RESPONSE TO HSAG JUNE / JULY NEWSLETTERS.

3 AUGUST 2018

In relation to:

HIGHVELD SYNDICATIONS 15 LIMITED (UNDER BUSINESS RESCUE)

HIGHVELD SYNDICATIONS 16 LIMITED (UNDER BUSINESS RESCUE)

HIGHVELD SYNDICATIONS 17 LIMITED (UNDER BUSINESS RESCUE)

HIGHVELD SYNDICATIONS 18 LIMITED (UNDER BUSINESS RESCUE)

HIGHVELD SYNDICATIONS 19 LIMITED (UNDER BUSINESS RESCUE)

HIGHVELD SYNDICATIONS 20 LIMITED (UNDER BUSINESS RESCUE)

HIGHVELD SYNDICATIONS 21 LIMITED (UNDER BUSINESS RESCUE)

HIGHVELD SYNDICATIONS 22 LIMITED (UNDER BUSINESS RESCUE)

("the HS companies")

ORTHOTOUCH (PTY) LIMITED

("Othotouch")

1. The content of the June 2018 HSAG Newsletter was brought to my attention. In view of the contents thereof I believe that it is necessary to comment on certain aspects raised therein.

2. The “Newsletter” contains, amongst others, the following gratuitous statements to the effect that:

2.1. there was a “feverish attempt” by, amongst others, myself to “persuade” the HSAG members to abandon claims.

2.2. I made a “startling revelation” that Zephan is paying the 18 300 investors their monthly interest from “capital”.

2.3. Zephan does not appear anywhere in the “Business Awards Plan! (sic)”

2.4. Nic Georgiou’s company, Zephan, received R3,2 billion from innocent investors.

2.5. There was a “revelation” that I “inexplicably jumped onto Orthotouch’s sinking boat”

2.6. My legal representatives “without any reason or explanation, withdrew from” my “case”.

2.7. Orthotouch have “squandered the unbonded properties of the HS 15 -22 companies”.

2.8. the directors of Orthotouch have in a “ruthless and covert” manner converted Orthotouch from a public to a private company and which was “engineered to jeopardise” the Investors’ financial position.

2.9. Billions of rands for the value of the HS 15 – 18 companies’ properties were “syphoned off” to a listed company.

2.10. Orthotouch and its directors have for “many years failed” keep audited financial statements and records.

2.11. As business rescue practitioner, I threatened the HSAG and other litigants with the liquidation of the HS Companies.

2.12. Liquidations are “regulated by the Insolvency Acts (sic) of the country”

2.13. It is “shocking” that I clearly “realised in 2014” that the HS Companies had to be liquidated.

2.14. Properties were allowed to be transferred out of Orthotouch

2.15. I “knew” that rent was collected by Zephan.

2.16. The Georgiou family were “exempted” from claims.

2.17. There was at the time of the proposing of the section 155 Scheme of Arrangement a “surplus” of R9million after all 18 300 investors had been paid their 6% interest.

2.18. I “aligned himself with Georgiou’s Orthotouch”.

2.19. The “threats” of liquidation by, amongst others, myself, Georgiou and others are immoral and a “smokescreen”.

3. When reading what is contained herein it is important that you refer to two important documents in relation to the history of this matter, these being the:

3.1. Business Rescue Plan ("the plan" or the "business rescue plan") published on 30 November 2011 and adopted in terms of section 151 of the Companies Act 71 0f 2008 ("the Companies Act") on 14 December 2011 and which can be viewed by clicking on the following link:
https://restructuring.bdo.co.za/sites/default/files/rescue/1440/HS%2015%20-%2022%20-%20final%20business%20rescue%20plan%20-%2014%20Dec%202011.pdf

3.2. The Scheme of arrangement ("the arrangement") adopted by the statutory majority of creditors, as provided for in terms of section 155 of the Companies, and sanctioned by the High Court of South Africa on 26 November 2014 and which can be viewed by clicking on the following link:
https://restructuring.bdo.co.za/sites/default/files/rescue/1440/ORHOTOUCH%20SCHEME ARRANGEMENT%20OF%20ARRANGEMENT%20-%20ANNEXURE%20X.pdf

