NOTICE OF FILING

Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	29/07/2026 3:49:31 PM AEST
Date Accepted for Filing:	29/07/2026 3:49:34 PM AEST
File Number:	NSD1039/2021
File Title:	WHITE OAK COMMERCIAL FINANCE EUROPE (NON-LEVERED) LIMITED v INSURANCE AUSTRALIA LIMITED ACN 000 016 722
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Filed pursuant to Order of Thawley J dated 21 July 2026

BCC/TMNF/TMMA Annexure D

No. NSD 1039 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

WHITE OAK COMMERCIAL FINANCE EUROPE (NON-LEVERED) LIMITED

Applicant

INSURANCE AUSTRALIA LIMITED (ACN 000 016 722) and others named in the Schedule

First Respondent

Filed on behalf of (name & role of party) BCC Trade Credit Pty Ltd, Second Respondent and Cross-claimant; Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), Sixth Respondent and Cross-claimant; and Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455), Seventh Respondent and Cross-claimant

Prepared by (name of person/lawyer) Matt Andrews

Law firm (if applicable) Kennedys (Australasia) Partnership

Tel 02 8215 5999 Fax 02 8215 5988

Email Matt.andrews@kennedyslaw.com

Address for service (include state and postcode) L48, 25 Martin Place, Sydney NSW 2000

[Form approved 01/08/2011]

Schedule

No. NSD 1039 of 2021

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Third Respondent:	Greg Brereton
Fourth Respondent:	Greensill Bank AG
Fifth Respondent:	Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG
Sixth Respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Seventh Respondent:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)

GREENSILL BANK CROSS-CLAIM

First Cross-claimant:	Greensill Bank AG
Second Cross-claimant:	Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

BCC CROSS-CLAIM

Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent:	Greensill Capital (UK) Limited
Second Cross-respondent:	Greensill Capital Pty Limited (In Liquidation) (ACN 154 088 132)

BCC/TMNF/TMMA CROSS-CLAIM

First Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)

Second Cross-claimant:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

ANNEXURE D

This Annexure D has been prepared for the purposes of supplementing the defences filed by BCC, TMNF and TMMA (being the Second, Sixth and Seventh Respondents respectively) in the White Oak Proceeding (NSD 1039 of 2021) (**Proceeding**). It uses internally defined terms rather than the terms defined in the defences in the Proceeding.

A. DENIAL OF RELIANCE AND CAUSATION

1. In the Proceeding, White Oak Commercial Finance Europe (Non-Levered) Limited (**White Oak**) pleads that it received and acted upon BCC's Actual Authority Representations when acquiring the Payment Obligations (as those terms are defined in White Oak's pleading).

Particulars

Refer to paragraphs 41B(c)(iii), 117(c) and 193(d)(iii) of White Oak's Sixth Amended Statement of Claim in the Proceeding.

2. BCC denies that White Oak relied on BCC's Actual Authority Representations when acquiring the Payment Obligations. BCC pleads this denial on the basis of:

   (a) the absence of any, or any adequate, pleading or evidence by White Oak as to the facts, matters and circumstances said to constitute reliance; and

   (b) the matters set out in the balance of this Annexure D.

3. For the avoidance of doubt, nothing in this Annexure D is intended:

   (a) to limit in any way the facts, matters or evidence BCC may rely upon in answer to the allegations made by White Oak (which are denied) that, but for the conduct of BCC, White Oak would not have acquired the relevant Payment Obligations and that White Oak has suffered loss or damage by the conduct of BCC and Brereton; or

   (b) to assume any onus or burden on the part of BCC to disprove such allegations made by White Oak, which remain facts in issue on which White Oak bears the onus of proof.

4. The matters pleaded in Section B were matters known by White Oak (or, where applicable, conduct engaged in by White Oak) when it acquired the Payment Obligations, except to the extent that all of the supporting particulars post-date such acquisition.

B. MATTERS KNOWN TO WHITE OAK

5. White Oak knew, or alternatively should have known, that there were credible allegations that implicated Mr Gupta and entities associated with Mr Gupta (including Liberty Commodities Limited) in fraudulent conduct.

Particulars

BCC refers to section D.

6. White Oak knew, or alternatively should have known, that:

   (a) there was a real possibility GCUK was acting dishonestly in its dealings with BCC and Brereton in relation to its financing facilities;

   (b) at least some of the invoices against which GCUK was financing facilities were not based on the underlying trade of goods or services;

   (c) at least in some cases, GCUK was lending against alleged receivables which did not exist;

   (d) the risk of lending against non-existent receivables, or invoices which were not based on the underlying trade of goods and services, could be mitigated by it verifying the receivables the subject of the Payment Obligations; and

   nevertheless decided not to verify the receivables the subject of the Payment Obligations prior to acquiring the Payment Obligations.

