



AFRIKAANS HIERBO

MONTHLY NEWSLETTER: JUNE 6.1 2023

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The obligation to keep us up to date with any inaccurate information or of any changes to your personal and/or contact details as well as to make sure that the contents of your monthly statements are correct rests on you as HSAG member.

HSAG OFFICIAL NEWSLETTER – CONTENTS

- 1 INTRODUCTION
- 2 2023: A QUICK VIEW
- 3 COMMITMENT TO THE HSAG
- 4 PROGRESS IN THE DECA CASE
- 5 PROGRESS IN CCAF CASE
- 6 LIQUIDATION APPLICATOIN
- 7 THE LESSON HIDDEN IN THE LAUGHTER
- 8 GENERAL ENQUERIES
- 9 IMPORTANT: USE OF CORRECT ACCOUNT NUMBERS AND REFERENCES
- 10 IMPORTANT: USE OF THE CORRECT EMAIL ADDRESSES!
- 11 IMPORTANT GENERAL TERMS AND CONDITIONS

1 **INTRODUCTION**

In this newsletter, we highlight key updates and events from the year 2023, shedding light on important legal proceedings, interlocutory matters, business rescue efforts, and the HSAG's commitment to its members.

The year began with a significant challenge as the transfer of the s155 Setting Aside Application faced opposition from the Georgiou sons. Despite their objections, the HSAG's legal team decided to issue an identical case in the Johannesburg High Court to avoid further delays. The ongoing legal battle for the transfer of the case from Johannesburg to Pretoria has been marked by persistent efforts to stall the process by the respondents.

In February, the HSAG faced a setback when the interlocutory applications, including the Rule 30 in the funding application, were postponed due to an overburdened court roll. These matters, crucial for the progress of the cases, will be rescheduled in the future. Business rescue proceedings for Orthotouch and Zephan Properties, which have been in progress for nearly three years, reached a critical juncture. The HSAG, representing its members' interests, strongly opposed the Business Rescue Plan presented by Mr. Jacques du Toit, citing concerns about procedural transparency and the relinquishment of investor rights and claims without proper legal recourse.

During the creditors' meeting, numerous objections and submissions were raised, but Jacques du Toit disregarded them and proceeded with the approval of the plan. The HSAG voted against the plan, reflecting its commitment to protecting the interests of its members and ensuring a fair resolution.

The HS21B trial, concerning the inclusion of HS21B investors within the CCAF was heard in the Pretoria High Court. The judgment is still pending, and the outcome will have implications for the classification of HS21B investors.

In the DECA case, a case management meeting was held to determine the submission timeline for further documents in the Smith cases. All parties involved have been notified of the required submission dates.

To address the ongoing challenges and seek justice for investors, the HSAG decided to pursue the liquidation of both Orthotouch and Zephan Properties. The application has been issued in the Bloemfontein High Court, highlighting alleged fraudulent activities, flawed business rescue proceedings, and questionable conduct by those involved in the schemes over the years. The liquidation process aims to thoroughly investigate the matters and recover investor funds.

The newsletter also emphasises the importance of members' commitment to the HSAG and its cause. While a dedicated portion of members continues to support the HSAG financially, it is essential for all members to contribute and honour their commitment. The HSAG's strength lies in its numbers, and collective support is crucial to drive the class action forward.

In conclusion, this newsletter provides a glimpse into the progress made in various legal cases, the challenges faced, and the determination of the HSAG to pursue justice for its members. The HSAG remains dedicated to its cause, representing members' interests, and striving for a favourable resolution in the ongoing legal proceedings.

2 2023: A QUICK VIEW

Transfer of the s155 Setting Aside of the s155 Scheme of Arrangements:

We started this year in a tug of war with the Georgiou sons regarding the administration and procedure in the transfer of the s155 Setting Aside Application from the Johannesburg High Court to Pretoria. Members will remember that at the end of last year, after a case management meeting held before Judge Janse van Nieuwenhuizen, we received the directive via the Deputy Judge President, that we must obtain leave in the Pretoria High Court for transfer of the Application of the s155 Scheme of Arrangement.

Not only did the Georgious oppose the transfer, but they also objected to the fact that we requested leave in the main seat of the Gauteng High Court (Pretoria), and not in the local division (Johannesburg). Apart from the convenience for all parties, since the

overlapping DECA case is already being heard in Pretoria, as well as the fact that the First Defendant has not filed any objection, the Georgiou sons persisted with their opposition.

