

Form 59  
Rule 29.02(1)

## Affidavit

No. VID420 of 2025

Federal Court of Australia  
District Registry: Victoria  
Division: Commercial and corporations list

**SEBASTIAN DAVID HAMS, MARK FRANCIS XAVIER MENTHA, LARA LUISA WIGGINS  
AND MICHAEL ANTHONY KORDA IN THEIR CAPACITY AS JOINT AND SEVERAL  
ADMINISTRATORS OF ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS  
APPOINTED) ACN 004 651 325**

First Plaintiff

**ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004  
651 325**

Second Plaintiff

**WHYALLA PORTS PTY LTD ACN 153 225 364**

Defendant

Affidavit of: Laura Jane Johns  
Address: Level 5, 60 Martin Place,  
Sydney NSW 2000  
Occupation: Solicitor  
Date: 23 April 2025

### Contents

| Document number | Details  | Paragraph | Page |
|-----------------|--|-----------|------|
| 1               | Affidavit of Laura Jane Johns affirmed on 23 April 2025. | N/A       | 1-3  |
| 2               | "Annexure LJ-1" being a draft Notice of cross-claim      | N/A       | 4-12 |

Filed on behalf of (name & role of party) the Defendant  
Prepared by Laura Johns  
Law firm Norton Rose Fulbright  
Tel +61 2 9330 8101 Fax +61 2 9330 8111  
Email laura.johns@nortonrosefulbright.com  
**Address for service** Level 5, 60 Martin Place, Sydney NSW 2000  
(include state and postcode)

I, Laura Jane Johns, of Level 5, 60 Martin Place Sydney NSW 2000, affirm:

1. I am the Solicitor on record for the Defendant, Whyalla Ports Pty Ltd (ACN 153 225 364) (**Whyalla Ports**).
2. Whyalla Ports seeks leave of the Court under s 440D of the *Corporations Act 2001* (Cth) (**Corporations Act**) to commence and proceed with a cross-claim against OneSteel Manufacturing (Administrators Appointed) (ACN 004 651 325) (**OSM**) and the voluntary administrators of OSM (the **Administrators**) (the **Cross-Claim**). A draft form of the Cross-Claim is at **Annexure LJ-1**.
3. I make this affidavit in respect of the proposed Cross-Claim by the Defendant, Whyalla Ports.
4. The statements in this affidavit are true to the best of my knowledge, information and belief. Where I depose to matters on the basis of information and belief, I believe such matters to be true and correct and I state the basis for my information and belief.

### Summary of the Cross-Claim

5. The Cross-Claim names as cross-respondents:
  - (a) Sebastian David Hams, Mark Francis Xavier Mentha, Lara Luisa Wiggins and Michael Anthony Korda in their capacity as joint and several administrators of Onesteel Manufacturing Pty Limited (Administrators Appointed) ACN 004 651 325; and
  - (b) Onesteel Manufacturing Pty Limited (Administrators Appointed) ACN 004 651 325 (together, the **Cross-Respondents**.)
6. The Cross-Claim seeks directions pursuant to s 90-15 of the Insolvency Practice Schedule (Corporations) (**IPS**) and alternatively declaratory relief pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**). The Cross-Claim further seeks damages for trespass and conversion including exemplary damages and costs in the application.
7. The proceedings brought by the Administrators against Whyalla Ports seek orders regarding their purported termination of the "*Lease Agreement*" executed on 29 June 2018 between Whyalla Ports as lessee and OSM as lessor (**Lease**) and their purported re-possession of the land the subject of the Lease (**Leased Land**), and use of equipment and property of Whyalla Ports situated on the Leased Land, without the consent of Whyalla Ports (the **Proceedings**). The Cross-Claim arises from the same set of facts as the Proceedings. I anticipate that the findings which will be required on the Cross-Claim will overlap with findings that will be required on the claim itself.

### Reasons for the timing

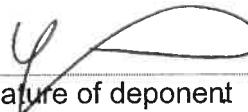
8. The Proceedings are progressing on an extremely expedited timetable.
9. The Proceedings were commenced by way of originating process in the Federal Court of Australia on 2 April 2025. In compliance with the court timetable set down in the orders of Justice Moshinsky on 7 April 2025, the Defendant filed and served its evidence on 17 April 2025.

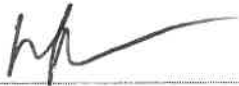



- 10. The Defendant had six business days to prepare, file and serve its evidence which consists of multiple affidavits and thousands of pages of documents.
- 11. The Defendant was unable in the time available to prepare, file and serve the Cross-Claim at the same time as its evidence.
- 12. The public holidays on Friday 18 April 2025 and Monday 21 April 2025 have meant the earliest the Defendant could file and serve the Cross-Claim is today, Wednesday 23 April 2025.
- 13. In view of the upcoming hearing date of 5 May 2025, set down pursuant to the orders of Justice Moshinsky on 7 April 2025, the Defendant requests an urgent case management hearing before Justice O'Callaghan.