Particulars

BCC refers to section E.

7. White Oak and Mr Greensill misled Mr Brereton in response to his inquiry about LCL's trade with Trafigura Pte Ltd (**Trafigura**).

Particulars

BCC refers to section F.

8. White Oak knew, or alternatively should have known, of matters that would preclude, or seriously prejudice, its entitlement to indemnity under the Policy.

Particulars

BCC refers to section G.

9. At the time White Oak executed the Loss Payee Endorsement and acquired the Payment Obligations, it believed the following matters with respect to the Policy:

(a) the Policy identified the premium payable by the insured to be $1;

Particulars

2019 Policy, Schedule 5.

(b) the Policy had relatively limited exclusions in comparison to comparable policies;

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615]

(c) the policy would cover fraud by LCL; and

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615]

(d) the limit applicable to LCL under the Policy would reset to whatever aggregate amount was required to cover any claim, such that there was in substance no limit applicable to LCL.

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615]

10. White Oak knew, or alternatively should have known, that White Oak's status as a loss payee may limit its right to claim under the Policy, and nevertheless decided not to enter into a policy proposed by GCUK pursuant to which it would be the named insured.

Particulars

BCC refers to section H.

11. White Oak knew, or alternatively should have known, that no reasonable insurer would agree to insure the risk in respect of which White Oak seeks indemnity in the Proceeding had they known the matters known by White Oak which are pleaded above at paragraphs 5 to 7 and 9 of this Annexure.

12. White Oak took no steps to ensure that BCC, Brereton or IAL were aware of the matters pleaded above in paragraphs 5 to 7 of this Annexure.

13. White Oak acted to conceal certain of the matters of which it was aware from BCC, Brereton and IAL.

Particulars

BCC refers to section F.

14. In the premises of paragraphs 5 to 13 above, White Oak did not rely, or reasonably rely, on the conduct of BCC and Brereton when acquiring the Payment Obligations.

C. RELEVANT ENTITIES AND INDIVIDUALS WITHIN THE WHITE OAK GROUP

15. At all material times, White Oak:

(a) was a company whose principal activity was asset-based lending in the United Kingdom;

(b) was ultimately financed by investment funds, including the White Oak Yield Spectrum Fund V, managed by its affiliate entity, White Oak Global Advisors LLC (**WOGA**); and

(c) was required to seek the approval of the

i. White Oak UK Approval Committee; and
ii. WOGA Investment Committee

in order to make potential investments.

Particulars

Witness Statement of Thomas Kevin Otte dated 6 March 2025, filed in *White Oak v Marsh* (**UK Proceeding**) [WOC.0010.0015.0046].

Affidavit of Andre Amin Hakkak affirmed on 4 December 2024, filed in this Proceeding.

Affidavit of David Hackett affirmed on 5 December 2024, filed in this Proceeding.

16. On 28 April 2020, being the date upon which the WOGA Investment Committee resolved to enter into the Loss Payee Endorsement and acquire the Payment Obligations:

(a) the members of the White Oak UK Approval Committee were:

i. Andre Hakkak;

ii. Barbara McKee; and

iii. Tom Otte, and

(b) the members of the WOGA Investment Committee were:

i. David Hackett;

ii. Susan George;

iii. Darius Mozaffarian;

iv. Andre Hakkak; and

v. Barbara McKee.

Particulars

Witness Statement of Thomas Kevin Otte dated 6 March 2025 filed in the UK Proceeding [WOC.0010.0015.0046]

Screenshot of Salesforce for Investment Committee Meeting dated 28 April 2020 [WOC.0007.0003.0006].

Affidavit of David Hackett affirmed on 5 December 2024.

D. ALLEGATIONS AGAINST MR GUPTA

17. On or around 12 March 2020, White Oak was informed by Simon Grenfell that it needed to be "very careful" when dealing with Mr Gupta and Mr Greensill, and that White Oak should take steps to ensure:

(a) that the accounts receivables that White Oak was purchasing were legitimate; and

(b) that the underlying trades existed.

Particulars

Affidavit of Simon Grenfell affirmed on 19 February 2026, [31].

18. From at least as early as 26 April 2020, three days before White Oak was purportedly endorsed as loss payee under the Policy, White Oak had set up media alerts for the following terms:

(a) "Greensill Capital fraud";

(b) "Liberty Steel lawsuit";

(c) "Liberty Steel bankruptcy";

(d) "Liberty Steel fraud";

(e) "GFG Alliance fraud";

(f) "liberty commodities limited LAWSUIT";

(g) "Liberty Commodities Limited bankruptcy"; and

(h) "Liberty Commodities Limited fraud".