In order to prevent further unnecessary time and costs from being wasted the HSAG Steering Committee and legal team decided not to be further stalled by the respondents' delaying tactics, and opted that the identical case (for transfer) be issued in the Johannesburg High Court. Identical opposing papers were served on HSAG's legal team by the Georgiou sons, who, as investors will remember, sought to be absolved of liability by ways of the s155 Scheme of Arrangement.

Leave must be obtained to transfer the case from the Johannesburg High Court to Pretoria. Notwithstanding the aforesaid attempts by the Georgiou sons and their legal advisors to delay the transfer application, the Deputy Judge President of the DECA advised that an expedited date should be requested from the Deputy Judge President in Johannesburg. Notwithstanding the judge's advice and numerous requests by the HSAG's legal team to comply therewith, one of the Georgiou sons' legal teams still have not complied therewith.

Interlocutory matters:

In February the HSAG was notified that the interlocutory (interim) applications was set down for hearing at the end of March and our counsel began preparing for them. The court's registrar informed us that the hearing cannot take place due to an overburdened court roll and the matter had to be postponed. The interlocutory issues included, among others, the Rule 30 in the funding application.

Business Rescue:

In between the court cases themselves, the HSAG prepared for the creditors' meeting for Orthotouch and Zephan Properties, after they had been placed in business rescue for almost 3 years. Mr Jacques du Toit, the business rescue practitioner, convened a second creditors meeting at the end of March for the approval of his Business Rescue Plan. The HSAG sent out thousands proxy forms for the confirmation of the HSAG

members' opposition thereto. The HSAG voted against the business rescue plan, as we did not agree at all with the outlined procedure, nor the rights and claims that investors would sign away with the 5% pay-out, all without those responsible coming before a court.

During the BRP, Jacques du Toit's, second creditors' meeting, numerous objections and submissions were raised but were ultimately ignored by du Toit. The objections included the refusal to allow proxy holders to join the meeting, concerns about du Toit's biased chairmanship and lack of independence, the undisclosed decision to conduct a poll vote, a motion for voting per investment, discrepancies in voting percentages before and after accepting proxies, prior knowledge of a high percentage of votes in favour of the plan, inappropriate voting practices, undue delay in the BRP process, misinterpretation of a judgment by Judge Davis, disallowance of executor of estates and proxy votes, insufficient time given for voters to respond, failure to send amended notices to investors, objections to the Business Rescue Plan, allowing related parties to vote, endorsing a comparison between the BRP and liquidation, deducting interest payments from owed capital, engaging in risky litigation without available funds, lack of knowledge about available funds, non-disclosure of alternative attorneys' identities, and biased interpretation of prescription. Despite the objections, du Toit disregarded them and proceeded with the meeting without addressing the concerns raised.

Jacques du Toit steamrolled the meeting and despite the above objections, proclaimed the plan to be approved, despite the HSAG voting for more than a thousand members as proxy. Jacques du Toit thereafter continued to send claim forms to HS-investors. (For the HSAG's view on the content of the business rescue plan, read the March 2023 newsletter. For the HSAG's view on the voting and registration process that accompanied the creditors' meeting, read the April 2023 newsletter).

HS21B trial:

Another matter was enrolled for trial and heard during May 2023. The interlocutory HS21B matter was heard in the Pretoria High Court before Judge Tolmay. The hearing was to determine whether HS21B falls within CCAF and we are still awaiting the

Judge's ruling regarding whether or not the HS21B investors may be considered part of CCAF. If not, they will necessarily have to be included with the other investors.

DECA Case:

A case management meeting was held on 1 June 2023 before the Deputy Judge President of the Pretoria High Court, where the timeline for the submission of further documents in the Smith cases was determined. All parties involved have been notified of when such documents must be submitted to court.

Zephan & Orthotouch Liquidations:

Finally, the HSAG decided to apply in the Bloemfontein High Court for the liquidation of Zephan and Orthotouch and the documents were issued and will soon be served on the Respondents, which include the Business Rescue Practitioner, Mr Jacques du Toit.

