



ENGLISH TEXT BELOW

MAANDELIKSE NUUSBRIEF: MEI 2024

HIERDIE NUUSBRIEF WORD AAN U GERIG AS LID VAN DIE HOËVELD SINDIKASIE AKSIEGROEP (“HSAG”) OP GROND VAN U BELEGGING IN DIE HOËVELD SINDIKASIEMAATSKAPPYE 15-22 EN/OF U ONDERSTEUNING VAN DIE HSAG.

HIERDIE E-POS IS VERTROULIK EN UITSLUITLIK VIR DIE GEADRESSEERDE HSAG LID BEDOEL. (SIEN ONS VRYWARING HIERONDER)*

HSAG AMPTELIKE NUUSBRIEF – INHOUDSOPGAWE

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1. INLEIDING

Geagte HSAG-lede,

Welkom by ons nuutste nuusbrieff, waar ons belangrike opdaterings en insigte in ons voortgesette groepsaksielitigasie met julle deel. Terwyl ons deur hierdie deurslaggewende jaar stuur, word ons gemeenskaplike krag en vasberadenheid steeds getoets. Hierdie uitgawe dek beduidende ontwikkelings, insluitend twee onlangse hofsake, voortgesette finansiële bydraes, en die vasberade pogings van ons regsman.

Ons doen weereens 'n beroep op almal vir hul onmisbare ondersteuning en bydraes. Elke bietjie hulp bring ons nader aan geregtigheid en finansiële verligting vir al ons lede.

Dankie dat julle by ons staan en vir julle vasberade toewyding aan ons saak.

2. VORDERING

Die eerste deel van hierdie jaar was 'n belangrike mylpaal in ons groepsaksielitigasie, aangesien die sterkte, samewerking, spanwerk en reaksievermoë van die HSAG getoets is. Eerstens was dit die Oorplasingaansoek wat in Januarie 2024 aangehoor is, en kort daarna die DECA-saak. Beide sake was uiters belangrik en 'n beroep is maand na maand op die HSAG-lede gedoen om te help met hul jaarlikse betalings.

Die eerste saak is belangrik omdat daar 'n groot oorvleueling is tussen hierdie saak (Tersydestelling van die A155 Reëlinskema ["SoA"]) en die tweede saak, DECA (Afgeleide Groepsaksie) teen die respondente wat na bewering verantwoordelik was vir die ondergang van die HS 15-22 maatskappye. Hierdie saak is middel Mei ter rolle geplaas. Ondanks volgehoue versoeke aan lede om hul uitstaande bydraes te maak, het slegs 'n klein gedeelte daaraan voldoen. In litigasie van hierdie aard is tyd uiters

belangrik en as die lede van die groep nie saamwerk nie, kan waardevolle geleenthede verlore gaan, wat nie maklik herwin sal word nie.

Ons doen dus weer 'n dringende beroep op julle ondersteuning. Soos almal weet, hang die sukses van ons groepsaksie steeds grootliks af van die groeps poging van die groep en bydraes van al 6,800 lede, ongeag die grootte. Ons gekose befondsingsmodel, goedgekeur deur die Pretoria Hooggeregshof, is ontwerp om te verseker dat elke lid oor 'n tydperk 'n klein bedrag bydra, wat die krag van ons groot getalle benut.

Die Huidige Stand Van Sake:

Slegs 'n fraksie van ons lede het hul ledegeld op datum betaal. Sonder die nodige fondse sal ons groepsaksie onvermydelik 'n stadige dood sterf, en die respondente sal sonder enige gevolge wegstap. Dit sou 'n hartseer uitkoms wees vir ons groepsaksie om sover te kom, net om kort te skiet weens 'n gebrek aan finansiële ondersteuning.

Die Belangrikheid van Jou Bydrae:

Ons het elke lid se samewerking nodig, hetsy groot of klein. 'n Enorme hoeveelheid werk is reeds gedoen, en ons kan die beduidende impak daarvan tot dusver sien. Sonder voldoende fondse het ons groepsaksievoertuig egter nie die brandstof om die einde te bereik nie.

Die Werklikheid:

Die howe sal nie die HS Beleggers help bloot uit simpatie of weens die beginsels van natuurlike geregtigheid nie, sonder voldoende verteenwoordiging. Verder vereis voldoende verteenwoordiging die nodige hulpbronne en ondersteuning.

'n Groepsaksie van hierdie aard, wat miljarde rand beloop, is ongetwyfeld 'n eerste teen 'n privaat individu/familie wat daarvan beskuldig word dat hulle miljarde rand wanbestuur het. Ons kan trots wees daarop dat ons onder die eerste 10 groepsaksies was wat in Suid-Afrika gesertifiseer is (CCAF), maar dit is ook nie genoeg om die maraton te voltooi nie.

As ons nie die beste moontlike regspan met ondersteunende span kan bekom nie, sal die respondente voortgaan om elke tegniese verdediging te gebruik om die verrigtinge te vertraag. Ons het dus 'n groot aantal lede nodig om hul trust opvragings op datum te maak om vorentoe te beweeg. Die meerderheid van verreweg, die lede wat hierdie nuusbrief lees, het nie aan ons versoek voldoen nie.

Die Bestuurskomitee sal ernstig oorweeg watter voordele toegeken kan word aan lede wat aan hierdie versoek voldoen vir die dilemma waarin ons ons bevind.

Waarom Jou Ondersteuning Saak Maak:

- Kollektiewe Krag: Elke klein bydrae dra by tot 'n kragtige mag wat verseker dat ons regstryd kan voortgaan.
- Geregtigheid vir Almal: Jou ondersteuning help om te verseker dat die respondente die gevolge van hul dade in die gesig staar, wat geregtigheid vir alle lede bied.
- Volhoubaarheid van die Stryd: Die werk wat tot dusver gedoen is, het 'n sterk fondament gelê. Voortgesette ondersteuning sal verseker dat ons dit tot die einde toe kan sien.

Hoe Jy Kan Help:

Maak asseblief onverwyld jou jaarlikse bydraes tot die HSAG krygskas. Elke bydra tel en bring ons een stap nader aan die bereiking van ons gedeelde doel van geregtigheid en finansiële verligting vir alle lede.

Gevolgtrekking:

Ons wil nie hê ons groepsaksie moet op hierdie kritieke punt misluk nie. Saam kan ons 'n verskil maak en verseker dat ons kollektiewe pogings nie tevergeefs is nie.

Dankie vir jou volgehoue ondersteuning en toewyding aan ons saak.

3. TERUGVOERING OOR REGTER CRUTCHFIELD

3.1 Opsomming van HSAG se Argumente:

Die Aansoekers se Argumente (HSAG) het daarop gemik om die Hoofaansoek (Tersydestelling) van die Johannesburg Hooggeregshof na die Pretoria Hooggeregshof oor te plaas. Die primêre rede vir die oorplasing is die beduidende oorvleueling van feite en regs kwessies tussen hierdie saak en die verwante DECA-aansoek, wat albei die Highveld Sindikasie 15-22 maatskappye betrek.

Die oorplasing poog om duplisering van verhore en botsende uitsprake te vermy. Die dokumente beklemtoon die gerief en geskiktheid daarvan om albei sake in Pretoria aan te hoor, met die argument dat dit tyd, hulpbronne en konsekwente Hooggeregshofuitsprake sal bespaar. Die Aansoekers het beklemtoon dat geen nadeel uit die oorplasing sal voortspruit nie en het 'n koste bevel teen die opponerende Respondente versoek. Slegs die twee Georgiou seuns (waarvan nie een die Tersydestelling Aansoek teenstaan nie) het die Oorplasingsoek teengestaan.

3.2 Opsomming van Oorvleueling:

Die HSAG voer aan dat, na evaluering van die beëdigde verklarings van beide die Tersydestelling Aansoek en die Afgeleide Aksie, talle oorvleuelende feitelike kwessies voorkom, wat die onderling verbonden aard van die twee regsdinge beklemtoon.

