



## NLA LEGAL INC.

FORMERLY KNOWN AS NATALIE LUBBE & ASSOCIATES INC  
ATTORNEYS / NOTARIES / CONVEYANCERS

**To:** Theron & Partners  
**Email:** kim@theronlaw.co.za  
**Your Ref:** Mr J Theron  
**Our Ref:** N Lubbe/MAT2508  
**Date:** 3 August 2018

Dear Sir

### HSAG – July / June 2018 Newsletters

1. We address this letter to you on behalf the business rescue practitioner of Highveld Syndications 15 – 22 Limited (“*the HS companies*”), Mr J.F Klopper (“*our client*”).
2. Our client was provided with copies of the HSAG newsletters of June and July 2018 (“*the Newsletters*”). The Newsletters contain false and inaccurate statements in relation to various parties, including our client.
3. In both the Newsletters, statements have been made about certain “*shocking revelations*” to the effect that our client realised during 2014 that the HS companies had to be liquidated, and that this is only now coming to light.
4. Those statements are false and misleading, and have been made by the HSAG in a widely-circulated document under circumstances where you, as the HSAG’s legal representative, know them to be false and misleading.
5. Our client, as the business rescue practitioner of the HS companies, already, in 2011, in the adopted business rescue plan, clearly demonstrated that all the HS companies were insolvent. In fact, the reason for placing the HS companies under business rescue was its financial distress as set out in section 128 of the Companies Act, 2008 (“*the Act*”), and its insolvency at the time. The HS companies were in this distressed financial position before our client arrived on the scene.

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2006/016189/21; VAT nr: 4610230023; Directors: N M Lubbe; N S Norval; H van der Westhuizen

6. The business rescue plan contained a calculation of the possible liquidation scenario had the HS companies been placed in immediate liquidation. It was demonstrated that HS Investors ("**the Investors**") would not have been paid in full. It was clearly set out that the HS companies, in the absence of the adoption of the business rescue plan, would have been liquidated as is provided for in terms of Chapter 6 of the Act. It is common cause that the HS companies had to be restructured in order to avoid liquidation.
7. Furthermore, the July 2018 newsletter, in which it is stated to be "*shocking*" that our client nevertheless proceeded to transfer properties out of Orthotouch is equally misleading and incorrect. The business rescue plan that was adopted in December 2011 clearly provided for the sale of properties by Orthotouch going forward.
8. The Scheme of Arrangement proposed by Orthotouch in 2014 made specific reference to the financial distress being experienced by Orthotouch pursuant to the actions of various parties that made it impossible for Orthotouch to source external funding. It was made clear that it was imperative that the Scheme of Arrangement was proposed at the time in order to restructure Orthotouch's affairs in order to avoid its liquidation, and the resultant liquidation of the HS companies. This was repeatedly stated in the Scheme of Arrangement documents in October 2014.
9. The Scheme of arrangement provided inter alia that

*"It is in the opinion of the BRP, that it is of utmost importance, in the best interests of HS Investors*

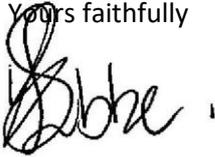
- *to create an alternative solution to serve the best interests of HS Investors, as was intended by the proposing and adopting of the Plan, in the circumstances set out in 2.1.29 and 2.1.30 above;*
- *to create an alternative to the inability to reach the envisaged end goals of the Plan;*
- *to avert any possible liquidation of the HS Companies or any of their number and the serious negative effects of loss of value for HS Investors, which will be the consequence of a liquidation the HS Companies or any of their number."*

10. Paragraph 2.1.63 of the Scheme of Arrangement sets out what the likely liquidation scenario would be upon the liquidation of the HS companies at the time, being October 2014. This demonstrated the state of insolvency of these companies. Averting liquidation is precisely what section 155 of the Act envisages.



11. Your communication to investors to the effect that this is only now being "*revealed at this stage*" is therefore false, misleading and incorrect.
12. We hereby place on record that the false statements by the authors of the Newsletters (dispatched under cover of your firm's letterhead) will be communicated to all affected persons. Attached hereto is a copy of a formal response by our client to the Newsletters.
13. Our client reserves his rights in this regard.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N M Lubbe', with a small mark to the right.

**N M LUBBE**  
**NLA LEGAL INC**