4. The factual information contained herein is mostly based on the contents of these two documents.

5. The history of my involvement in this saga over the past almost seven years is also documented in many communications to HS Investors ("the Investors") and affected persons which can also be viewed on by clicking in the following link:
https://restructuring.bdo.co.za/rescue/1440

6. BACKGROUND AND HISTORY

6.1. My involvement insofar as the affairs of the HS companies are concerned commenced in September 2011. I came to the HS Companies' affairs as a stranger to their affairs and my sole aim at the time was to ensure that the interests of Investors in the HS companies were to be protected and which duty I carried out without fear and in utmost good faith during the past seven years.

6.2. During March 2011, the HS companies, having run into financial difficulties in late 2010, entered into an agreement with Orthotouch in terms whereof Orthotouch would purchase certain immovable properties from the HS companies, subject to the fulfilment of certain conditions, and would pay Investors interest amounting to 6% per annum calculated on the Investors' initial capital investments in the HS companies ("the March 2011 agreement").

6.3. Despite the conditions not yet being fulfilled, Orthotouch commenced paying interest to the Investors.

6.4. From the outset and from the very first day of my involvement in September 2011, the HS companies were unable to generate sufficient income to pay Investors their monthly interest of 6% as per the March 2011 agreement.

6.5. In September 2011 already, the sole source of funding to cover the shortfall was a monthly loan from Zephan Properties Proprietary Limited ("Zephan") to Orthotouch.

6.6. The first few weeks of the business rescue process was taken up by attending to the convening of two statutory first meetings of creditors and coming to grips with a myriad of issues.

6.7. One of my first challenges when I came onto the scene in 2011 was that the first interest payment to Investors following the HS companies being placed in business rescue, in a total amount of approximately R21 million, was payable by the HS companies during the first week of October 2011.

6.8. At that stage, I was informed that the aggregate rental income derived from the property portfolios vesting Zephan, in those HS companies which owned properties (because not all the HS companies owned properties, despite being marketed as property syndications) and in other companies (who were still the registered owners of the properties earmarked for HS 19 to HS 22) was only approximately R14 million per month. That left a monthly shortfall of approximately R7 million which I had to procure pending the development of the business rescue plan(s).

6.9. It also became clear to me that Mr Nic Georgiou ("Georgiou"), via Zephan, was the only person who was prepared to offer financial support in regard to the R7 million per month

interest shortfall. Had Zephan not advanced funds to the HS companies in business rescue at the very outset, the HS companies would not have been able to meet the October 2011 interest payment, and they would have been liquidated immediately. Instead, total interest payments of approximately R21 million were made to approximately 18,250 Investors in early October 2011.

6.10. After attending to the initial administrative issues, on or about 11 October 2011, I commenced my investigations into the affairs of the HS companies. The factual background set out in the business rescue plan (and which background is briefly summarised above) which pre-dates my appointment as business rescue practitioner is based largely on those investigations.

6.11. By the end of October 2011, I had formed the view that the HS companies were all insolvent as at September 2011, and that if funding was not obtained to service the monthly interest payments to the Investors, the HS companies would collapse and be liquidated. I was however of the view that this would have had disastrous consequences for the Investors, who would have lost not only their interest payments, but also their capital investments.

6.12. Investors will recall that (and it was set out in the plan) , although HS 19 to HS 22 had paid a company by name of Bosman & Visser (Pty) Limited ("Bosman & Visser") for the properties in their syndication portfolios, Zephan retained title in those properties. The plan also recorded that my view was that if HS 19 to HS 22 were liquidated, their liquidators would have merely concurrent claims against Bosman & Visser for transfer of the properties, and those claims would be both difficult and costly to pursue to successful conclusion. In addition, the HS companies were not possessed of funds from which substantial litigation could be embarked upon or defended. It was more likely that all value in HS 19 to HS 22 would be wiped out by a liquidation. Investment in those four companies by Investors was more than R3.4 billion.