Hierdie oorvleuelings beklemtoon herhalende temas van finansiële wanbestuur, pligsversuim en onetiese gedrag deur diegene in beheer of verantwoordelik vir die sake van die maatskappye, maatskappybestuurders en ander, wat die basis van beide sake vorm.

Een van die primêre oorvleuelings is die wanbestuur van fondse. Beide beëdigde verklarings beskryf gevalle waar maatskappygeld nie in die beste belang van die HS maatskappye en aandeelhouers aangewend is nie. Dit sluit ongemagtigde transaksies en onbehoorlike gebruik van maatskappyeiendomme (onroerende eiendomme) in, wat beduidende bekommernisse in beide regsdinge is.

Nog 'n kritieke kwessie is die verbreking van fidusiêre pligte. Beide sake beskryf talle gevalle waar bestuurders versuim het om in die beste belang van die HS maatskappye en hul aandeelhouders op te tree. Dit sluit belangebotsings in waar persoonlike gewin van die Georgious en ander bo maatskappywelsyn gestel is, wat gelei het tot besluite wat die maatskappy se finansiële gesondheid gekompromitteer het.

Ongemagtigde transaksies is herhaaldelik relevant in beide sake. Dit sluit ongekeurde finansiële transaksies en lenings in wat nie behoorlike korporatiewe bestuur prosedures gevolg het nie.

Hierdie gedragpatroon dui op 'n sistemiese probleem binne die maatskappye se bestuurspraktyke, waar behoorlike toesig en goedkeuringsprosesse gereeld omseil is.

Valse of geen finansiële verslagdoening en die misleiding van beleggers is beduidende oorvleuelende kwessies. Beide sake wys daarop hoe finansiële state en openbare verklarings gemanipuleer of vervals is om 'n gunstiger beeld van die maatskappye se finansiële gesondheid voor te stel, tot die punt dat 'n Sakebereddingspraktisyn aangestel is om die maatskappye van likwidasie te "red".

Hierdie misleiding het nie net beleggers mislei nie, maar het ook regulatoriese vereistes oortree, en dus die integriteit van die maatskappye se bedrywighede gekompromitteer.

Die twee sake beklemtoon ook die versuim om aan korporatiewe beleide te voldoen en onvoldoende rekordhouding.

Hierdie mislukkings dui op 'n gebrek aan nakoming van standaard korporatiewe bestuurspraktyke, wat noodsaaklik is vir die handhawing van deursigtigheid en aanspreeklikheid binne enige organisasie.

'n Ander algemene kwessie is die onbehoorlike gebruik en beskikking van maatskappy bates. Dit sluit gevalle in waar maatskappy hulpbronne gebruik is vir persoonlike gewin of op maniere wat nie tot die maatskappye se doelwitte bygedra het nie. Hierdie misbruik van bates beïnvloed nie net die maatskappye se finansiële status nie, maar

het ook vertroue onder aandeelhouders en belanghebbendes ondermyn, wat gelei het tot die huidige litigasie.

Beide sake beskryf die versuim om wesenlike inligting bekend te maak en die oortreding van terugkoop en ander ooreenkomste. Hierdie aksies demonstreeer 'n duidelike minagting vir die regte en verwagtinge van die HS beleggers, wat verdere vertroue- en bestuurskwessies binne die maatskappye vererger. Onoorbetaalde finansiële beheer en onvoldoende interne beheermaatreëls is ook algemeen in beide sake.

Die sake beklemtoon hoe swak finansiële toesig talle onreëlmatighede en onetiese praktyke toegelaat het om ongekontroleerd te bly. Hierdie gebrek aan beheer is 'n beduidende faktor wat bydra tot die finansiële wanbestuur en bedrieglike aktiwiteite wat in beide sake beskryf word. Laastens is bedrieglike aktiwiteite en nie-nakoming van regulatoriese vereistes kritieke oorvleuelende kwessies.

Beide sake verskaf bewyse van aksies wat nie net interne beleide oortree het nie, maar ook eksterne wetlike en regulatoriese standaarde. Hierdie nie-nakoming het beduidende reg implikasies en beklemtoon die behoefte aan 'n deeglike ondersoek en regstelling van die maatskappye se bestuurspraktyke deur dieselfde hof.

In opsomming, die oorvleuelende kwessies tussen die Tersydestelling Aansoek en die Afgeleide Aksie is uitgebreid en beklemtoon 'n deurslaggewende patroon van finansiële wanbestuur, verbreking van fidusiêre pligte en onetiese gedrag en dit is jammer dat die hof nie hierdie oorvleuelende kwessies in ag geneem het nie (sien elders).

3.3 Uitspraak:

Op 14 Mei 2024 het haar Edele Regter Crutchfield haar geskrewe uitspraak gelewer in die Oorplasingaansoek van die Tersydestelling saak. Die uitspraak het die aansoekers se versoek om die saak van die Johannesburg Hooggeregshof na die Pretoria Hooggeregshof oor te plaas, aangespreek. Die saak is op 22 - 23 Januarie 2024 aangehoor en uitspraak is op 6 Mei 2024 gelewer met geskrewe redes gelewer

op Dinsdag, 14 Mei 2024. Dit was 'n dag nadat die DECA-saak begin het en tot Maart 2025 uitgestel is. Alhoewel die HSAG verwag het dat die uitspraak baie vroeër gelewer sou word, was dit ongelukkig nie die geval nie. Na oorweging het die regter die aansoek om die Tersydestelling saak oor te plaas, wat deur die twee Georgiou seuns teengestaan is, geweier en dit met koste op 'n prokureur-en-kliënt-skaal van die hand gewys.

3.4 Sleutelpunte van die Uitspraak:

Aansoek om Oordrag:

Die nominale aansoekers van die HSAG het gevra om die saak na die Pretoria Hooggeregshof oor te plaas. Die HSAG het aangevoer dat logistieke en praktiese oorwegings die Pretoria-hof meer geskik maak om die uitgebreide dokumentasie, oorvleueling van sleutelkwessies, betrokke partye en bewyse in die saak te hanteer.

Regterlike Beredenering:

Die Edele Regter het bevind dat artikel 27(1) van die Wet op Hoër Howe “'n hof 'n diskresie verleen, selfs al bevind die hof dat dit meer gerieflik of meer gepas sou wees as die saak by 'n ander setel van die Afdeling beslis word”. Die Pretoria Hooggeregshof is die hoof setel van die Gauteng Afdeling. Die hof het verder die siening gehuldig dat dit nie nodig was vir haar om die verskillende beweerde oorvleuelende faktore waarop die aansoekers voor haar gesteun het, te behandel nie.

Die hof het ook bevind dat in die DECA-saak en die Oorplasingssaak, “terwyl hulle almal lede van die HSAG is, verskil die individuele aansoekers self en die aansoekers in die DECA Aansoek is nie dieselfde as dié in die Tersydestelling of Oorplasingaansoek nie”. “Die respondente in die DECA-saak is egter ook respondente in die Tersydestelling Aansoek”.

Die hof het ook bevind dat die DECA-saak gereed is om aangehoor te word en vir Mei 2024 toegewys is (hierdie saak is egter tot 'n ander toekomstige datum uitgestel).

Die Georgiou-seuns (wat deur die Tersydestelling Aansoek kwytgeskeld is) het aangevoer dat die Oorplasingaansoek 'n poging is om die verhoor van die DECA-

saak te ontspoor. Die hof het ook die lang tydperk wat verloop het sedert die Tersydestelling Aansoek ingestel is tot die verhoor van die Oorplasingaansoek hanteer en verder verklaar dat indien daar geen Oorplasingaansoek is nie, die Tersydestelling Aansoek “ongeveer 6 weke na die lewering van die laaste stel Argumente in die [Johannesburg Hooggeregshof] aangehoor kan word”. Verdere beredenering het verwys na prosedurele aspekte, insluitend die kennisgewing wat aan HS-beleggers gegee moet word.