Particulars

Project Irish News Run dated 26 April 2020 [WOC.0001.0004.4424].

19. On at least 26 April 2020, as a result of the search terms pleaded above at paragraph 18, White Oak was sent links to various articles, including articles which stated that:

(a) Mr Gupta was the subject of criminal charges in India associated with the attempted take-over of a bankrupt car parts maker;

(b) Mr Gupta's businesses relied heavily upon opaque and unconventional financing linked to working capital and supply chains that could be expensive;

(c) Mr Gupta's bank, Wyelands, had been the subject of questions in the United Kingdom Parliament; and

(d) Mr Gupta had been associated with a scandal within GAM, a Swiss Fund Manager.

Particulars

Project Irish News Run dated 26 April 2020 [WOC.0001.0004.4424], which served the following articles:

1. Reuters, “Court questions funding for Liberty House bid for steelmaker Ascometal”, (27 January 2018, https://www.reuters.com/article/business/court-questions-funding-for-liberty-house-bid-for-steelmaker-ascometal-idUSKBN1FF2GU/);
2. Live Mint, “Is Liberty House's Sanjeev Gupta facing a crisis of credibility in India?”, (23 August 2018, https://www.livemint.com/Companies/r3eFnaa0jrkKxtKD0p2gHI/Is-Liberty-Houses-Sanjeev-Gupta-facing-a-crisis-of-credibil.html);
3. Financial Times, “Asset Management: inside the scandal that rocked GAM”, (19 March 2019, https://www.ft.com/content/56e5b0ba-39ed-11e9-b856-5404d3811663?syn-25a6b1a6=1);
4. City AM, “Greensill denies reports of false statement over bonds sold by steel tycoon Gupta”, (7 July 2019, https://www.cityam.com/greensill-issued-false-statement-on-bonds-sold-by-steel-tycoon-sanjeev-gupta/
5. Reuters, “Exclusive: Greensill issued false statement on bonds sold by metals tycoon Gupta”, (8 July 2019, https://www.reuters.com/article/world/exclusive-greensill-issued-false-statement-on-bonds-sold-by-metals-tycoon-gupta-idUSKCN1U20C8/);
6. Financial Times, “Sanjeev Gupta faces Indian court battle over aborted takeover”, (16 October 2019, https://www.ft.com/content/cc46cd1e-ef49-11e9-bfa4-b25f11f42901?syn-25a6b1a6=1);
7. Financial Times, “How Sanjeev Gupta’s empire is fuelled by opaque financing“ (27 September 2019, https://www.ft.com/content/e8e2d33c-dfb3-11e9-b112-9624ec9edc59?syn-25a6b1a6=1);
8. The Times, “Revealed: Sanjeev Gupta’s stake in controversial finance firm Greensill Capital”, (13 July 2019, https://www.thetimes.com/world/australasia/article/revealed-sanjeev-guptas-stake-in-controversial-finance-firm-greensill-capital-gtqvjm8dl);
9. Live Mint, “Lenders angry with Sanjeev Gupta for taking Liberty with top bids” (20 August 2019, https://www.livemint.com/companies/news/lenders-angry-with-sanjeev-gupta-for-taking-liberty-with-top-bids-1566241379660.html);
10. The Guardian, “Trouble at the mill: Sanjeev Gupta on Whyalla and its 'fundamental problems” (19 October 2019, https://www.theguardian.com/australia-news/2019/oct/19/journalists-are-annoying-sanjeev-gupta-on-whyalla-and-its-fundamental-problems);
11. Financial Times, “Sanjeev Gupta draws scrutiny over Wyelands Bank loans”, (24 February 2020, https://www.ft.com/content/2f3bde1e-4e4f-11ea-95a0-43d18ec715f5?syn-25a6b1a6=1); and

12. Financial Times, “The workings of Sanjeev Gupta’s empire” (27 February 2020, https://www.ft.com/content/5f279604-5719-11ea-a528-dd0f971febbc?syn-25a6b1a6=1)’

20. On 18 June 2020, Mr Hakkak circulated an email to the WOGA Investment Committee members which confirmed that he had spoken with Mr Gupta, who had accepted that he had been “a bit cute” in his business dealings.

Particulars

Email from A Hakkak to WOGA Investment Committee members dated 18 June 2020 [WOC.0001.0010.1851].

21. On 22 July 2020, Ms George circulated an email to the WOGA Investment Committee members in which she confirmed she was voting against an increase in White Oak's investment in the GCUK facility, including because of "the Liberty association".

