

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: 42334/14

In the application of:

HELGARD PETRUS HANCKE

1st Intervening party

APROBASE CC

2nd Intervening party

and

JURIE JOHANNES GELDENHUYS

First Applicant

(and two others)

And

ORTHOTOUCH LIMITED

First Respondent

(and twenty six others)

And

THE HIGHVELD SYNDICATION INVESTORS

**In re: The application for leave to appeal against
the order of the honourable Ismail J of 16 March
2017**

OPPOSING AFFIDAVIT – Hancke intervention – appeal, Ismail J

I, the undersigned,

Jacques Brink Theron

do hereby make oath and say that:

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1. I am a male attorney practicing under the name and style of Theron & Partners, situated at 18 Alexander Street, Stellenbosch, Western Cape.
2. The facts contained herein fall within my personal knowledge unless otherwise stated or implied, and are true and correct. I am authorised to depose to this affidavit on behalf of my clients, the members of the HSAG (Highveld Syndication Action Group), and also the newly joined Applicants herein, as described by me in my earlier affidavits filed of record.
3. This affidavit is deposed to in opposition to the application for Leave to Intervene by Mr Helgard P Hancke ("Hancke").
4. In summary, and as set out in more detail later below, the grounds for opposing Hancke's application are as follows:
 - 4.1 Contrary to what Hancke alleges, he has had full knowledge of these proceedings (i.e. the urgent application to reinstate the main application) since at least 10 January 2017, i.e. shortly after its issuing. On that date, he emailed a copy of the application to a member of the steering committee of the HSAG together with detailed comments on my allegations against him in my founding affidavit.
 - 4.2 Hancke, as well as the second intervening party (Aprobase CC) have no *locus standi* to intervene.
 - 4.3 All the so-called "new" allegations which are sought to be now put before court, were available, from the outset, to Georgiou (and hence Orthotouch) who opposed the application concerned.
 - 4.4 Also, these "new" allegations in any event only pertain to the manner in which the settlement between the nominal Applicants and Georgiou came

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about. They are however completely silent on the crucial step which followed the settlement, namely the simultaneous withdrawal of the litigation behind our backs through a newly appointed attorney. It is this withdrawal, not the settlement, which was held to be an abuse of the court process and irregular. Hancke's allegations are therefore irrelevant for purposes of the leave to appeal as it only deals with the settlement.

- 4.5 The allegations that I demanded payment of a commission on settlement (including that such demand delayed the conclusion of a settlement) is devoid of all truth and wholly engineered, as explained below, in order to discredit me and to thereby diminish support amongst investors for the HSAG class action litigation. Georgiou knows that should too few investors support the class action, especially financially, he will largely be "off the hook" concerning the serious allegations made against him.
- 4.6 It is clear that Hancke is dancing to the tune of Georgiou, who is funding and using Hancke as another of his "front persons" to further frustrate the class action litigation with delays and additional costs. There is no logical reason why Hancke would make this effort, at great financial cost, to now oppose the class action litigation on his own.
- 4.7 The nominal Applicants indeed did not know each other. The only "proof" that they knew each other, is a blank screen-print of a WhatsApp group of which two of them are members (with me and Visagie). They may have been aware of one another, but they certainly did not know each other - especially in the sense to have gone to the same attorney simultaneously with the same instructions to withdraw the litigation.

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A. Hancke knew from 10 January 2017 of the application:

5. In apparent justification for wanting to intervene at this late stage (and as reason why he did not file an opposing affidavit), Hancke states under oath in paragraph 6.6 of his affidavit that he was "*oblivious to the existence*" of the application concerned.

6.

6.1 This is incorrect. Firstly, on 10 January 2017 – a few days after the application was issued late in December 2016 – Hancke sent a copy of the Pretoria and Johannesburg application papers by email to Mr Johan Stander, another member of the HSAG steering committee.

6.2 A copy of the email is attached hereto marked "H1.1".

6.3 In the email, Hancke refers to the copy of the "Motion" which he attached to the email, and then comments in detail on the allegations against him by me in my founding affidavit, attempting to explain his (Hancke's) actions.

6.4 I refer to the accompanying confirmatory affidavit in this regard by the said Johan Stander ("*Stander*").

6.5 Secondly, on 3 February 2017, Hancke wrote in a WhatsApp message to Stander "*Theron lieg ook in 'n beëdigde verklaring wat hy vandag in die hof gebruik het waarby hy my betrek*". A copy of a printout of that WhatsApp message is attached hereto marked "H1.2". I also refer to the confirmatory affidavit filed herewith of Stander.

6.6 In addition, on 28 March 2017 Hancke commented again on my allegations against him to a journalist of Moneyweb (Mr Ryk van Niekerk), an online magazine (and still trying to maintain at that stage that he did not receive any money as settlement). In his portfolio as HSAG Steering Committee

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("HSSC") member, in dealing with the media, he had on numerous occasions communicated with Moneyweb. A copy of that email which was later copied to me) is attached hereto marked "H2". (As shown hereunder, Hancke's invoice also depicts his communication with the media).

7. As stated in my said founding affidavit, whilst still being a member of the HSAG Steering Committee of the HSAG in 2016, Hancke settled "his" claim (i.e. his wife's claim) with Georgiou in secret (i.e. without informing us) and did so "outside" the mechanism or procedure which had been established for settlement after long negotiations between the HSAG and Georgiou.
8. It is impossible that Hancke could have "forgotten" about the fact that he received and considered the application in early January 2017, for the following other independent reasons:
 - 8.1 After the issuing of the papers, Hancke also phoned Stander to complain about the allegations against him in the court papers, ostensibly being upset about the allegations. This conversation was in accordance with the e-mail sent by Hancke.
 - 8.2 On 3 February 2017, after the hearing of the Pretoria matter, Stander and I met as HSAG Steering committee members with Georgiou in the Turn & Tender restaurant (in Benoni), Johannesburg to discuss the finalisation and dates of some 800 HSAG members who were prepared to settle with Georgiou. To the surprise of Stander and me, Hancke arrived uninvited together with Georgiou. During this meeting, a heated argument ensued between Hancke and me concerning his actions, with me telling him that he is betraying the class action supporters through his conduct. In fact, at one stage Georgiou intervened, stating that we should "not be fighting". The meeting (with Hancke present) eventually ended up in nothing, so much so that Stander and I had to continue the meeting the next day with Georgiou.



- 8.3 The said meeting (of 3 February 2017) was held on the same day as the hearing of a very similar "reinstatement application" in the Pretoria High Court (in respect of the class action certification application) which was argued before the honourable Mr Justice Murphy. During the meeting, the court proceedings earlier in the day were specifically discussed with Hancke and Georgiou, clearly indicating that they knew about the court proceedings.
- 8.4 To refer back again to Hancke's email of 10 January 2017 to Stander: In the penultimate paragraph of his email, he indicates that he will obtain legal advice on how to deal with the allegations I make against him. His email was written in emotional language where he refers to the allegations against him, as will be noted.
- 8.5 Hancke also raged on social media regarding the so-called "lies" that I supposedly spread about him. This he personally conveyed to me in a sms on 14 December 2016.
9. Given the aforesaid, I submit it is clear that Hancke has tried to mislead this court, and that a punitive cost order should be given against him. I point out that Hancke, in interrupting the hearing of the application for leave to appeal (concerning a similar application) in the Pretoria High Court before Murphy J on 7 June 2017, also misled the honourable Murphy J by informing him in open court (with all counsel and attorneys (not me) present in court) that he (Hancke) had only learned about the allegations against him shortly before then (7 June) and wished to be afforded the opportunity to file an affidavit.
- 10.
- 10.1 I point out that Hancke's attorney was informed by me by letter, on 20 July 2017 (a copy of which is attached hereto marked "H3.1", that Hancke has probably known for months about the application (this was before I received the more precise information from Stander and others). This letter was



followed up by a similar letter referring to the proceedings conducted in this court. I attach hereto, marked "H3.2", the letter of 4 August 2017 to which the July letter ("H3.1") was annexed. Until date hereof, no response was received or reference made in Hancke's affidavit.