Affirmed by the deponent  
at Sydney  
in New South Wales  
on 23 April 2025  
Before me:

)  
)  
)  
)  
)

  
\_\_\_\_\_  
Signature of deponent



\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Harold Lawless, Solicitor

A person authorised under section 21(1)(d) of the *Oaths and Affirmations Act 2018* (Vic) to take an affidavit.

THIS IS THE ANNEXURE MARKED "LJ" 1  
ANNEXED TO THE AFFIDAVIT OF

Form 31  
Rule 15.02(1)

SWORN THIS 23<sup>rd</sup> DAY OF APRIL 2025  
BEFORE ME  
No. VID420 of 2025

**Notice of cross-claim**

Federal Court of Australia  
District Registry: Victoria  
Division: Commercial and Corporations List

**IN THE MATTER OF ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325**

**SEBASTIAN DAVID HAMS, MARK FRANCIS XAVIER MENTHA, LARA LUISA WIGGINS AND MICHAEL ANTHONY KORDA IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325 and another named in schedule 1**

Plaintiffs

**WHYALLA PORTS PTY LTD ACN 153 225 364**

Defendant

**WHYALLA PORTS PTY LTD ACN 153 225 364**

Cross-claimant

**SEBASTIAN DAVID HAMS, MARK FRANCIS XAVIER MENTHA, LARA LUISA WIGGINS AND MICHAEL ANTHONY KORDA IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325 and another named in schedule 1**

Cross-respondents

To SEBASTIAN DAVID HAMS, MARK FRANCIS XAVIER MENTHA, LARA LUISA WIGGINS AND MICHAEL ANTHONY KORDA IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325 and ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325, the Cross-respondents.

The cross-claimant, WHYALLA PORTS PTY LTD ACN 153 225 364, the defendant in the proceeding, applies for the relief set out in this cross-claim.

The court will hear this cross-claim, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the court may make orders in your absence.

|   |   |     |                 |
|---|---|-----|-----------------|
| Filed on behalf of (name & role of party)           | Defendant                                 |     |                 |
| Prepared by (name of person/lawyer)                 | Laura Johns, Solicitor                    |     |                 |
| Law firm (if applicable)                            | Norton Rose Fulbright                     |     |                 |
| Tel   | +61 2 9330 8101                           | Fax | +61 2 9330 8111 |
| Email   | laura.johns@nortonrosefulbright.com       |     |                 |
| Address for service<br>(include state and postcode) | Level 5, 60 Martin Place, Sydney NSW 2000 |     |                 |

If you have not already done so, you must file a notice of address for service (Form 10) in the Registry before attending court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne VIC 3000

The court ordered that the time for serving this application be abridged to:

Date:

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Signed by an officer acting with the authority  
of the District Registrar

**Details of cross-claim**

On the grounds stated in the accompanying affidavit, the cross-claimant claims:

1. Leave under s 440D of the *Corporations Act 2001* (Cth) (**Corporations Act**) to commence and proceed with this cross-claim against the second cross-respondent (**OSM**).
2. A direction pursuant to s 90-15 of the Insolvency Practice Schedule (Corporations) (**IPS**), being Schedule 2 to the Corporations Act, alternatively a declaration under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), to the effect that:
  - (a) the lease entered into by the cross-claimant (**Whyalla Ports**) and OSM and dated 29 June 2018 (**Lease**) is valid and binds the parties to it according to its terms; alternatively
  - (b) OSM is estopped from denying that the Lease is valid and binds it according to its terms, and the first cross-respondents (the **Administrators**) are bound to act accordingly.
3. A direction pursuant to s 90-15 of the IPS, alternatively a declaration under s 21 of the FCA Act, that on the proper construction of the Lease, and in the present circumstances where Whyalla Ports is holding over under the Lease (alternatively, where OSM is estopped from denying as much), OSM cannot terminate the Lease (alternatively, the estoppel) without giving Whyalla Ports:
  - (a) two years' written notice; alternatively
  - (b) six months' written notice.

4. A direction pursuant to s 90-15 of the IPS, alternatively a declaration under s 21 of the FCA Act, to the effect that:
  - (a) the **Assets** (as defined in Schedule 2 attached) are the property of Whyalla Ports; and
  - (b) on the proper construction of the Lease, the Assets are each '**Lessee's Improvements**' as defined in cl 1 of the Lease.
5. An order under s 90-15 of the IPS, alternatively a declaration under s 21 of the FCA Act, that by causing employees of OSM to enter the land the subject of the Lease (the **Premises**) on and after 28 March 2025, the Administrators trespassed on the Premises.
6. An order under s 90-15 of the IPS, alternatively a declaration under s 21 of the FCA Act, that by causing employees of OSM to use the Assets on and after 28 March 2025, the Administrators converted the Assets to their own use.
7. Damages for trespass and conversion, including exemplary damages (with the question of damages to be referred for assessment or tried separately following the determination of questions of liability).
8. If the court grants the relief sought by the plaintiffs in the originating process, a direction pursuant to s 90-15 of the IPS that the cross-respondents must permit Whyalla Ports to access and enter the Premises and remove the Assets for a period of six months commencing on the date of the order (or, if the Lease is terminated by disclaimer, commencing from the date that the disclaimer takes effect).
9. Costs.