Particulars

Email from Susan George to WOGA Investment Committee members dated 22 July 2020 [WOC.0010.0021.0001]

22. In the premises of the matters contained at paragraphs 17 to 21 of this Annexure, White Oak knew, or alternatively should have known, that there were credible allegations (including from an individual with direct knowledge of such matters) that implicated Mr Gupta and entities associated with Mr Gupta (including LCL) in fraudulent conduct.

E. RECEIVABLES DID NOT EXIST

23. BCC repeats and relies upon the matters contained at paragraph 112A(a) of the defence filed by BCC in the Proceeding.

24. By at least 6 February 2020, White Oak was aware of the importance of having oversight into how GCUK applied cash received from obligors in respect of Payment Obligations purchased by White Oak.

Particulars

Email exchange between Kenneth Wendler and White Oak Investment Committee dated 6 February 2020 [WOC.0001.0006.9785].

25. As at 19 February 2020, White Oak remained aware of the importance of having oversight into how GCUK applied cash received from obligors in respect of Payment Obligations purchased by White Oak.

Particulars

Email exchange between Phillip Neal and Steven Ruth dated 19 February 2020 [WOC.0001.0007.0501].

Email exchange between Phillip Neal and Steven Ruth dated 20 February 2020 [WOC.0001.0007.0507].

26. On 20 February 2020, White Oak raised concerns with Mr Greensill about loose cash controls at the seller level, to which Mr Greensill responded that, although the seller controls could be tighter, the insurance was “bulletproof”.

Particulars

WhatsApp exchange between Mr Otte and Mr Greensill dated 20 February 2020 [WOC.0002.0001.0028]

27. On 20 February 2020, White Oak raised with Mr Gupta whether it could engage Demica as a back-up servicer, to which Mr Gupta responded that he "sincerely recommend we keep it simple for now and get it going".

Particulars

WhatsApp exchange between Mr Otte and Mr Gupta dated 20 February 2020 [WOC.0002.0001.0200]

28. As at 12 March 2020, White Oak’s position was that it would not enter into the Loss Payee Endorsement and acquire Payment Obligations unless certain procedures were in place, which would include invoice verification, eligibility reports and reconciliations of cash collections on those Payment Obligations purchased by White Oak, with the assistance of Demica, a back-up servicer that was to verify the receipt of monies.

Particulars

Project Irish – Screener dated 12 March 2020 [WOC.0001.0007.2416]

WOGA Investment Committee Memo – Project Irish – Update to Underwriting Process [WOC.0001.0003.3068].

Transcript of UK Proceeding, Day 2, T64:19-T65:3 [CSA.0001.0011.8890]

29. As at 17 March 2020, White Oak was aware that there were inconsistencies between the financial information provided by GCUK and LCL and the level of funding alleged to have been provided by GCUK to LCL in respect of Payment Obligations which were supported by a supply of goods or services.

Particulars

Email exchange between Phillip Neal and James Waterman dated 17 March 2020 [WOC.0001.0001.0565]

30. On 17 March 2020, White Oak was informed by Mr Grenfell of the importance of verifying the Payment Obligations to ensure that they were for materials actually supplied and, as at that date, White Oak's position was that it would not acquire any Payment Obligations which were not verified.

Particulars

Email from Mr Grenfell to Mr Otte dated 17 March 2020 [WOC.0001.0012.3192]

Email Mr Otte to Mr Neal and Mr Schapiro dated 17 March 2020 [WOC.0001.0012.3199]

Email from Mr Neal to Mr Otte and Mr Schapiro dated 17 March 2020 [WOC.0001.0003.1374]

Transcript of UK Proceeding, Day 3, T7:10-18 [CSA.0001.0011.8891]

31. On 18 March 2020, White Oak placed a memo before the Investment Committee which stated that:

(a) Greensill did not verify the receivables the subject of the Payment Obligations; and

(b) LCL deserved a 25% verification level.

Particulars

WOGA Investment Committee memo dated 18 March 2020 [WOC.0001.0001.4167]

32. As at 23 March 2020, White Oak remained concerned as to the lack of verification.

Particulars

Email from Mr Hakkak to Diane Altieri dated 19 March 2020 [WOC.0001.0009.7138]

Email from Ms Altieri to Mr Thomson dated 19 March 2020 [WOC.0001.0009.7118].

Email from Mr Wendler to Mr Ruth dated 21 March 2020 [WOC.0001.0012.5292]

Email from Mr Neal to Mr Wendler dated 23 March 2020 [WOC.0001.0007.1255]

33. As at 26 March 2020, White Oak was aware that:

(a) not performing verification on the receivables the subject of the Payment Obligations exposed White Oak to a risk of fraud;

Particulars

Email exchange between Kenneth Wendler and Steven Ruth dated 21 March 2020 [WOC.0001.0012.5292].

