

HIGHVELD SYNDICATION NO 15 LIMITED: REGISTRATION NUMBER (2003/031064/06)
HIGHVELD SYNDICATION NO. 16 LIMITED REGISTRATION NUMBER: (2003/031129/06)
HIGHVELD SYNDICATION NO. 17 LIMITED, REGISTRATION NUMBER: (2003/025913/06)
HIGHVELD SYNDICATION NO. 18 LIMITED, REGISTRATION NUMBER: (2003/030778/06)
HIGHVELD SYNDICATION NO. 19 LIMITED, REGISTRATION NUMBER: (2003/030144/06)
HIGHVELD SYNDICATION NO. 20 LIMITED, REGISTRATION NUMBER: (2005/029425/06)
HIGHVELD SYNDICATION NO. 21 LIMITED, REGISTRATION NUMBER: (2005/027601/06)
HIGHVELD SYNDICATION NO. 22 LIMITED, REGISTRATION NUMBER: (2005/027390/06)

(“the companies”)

BUSINESS RESCUE STATUS REPORT IN TERMS OF SECTIONS 132 OF THE COMPANIES ACT, 71 OF 2008 (“THE ACT”) READ WITH REGULATION 125 OF THE ACT FILED BY THE BUSINESS RESCUE PRACTITIONER JF KLOPPER AND A NOTICE IN TERMS OF SECTIONS 145 AND 146 OF THE ACT.

1. The companies were placed under business rescue in September 2011 and Johannes Frederick Kloppe was appointed as Business Rescue Practitioner (“BRP”) of the companies at the time.
2. A Business Rescue Plan (“the Plan”) in respect of the companies was published on 30 November 2011 and adopted by affected persons (“HS Investors”) on 14 December 2011.
3. A scheme of arrangement between Orthotouch and its creditors was sanctioned by the High Court of South Africa on 26 November 2014 (“the scheme of arrangement”).
4. The BRP’s March 2022 status report contains a summary of events in this matter.
5. It has over the past years been reported that a group of HS investors who describe themselves as the Highveld Syndication Action Group (HSAG) represented by a firm of attorneys based in Stellenbosch embarked on a process of launching various court applications.
6. Over and above applications to register a so-called class action they also launched an application to set aside the November 2014 court sanctioned the scheme of arrangement (“the setting aside application”). They launched this setting aside application in March 2015, almost eight years ago.
7. The then director of Orthotouch, the late Mr Nic Georgiou, opposed the setting aside application and his opposing affidavit was served in September 2019. He also launched a conditional counter application for repayment and restitution of all payments received by HS Investors pursuant to the sanctioned scheme of arrangement in the event that the scheme of arrangement be set aside.
8. It was reported in the BRP’s November 2022 status report that the applicants in the setting aside had then, belatedly, filed their replying affidavit some three years later after the late Nic Georgiou filed his opposing affidavit and that the applicants have completely failed to deal with

the counter application. Their attorneys representing the so-called HSAG investors have to date failed to alert their clients of the risks associated with this litigation as the end result of this might, should they be successful with their setting aside application, have the effect that HS Investors will have to return millions of rands that they have received pursuant to the sanctioned Orthotouch scheme of arrangement.

9. The BRP's previous status reports made mention of the fact a further group of the purported HSAG investors launched what has been described in previous reports as "the Smith application" or the "DECA Case". This matter was set down to be heard in the High Court in Pretoria during May 2022.
10. However, during May 2022 the applicants in the Smith application, in their attempts to delay the hearing of the matter, launched a further application for Orthotouch and the HS Companies to "fund" their litigation ("the funding application"). What is now clear is why they are attempting to delay the hearing of this application. They have conceded in their own papers that unless they set the scheme of arrangement aside that they would face "defeat" in the Smith application.
11. It was also reported in November 2022 that, in relation to their "funding application", the applicants' attorneys had until then not responded to notices which had been served on them in terms of the court rules and they persisted with addressing correspondence to judges. A number of the respondents have filed objections to the funding application as long ago as October 2022 to which the applicants' attorneys had until the end of November 2022 not responded to.
12. They have also during November launched an application to have the setting aside application transferred to Pretoria but did so in the wrong court ("transfer application"). The High Court in Pretoria however wrote to the parties on 8 December 2022 advising them that they had launched this application in the wrong court.
13. That was after they had in the last few months prior to that attempted to "transfer" the case to Pretoria by merely addressing letters to the case management judge in the Johannesburg court and thereby ignoring the correct legal procedure.
14. It was reported during March 2021 that, after Orthotouch and Zephan were also placed under business rescue in November 2019, Jacques du Toit ("du Toit"), the appointed Business Rescue Practitioner of Orthotouch and Zephan, launched an application for a declaratory order to obtain

clarity on the status of the HS Investors' claims in view of the provisions of the sanctioned scheme of arrangement in terms of which all claims of HS Investors were ceded to Zephan and in terms of which their only remaining rights were to receive payment in terms of the sanctioned scheme of arrangement.

15. The matter was heard in the High Court, Pretoria, during October 2022 and Judgment was handed down 8 December 2022. Significantly, the court held that the sanctioned scheme of arrangement had the effect that HS Investors' claims against Orthotouch had been ceded to Zephan but not the HS Investors rights pursuant to the buyback agreements in that the HS Investors shares in the HS Companies had not been ceded.

16. The attorneys representing the so-called HSAG investors commented on this Judgment in the media in an article dated 13 December 2022 on Moneyweb named "*Orthotouch, Zephan BRP 'acting directly against HS investors' - High Court*".

17. The article contained the following statement about the BRP as being a quote by the HSAG's attorney:

"Since the outset, the HSAG experienced, what the court here labelled as 'back door appeals', by both Hans Klopper [BRP of the HS Companies] and Jacques du Toit, as the BRPs in their fiduciary positions, whilst spending hundreds of thousands of rands on litigation."

18. This statement in media as being a quote by the HSAG's attorney in relation to the BRP is however completely false and defamatory as the BRP has never been party to any "back door appeals" and have not incurred "hundreds of thousands of rands on litigation" in this regard. Despite this having brought to the attention to the journalist who wrote the article Moneyweb persists with their spreading of this false information.


JF KLOPPER

BUSINESS RESCUE PRACTITIONER

Date: 31 December 2022