- 10.2 In the letter of 20 July 2017, I also point out that Georgiou is clearly the person who is "standing behind" Hancke in his attempt to intervene with a view to further delaying the hearing of the main application, and that Hancke would clearly not go through all these efforts and considerable expense of his own accord or for own purposes.
- 10.3 Hancke was also forewarned that a punitive cost order will be sought against him.
- 10.4 In the letter, Hancke is challenged to disclose the identity of the person who is paying "his" considerable legal costs herein. Hancke has failed to disclose any of that in his Founding Affidavit.
- 10.5 Despite having known since January 2017 of the detailed allegations against him, and despite informing the honourable Murphy J on 7 June 2017 of his intention to intervene, Hancke waited until the day before the (postponed) proceedings before Murphy J on 2 August 2017 to file his application to intervene in the Pretoria High Court. (His current affidavit in support of this application is almost identical to the one filed in the Pretoria court on 1 August 2017, the day immediately preceding the hearing). Given the irrelevancy of Hancke's averments, counsel and I decided not to ask for a postponement to file opposing papers (thereby effectively causing a further delay), but instead argued the application for leave to appeal. (Murphy J reserved judgement in respect of the relief to appeal application, as well as Hancke's application to intervene).

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Hancke and Aprobase CC's lack of locus standi:

11. With regards to the *locus standi* of Hancke and Aprobase CC, the following:

11.1 Hancke acknowledges that *he* was never an investor in any of the Highveld companies. His wife, who obtained her shares in a Highveld company from her late father, has settled her claim with Georgiou (Orthotouch), as indicated by Hancke.

11.2 I submit that the fact that mere reference is made to Hancke in my founding affidavit, does not entitle him to intervene in the proceedings.

11.2.1 Firstly, I submit it is a matter of law that if allegations in court proceedings are made about a person who is not a party to the proceedings, such person is not entitled to intervene in the proceedings.

11.2.2 Secondly, the allegations about him were included in my affidavit as background information. Nowhere in the judgement of this honourable court (or the Pretoria High Court) is reference made of him or of the other erstwhile HSAG leading member who jumped ship (Mrs Elna Visagie). My allegations concerning Hancke are therefore academic for purposes of the appeal.

11.2.3 Furthermore, I submit that, at most, Hancke can potentially request leave from this court to merely file an affidavit to state his version of events.

11.3 In so far as Aprobase CC (*the CC*) is concerned: the CIPC printout (annexure "IP1" to Hancke's affidavit) reflects that it is in the process of

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being deregistered with CIPC. I therefore deny that "it" is in existence to act as a party herein.

11.4 Furthermore, I deny that the CC is an investor in any of the Highveld syndication companies.

11.4.1 Firstly, the staff of Orthotouch – who keeps and administers the detail of all the investors in view thereof that they make monthly payments to investors under the Scheme of Arrangement – on 15 Augustus 2017 informed the secretary of Stander (Ms Linda Bayman) upon enquiries that there is no investor listed in their records with such name. Also under the registration number of the CC, no listing/record could be found. I refer to her accompanying confirmatory affidavit.

11.4.2 I and my candidate attorney (Ms Jean-Marie Tosen) personally perused both lists as provided *in lieu* of a Court Order by the Business Rescue Practitioner (Hans Klopper) and the Receiver of Orthotouch (Mr Derek Cohen), comprising some 450 pages each, to verify whether Aprobase CC is listed as one of the investors in the HS Companies. I confirm that we could not find this entity on any of these lists.

11.4.3 In all Hancke's discussions with me and Stander over many months concerning "his" involvement in the Highveld companies, he only referred to the investment of his (now late) father-in-law, and that such investment was ceded to his (Hancke's) wife. It is highly improbable that, should the CC have been an investor as well, Hancke would not tell us about it.

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(For the sake of convenience, I will hereinafter refer to his wife's claim as "Hancke claim" or "his claim" given that he acted on his behalf at all times).

11.4.4 In addition, all of the Highveld companies were placed under Business Rescue by the court towards the end of 2011. It is not clear how, or why, an investment would be made after this. (Hancke alleges, in paragraph 6.7, that the CC "*invested an amount of R700,000 in Highveld Syndication number 21on or about the end of 2012, early 2013*").

11.4.5 I also doubt that Hancke had such an amount to invest at any stage. He informed Stander and me of his financial difficulties, especially given the expenses caused by the ill-health of his wife and son. He also acceded to a monthly payment of R16 000.00 for services rendered to the HSAG. Hancke states that he ("personally") never received any benefit. This is devoid of all truth. He received more than R100 000.00 from the HSAG. His last invoice is dated November 2016, and is attached hereto as Annexure "H4".

11.5 In his application for leave to intervene in the application for leave to appeal in the Pretoria High Court (Murphy J), Hancke was the only intervening party and peculiarly says nothing about Aprobase CC, but only refers to the investment of his late father-in-law (wife's) which was then settled. This despite my earlier letter to his attorney on 20 July 2017 (referred to before ("H3.1") pointing out Hancke's lack of interest in the matter. This was in keeping with what Hancke told me and Stander all along. If the CC was an investor as stated by Hancke, he would have stated same in his intervention application before the Pretoria High Court. I submit the "fact" that Aprobase CC is now an investor was recently created in some manner between

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Georgiou and Hancke in order to provide him with some locus standi. If so, this just further goes to show that Hancke is just a front man for Georgiou and colluding with him.

11.6 I therefore request and challenge Hancke, in reply, to provide full detail of the R700,000 investment in Highveld 21 by the CC, including providing the court with the following:

11.6.1 The CC's share certificate in the particular Highveld company;

11.6.2 The application form, which was filled in by all prospective investors, whereby application was made for shares in a Highveld company.

11.6.3 Copies of purchase, cession and transfer documents.

11.6.4 The investment certificate in respect of the investment made.

11.6.5 Proof of payment by the CC of the R700,000 for the investment, including a copy of the CC's banking statement reflecting such payment.

