ENGLISH TEXT BELOW

MAANDELIKSE NUUSBRIEF: JUNIE 2020

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

Hierdie e-pos is vertroulik en uitsluitlik vir die geadresseerde bedoel. As u dit per ongeluk / verkeerdelik ontvang het, stel asseblief die versender by hsagenquiries@gmail.com onmiddellik in kennis en vernietig dit. U mag nie 'n e-pos, of enige deel daarvan, wat foutiewelik ontvang aan enigiemand anders stuur, kopieer of openbaar nie. HSAG se webmeester gebruik antivirusprogrammatuur om virusse en ander kwaadwillige kodes te voorkom. Hierdie sagteware kan egter nie so 'n kode altyd voorkom of uitwis nie. Die HSAG of sy verteenwoordigers sal nie aanspreeklik wees vir enige verlies of skade wat voortspruit uit ontvangs of gebruik van hierdie e-pos of andersins, of dit voortspruit uit die nalatigheid van HSAG, sy lede, bestuurskomitee en agente of andersins nie.

Alhoewel e-posse, HSAG Nuusflitse en HSAG Inligtingsbrokkies van tyd tot tyd uitgestuur word, is die www.hsaction.co.za 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.

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1. DIE VRAAG IS: HOE GAAN DIT MET DIE HSAG?

Die antwoord is, onder hierdie ongewone moeilike omstandighede en ten midde van ‘n wêreldwye pandemie, inderdaad baie goed en aan die gang!

Nieteenstaande die nasionale Covid-19 inperking wat inwerking was vir die grootste deel van hierdie jaar sover en steeds nog nie gelig is nie (terwyl meeste van ons lede steeds in hul huise moet bly), is ons steeds sterk op pad ten spyte van hierdie ongekende gebeurtenis, wat die hele wêreld, sowel as ons siviele regsisteeml tot stilstand gebring het.

2. DIE HSAG KLAS-AKSIE – DIE EEN EN ENIGSTE KLAS-AKSIE IN DIE PICKVEST SAGE

Daar het onlangs gerugte op sosiale netwerke ontstaan dat daar individue is wat aktief poog om HSAG-lede te werf vir ’n “nuwe klas-aksie” teen Georgiou en ander. Die HSAG stel sy lede gerus dat dit die enigste gesertifiseerde klas-aksie tot stand gebring het en ook dat daar ’n opvolgende klas-aksie ingestel is wat dieselfde ten doel het.

Volgens verdere gerugte beoog diegene wie ’n klas-aksie wil begin (na sodanige persone vir die afgelope 5 jaar ernstig gekant was teen die klas-aksie prosedure) om nou lede te werf met die belofte van ’n ledebydrae van ‘n skamele R100 per persoon. Ondervinding het getoon dat dit ‘n fabel is wat glad nie haalbaar is nie.

Klas-aksies is gespesialiseerde regsgedinge en is die administrasie en dryf van litigasie ook gespesialiseerd van aard. Tensy die teenstander 'n groot en kapitaalkragtige pensioenfonds, goudmyn of multinasionale korporasie is, bly die beste (en deur die hof goedgekeurde) befondsingsmodel steeds 'n behoorlik geoliede, privaat-befondsingsmodel. Die HSAG is tot dusver (sedert vyf jaar gelede en van die begin af) verteenwoordig deur dieselfde regspan wat ook deur die hooggeregshofbevel as geskik gesertifiseer is om dit te doen.

HSAG-lede was al voorheen daaroor gewaarsku, soos weer hierin herhaal, dat enige nuwe sake waarskynlik met ’n suksesvolle verweer van verjaring begroet kan word.

Die HSAG se gesertifiseerde klas-aksie is, op advies van ons advokatuur, nie onderhewig aan verjaring nie.

Private vervolging in sindikasie maatskappye? Sharemax

Die media gons tans oor AfriForum se onlangse bekendmaking dat hul privaatvervolginseenheid, onder leiding van Adv. Gerrie Nel, die Nasionale Vervolgingsgesag ("NVG") nader met 'n aansoek om 'n bewaringsbevel toe te staan teen die Nova Eiendomsgroep om te verhoed dat die groep eiendomme vir minder as die markwaardes verkoop. HSAG lede kan die Sharemax storie vergelyk met Pickvest.

Volgens AfriForum kan die Batebeslaglegginseenheid van die NVG die eiendomme ingevolge 'n hofbevel in bewaring neem, maar het die NVG nog geen sodanige stappe geneem nie. In die Pickvest saga het die NVG ook geen stappe geneem nie.

AfriForum voer aan dat hul ondersoeke bewyse oplewer dat die direkteure van Nova vir hulself buitensporige salarisse betaal en dat dit blyk dat Nova, die reddingsvoertuig vir die Sharemax skema, huidig ontslae raak van eiendomme in 'n poging om likwidasie te vermy. In die Pickvest debakel is eise *inter alia* dat die maatskappye betaling ontvang het vir eiendomme wat hulle nooit oorgedra het nie.

AfriForum versoek dat 'n kurator aangestel word om die eiendomme tot voordeel van die voormalige Sharemax beleggers te verkoop.

Die beweringe deur AfriForum wat verband hou met buitensporige salarisse is interessant, veral in lig van Connie Myburgh, die voorsitter van die Nova eiendomsgroep, se skrywe waarin hy poog om 'n bekende ondersoekende finansiële joernalis te verkleineer deur aan te voer dat hy slegs 'n karige salaris verdien in vergelyking met wat hy (Myburgh) verdien, as senior regspraktisyn met baie jare se ervaring. (sien die artikel hieronder)

Alhoewel dit goeie nuus vir Sharemax beleggers is dat AfriForum die NVG bystaan, beteken dit nie dat AfriForum op hierdie stadium private vervolging instel nie, en is die Sharemax skema ook nie direk verwant aan die HS beleggers (Picvest) nie. Op die stadium gee dit egter hoop dat die bevoordeeldes agter mislukte eiendomsindikasies in Suid-Afrika, waardeur duisende beleggers hul miljarde rande se kapitaal verloor het, verantwoordbaar gehou sal word deur die owerhede vir hul gewetenlose dade.

COVID-19

Die Covid-19 pandemie het nie die klas-aksie ontspoor nie, maar tog die proses vertraag, aangesien howe nie in normale werking is nie, en die klas-aksies nie in terme van die reg beskou word as dreigend en dringende sake wat noodsaaklik is gedurende hierdie ongekende tye nie.

Nieteenstaande die Covid-19 aanslag en vertragings wat die afgelope paar maande ervaar is nie, is die regspan gereed en ingestel om sodra die howe weer volstoom in werking is, voort te gaan met die regsake.

Die HSAG Bestuur wil sy lede hartlik bedank vir die volgehoue ondersteuning die afgelope tyd.

3. ALGEMENE NAVRAE EN TERUGVOER

Die regsproses is oor die algemeen ingewikkeld en uitdagend en kan frustrerend wees, veral vir diegene wat dit nie ken nie. Alhoewel die HSAG voortdurend poog om lede op hoogte te hou van die regsproses, is dit nie moontlik om die volle proses deur middel van die nuusbrief te verduidelik nie, en is die HSAG se sake ook geensins eenvoudig nie.

Ten einde lede by te staan word daar kortliks hieronder verduidelik wat die HSAG is, waarom die HSAG struktuur tot stand gebring is, sowel as die huidige hofsake verwant aan, of voortspruitend uit, die HSAG.

Wat is die HSAG?

Die HSAG is ŉ vrywillige groep wat bestaan uit ‘n groot aantal beleggers in die HS maatskappye wat die litigasie ondersteun as die enigste uitweg om beleggers se miljarde te vorder. Die HSAG Bestuur is die dryfkrag agter die HSAG se hofsake, tesame met die regspan, Theron & Vennote.

Die geheim tot die HSAG struktuur, is die ekonomie van skale, wat voorsiening daarvoor maak dat ŉ massa-groep beleggers gesamentlik minimale bydraes maak om die litigasie te voer. Individuele litigasie kan honderde duisende rande beloop, en op ŉ individuele basis is daar slegs enkele beleggers wat die litigasie vir hulself kan finansier. Die meerderheid beleggers is dus uitgelewer gelaat en het geen ander keuse gehad as om Georgiou se mislukte skemas en belaglike opsies te aanvaar nie.

Ten einde toegang tot geregtigheid te laat geskied vir daardie uitgelewerde beleggers, is die HSAG met sy groepslede befondsingsmodel gestig met die doel om klas-aksies te loods namens duisende beleggers, om sodoende toegang tot geregtigheid te bewerkstellig op ŉ bekostigbare wyse.

Sedert die ontstaan van die HSAG is sy lede dus regsverteenwoordig teen ŉ fraksie van die kostes van individuele regsverteenwoordiging.

Indien dit nie vir die HSAG was nie, sou daar nie ŉ gesertifiseerde klas-aksie wees vir lede in HS 21 en 22 nie, en sou daar ook nie ŉ klas-aksie uitgereik kon word vir lede met beleggings in HS 15 tot 20 nie.

Die uitgereikte aansoek namens beleggers in HS 15 tot 20 word onder punt 5 bespreek.

CCAF

Die klas-aksie namens beleggers in HS 21 en 22 is vanaf 11 November 2019 tot 13 November 2019 aangehoor en uitspraak is gelewer op 10 Desember 2019.

Hierdie sertifiserings-aansoek is op ŉ bespoedigde wyse hanteer aangesien daardie beleggers se eise gebaseer is op die veel eenvoudiger spesifieke nakoming eis (afdwing van kontraktuele verpligting, nl. die terugkoopklousules). Hierdie aansoek kon op 'n bespoedigde basis hanteer word na beide die Hooggeregshof en Hoogste Hof van Appèl (in die Noormahomed aangeleentheid) beslis het dat die terugkoopklousules afdwingbaar is, ten spyte van die Art 155 Reëlingskema.

Die feit dat die klas-aksie gesertifiseer is, beteken dat die hof gesertifiseer het dat ŉ klas-aksie ŉ toepaslike meganisme is, en dat beide die verteenwoordigers van die klas (applikante) sowel as die regsverteenwoordigers (Theron & Vennote) gepas is om die klas-aksie te voer. Daar bestaan ŉ wêreldwye tendens dat die suksesvolle sertifisering van ŉ klas-aksie normaalweg ŉ skikking tot gevolg het, aangesien ŉ Regter dan reeds beslis het dat dit in die belang van geregtigheid is dat die aangeleentheid aangehoor word as ŉ klas-aksie. Tyd sal leer of dit in hierdie saak ook dieselfde sal wees.

In terme van die sertifisering mag daar egter nie kruisbefondsing plaasvind nie. Dit is om hierdie rede dat daar dikwels na die HS 21 & 22 klas-aksie verwys word as CCAF ("Certified Class Action Fast Track") ten einde te verseker dat die hofbevel gehoorsaam word. CCAF het dus sy eie trustrekening apart van die HSAG trustrekening, en CCAF registrasiegelde word aangewend alleenlik vir die HS 21 & 22 klas-aksie. U HSAG ledebydraes word in die HSAG se trustrekening betaal en word dus nie sondermeer aangewend om die HS 21 & 22 gesertifiseerde klas-aksie te dryf nie.

Ten einde die bogenoemde skeiding tussen die HSAG en CCAF verder te bewerkstellig, is daar ook aparte e-pos adresse vir die CCAF klas-aksie (gesertifiseerde HS 21& 22 klas-aksie). Die e-pos adresse vir beide CCAF en die HSAG is sigbaar onder punt 9 van hierdie nuusbrief.

Die stappe wat volg op die sertifisering van die CCAF klas-aksie, is dat daar nou ‘n klas-aansoek gebring word namens die gesertifiseerde klas in terme waarvan die hof versoek word om te beveel dat die terugkoopklousules afgedwing word.

