NOTICE OF FILING

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	2/07/2026 4:24:13 PM AEST
Date Accepted for Filing:	2/07/2026 4:28:32 PM AEST
File Number:	NSD110/2022
File Title:	CREDIT SUISSE VIRTUOSO SICAV-SIF CREDIT SUISSE (LUX) SUPPLY CHAIN FINANCE FUND v INSURANCE AUSTRALIA LIMITED (ACN 000 016 722) & ORS
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.

Form 17

Rule 8.05(1)(a)

Tenth ~~Ninth~~ Amended Statement of Claim

Filed pursuant to leave granted by Thawley J on 26 June 2026~~24 December 2025~~

No. 110 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations National Practice Area

CREDIT SUISSE VIRTUOSO SICAV-SIF IN RESPECT OF THE SUB-FUND CREDIT SUISSE (LUX) SUPPLY CHAIN FINANCE FUND

Applicant

INSURANCE AUSTRALIA LIMITED (ACN 000 016 722) and others set out in the schedule

Respondents

A NATURE OF THE DISPUTE

1. The Applicant is named~~,~~ as Loss Payee in endorsements to ~~and third-party beneficiary under s 48(1) of the *Insurance Contracts Act 1984* (Cth), claims payment under an~~ insurance policies~~y~~ issued by the First Respondent, Insurance Australia Limited (ACN 000 016 722) (the **Insurer**), to Greensill Capital Pty Limited (ACN 154 088 132) (**GCPL**) and the Second Respondent, Greensill Bank AG (**Greensill Bank** or **GBAG**)~~, in respect of unpaid debts accruing from around March 2020~~. Those policies were issued by the Fourth Respondent, BCC Trade Credit Pty Ltd (ACN 608 296 233) (**BCC**), and Fifth Respondent, Greg Brereton (**Brereton**), without the authority of the Insurer.

1A. ~~In the alternative, t~~The Applicant claims that BCC and Brereton ~~the Fourth and Fifth Respondents~~ engaged in misleading or deceptive conduct in contravention of s 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**), s 12DA of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**),

Filed on behalf of (name & role of party)	Credit Suisse Virtuoso SICAV-SIF in respect of the sub-fund Credit Suisse (Lux) Supply Chain Finance Fund, Applicant
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and/or s 18 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Competition and Consumer Act**), including as applied by the *Competition Policy Reform (New South Wales) Act 1995* (NSW) (**Australian Consumer Law**); knowingly or recklessly made representations, including as to their authority, that were false in a material particular or were materially misleading and thereby committed the tort of deceit and contravened s 1041E of the Corporations Act~~; and breached warranties of authority under the general law~~.

1B. [NOT USED]

1C. The Applicant also alleges that the Insurer and the Sixth Respondent, Tokio Marine & Nichido Fire Insurance Co Ltd (**TMNF**) are responsible for the conduct of BCC and Brereton for the purposes of ss 917B or 917C of the Corporations Act.

1D. As against the Seventh Respondent, Marsh Limited (**Marsh**), the Applicant alleges that it was negligent in 2017 when it failed to make proper inquiries as to the limits of BCC's and Brereton's authority, despite undertaking the responsibility to do so, and in that context, that it engaged in misleading or deceptive conduct in contravention of s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law, and made representations that were false in a material particular or were materially misleading in contravention of s 1041E of the Corporations Act, by periodically representing to the Applicant that the 2018 Policy TS-03088 or Policy TS-03088, as the case may be, and ~~its~~ their respective endorsements were valid and effective and that it was not aware of any matter that suggested that BCC or Brereton did not have the necessary authority to issue those documents.

B ISSUES LIKELY TO ARISE

2. [NOT USED]~~Whether the loss identified in the Statement of Claim is covered by Policy TS-03088 (as defined at paragraph 36 below).~~

2A. Whether the Fourth Respondent and/or the Fifth Respondent were authorised to enter into Policy TS-03088 (as defined at paragraph 36 below) as agent for the First Respondent.

2B. [NOT USED]~~Whether the Fourth Respondent and/or the Fifth Respondent breached warranties of authority.~~

2C. Whether the Fourth Respondent and the Fifth Respondent, engaged in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act, s 12DA of the ASIC Act, and/or s 18 of the Australian Consumer Law.

2D. Whether the Fourth Respondent and/or the Fifth Respondent made representations that were false in a material particular or were materially misleading in contravention of s 1041E of the Corporations Act, or committed the tort of deceit.