The "new facts" claimed by Hancke were available to Georgiou since inception:

12. The case made out in my founding affidavit – which case this court, as well as the Pretoria High Court (per Murphy J), accepted – was as follows:

- Firstly, that the erstwhile nominal Applicants in both courts, in collusion with Georgiou and behind our (HSAG's) back, were paid an undisclosed amount to settle their claim, and;

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- Secondly, and crucially, that they then appointed another attorney (Jeff Donenberg) with instructions to withdraw the class action litigation in both courts without any prior notice to us, thereby leaving the other class action supporters high and dry.
13. It is the aforementioned *second step* which was the crucial part of the case. The secrecy with which the withdrawal was effected clearly reflects a motivation to sabotage the class action litigation through such "withdrawal". Both courts effectively held that the litigation could not be withdrawn without providing us with the opportunity to first join replacement applicants to continue the litigation.
 14. Even if the "new" alleged facts that Hancke tries to present are true (which they are not), they only speak to the *first* (non-crucial) part of the basic case, i.e. the settlement. The HSAG and I have always acknowledged the right of investors to settle their claims. The new allegations do not detract from the *second* part which pertains to the *withdrawal*.
 15. In addition, if the new alleged facts were true, there is no reason why Georgiou or Orthotouch could not have put them before court in his opposing affidavit. Georgiou (Orthotouch) was, after all, the party who settled the claims of the erstwhile Applicants and knows every detail of the process by which the settlement occurred – including, for instance, how it came about, who approached who to settle, and why such approaches were made. Each settlement in this case, by definition, involved both parties thereto. The new alleged facts all pertain to the issue of settlement to which Georgiou and/or Orthotouch, or their agents, were privy. There is no explanation before court why Georgiou and/or Orthotouch did not put these allegations before court first time round.
 16. In this regard, I again point out that Ms Elna Visagie has been in the employ of Georgiou since about end 2015. From her current affidavit, it is clear that in 2017 she was in regular and close contact with Hancke who knew about the allegations

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against him from at least 10 January 2017, as indicated earlier above.

Relevant vs Irrelevant allegations:

17. Before I proceed to deal with the further allegations raised by Hancke, I mention the following:
 - 17.1 Large portions of Hancke's affidavit, I submit, are irrelevant to the possible appeal.
 - 17.2 I submit that I have dealt with the potentially relevant allegations in the paragraphs above.
 - 17.3 I nevertheless proceed to also deal with the other allegations made about me and my conduct even though I regard them as probably irrelevant to current proceedings. I do so, firstly, as I am sure Hancke will argue that it is relevant. And secondly, since I am reluctant to leave some (irrelevant) allegations unanswered as I will probably be accused, as in the past, of not responding to allegations. This must be seen in the context of a relentless campaign against the class action, and against me personally, by Georgiou and his accolades to cause support for the class action to diminish.
 - 17.4 Insofar as my reluctance *not* to respond to allegations is concerned: For instance, my non-answering of allegations were referred to in a Moneyweb article of a few weeks ago, namely that I did not file an opposing affidavit to Hancke's allegations in the Pretoria High Court, with the implications that I have no answer to them (the reason for my non-filing of an opposing affidavit at this stage is explained elsewhere herein)).

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- 18.1 I now proceed to shortly deal with some of the paragraphs in the founding affidavit of Hancke. Each allegation should be considered to be denied by me, except those that I expressly admit.
- 18.2 Much of the allegations are already dealt by me in my Replying Affidavit to the reinstatement application concerned. I request that such affidavits be incorporated herein as if specifically repeated.

This campaign has been intensified over the last few weeks. During our HSAG management meeting (at which Furstenberg was also present) Stander received a threatening telephone call on 29 June 2017 in the presence of myself and other members from Ms Elna Visagie (one of Georgiou's (Orthotouch's) employees), in which she informed Stander of the increased campaign and that a website will be established for such purpose and, with reference to the website, that "*nou gaan Jacques [me] uitmekaar geskiet word*". This is borne out by the two letters written by Hancke and published on the website, as referred to by me elsewhere, and is clearly an attempted assassination of my character.

Hancke's affidavit:

19. **Ad paragraph 2.2 of Hancke's founding affidavit:**

- 19.1 Again, the Aprobase CC is in the process of being deregistered.
- 19.2 In any event, even if the CC was not in the process of being deregistered, I deny that Hancke can act for Aprobase CC whilst not being a member of it. I note that no resolution by the members of the CC is attached whereby Hancke is authorised to act for the CC. Neither is there a confirmatory affidavit filed by the member/s of the CC.

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19.3 For the reasons stated earlier, I deny that the CC became an investor in the Highveld Syndication Companies as alleged, or that it is an investor at all. I repeat my challenge to Hancke to provide detailed proof of his allegations in this regard.

20. **Ad paragraph 2.3 thereof:**

20.1 Distinction must be drawn between, on the one hand, the "process" or mechanism for settlement established by my firm (and which would be administered by my firm) for the HASG members who wished to settle and, on the other hand, the settlement which Hancke (and other Georgiou accolades) later tried to establish "outside" the aforementioned process set up by my firm.

20.2 Hancke, although having always supported the class action until about November 2016, only started to campaign for such "outside" settlements after he "jumped ship", as it were, towards the end of 2016 to join Georgiou after having settled "his" claim in secret.

20.3 In this regard, I refer in particular to paragraph 16.5 and further of my replying affidavit dated 23 February 2017 filed of record – which I note both Georgiou and Hancke conveniently fails to address in their current (new) affidavits.

20.4 Again, there may have been individual settlements "outside" the said Theron & Partners structure (for instance a few large individual investors like Posthumus and Rhema Eksteen, and naturally the erstwhile nominal applicants) before November 2016. Hancke, before jumping ship, was involved in assisting HSAG investors to settle within the Theron & Partners "structure" between approximately April and November 2016. However, since the end of 2016 and after having jumped ship, Hancke has been



campaigning against the class action and, to that end, trying to convince as many investors to settle in terms of a settlement agreement with Orthotouch which he and/or Georgiou drafted. A settlement with Orthotouch is severely damaging to the rights of HS investors. The HSAG has sent out a communication to its members during May 2017, June 2017 and again on July 2017, warning them of those risks. I attach hereto an extract from our May 2017 communication, marked "H5". Orthotouch is the vehicle that Georgiou uses to pay the 18 310 Highveld investors their monthly interest in terms of the Scheme of Arrangement. I pause to state that Orthotouch is a public company which currently owns a mere 2 adjacent properties as per the recent deeds search that my offices performed. Of the 50 properties it previously owned, 48 properties were sold or alienated. It is inconceivable that a company that bought two properties for R143 million, with a bond of R72 million in favour of Accelerate (a company steered by Georgiou's son, Michael Georgiou), can now pay monthly the approximately R10 million (an amount hinted by Georgiou to Stander, Hancke and myself) from these two properties. Georgiou, Hans Klopper (both directors of Orthotouch) and Cohen fail or refuse to disclose the financials of this public company. Hans Klopper (annexure "EV3" to Visagie's affidavit) has also sent out a veiled threat of liquidation which, undoubtedly, will leave investors settling with Orthotouch destitute.

21. **Ad paragraph 4.1.1 thereof:**

As mentioned, the honourable Murphy J reserved judgement in Hancke's application to intervene in the application for leave to appeal before him. Hancke's said application was argued without any opposing papers being filed to it, given that his application was filed only one day before the hearing on 2 August 2017. There was no time to file papers, and to have done so would in any event have provided a possible argument on the part of Georgiou and Hancke that the matter should again be postponed for purposes of filing replying papers. Hence my

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decision, taken after discussion with counsel, to have his application argued on Hancke's papers only.

22. **Ad paragraph 5.1 thereof:**

For the reasons stated earlier, I deny that it is necessary, in order for Hancke to respond to the allegations against him, for him to apply to intervene in the proceedings. In any event, the facts stated about Hancke are entirely correct.

23. **Ad paragraph 5.3 thereof:**

23.1 It is unclear why Hancke, on his version, wants to become involved in the litigation and why he makes common cause with Georgiou (who also controls Orthotouch) to thwart the class action. He does not seek to intervene only to put his version to court, but tellingly to also become involved in the appeals process in order to overturn the reinstatement of the main application.