Die hof het bevind dat daar geen meriete is in die argument dat die Tersydestelling Aansoek en onderliggende eise in die pad staan van die DECA-saak nie. Die Skikkingsooreenkoms (Tersydestelling Aansoek) saak verleen immuniteit aan die Georgiou-seuns.

Die hof het ook bevind dat die Eerste Respondent (Orthotouch) “in Fourways woonagtig is, wat hierdie hof (Johannesburg Hooggeregshof) die geriefliker forum maak vir die relevante respondent.”

Die hof het ook bevind dat “dit ongetwyfeld 'n vertraging aan die DECA Aansoek sal veroorsaak indien [die hof] die Oorplasing van die Tersydestelling Aansoek na die Pretoria Hof sou beveel.”

Die hof het beveel dat koste op die prokureur-en-kliënt-skaal gelas moet word, een van die “redes synde dat die aansoekers versuim het om aan Spilg R se uitspraak te voldoen ten opsigte van betekening en kennisgewing aan die belanghebbende partye”. Die hof het saamgestem “dat bestraffendekoste geregverdig is in die lig van die afwesigheid van kennis aan die belanghebbende partye, ondanks die bevel van Spilg R in hierdie verband”. Die bevel van Spilg R lui soos volg (p15, ii): “Gee kennis aan alle beleggers waarna in die funderende stukke in die hoofaansoek verwys word deur: 1. Publikasie van 'n kennisgewing in die Sunday Times, die City Press en Rapport koerante minstens drie weke voor die verhoor;” (eie beklemtoning). Hierdie datum kan slegs verkry word sodra 'n verhoordatum vasgestel is, wat nog nie moontlik was nie.

Kortom, haar Edele Regter Crutchfield het die redes wat vir die Oorplasing aangevoer is, geëvalueer. Die regter het die juridiksionele relevansie, gerief vir die meerderheid van die betrokke partye en die doeltreffendheid van saakbestuur oorweeg. Ten spyte van hierdie oorwegings het die regter tot die gevolgtrekking gekom dat die Johannesburg Hooggeregshof ten volle in staat is om die saak effektief te hanteer.

4. TERUGVOERING OOR DIE DECA-VERHOOR

In 'n beduidende ontwikkeling gedurende die week van 13-17 Mei 2024, het die voortgesette litigasie wat die belangrike tydperk tussen 2014 en 2018 van die Ontvanger van Orthotouch, Mnr. Derek Pedoe Cohen (die 14de Respondent), behels, onder die soeklig gekom, aangesien hy daarop aangedring het dat die saak teen hom apart van die ander Respondente aangehoor word. Hieronder is 'n opsomming van die onlangse ontwikkelings.

4.1 Gebeure Voor en Gedurende die Verhoor (13-17 Mei 2024):

Kennisgewing van Mosie Ingedien:

Toe dit duidelik geword het dat die sekwestrasie van Mnr. Nic Georgiou se bestorwe boedel die saak sal vertraag, is 'n Kennisgewing van Mosie op 8 Mei 2024 namens die Aansoekers ingedien. Hierdie mosie het 'n koste bevel teen die respondente versoek wat, ten spyte van die staking van verrigtinge, daarop aangedring het dat sekere aspekte van die saak op 13 Mei 2024 aangevoer word.

Doel van die Beëdigde Verklaring:

Die beëdigde verklaring wat saam met die Kennisgewing van Mosie ingedien is, het drie hoofaspekte beloop:

- **Aangehegte Relevante Korrespondensie:** Die beëdigde verklaring sluit belangrike korrespondensie in wat die basis van die HSAG se aansoek gevorm het. Die doel hiervan was om te voorkom dat onnodige koste aangegaan word.

- Inligting oor Verwickelings: Dit het die hof op hoogte gehou van onlangse ontwikkelings wat die respondente beïnvloed teen wie die koste bevel gesoek word.
- Verduidelik Regshulp Versoek: Dit verduidelik die regshulp wat die HSAG versoek het en die redes daarvoor.

Kronologie van Gebeure:

- 24 April 2024: Tydens 'n Saakbestuursvergadering het sekere respondente aangedring op voortsetting van die verhoor. Die HSAG het daarop gewys dat dit nie kon voortgaan sonder die Eerste Respondent (Boedel van wyle Nic Georgiou in voorlopige sekwestrasie), en het die koste-implikasies beklemtoon.
- 27 April 2024: Trustees van die voorlopige sekwestrasieboedel van wyle Nic Georgiou het Michael Georgiou se prokureurs ingelig dat die eksekuteur van wyle Nic Georgiou onbeskikbaar was en nie uitgebreide magte vir litigasie gehad het nie.
- 30 April 2024: Hans Klopper se prokureurs het in korrespondensie voorgestel dat verrigtinge gestaak word om beduidende koste te vermy.
- 9 Mei 2024: Michael Georgiou en Jacques du Toit se prokureurs het bevestig dat hulle nie met die verhoor sou voortgaan nie.
- Al die partye, behalwe die 14de Respondent, Derek Pedoe Cohen, het op die datum van die verhoor (13 Mei 2024) bevestig dat die saak nie voortgesit word nie en uitgestel word.

4.2 Mnr. Cohen se Teenkanting en Reaksie op Sy Beëdigde Verklaring:

Mnr. Cohen het daarop aangedring dat sy saak op 13 Mei 2024 aangehoor word. Daarbenewens het hy ook sy Hoofde van Betoog op die dag van die verhoor ingedien, en verder aangedring dat sy saak van al die ander Respondente geskei word. Die Hofreëls bepaal dat 'n respondent sy Hoofde van Betoog 10 dae na die indiening van die Hoofde deur die Aansoekers moet indien. Daarbenewens het hulle ook 'n Aansoek ingedien ten opsigte van die Skeiding van sy saak van die ander Respondente. Die Aansoekers het vasgestel dat 'n beëdigde verklaring rakende Mnr. Cohen se antwoord uitstaande was en het dit aangespreek. Hierdie beëdigde verklaring het grootliks

verwys na dokumente wat reeds voor die hof was, wat tydens argument hanteer sou word.

4.3 Skeiding van Mnr. Cohen se Saak:

Die bogenoemde aansoeke is uitgestel tot Vrydag, 17 Mei 2024. Nadat die HSAG 'n aansoek by die hof ingedien het om 'n verdere beëdigde verklaring in te dien (wat versoek geweier is), het Mnr. Cohen se regsverteenwoordiger aansoek gedoen vir die skeiding van sy saak. Die HSAG het aangevoer dat daar baie faktore is wat nie 'n skeiding regverdig nie, onder andere dat Cohen nie 'n afskrif van die likwidasie- en distribusierekening aan die beleggers verskaf het nie, en slegs inspeksie by Orthotouch se kantore toegelaat het. Hierdie gebrek aan deursigtigheid het die beleggers se vermoë om 'n volledige rekord aan die hof voor te lê, belemmer. Mnr. Cohen se rol in die SoA is ook betwis, aangesien hy verantwoordelik was vir die implementering van die ooreenkoms, maar versuim het om dit te doen, wat gelei het tot beduidende verliese tussen 2014-2018 vir beleggers.

4.4 Gevolgtrekking:

Die Aansoekers het dus regshulp teen Mnr. Cohen versoek en sy versuim om sy verpligtinge na te kom en sy rol in die verdwyning van beleggersfondse, uitgelig. Die HSAG het daarop aangedring dat hy steeds deel vorm van die ketting van gebeure waar HS beleggers miljarde rande verloor het. Die HSAG herbevestig sy verbintenis om geregtigheid vir die HSAG-lede te soek en die onregte wat hulle in die gesig gestaar het, aan te spreek. Die hof het uitspraak voorbehou.