2DA. [NOT USED]

2DB. Whether the Seventh Respondent engaged in misleading or deceptive conduct in contravention of s 12DA of the ASIC Act or s 18 of the Australian Consumer Law, made representations that were false in a material particular or were materially misleading in contravention of s 1041E of the Corporations Act, or was negligent.

2E. The quantum of the Applicant's loss or damage arising from one or more of the breaches or contraventions referred to in paragraphs 2CB to 2DB above.

C THE PARTIES AND OTHER RELEVANT ENTITIES

3. The Applicant (**Credit Suisse Virtuoso**) is:

(a) a Société Anonyme company incorporated under the laws of Luxembourg and is able to sue and be sued; and

(b) acting in respect of its sub-fund, Credit Suisse (Lux) Supply Chain Finance Fund.

4. At all material times, Credit Suisse Virtuoso was in the business of generating financial returns by investing in zero coupon global notes issued by a special purpose vehicle.

Particulars

A zero coupon global note is a debt security instrument that pays, on the maturity date (and in some instances also on instalment dates), the value of the note (or the specified instalment) with no separate interest payments.

5. The First Respondent, ~~(~~the Insurer~~,)~~ is a company incorporated under the laws of Australia.

6. The Second Respondent, Greensill Bank ~~AG (~~**~~Greensill Bank~~** ~~or~~ **~~GBAG~~**~~)~~, is incorporated under the laws of Germany.

7. The Third Respondent, Dr Michael Frege, was appointed as an insolvency administrator to Greensill Bank on 16 March 2021.

8. At all material times, the Insurer was in the business of issuing general insurance products in Australia.

~~**D OTHER RELEVANT ENTITIES**~~

D.1 [NOT USED]~~Agent of the Insurer~~

8A. The Fourth Respondent, ~~BCC Trade Credit Pty Ltd (ACN 608 296 233) (~~BCC~~)~~, is and was at all material times a company registered under the laws of Australia and is able to be sued.

9. From 1 August 2017 to 30 June 2019, BCC was an authorised representative under the AFS Licence held by IAG Agencies Pty Limited (ACN 147 749 139) (**IAG Agencies**), a subsidiary of Insurance Australia Group Limited (ABN 60 090 739 923) (**IAG**), and wrote trade credit insurance policies on behalf of the Insurer, also a subsidiary of IAG.

10. From 1 July 2019, BCC has acted as the Insurer's agent to administer trade credit insurance policies issued by the Insurer on or before 30 June 2019.

10A. From at least 14 July 2016 to 8 July 2020, the Fifth Respondent, Greg Brereton (**Brereton**), was employed by Bond and Credit Company Pty Ltd (**Bond**) as BCC's Head of Trade Credit.

10B. [NOT USED]

10C. The Sixth Respondent, Tokio Marine & Nichido Fire Insurance Co Ltd (**TMNF**), is a foreign registered corporation and general insurer that provides financial services (namely, the issuing of insurance policies) under an Australian Financial Services Licence and is regulated by the Australian Prudential Regulation Authority.

10D. At all material times, the Seventh Respondent, Marsh ~~Limited (**Marsh**)~~:

(a) was a company incorporated under the laws of the United Kingdom;

(b) was the insurance broker engaged by one or more of GCPL, Greensill Capital (UK) Limited (**GCUK**) and/or GBAG in respect of Policy TS-03088 (as defined at paragraph 36 below); and

(c) conducted business in Australia within the meaning of s 5 of the Competition and Consumer Act and s 12AC(1) of the ASIC Act.

Particulars

(i) Marsh provided insurance broking services pursuant to an engagement by one or more of GBAG, GCUK and/or GCPL (**Marsh Broking Services**).

(ii) The Marsh Broking Services were provided largely by Marsh employees, in particular Julian Macey-Dare, Edward Smith and Angus Ward, and included:

(A) negotiating and arranging insurance cover with Australian-domiciled insurers on behalf of an Australian-domiciled Insured;

(B) arranging the Insurer's entry into the LOS Policy (as defined at paragraph 35ZY below), Policy TS-03088 (as defined at paragraph 36 below) and the 2019 Policy (as defined at paragraph 35ZZA below) and the endorsements to those policies, each of which are governed by the law of New South Wales and have as parties an Australian-domiciled insurer and an Australian-domiciled insured; and

(C) accessing an online portal maintained by BCC in Australia for the purpose of confirming and/or monitoring the insurance cover arranged by Marsh and provided by the Insurer to the Insured.