Hierdie klas-aansoek is reeds in Februarie 2020 uitgereik en wag die regspan tans op Georgiou en ander se antwoordende stukke (die stukke waarin daar beantwoord word op die aantygings gemaak in die stukke uitgereik deur die HSAG regspan). In terme van die Uniforme Hofreëls het Respondente in die gewone loop van sake 5 dae om aan te dui dat ŉ aansoek geopponeer (teengestaan) gaan word, en daarna ŉ verdere 15 dae om ŉ antwoordende verklaring te liasseer. Covid-19 het egter ‘n ernstige belemmering van die hofreëls tot gevolg gehad.

HSAG-lede wat opbetaal was teen 31 Januarie 2020 is outomaties ingesluit by die CCAF klas-aksie sonder om enige stappe te neem. HSAG-lede wat nie opbetaal was nie, of enige ander persone, kon deel wees van die CCAF klas-aksie deur te opt-in op die aanlyn portaal en deur ŉ registrasiefooi te betaal in die CCAF trustrekening, welke registrasiefooie aangewend word om daardie litigasie te voer. In terme van die sertifiseringsuitspraak word die Applikante toegelaat om verdere betalings te versoek by die lede van die klas-aksie indien die registrasiefooie ontvang onvoldoende is om die litigasie te befonds.

Die belang van bogenoemde opt-in proses is dat alle beleggers in HS 21 & 22 ‘n geleentheid gegun is om deel te wees van die CCAF klas-aksie, ongeag daarvan of hulle HSAG-lede is/was. Hierdie bepaling is ook deur die hof gelas en glo die regspan dat dit toegang tot geregtigheid vir meer beleggers moontlik sou maak.

ŉ Verdere belangrike punt is dat die eise van beleggers in HS 21 & 22 op grond van die terugkoopklousules reeds sou verjaar, maar stuit die uitgereikte klas-aksie verjaring vir diegene wat deel is daarvan. Die CCAF klas-aksie kan dus gesien word as die finale geleentheid vir beleggers in HS 21 & 22 om eise af te dwing op grond van die terugkoopklousules.

4. JAARLIKSE OPVRAGING – 2020

Hierdie afdeling is nie van toepassing op CCAF lede nie (daardie nuwe persone wie slegs deel is van die gesertifiseerde HS21 en 22 klas-aksie).

Die kostes verbonde aan litigasie is enorm, en alhoewel die ekonomie tans tot feitlike stilstand gebring is, moet die HSAG regspan en advokatuur steeds hul onverwylde aandag gee aan beleggers se saak/e.

Buiten vir die spesiale voorverhoorheffing betaalbaar deur lede met beleggings in HS 21 en 22, het die HSAG 18 maande laas ’n opvraging gedoen en was daar intussen ’n lywige afgeleide klas-aksie vir beleggers in HS 15 tot 18 uitgereik (hierdie afgeleide klas-aksie word onder punt 5 verder bespreek).

Verder, is Orthotouch en Zephan in sakeredding geplaas en moet die HSAG regspan van kundige advies gebruik maak ten einde die proses te monitor en deel te neem ten einde lede se belange te beskerm. Beleggers is reeds in die verlede in ’n blik gedruk deur die HS sakeredding en gevolglike Art 155 Reëlingskema, en is die regspan bedag daarop dat beleggers in ’n strik kan trap wanneer hul stem ten gunste van sodanige planne en skemas, en gevolglik afstand doen van hul eise. Die HSAG Bestuur neem dus die nodige stappe om ’n herhaling van geskiedenis te voorkom.

Dit behels onder andere ’n deeglike ondersoek na die sakereddingsplanne vir Zephan en Orthotouch, en die oorweging van talle moontlike stappe wat geneem kan word ten einde beleggers se belange te beskerm.

In lig van bogenoemde, is dit nodig om ’n opvraging in 2020 teen lede se state, soos hierby aangeheg, te hef.

Die regspan, in oorlegpleging met die HSAG Bestuur, sal binne die volgende paar maande ’n besluit neem rakende enige versoeke vir bydraes vir 2021.

5. **HS 21 & 22 GESERTIFISEERDE KLAS-AKSIE: OPT-IN en FICA**

Beleggers wat die “opt-in” opsie uitgeoefen het en skriftelik aansoek gedoen het om die registrasiefooie oor ses maande af te betaal deur wyse van die voorgeskrewe aansoekvorm, moet hul totale registrasiefooi binne 6 maande vanaf die datum waarop hul die opt-in vorm voltooi het, ten volle betaal om deel te wees van die gesertifiseerde HS 21 & 22 klas-aksie. Indien die volle registrasiefooi nie binne ses maande vanaf die “opt-in” tydperk, soos vasgestel, betaal is nie, sal daardie persone ongelukkig nie deel kan wees van die gesertifiseerde klas-aksie (“CCAF”) nie.

U word weereens daaraan herinner (indien u dit nog nie gedoen het nie) om solank u FICA dokumente stuur na accounts@ccaf.co.za.

Daar is persone wat aangedui het dat hul nie bereid is om hul FICA dokumente te voorsien nie, aangesien hul met hul aansluiting (solank soos vyf jaar gelede) reeds sekere dokumente voorsien het. Daar was egter ’n lang tydsverloop sedertdien, en moet daardie

persone ongelukkig ingevolge die FICA wetgewing steeds hul dokumente voorsien vir doeleindes van FICA verifikasie.

Die dokumentasie tans benodig is ŉ afskrif van u Identiteitsdokument, sowel as ŉ bewys van adres (nie ouer as drie maande).

Die regspan bedank diegene wat reeds hul dokumentasie gestuur en hul goeie samewerking tot dusver gegee het.

Die Kennisgewing van Mosie kan besigtig word by:
http://hsaction.co.za/wp-content/uploads/2019/10/Amended-Notice-of-Motion-Fast-Tracking-of-buyback-claims.pdf

Die Hofbevel en uitspraak gelewer deur Regter Tolmay op 10 Desember 2019 kan besigtig word by die volgende skakel:
http://hsaction.co.za/wp-content/uploads/2020/01/HS2122Order.pdf

6. BELEGGERS MET EISE IN HS 15 TOT 20

Die HS 15 – 20 sertifiserings-aansoek is reeds uitgereik en beteken op Georgiou en andere, en is die onderskeie regsverteenwoordigers tans besig om stukke uit te ruil. Huidig wag die HSAG regspan op die teenkant.

Hierdie sertifiserings-aansoek behels in werklikheid ŉ aansoek namens beleggers in alle sindikasies. Die sertifiserings-aansoek kan onderskei word van die HS21 & 22 klas-aksie wat alleenlik gebaseer is op die afdwing van die kontraktuele terugkoopklousules, deur dat hierdie aansoek gebaseer is op onder andere bedrog en wanvoorstelling.

Aangesien beleggers in **alle** sindikasies hier ingesluit is, dien die aansoek ook as 'n alternatief vir diegene wat nie deel vorm van die HS 21 & 22 gesertifiseerde klas-aksie nie, maar wie wel in HS 21 en/of 22 belê het.

Hierdie klas-aksie word gebring deur middel van ŉ afgeleide aksie (Art 165(6) van die Maatskappyewet) in terme waarvan die Applikante die hof versoek om verlof toe te staan dat die Applikante namens en in die naam van die HS maatskappye eise instel teen Orthotouch, en teen Zephan, die N Georgiou Trust (verteenwoordig deur die trustees, Nic Georgiou, Maureen Lynette Georgiou en Joseph Chemaly) as borge en medeskuldenaars, vir die kooppryse van verskeie eiendomme verkoop aan Orthotouch deur die HS maatskappye in terme van die sakereddingsplan van die HS maatskappye.

In die aansoek word daar verder versoek dat die hof gelas dat Georgiou en sy twee seuns, Michael en George, en die voormalige en huidige direkteure van Orthotouch (Hans Klopper, Connie Myburgh en Panogiotis Kleovoulou), persoonlik aanspreeklik gehou word, saam met Orthotouch, vir die eise.

Hierdie eise word ook gebring deur middel van die klas-aksie meganisme aangesien die geskiedenis bewys het dat daar mag in groot getalle lê en aangesien individuele litigasie nie bekostigbaar is vir die groot meerderheid HS beleggers nie.

Die gerugte wat die rondte gedoen het dat die plasing van Zephan en Orthotouch in sakeredding beteken dat alle litigasie gestaak word, is nie waar nie. Die Maatskappyewet bepaal uitdruklik dat litigasie teen ŉ maatskappy in sakeredding kan voortgaan met die toestemming van die sakereddingspraktisyn of indien die Hof so gelas. Indien die Hof dit gelas, kan daar dus voortgegaan word met litigasie al stem die sakereddingspraktisyn nie daartoe in nie.

Die uitgereikte aansoek bevat reeds ŉ versoek tot die effek en glo die HSAG Bestuur dat die Hof dit in die belange van geregtigheid sal sien om verlof te gee dat die litigasie voortgaan. In die HS 21 & 22 sertifiserings-aansoek het Regter Tolmay gelas dat die aansoek voortgaan ten spyte van Orthotouch en Zephan se plasing in sakeredding kort voor die aanhoor van die aansoek.

Weens die Covid-19 inperking is sekere hofprosesse tydelik gestaak en is dit ongelukkig buite die hande van die regspan. Sodra daar nuwe regulasies bekendgemaak word, sal die regspan dit evalueer ten einde te bepaal welke stappe geneem kan word om die proses verder te dryf. Die regspan wil u egter bedag maak daarop dat Covid-19 ŉ geweldige impak het op die effektiewe funksionering van die howe en dat geen waarborge gemaak kan word oor wanneer die aansoek aangehoor gaan word nie. Die ongelukkige realiteit is dat Covid-19 volgens wetenskaplikes nog nie ŉ hoogtepunt van infeksietoename bereik het nie.

Ons versoek ook dat u in ag neem dat die eis van beleggers se kapitaal ‘n siviele eis is, en nie strafregtelike verrigting is nie. U sal dus huidig in die media verskeie berigte lees waar regstappe geneem word, maar wys die regspan uit dat daardie regsprosesse hoofsaaklik strafregtelik is en deur die staat gedryf word. Ongelukkig word strafregtelike en siviele aangeleenthede nie op dieselfde basis hanteer deur die howe nie.

Die regspan sal spoedig berig sodra daar vordering gemaak word en is tans besig om sodanige stappe te neem, in ag genome die huidige Covid-19 inperking, om vordering te bewerkstellig.

Die HSAG Bestuur poog om te alle tye in die beste belang van al sy lede op te tree en is steeds van voorneme om, soos voorheen bekend gemaak, namens elke HSAG-lid wat opbetaal is te onderhandel indien daar enige skikkingsonderhandelinge sou plaasvind. Hierdeur word daar opgetree namens elke lojale lid wat dit vir die HSAG oor die jare moontlik gemaak het om, deur hul ondersteuning, hierdie punt te bereik.

7. ORTHOTOUCH EN ZEPHAN SAKEREDDING

Daar is voorheen berig rakende die inhoud van die gepubliseerde sakereddingsplanne vir Orthotouch en Zephan en die sigbare kortpadproses wat Du Toit as sakereddingpraktisyn blyk te volg.

Die HSAG se standpunt is steeds dat beleggers nie die BRP (Du Toit) aanbod moet aanvaar nie aangesien die aanbod net nog 'n poging is om beleggers beangs te maak (Du Toit dreig met likwidasie en die terugbetaling van rente). Hierdie dreigemente is daarop gemik om lede te ontsenu.

INDIEN DAAR VIR DIE SAKEREDDINGSPLANNE VAN ZEPHAN EN ORTHOTOUCH GESTEM MOET WORD, IS DIE HSAG SE ADVIES AAN SY LEDE OM NEE TE STEM.

Daar bestaan ŉ groot risiko dat indien beleggers die aanbod aanvaar deur 'n opsie te kies, hul regte en eise herskik word en Georgiou en andere wegloop met jou geld.