Email exchange between Vanessa Bertrand-Smith and Diane Altieri et al dated 26 March 2020 [WOC.0001.0003.2971]

(b) White Oak wished to be able to show its investors that it had some visibility into the cash collection in respect of Payment Obligations;

Particulars

Email from Diane Altieri to Becci Rogers et al dated 25 March 2020 [WOC.0001.0009.7708].

(c) GCUK, however, would not be providing the information that White Oak required in respect of cash collections; and

Particulars

Email from Becci Rogers to Diane Altieri et al dated 25 March 2020 [WOC.0001.0009.7708].

WhatsApp exchange between Mr Otte and Mr Greensill dated 25 March 2020 [WOC.0002.0001.0039].

(d) it was making a commercial decision in not pressing for controls of the kind contained at paragraph 28 of this Annexure.

Particulars

Transcript of UK Proceeding, Day 2, T196:1-14 [CSA.0001.0011.8890].

34. On 23 April 2020, White Oak made an investment recommendation to the WOGA Investment Committee seeking approval to proceed with entry into the Loss Payee Endorsement and acquisition of the Payment Obligations, in which it noted that GCUK did not perform any verification procedures, and did not track historical dilution rates on the LCL receivables which would become the Payment Obligations.

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615].

35. As at 24 April 2020, White Oak was aware that by purchasing the Payment Obligations it was providing an unsecured loan aligned to the value of the Payment Obligations.

Particulars

Email from P Thompson to D Altieri and V Bertrand-Smith dated 24 April 2020 [WOC.0001.0008.3896].

36. In the period between 30 May 2020 and 10 June 2020, White Oak purchased Payment Obligations involving an account debtor, Trafigura, in the sum of $20,918,609.54.

Particulars

Email from Jacob Schapiro to Phillip Neil and Simon Grenfell dated 10 June 2020 [WOC.0001.0005.8045].

Breakdown of White Oak purchases as at 19 June 2020 [WOC.0001.0005.8405].

37. In or about late June 2020, White Oak became aware from Mr Grenfell that Trafigura did not have any "accounts receivable" arrangement with LCL, as it paid for any materials purchased from LCL at the time, or soon after, they were purchased.

Particulars

Email from Mr Schapiro to Mr Neal and Mr Grenfell dated 10 June 2020 [WOC.0001.0005.7774]

Email from Simon Grenfell to Tom Otte dated 19 June 2020 [WOC.0011.0007.0001]

Affidavit of Simon Grenfell affirmed on 19 February 2026, [39].

38. On 7 July 2020:

(a) GCUK requested that White Oak purchase two Trafigura receivables;

Particulars

Email from Paul Thompson to Diane Altieri and Tom Otte dated 7 July 2020 [WOC.0001.0007.7068]

(b) White Oak rejected GCUK's offer to purchase the Trafigura receivables;

Particulars

Email from Paul Thompson to Rosie Cavanagh and Becci Miller dated 7 July 2020 [WOC.0001.0021.1324]

(c) when GCUK enquired as to why White Oak did not accept the offer, Mr Otte responded to request confirmation that GCUK had invoices to support the receivables;

Particulars

Email from Tom Otte to Becci Miller dated 7 July 2020 [WOC.0001.0021.1324]

(d) in response, GCUK voided the offer to purchase the Trafigura receivables and offered receivables originated from a different account debtor;

Particulars

Email from Becci Miller to Tom Otte and Paul Thompson dated 7 July 2020 [WOC.0001.0021.1324]

(e) Mr Otte and Mr Greensill had a telephone conversation relating to the Trafigura receivable;

Particulars

Email from Tom Otte to Diane Altieri dated 8 July 2020 [WOC.0001.0021.2508]

(f) Sean Marshall emailed Paul Thompson with the subject line "Trafigura" and wrote that "[White Oak had] been sold an absolute pup there".

Particulars

Email from Sean Marshall to Paul Thompson dated 7 July 2020 [WOC.0009.0050.7150]

39. It was not White Oak's usual practice, when considering GCUK's offers to purchase Payment Obligations, to request copies of supporting invoices.

Particulars

White Oak's usual practice for purchasing Payment Obligations from GCUK is described in the affidavit of Paul Thompson dated 6 December 2024 at paragraphs 18 to 25.

40. As at 7 July 2020, White Oak was aware that the payment terms for the Payment Obligations in respect of Trafigura were not capable of supporting an “accounts receivable” arrangement with LCL.