5. WHATSAPP-GESPREEKKE ONDER HSAG-LEDE

Soos altyd tydens verhore in litigasie, word 'n hoër vlak van paraatheid en onsekerheid onder sommige van ons lojale HSAG-lede ervaar, soos blyk uit ons onlangse WhatsApp-groepgesprekke. Ons verstaan en deel die frustrasie en teleurstelling wat baie ondersteunende lede ervaar, veral as gevolg van die lang wag vir 'n finale reguitkoms.

Bydraende lede het hul bekommernisse uitgespreek oor die aanhoudende vertraging en die finansiële druk wat hulle ervaar, terwyl ander probeer het om hoop te behou en positiewe denke aan te moedig. Dieselfde gevoelens word gedeel deur die HSAG Bestuur, PR, en regspan.

Hier is 'n paar punte wat ons graag wil aanspreek:

- Regstappe en Uitkomste: Daar is 'n bekende term in die reg wat sê: Die wiele van geregtigheid draai stadig maar seker. Dit is presies waar ons onself bevind, en die woord “pynlik” kan ook bygevoeg word. Ons waardeer dus die drang na finaliteit.
- Een ding wat op hierdie tydstip uitstaan (en dit is amper so sedert die begin van ons hofsake) is dat, ondanks die groot getalle van geregistreerde HSAG-lede, slegs 'n klein gedeelte van daardie lede die HSAG finansiël ondersteun.
- Ons hulpbronne is dus uiters gesny en beperk, en ons het maand na maand gepleit dat ons groot aantal lede finansiël moet bydra om die beste moontlike reg verteenwoordiging te verseker.
- Ten spyte hiervan, en hoewel ons reg verteenwoordigers onverpoosd werk om die beste moontlike uitkoms te verseker, is dit geen maklike taak as jou hulpbronne beperk is nie. Ons teenstanders het groot hulpbronne. 'n Groot gedeelte bestaan uit die opbrengs van beleggings wat deur HS-beleggers gemaak is. Trouens, ons lede word inderdaad met hul eie beleggingsgelde beveg!
- Die kompleksiteit van die sake, saam met die aanhoudende opposisie van die Georgiou-familie en hul medewerkers, maak vinnige oplossings uiters moeilik en amper onmoontlik.

Geduld en Volharding:

- Ons waardeer die geduld en ondersteuning van ons lojale lede. Dit is herhaal deur baie lede wat gesê het dat dit belangrik is om geduldig en volhardend te wees.

- Ons is by 'n baie belangrike kruispad op ons lang pad, en nou meer as ooit is dit nodig om ons vertrouwe in die proses en in ons regstelsel te behou.

Kommunikasie en Opdaterings:

- Soos voorheen, sal ons voortgaan om gereelde opdaterings deur ons maandelikse nuusbrief te verskaf en enige belangrike ontwikkelings so vinnig as moontlik met julle te deel.
- Ons verstaan dat deursigtigheid en gereelde inligting noodsaaklik is om onsekerheid te verminder.

Finansiële Behoeftes:

- Ons erken die dringende finansiële behoeftes van baie van ons lede en doen ons uiterste bes om die beste moontlike uitkoms met die beskikbare hulpbronne te bereik. Egter, in die lig van ons groot getalle wat die basis van ons befondsingsmodel vorm (wat deur die Hooggeregshof goedgekeur is), maak die gebrek aan finansiële ondersteuning van die nie-bydraende lede die posisie van die HSAG ondraaglik, en tensy drastiese stappe geneem word, sal die befondsingsmodel uiteindelik misluk.

6. TEENSTANDERS MET DIEP SAKKE

Dit is van kritieke belang om die dinamika tussen litigerende partye te verstaan, veral wanneer een 'n goed befondsde teenstander is (soos in ons geval) en die ander bestaan uit ontnemende bejaarde litigante. Die verduideliking hieronder sal waardevolle insigte bied in die uiteenlopende uitdagings en dinamika wat deur hierdie kontrasterende groepe ervaar word.

In die konteks van die voortgesette regsgeskilte wat in ons nuusbriewe uitgelig word, is dit noodsaaklik om die implikasies van litigasie teen teenstanders met beduidende finansiële hulpbronne te verstaan. Wanneer jy te staan kom teen teenstanders soos

die Georgious, wat oor aansienlike fondse beskik, word hofgedinge inherent moeiliker. Hierdie uitdaging word vererger deur die uiters ingewikkelde en komplekse finansiële strukture wat in die proses opgestel is en nou ontwrig moet word.

Boonop kan teenstanders met oorvloedige finansiële hulpbronne regsgekille verdrag deur talle mosies, appèlle en ander regs maneuvres in te stel. Hierdie taktiek verdrag nie net die oplossing van die saak nie, maar verhoog ook die finansiële las op die opponerende party (HS-beleggers), soos gesien in ons voortgesette litigasie teen die Georgious.

Strategiese skikkingsaanbiedinge is nog 'n algemene taktiek wat deur goed befondsde teenstanders gebruik word. Hierdie aanbiedinge kan swakpunte in iemand se saak uitbuit of voordeel trek uit hul finansiële beperkings, en druk uitoefen om minder gunstige terme te aanvaar (wat tans die geval is – bv. 5c in die Rand) as wat deur voortgesette litigasie verkry kan word.

In ons saak teen die Georgious en hul medewerkers is 'n besonder bedenklike strategie in die onderhandeling van skikkings tot dusver gevolg. Wyle Nic Georgiou het beweer dat hy slegs bereid was om in skikkingonderhandelinge te tree met lede van die groepsaksie wat op hul foie aan die HSAG opbetaal is. Sedert Georgiou oorlede is, het sy opvolgers soos Jacques du Toit en sy seuns geen poging aangewend om kommersieel te skik nie, maar eerder geveg tot die bitter einde.

Georgiou se selektiewe benadering was nie moeilik om te verstaan nie. Dit skik effektief die finansiële sterk eise en plaas druk op die res (wat nie finansiële sterk is nie) om voort te gaan met die litigasie. Hierdie benadering ondermyn die solidariteit onder die HS-lede en plaas diegene wat steeds die regsgeging befonds buite die speelveld. In werklikheid sal 'n skikking van betaalde lede ongetwyfeld tot die ondergang van die groepsaksie lei. Tot dusver is geen skikkings bereik nie, wat gelei het tot die voortsetting van die litigasie.

Ten spyte van ons teenstanders wat diep sakke het, het hulle tot nou toe nie daarin geslaag om die HSAG groepsaksie te stop nie.

7. OM IEMAND “UIT TE LITIGEER”

In die voortgesette regsgelede wat die HSAG en hoofsaaklik die Georgious behels, het nog 'n kommerwekkende taktiek oor die jare na vore gekom, naamlik die doelbewuste maar subtiele poging deur ons teenstanders en hul volgelinge om die hulpbronne van die HSAG te frustreer en uit te put, veral deur die Georgious. Hierdie strategie manifesteer in verskeie vorme, elk gemik op die vertraging van die regsgelede en die skep van nadele vir die HSAG.

Een so 'n taktiek was, sedert die begin, die gebruik van vertragingstaktieke waar die Respondente voortdurend tussentydse mosies en appèlle ingedien het om verrigtinge te verleng en om die hulpbronne van die HSAG te dreineer. Net so is ontdekkings misbruik ingevolge Reël 35(12) om die HSAG te oorlaai met oormatige versoeke om inligting, wat hulle oorweldig en 'n nadeel skep. Hierdie sake het voor die hof gedien met negatiewe uitkomst vir die respondente.

Nog 'n taktiek was “leë skikkingsaanbiedinge”, waar Nic Georgiou, en daarna Helgard Hancke, gebruik gemaak het om swakpunte onder die HSAG-lede uit te buit om voordeel te trek uit hul finansiële beperkings, en hulle gedwing het om “skikkings” met ongunstige voorwaardes te aanvaar. In baie gevalle het die betrokke HS-beleggers teruggekom en ons ingelig dat hulle nie 'n enkele sent van die beloofde skikking ontvang het nie.

Prosedurele manewales, soos die uitbuiting van tegniese punte, is ook ontwerp om sake vir die HSAG verder te bemoeilik.