In die vorige Nuusbrief is berig dat die HSAG regspan ‘n skrywe gestuur het na Du Toit op 12 Mei 2020 waarin sekere punte uitgelig word oor die gepubliseerde sakereddingsplanne. Die HSAG regspan het ‘n verdere skrywe aan Du Toit se regsverteenwoordigers gestuur na daar nie ‘n antwoord op die substansie van die HSAG se skrywe ontvang is nie.

Op 13 Mei 2020 het RSG Geldsake gesprek gevoer met Jacques du Toit, Johan Stander (HSAG Bestuur), Helgard Hancke (HSBF en krediteurekomiteelid), Dr. Gerhard Holtzhauzen (sakeredding spesialis en krediteurekomiteelid) oor die gepubliseerde sakereddingsplanne.

Alhoewel die gesprek heeltemal te lank is om in tgeheel hier weer te gee, word Du Toit se antwoord op die beweringe van ongerymdhede wat gely het tot die verlies van beleggers se kapitaal en Du Toit se ondersoek daarna word hier weergegee:

JACQUES DU TOIT:
"*Dan as ons kyk na Gert, in terme van Gert en... en Johan se vraag, daardie saam antwoord want dit gaan oor die... oor Artikel 141 se ondersoek. Dis baie duidelik uit my besigheidsplan uit, soos ek sê, dat die inligting tot my beskikking is weergegee in die besigheidsplan. As daar enige ander inligting beskikbaar word aan my, sal ek dit ondersoek.*

So ek het gevra in die eerste krediteurevergadering asook daarna, enige iemand wat vir ons vol... konkrete inligting het ten opsigte van bewerings van bedrog, moet dit asseblief vir my deurstuur. Ek... ek verwys nie na briewe en ons noem dit in Engels 'n "hunch". Ek soek nie briewe wat sê, ja, hulle vermoedens is X, Y en Z nie, dit is wat hulle vermoed nie. Gee vir my die bewyse dat ek dit ondersoek en dan ondersoek ons dit van daar af.

En ten opsigte daarvan, natuurlik sal ek dit verklaar as daar enige ongerymdhede plaasgevind het of misaanwending van fondse is. Maar gee vir my die bewyse wat ek nie het nie. Die bewyse wat ek het kom van die ouditeure af. Dis deel van die business rescue, van besigheidsreddingsplan. As julle dit ordentlik lees, sal dit... veral die aanhangsels soos dit van die ouditeure af, 'n vloei van kontant wat uiteengesit is, 'n vloei van eiendomme wat uiteengesit is en dit staan vry, as daar 'n eiendom is wat ontbreek of kontantvloei wat ontbreek, sê vir my dis die eiendom. Wat het van hierdie eiendomme geword?

Die R3.2 miljard waarvan die... weereens dit is dieselfde vraag wat jy gestel vroeër, dit wat oorgedra is wat... geld wat betaal is aan Zephan, hulle het die eiendom daarvan gekry nie, kan ek vir jou nie daarop antwoord nie. Dit wil sê ek... ek het reeds vraag geantwoord dat die eiendomme wat hanteer is, is reeds deel van die plan, reeds deel van die skikking van die... van die reëlingskema. En... en verder, ek... ons probeer nie enigsins probeer ek as reddingspraktisyn die beleggers skrikmaak of bang praat nie. Dis elkeen se eie besluit. Die meerderheid gaan besluit oor wat hulle voel. As hulle wil deel vorm van 'n... van 'n litigasieproses, hulle goeie reg om dit te doen want hulle is die afgelope 10 jaar al besig daarmee, nog geen gelde is gevorder nie. Verskeie ondersoeke is al gedoen, maar dis elke belegger se eie besluit. Geen beïnvloeding nie. Hy moet self besluit en die beleggers gaan besluit of die besigheidsreddingsplan voortgaan of nie."

Uit die bogenoemde is dit duidelik dat daar nie werklike ondersoek na ongerymdhede plaasgevind het nie weens 'n gebrek aan bewyse, en dat Du Toit van mening is dat bewyse na hom gestuur moet word, en dat dit ondersoek moet word. Indien u enige bewyse van ongerymdhede het, moet u dit dus asseblief onder Du Toit se aandag bring by jacques@dtbbusinessrescue.co.za sodat dit ondersoek kan word deur hom.

8. UIT DIE PEN VAN ‘N BELEGGER

Beste HSAG-Bestuur

Nadat ek die artikel op Moneyweb ten opsigte van die besigheidsredding vir die soveelste keer gelees het voel ek genoop om ’n ope brief hier te rig.

Eerstens wonder ek hoekom daar net ’n mening verkry is van twee persone van die krediteurs komitee? Hopelik was almal genader.

Daar is 6 lede op die komitee, naamlik:

- *Helgard Hancke - voormalige Bestuurslid van HSAG wat geskik het met Nic Georgiou namens sy vrou, wat werk vir Georgiou onder die vaandel van Hoëveld Sindikasie Beleggers Forum (“HSBF”);*
- *Don Dawson - voormalige lid van die klas-aksie wat dieselfde roete as Hancke gevolg het;*
- *JP Smit - wie ek geen kennis van dra nie;*
- *Bethuel Khobane - wie ek geen kennis van dra nie;*
- *Dr Gert Holtzhauzen - 'n gespesialiseerde besigheidsreddingspraktisyn.*

As ek so na die name op hierdie lys kyk dan lyk dit vir my dat Dr. Gert Holtzhauzen, wat 'n gespesialiseerde besigheidsreddingspraktisyn is, dalk die enigste een is wat die proses baie goed ken so ek aanvaar om sy opinie te kry was uit ’n regsoogpunt die korrekte besluit.

Geen kommentaar van Don Dawson, JP Smit en Bethuel Khobane was gelewer nie en ek sou graag hul kommentaar as komiteelede ook wou hoor?

Maar nouja, nou kom ek by die een persoon wie se kommentaar wel in die artikel verskyn het, Helgard Hancke.

Helgard Hancke (wie ons as HSAG-Lede almal baie goed ken) is ‘n voormalige Bestuurslid van HSAG wat geskik het met Nic Georgiou namens sy vrou. Hy werk vir Nic Georgiou onder die vaandel van die HSBF. Hancke werk sekerlik nie verniet nie, alhoewel hy te kenne gee dat hy ’n onafhanklike persoon is. Hy word die voorsitter van die HSBF genoem in die artikel (ons weet almal wie die web vir hom daargestel het). Die HSBF stuur nuusbriewe aan beleggers ten opsigte van die Accelerate JSE opsies (waar het hy

al die beleggers se kontak besonderhede verkry?). In daardie nuusbriewe word finansiële advies aan beleggers voorgehou sonder dat hy (Hancke) ŉ finansiële adviseur is.

Dit gaan my verstand te bowe dat hierdie man wegkom met die feit dat hy klaarblyklik "nie werk vir Nic Georgiou nie" maar wel toegang het tot alle besonderhede van elke belegger binne Orthotouch. Dit laat ŉ wrang smaak dat hy homself aanmatig om op elke platvorm vir Jacques Theron, Johan Stander en ons HSAG-bestuur sleg te maak.

Vergewe my dat ek so stoom afblaas, maar Helgard Hancke kan nie bereik word op sy Facebook blad nie (hy het my geblok). Ek neem aan dit is omdat hy nie hou van kritiek nie, of wil hy nie hê ander moet bewus word van enige waarhede nie? Ek vra dus dat hierdie brief in die volgende HSAG nuusbrief verskyn. Op daardie manier weet ek vir ŉ feit dat my boodskap van misnoeë hom sal bereik.

Vir al die beleggers binne die klas-aksie wil ek net sê om moed te hou. Ons het die beste regspan wat ons bystaan. Ek weet dis ŉ lang pad wat ons reeds geloop het en dat Covid-19 dit nog moeiliker maak, maar met die hulp van Onse Vader en ons regspan sal ons wen, dit is hoe ek na ons saak kyk en daarin glo.

Groete

Sunette du Plessis

9. ONLANGS IN DIE MEDIA: ORTHOTOUCH: ADMINISTRATIEWE FOUTE HET GELEI TOT "VALSE PERSEPSIE VAN ONBEHOORLIKHEID"

ŉ Finansiële joernalis van Moneyweb het onlangs dié artikel gepubliseer. Soos in vorige nuusbriewe gaan ons voort om ŉ vertaalde en verkorte weergawe van die artikel te gee, maar ons wil u graag uitnooi om die amptelike artikel in Engels te lees op die Moneyweb webtuiste. 'n Skakel na die oorspronklike artikel volg onder hierdie vertaalde weergawe.

'n Klaarblyklike administratiewe fout het 'n "valse persepsie van onbehoorlikheid" geskep wat verband hou met die verkoopstransaksies van 31 eiendomme deur die voormalige eiendomsmagnaat Nic Georgiou en die Highveld Syndication ("HS") maatskappye via Orthotouch aan Accelerate Property Fund in 2013. Die fout hou verband met die oordragprokureurs wie glo verkeerde verkoopspryse by die aktekantoor ingedien het.

Dit is een van die belangrikste bevindinge vanuit die sakereddingsplan van Orthotouch en Zephan en die daaropvolgende kommunikasie tussen Moneyweb en Jacques du Toit, die sakereddingspraktisyn (BRP) van die twee ondernemings.

Du Toit se bevindings volg op 'n Moneyweb-ondersoek na die verkoop van 16 eiendomme aan Accelerate, in welke ondersoek bevind is dat Orthotouch 'n verlies van R782 miljoen gely het as gevolg van die transaksies.

Volgens die sakereddingsplanne is die rede vir die vals persepsie die feit dat die oordragsprokureurs verkeerde waardes gebruik het vir die oordrag na Orthotouch wat ŉ wanpersepsie tot gevolg gehad het dat Orthotouch die eiendomme teen ‘n hoër prys gekoop het vanaf die HS maatskappye of van Zephan, en dat dit toe verkoop is aan Accelerate teen aansienlike afslag. Hierdie persepsie is verkeerd volgens Du Toit en heeltemal onwaar, aangesien die verkeerde waardes die valse persepsie van onbehoorlikheid geskep het.

Die plan verwys ook na vorige Moneyweb-verslae en lui dat dit duidelik is dat die beweringe en joernalistieke ondersoeke wat gepubliseer is nie die feitelike inligting wat vir die publiek beskikbaar was, aan die lig gebring het nie, en dit kan net geïnterpreteer word dat die beweerde ondersoeke “lessenaar” ondersoeke was sonder om die onderskeie transaksies en feite behoorlik te ondersoek.

Prokureurs het nie verkeerde bedrae ingedien nie.

Moneyweb kan egter bevestig dat die oordragprokureurs nie verkeerde transaksiebedrae ingedien het nie.

Nie net het die oordragprokureurs, Connie Myburgh en Vennote (CM&P), ten sterkste ontken dat die verkeerde kooppryse by die aktekantoor ingedien is nie, die volmagte wat by die aktekantoor ingedien is, onderteken deur Georgiou self of verteenwoordigers van entiteite aan hom, bevestig die transaksiebedrae. (Dit is die geval by die aktekantoor indienings van 13 uit die 16 eiendomme; Moneyweb kon nie dokumente in verband met drie transaksies kry nie.)

Nic Georgiou het ŉ volmag onderteken met betrekking tot die verkoop van 1 Charles Crescent deur Zephan aan Orthotouch vir R 216.4 miljoen. (Volgens Du Toit moes die korrekte bedrag die R107 miljoen gewees het.)

Volmag: Michael Georgiou het ook ŉ volmag onderteken wat verband hou met die verkoop van Leaping Frog aan Orthotouch vir R231.9 miljoen. (Volgens Du Toit moes die korrekte bedrag R140,3 miljoen gewees het.)

Dit beteken dat die kooppryse wat by die aktekantoor ingedien is in die werklike verkoopsooreenkoms verskyn het, en dat die oordragprokureurs nie ŉ fout gemaak het nie.

Verkoop van eiendomme

Die transaksies dateer terug na 2013 toe verskeie entiteite wat met Georgiou en die HS-ondernemings verband hou, 31 eiendomme vir R1,3 miljard aan Accelerate verkoop het. Van besondere belang was 16 eiendomme wat Georgiou-entiteite in rug-aan-rug-transaksies via Orthotouch aan Accelerate verkoop het.