Particulars

BCC refers to and repeats paragraph 38 and 39 above.

Email exchange between Paul Thomson and Tom Otte dated 8 July 2020 [WOC.0001.0007.8834].

White Oak's knowledge may also be inferred from the fact that it ceased acquiring Payment Obligations in respect of Trafigura from 7 July 2020 and subsequently removed Trafigura as an approved account debtor.

41. On 10 July 2020, the White Oak UK Credit Committee approved the removal of Trafigura as an approved account debtor, such that White Oak would no longer purchase Payment Obligations owed by Trafigura.

Particulars

Credit memo to White Oak UK Credit Committee dated 10 July 2020 [WOC.0001.0007.7441]

42. BCC refers to and repeats paragraph 21 above.

43. As at 29 January 2021, White Oak remained aware that it did not have any operational or fraud oversight in respect of the Payment Obligations, and that "[s]ome of the players have sketchy reputations".

Particulars

Email from S Ruth to White Oak Investment Committee dated 29 January 2021 [WOC.0001.0006.7000]

44. In the premises of the matters pleaded at paragraph 23 to 42, White Oak knew, or alternatively ought to have known, that:

(a) there was a real possibility GCUK had not provided full and accurate disclosure to BCC and Brereton in relation to its financing facilities with the Liberty group, including LCL;

(b) at least some of the invoices against which GCUK was providing finance to LCL were not based on the underlying trade of goods or services;

(c) at least in some cases, GCUK was lending against alleged receivables which did not exist; and

(d) the risk of lending against non-existent receivables, or invoices which were not based on the underlying trade of goods and services, could be mitigated by it verifying the receivables the subject of the Payment Obligations.

45. Notwithstanding the matters in paragraph 44 above, White Oak decided not to verify the receivables the subject of the Payment Obligations.

46. In the premises of paragraphs 23 to 43, White Oak knew, or ought to have known, that:

(a) the matters in paragraph 44 made the Payment Obligations risks that were unattractive to a prudent underwriter of trade credit insurance, with the consequence that it was likely that an underwriter with full knowledge of those characteristics would not have underwritten the risks; and

(b) GCUK had an incentive not to make full and accurate disclosure to BCC and the Insurer because the terms of the Policy purported to insulate GBAG and GCPL, as co-insureds, from any inaccuracy or omission in the information provided by GCUK to the Insurer, on which basis Mr Greensill had described the insurance to White Oak as "bulletproof";

47. White Oak did not make any, or reasonable, inquiries as to whether GCUK had provided full and accurate disclosure to BCC and the Insurer of the matters in paragraph 44 above and the true nature of the risks of non-payment of the Payment Obligations.

48. In the premises, it is to be inferred that White Oak refrained from making the inquiries referred to in paragraph 47 above because White Oak either:

(a) was aware that full and accurate disclosure of such matters had likely not been made to BCC and the Insurer; or

(b) alternatively, was recklessly indifferent to whether full and accurate disclosure of such matters had not been made to BCC and the Insurer.

F. WHITE OAK AND MR GREENSILL MISLED BCC AND BRERETON

49. Despite having the knowledge pleaded at paragraph 44 of this Annexure, on 25 June 2020, White Oak and Mr Greensill represented to BCC and Brereton that:

(a) LCL had a practice of requesting early settlement of invoices with Trafigura, including invoices the subject of Payment Obligations; and

(b) upon receipt of the early settlement funds, LCL would then hold those funds and use them for the period up until the due date of the invoice, and any "buffer" period, rather than forwarding them to GCUK's collection account.

Particulars

Email exchange between Mr Otte and Mr Greensill dated 25 June 2020 [WOC.0001.0012.4229].

Email exchange between Mr Otte and Mr Greensill dated 26 June 2020 [WOC.0001.0012.0043]

50. The purpose of both White Oak and Mr Greensill in making the representations pleaded at paragraph 49 of this Annexure was to cause BCC and Brereton to reaffirm cover under the Policy.

Particulars

Email exchange between Paul Thompson and Tom Otte dated 8 July 2020 [WOC.0001.0021.2403]

51. The representations pleaded at paragraph 49 were false.

Particulars

BCC refers to and repeat paragraph 40 and 44 above.

52. White Oak knew, or ought to have known, the representations pleaded at paragraph 49 were false.

Particulars

BCC refers to and repeat paragraph 40 and 44 above.

53. In the premises of paragraphs 49 to 51, Mr Brereton confirmed cover under the Policy on the basis of the false representations pleaded at paragraph 49 above.