6.13. It was also recorded on many occasions that during this time, no-one, other than Georgiou, approached me with any solution that would continue to provide regular income to the Investors. During October/November 2011 I was contacted by several parties who wanted

to buy the assets belonging to the HS companies at *'bargain prices'* – but none expressed any interest in looking after the Investors.

6.14. It was clear to me that any proposal from any party that did not make provision for interim interest payments to the Investors should not be considered.

6.15. During September 2011, my office could hardly cope with the avalanche of telephonic enquiries from concerned Investors. We spent many hours of each day attending to many telephone calls from concerned and often irate Investors who enquired about the reduction (with effect from April 2011) in their interest payments from 12% to 6% (in terms of the March 2011 agreement) and who expressed the fear that they could lose their entire investments. Most pleaded with me to find a solution to avert liquidation and that would ensure that they did not lose their investments or interrupt the monthly interest payments on which many relied.

6.16. At the beginning of November 2011, the October 2011 interest payment of approximately R21 million was payable. By this time,I had received no proposals which would save the HS companies.

6.17. My view was that the only way to avoid the liquidation of the HS companies was to renegotiate the terms of the March 2011 agreement with Orthotouch, and thereby ensuring the continuation of the monthly interest payments to the Investors.

6.18. A creditors' committee was formed shortly after the HS companies were placed under business rescue. Its members were Elna Visagie, Rhynier Burger, Johan Pretorius, Johan Stander, Herman Lombaard and Heinrich Blumenthal (all financial advisors representing many Investors), Pieter Herman (representing Pickvest Investments (Pty) Limited ("PIC")) and Remia Eksteen, a substantial Investor in his personal capacity. The committee aided in the discussions with Orthotouch.

6.19. I considered, on the basis of my experience in the field, that a successful business rescue plan would require amongst others, the following:

6.19.1. An initial loan of R200 million would need to be procured from a financial institution, to be utilised for purposes of immediate working capital requirements and financing the initial tranches of interest payments to Investors;

6.19.2. Orthotouch would need to be able to trade freely with the properties in order to increase the value of its property portfolio in order to generate the income that would be used to fund interest payments to Investors;

6.19.3. Orthotouch would need ongoing finance for its operations, including working capital and funding for the upgrading of the properties. I considered that Orthotouch would need an initial loan of approximately R1 billion.

6.20. The plan, which was developed during November 2011, provided for repayment in full to the Investors by December 2016 – in other words, by December 2016 Investors would be repaid their capital investment (that is, the price of the shares purchased and linked loans advanced) and would continue to receive interest payments in the interim.

6.21. During November 2011, I was informed that RMB in principle agreed to make a loan of some R200 million to the HS companies in business rescue. It released the first tranche of R30 million (less bank charges) on 18 November 2011, and this enabled the HS companies to pay the October 2011 interest payments to the Investors. However, a week later, on 25 November 2011, some five days before the business rescue plan was due to be published, the bank had a change of heart and informed me that the balance would not be provided. The bank advanced no reasons for their about turn.

6.22. In the end, therefore, the business rescue plan which I developed was essentially based on the proposal received from Orthotouch (which largely replicated the terms of the March 2011 agreement and which was attached to the published business rescue plan), albeit without financial institution funding.

6.23. Because the Orthotouch offer provided (in paragraph 2 thereof), that the "*offer is made on the basis that if same is accepted same will constitute an indivisible transaction*" and was for all of the properties held by HS15 to HS22, a single plan was developed in respect of all eight of the HS companies.

6.24. I published the business rescue plan on 30 November 2011. Between the commencement of the business rescue proceedings in September 2011 and publication of the plan on 30 November 2011, Investors had continued to receive interest. Over this period, more than R64 million had been paid to the HS companies by Zephan on behalf of Orthotouch, for distribution as interest payments amongst the Investors.

6.25. Please refer to the link to the business rescue plan mentioned above and the following highlighted from it:

6.25.1. The plan recorded that Orthotouch had submitted an offer to acquire the properties and that '*[b]ased on the offer received from Orthotouch the BRP formed the view that there is a reasonable prospect of publishing a plan which would result in a better return than would result from the immediate liquidation of the company*' (paragraph 3.10).