Volgens bedrae wat in die titelaktes van die eiendomme uiteengesit is, het Georgiou-verwante entiteite die eiendomme vir R1,49 miljard aan Orthotouch verkoop, wat dit onmiddellik en sonder oordrag vir R708 miljoen aan Accelerate verkoop het, wat 'n verlies van R782 miljoen vir Orthotouch tot gevolg gehad het.

Volgens Du Toit is die verkeerde kooppryse by die aktekantoor ingedien wat verband hou met die eerste deel van die transaksie, die verkoop van eiendomme tussen Georgiou-entiteite en Orthotouch. Die regte kooppryse is volgens hom ingedien vir die tweede deel van die transaksies, die verkoop van eiendomme deur Orthotouch aan Accelerate.

Verkoopsooreenkomste

Die volmag-dokumente wat by die aktekantoor ingedien is, as deel van die dokumentasie van 13 uit die 16 transaksies, is namens Zephan deur Georgiou onderteken, en deur sy seun Michael namens die ander Georgiou verwante entiteite. Dit dui daarop dat wortel van die oënskynlike foutiewe indiening van kooppryse nie voor die deur van die oordragprokureurs gelê kan word nie, soos Du Toit beweer. Moneyweb het vrae gerig aan Georgiou, Hans Klopper, die sakereddingspraktisyn van die HS-maatskappye, en Myburgh in sy hoedanigheid as voormalige direkteur van Orthotouch en destydse mede-eienaar van CM&P. Georgiou het nie reageer nie, en Klopper het geweier om te reageer via sy prokureur.

Myburgh het ontken dat verkeerde waardasies by die aktekantoor ingedien is.

Volgens Myburgh het CM&P die kooppryse ingedien ooreenkomstig die inligting vervat in die tersaaklike verkoopsooreenkomste wat sy kliënt aan hom verskaf het in die uitvoering van sy pligte as aangewese aktebesorgers, soos gebruiklik in die praktyk. CM&P het nie die ooreenkomste opgestel nie en daar is ook nie 'n beroep op hulle gedoen om die akkuraatheid of nie van die kooppryse te kontroleer nie. Volgens Myburgh het CM&P slegs op die instruksies van sy kliënt opgetree in ooreenstemming met sulke instruksies.

Moneyweb het ook korrespondeer met die werklike oordragprokureur, wie ook gesê het dat die oordragte uitgevoer is ingevolge die ondertekende verkoopsooreenkomste.

Myburgh was ook destyds 'n direkteur van Orthotouch, maar in antwoord op vrae het hy gesê dat hy nie weet of die bedrae wat in verkoopsooreenkomste gemeld is, ooreenstem met die pryse wat by die aktekantoor ingedien is nie.

Myburgh het gesê dat hy nie weet nie of die koopbedrae wat in die oorspronklike verkoopooreenkomste gelys is, ooreenstem met die pryse wat by die aktekantoor ingedien is nie. Volgens Myburgh is dit is 'n stelling wat Moneyweb maak, en wat inaggenome die “gebrekkige” aard van die Moneyweb “ondersoeke” met omsigtigheid beskou moet word.

Volgens Myburgh is die verkoopsooreenkomste gekonsepsualiseer en opgestel deur die professionele span van Orthotouch, en die direksie het daarop staatgemaak. As die professionele span 'n fout begaan het, was dit 'n nie-opsetlike, goeie trou, administratiewe fout, wat geen skade of verliese veroorsaak het nie, en dit het geen invloed gehad op die transaksies en die uitkoms daarvan, soos deur die sakereddingspraktisyn gesê nie.

Myburgh het gemaan dat sy volle korrespondensie met Moneyweb woordeliks gepubliseer moet word. U kan dit beskou by die skakel wat aan die einde van die vertaling verskyn.

(Dit is ook belangrik om daarop te let dat Moneyweb in 2019 breedvoerig met Georgiou, Klopper en Accelerate gekorrespondeer het oor die verliese wat Orthotouch gely het as gevolg van die transaksies, en hulle het nooit die feit dat verkeerde verkoopspryse by die aktekantoor ingedien is, geopper nie.)

Du Toit het nie met die oordragprokureur geraadpleeg nie.

Ondanks Du Toit se bewerings dat die oordragprokureur die verkeerde koopppryse aangebring het, het hy die vraag nie by Myburgh geopper, in sy hoedanigheid as direkteur van Orthotouch of as mede-eienaar van die oordragfirma nie, en ook nie as die eintlike prokureur wat die transaksies by die aktekantoor namens CM&P ingedien het nie.

In antwoord op vrae het Du Toit gesê dat die waardes verkeerd bly, ongeag die oordragprokureur se liassering. Hy het bygevoeg dat die prokureur wat die kontrak opgestel het dit moet verduidelik aangesien dit verkeerd is.

Op die vraag waarom Georgiou kontrakte met die verkeerde koopppryse onderteken het, het Du Toit gesê dat hy “Nic” gevra en dat geantwoord het dat die dokumentasie aan hom voorgelê is en hy het dit onderteken sonder om die koopppryse na te gaan aangesien hy verwag het dat die dokumentasie korrek sou wees.

Du Toit het gesê die foutiewe indienings nie noodwendig 'n onreëlmatigheid was nie en glo dat die verkeerde waardes 'n fout in goeie trou was sonder dat enige party skade berokken is, aangesien geen geld van hande verwissel het ten opsigte van sulke transaksies nie. Hy het bygevoeg dat Orthotouch die eiendomme teen die regte waardes hanteer het. Daar was geen wanbesteding deur Orthotouch of Zephan volgens sy inligting nie.

Markwaardes

Daar is ook 'n teenstrydigheid wat verband hou met die oorsprong van die werklike verkoopspryse wat by die aktekantoor ingedien is. Die sakereddingsplanne meld dat die verkeerde waardes wat by die aktekantoor ingedien is, die oorspronklike oor-gewaardeerde HS sindikasie waardes was wat in die HS-prospektusse gepubliseer is. Die regte waardes moes die markwaardasies wees van die eiendomme wat in die oorspronklike HS-sakereddingsplan en die Artikel 155-reëlingskema ("Reëlingskema") geopenbaar is.

Moneyweb kan bevestig dat die werklike kooppryse wat by die aktekantoor ingedien is, nie ooreenstem met die oorspronklike HS sindikasie-waardes nie. Die werklike kooppryse van die 16 eiendomme wat by die aktekantoor ingedien is, beloop R95 miljoen meer as die werklike sindikasiewaardes

Du Toit het in antwoord op 'n vraag wat verband hou met hierdie oënskynlike teenstrydigheid gesê dat hy nie al die waardasies van die prospektusse het nie. Die waardasies wat gebruik is, is volgens hom nader aan die [prospektus] waardasies, maar beslis nie die waardes wat in die Reëlingskema geopenbaar word nie. Volgens Du Toit sal die persoon wat die kontrakte opgestel het gevra moet word waar die waardes vandaan kom.

Implikasies

Dr Albertus Marais, 'n direkteur van die belastingkonsultante-groep AJM, het die beperkte inligting in die openbare domein ontleed en gesê dat die transaksies, objektief oorweeg, twee belastingsgevolge kan hê.

Volgens Marais is die eerste dat dit 'n inkomstebelasting verlies in Orthotouch kan skep om teen toekomstige of bestaande winste af te skryf, en tweedens 'n kapitaalwins in Zephan te skep wat óf teen laer koerse belas word, of wat gebruik kan word teen bestaande verliese in daardie maatskappy. As die transaksies egter verkeerdelik by die [aktekantoor] geregistreer is, en die ondernemings hul inkomstebelastingopgawes op daardie verkeerde basis ingedien het, kan boetes gehef word bo die belastingvoordeel wat verkry is uit die verkeerde verklaarde basis, tensy dit werklik onopsetlik was.

Marais het verder verduidelik dat belastingbetalers in terme van die Inkomstebelastingwet vermoed word om transaksies vir presies hierdie doel aan te gaan, tensy die teendeel bewys kan word. Marais sê dat indien SARS daarom die transaksies oorweeg, die relevante maatskappye sal moet illustreer dat kommersiële nie-belasting verwante redes hierdie transaksies motiveer het, insluitend die bepalings en waardes waarteen die transaksies aangegaan is.

Du Toit het in die sakereddingsplanne erken dat hy die aankoopbedrae moet regstel deur met Sars in verbinding te tree aangesien dit volgens hom massiewe belastingverpligtinge op Zephan sal plaas en ‘n massiewe belastingsverlies vir Orthotouch.

Reaksie

Moneyweb het afskrifte van die besigheidsreddingsplanne en ander dokumentasie aan verskeie sakeredding-spesialiste gestuur vir kommentaar.

Henco Kruger, 'n ervare sakereddingspraktisyn en direkteur van die ommekeer spesialis Sturns, het gesê dat die kommer oor die eiendomstransaksies onbeantwoord bly weens die tekortkominge in die ondersoek in die sake van die onderneming. Die sogenaamde “valse persepsie van onbehoorlikheid” moes volgens hom die draaipunt gewees het van die ondersoek na die sake van die maatskappye.

Hy het gesê dat die persepsies verwant is aan die eiendomswaardes wat in die verskillende prospektusse geopenbaar word, in vergeleke met wat in die regte wêreld van die HS-maatskappye, Orthotouch en Zephan, gebeur. Volgens Kruger is die eintlike betoog met die ondersoek dat die skuldeisers verwag het dat die praktisyn behoorlik ondervra en ondersoek instel na items soos die eiendomme se waardes. Die ondersoek het nie onthul hoe beleggers se fondse bewillig is nie.

Volgens Kruger is daar geen bewyse van 'n uitgebreide ondersoek na die eiendomme nie. Die reddingsplanne sluit slegs sigblaaie met die eiendomme se besonderhede en bewegings.

Hy het gesê dat daar 'n aantal beskuldigings in verskillende forums en hofsake gemaak is wat nie ondersoek word nie.

In plaas daarvan is die krediteure volgens hom genooi om met sogenaamde bewyse te vorendag te kom. Krediteure word van die besigheidsinligting verwyder en vertrou op die praktisyn om onafhanklik op te tree. Dit sou mees omsigtig wees vir die praktisyn om 'n onderhoud met die bestuurskomitee van die klas-aksie groep en die krediteurekomitee te voer om hul insette te kry. Die praktisyn het ook nie aangedui op watter finansiële inligting sy ondersoek gebaseer is nie, aangesien die laaste geouditeerde finansiële state vir Zephan in 2009 en vir Orthotouch in 2015 gepubliseer is.

Kruger het ook verwys na artikel 141 van die Maatskappywet, wat bepaal dat ‘n praktisyn 'n professionele verantwoordelikheid, bevestig deur sy / haar aanstelling as beampte van die hof, om die sake van die maatskappy onafhanklik te ondersoek. Daar word van 'n praktisyn verwag om onmiddellik in 'n verslag bekend te maak as daar 'n redelike vermoede van korrupte of bedrieglike aktiwiteite is en die aangeleentheid aan 'n toepaslike owerheid te rapporteer vir verdere ondersoek en toepaslike optrede.

Connie Myburgh se korrespondensie aan Moneyweb word verkort en vertaal hieronder, maar ons versoek dat u die amptelik antwoord en berig op die Moneyweb blad lees by: https://www.moneyweb.co.za/in-depth/investigations/orthotouch-administrative-error-led-to-false-perception-of-impropriety/

Die vrae word gestel deur Moneyweb en die antwoorde is voorsien deur Connie Myburgh

Vraag 1: Stem u saam met die sakereddingspraktisyn dat Connie Myburgh en Vennote die verkeerde koopprys by die aktekantoor ingedien het?

Connie Myburgh en Vennote het nie 'die verkeerde koopprys' by die Aktekantoor ingedien nie.