G. CONCERNS REGARDING INSURANCE COVERING CERTAIN GCUK FACILITIES

54. BCC repeats and relies upon the matters contained at [39](b) of the defence filed by BCC in the Proceeding.

55. On 20 April 2020, White Oak received advice from Lockton on the Policy, including with respect to the reporting obligations and stop asset acquisition provisions it contained.

Particulars

"Trade Credit Insurance Review – Project Irish" prepared by Lockton dated 20 April 2020 [WOC.0001.0004.1889].

56. On 22 April 2020, White Oak sought specific advice from Lockton as to whether the Policy would cover fraud committed by LCL or GCUK.

Particulars

Email from J Paulson JR to H Hepburn and M Georgescu dated 22 April 2020 [WOC.0001.0015.1226].

57. In the premises of the matters pleaded at paragraphs 24 to 33, and 56, as at 22 April 2020, White Oak was concerned about the possibility of fraud being committed by LCL or GCUK, and the impact that this might have on its ability to claim under the Policy.

58. Notwithstanding White Oak's concerns about these matters, it proceeded with the transaction and to acquire the Payment Obligations.

59. On 25 April 2020, White Oak sought from GCUK, but GCUK declined to provide:

(a) confirmation that GCUK would provide to White Oak copies of all insurance reporting packages actually submitted to insurers for compliance;

(b) a representation from GCUK prior to every White Oak purchase of Payment Obligations that:

i. GCUK was up-to-date on insurance reporting;

ii. both LCL and current account debtors being offered were not on GCUK's "Watch List"; and

iii. no debtors were more than 10 days past due;

(c) an amendment to clause 9.7 of the Policy so as to include the following at the end of the second section:

…or any failure by the Servicer to provide any information or material to the Insurer.

Particulars

Email exchange between Richard Kohn (Goldberg Kohn) and John Whelan dated 25 April 2020 [WOC.0001.0004.2462].

60. White Oak did not request, and did not receive, a copy of GCUK's monthly insurance reporting under cl 9.3(a) of the Policy, or of GCUK's "Watch List", as that term is defined in the Policy.

61. On 27 April 2020, White Oak was advised by Lockton that the items contained at paragraph 59(a) and (b) were important to verify White Oak's interest in the Policy and

that proceeding with the transaction notwithstanding GCUK's unwillingness to provide those items was a "commercial decision" for White Oak.

Particulars

Email exchange between Richard Kohn (Goldberg Kohn) and John Whelan dated 25 April 2020 [WOC.0001.0004.2462].

62. White Oak was aware that there was a risk that it would suffer a shortfall in the event that it became necessary to claim under the Policy but did not take any steps to hedge or mitigate that risk.

Particulars

Deed of Indemnity granted by GCUK in favour of White Oak dated 29 April 2020 [WOC.0001.0007.2519]

Witness Statement of Thomas Kevin Otte dated 6 March 2025 in the UK Proceeding [WOC.0010.0015.0046]

Transcript of UK Proceeding, Day 3, T19:7-8 [CSA.0001.0011.8891].

63. In the premises of the matters pleaded at paragraphs 54 to 62 of this Annexure, White Oak knew, or alternatively should have known, that there was a prospect that:

(a) GCUK was not up-to-date on insurance reporting;

(b) both LCL and current account debtors being offered were on GCUK's "Watch List" as that term is defined in the Policy; and

(c) there were debtors that were more than 10 days past due,

and that such matters would impact coverage under the Policy.

64. BCC repeats and relies upon the matters contained at paragraphs 40 and 49 of this Annexure and says that, as at 7 July 2020, White Oak had knowledge that any loss arising from the alleged Trafigura Payment Obligations, which it knew were not capable of supporting an "accounts receivable" arrangement with LCL, was not covered under the Policy.

Particulars

Email exchange between D Alteri and P Thompson dated 7 July 2020 [WOC.0001.0021.2411].

65. Despite having the knowledge referred to at paragraph 64, White Oak took no steps to verify that other Payment Obligations were not affected by the same or similar matters affecting the Trafigura Payment Obligations.

66. In the premises of paragraphs 54 to 65, White Oak knew, or alternatively should have known, of matters that would preclude, or seriously prejudice, its entitlement to indemnity under the Policy.

H. CHARACTERISATION AS LOSS PAYEE

67. As at 10 February 2020, White Oak was aware that if it were merely a loss payee under an insurance policy, that status might impact its ability to, and the manner in which it might, claim under the policy.

Particulars

Email from Donnie DiCarlo (BPL Global) to Phillip Neal dated 10 February 2020 [WOC.0001.0006.9792].