23.2 Even if it were so that he or the second intervening party ("the CC") had *locus standi* to intervene, which is denied, it is strange that they would go through the considerable expense and effort to litigate "against" the class action. Why not merely stay out of it? The HSAG consists of approximately 6700 members and the largest majority of remaining investors in the HS companies (approximately 12 000) do not form part of the HSAG. Hancke knows very well that Georgiou (and the parties he controls, such as Orthotouch) are well represented by various attorneys and counsel to oppose the class action litigation. One wonders if Hancke is of the view that the aforementioned phalanx of lawyers is maybe not competent enough, or sufficient in numbers, to present the opposing case.

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- 23.3 Hancke does not indicate at all what his motivations are in opposing the class action litigation. I submit the inescapable conclusion is that, as stated before, he is unfortunately a pawn in the hands of Georgiou.
24. **Ad paragraphs 6.1 thereof:**
- 24.1 Again, I submit that the mere fact that Hancke is unhappy about some allegations, does not entitle him to intervene. I confirm that all my factual allegations are correct.
25. **Ad paragraphs 6.4 thereof:**
- 25.1 Hancke did not settle the claim of his wife due to any unhappiness about my actions or fees charged, as implied. These allegations have only now surfaced.
- 25.2 There was extensive communication between, amongst others, myself, Hancke and Stander on the HSAG management Whatsapp Group during the course of 2016 whilst we were all members of the HSAG steering committee. In *not one* of those communications, and in not one of the communications shortly after Hancke parted ways with us, did he express any dissatisfaction whatsoever about my handling of the case or about my fees. Let alone to site such dissatisfaction as a reason for settling his claim.
- 25.3 As illustration, I refer to the following correspondence and HSSC WhatsApp messages, from which it is clear that there was no such dissatisfaction:
- (a) A WhatsApp message from Hancke on 7 November 2016 (at 07:07), in which Hancke refers to the fact that Georgiou again failed to sign the settlement agreements. A printout of the message is attached hereto marked "H6.1".



- (b) An undated letter by Hancke, emailed to me on 9 November 2016, to which he attached a summary of his meeting with Georgiou of 7 November 2016, from which it is clear what the cause of the delay and frustration was. This is attached hereto marked "H6.2".
- (c) An email from Hancke to me on 5 December 2016, a copy of which is attached hereto marked "H6.3".
- (d) I attach hereto, marked annexure "H6.4", specific Whatsapp communication between Hancke and myself which was forwarded by Hancke to Stander on 9 December 2016, where he once again stated that he has over two years implicitly trusted the manner in which my firm conducted the finances of the HSAG in a separate trust account. His subsequent turnabout therefore needs no explanation.

26. Ad paragraphs 6.5 to 6.7 thereof:

- 26.1 I deny that Hancke or his CC has a substantial or real interest in the matter.
- 26.2 I have already dealt with the allegations concerning the CC's "investment of R700,000", and concerning the CC's and Hancke's *locus standi*.
- 26.3 For the reasons stated above, it is clearly not so that Hancke was "*oblivious to the existence of the urgent application... for the setting aside...*" as he claims in paragraph 6.6 – and which he presents as the ostensible reason why he did not file an opposing affidavit during the actual proceedings.

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27. Ad paragraph 7.5 thereof:

- 27.1 Proper records of income and expenses of my firm in relation to the class action litigation are being kept. At the end of the matter, I will account for all such income and expenses.
- 27.2 As stated before, the reason for keeping such information confidential at this stage, are that such information would reveal the extent of the "financial strength" of the HSAG. This is very valuable information to Georgiou, who will surely adapt his tactics and litigation strategy according to such knowledge. It is clearly to the HSAG's advantage to not have Georgiou know how much funds we have to our disposal at any given time.
- 27.3 Since we have informed the HSAG members, and Georgiou and others then became aware thereof that merely several hundreds and not several thousands of investors are up to date with the trust requisitions by the HSAG, they have intensified their litigation and delays, which is undoubtedly in line with Georgiou's stratagem to out-litigate the poor disenchanted investors.

28. Ad paragraph 7.8.1 thereof:

I deny that the majority of investors were not in favour of the proposal to charge contributions as referred to. The fact of the matter is that most of the pensioners (we receive daily telephone calls to that effect) have invested all their life savings in the HS companies and simply do not have the financial means to contribute to the fund, notwithstanding that, until May 2017 the HSAG requested (not recovered) less than R 1 per day per syndication from them towards legal costs.

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29. **Ad paragraph 7.13 thereof:**

29.1 It was not only Hancke who "insisted that Georgiou came fourth with a settlement proposal". All of us at the HSSC felt that it was necessary. This is also evident from annexure "H6.1".

29.2 Contrary to what Hancke states, it was not a question of Stander being embarrassed or surprised by the fact that Georgiou's settlement proposal during June 2016 was not higher than the one he offered to Stander's clients in March/April 2016. Stander was reluctant to recommend settlement to his clients earlier since he thought that a better offer could possibly be received in future to settle the whole class action.

30. **Ad paragraph 7.14 thereof:**

It was in fact Georgiou's insistence that the HSAG members who settle with him must be paid up members. At more than one occasion (and this view was shared by both Stander and Hancke) I accused Georgiou during negotiations that he specifically insisted that the HSAG members who wish to settle must be paid up in full for one simple reason: if he (Georgiou) settles the HSAG members with financial means, the HSAG will be left financially dry with only the destitute members. Georgiou, more than once, requested that we supply him with the so-called "weak and poor" list (i.e. the desperate pensioners who are either suffering from ill health or are financially ruined), which we, of course, refused to do.

31. **Ad paragraphs 7.16 thereof:**

The actual reason of the HSSC for being in favour of a R2,500 "settlement" fee was to have funds available to litigate against Georgiou in the event of him not keeping to his periodic payments under the proposed settlement. Hancke agreed with this approach (which we discussed in confidence) but undoubtedly betrayed



us by conveying these strategies to Georgiou, which was, besides Georgiou's search for financial "assistance" elsewhere, one of the obvious reasons why he failed to sign the 800 agreements during the two days that was set aside only for the signing of the 800 agreements. Georgiou also indicated that he wants to settle with the whole class action (with a better offer) and nothing was said about any commissions. Mr Johan Furstenberg ("Furstenberg") (an attorney at my firm) and Georgiou's wife, Theresa, were also present at that meeting.

32. Ad paragraph 7.17 thereof:

32.1 It is astonishing that Hancke entirely believes what he is told by Georgiou. Of course Georgiou will tell everybody he is "poor" in order to convince investors to accept a lower settlement figure. The fact of the matter is that Georgiou is accused in the certification application in Pretoria that he (or his entities) sold properties in HS 19 – 22 of some R3,2 billion and received the full purchase price therefore without transferring those properties. He and the other Respondents have not explained what happened to these billions and have not filed any answering papers to those serious allegations. Instead, they tried every proverbial "trick in the book" to frustrate, delay and prevent that matter and others be heard and, of course, at an enormous price.

32.2 The fact is that Hancke was paid an undisclosed amount to settle his ("his") claim, and that he is now actively campaigning against the class action and against me personally on social media and has even set up a disparaging website to "Stop Theron" and to "Prevent a National disaster awaiting investors". Once again, I submit, with Georgiou's financial backing. I attach hereto, marked as Annexure "H7", a screenshot of the aforementioned HSBF's homepage. Apart from the few "large" investors which have instituted court proceedings against Georgiou and with whom Georgiou has settled (and the erstwhile Applicants), Hancke was the first "normal"

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investors that I know with whom Georgiou settled. I submit this is telling, and an indication that Georgiou targeted key persons in the HSAG and Hancke to win over to his side, as he did with Elna Visagie earlier in 2015.