3 COMMITMENT TO THE HSAG

There are many HSAG members who are committed to their case by providing the essential yearly contributions, but unfortunately, it is by far not enough to keep the process going. We have previously pleaded with our members to support us financially and due to the large number of HSAG members, this can only be made possible if all put their shoulder to the wheel and contribute to the financial needs of the court cases to be concluded.

The HSAG has dedicated itself to its members and their cause since its inception. Year in and year out, the HSAG represents members in every court action, with full confidence that justice will prevail. Over the years, the good faith of the HSAG and its legal team has been called into question time and time again by our opponents, but without merit or any success. (See the story of the emperor here below).

Unfortunately, there is still a very small percentage of members who faithfully pay their annual requisition and also paid last year's Special Trial Levy. These are the people

who ultimately drive the HSAG Class Action. We urgently want to make a request to every member of the HSAG to please honour their commitment to the HSAG. The simple reason is that our strength lies in our numbers. If everyone expects single members to support the case, it will undermine and defeat the purpose of the entire class action. It may come to a point that those loyal persons say that they no longer want or can carry the rest of the group. If there are then any settlement proposals from the opposition, as has happened in the past, it may lead to serious consideration, which will end up favouring a small group of members, which will be a sorry day for the class action. The members' cause and survival of the HSAG is squarely in its members' hands.

The HSAG therefore asks for members' commitment in their own cause. Support the HSAG, as the HSAG has supported members' interests all these years, and still does. To let this court case die a quiet death after all the hard work that has been done will be an extreme tragedy. The HSAG has never dropped or removed members, and will never do so out of hand, but the fact remains that if the opposition approaches us with a settlement proposal, there will likely be a settlement with paid-up members, and the class action as members know it now, will come to an end.

Of course, this is not the HSAG's wishes. We would like every investor who lost money in the scheme to get back what they are entitled. And that's why we encourage members to get their overdue requisition up to date - it's the best way to ensure that this matter, the members' matter, can be driven to finality.

4 PROGRESS IN THE DECA CASE

One of the interlocutory issues, the Rule 30 in the Funding Application, will be heard in the Pretoria High Court on 27 October 2023. A specific date for the main application will be fixed once the interlocutory and other cases have been heard, which date is scheduled for early next year.

Furthermore, it can be confirmed that feedback has indeed been requested from the executor of the late Georgiou's estate, but that the executor has informed us that he is apparently unable to provide us with the financial status or information about the

solvency of the estate, pending the outcome of the BRP and ongoing litigation. He also confirmed that no claims had been paid to any concurrent creditors.

5 PROGRESS IN CCAF CASE

As mentioned in the May newsletter, Judge Tolmay reserved judgment in the HS21B trial and once we have received the judgment, we will give the necessary feedback. In the meantime, we have instructed our correspondent attorneys in Pretoria to obtain a date for the hearing of the main application, pending the judgment in the interlocutory application.

6 LIQUIDATION APPLICATOIN

As previously reported, the HSAG has decided to apply in the Bloemfontein High Court for Liquidation of both Orthotouch and Zephan Properties. Below follows a summary of the founding affidavit in the application

The affidavit starts off by describing the history of the investment scheme launched between 2005 and 2009 by Nicolas Georgiou through Pickvest Investments. The following allegations are made: that Georgiou solicited over R4.7 billion from investors with the promise of ownership in unencumbered properties through shares in the Highveld companies, the prospectuses did not disclose that the Highveld companies would be buying Georgiou's own properties and Georgiou and his family controlled Orthotouch, Zephan, Accelerate and Pickvest.

Despite receiving full payment, properties were not transferred to investors in Highveld 19 to 22. The aforesaid state of affairs were presented to the Financial Services Board and was eventually taken on appeal where it was found to involve fraud by the Appeal Board of the Financial Services Board. In 2011, all eight Highveld companies were placed under business rescue with Mr Hans Klopper appointed as BRP. The 2011 BR Plan involved transferring properties to Orthotouch, but Orthotouch soon required rescuing itself.

A Scheme of Arrangement was then foisted on investors in 2014, offering even lower returns. However, properties had already been sold to Accelerate without disclosure. Orthotouch was placed under business rescue again in 2019 while still subject to the 2014 Scheme. The recent BR Plan by Du Toit falsely all investors as creditors and seeks to absolve individuals from liability.