Weereens u woorde, ontwerp om atmosfeer te skep en om die prokureurs en my leed aan te doen, aangesien Connie Myburgh en Vennote die prokureurs was.

Connie Myburgh en Vennote het die koopprys ingedien ooreenkomstig die inligting vervat in die betrokke ooreenkomste wat deur sy kliënt voorsien is, in die uitvoering van hul pligte as aangewese aktebesorgers, soos in die normale praktyk.

Connie Myburgh en Vennote het nie die ooreenkomste opgestel nie, en hulle is nie gevra om die akkuraatheid al dan nie van die koopprys te kontroleer nie.

Connie Myburgh en Vennote het slegs op instruksie van sy kliënt opgetree, ooreenkomstig sulke instruksies.

Vraag 2: Indien wel, waarom het Connie Myburgh en Vennote die verkeerde koopprys by die aktekantoor ingedien?

Hierdie vraag word beantwoord onder vraag 1 hierbo.

Vraag 3: Sal Connie Myburgh en Vennote die fooie vir hierdie oordragte aan Orthotouch terugbetaal?

(Connie Myburgh en Vennote bestaan nie meer nie.)

As enige iets terugbetaal moet word, sal Carol Coetzee en Vennote so 'n terugbetaling moet doen, maar daar is geen basis wat aandui dat gelde terugbetaal moet word nie.

Dit sal interessant wees om te weet op watter basis u voorstel dat die fooie terugbetaal moet word, op armlengte-transaksies, waar fooie normaalweg gehef word teen die verkopers van eiendomme.

Miskien kan u die, normaal vir u, wilde en ongesubstansieerde stelling, gemaak om die innuendo te skep dat iets verkeerd gedoen is deur Connie Myburgh en Vennote, wat die terugbetaal van fooie regverdig, en daardeur skade berokken aan my, Connie Myburgh.

Die oordragprokureurs se gebruik van die verkeerde kooppryse was volgens die sakereddingspraktisyn 'n onopsetlike, goeie trou, administratiewe fout, geen leed of skade is aangerig nie, en dit het geen invloed gehad op die transaksies en die uitkoms daarvan as ‘n resultaat van ‘n onopsetlike, goeie trou, administratiewe fout nie.

As u kommer die kwantum van die fooie is, behoort jy nie sulke kommer te hê nie, aangesien die fooie ooreengekom is tussen Connie Myburgh en Vennote en Orthotouch teen groot afslag van die voorgeskrewe fooi, of tussen 40% na 60% onder tarief, en was betaal oor ‘n tydperk van baie maande.
Sien die e-pos van Carol Coetzee wat deel vorm van die reeks e-posse hierby aangeheg.

Dit is interessant dat u weereens ondersoek instel en die betalings gemaak aan, of verskuldig aan my, bevraagteken soos jy voorheen kwaadwillig rapporteer het, op verskeie aangeleenthede.

'n Mens moet nadink oor die rede.

Is dit dat u minderwaardig voel, of dat u ingedoen voel, wanneer jy in ag neem jou, vermoedelike karige salaris, as joernalis, in vergelyking met wat ek verdien of potensieel verdien, as ‘n senior regspraktisyn van baie jare se ervaring, of is daar iets van substansie aan jou aanhoudende bejammering in hierdie verband.

Connie Myburgh en Vennote is regverdige bedrae betaal as regspraktisyns, ooreengekom tot deur hul kliënt, en is betaal vir dienste gelewer.

Vraag 4: Die kooppryse wat in die oorspronklike verkoopsooreenkomste gelys is stem ooreen met die pryse wat by die aktekantoor ingedien is. Het u as voormalige direkteur van Orthotouch die verkoopooreenkomste nagegaan en goedgekeur?

Ek weet nie of die aankoopbedrae wat in die oorspronklike verkoopooreenkomste gelys is, ooreenstem met die pryse wat by die Aktekantoor ingedien is nie.

Dit is ’n stelling wat deur u gemaak word.

Inaggenome die gebrekkige aard van jou “ondersoeke”, moet mens hierdie stelling met versigtigheid benader.

Die verkoopsooreenkomste is gekonsepsualiseer en opgestel deur die professionele span van Orthotouch, en was op staatgemaak deur die direksie.

As die professionele span ’n fout gemaak het, was dit ‘n onopsetlike, goeie trou, administratiewe fout, welke fout geen leed, skade of verliese veroorsaak het nie, en wat

geen impak gehad het op die transaksies en hul uitkoms nie, soos gestel deur die sakereddingspraktisyn.

Vraag 5: Het u met die sakereddingspraktisyn gekorrespondeer oor die verkeerde indiening van die koopPryse by die aktekantoor voor die publikasie van die sakereddingsplan?

Nee ek het nie.

Soos normaal met u beriggewing, plaas dieselfde paar ontevrede individue wat van u lofsangblad sing gewoonlik lasterlike opmerkings en haatspraak op Moneyweb se platform rakende individue wat in u beriggewing genoem word, kort na u beriggewing.

Moneyweb word gewaarsku om sodanige opmerkings van sy platform te verwyder, onmiddellik nadat dit verskyn, in ooreenstemming met Moneyweb se eie, selfopgelegde verpligting om dit te doen, soos vervat in Moneyweb se selfregulerende bepalings, soos toegegee om te bestaan deur Moneyweb, in 'n antwoord van Moneyweb na klag nommer 7792 deur my gelê teen jou en Moneyweb by die Persombudsman.

Sou Moneyweb nie sulke kommentaar verwyder nie, sal nog 'n klag by die Persombudsman gelê word.

Connie Myburgh.

Hierdie is ’n vertaalde en verkorte weergawe van die oorspronklike artikel, en die akkuraatheid van die vertaling word nie gewaarborg nie. Die oorspronklike artikel is geskryf deur Ryk van Niekerk, die besturende redakteur van Moneyweb. Hierdie artikel is gepubliseer op 2 Junie 2020 en die amptelike weergawe is beskikbaar by: https://www.moneyweb.co.za/in-depth/investigations/orthotouch-administrative-error-led-to-false-perception-of-impropriety/

10. 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, sindikasienommers en verwysingsnommers (bv. identiteitsnommer ens.) vir alle kommunikasie, is uiters noodsaaklik en verpligtend.

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 kwytskelding van 'n spesifieke belegger, ensovoorts);
- **hsagregister@gmail.com** vir die Registrasie en Deregistrasie van HSAG- lede;
- **hsagwhistle@gmail.com** vir alle Vertroulike Inligting wat anoniem aan ons gestuur moet word;
- **hsagestates@gmail.**com vir alle Boedel navrae.

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

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

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

11. 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: JUNE 2020

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

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 rests on you as HSAG member.

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1. **<u>THE QUESTION IS: HOW IS THE HSAG DOING?</u>**

Indeed, under all the extremely difficult circumstances and worldwide pandemic, very good and on-the-go!

With the national Covid-19 lockdown enduring for the greater part of the year and not uplifted (and most of our members are still firmly bolted to their homes), we are still firmly on course despite this unprecedented occurrence that brought the whole world and basically our civil legal system to a standstill.

2. **<u>THE HSAG CLASS ACTION – THE ONE AND ONLY CLASS ACTION IN THE PICKVEST SAGA</u>**

Recently rumours started circulating on social media that certain individuals are currently actively attempting to recruit HSAG members for a "new class action" against Georgiou and others. The HSAG can reassure its members that the HSAG applicants are the only persons that instituted and obtained a certified class action and also instituted other class applications with the same objective.

Rumour further has it that those individuals (who vigorously opposed the class action process for more than 5 years) now try to recruit HSAG members with the promise of membership contribution of a mere R100 per person. Experience has shown that this is a fallacy and completely unattainable.

Class actions are specialised legal processes and the administration and management thereof are also specialised by nature. Unless the opponent is a large and resourceful pension fund, gold mine or multinational corporation, the best (and court approved) funding model remains a properly oiled, private member funding model. The HSAG has so far from the outset (five years ago), been represented by the same legal team who has also been certified by a High Court order to be suitable to do so.

HSAG members were warned before, which warning is repeated herein, that any new legal processes will in all probabilities be met with a successful defence of prescription.

The HSAG's certified class action is, on advise of our counsel, not subject to prescription.

Private prosecution in syndication companies? Sharemax

The media is currently buzzing about AfriForum's recent publication that its private prosecution unit, under leadership of Adv. Gerrie Nel, has approached the National Prosecuting Authority ("NPA") to offer assistance in an application for an order to seize assets of the Nova Property Group to prevent these properties from being sold for less than market value. HSAG members can relate the Sharemax story to Pickvest.

According to AfriForum the Asset Forfeiture Unit of the NPA may seize the properties in terms of a court order, but the NPA has not taken such steps yet. In the Pickvest saga the NPA has also not taken any steps.

AfriForum argues that their investigations have uncovered evidence that the directors of Nova had paid themselves extravagant salaries and that it appears that Nova, the rescue vehicle for the Sharemax scheme, is currently selling assets in an attempt to avoid liquidation. In the Pickvest debacle the claims are *inter alia* that the companies received payment for properties sold without transferring it.

AfriForum requests that a curator be appointed to sell the properties to the benefit of the former Sharemax investors.

The contentions by AfriForum relating to the extravagant salaries are interesting. Especially in light of the Nova Group chairman, Connie Myburgh's attempt to belittle a well-known investigative financial journalist for earning "a meagre salary" compared to Myburgh's (large) earnings as an experienced senior legal practitioner (see article hereunder).

It is positive news to Sharemax investors that AfriForum is assisting the NPA, but it does not mean that AfriForum's Adv Gerrie Nel is already conducting a private prosecution at this time. The Sharemax scheme is also not directly related to the HS investors (Picvest) but something similar. However, at this stage it creates hope that those who benefited from failed property syndications in South Africa, in which thousands of investors lost billions of rand of capital, will be brought to book for their unconscionable deeds by the authorities.

COVID-19

The Covid-19 pandemic did not derail the class action, but has nonetheless slowed down the process as courts are not in normal operation and the class actions are not regarded as "threatening and urgent" matters that are essential during these unprecedented times.

Notwithstanding the Covid-19 onslaught and delays that have been experienced the past few years, the legal team is ready and set to proceed with the legal matters as soon as courts are fully operational.

Die HSAG Steering Committee wishes to thank its members for their continued support in recent times.

3. <u>GENERAL ENQUIRIES AND FEEDBACK</u>

The legal process is generally complicated and challenging and can be frustrating, especially for those who do not know it. Although the HSAG constantly strives to keep its members informed about the legal process, it is not possible to explain the full process through a newsletter. The HSAG's cases are by no means simple.

In order to assist members, it is briefly explained below what the HSAG is and why the HSAG structure was established. The current court cases that the HSAG is a part of as well as the cases that relates to the HSAG will also be briefly explained.

What is the HSAG?

The HSAG is a voluntary group comprised of a large number of investors in the HS companies who support litigation as the only way of recovering their billions. The HSAG Management together with its legal team, Theron & Partners, is the driving force behind the HSAG's legal processes.

The secret to the HSAG structure is the economics of scale, which allows for a mass group of investors to make minimal contributions to fund litigation. Individual litigation can amount to hundreds of thousands of Rands and there are only a few investors who can finance the litigation on their own accord. Therefore, the majority of investors were left destitute and had no choice but to accept Georgiou's failed schemes and ridiculous options.
In order to allow access to justice for those destitute investors, the HSAG was established with its group member funding model with the aim of launching class actions on behalf of the thousands of investors. This was done to enable access to justice in an affordable manner.

Therefore, since the inception of the HSAG, its members have been legally represented at a fraction of the costs of individual legal representation.

If it were not for the HSAG, there would not be a certified class action for members in HS 21 and 22, nor would a class action be issued for members with investments in HS 15 to 20.

The issued application on behalf of investors in HS 15 - 20 is discussed under point 5.

CCAF

The class action on behalf of investors in HS 21 and 22 was heard from 11 November 2019 to 13 November 2019 and judgment was handed down on 10 December 2019.

