

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. Subsequent to the passing of Mr Nic Georgiou on 10 September 2021 I am advised that the relevant office of the Master of the High Court has now issued Letters of Executorship in relation to the estate late N Georgiou.
4. In monthly newsletters from the attorneys for the Highveld Syndication Action Group (“HSAG”), in addition to them persistently pleading for a contribution towards their legal fees, they refer to the Smith Application, which have been referred to by the BRP in previous monthly reports since March 2021, as the DECA Case (being their acronym for what they refer to as a Derivative Class Action).
5. Previous status reports, containing further details of the Smith Application or the DECA case, may be found by clicking on:

<https://restructuring.bdo.co.za/rescue/1440>
6. In the BRP’s October status report In relation to the Smith Application/the DECA Case it was reported that the applicant (Mr Smith) only filed a replying affidavit dealing only with the answering affidavits of the late Mr Nic Georgiou and his sons, Mr George Georgiou and Michael Georgiou and which he referred to as their “Main Replying Affidavit”.

7. They have however failed to comply with a directive issued by the case manager appointed in relation to Smith Application / the DECA case under case number 93417/19, Judge Janse van Nieuwenhuizen, who directed on 31 August 2021 that Smith must file his “composite” replying affidavit dealing with the answering affidavits by all the respondents i.e. the Georgiou’s, the BRP of Zephan and Orthotouch (Jacques du Toit) and others including the BRP, by 28 October 2021.
8. Unsurprisingly, Smith and his co-applicants have therefore ignored Judge Janse van Nieuwenhuizen’s aforesaid directive. The BRP’s attorney and one of the other respondent’s attorneys have written to Smith attorneys advising them that any attempt to file any further affidavits will be irregular and objected to.
9. It was reported in my 30 September status report Jacques du Toit filed his answering affidavit in the Smith Application (the DECA case) on 28 September 2021 and which may be viewed by clicking on the following link:

<https://restructuring.bdo.co.za/sites/default/files/rescue/1440/21-09-28.%282%29ANS%20AFF.8TH%20AND%2010TH%20RESP.pdf>
10. It was mentioned in the October status report that Jacques du Toit’s answering affidavit revealed that the narrative that properties were allegedly transferred to Accelerate Property Fund Ltd at “a discount” was in fact false.
11. This false narrative was promoted on behalf of the applicants’ attorneys by the media in various articles over the years and so was the innuendo to the effect that there was somehow improper conduct by various parties. It has now furthermore come to the BRP’s knowledge that, pursuant to the persistent unsubstantiated allegations in court papers and in the media, Accelerate Property Fund Limited also caused a thorough independent review to be conducted by a prominent firm of attorneys, Glyn Marais, and pursuant to which Glyn Marais presented in a 51-page document on 21 February 2021. This report dispels the false narrative promoted by the media in relation to the transactions between Orthotouch and Accelerate Property Fund and, supported by senior counsel’s opinion, they found that the transactions were validly entered into.
12. In my monthly status reports since March 2021 HS Investors were reminded that Jacques du Toit launched an application for a declaratory order on 28 January 2021 in order to obtain clarity on the status of the HS Investors’ claims. It was explained that this clarity is sought in view of the

provisions of the sanctioned Orthotouch 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.

13. It is understood that Jacques du Toit's replying affidavit in connection with this application will be filed within the first two weeks of December 2021. This affidavit will inter alia also contain details of the cancellation of the so called "buy back agreements" prior to the commencement of business rescue proceedings in September 2011. In the event that the Court in due course find that cancellations have in fact been in place since then there may be devastating consequences for those parties who obtained judgement against the late Mr Nic Georgiou and Zephan Properties based on the purported "buyback agreements" and those judgements may very well fall to be set aside in due course. This position will however become cleared during 2022.



JF KLOPPER

BUSINESS RESCUE PRACTITIONER

Date: 30 November 2021