32.3 Hancke has also established a forum and website (the Highveld Syndication Investors Forum – “HSIF”) for the purpose of campaigning against the class action – all at the behest, of course, of Georgiou.

32.4 As an example of Hancke’s extensive campaigning against the class action, I attach hereto a copy of the recent “newsletters” of the said HSIF, marked “H8.1” and “H8.2” respectively. Both newsletters speak for themselves. The first newsletter was anonymous, but after we established that Hancke is the registered owner of the website, he seems to have come out of the woodwork. In the second letter, for instance, it is claimed that, should the main application proceed and the Scheme of Arrangement be set aside, that the Highveld companies will be liquidated and that liquidators will reclaim payments made by it to investors prior to liquidation. Hancke made a point in his last newsletter that the writer thereof (Hancke) “apologises for his name that was left out in the first newsletter, and that the error might have been due to a ‘printing devil’”.

(I submit this averment (of claiming repayment from investors) is clearly incorrect, given that, firstly, payments to investors are not being paid “without value” and furthermore it is not paid in preference of some creditors over others given that it is paid in accordance with a formula set out in the Scheme of Arrangement, which has been sanctioned by court, making such payment within the normal course of business). With its meagre property portfolio, Orthotouch is undoubtedly funded by the Georgiou’s to be able to pay 18 300 investors’ interest every month. Nowhere is it to be found how Orthotouch is able to fund enormous monthly payments.

32.5 This smear campaign against the class action has been intensified over the last few weeks, as stated before.

33. Ad paragraph 7.18 thereof:

At this meeting in the hotel room referred to, Stander referred to a 1% commission that Georgiou offered him earlier (in April 2016) in the event of Georgiou managing to settle with Stander's clients. This was never a demand by Stander. Stander offered to share 0,25% of the 1% with Hancke should a settlement be reached with HSAG members. There was never any talk about commission being paid to me, and I was never interested in same. I have stated (under oath) from the outset that, *inter alia* due to the large number of HS investors involved (and the HSAG), as well as the nature of the litigation, my firm does not work on a contingency basis, but only on our normal fees and tariffs. Stander in fact told me about this offer of Georgiou to him of a 1% settlement commission. Stander said he would retain the other 0.25% in the attorneys' trust account, for the same reason as the investors' contributions towards legal and registration costs, in the event that Georgiou fails to honour his agreement with him. Nothing more.

34. Ad paragraph 7.19 thereof:

34.1 The allegation that I demanded a 1% commission payment is a blatant lie. I never even mentioned payment of commission to me, let alone demanding same. The possibility of a 1% commission was always only in relation to Stander.

34.2 I again specifically point out that, in the *pro forma* settlement agreement negotiated and agreed between the HSSC (at which stage Hancke was still part of) on behalf of the HSAG members and Georgiou, no mention is made of any commission, and it is stated that the agreement is the whole agreement [annexure "H9"]. (I refer in particular to paragraphs 16.5 of my

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Replying Affidavit dated 23 February 2017, in which I refer to the attached draft agreement and the "Form B" relating to the settlement).

34.3 I again challenge Hancke, or anyone else for that matter, to present to this court any correspondence (whether a letter, email, SMS, WhatsApp message, or the like) which refers to any suggestion of any commission payable to me, let alone that I demanded same.

34.4 Only in Hancke's August 2017 HSBF newsletter, is mention made of such commission and never before.

35. Ad paragraph 7.20 thereof:

As stated earlier, Hancke was requested by myself to resign, given that we previously discovered by chance that he had settled his claim in secret (i.e. without him informing us of it) and whilst, thereafter, still being privy to confidential information and meetings concerning strategy, and so forth, of the HSAG.

36. Ad paragraph 7.21 thereof:

36.1 Hancke states that he "assumes" that my request for commission is the reason why the Applicants settle their claims with Georgiou directly and not through the "channels and the systems" made available by my firm. Hancke knows, as a fact, that this is not the case. I add in passing that paragraph 5.2 of the draft settlement agreement negotiated with Georgiou by me provided that he also pays towards the costs incurred by investors (i.e. to reimburse investors for the fees paid to me).

36.2 I note, without surprise, that no confirmatory affidavits of the erstwhile Applicants have been filed.

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- 36.3 Again, with reference to the mechanism for settlement set up by my firm for the HSAG members, of the nominal erstwhile Applicants, only Mr Jurie Geldenhuys (First Applicant) indicated that he wants to settle by filling in the "Form B" (the form sent to HSAG members to be filled in if they wish to settle) as referred to by me in paragraph 16.5 and further of my Replying Affidavit in the reinstatement application dated 23 February 2017, which I hereby incorporated herein and attach as Annexure "H10".
- 36.4 On 7 November 2016 I contacted Geldenhuys and had a strange conversation with him, whereby he advised me that he does not want to continue with the class action as he deemed the settlement as "bad". He absurdly indicated that he was satisfied with the monthly interest (some R1600) that Orthotouch paid to him. I specifically asked him whether he settled privately with Georgiou, which he denied. I communicated this conversation on the HSSC Whatsapp group, attached hereto as "H6.1".
37. **Ad paragraphs 7.22 thereof:**

I deal later below with the "confirmatory affidavit" of Ms Elna Visagie. I also refer to Mr Johan Stander's explanation below of his handwritten note referred to by Visagie.

38. **Ad paragraph 7.23 thereof:**

I have the best interest of the investors (and specifically the HSAG members) at heart. Hancke and Visage clearly have the interest of Georgiou at heart, despite professing otherwise.

39. **Ad paragraph 8 thereof:**

Again, Hancke does not only wish to file an affidavit to respond to my allegations.

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He peculiarly, and meaningfully, also intends to oppose the class action litigation by asking for the withdrawal thereof to be upheld.

40. **Ad paragraph 9.2 thereof:**

Hancke acted on behalf of his late father-in-law, and later his wife, in actively supporting the class action litigation. In that sense, he/they were clearly "disgruntled investors". If they were not disgruntled, he, on their behalf, would not have supported the class action litigation unless he had ulterior motive from the outset. I admit that Hancke's father-in-law never formally joined the HSAG. I was surprised to learn from Hancke's affidavit that neither his father-in-law, nor his wife supported or ever joined the HSAG. Stander and I were always under the impression that they had done so.

41. **Ad paragraph 9.3 thereof:**

41.1 From the facts stated by me elsewhere herein, Hancke has clearly "jumped ship" – and now actively supports the withdrawal of the litigation by the erstwhile applicants behind the backs of all other investors. As stated earlier, a fresh application for certification cannot be issued given the probability of prescription of the claim involved.

41.2 I submit the prospects of success in the class action are good. The Appeal Board of the Financial Services Board (FSB), chaired by former Judge President of the SCA (the honourable Howie JA) already unanimously found that the non-transfers of the properties to the Highveld companies – which forms the heart of the case in the class action – involved fraud on the part of the individuals concerned, and also that the non-transfer is a criminal offence under the relevant regulations governing property investment schemes. Recently eight judges of the Supreme Court of Appeal and the

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Constitutional Court (16 August 2017) also ruled in favour of 46 HS 21 investors, against Georgiou and his entities.

42. **Ad paragraphs 10.1 thereof:**

It is clear that, when I referred to the settlement of Hancke's father-in-law's claim, I meant the claim or interest which Hancke "represented". Hancke is disingenuous by trying to imply that I am referring to any other claim.