68. On 20 April 2020, White Oak received advice from Lockton on the Policy observing the need for compliance with the Policy by an Insured was a customary risk when White Oak was a loss payee only, rather than the Insured under the Policy.

Particulars

"Trade Credit Insurance Review – Project Irish" prepared by Lockton dated 20 April 2020 [WOC.0001.0004.1889].

69. On 23 April 2020, White Oak placed a memo before the White Oak Investment Committee that mischaracterised the advice given by Lockton in respect of the proposal that it be loss payee in that:

(a) the memo placed before the White Oak Investment Committee stated that Lockton "feels 'Loss Payee' should provide [White Oak] with sufficient rights"; and

(b) Lockton had not, in fact, provided that advice.

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615].

"Trade Credit Insurance Review – Project Irish" prepared by Lockton dated 20 April 2020 [WOC.0001.0004.1889].

70. On 28 April 2020, the White Oak Investment Committee approved entry into the Loss Payee Endorsement on the proviso that White Oak would execute a side letter with GCUK that GCUK would use its best efforts to provide White Oak with its own insurance policy within 90 days of White Oak's initial purchase of Payment Obligations.

Particulars

Investment Committee Meeting – Project Irish – Update and Funding Approval Request [WOC.0001.0006.9601].

Transcript of UK Proceeding, Day 2, T115:14-25, T116:1-25 [CSA.0001.0011.8890].

71. On 5 May 2020, White Oak reiterated to GCUK the importance of White Oak becoming an insured under the Policy, rather than a loss payee.

Particulars

Email from Mr Otte to Becci Miller dated 5 May 2020 [WOC.0001.0008.7093].

72. On 6 May 2020, GCUK provided White Oak with a draft policy whereby it was proposed that White Oak be the insured under a policy of insurance to be issued by BCC.

Particulars

Email from John Whelan to Mr Otte dated 6 May 2020, with attachments [WOC.0001.0012.3959, WOC.0001.0012.3960, WOC.0001.0012.3965, WOC.0001.0012.3967, WOC.0001.0012.3968]

73. On 6 May 2020, Mr Gupta and Mr Otte exchanged a WhatsApp message whereby Mr Gupta stated as follows:

Getting u your insurance policy in your own name.. now u better get me that billion

Particulars

WhatsApp exchange between Mr Gupta and Mr Otte dated 6 May 2020 [WOC.0001.0001.0245]

74. In the premises of paragraphs 67 to 73, White Oak:

(a) knew, or alternatively should have known, that White Oak's status as a loss payee may limit its right to claim under the Policy; and

(b) nevertheless decided not to enter into a policy proposed by GCUK pursuant to which it would be the named insured.

Particulars

Email exchange between Mr Whelan and Rehana Box (Ashurst) dated 23 May 2020 [AGB.0002.0010.0373].

WhatsApp exchange between Mr Greensill and Mr Otte dated 26 May 2020 [WOC.0002.0001.0051].

Transcript of UK Proceeding, Day 3, T30:8-14 [CSA.0001.0011.8891].

Credit memo to White Oak UK Credit Committee dated 10 July 2020 [WOC.0001.0007.7441]

Date: 29 July 2026



……..

Signed by Raylee Joy Hartwell as partner of
Matt James Andrews, Lawyer for the
Second, Sixth and Seventh Respondents

This annexure was prepared by Peter Braham SC, Justin Williams SC, James Hutton SC, Julie Granger, Jerome Entwisle, Daniel Reynolds, Stephen Thomson and Christopher Beshara of counsel.

Certificate of lawyer

I, Raylee Joy Hartwell, certify to the Court that, in relation to the Annexure filed on behalf of the Second, Sixth and Seventh Respondents, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 29 July 2026



……..

Signed by Raylee Joy Hartwell as partner of Matt
James Andrews, Lawyer for the Second, Sixth
and Seventh Respondents

Schedule

No: NSD 1039 of 2021

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Third Respondent:	Greg Brereton
Fourth Respondent:	Greensill Bank AG
Fifth Respondent:	Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG
Sixth Respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ACN 000 438 291)
Seventh Respondent:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)

GREENSILL BANK CROSS-CLAIM

First Cross-claimant:	Greensill Bank AG
Second Cross-claimant:	Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

BCC CROSS-CLAIM

Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent:	Greensill Capital (UK) Limited
Second Cross-respondent:	Greensill Capital Pty Limited (ACN 154 088 132) (In Liquidation)

BCC/TMNF/TMMA CROSS-CLAIM

First Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Second Cross-claimant:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

IAL CROSS-CLAIM

Cross-claimant:	Insurance Australia Limited (ACN 000 016 722)
First Cross-respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Second Cross-respondent:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Third Cross-respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233