Die praktyk om teen kwesbare bejaardes te litigeer, stel beduidende uitdagings, deur hul unieke omstandighede en kwesbaarhede uit te buit. Anders as om bloot oneties te wees, het bejaarde litigante dikwels nie die insig, krag of finansiële middele om langregsgedinge te deurstaan nie, wat hulle maklike teikens vir uitbuiting maak.

Egter, en tot dusver te midde van hierdie uitdagings, kon die HSAG krag vind in sy getalle. Een benadering om sulke litigasiestormlope te oorleef, is deur ons kollektiewe

krag te benut om te verseker dat ons nominale regs-koste wat betaalbaar is, aansienlik kleiner is as meer mense tot op datum betaal is. Hierdie strategie verdeel die totale fooie onder die meerderheid, verminder die las op individuele lede en verhoog ons veerkragtigheid teen pogings om die HSAG finansieel uit te put.

Verder, terwyl ons standvastig bly in ons strewe na geregtigheid, moet ons ook oop bly vir onderhandelings. Onderhandelings moet nooit buite rekening gelaat word nie, maar moet billik en regverdig wees, anders as die aanbiedings wat tot dusver deur die Georgious en Hancke aangebied is. Deur hierdie standpunt te handhaaf, kan ons deur die regslandskap navigeer met integriteit terwyl ons streef na 'n oplossing wat die regte en belange van alle HSAG-lede handhaaf.

In die lig van die voortgesette regsgeskilte wat die HSAG en sy lede betrek, is dit noodsaaklik vir ons lede om die verskillende opsies wat tot hul beskikking is tydens hierdie moeilike tye te verstaan. Die beskikbare opsies is:

Eerstens het ons die opsie om ons ledegeld te bly betaal en voort te gaan met ons regstappe in die hof. Hierdie roete vereis deursettingsvermoë en finansiële toewyding, maar dit stel ons in staat om ons beginsels te handhaaf en geregtigheid deur die regstelsel te soek.

Tweedens is daar die moontlikheid om skikkings met die opponerende partye te onderhandel. Dit is egter van kardinale belang om sulke onderhandelings versigtig en met 'n duidelike begrip van die potensieële gevolge aan te pak. Om 'n skikking te aanvaar wat slegs 'n fraksie van wat ons verdien bied, kan die integriteit van ons saak in gevaar stel en die pogings van die HSAG ondermyn. Ten spyte hiervan het die HSAG reeds so lank gelede as 2016 in bona fide onderhandelings met wyle Nic Georgiou getree.

Laastens is daar die alternatief om aan te dring op die likwidasië van die betrokke maatskappye, naamlik Orthotouch en Zephan. Hierdie roete mag tans ons beste kans bied om 'n gunstige uitkoms te verseker, aangesien likwidasië potensieël meer aansienlike opbrengste vir ons lede kan oplewer.

Ook, ten spyte van die Georgious se poging om die HSAG uit te litigeer, het hulle tot dusver nie daarin geslaag nie en, met julle hulp, sal hulle nie daarin slaag om dit te doen nie.

***VRYWARING**

As u dit per ongeluk / verkeerdelik ontvang het, stel asseblief die versender onmiddellik in kennis by hsagenquiries@gmail.com 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 onakkurate inligting of enige veranderinge van u persoonlike en/of kontakbesonderhede asook dat die inhoud van u maandelikse state korrek is.

8. BELANGRIK: GEBRUIK VAN KORREKTE REKENINGNOMMERS EN VERWYSINGS.

HSAG lede wie in beide HSAG en CCAF is, moet asseblief by beide die HSAG en CCAF se epos-adresse enige verandering aanmeld, hetsy afsterwe van 'n lid, verandering van 'n e-pos-adres, selfoonnommer of woonadres.

Lede word daaraan herinner om te let op die verwysingsnommers soos vervat op hul state. Opvragings moet deur lede in die korrekte rekening inbetaal word met die korrekte verwysingsnommer daarby aangeheg. Die tyd, moeite en administrasie wat dit die HSAG se regspraak kos om elke foutiewe betaling te korrigeer ly daartoe dat die HSAG saak onnodig duur word.

Rekeningnommers en verwysings word op elke staat aangebring en ons versoek dat lede asseblief hul state noukeurig deurgaans maak wanneer hulle betalings maak.

Indien jy jou bedrag in 'n verkeerde rekening inbetaal het, stuur 'n e-pos met 'n versoek om die bedrag na die korrekte rekening oor te dra, en onthou om jou bewys van betaling by die e-pos aan te heg.

Indien u die bedrag in bv. CCAF Trustrekening 3 inbetaal het, maar die bedrag was bedoel vir u HSAG Trustrekening 2, of anders om.

Betalings verkeerd in CCAF betaal, stuur e-pos na admin@ccaf.co.za.

Betalings verkeerd in HSAG betaal, stuur epos aan hsactiongroup@gmail.com

9. ALGEMENE NAVRAE

'n Navraag wat ons gereeld kry is aangaande oordrag van aandele, na 'n geliefde se afsterwe. Ons wil almal graag herinner dat dit deur Orthotouch gedoen word. Dit is die maatskappy wat die aandele se oordrag behartig en dit is eers ná ons 'n dokument, deur hulle uitgereik, wat aandui dat die aandele in 'n nuwe naam oorgedra is, ontvang het, wat ons dit op ons stelsel kan verander. Ons is ook bewus van die feit dat dit in besigheidsredding is – dit behoort egter geen impak op hul werkswaardigheid te hê nie een ons vra dat almal hulle op dié epos kontak: admin@orthotouch.co.za.

Oor jare het sommige mense se eise vermeerder tot 'n bedrag groter as die aanvanklike beleggings wat in die Hoëveld Sindikasie belê is, weens die feit dat hulle onder andere beleggings vanaf hulle ouers die geërf het. Lede moet baie seker maak dat hulle dokumente en sertifikate wat die oordrag bewys lewer, aangesien dit

uiteindelik by die bewys van die verhoogte eisbedrag gaan nodig word. Op hierdie stadium aanvaar ons mense se waarde van hul belegging op grond van hul skriftelike bewyse.

Laastens, neem asseblief kennis dat indien geen betalings oor 'n lang tydperk deur u gemaak is nie, dit moontlik is dat vorige trustopvragings en betalings nie op die staat gereflekteer kan word nie.

10. BELANGRIK: GEBRUIK VAN KORREKTE E-POS ADRESSE

Die korrekte gebruik van e-pos adresse (soos vervat op ons webtuiste en e-posse) asook HSAG-lede se voorletters en van, sindikasiennommers en verwysingsnummers (bv. identiteitsnommer ens.) vir alle kommunikasie, is uiters noodsaaklik en verpligtend. Versuiming om hieraan te voldoen kan die gevolg hê van onnodige vertraging of dat u geen antwoord sal ontvang nie.

Die amptelike en bestaande e-pos adresse vir die HSAG, is as volg:

- **hsactiongroup@gmail.com** vir alle Algemene Navrae (Bv. – selfoon of adres veranderinge, betalingsbewyse, betalings foutiewelik in HSAG Trust Rek 2 betaal het, foutiewe verwysing gebruik het ensovoorts);
- **hsagenquiries@gmail.com** vir Spesifieke Navrae (Bv. – navrae rakende besonderhede van 'n spesifieke belegger, navrae rakende kwytstelling van 'n spesifieke belegger, ensovoorts);
- **hsagregister@gmail.com** vir die Registrasie en Deregistrasie (indien 'n lid uit die klas-aksie wil onttrek), sowel as kennis van lede wie gesterf het;
- **hsagwhistle@gmail.com** vir alle Vertroulike Inligting wat anoniem aan ons gestuur moet word;
- **hsagstates@gmail.com** vir alle Boedel navrae.