43. **Ad paragraph 10.2 thereof:**



The information which were received (on the morning of 17 November 2016 just before the HSSC meeting with Georgiou) in confidence concerning Hancke's settlement, was indeed correct, given that Hancke admits as much.

44. **Ad paragraphs 10.3.1 thereof:**

This is correct. Georgiou insisted that such term be included in the draft settlement.

45. **Ad paragraph 10.3.2 thereof:**

It was never denied that Hancke's wife (through Hancke) was not entitled to settle the claim directly with Georgiou. The problem was the withdrawal of the litigation behind the backs of all the other investors, thereby leaving them without a claim. Now that Hancke's claim has been settled, he also suddenly supports an appeal against the judgments concerned. Another peculiarity which arises is that the second intervening party's (the CC's) claim would also have become prescribed, unless it has served a summons alternatively reached a settlement with Georgiou. The joining of the HSAG by the CC is inconceivable is clearly elected to distance itself from the class action.



46. **Paragraph 10.3.3 thereof:**

Stander only pointed out that any court action has the risk of not being successful. If Stander really thought that the 50% settlement offered by Georgiou was the only option open to investors, it is strange that not all of his clients have opted to settle with Georgiou.

47. **Ad paragraph 10.3.4 thereof:**

47.1 My firm does not charge exorbitant fees. My firm's fees are in accordance with the guidelines set by the Cape Law Society, and less than the fees charged by many other firms.

47.2 I deny that the amount Hancke refers to was ever mentioned. For the reasons stated elsewhere, I submit there is good reason why to keep the financial information of the HSAG confidential at this stage, given that its publication will benefit Georgiou. When Visagie left the HSSC to work for Georgiou / Orthotouch, she undoubtedly disclosed sensitive and confidential financial information to Georgiou which caused great harm to the HSAG. This necessitated the confidentiality of financial information even more. Hancke speculates regarding the finances of the HSAG as he was, in his portfolio of public relations, was not privy thereto.

48. **Ad paragraph 11 thereof:**

48.1 Again, it is clear that, when I referred to "Mr Hancke's claim" having been settled, I referred to the claim that he "represented", i.e. the claim of his wife (and before her his father-in-law). I expressly referred to this claim as the claim concerned (see for example paragraph 23.3 of my founding affidavit dated 19 December 2016). Again, this was the only claim which Hancke disclosed to members of the HSSC.

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48.2 Not only is it correct, as Hancke states, that a non-HSAG member is entitled to settle directly with Georgiou, but even HSAG members are entitled to do so. Neither I nor the HSSC have ever discouraged individual investors who wished to settle, to do so. Again, Georgiou evaded and eventually refused to sign the settlement agreement of about 800 HSAG members who elected to settle in 2016.

49. **Ad paragraphs 12.1 thereof:**

Hancke does not state how I am "twisting facts". If he means to refer to the fact that "his" settlement was not his but his wife's, that is obvious as referred to herein above.

50. **Ad paragraph 12.2.1 and 12.2.2 thereof:**

50.1 Hancke was one of the staunchest class action supporters, stating that he would "never settle". On 30 September 2016 (the deadline for applications by HSAG members to settle) Hancke was in Stellenbosch and strongly voiced (in front of all my office staff) that he will not settle and that he is a "class action man". (*"Ek is 'n klas-aksie man. Ek sal nie skik nie."*) I submit it is not coincidental that he drastically changed tune the moment his (or rather his wife's) claim was settled and money was received in terms thereof. When I spoke to Hancke telephonically (in the presence of Fursenberg and others) on 2 December 2016, he conceded to me that he settled his (sic) claim but did not receive all his (sic) money. (*"Ek het my eis geskik maar nie al my geld gekry nie."*)

50.2 As attorney acting for the HSAG members, I have a duty to look after the interest of those members who wish to settle (and to follow their instructions in this regard), as well as those who do not wish to settle but continue with the class action litigation (and to act in accordance with such instructions).


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It is common practice for attorneys to present settlement offers to their clients, once received (whether good or bad), and in this particular case it was foreseen that a number of HSAG members might accept the offer. Why should they be left in the cold? That is why we negotiated that their claims (and HSAG membership) would only come to an end upon the final date of payment which meant that my firm acted for them until the settlement debt was discharged. The number of more than 800 HSAG members who wished to settle is not insignificant.

50.3 Hancke's settlement was indeed an extra ordinary one at the time from HSAG's perspective. Firstly, despite being a supporter of the HSAG, he settled "outside" the structure set up by us for settlement. Secondly, he (his wife) was to my knowledge the first "normal" HSAG investors that in fact received payment from Georgiou, apart from the erstwhile Applicants. This I submit is telling.

51. **Ad paragraph 12.2.2 thereof:**

Stander and his clients are also free to do as they like regarding settlement. The difference with Hancke's campaign to settle, compared to the option provided to HSAG members to settle, is Hancke's campaign forms part of his campaign against the class action whilst defaming me and also is a settlement only with Orthotouch which leaves Georgiou and all the other Respondents off the hook. The HSAG claims are against Georgiou and 26 Others and, even if the HS Companies are liquidated, they will still continue against the Other Respondents.

52. **Ad paragraph 12.2.3 and 12.2.4 thereof:**

52.1 Although the email account of the HSAG might be registered in Hancke's name, the point is that he established the account for and on behalf of the HSAG whilst being a member of its steering committee.

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- 52.2 I suspect there is no additional charges payable by him for having an additional email address with his service provider. But even if there were such additional charges payable, I point out that Hancke was paid R16,000 per month by the HSAG for his services, and such amount was intended precisely to compensate him for some minor expenses he may have incurred for such services. In the attached invoice he also included direct expenses (i.e. telephone costs) in the amount of R 758.50.
- 52.3 I do not quite follow why Hancke is using an email address with the letters "HSAG" in it "*for private email correspondence*". I submit it is also clear that uninformed investors and outsiders without particular information on this, will assume that Hancke still has some connection with the HSAG when receiving an email from an email address containing such name. This is so, regardless of Hancke's intention and regardless of whether HSAG is a "brand name". (Ditto the Facebook groups referred to by me in my founding affidavit). Many of the 800 HSAG members (whose particulars Hancke had in his possession) communicated this this e-mail address. We later received enquiries from HSAG members who communicated to this address informing us that they did not know that he was no longer part of the HSSC.
- 52.4 The aforementioned, I submit, is the case irrespective of whether the term HSAG is a "brand-name".
- 52.5 In a WhatsApp message to steering committee members, Hancke also acknowledged that the said email address was established for use by the HSAG.

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53. **Ad paragraph 12.2.5 thereof:**

I have referred to this new website above. It reflects the extensive smear campaign against me, the steering committee and the class action. It is littered with defamatory and disparaging remarks against me and others.

54. **Ad paragraph 13 thereof:**

I submit that it is clear that Hancke, just like Visagie, has jumped ship and is now acting in the interest of, and probably being paid by, Georgiou.

55. **Ad paragraphs 14.1 thereof:**

55.1 Hancke resides in Pretoria. In the latter half of 2016, Hancke started to have more and more meetings with Georgiou, without the rest of the HSSC being present. After one such meeting, Hancke informed me, while the two of us were driving together to the meeting venue in Mosselbay, that Georgiou approached him to do business. Georgiou said that he was interested to purchase his (Hancke's) shares, with me interpreting this as the shares that Hancke has in his Fuel Energiser business. I knew that Georgiou, as in the past, has targeted key drivers of the class action and I warned Hancke that, should he wish to do business with Georgiou, I cannot stop him but that he must be very careful.

