earlier during a case management meeting, and two dates have already been arranged for this. Unfortunately, the date did not suit everyone and we look forward to the requested case management meeting taking place soon.

10. PROGRESS IN THE CCAF CASE

The CCAF legal team had a busy and productive month in respect of the procedural matters involving the estate late of Mr Nicolas Georgiou. Because Mr Georgiou passed away, the litigation proceedings will continue against Mr Georgiou's estate. The CCAF legal team has been in continuous contact with the Executor's Agent, and we confirm that the Claims in the CCAF matter have been formally lodged against the Estate.

The CCAF legal team also served a Notice in terms of Rule 15(2) on the Executor of the estate late Mr Nicolas Georgiou in order to substitute the Executor of the estate, Mr Joseph Victor Chemaly N.O., as the new First Respondent in the matter. The Executor appointed in respect of the estate late of Mr Nicolas Georgiou is Mr Victor Joseph Chemaly. The time has now lapsed in terms of the Court Rules for the relevant parties to

object to the Notice and thus Mr Victor Joseph Chemaly N.O. is formally the (new) first respondent in the matter. The matter will continue against the estate of the late Mr Nicolas Georgiou and all parties that currently form part of the proceedings. The Executor will thus be included and logged into the CaseLines system of the Gauteng High Courts.

Furthermore, please note that the list of Claims has been formally lodged against the estate of late Mr Nicolas Georgiou. The CCAF legal team formally lodged the Claims and the Executor's Agent, Mr Luke Saffy, confirmed receipt of the Claims that were lodged and confirmed that they will pursue the Claims and revert to us in due course.

In light of the fact that the Claims have been formally lodged against the Estate, we wish to emphasise the importance of members contributing to their own matter in order to strengthen their case and their chances of success. During the negotiations with the late Mr Nicolas Georgiou, he made it patently clear that he was only prepared to talk negotiations with paid-up members of the HSAG, and we expect this stance will also be followed by his successors in title relating to negotiations of Claims lodged against the Estate. The rationale behind this approach by the Executor will be simple in that they will only entertain bona fide HSAG claims that have not prescribed.

Now that the Executor formally forms part of the proceedings, the CCAF legal team will in due course arrange a case management meeting with all the parties to the proceedings, now including the Executor of the Estate.

11. GENERAL ENQUIRIES

A query we often receive is regarding the transfer of the shares, after the death of a loved one. We would like to remind you that this is done by Orthotouch. They are the company that handles the transfer of the shares and it is only after we have received a document from them indicating that the shares have been transferred to a new name that we can change them on our system. We are also aware of the fact that they are in Business

Rescue - however, this should have no impact on their work performance and we ask that everyone contact them on this email:

admin@orthotouch.co.za

12. 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;
- **hsagstates@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.

13. 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

Contact the HSAG's attorneys at:

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hsactiongroup@gmail.com