6.25.2. The plan referred to the downturn in the economy at the time and the effect on the companies and their property portfolios. The plan expressed the view that '*the prospects of the Investors recovering their Capital without the Offer* [from Orthotouch] *being accepted are bleak whereas the recovery prospects, should the Offer* [from Orthotouch] *be accepted, are considerably improved*'. (paragraphs 4.4 and 4.5.)

6.25.3. The plan recorded that the HS companies were all insolvent and a calculation of the probable dividend which Investors in respect of HS 15 -HS 18 was done. The probable dividend in respect of HS 19 to HS 22 assumed that the liquidators would pursue Bosman & Visser and would be 20% successful in those claims (which all experts I consulted stated was an optimistic outcome, given the complexities of the claims). The calculations and assumptions on which these estimates are based are set out in paragraph 5.1.4. of the plan. This paragraph essentially sets out that the Investors in the HS companies would have received only liquidation dividends if these companies were liquidated as opposed to payment in full.

6.26. After the adoption of the business rescue plan, the Investors received regular monthly interest payments in terms of the plan. <u>During this period, up until September 2014, they received interest payments exceeding **R614 million** in total. If one includes the period</u>

from March 2011, when the March 2011 agreement was concluded, investors received interest payments exceeding **R807 million** in total, up until September 2014. The funds for the payment of the interest was received from Orthotouch, which in turn received the funds from Zephan.

6.27. However, certain parties continued to undermine Orthotouch's efforts to implement the business rescue plan successfully.

6.28. Significant amounts of external funding were needed by Orthotouch to implement the business plan, which included paying interest to the Investors, to take the steps necessary to put Orthotouch in a position to take transfer of properties (including repaying loans on bonded properties), to cover the ongoing refurbishment costs in respect of properties and, in some cases, to redevelop properties.

6.29. Orthotouch's property portfolio was such that in the ordinary course funding on acceptable terms would and should have been available. The portfolio provided more than sufficient security for the required loan funding and the letting income was available to ensure that the loan or loans would be serviced.

6.30. It appeared, however, that there were parties who were in various ways undermining Orthotouch and, indeed, effectively prevented Orthotouch from accessing loan funding. The details are not relevant for present purposes, and much of this is set out in the arrangement document and I refer particularly to paragraphs 2.1.31 to 2.1.34 of the arrangement document in this regard.

6.31. The result, however, was that Orthotouch was prevented from doing all it had intended to do in respect of the HS company property portfolio. It did not have the funds needed to discharge all bonds, obtain rates clearance certificates and take transfer of properties, or to redevelop and refurbish those properties which required a revamp. It continued to meet its obligations in respect of the payment of interest to Investors, but this became increasingly difficult.

6.32. Orthotouch received relatively low income from the portfolio of properties, in part because of the distressed state of the properties (which was as a result of the fact that no funds

were available to refurbish them, and the generally difficult economic climate in the wake of the global recession).

6.33. In order to ensure that Investors received the interest payments provided for in the business rescue plan, Zephan continued to make substantial loans to Orthotouch to top up its rental income. By October 2014, Zephan had a loan claim against Orthotouch of some R383 million.

6.34. This was not a sustainable arrangement. It became increasingly difficult, and later simply impossible, for Orthotouch to meet the interest payments on time, and the payments started to fall into arrears.

6.35. This was a critical issue for the Orthotouch board (of which I was, and remain, a member) during the early part of 2014. Extensive discussions took place at board level with the other directors of Orthotouch, with other role-players and with legal advisors on how to alleviate the situation. Discussions were held with Orthotouch's internal legal advisers, attorneys, and junior and senior counsel regarding the options. The financial distress that Orthotouch was experiencing had to be considered and taken cognisance of.

6.36. By this time, it was clear to me, the Orthotouch board of directors and other role-players and advisors that, had Orthotouch gone into liquidation, the business rescue plan in respect of the HS companies would have failed and those companies would also have been liquidated.