#### **Cross-claimant's address**

The Cross-claimant's address for service is:

Place: Level 5, 60 Martin Place, Sydney NSW 2000

Email: laura.johns@nortonrosefulbright.com

The Cross-claimant's address is C/- Norton Rose Fulbright, Level 5, 60 Martin Place, Sydney NSW 2000

**Service on the Cross-respondents**

Whyalla Ports intends to serve this cross-claim on all cross-respondents.

Date:

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Signed by Laura Johns  
Solicitor for the cross-claimant

**Schedule 1**

No. VID420 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Commercial and Corporations List

Second Plaintiff: **ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325**

Second Cross-respondent: **ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325**

Date: 23 April 2024

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## Schedule 2

## Assets

|     | Description                                      |
|-----|--|
| 1.  | Site Services Buildings                          |
| 2.  | Shed 1   |
| 3.  | Shed 2   |
| 4.  | Tip Pocket                                       |
| 5.  | Fire Fighting System                             |
| 6.  | Dust Collection System                           |
| 7.  | Water Spray System                               |
| 8.  | Sampler Equipment                                |
| 9.  | Conveyor 1 - from Tip Pocket to Transfer Tower 1 |
| 10. | Inloading Conveyors and Transfer Towers          |
| 11. | Outloading Conveyors and Transfer Towers         |
| 12. | Standard Gauge Rail Network                      |
| 13. | Narrow Gauge Rail Network                        |
| 14. | Products Berth Upgrade                           |
| 15. | Rolls Royce Mooring Winches                      |
| 16. | B&W Shiploader                                   |
| 17. | Permanent Berth                                  |
| 18. | Permanent Shiploader                             |
| 19. | Wharf Front Power Supply-Generator               |
| 20. | IHEF Shiploader Exclusion Zone                   |
| 21. | Rail Infrastructure                              |
| 22. | Material Handling Facility                       |
| 23. | Permanent Berth / Shiploader 2                   |
| 24. | Temporary Berth                                  |
| 25. | Transshipment                                    |
| 26. | Permanent Utilities                              |
| 27. | Bulk Berth Timber Wharf                          |
| 28. | Wharf Front Power Supply-Generator               |
| 29. | Shiploader                                       |
| 30. | Building Structure Etc.                          |
| 31. | Bypass Conveyor & Other Conveyor (Feed Out)      |
| 32. | Incoming Conveyors & Support Structure & Gantry  |
| 33. | The Shed (Incl. Foundation, Walkway, Drainage)   |
| 34. | Inner Harbour Control System                     |
| 35. | Inner Harbour 3 Navigation Beacons               |
| 36. | IH2 Navigation Beacon                            |
| 37. | IH6 Navigation Beacon                            |
| 38. | Ih12 Navigation Beacon                           |
| 39. | J2 Navigation Beacon                             |
| 40. | J3 Navigation Beacon                             |
| 41. | J9 Navigation Beacon                             |
| 42. | Mobile Solution For Sampling                     |
| 43. | 9 Navigation Beacons Jet 1,4,5,7,9,11,Ih 1,16,14 |
| 44. | Replace Inner Harbour Pilot Steps                |
| 45. | Mobile Harbour Crane - Mobile Hopper             |