Furthermore, it is argued that the business rescue proceedings should be regarded as flawed for various reasons, including: The 2023 plan differs significantly from the 2020 plan and does not provide proper transparency. Many investors were not properly acknowledged as creditors in the 2023 plan and had to go through a cumbersome registration process. The two companies' affairs were improperly combined in the 2023 plan without proper differentiation. No proper annual financial statements were presented to reflect the companies' financial positions. The identity of the proposed funder of the plan remains undisclosed. The identity and claims of substantial creditors worth R610 million have also not been disclosed. Investors are only set to receive 5 cents per rand of their claims, indicating a lack of genuine rescue attempt. Du Toit's ability to properly account for the decimation of Orthotouch's assets is questioned.

Du Toit's conduct and independence is also questioned, citing his opposition to the certified class action against Zephan and his obstructive attitude in correspondence with investors' attorneys. The court judgment against Du Toit which found him to be partisan and attempting to renege on prior court rulings upholding the buyback agreements, is referred to. The court admonished Du Toit for his "partisan attitude" and granted a cost order against him. It is held that Du Toit's decision to oppose the class action claims against Zephan, after those claims had already been opposed for years, indicates a lack of independence on his part.

Furthermore, it is alleged that that individuals like Helgard Hancke, who was appointed to the creditors committee, are protecting the interests of the Georgiou family and trying to frustrate the class action litigation.

Claims that Georgiou manipulated proceedings by "buying off" individuals who then acted to delay the litigation, are made. These individuals pretended to be independent but were funded by Georgiou. The HSAG believes that there are exceptional

circumstances that exist for the court to grant leave to proceed with liquidation proceedings against the companies.

The schemes have been subject to multiple business rescue plans and arrangements over the years, each time providing investors with less income and security. The Liquidation of Orthotouch and Zephan is justified given their insolvency, the flawed business rescue process, and the questionable conduct of those involved in the schemes over the years. The process will properly investigate matters and recover investor funds.

The HSAG would like to assure members that the issuing of this liquidation application does not impede or slow down the work the HSAG is doing in all the other cases the HSAG currently has before the Gauteng High Courts.

The procedure that will be followed is as follows: The HSAG's legal team has given its correspondent attorneys in Bloemfontein instruction to have the case issued in the Bloemfontein High Court. The Respondents then have five court days to file a notice of opposition (should they want to oppose the matter) and thereafter the Respondents have a further 15 days to draft and issue answering affidavits.

Throughout this procedure, no liquidator will yet be appointed. Once the HSAG has identified a suitable liquidator, proxy forms will be sent out to mandate the HSAG legal team to appoint a liquidator and/or to submit their claims.

7 THE LESSON HIDDEN IN THE LAUGHTER

The pointing out of a fox in the HSAG pigeon loft, caused a big flutter. This has left a bitter aftertaste in the mouths of the hard-working, impoverished investors, especially those who have graciously accepted the false information that has been spread around by supporters of our opponents. There are many idioms, fables and proverbs that can certainly be applied, but one of the more striking is that of the naked emperor who was unmasked:

Long long ago, in the self-made country of Liegeria, an emperor ruled. He was known for spreading false hope, lies, unrealistic visions and dreams to innocent people. He grew up and lived in the land of Truths, but over time he was corrupted by lies, money and the spread of falsehoods and he moved to a low, dark place, where he crowned himself as emperor.

This peculiar ruler had an unusual preference, namely to perform his royal duties naked. The emperor was paid substantial sums of money to believe that integrity, honour and telling the truth was a symbol of oppression and falsehood, and vowed to challenge those norms practiced by the righteous.

News of the emperor's nudity spread throughout the kingdom and surrounding territories, leaving the citizens confused but still fascinated. Some people were appalled, while others found his audacity inspiring and touching. The emperor's loyal subjects tried to emulate his behaviour by spreading lies themselves and throwing away their own clothes in an attempt to show solidarity.

However, the emperor's subjects faced a perplexing dilemma. It was their duty to adorn their ruler in the choicest garments, but he adamantly refused to wear anything. Fearing ill effects, they came up with an unwise and transparent plan.

They summoned the best weavers in the land and instructed them to create an ensemble so extraordinary that only those with true wisdom and discernment could see it.

The weavers, eager to please the emperor and also receiving large sums of money for it, worked diligently day and night, pretending that they were weaving an invisible fabric. They described the colours and patterns in exquisite detail, insisting that only the purest of heart could truly perceive their beauty.