6.37. This would have had the same disastrous consequences for Investors as would have resulted if the HS companies had been liquidated at the end of 2011, rather than having been placed in business rescue. In particular, Investors whose investments were held in HS 19 – HS 22, which companies did not own immovable property, were vulnerable.

6.38. During June 2014, because of the aforesaid financial distress, it became clear to the Orthotouch board, including me, that one of the options and possibly the most viable option would be to restructure Orthotouch's affairs, including its obligations under the business rescue plan, via a scheme of arrangement in terms of section 155 of the Companies Act. The Orthotouch board, with input from its legal team, started developing a restructuring proposal.

6.39. The focus was to develop a financial arrangement which could be sustained having regard to the market value of Orthotouch's portfolio of properties (rather than the properties' inflated syndication values) and to the income earned by those properties. This inevitably meant that Investors would have to compromise, or accept a reduction on, their returns.

6.40. However, all the aforesaid parties formed the view that this remained a **better outcome for investors than the liquidation of Orthotouch** and in turn of the HS companies. A compromise would provide the investors with a better return than a liquidation would have provided, which was consistent with the aim of the approved business rescue plan.

6.41. During July and August 2014, the Orthotouch board continued to explore alternatives to be presented to the Investors. Orthotouch's financial position was worsening. It was unable by this stage to make interest payments in terms of the business rescue plan. If Orthotouch had been liquidated, there would have been a ripple effect on the HS companies, with disastrous financial consequences for the Investors. Unless another option was pursued, Orthotouch's liquidation was becoming inevitable.

6.42. On 26 August 2014, the Orthotouch board held a meeting with some of the representatives of the erstwhile Investors' creditors' committee and other parties. The various options, including a scheme of arrangement, were presented. I attended that meeting. The meeting was generally amenable to the proposed restructuring (although it later became clear that there was a group of people who were opposed to a restructuring).

6.43. The arrangement was prepared and refined during September 2014 and was eventually finalised on 7 October 2014. The arrangement was sanctioned by the High Court in November 2014.

6.44. I was involved in the initial structuring of the proposal and in modelling the alternative liquidation scenario.

7. I now deal with the statements contained in the Newsletter and identified in paragraph 2 above as follows:

7.1. **Re: "feverish attempt by, inter alia, myself to "persuade" the HSAG members to abandon claims:**

7.1.1. There is not a shred of evidence supporting this allegation. This is a blatant lie.

7.1.2. During late May 2018 I communicated with certain Investor groups on WhatsApp groups with a view to providing them with accurate and true information in a responsible and professional manner.

7.1.3. This proved to be impossible as it turned out within a matter of three days that attempts to provide input in a professional and accurate manner were being trashed and returned with bad language, and I therefore ceased my attempts to communicate on WhatsApp groups.

7.2. **Re: the "startling revelation" that Zephan is paying the 18 300 investors their monthly interest from "capital".**

7.2.1. Investors are referred to the arrangement document, which was circularised to all investors during October 2014.

7.2.2. The fact that Zephan had been funding the business rescue process with an amount of almost R 1 billion at the time was never a secret.

7.2.3. Clause 1.60 of the arrangement, read with annexure H thereto, made it clear that the sole trade creditor of Orthotouch was Zephan, by virtue of Zephan having funded the payment of the claims of all trade creditors of Orthotouch and the HS companies as well as amounts owing to sundry professional advisors and consultants.

7.2.4. This statement by the author/s of the Newsletter would appear to be deliberate attempt to mislead Investors in this regard.

7.2.5. It is furthermore misleading and blatantly untrue to state that Zephan appears nowhere in the business rescue plan which is assumed what the author of the newsletter meant by referring to the "Business Awards Plan!"