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

- **accounts@ccaf.co.za** vir betalingsbewyse, foutiewe verwysing op betalings bewyse;

- **admin@ccaf.co.za** vir die amptelike versoek vir afbetaling-vorm, sowel as onttrekkings, betalings foutiewelik aan CCAF Trust Rek 3 , onttrekking uit CCAF;
- **enquiries@ccaf.co.za** vir ander CCAF navrae, bv. navrae oor state wat nie ontvang is nie.
- 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: MAY 2024

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. (SEE OUR DISCLAIMER HEREUNDER*)

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.

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1 INTRODUCTION

Dear HSAG members,

Welcome to our latest newsletter, where we bring you crucial updates and insights into our ongoing class action litigation. As we steer through this pivotal year, our collective strength and determination continue to be tested. This edition covers significant developments, including two recent court cases, ongoing financial contributions, and the persistent efforts of our legal team.

We are reaching out once again for your crucial support and contributions. Every bit of assistance brings us closer to achieving justice and financial relief for all members.

Thank you for standing with us and for your firm commitment to our cause.

2 WAY FORWARD

The first part of this year was a very important landmark in our class action litigation, as the strength, co-operation, teamwork and responsiveness of the HSAG were tested. Firstly, it was the Transfer Application that was heard in January 2024, and shortly thereafter the DECA case. Both matters were extremely important and an appeal was made month after month to the HSAG members to assist with their annual payments.

The first matter is important because there is a huge overlap between this matter (Setting Aside of the Scheme of Arrangement [“SoA”]) and the second matter, DECA (Derivative Class Action) against the respondents who are claimed to be responsible for the demise of the HS 15-22 companies. This matter was enrolled in middle May. However, despite continuous requests to members to make their outstanding contributions, only a small portion adhered thereto. In litigation of this nature, time is extremely important and if the members of the class do not co-operate, valuable ground may be lost, which will not easily be recovered.

We are therefor again reaching out with an urgent plea for your support. As you know, the success of our class action still relies heavily on the collective effort of the class and contributions of all 6,800 members, regardless the size. Our chosen funding model, approved by the Pretoria High Court, was designed to ensure that each member contributes only a small amount over a period of time, leveraging the strength of our large numbers.

The Current Situation:

Only a fraction of our members has paid their dues. Without the necessary funds, our class action will inevitably die a slow death, and the respondents will walk away without any consequences. It would be a tragic outcome for our class action to come so far, only to fall short due to a lack of financial support.

The Importance of Your Contribution:

We need every member's cooperation, whether big or small. An enormous amount of work has already been done, and we can see the significant impact it has made so far. However, without sufficient funds, our class action vehicle does not have the fuel to reach the end.

The Reality:

The courts will not help the HS Investors merely out of sympathy or due to the principals of natural justice, without adequate representation. Furthermore, adequate representation requires the necessary resources and support.

A class action of this nature, involving billions of rand, is undoubtedly a first against a private individual / family accused of mismanaging billions of rand. We can pride ourselves that we were under the first 10 class actions to be certified in South Africa (CCAF), but this also not enough to complete the marathon.

If we are unable to secure the best possible legal representatives with supporting team, the respondents will continue to use every technical defence to delay the proceedings. We therefore need a large number of members to bring their trust requisitions up to date, to keep moving forward. The majority, by far, of every member reading this newsletter, have not complied with our request.

The Steering Committee will seriously evaluate what advantages could be awarded to members who adhere to this request for the predicament that we find ourselves.

Why Your Support Matters:

- **Collective Strength:** Each small contribution adds up to a powerful force, ensuring that our legal battle can continue.
- **Justice for All:** Your support helps ensure that the respondents face the consequences of their actions, providing justice for all members.
- **Sustaining the Fight:** The work done so far has laid a strong foundation. Continued support will ensure we can see this through to the end.

How You Can Help:

Please make your annual contributions to the HSAG war-chest today. Every bit counts and brings us one step closer to achieving our shared goal of justice and financial relief for all members.

Conclusion:

Let us not allow our class action to fail at this crucial point. Together, we can make a difference and ensure that our collective efforts do not go in vain.

Thank you for your continued support and commitment to our cause.

3 FEEDBACK ON JUDGE CRUTCHFIELD

3.1 Summary of HSAG's Heads of Argument

The Applicants' Heads of Argument (HSAG) sought to transfer the Main Application (Setting Aside) from the Johannesburg High Court to the Pretoria High Court. The primary reason for the transfer is the significant overlap in facts and legal issues between this case and the related DECA application, both involving the Highveld Syndication 15-22 companies.

The Transfer aims to avoid duplicative hearings and conflicting judgments. The papers highlight the convenience and appropriateness of having both matters heard in Pretoria, arguing that this would save time, resources, and ensure consistent High Court rulings. The Applicants emphasised that no prejudice will result from the transfer and request a cost order against the opposing Respondents. Only the two Georgiou sons (of whom none of them opposed the Setting Aside Application) opposed the Transfer Application.

3.2 Summary of Overlap

The HSAG submits that, on the evaluation of the affidavits from both the Setting Aside Application and the Derivative Action, numerous overlapping factual issues are present, that underscore the interconnected nature of the two legal proceedings.

These overlaps highlight recurring themes of financial mismanagement, breaches of duty, and unethical behaviour by those in charge or looking after the affairs of the companies, company executives and others, which form the basis of both cases.

One of the primary overlaps is the mismanagement of funds. Both affidavits detail instances where company funds were not utilised in the best interest of the HS companies and shareholders. This includes unauthorised transactions and improper use of company assets (immovable properties), which are significant concerns in both legal actions.

Another critical issue is the breach of fiduciary duty. Both cases outline numerous instances where executives failed to act in the best interest of the HS companies and its shareholders. This includes conflict of interest instances where personal gains of the Georgious and others were prioritised over company welfare, leading to decisions that compromised the company's financial health.

Unauthorised transactions are repeatedly relevant in both cases. These include unapproved financial deals and loans that did not follow proper corporate governance procedures.

This pattern of behaviour points to a systemic issue within the companies' management practices, where proper oversight and authorisation processes were frequently circumvented.

False or no financial reporting and misleading investors are significant overlapping issues. Both cases point to how financial statements and public disclosures were manipulated or falsified to present a more favourable picture of the companies' financial health, to the point that "a Business Rescue Practitioner" was appointed to "save" the companies from liquidation.

This deception not only misled investors but also violated regulatory requirements, thus compromising the integrity of the companies' operations.

The two matters also emphasise the failure to comply with corporate policies and inadequate record-keeping.

These failures are indicative of a lack of adherence to standard corporate governance practices, which are essential for maintaining transparency and accountability within any organisation.

Another common issue is the improper use and disposal of company assets. This includes instances where company resources were used for personal benefits or in ways that did not contribute to the companies' objectives. Such misuse of assets not only impacts the companies' financial status but also eroded trust among shareholders and stakeholders, which lead to the current litigation.

Both cases detail the failure to disclose material information and violation of buy-back and other agreements. These actions demonstrate a clear disregard for the rights and expectations of the HS investors, further compounding the issues of trust and governance within the companies. Improper financial controls and inadequate internal controls are also prevalent in both cases.

The matters highlight how weak financial oversight allowed for numerous irregularities and unethical practices to go unchecked. This lack of control is a significant factor contributing to the financial mismanagement and fraudulent activities detailed in both cases. Lastly, fraudulent activities and non-compliance with regulatory requirements are critical overlapping issues.

Both matters provide evidence of actions that not only violated internal policies but also breached external legal and regulatory standards. This non-compliance has significant legal implications and emphasises the need for a thorough investigation and rectification of the companies' governance practices by the same court.

In summary, the overlapping issues between the Setting Aside Application and the Derivative Action are extensive and highlight a pervasive pattern of financial mismanagement, breaches of fiduciary duty, and unethical behaviour and it is unfortunate that the court not take these overlapping issues into account (see elsewhere).

