

2 December, 2015

## **AN E-MAIL FROM THE RECEIVER**

Dear Madam / Sir

Further to my e-mail dated 18 August, 2015, I wish to update you on certain of the issues contained in the said e-mail.

### **1. LIQUIDATION AND DISTRIBUTION ACCOUNT ("L&DA")**

- 1.1. A number of objections were received regarding the L&DA which I ruled upon. None of the objections were valid and, as required, I provided my reasons in respect thereof to the affected HS Investors via e-mail in the event that they had email addresses, and by post in the event that such HS Investors did not have email addresses.
- 1.2. The same HS Investors represented by Theron and Partners ("Theron") who unsuccessfully brought an urgent application against Orthotouch Limited ("Orthotouch"), myself and Mr Nic Georgiou to, inter alia, halt the process prescribed in the Scheme of Arrangement ("the Arrangement") in respect of the inspection of the L&DA and related matters, have now instituted review proceedings in the Court regarding my ruling in respect of the objections of two particular HS Investors. (See clause 4.5 of the Arrangement). Orthotouch is the second respondent in this matter. These proceedings are in addition to the application to set aside the Arrangement.
- 1.3. In terms of clause 4.5 of the Arrangement, such a review application must be instituted within a period of 14 (fourteen) day from the date an objector receives my notice setting out the reasons for my ruling rejecting an objection.



- 1.4. I am advised that the review proceedings referred to in paragraph 1.2 were not instituted within the prescribed 14 (fourteen) day period, and as a result of this late service, the review application is invalid and the L&DA process is now finalised.

## 2. LEGAL COSTS

- 2.1. Your attention is drawn to paragraphs 2.4 and 2.5 of my e-mail of 18 August, 2015 regarding the draining of Orthotouch's financial resources as a result of Theron's clients bringing frivolous cases against various parties, including an attempt to set aside the Arrangement. The new review application referred to in paragraph 1.2 above, is the latest example of another frivolous matter being brought by Theron on behalf of two of its clients in an attempt to halt the implementation of the Arrangement. One should question whether these two clients of Theron, who at best can attempt to exercise their personal rights, following from their personal objections having been lawfully dismissed by me, are having their legal fees paid by the aggregate "contributions" from historical HS Investors, or whether these two clients are personally paying Theron for the legal fees incurred by Theron in this unlawful and frivolous matter.
- 2.2. Once again, please refer to paragraph 2.6 of my e-mail of 18 August, 2015 where I make it clear that if Theron's clients are successful in their application to set aside the Arrangement, then HS Investors will receive **NEITHER** interest **NOR** capital as set out in the Arrangement.
- 2.3. With regard to paragraph 2.2 above, Mr Theron of Theron's wrote me a highly emotional letter, inter alia, accusing me of "misguiding" the HS Investors by explaining to you the sad reality that if the Arrangement is set aside by the Court, then no amounts will flow to the HS Investors. He stated that my email dated 18 August 2015 "contains an indirect threat to terminate interest payments". This is not correct. It is an undeniable consequence that if the application to set aside the Arrangement is successful, the interest payments and the capital payments in terms of the Arrangement will cease. This will not be my decision, but will flow automatically from the Court order setting aside the Arrangement.
- 2.4. The amounts already expended by Orthotouch on legal and related fees in defending the Arrangement are substantial. These funds, together with management time required to deal with these matters, could be spent on implementing the Arrangement to your benefit. If these fees continue to escalate, then this may well have a negative effect on Orthotouch's cash flow and ability to properly implement the Arrangement.
- 2.5. It is a pity that Theron's two clients are hell bent on holding some 18 000 HS Investors to ransom, in view of the damage these matters may cause to your future benefits under the Arrangement.



**3. UNLAWFUL LEGAL FEES CONTRIBUTION COLLECTION ACTIONS BY THERON**

- 3.1. It has come to my attention, and I have documentary proof in this regard, that Theron has been repeatedly requesting funds from an HS Investor to make a "contribution" to Theron's legal fees for the "class action", notwithstanding such investor having, in writing, advised Theron that he is not in a financial position to do so.
- 3.2. I believe it is my duty to caution HS Investors regarding such demands for funding because there is no guarantee that such funds will be recouped on conclusion of any legal action.
- 3.3. Should there be any other HS Investors having experienced or experiencing demands for funding from Theron under similar circumstances as described above, I would appreciate being advised thereof, and relevant documentation and detail be provided to me.

**4. ALTERNATIVES UNDER THE ARRANGEMENT**

I am informed by the Orthotouch Board that progress is being made regarding the listing of Capital Growth Fund Limited ("CGF") and that details will be provided to me during the first half of next year.

I will be unavailable between 3 December 2015 and 13 January 2016, and will deal with all issues relating to the Arrangement before and after these dates.

Yours faithfully



**DP COHEN**  
Receiver