7.3. **Re "Nic Georgiou's company, Zephan, received R3,2 billion from innocent investors."**

7.3.1. This statement is therefore factually incorrect.

7.3.2. You are referred to paragraphs 6.12 and 6.25.3 above. These are references to a company known as Bosman & Visser.

7.3.3. Bosman & Visser was the entity that Zephan dealt with in its property transactions.

7.3.4. This is also explained in paragraphs 2.13 to 2.23 and 5.1.2.1 – 5.1.2.4 of the business rescue plan.

7.4. **Re: "There was a "revelation" that I "inexplicably jumped onto Orthotouch's sinking boat"**

7.4.1. This statement is not understood and nonsensical.

7.4.2. Please refer to paragraphs 6.13, 6.14 and 6.17 above. I have at all times been committed to ensuring that the restructuring of the financial affairs of, initially, when the business rescue plan in relation to the HS companies was published and adopted in 2011 and thereafter when the arrangement in relation to Orthotouch's affairs was proposed in 2014.

7.4.3. It is the latter restructuring (that is, the arrangement) that the HSAG and their attorney do not believe is in the interest of the Investors and that they are taking issue with.

7.4.4. My commitment to ensuring the best possible outcome for the Investors continues and will only come to an end when it turns out the that the Orthotouch restructuring is no longer viable or attainable.

7.4.5. The liquidation application issued against Zephan as financial proposer in terms of the arrangement referred to in paragraph 7.10.2 below might, however, be successful, in which event the Orthotouch arrangement will collapse, and Investors will receive no further interest payments.

7.5. **Re:" My legal representatives "without any reason or explanation, withdrew from" my case.**

7.5.1. The writer was not involved in any "case" in respect of which any "legal representatives" "withdrew". This is a blatant lie.

7.6. **Re:" Orthotouch have "squandered the unbonded properties of the HS 15 -HS 22 companies"**

7.6.1. Investors are again referred to the business rescue plan where the important features of the Orthotouch offer were set out.

7.6.2. They included the properties to be purchased from each HS company and the price attributable to the purchases, which was equal to the syndication value of the relevant HS company (clause 8.3).

7.6.3. The plan recorded an acknowledgment by the HS companies that *'they understand that for Orthotouch to be able to build up the value of the property portfolio sufficiently from its current low value to an amount sufficient to pay the full purchase prices timeously within 5 years, Orthotouch* ***shall have to deal in its discretion*** *with the properties in the manner detailed in the Business Plan annexed to Annexure A'* (paragraph 8.16).

7.6.4. In that regard, the Business Plan recorded that the *'… plan of Orthotouch based on current circumstances and on its evaluation of the Syndication portfolios to date'* was *inter alia* to sell non-performing properties (paragraph 2.4 of the Business Plan, attached to annexure A to the business rescue plan).

7.6.5. This is therefore nothing but a false and sensationalist statement by of the author of the Newsletter.

7.7. **Re: "the directors of Orthotouch have in a "ruthless and covert" manner converted Orthotouch from a public to a private company and which was "engineered to jeopardise" the Investors' financial position.**

7.7.1. This is an unwarranted and misleading statement by the authors of the Newsletter as the conversion of Orthotouch from public to private company does not affect Investors' financial position whatsoever.

7.8. **Re: Billions of rands for the value of "the HS 15 – 18 companies' properties were "syphoned off" to a listed company.**

7.8.1. This outrageous allegation would appear to relate to the disposal of properties of certain HS companies by Orthotouch to the Accelerate Property Fund in 2013 *prior* to the

adoption and sanctioning of the arrangement in 2014, but at a time when the HS companies were already under business rescue.

7.8.2. The author of the Newsletter is again untruthful by making this statement. The property disposals were, in truth, entirely legitimate and competent in that the business rescue plan itself expressly provided for the right of Orthotouch to deal in the properties in its discretion in order to build up the value of the property portfolio for the benefit of the Investors. See paragraph 8.16 of the business rescue plan.

7.8.3. This aspect was central to the business rescue plan and, in addition, the arrangement itself expressly recorded the sales in annexure "**E**" thereto under the heading:" *Orthotouch property movements to Final Date*".

7.8.4. It will be demonstrated that the sales were to the direct benefit of the HS companies and the Investors and no Investor could claim that he/she did not know about disposals of property.

7.8.5. The sales of property to the Accelerate Property Fund by Orthotouch was a matter of public record and sales were effected at market related prices following a valuation of the properties by JSE approved valuators.