3.3 Judgment

On May 14, 2024, Honourable Madam Crutchfield J delivered her written judgment in the Transfer of the Setting Aside case. The judgment addressed the applicants' request to transfer the matter from the Johannesburg High Court to the Pretoria High Court. The matter was heard on 22 – 23 January 2024 and judgment delivered on 06 May 2024 with written reasons delivered on Tuesday, 14 May 2024. This was a day after the DECA case commenced and was postponed to March 2025. Although the HSAG anticipated the judgment to be delivered much earlier, this was unfortunately not the case. After consideration, the judge refused the application for the Transfer of the Setting Aside case, opposed by the two Georgiou sons, and dismissed it with costs on an attorney-client scale.

3.4 Key Points of the Judgment:

Application for Transfer:

The nominal applicants of the HSAG sought to transfer the case to the Pretoria High Court. The HSAG argued that logistical and practical considerations made the Pretoria court more suitable for handling the extensive documentation, overlapping of key issues, parties involved and evidence involved in the case.

Judicial Reasoning:

The Honourable Judge found that section 27(1) of the Superior Courts Act grants “a court a discretion, even if the court finds that it would be more convenient or more appropriate if the matter be determined at another seat of the Division”. The Pretoria High Court is the main seat of the Gauteng Division. The court further took the view that it was not necessary for her to traverse the various alleged overlapping factors relied upon by the applicants before her.

The court also found that in the DECA case and the Transfer case, “whilst they are all members of the HSAG, the individual applicants themselves differ and the applicants in the DECA Application are not the same as those in the Setting Aside or Transfer Application”. “The respondents in the DECA case are however also respondents in the Setting Aside Application”.

The court also found that the DECA case is ready to be heard and allocated for May 2024 (however, the matter was postponed to another future date).

The Georgiou sons (who were indemnified by the Setting Aside Application) contended that the Transfer Application is an attempt to derail the hearing of the DECA case. The court also dealt with the long period that lapsed since the Setting Aside Application was instituted until the hearing of the Transfer Application and further stated that if there is no Transfer Application, then the Setting Aside Application “can be heard in [Johannesburg High Court] approximately 6 weeks from the delivery of the last set of Heads of Argument”. Further reasoning referred to procedural aspects including the notice that must be given to HS investors.

The court found that there is no merit in the argument that the Setting Aside Application and underlying claims stands in the way of the DECA case. The Scheme of Arrangement (Setting Aside Application) case indemnifies the Georgiou sons.

The court also found that the First Respondent (Orthotouch) “resides in Fourways, making this court (Johannesburg High Court) the more convenient forum to the relevant respondent.”

The court also found that “it would undoubtedly cause a delay to the DECA Application if [the court] were to order the Transfer of the Recession Application to the Pretoria Court.”

The court ordered that cost should be ordered on the attorney and client scale, one of the “reasons being that the applicants failed to comply with Spilg J’s judgment in respect of service and notice to the interested parties”. The court agreed “that punitive costs are justified in the face of the absence to the notice of the interested parties, despite the order of Spilg J in this regard”. The order of Spilg J reads as follows (p15, ii) : “Give notice to all investors referred to in the founding papers in the main application by: 1. Publication of a notice in the Sunday Times, the City Press and Rapport newspapers at least three weeks before the hearing;” (own emphasis). This date can only be obtained once a trial date has been set down, which was not possible yet.

In short, the Honourable Madam Crutchfield J evaluated the reasons presented for the Transfer. The judge considered the jurisdictional relevance, convenience for the majority of parties involved, and the efficiency of case management. Despite these considerations, the judge concluded that the Johannesburg High Court was fully capable of managing the case effectively.

4 FEEDBACK ON DECA HEARING

In a significant development the week of 13-17 May 2024, the ongoing litigation involving the crucial period between 2014 and 2018 of the Receiver of Orthotouch, Mr. Derek Pedoe Cohen (the 14th Respondent), came under the spotlight, as he insisted that the matter against him be heard separately from the other Respondents. Below is a summary of the recent developments.

4.1 Events Prior To and During The Hearing (13-17 May 2024):

Notice of Motion Filed:

When it became apparent that the sequestration of the late Mr. Nic Georgiou's estate will delay the case, a Notice of Motion was filed on 8 May 2024 on behalf of the Applicants. This motion sought a costs order against those Respondents who, despite the stay of proceedings, insisted that certain aspects of the matter be argued on 13 May 2024.

Purpose of the Affidavit:

The affidavit filed alongside the Notice of Motion served three main purposes:

- **Attached Relevant Correspondence:** The affidavit includes important correspondence that formed the basis of the HSAG's application. The purpose hereof was to prevent that unnecessary costs be incurred.
- **Inform of Developments:** It updated the court on recent developments affecting the Respondents against whom the cost order was sought.
- **Clarify Relief Sought:** It explains the relief the HSAG was seeking and the reasons behind it.

Chronology of Events:

- **24 April 2024:** During a Case Management meeting, certain Respondents insisted on proceeding with the hearing. The HSAG pointed out that it could not proceed without the First Respondent (Provisionally insolvent estate of the late Nic Georgiou), and highlighted the cost implications.
- **27 April 2024:** Trustees of the provisionally insolvent estate of the late Nic Georgiou informed Michael Georgiou's attorneys that the executor of the late Nic Georgiou was unavailable and lacked extended powers for litigation.
- **30 April 2024:** Hans Klopper's attorneys suggested in correspondence that proceedings be stayed to avoid significant costs.
- **9 May 2024:** Michael Georgiou and Jacques du Toit's attorneys confirmed they would not continue with the hearing.

- All the parties, except the 14th Respondent, Derek Pedoe Cohen, confirmed on date of hearing (13 May 2024) that the matter not be continued with and be postponed.

4.2 Mr Cohen's Opposition and Response To His Affidavit:

Mr. Cohen insisted that his matter be heard on the 13th of May 2024. Besides that, he also filed his Heads of Argument on the day of the hearing, and furthermore insisted that his matter be separated from all the other Respondents. The Court Rules state that a Respondent must file his Heads of Argument 10 days after the filing of the Heads by the Applicants. Besides this, they also brought an Application in respect of Separation of his case from the other Respondents. The Applicants ascertained that an affidavit relating to Mr Cohen's answer was outstanding and addressed it. This affidavit largely referenced documents already before the court, which were to be dealt with during argument.

4.3 Separation of Mr. Cohen's Matter:

The above matters stood down until Friday, 17 May 2024. After the HSAG applied to court to submit a further affidavit (which request was denied), Mr. Cohen's counsel applied for the Separation of his matter. The HSAG argued that there were many factors that do not warrant a separation, *inter alia* that Cohen has not provided a copy of the liquidation and distribution account to the investors, only allowing inspection at Orthotouch's offices. This lack of transparency has hindered the investors' ability to present a complete record to the court. Mr Cohen's role in the SoA was also disputed, as he was responsible for implementing the arrangement but failed to do so, resulting in significant losses between 2014-2018 for investors.

4.4 Conclusion:

In conclusion, the Applicants sought relief against Mr. Cohen, highlighting his failure to fulfil his obligations and his role in the dissipation of investors' funds. The HSAG therefor insisted that he still formed part of the chain of events where HS investors lost billions of rands. The HSAG reaffirms its commitment to seeking justice for the HSAG members and addressing the injustices they have faced. The court reserved judgment.

5 WHATSAPP CONVERSATIONS AMONGST HSAG MEMBERS

As always during trials in litigation, a higher level of alertness and uncertainty are experienced amongst some of our loyal HSAG members, as evident from our recent WhatsApp group conversations. We understand and share those frustration and disappointment that many contributing members are experiencing, especially due to the long wait for a final legal outcome.

Contributing members have expressed their concerns about the ongoing delays and the financial pressure they are experiencing, while others have tried to maintain hope and encourage positive thinking. The same feelings are shared by the HSAG Management, PR, and legal team.