55.2 Stander and I were also at another HSSC meeting told by Hancke that Georgiou drove with him (Hancke) to Nelspruit (where Hancke's daughter was apparently working with an estate agency) as Georgiou was interested in property there. This again left me uncomfortable.

If Hancke however ever settled his wife's claim, I thought it should (as with Stander's clients) be a settlement within the mechanism set up by my firm.

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There were no grounds for me to object to Hancke acting in the best interest of him or his wife. However, to go further and thereafter also act in the interest of Georgiou and supporting these proceedings is something else.

55.3 Since learning of Hancke's secret settlement, there was no way in which I would be able to work with him on the steering committee of the HSAG. When he admitted it, I made it clear to him that is services with the HSSC would no longer be required.

56. **Ad paragraph 14.2 and 14.3 thereof:**

56.1 The information placed on the HSAG website regarding Hancke resignation reflects the correct position.

56.2 However, I submit that whether Hancke resigned on own accord, or whether he was asked to resign (which was actually the case), is irrelevant for current purposes.

56.3 With reference to the alleged reaction of investors, as referred to in paragraph 14.3, I deny that same were the reaction of investors generally. I also deny the correctness of Hancke's post on social media referred to in paragraph 14.3 Insofar as it differs from my version. I submit the other detail surrounding this and raised by Hancke is wholly irrelevant for purposes of the leave to appeal.

57. **Ad paragraphs 14.4 thereof:**

57.1 There was no harassment of Hancke from my side. The "personal email" he refers to is the email address referred to earlier containing the HSAG name.

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57.2 Tellingly, Hancke does not tell what he (or his wife) has been paid by Georgiou to settle. I suspect the total monies received, plus the costs expended in Hancke's current campaign against the class action (including this litigation) does not add justification to his wife's initial capital investment of R394 000.

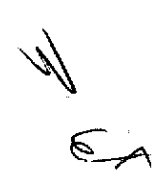
57.3 Hancke repeats the story that he did not have a personal claim, and that he did not receive personal settlement. This is obvious and never in dispute. It is raised by him simply to obfuscate the issues.

58. **Ad paragraph 14.5 thereof:**

There was never any programming from my side to resend SMS messages as alleged. We exchanged a few strong WhatsApp messages on 14 December 2016 after Hancke defamed me on social media. We also later that day exchanged a few SMS's after my WhatsApp messages did not seem to go through to him. My phone records indicate that the last message (SMS) was sent from my phone at 10.16pm (we would often during 2016 message each other sometimes late after hours). Hancke replied to all my SMS's on that evening (14 December)). A printout of the series of SMS messages is attached hereto marked "H11", and I submit that, given the contents and number of messages (on that evening), it can hardly be described as harassment as alleged. I accused him of betraying the HSAG and informed him that he was not welcome at our January 2017 meeting (which took place at Benoni on 3 February 2017). He threatened me that I would come second and after a few more messages, the conversation came to an end.

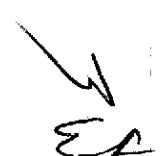
59. **Ad paragraph 15.1 thereof:**

59.1 Annexure IP4 to Hancke's affidavit reflects an exchange of emails between my office and Mr Jurie Geldenhuys. There was no reference made in the



exchange to the First Applicant (Vlok) or her claim, as apparently alleged by Hancke in the paragraph under reply.

- 59.2 There were three nominal Applicants in the main application in this court, and four in the Pretoria High Court in the certification application. As Vlok was a party to both, only six different individuals with therefore involved as nominal Applicants in the two applications. It is correct that Jurie Geldenhuys was the only one of the six persons (Applicants) who indicated (applied) that he wished to settle. Hence the earlier mentioned form "B" (annexure "H10") which had to be filled in by him, as referred to in the said exchange of emails.
- 59.3 It is telling that the other five nominal Applicants suddenly decided to settle without informing us at all, despite them not expressing a preference to settle shortly before then. Ms Jean-Marie Tosen, a candidate Attorney employed by my firm, was responsible for compiling a list of HSAG members who indicated that they wished to settle. This was obviously on the proposed terms which had been negotiated and agreed between me and Georgiou. No other nominal Applicant (apart from Geldenhuys) indicated that they wanted to settle. I refer to Tosen's confirmatory affidavit filed herewith. The proposed settlement was expressly communicated to all HSAG members on more than one occasion.
- 59.4 In so far as the email communication by Geldenhuys to Visagie is concerned ("IP4"): This is hearsay evidence, as no affidavit is filed by Geldenhuys explaining its contents.
- 59.5 In any event, if this was ever written, it is dated long after (seven months) the secret settlement and betrayal by Geldenhuys to withdraw the class action litigation. He clearly tries to justify his betrayal by rationalising some of his actions *ex post facto*, which is easy to do. Geldenhuys and the other



nominal Applicants never communicated to me any dissatisfaction about me or the fees charged. Let alone that such dissatisfaction cause them to settle directly with Georgiou behind our backs. This so-called dissatisfaction is now used as an excuse to justify his actions. This is another recent fabrication by Hancke to discredit me.

Ad "confirmatory" affidavit of Mrs Elna Visagie dated 11 August 2017.

60. Ad paragraph 1 thereof:

60.1 For the reasons stated elsewhere, I deny that the litigation by Hancke or Visagie is correct.

60.2 As mentioned before, Visagie now works for Georgiou (through Orthotouch) and is being paid a six-figure monthly salary.

61. Ad paragraph 1.4.3 thereof:

The increase in registration fees from R200 was supported and recommended by Hancke. The increased amount was R1000 per syndicate investment, not R1 million as alleged. I attach hereto correspondence as sent by Hancke on the HSSC Whatsapp group, sent to myself and Stander, marked "H12", where he favours the increased amount.

62. Ad paragraph 1.4.4.1.

The R1,000 additional fee per syndicate investment was 18 months after the class action litigation commenced. The increases were not only necessary and but not at all exorbitant as suggested.

63. **Ad paragraph 1.4.6:**

As indicated earlier, the allegation that I wanted a 1% commission on settlement as an outright lie. The 1% commission was what was offered earlier to Johan Stander by Georgiou during April 2016 in the event of Stander's clients are settling with Georgiou.

64. **Ad paragraph 1.4.6.1 thereof:**


64.1 Visagie was not present at this meeting. Stander informs me that the handwritten note which he gave Georgiou came about as follows (I refer to his confirmatory affidavit herein):

- (a) A meeting was held in Stellenbosch (Weltevreden farm) over 30 and 31 March 2017 specifically to sign the more than 800 settlement agreements for HSAG members who earlier responded that they wish to settle.
- (b) On the last day, after having concluded our meeting and realising that Georgiou does not intend signing the contracts, Georgiou requested Stander to indicate to him, on a piece of paper, what would be the "worst-case scenario" concerning costs and legal fees payable by him be under a settlement (apart from capital payments due), in the event of all 6688 HSAG members' claims being settled (and not only the 800 at that stage).
- (c) This Stander did in a matter of minutes by writing the note ("EV1") for his own purpose and clarity. Neither myself nor Georgiou (or Furstenberg) were involved in writing the note and did not give inputs in any items or figures on Stander's note. Stander also explained these figures in a letter sent to Georgiou a few days later (on 5 April

2017), a copy of which is attached hereto marked "H13". The discussion lasted no more than five minutes, as opposed to the two days of intensive discussions to move Georgiou to sign the agreements. Georgiou shifted the goalposts and now indicated that he could not only sign 800 contracts whilst the sword of a class action was still over his head.