7.8.6. The properties were sold for R1 323 440 540,00 and the Accelerate Property Fund discharged its indebtedness to Orthotouch by paying an amount in excess of the basic purchase prices.

7.8.7. Orthotouch received a total of R1 707 545 560,00 from the Accelerate Property Fund transaction, an amount more than R157 million in excess of what it was contractually entitled to receive.

7.8.8. In short, the disposition of assets was to the direct benefit of the Investors.

7.9. **Re:" Orthotouch and its directors have for "many years failed" keep audited financial statements and records".**

7.9.1. This statement is false. Financial statements were prepared since 2012 after Orthotouch started doing business after the adoption of the business rescue plan in 2011.

7.9.2. The financial statements for 2017 and 2018 are in the process of being finalised.

7.10. **Re:" As business rescue practitioner I threatened the HSAG and other litigants with the liquidation of the HS Companies.**

7.10.1. There has never been any threat of liquidation by me, and neither am I aware of any such threats of liquidation by Georgiou.

7.10.2. The reality is that an Investor in HS 22, one Mrs M.S.Pretorius, during the latter part of 2017, issued an application, under case number 5943/2017, out of the Free State High Court in Bloemfontein, for the liquidation of Zephan, the financial proposer in terms of the arrangement.

7.10.3. In terms of section 348 of the Companies Act 61 of 1973 ("the old companies act"), Chapter 14 of which is still in operation insofar as it relates to the liquidation of companies, Zephan's liquidation date, upon Mrs Pretorius application being successful, will be retrospective to the date of the issuing of the liquidation application in 2017.

7.10.4. The effect of this will be that all payments made by Zephan to Orthotouch in terms of the arrangement since that date late in 2017 will be **void** as provided for in terms of section 341 of the old companies act.

7.10.5. This means that Zephan's liquidator will call upon Orthotouch to return such payments. This will mean that the arrangement will collapse, in which event Orthotouch will, in all likelihood, also be liquidated.

7.10.6. Othotouch's liquidator will then also be calling upon Investors to return all payments received in terms of the arrangement.

7.10.7. If the applicants in the application to set the Orthotouch arrangement aside, represented by Theron & Partners, are successful, the effect will be the same. In other words, all payments made to Investors since 2014, in terms of an arrangement that is set aside by attorney Theron's application, will also have to be returned by Investors to Orthotouch.

7.10.8. It has already been recorded as to why it was necessary to propose the arrangement in 2014. The setting aside of the arrangement will mean that the status quo will revive, which will then mean the business rescue plan in relation to the HS companies would

have failed. In that event, the business rescue practitioner will have a statutory duty to liquidate the HS companies.

7.10.9. It is therefore not the case of "threatening" but, in fact, the invoking of a statutory provision contained in the Companies Act. The authors of the Newsletter completely overlooked this reality and are unable to deal with it except to to give it an emotive spin because the author of the Newsletter has not, and cannot, explain the legal consequences of the setting aside of the arrangement that the HSAG so desperately wishes to achieve.

7.11. ***Re: "Liquidations are "regulated by the Insolvency Acts (sic) of the country"***

7.11.1. This absurd statement is aimed at misleading Investors.

7.11.2. The true position is set out in paragraphs 7.10.1 to 7.10.9 above.

7.12. ***Re : "It is "shocking" that I clearly "realised in 2014" that the HS Companies had to be liquidated".***

7.12.1. This statement is dishonest and a further attempt to mislead Investors with misplaced sensationalism.

7.12.2. You are referred to the business rescue plan and paragraph 6.11 above, in which the potential liquidation of the HS companies was contemplated and had to be averted in October 2011.

7.12.3. You are referred to paragraphs 6.36 to 6.38 above setting out what the position was in 2014, and to the arrangement itself.

7.12.4. The reason for the proposal of the arrangement in 2014 was because of the financial position that the HS companies and Orthotouch found themselves in at the time.

7.12.5. The very reason for using the provisions of section 155 of the Companies Act in relation to Orthotouch was to achieve the restructuring of the affairs of the company under circumstances where it was in financial distress and under threat of liquidation. The likely dividend that would be received by Investors if Orthotouch or the HS companies were placed in liquidation was dealt with in paragraphs 2.1.61 to 2.1.64 of the arrangement document.

