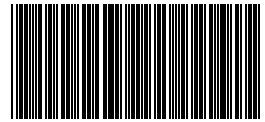




Filed: 24 January 2023 7:18 PM



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Form 2

ORIGINATING PROCESS – COVERSHEET AND ACKNOWLEDGEMENT

IN THE MATTER OF SUN CABLE PTY LTD (ADMINISTRATORS APPOINTED)

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2023/00025359

TITLE OF PROCEEDINGS

First Plaintiff	Christopher Clarke Hill
Second Plaintiff	David McGrath
Number of plaintiffs	4

FILING DETAILS

Filed for	Christopher Clarke Hill, Plaintiff 1 David McGrath, Plaintiff 2 John Park, Plaintiff 3 SUN CABLE PTY LTD (ADMINISTRATORS APPOINTED), Plaintiff 4
Legal representative	Camilla Clemente
Legal representative reference	
Telephone	0439443153
Your reference	1000-161-014

HEARING DETAILS

This application will be heard at Supreme Court Sydney on 6 February 2023 at 10:00 AM

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Originating process (Corporations Law) Other, along with any other documents listed below, were filed by the Court.

Corporations Law Originating Process (Form 2) (Originating Process dated 24 January 2022 - Sun Cable.pdf)

Affidavit in Support of Originating Process (Affidavit of David McGrath affirmed on 24 January 2023.pdf)

[attach.]

Form 2

(rules 2.2 and 15A.3)

IN THE SUPREME COURT OF NEW SOUTH WALES

No. of 2023

DIVISION: Equity

REGISTRY: Sydney

IN THE MATTER OF SUN CABLE PTY LTD (ADMINISTRATORS APPOINTED) ACN 623 991 006 AND OTHERS

CHRISTOPHER CLARKE HILL, DAVID MCGRATH AND JOHN PARK IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF SUN CABLE PTY LTD (ADMINISTRATORS APPOINTED) ACN 623 991 006

First Plaintiffs

SUN CABLE PTY LTD (ADMINISTRATORS APPOINTED) ACN 623 991 006

Second Plaintiff

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under sections 439A(6) and 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

Through this application, the Plaintiffs seek orders:

- a. pursuant to section 447A of the Act that Part 5.3A of the Act operate such that, if their indemnity under section 443D of the Act is insufficient to meet any amount for which the Administrators may be liable arising out of or in connection with a funding agreement, then the Administrators will not be personally liable to repay any such amount to the extent of that insufficiency;
- b. pursuant to section 439A(6) an extension of the convening period.

On the facts stated in the supporting affidavit of David McGrath sworn on 24 January 2023, the Plaintiffs claim:

Filed on behalf of (name & role of party)	Christopher Clarke Hill, David McGrath and John Park as joint and several administrators of Sun Cable Pty (Administrators Appointed) ACN 623 991 006 and Sun Cable Pty (Administrators Appointed) ACN 623 991 006, Plaintiffs
Prepared by (name of person/lawyer)	Camilla Clemente
Law firm (if applicable)	Ashurst Australia
Tel	+61 2 9258 6508
Fax	+61 2 9258 6999
Email	camilla.clemente@ashurst.com ; john.nolan@ashurst.com
Address for service (include state and postcode)	Ashurst Australia, Level 11, 5 Martin Place, Sydney NSW 2000

Orders

1. An order that pursuant to section 447A(1) of the Act that Part 5.3A of the Act is to operate in relation to the Plaintiffs as if s 443A(1) of the Corporations Act provides that:
 - (a) the liabilities of the First Plaintiffs (in their capacities as administrators of the Second Plaintiff) incurred with respect to any obligations arising out of, or in connection with any funding agreement substantially in accordance with the draft funding agreement in pages 991 to 1016 of Exhibit DMG-1 (**Funding Agreement**), between Eriostemon Pty Limited ACN 119 827 593 (or their nominee) and the First Plaintiffs are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of the Second Plaintiff; and
 - (b) notwithstanding that the liabilities referred to in Order 1(a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of the Second Plaintiff, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the property of the Second Plaintiff is insufficient to satisfy the debts and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the Funding Agreement.
2. An order pursuant to section 439A(6) of the Act, that the date of the convening period as defined by section 439A(5) of the Act, for the second meeting of creditors of the Second Plaintiff required by section 439A of the Act (**Second Meeting**), be extended up to and including 30 June 2023 or such other period that the Court considers appropriate.
3. An order pursuant to section 447A of the Act, that Part 5.3A of the Act is to operate in relation to the Company as if the Second Meeting may be convened and held at any time during the convening period, or within 5 business days after the end of the convening period as extended by the order sought in paragraph 2 above, notwithstanding the provisions of 439A(2) of the Act.
4. An order that the First Plaintiffs take reasonable steps to cause a copy of this application and the Court's orders to be given to creditors of the Second Plaintiff within two business days of the making of those orders.
5. An order that any person who can demonstrate a sufficient interest have liberty to apply to vary or discharge the Court's orders on two business days' notice.
6. An order that the First Plaintiffs' costs of and incidental to this application be costs in the administration of the company.
7. Such further or other order as the Court considers appropriate.

Date: 24 January 2023



*Signature of
Camilla Clemente, Plaintiffs' legal practitioner*

This application will be heard by Justice Black at the Supreme Court of New South Wales, Law Courts Building, Queens Square, 184 Philip Street, Sydney NSW 2000 at 9 am on Wednesday 25 January 2023.

B. NOTICE TO DEFENDANTS(S) (IF ANY)

Not Applicable.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not Applicable.

D. FILING

Date of filing:

This originating process is filed by Ashurst Australia for the Plaintiffs.

E. SERVICE

The plaintiff's address for service is: c/- Ashurst Australia
Lawyers
5 Martin Place
Sydney NSW 2000
Ref: 1000 136 163

It is not intended to serve a copy of this application on any person.