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|-----|--|
| 46. | Ihef Tip Pocket Remediation                        |
| 47. | Development Of Tug Berth                           |
| 48. | Whyalla Port Lan Connection                        |
| 49. | Installation Electromagnetic Brake On Boom Hoist   |
| 50. | Canopy From Shear Legs Over Walkways - Nos.1 & 2   |
| 51. | Safety Handrails-Inside Girder Platform & Cantil.  |
| 52. | Stockbridge Unloader With Two Grabs - 26t Cap.     |
| 53. | No.2 Stockbridge Electrical Upgrade                |
| 54. | Stockbridge Concrete Platform And Support Brackets |
| 55. | Excavations + Concrete Foundations                 |
| 56. | Building Structure                                 |
| 57. | Plumbing Fixtures + Fittings Sanitary Ware         |
| 58. | Foundations  |
| 59. | Concrete Floor                                     |
| 60. | Foundations  |
| 61. | Building   |
| 62. | Concrete Foundations                               |
| 63. | Building Structure                                 |
| 64. | Plumbing Fixtures + Fittings                       |
| 65. | IRON CLAD 8M X 13M EXT.TO INST.WORKSHOP            |
| 66. | Foundations  |
| 67. | Concrete Floor                                     |
| 68. | Channel Beacon                                     |
| 69. | Safety Barrier & Alterations To Corner Of Road     |
| 70. | Concrete Storage Pad At Blast Furnace Wharf        |
| 71. | Monorail   |
| 72. | Front Lead Light - Tower                           |
| 73. | Rear Lead Light - Tower.                           |
| 74. | Rebuilding-106 Metres Of Sheet Piled Wharf         |
| 75. | Piling + Peine Piling For Wharf Rebuilding         |
| 76. | Rubber Fenders                                     |
| 77. | Ext.Of Dolphin Platform- No.4 B/Fnce Wharf         |
| 78. | Upgrade Sheet Piling At West End Of Bulk Wharf     |
| 79. | Stonework On North Side Of Harbour                 |
| 80. | Extending South Protection Bank By 700 Feet        |
| 81. | Boat Harbour Extensions                            |
| 82. | Bollards   |
| 83. | Retaining Wall Ext. Tie Rods And Beams Etc.)       |
| 84. | Wharf Decking                                      |
| 85. | Timber Piles For Wharf Fenders                     |
| 86. | Tracks And Wharf Anchorage                         |
| 87. | Sheet Piling Incl. False Work                      |
| 88. | Timber Work Decking And Rubber Fenders             |
| 89. | Misc. Concrete Work Inc. Concrete Anchors          |
| 90. | Piling   |
| 91. | Rubber Fenders                                     |

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|------|--|
| 92.  | Bollards And Mooring Cleats                        |
| 93.  | 25 Ton Capacity Lifting Beam                       |
| 94.  | Ret Walls And Stockbridge Front Track Foundations  |
| 95.  | Stockbridge Back Track-Incl. Foundations           |
| 96.  | Trackwork Inc. Buffers Etc. For Stockbridge        |
| 97.  | Piling   |
| 98.  | Foundations  |
| 99.  | Piling   |
| 100. | Foundations  |
| 101. | Trackwork  |
| 102. | Luffing Crane Collector Trench                     |
| 103. | Piling   |
| 104. | Concrete Foundations                               |
| 105. | Inner Harbour Additional Beacon 8a                 |
| 106. | 14 Sola - Chan Marine Navigation Beacons           |
| 107. | Shore Beacons                                      |
| 108. | Front Lead Light - Piling                          |
| 109. | Front Lead Light - Concrete Foundations            |
| 110. | Rear Lead Light - Concrete Foundations             |
| 111. | Piling And Structural Steelwork                    |
| 112. | Sealing Of Wharf Stacking Area                     |
| 113. | Harbour Lead Lights (Located In Shipyard Area)     |
| 114. | Plumbing Fixtures Fittings Sanitary Ware           |
| 115. | Toilet Cisterns And Urinals                        |
| 116. | Structural Supports For 3 Lights                   |
| 117. | Lights - P/Bar Shop - No.3 Crane Track Tailing Dam |
| 118. | Lighting Towers For Bulk Stock Wharf Area          |
| 119. | Floodlighting (9 Off) On Wharf                     |
| 120. | Upgrade Lights & Wiring In Gear Shed               |
| 121. | Upgrade Lighting Wharf Material Handling Area      |
| 122. | Timber Wharf                                       |
| 123. | Dredging   |
| 124. | Dredging Basin And Channel Reclamation             |
| 125. | Harbour Dredging (Re Wharf Extension)              |
| 126. | Outside Cyclone Fencing (Compound)                 |
| 127. | Sewers And Sumps                                   |
| 128. | Storage Area - Tar Paving                          |
| 129. | Septic Tank  |
| 130. | Sewerage   |
| 131. | Concrete Paths                                     |
| 132. | Safety Fence -Areas Around Shipping Office         |
| 133. | Wharf Stockbridge Upgrade                          |
| 134. | Install Ship Loading Material Deflectors At Wharf  |
| 135. | No.2 Stockbridge Cabin Air Conditioner             |
| 136. | Stage 3 Seawall Rock Armour                        |
| 137. | Security Fence To BF Wharf Area                    |

|      |  |
|------|--|
| 138. | Coke Shipping Wharf Pier                   |
| 139. | Coke Wharf Rem                             |
| 140. | Csl Compound Potable Water Filtration Skid |
| 141. | Csl Potable Water Project                  |
| 142. | Jetty Conveyor Motor Upgrade               |
| 143. | Boarding Platforms                         |
| 144. | Jetty Conveyor - Shiploader                |
| 145. | Bis Equipment Transition                   |
| 146. | Ohef Control System Upgrade1               |