- (d) The first item was a rough indication of total costs for the administration by my firm of 6688 monthly payments in settlement, given that the settlement figure was payable in twelve instalments over a period of 60 months. (Payments were to be made to my firm, who in turn would have to verify and reconcile payments and then pay the various investors). Again, Stander did not inquire from me about the fees before writing them down. This amounted to less than R100 per payment per client for each of the twelve instalments (which I submit is a nominal fee) and is an average fee of less than R20 per month (per client).
- (e) The second item was a suggested payment to reimburse investors for the contributions made to the class action, calculated on the basis that if every investor were to be paid by Georgiou his/her full requisite contribution.
- (f) The third item speaks for itself. The 6688 number refers to the number of members of the HSAG in the event that further requisitions had to be made.
- (g) The 1% negotiators fee is the same percentage offered earlier to Stander (in March/April 2016) in the event of settlements being reached, now based on settlement of all HSAG members.

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- 64.2 These figures were presented by Stander as part of a negotiation process, knowing that Georgiou would come back with counter figures. Therefore, Stander "aimed high" with these figures as one often does during negotiations. I point out that, and Stander will confirm, that this negotiators fee is a reference to him, and not a fee payable to me. No such fee was ever on the cards for me, nor did I ever request or expect same.
- 64.3 Visagie was indeed "bought off", and I submit the facts speak for themselves. I have no doubt that Visagie was instrumental in persuading the nominal Applicants to withdraw the class action litigation and to thereby betray the other investors. No confirmatory affidavits have been filed by the erstwhile nominal applicants to substantiate Visagie's averments. As mentioned before, myself and three other persons had sight of Visagie's signed employment agreement, in the presence of Visagie, during a meeting at Cape Town International Airport in 2015. In this agreement it is stipulated that Visagie is paid R100 000 per month by Georgiou/Orthotouch as a communications officer, clearly to campaign against the class action and to further the interest of Georgiou. In a letter to Mr Derek Cohen, dated 9 February 2016 (which was never contested), some of the significant provisions of Visagie's employment contract was recorded. A copy is attached hereto, marked "H14".
- 64.4 One of the nominal Applicants in the Pretoria application (for certification), Mr Danie Lampbrechts, for instance later acknowledged to Stander in a WhatsApp message on 29 November 2016 that "*ek het nie hierdie skikkings-proses begin nie*". This means that he was approached for settlement, and not the other way around. I attach hereto a printout of such WhatsApp exchange between Stander and Lamprechts, marked "H15", reflecting the aforementioned.
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65. **Ad paragraph 2.2 thereof:**

I reiterate that I act in the interest of the HSAG members. I am not driving this litigation all by myself or for my own benefit. My firm's fees and disbursements are verified by an independent bookkeeper, two cost consultants and auditors, and are paid in full only up to the end of 2014. We have only received partial payments for 2015, 2016 and 2017, given that many HSAG members are struggling to make contributions. Various counsel, correspondent attorneys and other experts were already consulted and appointed to assist with the process.

66. **Ad paragraph 2.3 thereof:**

66.1 Not only were the nominal Applicants "bought off", but they betrayed their fellow investors by their actions. I note that no confirmatory affidavit is filed by Jordaan. I will in any event deal with Jordaan's allegations in responding to Georgiou's application to lead further evidence on appeal. Although I do not deny that Jordaan approached Georgiou, she did so, on her own version, in March 2016, long before settlement of HSAG members were ever on the cards. Jordaan therefore clearly did not approach Georgiou because of my "inability to settle a claim on her behalf".

66.2 When my firm circulated a form to HSAG members (Annexure / Form "A") to obtain instructions from them regarding settlement, Jordaan indicated in her reply that she would only settle for payment of 100% of her capital. I again refer to the confirmatory affidavit of Ms Tosen in this regard. I also attach hereto the document signed by herself on 7 June 2016, marked "H16".

67. **Ad paragraph 2.4 thereof:**

- 67.1 The nominal Applicants indeed did not know each other. They live in different parts of the country (apart from possibly Lambrechts and Geldenhuys who both live in Mossel Bay), and was initially chosen in an almost random fashion by Visagie (at the request of the HSSC) to act as nominal Applicants. Anyone of the thousands of investors could have been approach for such purposes. Visagie's brief from the HSAG at the time, and its legal team, was to find different individuals from different walks of life (to act as Applicants), which she exactly did.
- 67.2 Although the referred to WhatsApp group was established by Visagie, and of which I was made a participant), this was a very inactive group, as I recall. There was no significant need for communication to, or between, these members as all important information was in any event published on the HSAG website and later via e-mail and WhatsApp. (From the screen-print attached to Visagie's affidavit, I note that the group in any event only comprised of Jordaan, Vlok, me and Visagie). I upgraded to a new phone in January 2017, and unfortunately therefore cannot retrieve the messages that may have been posted on this group.
- 67.3 It is significant to observe that Visagie does not attach any printout of the messages which was written/posted on this group.
- 67.4 Because the names of the nominal Applicants appeared on the court papers filed from time to time, they were clearly aware of one another. I would however be very surprised if they ever met each other before their secret settlement negotiations and withdrawal, apart from Lambrecht and Geldenhuys. The few court affidavits that had to be signed by them, was sent to them individually for consideration and signing, upon which the signed papers were sent back to us.

W
EA

67.5 Irrespective of whether or not they knew each other, the point is that it is still important that all of them (i.e. two sets of nominal Applicants for the two respective applications (i.e. in Johannesburg and Pretoria) simultaneously went (I am not sure if they all physically went there) to the same attorney in Johannesburg with the same instruction (to withdraw the class action litigation). It was clearly orchestrated. Three of the two applicants in the Pretoria certification matter and two of the Johannesburg setting aside matter did not even share the same affidavits and I find it, with respect, preposterous that they would have known each other, as alleged.

68. **Ad paragraph 2.5 thereof:**

68.1 Irrespective of whether or not they knew each other, the point is that it is still significant that all of them (i.e. two sets of nominal Applicants for the two respective applications (i.e. in Johannesburg and Pretoria)) simultaneously went to the same attorney in Johannesburg with the same instruction (to withdraw the class action litigation). It was clearly orchestrated.

68.2 I deny that I "ignored various requests" for information, apart from that pertaining to the financial situation of the HSAG which should remain confidential for the reasons stated earlier.

69. **Ad paragraph 2.6 thereof:**

I do not deny that the attached circular was sent out by Klopper, but deny that its contents are relevant for current purposes. It is however interesting to observe that liquidation of the companies are foreshadowed.

70. I therefore request that Hancke's application be dismissed with cost on an attorney and own client scale for the reasons stated earlier.

EA

DEPONENT

2017-08-22
Y EA

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED TO ME THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, WHICH WAS SIGNED AND SWORN TO BEFORE ME AT Stellenbosch ON THIS 22ND DAY OF AUGUST 2017 IN ACCORDANCE WITH THE REQUIREMENTS OF REGULATION R1258 DATED 21 JULY 1972, AS AMENDED BY REGULATION NO R1648 DATED 19 AUGUST 1977, AS FURTHER AMENDED BY REGULATION NO 1428 DATED 11 JULY 1980.

[Signature]
P. 24030
P. Adams Sgt
COMMISSIONER OF OATHS

Name: Berna Rne Adams

Designation: POLICE OFFICER - SERGEANT

Address: du Toit Street
Stellenbosch
7600