7.12.6. At the time there was interference from 3rd parties and the financial distress was evidenced by the fact that interest payments were, at a time when the arrangement of was proposed, some 6 months in arrears.

7.12.7. The potential of liquidation was clearly set out in the arrangement document in October 2014.

7.12.8. It is sensationalist and simply dishonest to suggest that the financial distress experienced in 2014 is something that was only revealed at this late stage.

7.13. ***Re: "Properties were allowed to be transferred out of Orthotouch"***

7.13.1. Under the business rescue plan Orthotouch was entitled freely to deal with the immovable properties acquired by it. Clause 2.1.45.1 of the arrangement read with annexures A, D and E thereto makes it plain that in the intervening period, Orthotouch had (as it was entitled to do) disposed of various of the properties owned by the HS companies. There was no failure to disclose anything in this regard.

7.14. **Re: "The writer "knew" that rent was collected by Zephan".**

7.14.1. This is a ridiculous statement as it was common cause and a well published fact in the business rescue plan and thereafter in the arrangement that properties had not been transferred for reasons fully set out in the arrangement.

7.14.2. Is simply sensationalist to create the appearance that there is a "startling revelation" that Zephan is paying the 18,300 investors their monthly interest. It was set out in the business rescue plan and in the arrangement and in many communications to Investors.

7.14.3. You are again referred to the contents of the arrangement document circularised to all investors during October 2014, in which the fact that Zephan had been funding the business rescue process with an amount of almost R1 billion at the time was fully disclosed. Please also refer to paragraph 6.33 above.

7.14.4. Clause 1.60 of the arrangement read with annexure H thereto made it clear that the sole trade creditor of Orthotouch was Zephan by virtue of it having funded the payment of the claims of all trade creditors of Orthotouch and the HS companies as well as amounts owing to sundry professional advisors and consultants.

7.15. **Re: "The Georgiou family were "exempted" from claims".**

7.15.1. The arrangement was proposed and drafted by inter alia parties who had to look after the interests of Zephan, the financial proposer in terms of the arrangement, and it was their prerogative to look after the interest of its stakeholders.

7.15.2. The exemption is clearly referred to in the arrangement document.

7.16. **Re: "There was at the time of the proposing of the section 155 Scheme of Arrangement a "surplus" of R9m after all 18300 investors had been paid their 6% interest".**

7.16.1. This is a further false statement and it would appear that the author/s of the Newsletter will say anything to advance their cause.

7.16.2. As alluded to in paragraph 6.8 above, the fact that the aggregate rental income derived from the property portfolios vesting in those HS companies which owned properties, and in Zephan and others (who were still the registered owners the properties earmarked for HS 19 to HS 22) was only approximately R14 million per month.

7.16.3. That left a monthly shortfall of approximately R7 million

7.17. **Re: I "aligned himself with Georgiou's Orthotouch".**

7.17.1. It is once again, misleading and mischievous of the author of the Newsletter to state that doing so was somehow wrong or improper.

7.17.2. The truth and reality is, as set out above, that the only party who came to the rescue of investors at the time of the commencement of business rescue proceedings was Orthotouch and had it not been for the Orthotouch proposal the companies would have been liquidated, as far back as 2011.

7.18. **Re: "The "threats" of liquidation by, inter alia, myself, Georgiou and others are immoral and a "smokescreen".**

7.18.1. There are no "threats" of liquidation. There is already a very real application for the liquidation of Zephan before the courts. This liquidation application was not launched by me, Georgiou or any other related party, but rather by an Investor.

7.18.2. If the liquidation application is successful, it will lead to the demise of Orthotouch. This is no "smokescreen".

7.18.3. The setting aside of the arrangement will lead to the collapse of the Orthotouch restructuring and the HS companies' business rescue will be a failure, in which event the business rescue practitioner has no option in law but to liquidate the HS companies. This is a reality and no "smokescreen".

8. We trust that you will be guided by what is contained herein.

Yours faithfully,

JF KLOPPER