

# T A B A C K S

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**Date**         **17 February 2023**

**MESSRS LAWTONS INC**

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Dear Sir / Madam

**RICHARDS BAY COAL TERMINAL (PTY) LTD (“RBCT”) // MR ALLAN WALLER // OPTIMUM  
COAL MINE (PTY) LTD (IN BUSINESS RESCUE) (“OCM”) // OPTIMUM COAL TERMINAL  
(PTY) LTD (IN BUSINESS RESCUE)**

1. We address this letter on behalf of Mr Daniel McGowan, Templar Capital Limited and Liberty Coal (Pty) Ltd (“our Clients”).
2. We refer to the affidavit deposed to by Mr Allan Waller, in his capacity as the Chief Executive Officer (“CEO”) of RBCT which was served on the parties on 13 February 2023.
3. It requires an impossible stretch of imagination for any reader with knowledge of the true state of affairs relating to OCM / OCT to conclude that the affidavit deposed to by the CEO of

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Associates A Attieh CD Bergmann MG Davis CS Majuru  
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Consultants JS Peart M Taback

RBCT, '**one of the leading coal export terminals in the world**' is an honest representation of the true history and state of affairs.

4. Loathe to further burden the papers in the present proceedings, in the limited time available our Clients will have no option but to correct the factual inaccuracies recorded by RBCT relevant to the determination of the proceedings and we shall file papers in due course.
5. An issue of grave concern is the false, misleading and defamatory utterances on oath by the CEO of RBCT which are clearly intended to and **will in fact cause harm** to our Clients. It has become quite obvious from the proceedings to date, that these bald and unsubstantiated allegations are made to further the designs of the real protagonists necessitating the present litigation, the National Prosecuting Authority ("NPA") and the other shareholders of RBCT who can only benefit from the use of OCT's rail and port entitlement whilst OCT remains suspended by RBCT.
6. Mr Waller has misguidedly contended that "*...this Court can accept **the facts as set out in RBCT's Answering Affidavit regarding Mr McGowan's role in State Capture and associate Gupta Family**, as I am informed that it is obliged to do in line with the principles in Plascon Evans*". These "facts" are anything but and are simply **unproven allegations** which will be dealt with in the Forfeiture Proceedings in due course.
7. Whilst reckless **unfounded and unproven** defamatory statements similar to those made by Mr Waller have been put up by the NPA (which are no longer met with any small degree of surprise and quite frankly taken from whence they come) Mr Waller's statements made under oath as a fact in paragraph 144 that "*...Mr McGowan and the compliant BRPs creating so much unnecessary **social unrest, death threats and employment insecurities**...*" and in paragraph 143 that "*OCM and OCT and Liberty Coal in a demonstrably orchestrated manner creating so much unnecessary social unrest and insecurity, and **heinous death threats, to preserve the secret CPSA and Mr McGowans Grand Plan and his R8.4 – 6.5 billion super profits***." cannot be left unchallenged and unsanctioned.
8. Whilst Mr Waller does not elaborate on his allegations, the NPA have referred *inter alia* to the death threats received by the OCM / OCT Curator in these same proceedings – we have attached the relevant section under cover. It beggars belief that the CEO of RBCT (not the

NPA) now, without any factual basis to do so, directly attributes this unlawful conduct to our Clients which can only result in **irreparable harm and damage to our Clients**.

9. In amplification the defamatory statements made by the CEO of RBCT, which will be read by *inter alia* our Client's customers and suppliers, financial institutions and regulatory bodies both locally and abroad will (as they have in the past) will affect our Clients' ability to *inter alia* open and / or maintain bank accounts, procure the continued services of auditors and / or maintain its relations with customers and suppliers. It appears that the sole purpose of Mr Waller stating these alleged facts under oath, without a shred of evidence, including but not limited to confirmatory affidavits or contemporaneous documentation, was to deliberately and intentionally cause the irreparable harm to our Clients. Both Mr Waller in his personal capacity and RBCT will be held liable for the **irreparable damage** our Clients' will suffer in this regard and our Clients' rights are strictly reserved.

10. We are instructed to demand, as we hereby do,:

10.1 Confirmation that Mr Waller was authorised by the entire RBCT board to make the defamatory comments under oath in the representative capacity as the RBCT CEO, or whether he did so on a frolic of his own;

10.2 Mr Waller **provides a clear and unequivocal clarification and absent any proof, a retraction and apology in writing** that he in no way has accused, or has sought any reader of his affidavit deposed to in his capacity as the CEO of RBCT to infer that, Liberty Coal and / or Mr McGowan are in any way associated with the "*unnecessary social unrest, death threats (heinous or otherwise) and employment insecurities*";


10.3 Mr Waller shall make arrangements for the Court to be provided with his retraction and apology, and the apology should be published in a prominent position on RBCT's website.

11. In the event that Mr Waller fails to provide the aforesaid by **16h00 on 17 February 2023**, we

are instructed to launch proceedings for defamation and damages from Mr Waller personally and RBCT. It follows that criminal sanction for perjury will arise in due course.

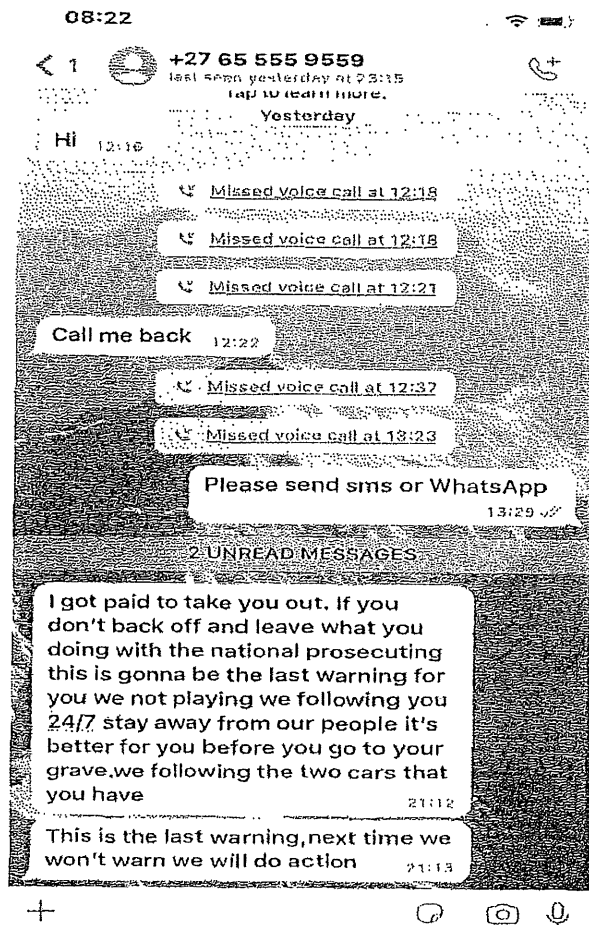
12. We trust that you will be guided accordingly.

Yours faithfully,



**BRETT TATE**  
**TABACKS**

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26. Following receipt of further death threats, the Curator gave notice to the NPA that he intended to resign his appointment. Arrangements are currently being made for a suitable replacement Curator to be appointed. When these arrangements have been finalised, the NDPP will apply to the Pretoria High Court to allow Mr van den Steen to withdraw as Curator and for his replacement to be appointed.

C. J. R.