

**IN THE SUPREME COURT OF WESTERN AUSTRALIA  
COMMERCIAL AND MANAGED CASES LIST**

**No. CIV 1561 of 2012**

BETWEEN

**STEPHEN WILLIAM MARSH**

First Plaintiff

**SUSAN GENEVIEVE MARSH**

Second Plaintiff

and

**MICHAEL OWEN BAXTER**

Defendant

**WITNESS STATEMENT OF FREDERICK EVAN DAVIES**

I, **FREDERICK EVAN DAVIES** of 145 Davies Road, Talbot in the State of Victoria, farmer and business director, make the following statement:

1. I am the Managing Director of Stoney Creek Oil Products Pty Ltd (**Stoney Creek**). Stoney Creek is a grower and processor of certified organic oilseed products, including oils and meals from linseed, also known as flaxseed.
2. I have worked on farms all my life. I established Stoney Creek farm in 1990 with my wife Coral and incorporated our processing business under the Stoney Creek name in 1992.
3. Our processing facility was first certified organic by Biological Farmers Australia, now Australian Certified Organic (**ACO**), in 1993. In 1996, to achieve accreditation from International Federation of Organic Agriculture Movements (**IFOAM**), Stoney Creek applied to National Association for Sustainable Agriculture, Australia (**NASAA**) for certification of Stoney Creek's processing facilities. Stoney Creek farm was certified by NASAA in 1999. When ACO obtained IFOAM accreditation we ceased dual certification in favour of NASAA.
4. Stoney Creek's organic certification requires us to source organic seed from certified organic growers. NASAA audits us annually to confirm that we have complied with the *NASAA Organic Standard*. I refer to *NASAA Organic Standard* [TB 1293-1407].
5. Since 1992 the processing side of the Stoney Creek business has grown rapidly, and soon required much more oilseed than what we can grow on our own farm. Because of this I have established relationships with a number of farmers who Stoney Creek buys oilseed from.

6. I am very selective about who I choose to purchase oilseed from because it is very important to me that Stoney Creek products are of the highest quality. I only buy oilseed from farmers I have developed a relationship with and who I can trust to grow regular, high quality crops.
7. Stoney Creek has farmers in different climatic zones to afford a degree of drought-proofing. In the past, Stoney Creek has purchased oilseed from farmers in Victoria, New South Wales, South Australia, Tasmania and Queensland. We have never purchased oilseed from Western Australia, but this is only because I do not have the opportunity to meet farmers from Western Australia very often.
8. I believe the market demand, in particular the health food market which Stoney Creek services, for organic linseed products continues to be very strong, while the market demand for non-organic linseed is not as strong. In my experience, although we produce and advertise both organic and non-organic linseed products, we sell significantly more organic products. For example, in 2013 Stoney Creek had exhausted our supply of organic gold linseed within the first two months of the year.
9. Stoney Creek pays a higher price for certified organic linseed than for non-organic linseed because our customers' demand is predominantly for organic linseed and because the prices we can sell certified organic products for are substantially higher than what we can sell non-organic products for. If one of our farmers grows linseed using organic methods but does not have organic certification then we would pay the farmer the non-organic price because we cannot sell non-certified products at the higher price available to certified organic products.
10. Stoney Creek does not buy or sell oilseed or other products labelled "organic" unless they are certified organic. We check our organic suppliers' certification to confirm that they have current organic certification with an organic certifier whose standards we know to be consistent with the National Standard for Organic & Bio-Dynamic Produce. I refer to the National Standard for Organic & Bio-Dynamic Produce [TB 1408-1480].
11. Stoney Creek purchases both machine graded and farm graded linseed. Machine graded means that the linseed has been put through a machine that removes all impurities and sorts weed or other seeds by size and weight. Farm graded means that it has not been separated to this extent and other plant seeds may still be

present. To be suitable for use in food products for human consumption linseed must be machine graded.

12. Stoney Creek purchases two types of linseed: brown linseed and gold linseed. We mostly purchase certified organic linseed, but we also purchase some non-organic linseed for use in a small, lower priced market we have for non-organic products, such as oils and meals for commercial bakers, animal foods and timber treatments.
13. Stoney Creek does not publish the prices we pay farmers for oilseed. We negotiate these prices one-on-one with the farmers we contract with.
14. In 2013, Stoney Creek paid around \$2,300 per tonne for organic farm graded brown linseed and \$2,500 per tonne for organic machine graded brown linseed. We paid \$2,600 per tonne for organic farm graded gold linseed and \$3,000 per tonne for organic machine graded gold linseed.
15. In 2013, Stoney Creek purchased non-organic machine graded gold linseed for \$1,150 per tonne. This price included \$100 per tonne freight costs because Stoney Creek purchased non-organic gold linseed from Tasmania in 2013. Usually farm graded non-organic brown linseed is available from Southern Victoria for about \$1000 per tonne, however Stoney Creek did not purchase non-organic brown linseed in 2013 because we have found no customer demand for it.
16. In about August 2013 I received a call from Stephen Marsh. I had never spoken to Mr Marsh before.
17. Mr Marsh told me that he was growing linseed and was considering growing certified organic linseed in the future.
18. Mr Marsh also told me that he had grown linseed for the first time that year and said that he was having some problems with some of his crop. Mr Marsh asked me a lot of questions about my experience growing linseed.
19. I told Mr Marsh that Stoney Creek may be interested in purchasing linseed from him. I provided Mr Marsh with information regarding the prices that Stoney Creek paid farmers for organic and non-organic linseed in 2013, as set out above.
20. If Stoney Creek did enter into an agreement with Mr Marsh to purchase organic linseed from him, it would be for a partial purchase of about 20 to 30 tonnes in the first instance so that I could confirm the linseed was of suitable quality.

21. If Mr Marsh's organic linseed was of a good quality Stoney Creek would purchase increasing amounts in subsequent years. The amount of linseed Stoney Creek would buy from Mr Marsh in any given year would depend on a number of factors, including how much was being supplied by our other farmers.
22. For example, in 2013 several of the farmers who Stoney Creek buys organic gold linseed from experienced problems with their crops and so there was a shortage. If Mr Marsh had grown organic gold linseed in 2013, Stoney Creek would have bought all that he was able to sell to us.
23. As Stoney Creek has never previously purchased linseed from Western Australia I am not personally familiar with what the freight costs would be. Based on my experience of receiving linseed freighted from other states, I estimate the freighting costs would be approximately \$2,000 to \$4,000 per truck. Stoney Creek splits any freight costs with the farmer whatever they may be and we would do the same if we bought organic linseed from Mr Marsh.
24. I am also not familiar with the transport regulations, but I consider based on my experience of freighting linseed from other states of Australia that any linseed transported from Western Australia to Victoria may need to be machine graded and certified weed free. I don't know what the costs of this would be, however I estimate based on my experience that it would cost up to \$200 per tonne to have linseed machine graded to this standard and a further nominal fee to be certified weed free. These costs are paid by the farmer.
25. On or about 18 October 2013 I met Mr Marsh for the first time at the Organic Expo in Melbourne. We talked further about the possibility of Mr Marsh selling organic linseed to Stoney Creek in future years on the basis I described in paragraphs 20 and 21, above.

I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

**Frederick Davies**

Dated: 15 January 2014

Amended: 18 February 2014