Here are a few points we would like to address:

- Legal Actions and Outcomes: There is a well-known term in law that says: The wheels of justice turn slowly but surely. This is exactly where we find ourselves, and the word “painful” can also be added. We therefor appreciate the urge for finality.
- One thing that stands out at this point of time (and it has been so almost since the beginning of our court cases) is that, despite having large numbers of registered HSAG members, only a small portion of those members support the HSAG financially.
- Our resources are therefore extremely strained and limited, and we have pleaded month after month that our large number of members must contribute financially to ensure the best possible legal representation.
- Despite the above and although our legal representatives are working around the clock to ensure the best possible outcome, this is not an easy task if your resources are limited. Our opponents have great resources. A large portion consists of the proceeds of investments made by HS investors. In fact, our members are being fought with their own investment monies!

- The complexity of the cases, along with the ongoing opposition from the Georgiou family and their associates, make quick solutions extremely difficult and almost impossible.

Patience and Perseverance:

- We appreciate the patience and support of our loyal members. This was echoed by many members who reiterated that it is important to be patient and persevering.
- We are at a very important junction on our long road, and now more than ever, it is necessary to maintain our trust in the process and in our legal system.

Communication and Updates:

- As before, we will continue to provide regular updates through our monthly newsletter and will share any important developments as quickly as possible.
- We understand that transparency and regular information are essential to reduce uncertainty.

Financial Needs:

- We recognise the urgent financial needs of many of our members and are doing our utmost best to achieve the best possible outcome with the resources available to us. However, in light of our large numbers which form the basis of our funding model (which was approved by the High Court), the lack of financial support from the non-contributing members makes the position of the HSAG unbearable, and unless drastic steps are taken the funding model will eventually fail.

6 OPPONENTS WITH DEEP POCKETS

It is crucial to understand the dynamics between litigating parties, particularly when one is a well-funded adversary (as in our case) and the other comprises deprived elderly litigants. The explanation below will offer valuable insights into the distinct challenges and dynamics experienced by these contrasting groups.

In the context of the ongoing legal disputes highlighted in our newsletters, it's essential to understand the implications of litigating against oppositions with significant financial resources. When faced with opponents like the Georgious, who possess substantial funds, conducting court cases becomes inherently more difficult. This challenge is exacerbated by the extremely intricate and complex financial structures which were set up in the process and now need to be unravelled.

Moreover, opponents with abundant financial resources can delay legal disputes by initiating numerous motions, appeals, and other legal manoeuvres. This tactic not only delays the resolution of the case but also escalates the financial burden on the opposing party (HS investors), as seen in our ongoing litigation against the Georgious.

Strategic settlement offers are another common tactic used by well-funded opponents. These offers may exploit weaknesses in one's case or capitalise on their financial constraints, exerting pressure to accept less favourable terms (which is currently the case – e.g. 5c in the Rand) than might be obtained through continued litigation.

In our case against the Georgious and their associates, a particularly shrewd strategy in negotiating settlements was so far followed. The Late Nic Georgiou professed that he was only willing to engage in settlement discussions with members of the class action who were paid up on their fees to the HSAG. Since Georgiou passed away, his successors as Jacques du Toit and his sons did not make any effort to settle commercially, but rather fight to the bitter end.

Georgiou's selective approach was not difficult to understand. It effectively settles the financially strong claimants and puts pressure on the rest (who are not financially strong) to continue with the litigation. This approach undermines the solidarity among the HS members and places those who are still funding the lawsuit outside the playing field. In effect, a settlement of paid up members will undoubtedly be to the demise of

the class action. So far, no settlements have been reached, which lead to the continuation of the litigation.

Despite our opponents having deep pockets, they have until now not succeeded to stop the HSAG class action.

7 TO “OUT-LITIGATE” SOMEONE

In the ongoing legal disputes involving the HSAG and predominantly the Georgious, another concerning tactic has emerged over the years, namely the deliberate but subtle attempt by our opponents and their followers to outmanoeuvre and exhaust the resources of the HSAG, particularly the Georgious. This strategy manifests in various forms, each aimed at prolonging the legal process and creating disadvantages for the HSAG.

One such tactic was, since the beginning, the use of delay tactics where the Respondents continuously filed interlocutory motions and appeals to prolong proceedings and to drain the resources of the HSAG. Similarly, discovery abuse in terms of Rule 35(12) had been employed to inundate the HSAG with excessive requests for information, overwhelming them and creating a disadvantage. These matters served before court with negative outcomes for the Respondents.

Another tactic was “empty settlement offers”, where Nic Georgiou, and thereafter Helgard Hancke, utilised to exploit weaknesses amongst the HSAG members or capitalise on their financial constraints, coercing them into accepting “settlements” with unfavourable terms. In many cases the relevant HS investors came back and informed us that they have not received a single cent of the promised settlement.

Procedural manoeuvring, such as exploiting technicalities is also designed to further complicate matters for the HSAG.

The practice of outlitigating against vulnerable seniors poses significant challenges, exploiting their unique circumstances and vulnerabilities. Other than being simply

unethical, elderly litigants often lack the insight, strength or financial means to endure long-drawn-out legal battles, making them easy targets for exploitation.

However, and so far amidst these challenges, the HSAG could find strength in its numbers. One approach to survive such litigation onslaughts, is by leveraging our collective strength to ensure that our nominal legal fees payable are substantially smaller if more people are paid up to date. This strategy divides the total fees among the majority, lessening the burden on individual members and increasing our resilience against attempts to financially exhaust the HSAG.

Furthermore, whilst remaining steadfast in our pursuit of justice, we must also remain open to negotiations. Negotiations should never be disregarded, but must be fair and equitable, unlike the offers presented so far by the Georgious and Hancke. By maintaining this stance, we can steer through the legal landscape with integrity while striving for a resolution that upholds the rights and interests of all HSAG members.

In light of the ongoing legal battles involving the HSAG and its members, it is imperative for our members to understand the various avenues available to them during these difficult times. The options available are:

Firstly, we have the option to continue paying our dues and pressing forward with our legal actions in court. This route requires perseverance and financial commitment, but it allows us to uphold our principles and seek justice through the legal system.

Secondly, there is the possibility of negotiating settlements with the opposing parties. However, it's crucial to approach such negotiations cautiously and with a clear understanding of the potential consequences. Accepting a settlement that offers only a mere fraction of what we deserve, could compromise the integrity of our case and undermine the efforts of the HSAG. Despite this, the HSAG has as long ago as 2016 entered into *bona fide* negotiations with the late Nic Georgiou.

Lastly, there's the alternative of pushing for the liquidation of the companies involved, namely Orthotouch and Zephan. This avenue may currently present our best chance

at securing a favourable outcome, as liquidation could potentially result in more substantial returns for our members.

Also, despite the Georgious' attempt to out litigate the HSAG, they have so far not succeeded and, with your assistance, will not succeed to do so.

***DISCLAIMER**

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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 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. Participation in the HSAG is voluntary, however, persons that do not belong to the HSAG or who are not up to date with their payments, would not be able to claim any rights or privileges that faithful members of the HSAG can. Persons that refuse or neglect to pay their membership fees, would be removed as members of the class action

8 IMPORTANT USE OF ACCOUNT NUMBERS AND REFERENCES

HSAG members who are in both HSAG and CCAF, please report any change to both HSAG and CCAF's e-mail addresses, be it death of a member, change of email address, mobile phone number or residential address.

Members are reminded to note the reference numbers as contained on their statements. 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 with a request to transfer the amount to the correct account, and remember to attach your proof of payment to the email.

If you paid the amount into e.g. CCAF Trust Account 3, but the amount was intended for your HSAG Trust Account 2, or vice versa.

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

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

9 GENERAL ENQUIRIES

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.

10 IMPORTANT USE OF 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](http://hsaction.co.za) and can directly be accessed via the following link: <http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf>

The HSAG Steering Committee wishes prosperity and success to each and every member for the foreseeable future.

Kind regards

HSAG Steering Committee

Contact the HSAG's attorneys at:
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hsactiongroup@gmail.com