

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 26911/2016

In the matter between:

DANIEL TERBLANCHE N.O.	First Applicant
PIERS MICHAEL MARSDEN N.O.	Second Applicant

and

AIR LIQUIDE (PTY) LTD	First Respondent
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EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE)	Second Respondent
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THE CREDITORS OF THE SECOND RESPONDENT LISTED IN ANNEXURE A TO THIS NOTICE OF MOTION	Third Respondents
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THE EMPLOYEES OF THE SECOND RESPONDENT LISTED IN ANNEXURE B TO THIS NOTICE OF MOTION	Fourth Respondents
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NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA	Fifth Respondent
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SOLIDARITY	Sixth Respondent
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THE SHAREHOLDERS OF THE SECOND RESPONDENT LISTED IN ANNEXURE C TO THIS NOTICE OF MOTION	Seventh Respondents
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NOTICE OF COUNTER-APPLICATION

BE PLEASED TO TAKE NOTICE that the first respondent intends to counter-apply to this Honourable Court for an order in the following terms: -

1. Declaring that an order cancelling the obligations of the second respondent on the terms set out in paragraph 1 of the notice of motion in the main application amounts to a repudiatory breach on the part of the second respondent of the agreement concluded between the first respondent and the second respondent on 7 December 2011 and amended on 9 October 2012 (“**the Supply Agreement**”) giving rise to a claim for damages on the part of the first respondent against the second respondent.

2. Declaring that:
 - 2.1. the first respondent is not bound by paragraph 24.2 of the Business Rescue Plan (“**the Plan**”);

 - 2.2. clause 20.12 of the Supply Agreement does not impose any limitation on the first respondent’s claim for damages arising from a cancellation of the second respondent’s obligations under the Supply Agreement on the terms set out in paragraph 1 of the notice of motion in the main application;

 - 2.3. the first respondent is entitled to submit and the applicants are obliged to accept a claim to the full extent of the first respondent’s duly mitigated claim for damages discounted to a present day value in the business rescue proceedings and that any dispute regarding the quantification thereof is to be determined in accordance with the dispute resolution mechanism in paragraph 38 of the Plan;

- 2.4. the first respondent is entitled to be paid and the applicants are directed to pay the first respondent a dividend based on the full amount of the first respondent's damages claim in the business rescue proceedings.

3. Declaring that:
 - 3.1. the first respondent is entitled to continue to receive a supply of water according to its requirements from the Highveld Steel water pipeline ("**the pipeline**") and to have its waste water managed by Highveld Steel's waste water treatment facility ("**waste water facility**"), on reasonable commercial terms;
 - 3.2. to that end, the second respondent and/or the applicants is/are obliged to include the first respondent in any agreement concluded by the second respondent and/or the applicants with any third party or parties concerning the ownership and continued operation of the pipeline and waste water facility.

4. Directing that the applicants pay the costs of this counter-application, including the costs consequent upon the employment of two counsel, as costs of the business rescue proceedings.

5. Granting the first respondent further and/or alternative relief.

TAKE NOTICE that the answering affidavit of **Amine Houssaim** in the main application, together with the attachments thereto, shall be used in support of this application.

TAKE NOTICE FURTHER THAT if you intend opposing this application you are required to:

- a) notify the first respondent's attorneys in writing within 5 days of the service of this notice of counter-application on you;
- b) within 15 days after you have so given your intention to oppose the application, to file your answering affidavits, if any; and
- c) appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT the application will be made at the hearing of the main application.

DATED AT JOHANNESBURG ON THIS THE 25th DAY OF NOVEMBER 2016.

VAN HULSTEYNS ATTORNEYS
First Respondent's Attorneys
3rd Floor, Katherine & West Building
Cnr. Katherine and West Streets
Sandton
Email: andrew@vhlaw.co.za
Ref: Mr Legg/MAT10034

**TO: THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
JOHANNESBURG**

AND TO: EDWARD NATHAN SONNENBERGS INC

Applicants' Attorneys
150 West Street
Sandton
Email: lfield@ens.co.za
Ref: L Field

Received a copy hereof on this the
_____ day of November 2016.

For: Applicants' Attorneys

**AND TO: EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED
(IN BUSINESS RESCUE)**

Second Respondent
**Care of Matuson Associates
(Attention Piers Marsdon)
Cnr Glenhove Road & Ninth Street
Melrose Estate
2196 Johannesburg**

SERVICE BY THE SHERIFF

**AND TO: THE CREDITORS OF THE SECOND RESPONDENT LISTED IN
ANNEXURE A TO THIS NOTICE OF MOTION**

Third Respondents
PER SUBSTITUTED SERVICE

**AND TO: THE EMPLOYEES OF THE SECOND RESPONDENT LISTED IN
ANNEXURE B TO THIS NOTICE OF MOTION**

Fourth Respondents
PER SUBSTITUTED SERVICE

AND TO: NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA

Fifth Respondent
NUMSA Head Office
**153 Lillian Ngoyi Street
Cnr Gerald Sekoto Street
Newtown
2001 Johannesburg**

SERVICE BY THE SHERIFF

AND TO: SOLIDARITY

Sixth Respondent
Solidarity Head Office
Corner DF Malan and
Eendracht Street
Kloofsig
0157

SERVICE BY THE SHERIFF

**AND TO: THE SHAREHOLDERS OF THE SECOND RESPONDENT LISTED IN
ANNEXURE C TO THIS NOTICE OF MOTION**

Seventh Respondents
PER SUBSTITUTED SERVICE