This certification application was handled expeditiously as those investors' claims are based on the much simpler specific performance claim (enforcing contractual obligation, i.e. the buyback clauses). This application was able to be dealt with on an expedited basis after both the High Court and Supreme Court of Appeal (in the Noormahomed matter) ruled that the buyback clauses are enforceable despite the S 155 Scheme of Arrangement.

The fact that the class action is certified means that the court has certified that a class action is an appropriate mechanism and that the class representatives (applicants), as well as the legal representatives (Theron & Partners), are suitable to conduct a class action. There is a worldwide trend that a successful certification of a class action normally leads to a settlement as a judge has upon certification already decided that it is in the interest of justice that the matter be heard as a class action.

However, in terms of certification ruling, there may not be any cross-funding between the HSAG and the certified HS 21 & 22 class action. This is why the HS 21 & 22 class action is often referred to as CCAF (Certified Class Action Fast Track) to ensure that the court order and separation is adhered to. CCAF therefore has its own trust account separate and distinct from the HSAG trust account. CCAF registration fees are only used for the HS 21 & 22 class action. Your HSAG member contributions are paid into the HSAG's trust account and are therefore not used to drive the HS 21 & 22 certified class action. This is in accordance with the requests of many HSAG members.
In order to further enforce the above separation between the HSAG and CCAF, there are also separate e-mail addresses for the CCAF class action (certified HS 21 & 22 class action). The e-mail addresses for both CCAF and the HSAG are provided under point 9 of this newsletter.

The steps following the certification of the CCAF class action is that a class application is now being brought on behalf of the certified class in terms of which the court is requested to order that the buyback clauses be enforced.
This class application was issued as early as February 2020 and the legal team is currently awaiting Georgiou and others' answering affidavits (the papers responding to the allegations made in the papers issued by the HSAG legal team). In terms of the Uniform Rules of Court, Respondents (in the ordinary course of business) have to indicate within 5 days whether an application will be opposed, after which they have another 15 days to file an answering affidavit.

HSAG members that were paid up by 31 January 2020 were automatically included in the CCAF class action without being asked to do anything. HSAG members who were not paid up on the above-mentioned date, or any other persons, could be part of the CCAF class action by opting-in on the online portal and paying a registration fee into the CCAF trust account. These registration fees are used to conduct the litigation. In terms of the certification order, the Applicants are allowed to request further payments from the class action members if the registration fees received are insufficient to fund the litigation.

The importance of the above-mentioned opt-in process is that all investors in HS 21 & 22 have been given an opportunity to be part of the CCAF class action, regardless of whether they are / were HSAG members. This provision was also ordered by the court and the legal team believes that this process enables access to justice for more investors.

Another important point is that the claims of investors in HS 21 & 22 on the basis of the buyback clauses would have prescribed already, but the issued class action suspends prescription for those investors who are part of it. The CCAF class action can therefore be seen as the final opportunity for investors in HS 21 & 22 to enforce claims based on the buyback clauses.

4. **ANNUAL CONTRIBUTION - 2020**

This section does not apply to CCAF members (those who are only part of the certified HS 21 & 22 class action).

The costs associated with litigation are enormous, and although the economy is currently at a standstill, the HSAG legal team and advocacy still have to pay close attention to investors' case/s.

Save for the special trial levy only payable by investors in HS 21 and 22, the HSAG last conducted an annual request for contributions 18 months ago, and in the meantime a voluminous derivative class action was issued for investors in HS 15 to 20 (this derivative action will be discussed further under point 5).

Furthermore, Orthotouch and Zephan were placed in business rescue and the HSAG legal team must make use of expert advice to monitor and participate in the process in order to protect members' interests. In the past investors were "coerced" by the HS business rescue and subsequent Sec 155 Scheme of Arrangement, and the legal team is weary of investors walking into a trap when voting in favour of such plans and schemes, and consequently waiving their claims. The HSAG Steering Committee therefore takes all steps necessary to prevent a repeat of history.

This entails, amongst other things, a thorough investigation into the business rescue plans for Zephan and Orthotouch, and the consideration of numerous possible steps that can be taken to protect investors' interests.

In light of the above, it will be necessary to request an annual contribution against members' statements in 2020.

The legal team in conjunction with the HSAG Steering Committee will make a decision within the next few months with regards to any request for contributions for 2021.

5. <u>HS 21 & 22 CERTIFIED CLASS ACTION: OPT-IN and FICA</u>

Investors who have already exercised the "opt-in" option and applied in writing to pay the registration fees over six months by means of the prescribed application form, must pay their total registration fee within 6 months after submission of the opt-in form. Their account must be paid in full to be part of the certified HS 21 & 22 class action. Unfortunately, if the full registration fee is not paid within six months of the opt-in period, as determined, those persons will not be part of the certified class action (CCAF).

Once again you are reminded (if you have not already done so) to send your FICA documents to accounts@ccaf.co.za.

Some people have indicated that they are not prepared to provide their FICA documents as they have already provided certain documents when they joined. However, a long period of time has passed since then and unfortunately those persons still have to submit their documents for FICA verification purposes.

The current required documentation is a copy of your Identity Document, as well as a proof of address (not older than three months).

The legal team thanks those who have already submitted their documentation and have given their good cooperation so far.

The Notice of Motion is available at:
http://hsaction.co.za/wp-content/uploads/2019/10/Amended-Notice-of-Motion-Fast-Tracking-of-buyback-claims.pdf

The Court order and judgment delivered by Judge Tolmay on 10 December 2019 can be viewed at the following link:
http://hsaction.co.za/wp-content/uploads/2019/12/HS21and22judgment.pdf

6. INVESTORS WITH CLAIMS IN HS 15 TO 20

The HS 15 - 20 certification application has already been issued and served on Georgiou and others and the various legal representatives are currently exchanging documents. The legal team is currently waiting on the opposition.

In reality, this certification application entails an application on behalf of investors in all HS syndications. It can be distinguished from the HS 21 & 22 class action that is based solely on enforcement of the contractual buy-back clauses, as this application is based on amongst others, fraud and misrepresentation.

As investors in **all** syndications are included in this application, it also serves as an alternative to those who are invested in HS 21 & 22, but who do not form part of the HS 21 & 22 class action.

This class action is brought through a derivative action (S 165(6) of the Companies Act) in terms of which the Applicants request the Court to grant leave to the Applications to institute claims on behalf of and in the name of the HS companies against Orthotouch, and against Zephan, the N Georgiou Trust (represented by the trustees, Nic Georgiou, Maureen Lynette Georgiou and Joseph Chemaly) as sureties and co principle debtors, for the purchase prices of numerous properties sold to Orthotouch by the HS companies in terms of the business rescue plan of the HS companies.

In the application it is also requested that the Court orders that Georgiou and his two sons, Michael and George, as well as the former and current directors of Orthotouch (Hans Klopper, Connie Myburgh and Panagiotis Kleovoulou) are personally liable, together with Orthotouch, for the claims.

These claims are also brought by means of the class action mechanism as history has shown that there is great power in large numbers as individual litigation is unaffordable to the great majority HS investors.

The rumours that have been circulated that the placement of Zephan and Orthotouch in business rescue will not mean that all litigation will be stopped. The Companies Act expressly provides that litigation against a company in business rescue may proceed with the consent of the business rescue practitioner or if the Court so directs. Therefore, if the Court gives consent, litigation can be continued even if the business rescue practitioner does not agree to it.

The issued application already contains ‘n request to the effect and the HSAG Steering Committee trusts that the Court will deem it in the interests of justice to grant leave for the continuation of the litigation. In the HS 21 & 22 certification application, Judge Tolmay ordered that the application proceed in spite of Orthotouch and Zephan being place in business rescue shortly before the application was heard.

Due to the Covid-19 lockdown certain court processes were temporarily suspended and it is unfortunately out of the legal team’s control. As soon as new Regulations are announced, the legal team will evaluate same to determine which steps may be taken to drive the process further. The legal team wishes to make you aware that Covid-19 has had an immense impact on the effective functioning of the courts and that no guarantees can be made on when the application will be heard. The unfortunate reality is that Covid-19 has not reached its peak infection rate according to scientists.

We request that you are mindful that the claims of investors’ capital is a civil claim, and not criminal proceedings. You will therefore read about certain legal steps being taken in the media, but the legal team wishes to point out that those legal proceedings are mainly criminal proceedings that are driven by the State. Unfortunately criminal and civil proceedings are not dealt with in the same manner by the courts.

The legal team will report timeously as soon as progress is being made, and is currently initiating steps, bearing in mind the current Covid-19 lockdown, to have the matter proceed.

The HSAG Management attempts to act in the best interest of all its members at all times and still intends, as previously mentioned, to negotiate on behalf of each paid-up HSAG member should settlement negotiations occur. This is done on behalf of every loyal member who has made it possible for the HSAG over the years, through their support, to reach this point.

7. **ORTHOTOUCH AND ZEPHAN BUISNESS RESCUE**

The contents of the published business rescue plans for Orthotouch and Zephan, and the visible shortcut process that Du Toit seems to follow was previously reported on.

The HSAG’s position remains that investors must not accept the BRP’s (Du Toit’s) offer as the offer is merely another attempt to scare investors (Du Toit threatens with liquidation and the repayment of interest payments.) These threats are aimed at scaring investors and are without legal grounds.

IF THERE HAS TO BE VOTED FOR THE BUSSINESS RESCUE PLANS OF ZEPHAN AND ORTHOTOUCH, THE HSAG’S ADVICE TO ITS MEMBERS IS TO VOTE NO.

There exists a large risk that if investors accept the offer by choosing an option, their rights and claims may be rearranged and Georgiou and others will walk away with your money.

In the previous newsletter it was reported that the HSAG legal team sent a letter to Du Toit on 12 May 2020 in which certain facts were pointed out about the published business rescue plan. The HSAG legal team sent a further letter to Du Toit's legal representatives after an answer to the substance of the HSAG's letter was not forthcoming.

On 13 May 2020 RSG Geldsake (Money Matters) conducted an interview with Jacques du Toit, Johan Stander (HSAG Steering Committee), Helgard Hancke (HSBF and creditors committee member), Dr. Gerhard Holtzhauzen (business rescue specialist and creditors committee member) regarding the published business rescue plans.

Although the conversation was too extensive to repeat it here in its totality, Du Toit's answers to allegations of irregularities that led to the loss of investors' capital and Du Toit's investigation into such irregularities is repeated here in translated form.

Take note that we endeavour to repeat and translate the relevant extract of the conversation as accurately as possible, but that we do not guarantee that it corresponds to the original conversation with 100% accuracy. A recording of the conversation is available on request.

JACQUES DU TOIT:
"…Then if we look at Gert, in terms of Gert and… and Johan's question, those answered together as it related to the… Sec 141 investigation. It is very clear from by business rescue plan, as I say, that the information available to me is reflected in the business rescue plan. If any other information becomes available to me, I shall investigate it.

So I asked in the first meeting of creditors, as well as thereafter, anyone that can give us full… concrete information in respect of the allegations of fraud, must please send it to me. I… I do not refer to letter and we call it a "hunch" in English. I do not want letters that say: "yes, their suspicions are X, Y and Z", that is what they suspect. Give me the evidence that I may investigate it and then we investigate it from there.

And in respect thereof, naturally I will disclose if any irregularities took place or a misappropriation of funds. But give me the evidence that I do not have. The evidence that I have come from the auditors. It is part of the business rescue, of the business rescue plan. If you read it properly it will… especially in the annexures, as from the auditors, 'n flow of cash that is set out, 'n flow of properties that is set out, and you are free to, if there is property missing or cash flow missing, tell me it is this property. "What happened to this property?"

The R3.2 billion that the… once again it is the same question that you posed earlier, that which was transferred is that… money that was paid to Zephan, they did not get the property…that I cannot answer. Therefore I…I already answered the question the properties that were handled, are already part of the plan, already part of the settlement of the Scheme of Arrangement. And…further, I…. we do not attempt in any way as the business rescue practitioner to scare investors or frighten them. It is everyone's own decision. The majority will decide on what they feel. If they want to form part of a litigation process, they are in good right to do what they have been busy

with for the past 10 years, no money has been recouped. Numerous investigations have already been done, but it is every investor's own decision. No influencing. He must decide himself and the investors will decide if the business rescue plan proceeds or not."