When the day of the grand unveiling arrived, the emperor paraded through the streets basking in the adoration of his loyal subjects. Applause and cheers filled the air as everyone believed they had witnessed the wonderful garment. No one dared to admit that they could not see it, for fear of being called a fool. Something the emperor loved.

Amidst the fanfare, a little boy pointed to the emperor and exclaimed, "But he has no clothes on!" A hush fell over the crowd as the truth reverberated through their minds. The child's innocent honesty shattered the illusion of a robed emperor, and laughter erupted from the people.

When the emperor realised the folly of his ways, he first blushed, but then a wry smile crossed his face. He immediately fled, shut down his website and ended all direct communication with his followers. The news that he received hundreds of thousands of rands for spreading false information and hope spread like wildfire, but for some people who faithfully followed him, it was just too late. They signed away or lost everything they hoped for or had left.

He finally understood the lesson hidden in the laughter. From that day on, the Emperor of Liegeria tried to put on only the best attire, not only in clothes, but also in humility, honesty and self-awareness, to try to lead his ruined kingdom with newfound grace, but to no avail. He slowly and shyly tried to move back out of the darkness into the light, but the light was just too sharp for the devastation he caused to some honourable citizens.

And so the story of the emperor who wore no clothes became a timeless fable, reminding everyone that true power lies not in outward appearances and deception, but in true substance, honesty and authenticity.

8 GENERAL ENQUERIES

A query we often get is regarding the transfer of shares, after the death of a loved one. We would like to remind everyone that this is done by Orthotouch. It is the company that handles the transfer of the shares and it is only after we have received a document, issued by them, indicating that the shares have been transferred in a new name, that we can change it on our system. We are also aware of the fact that it is in Business Rescue - however, this should have no impact on their work performance and we ask that everyone contact them on this email: admin@orthotouch.co.za.

Over the years, some people's claims have increased to an amount greater than the initial investments invested in the Highveld Syndication, due to the fact that, among other things, they inherited investments from their parents. Members must make sure that they provide documents and certificates that prove the transfer, as they will eventually be needed to prove the increased claim amount. At this stage we accept people's value of their investment based on their written evidence.

Finally, please note that if no payments have been made by you over a long period of time, it is possible that previous trust requisitions and payments may not be reflected on the statement.

9 IMPORTANT: USE OF CORRECT ACCOUNT NUMBERS AND REFERENCES

Requisitions must be paid by members into the correct accounts with the correct reference number attached. The time, effort and administration it costs the HSAG's legal team to correct any erroneous payment leads to the HSAG case becoming unnecessarily expensive.

Account numbers and references are affixed to each statement and we request that members please review their statements carefully when making payments.

If you have paid your amount into an incorrect account, send an e-mail and receipt with a request to transfer the amount to the correct account as follows:

If you enter the amount in e.g. paid into CCAF Trust Account 3, but the amount was intended for your HSAG Trust Account 2, or else to.

Payments made incorrectly in CCAF, send email to admin@ccaf.co.za.

Payments incorrectly paid in HSAG, send email to hsactiongroup@gmail.com

10 IMPORTANT: USE OF THE CORRECT EMAIL ADDRESSES!

The correct use of e-mail addresses (as stipulated on our website and e-mails) as well as HSAG members' initials and surnames, syndication numbers and reference numbers (e.g. identity number, etc.) for all communications are essential and obligatory. Failure to comply herewith may lead to unnecessary delays or any reply at all.

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

- **hsactiongroup@gmail.com** for all General Enquiries; (For Example - to change contact details, Proof of Payments, Death of a Member, payments erroneously paid into HSAG Trust Account 2, incorrect references 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, as well as notice of members who have died;
- **hsagwhistle@gmail.com** for all Confidential Information that you would like to send to us anonymously;
- **hsagstates@gmail.com** for all estate related questions.

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

- accounts@ccaf.co.za for proof of payments, incorrect references on proof of payments
- admin@ccaf.co.za for the official request to pay registration fees over 6 months form, payments erroneously made to CCAF Trust Account 3, as well as deregistering from CCAF;
- enquiries@ccaf.co.za for statements not received and all other CCAF questions and enquires

If an investor or any person sends an email to the wrong address, it will result in the email not receiving the speedy or necessary attention, if any. If you do not wish to receive any further emails, please inform us thereof in writing.

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

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