From the above it appears there was not a real investigation into irregularities as a result of a lack of evidence, and that Du Toit is of the opinion that the evidence must be sent to him and that he will then investigate it. If you have any proof/evidence of irregularities, please bring it to Du Toit's attention at jacques@dtbbusinessrescue.co.za to enable him to investigate it.

8. FROM AN INVESTOR'S PEN

Dear HSAG Steering Committee

After reading the article on Moneyweb regarding the business rescue for the umpteenth time, I feel compelled to share an open letter.

Firstly, I was wondering why there were only opinions from two people who are members of the creditors committee? Hopefully everyone was approached.

There are 6 members on the committee, namely:

- *Helgard Hancke - former HSAG Steering Committee member, who settled with Nic Georgiou on behalf of his wife, and who works for Nic Georgiou under the auspices of the Highveld Syndication Investors Forum ("HSIF").*
- *Don Dawson - former member of the class action who has followed the same route as Hancke.*
- *JP Smit - whom I have no knowledge of;*
- *Bethuel Khobane - whom I have no knowledge of;*
- *Dr. Gert Holtzhauzen - a specialised business rescue practitioner.*

When I look at the names on this list, it seems to me that Dr. Gert Holtzhauzen, who is a specialized business rescue practitioner, may be the only one who knows the process very well. I therefore accept that obtaining his opinion was the correct decision from a legal perspective.

There were no comments from Don Dawson, JP Smit and Bethuel Khobane. I would have liked to hear their comments as creditor's committee members as well?

In any case, now I come to the one person whose comments did appear in the article, Helgard Hancke.

Helgard Hancke (who we as HSAG Members all know very well) is a former HSAG Steering Committee member who settled with Nic Georgiou on behalf of his wife. He is working for Nic Georgiou under the auspices of the HSIF. Hancke certainly does not work for free, although he indicates that he is an independent person. He is mentioned as being the chairman of the HISF in the article (we all know who spun the web for

him). The HSBF sends newsletters to investors regarding the Accelerate JSE options (where did he obtain all investors contact details from?). In those newsletters financial advice is given to investors without him (Hancke) being a financial advisor.
It goes beyond my understanding that this guy gets away with the explanation that he is not working for Nic Georgiou, however, at the same time he has access to all details of each Orthotouch investor? It leaves a bad taste that he arrogantly continues to badmouth Jacques Theron, Johan Stander and our HSAG Steering Committee on every platform.

Forgive me for blowing off steam, but Helgard Hancke can't be reached on his Facebook page (he blocked me). I assume it's because he doesn't like criticism, or he doesn't want others to become aware of any truths? I therefore request if possible, that my letter is placed in the next newsletter? That way, I know for a fact that my message of displeasure will reach him.

To all the investors in the class action I just want to tell you to remain hopeful. Bear in mind that we have the best legal team to assist us. I'm aware that we've already walked a long road and the Covid-19 situation makes it even more difficult, but with the help of Our Father and our legal team we will win our case. This is how I view and believe in our case.

Regards

Sunette du Plessis

9. RECENTLY IN THE MEDIA: ADMINISTRATIVE ERROR LED TO "FALCE PERCEPTION OF IMPROPRIETY"

A financial journalist from Moneyweb recently published an article about the failure of Orthotouch. As in previous newsletters, we continue to provide the article, but wish to invite you to read the official article at: https://www.moneyweb.co.za/in-depth/investigations/orthotouch-administrative-error-led-to-false-perception-of-impropriety/. In this instance, the article will be repeated verbatim to ensure its accuracy.

An apparent administrative error created a "false perception of impropriety" related to the sales transactions of 31 properties by former property tycoon Nic Georgiou and the Highveld Syndication (HS) companies via Orthotouch to the Accelerate Property Fund in 2013.

The error relates to the transferring attorneys who apparently filed incorrect purchase amounts with the deeds office.

This is one of the key findings of the business rescue plans of Orthotouch and Zephan and subsequent communication between Moneyweb and Jacques du Toit, the business rescue practitioner (BRP) of the two companies.

Du Toit's findings follow a Moneyweb investigation into the sale of 16 properties to Accelerate, which found Orthotouch suffered a loss of R782 million as a result of the transactions.

The business rescue plans state the "incorrect values being used by the transferring attorneys for the transfer to Orthotouch resulted in creating a false perception of Orthotouch purchasing properties at a high value, either from the HS Companies or from Zephan, and then selling the properties, at a significant/substantial discount, to Accelerate … This perception is inaccurate and completely false as the incorrect values created the false perception of impropriety."

The plan also refers to previous Moneyweb reports and states: "It is clear that the allegations and journalistic investigations published did not reveal the factual information available to the public and can only be interpreted that the purported investigations were 'desktop' investigations without properly interrogating the various transactions and the actual facts."

Attorneys did not file incorrect amounts

However, Moneyweb can confirm that the transfer attorneys did not file erroneous transaction amounts. Not only did the transferring attorneys, Connie Myburgh and Partners (CM&P), strongly deny filing incorrect purchase prices with the deeds office, the power of attorney documents submitted to the deeds office, signed by Georgiou himself or representatives of entities related to him, confirm the transaction amounts. (This is the case for deeds office filings of 13 of the 16 properties; Moneyweb could not source documents related to three transactions.)

Power of attorney (PoA): Nic Georgiou signed PoA related to the sale of 1 Charles Crescent by Zephan to Orthotouch for R216.4 million. (The correct amount, according to Du Toit, should have been the R107 million.)

PoA: Michael Georgiou signed PoA related to the sale of Leaping Frog to Orthotouch for R231.9 million. (The correct amount, according to Du Toit, should have been R140.3 million.)

This means the purchase prices filed with the deeds office appeared in the actual sales agreements, and the transferring attorneys were not at fault.

Sale of properties

The transactions date back to 2013 when several entities related to Georgiou and the HS companies sold 31 properties to Accelerate for R1.3 billion. Of particular interest were 16 properties that Georgiou entities sold in back-to-back transactions via Orthotouch to Accelerate.

According to amounts disclosed in the title deeds of the properties, Georgiou-related entities sold the properties to Orthotouch for R1.49 billion, which immediately and without taking transfer, sold them to Accelerate for R708 million, resulting in a loss of R782 million for Orthotouch.

Du Toit's investigation found the incorrect purchase prices were filed with the deeds office related to the first leg of the transaction, the sale of properties between Georgiou entities and Orthotouch. The correct purchase prices were filed for the second leg of the transactions, the sale of properties by Orthotouch to Accelerate.

Sales agreements

The PoA documents submitted to the deeds office, as part of the documentation of 13 of the 16 transactions, were signed by Georgiou on behalf of Zephan, and his son Michael on behalf of the other Georgiou-related entities.

This indicates the root of the apparent erroneous filing of purchase prices cannot be laid at the door of the transferring attorneys, as alleged by Du Toit.

Moneyweb sent questions to Georgiou, Hans Klopper, the business rescue practitioner of the HS companies, and Myburgh in his capacity as a former director of Orthotouch and co-owner of CM&P at the time.

Georgiou did not respond, and Klopper declined to respond via his attorney.

Myburgh denied that incorrect valuations were submitted to the deeds office.

"CM&P submitted the purchase prices according to the information contained in the relevant agreements provided to it by its client, in performing its duties as appointed conveyancing attorneys, as is normal practice. CM&P did not prepare the agreements, and were not called upon to check the veracity or not of purchase prices. CM&P acted purely on the instructions obtained from its client, in accordance with such instructions," he said.

Moneyweb also corresponded with the actual transfer attorney, who also said the transfers were executed in terms of the signed sales agreements.

Myburgh was also a director of Orthotouch at the time, but in response to questions said he did not know whether the amounts listed in sales agreements corresponded with the prices filed with the deeds office.

"I do not know whether 'the purchase amounts listed in the original sales agreements correspond with the prices filed with the deeds office'. This is a statement made by you. Bearing in mind the flawed nature of your 'investigations', one should regard this statement with caution," he said.

"The sale agreements were conceptionalised [sic] and drafted by the professional team of Orthotouch, and were relied upon by the board. If the professional team made a mistake, it was a non-intentional, bona fide, administrative mistake, which mistake caused no harm, damage or losses, and had no impact on the transactions and their outcome, as stated by the BRP."

Myburgh demanded that his full correspondence with Moneyweb be published verbatim. This is included at the end of this article.*

(It is also important to note that Moneyweb corresponded extensively with Georgiou, Klopper and Accelerate in 2019 regarding the losses Orthotouch suffered as result of the transactions, and they never raised the fact that incorrect transaction prices were filed with the deeds office.)

Du Toit did not consult with transferring attorney

Despite Du Toit's assertions that the transfer attorney filled in the incorrect purchase prices, he did not question this with Myburgh, in either his capacity as Orthotouch director or as co-owner of the transferring firm, or the actual attorney who filed the transactions with the deeds office on behalf of CM&P.

In response to questions, Du Toit said "the values remain incorrect irrespective of the transfer attorney's filings". He added that the attorney who drafted the contract should explain this as it is incorrect.

Asked why Georgiou signed contracts that contained the incorrect purchase prices, Du Toit said: "I asked Nic and he answered that the documentation was presented to him and he signed it without checking the purchase prices as he expected the documentation to be correct."

Du Toit said the erroneous filings were "not necessarily an irregularity and I believe that the wrong values used [were] a bona fide mistake with no damage to any party involved, as no money changed hands in regard to such transactions". He added: "Orthotouch dealt with the properties at the correct values. No misappropriation by Orthotouch or Zephan according to my info."

Market values

There is also an inconsistency related to the origin of the actual sales amounts filed with the deeds office. The business rescue plans state that the incorrect values submitted to the deeds office were the original overvalued HS syndication values published in the HS prospectuses. The correct values should have been the market valuations of the properties disclosed in the original HS business rescue plan and the Section 155 Scheme of Arrangement (SoA).

Moneyweb can confirm that the actual purchase prices submitted to the deeds office do not correspond with the original HS syndication values. The actual purchase prices of the 16 properties filed with the deeds office amount to R95 million more than the actual syndication values (see table below).

Du Toit said in response to a question related to this apparent discrepancy: "I do not have all the prospectus valuations. The valuations which were used is closer to the [prospectus] valuations, but definitely not the values disclosed in the SoA. We would have to ask the person who drafted the contracts where the values came from."

Implications

Dr Albertus Marais, a director of the tax consulting group AJM, analysed the limited information in the public domain and said the transactions, objectively considered, could have two tax effects.

"The first is that it could create an income tax loss in Orthotouch to write off against future or existing profits, while, secondly, creating a capital profit in Zephan which is either taxed at lesser rates, or which may be utilised against existing losses in that company. If the transactions were incorrectly registered in the [deeds office] though, and the companies filed their income tax returns on that incorrect basis, penalties may be levied in excess of the tax advantage that was achieved from the transactions on the incorrectly declared basis, unless these were truly inadvertent."

Marais further explained that, in terms of the Income Tax Act, taxpayers are presumed to have entered into transactions for exactly this purpose, unless the contrary can be proven. "If Sars [the South African Revenue Service], therefore, were to consider the transactions, the relevant companies should be able to illustrate that commercial non-tax reasons motivated these transactions, including the terms and values at which they were concluded."

Du Toit acknowledged in the business rescue plans that he needs to rectify the purchase amounts by engaging with Sars, "as it will have a huge tax obligation on Zephan and a huge tax loss on Orthotouch".

Response

Moneyweb sent copies of the business rescue plans and other documentation to several business rescue specialists for comment.

Henco Kruger, an experienced business rescue practitioner and a director of turnaround specialist Sturns, said the concerns related to the property transactions remain unanswered due to shortcomings in the investigation into the affairs of the company. "The so-called 'false perception of impropriety' should have been the pivotal point of the investigation into the affairs of the companies."

He said the perceptions relate to the property values disclosed in the various prospectuses, compared with what is happening in the real world of the HS companies, Orthotouch and Zephan. "The real contention with the investigation is that the creditors expected the practitioner to properly interrogate and investigate items such as the values of the properties. The investigation did not reveal how investors' funds were appropriated.

"There is no evidence of a comprehensive investigation with regards to the properties. The rescue plans only include spreadsheets with the property details and movements."

Kruger said a "host of allegations were made in various forums and court cases which were not investigated".

“Instead, the creditors were invited to come forward with so-called evidence. Creditors are removed from the business information and [rely] on the practitioner to act independently. It would have been most prudent for the practitioner to have interviewed the steering committee of the class action grouping and the creditor’s committee to get their input. The practitioner also did not state on which financial information his investigation was based, as the last audited financials for Zephan were published in 2009 and for Orthotouch in 2015.”

Kruger also referred to Section 141 of the Companies Act, which stipulates that: “A practitioner has a professional responsibility, confirmed by his/her appointment as an officer of the court, to investigate the affairs of the company independently. A practitioner is required to immediately disclose in a report if there is a reasonable suspicion of corrupt or fraudulent activity and report the matter to an appropriate authority for further investigation and appropriate action.”

———

*** Correspondence from Connie Myburgh, former Orthotouch director and co-owner of Connie Myburgh & Partners:**

Moneyweb’s questions are listed above the answers.

Mr van Niekerk,

I refer to your email dated 1 May 2020, and the questions put to me therein.

In replying to your email, I insist that this response email be quoted, verbatim, in the article you intend publishing and in any other article, which you may wish to publish, in which the subject matter of your above email is dealt with.

You are requested to confirm to me that you will do so.

At the outset, I wish to state that your questions follow your highly flawed “investigations” into the affairs of Orthotouch.

The nature of your “investigations” was severely criticised by the Business Rescue Practitioner of Orthotouch (“the BRP”), in paragraph 5.10.3 of his Business Rescue Plan in regard to Orthotouch, where he states that you did “desktop” investigations, “without properly interrogating” the (1) “various transactions” and (2) “the actual facts” (my emphases on words used by the BRP).

Your modus operandi of investigating, by way of flawed desktop investigations, the affairs of Orthotouch, and thereafter reporting in a flawed manner on such affairs, has therefore been publicly labelled, by the BRP, as a responsible officer of the High Court, as dubious, and you do not come into any debate regarding the affairs of Orthotouch with clean hands.

In engaging in desktop investigations, without properly interrogating the various transactions and the actual facts, you do not behave as a responsible journalist ought to behave.

It is interesting that you have never sought to exonerate yourself from this most serious allegation by the BRP and that, notwithstanding not having done so, you still proceed to craft inflammatory and defamatory emails to me and Mr Hans Klopper, posing questions, that are based on your alleged “facts” that were not properly researched and are incorrect.

Based on your flawed “desktop” investigations, you also proceeded to write numerous incorrect and highly defamatory articles, including referring repeatedly to “incorrect valuations”, “incorrect purchase prices”, “losses” and all manner of impropriety on the part of various individuals, including me, stemming from your flawed investigations.

The BRP, as duly appointed official in terms of the Companies Act, duty bound to investigate the affairs of Orthotouch, accurately and fully investigated such affairs, with reference to the books and records of Orthotouch, to which books and records you do not have access, and specifically the “various transactions” and “the actual facts”, referred to by him in his criticism of you, and showed, in his BR Plan, the flawedness of your investigations and consequent incorrect reportage referred to above.

It is to be noted that the BRP embarked upon his own investigations, following an invitation made by him to you, specifically, to provide him with documentary proof of impropriety and misappropriation of funds.

It is telling that you did not respond to such invitation, although it seems that, according to you, you have an abundance of damning “information” and “evidence” of impropriety and misappropriation of funds.

If you have this damning “information” and “evidence”, why not share it?

It is to be noted that you attended the first meeting of creditors of Orthotouch, in Business Rescue, and was present when the invitation was put to all parties present.

The BRP later, in communicating with you, repeated his invitation.

Paragraphs 5.1, 5.2 and 5.3 of the Orthotouch Business Rescue Plan contain information regarding the above invitation, non response and independent investigation by the BRP.

The results of the BRP’s investigation were that he “could not find any proof of misappropriation in regard to the property transactions.”

The aforesaid statement is made in paragraph 5.11 of the Orthotouch Business Rescue Plan.

Now you are attempting to place yet another “spin” on matters, as you have difficulty dealing with and explaining away to your readers, the flawed nature of your investigations and consequent incorrect and defamatory reportage, now focusing on alleged mistakes made by the transferring attorneys, the fees of the attorneys, alleged incorrect purchase prices and your perceived wrongs flowing therefrom.

Against the above background, I respond to your questions.

Many of the answers to your questions have already been given to you by the BRP and the relevant "conveyancing attorney", Ms Carol Coetzee, both of whom you have questioned in detail regarding the conveyancing process, the alleged mistakes made by the transferring attorneys in regard to the use of "incorrect purchase prices" in the transfer process, and the conveyancing fees, in regard to all of which you received comprehensive responses.

I attach a series of emails between you and the BRP, showing the above.

Most telling, are the emails from the BRP, dated 21 and 22 April 2020, which clearly indicate, read together with the Orthotouch Business Rescue Plan, which you were fully au fait with, that the use of incorrect purchase prices was a non intentional, bona fide, administrative mistake (the word "administrative" being used by you in your email of 22 April 2020, forming part of the series of emails referred to above), that nothing untoward occurred in regard to the conveyancing fees and that the conveyancing fees were paid in accordance with a negotiated agreed quantum, at a huge discount to prescribed fees, that no harm was done and no damage was suffered, and that there was no impact on the transactions and their outcome, resulting from the use of incorrect purchase prices issue and the payment of conveyancing fees.

Interesting that you now ask the same questions of me.

I understand that you asked the same questions of Mr Hans Klopper.

This beggars belief, as you have the answers, but perhaps you are hoping that someone will give you different answers, so that you can write yet another scathing article.

Before I deal with the questions, I deal with certain of the statements made by you in the paragraph preceding the questions.

Firstly.

The BR Plan does not state that the transfer attorneys "were at fault".

These are your words, designed to create atmosphere and to damage to the attorneys and me, as the attorneys were Connie Myburgh and Partners.

The BR Plan merely states that the "purchase prices …. was incorrectly reflected by the Transferring Attorneys", which is consistent with the response to question 1 below.

Secondly.

Connie Myburgh and Partners was a law firm of which I was a 50% shareholder, the other shareholder being Ms Carol Coetzee.

Ms Coetzee took 100% shareholding control some years ago, and changed the name of this law firm to Carol Coetzee and Associates.

At the time of the transfers of properties you refer to, Ms Coetzee attended to the conveyancing issues on behalf of Connie Myburgh and Partners.

Question 1: Do you agree with the BRP that Connie Myburgh and Partners submitted the incorrect purchase prices to the deeds office?

Connie Myburgh and Partners did not "submit the incorrect purchase prices" to the Deeds Office.

Again your words, designed to create atmosphere and to damage the attorneys and me, as the attorneys were Connie Myburgh and Partners.

Connie Myburgh and Partners submitted the purchase prices according to the information contained in the relevant agreements provided to it by its client, in performing its duties as appointed conveyancing attorneys, as is normal practice.

Connie Myburgh and Partners did not prepare the agreements, and were not called upon to check the veracity or not of purchase prices.

Connie Myburgh and Partners acted purely on the instructions obtained from its client, in accordance with such instructions.

Question 2: If so, why did Connie Myburgh and Partners submit the incorrect purchase prices to the deeds office?

This question is answered under question 1 above.

Question 3: Will Connie Myburgh and Partners refund the fees for these transfers to Orthotouch?

(Connie Myburgh and Partners does not exist anymore.)

If anything is to be repaid, such repayment will have to be done by Carol Coetzee and Associates, but there is no basis to suggest that any fees ought to be prepaid.

It would be interesting to know on what basis you suggest the fees ought to be repaid, on arm's length transactions, where fees are charged to the sellers of properties in the normal course.

Perhaps you can explain this, normal for you, wild and unsubstantiated statement, made to create the innuendo that something untoward was done by Connie Myburgh and Partners, warranting the repayment of fees, thereby causing harm to me, Connie Myburgh.

The use of the incorrect purchase prices by the transferring attorneys was, according to the BRP, a non intentional, bona fide, administrative mistake, no harm or damage was done, and there was no impact on the transactions and their outcome, as a result of this non intentional, bona fide, administrative mistake.

See the emails between you and the BRP dated 21 and 22 April 2020 attached hereto.

If your concern is the quantum of the fees, you ought to have no such concern, as the fees were agreed between Connie Myburgh and Partners and Orthotouch at a huge discount to prescribed tariff, of between 40% to 60% below tariff, and were paid over a period of many months.

See the email from Carol Coetzee forming part of the series of emails attached hereto.

It is interesting that, once again, you probe into and question payments made to or due to me, as you have maliciously reported on, on numerous occasions.

One should ponder on the reason.

Is it that you feel inferior, or hard done by, when you have regard to your, presumably rather meagre salary, as a journalist, in comparison to what I earn or potentially earn, as a senior legal practitioner of many years' experience, or is there something of substance to your persistent lament in this regard.

Connie Myburgh and Partners were paid the fair amounts, as legal practitioners, agreed to by their client, and were paid for services rendered.

Question 4: The purchase amounts listed in the original sales agreements correspond with the prices filed with the deeds office. Did you as a former director of Orthotouch review and approve the sales agreements?

I do not know whether "the purchase amounts listed in the original sales agreements correspond with the prices filed with the Deeds Office".

This is a statement made by you.

Bearing in mind the flawed nature of your "investigations", one should regard this statement with caution.

The sale agreements were conceptionalised and drafted by the professional team of Orthotouch, and were relied upon by the board.

If the professional team made a mistake, it was a non intentional, bona fide, administrative mistake, which mistake caused no harm, damage or losses, and had no impact on the transactions and their outcome, as stated by the BRP.

Question 5: Did you correspond with the BRP regarding the incorrect filing of the purchase prices to the deeds office before the publication of the business rescue plan?

No, I did not.

As is normal with your reportage, the same few disgruntled individuals, singing from your hymn sheet, normally post defamatory comments and hate speech on

Moneyweb's platform, regarding individuals named in your reportage, shortly after your reportage.

Moneyweb is cautioned to remove such comments from its platform, immediately after same appears, in accordance with Moneyweb's own, self imposed, obligation to do so, as contained in Moneyweb's self regulatory provisions, as conceded to exist by Moneyweb, in a response by Moneyweb to Complaint number 7792 lodged by me against you and Moneyweb with the Press Ombudsman.

Should Moneyweb not remove such comments, yet another Complaint will be lodged with the Press Ombudsman.

Connie Myburgh.

This article was published on 2 JUNE 2020 and the official version is available at: https://www.moneyweb.co.za/in-depth/investigations/orthotouch-administrative-error-led-to-false-perception-of-impropriety/

10. 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.

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

- **hsactiongroup@gmail.com** for all General Enquiries; (For Example - to change contact details, Proof of Payments, Death of a Member etc.);
- **hsagenquiries@gmail.com** for Specific Enquiries; (For Example requesting information/statements regarding a specific member, exemption queries for a specific member);
- **hsagregister@gmail.com** for the registration and deregistration of HSAG members;
- **hsagwhistle@gmail.com** for all Confidential Information that you would like to send to us anonymously;
- **hsagestates@gmail.com** for all estate related questions.

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

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

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.

11. IMPORTANT GENERAL TERMS AND CONDITIONS

The general and repetitive terms, conditions and other general information that was previously contained in the Newsletter, is now available on the HSAG website at www.hsaction.co.za 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:
Tel: (021) 887 7877
hsactiongroup@gmail.com