(iii) Further, the Marsh Broking Services were provided in part by employees of Marsh Pty Ltd (**Marsh Sydney**), a company

incorporated under the laws of Australia, acting at the direction of Marsh, including the invoicing and receipt of commissions payable by one or more of GBAG, GCUK and/or GCPL to Marsh in respect of the Marsh Broking Services. Those employees included in particular Ewan Berkemeier. That Marsh Sydney was acting at the direction of Marsh can be inferred from Marsh's entitlement to commissions in respect of premiums paid to the Insurer for the LOS Policy and Policy TS-03088 and the endorsements to those policies, among others, and Marsh Sydney's invoicing and receipt of those commissions: see, for example, invoice dated 4 December 2018 (MMC_GCUK12_00000548), invoice dated 4 August 2020 (MMC_GCUK14_00001947), invoice dated 16 February 2021 (MMC_GCUK14_00002453).

(iv) Further particulars may be provided after further discovery and evidence.

D OTHER RELEVANT ENTITIES

D.2 Greensill group of companies

11. At all material times, ~~Greensill Capital Pty Limited (ACN 154 088 132) (~~GCPL~~)~~ was incorporated under the laws of Australia.

12. On 9 March 2021, Matthew Byrnes, Philip Campbell-Wilson and Michael McCann, officers of Grant Thornton Australia Limited (**Grant Thornton**), were appointed Joint and Several Administrators of GCPL and on 22 April 2021, were appointed Joint and Several Liquidators of GCPL.

13. At all material times, ~~Greensill Capital (UK) Limited (~~GCUK~~)~~ was incorporated under the laws of England and Wales.

14. On 8 March 2021, GCUK applied under s 124 of the *Insolvency Act 1986* (UK) for GCUK to be wound up on the basis that GCUK was unable to pay its debts for the purposes of s 122(1)(f) of the *Insolvency Act 1986* (UK), and on or about 22 March 2021, a notice of administrator's appointment (dated 10 March 2021) was filed.

15. At all material times, Greensill Bank, GCPL and GCUK (together, the **Greensill**

Group) were part of a group that provided financing, including but not limited to, supply chain financing, to industrial companies.

D.3 Lagoon Park

16. Lagoon Park Capital SA (**Lagoon Park**) is, and was at all material times:

(a) a company incorporated under the law of Luxembourg; and

(b) a securitisation company within the meaning of and governed by the *Luxembourg Securitisation Act 2004*.

D.4 NMC Health

17. NMC Health Care LLC (**NMC Health**) is, and was at all material times, a company incorporated under the laws of the United Arab Emirates.

17A. At all material times, NMC Health plc was:

(a) a company incorporated under the laws of the United Kingdom; and

(b) the parent company of NMC Health.

D.5 Demica

18. DEMICA Limited (**Demica**) is, and was at all material times:

(a) a company incorporated under the laws of England and Wales;

(b) a technology provider and the owner and operator of a web-based proprietary technology platform (**Platform**) created to facilitate supply chain financing arrangements between suppliers, buyers and funders.

E THE EXECUTION AGREEMENTS AND THE BUYER TRACKING AND SETTLEMENT SERVICES AGREEMENT

E.1 The NMC Health Execution Agreement

19. On 24 May 2018, NMC Health and Demica entered into an Execution Agreement (**NMC Health Execution Agreement**), which incorporated the terms of a Demica Platform Agreement and a Member Access Agreement, and which governed the terms on which NMC Health could use the Platform.

Particulars

The Execution Agreement was in writing and signed on behalf of NMC Health and Demica (CSA.0001.0001.3240). The Demica Platform Agreement formed Appendix 1 to the Execution Agreement and the Member Access Agreement formed Appendix 2 to the Execution Agreement. Terms used in the Demica Platform Agreement and the Member Access Agreement were defined in the Common Definitions and Interpretations Schedule.

20. It was a term of the Demica Platform Agreement at Appendix 1 to the NMC Health Execution Agreement that (with defined terms having the meaning assigned in the Demica Platform Agreement) during the term of the Demica Platform Agreement for the period from the date that NMC Health becomes a Member, Demica grants NMC Health a limited, nonexclusive, non-transferable, licence to access and use the Platform in such capacity as afforded to its Member Classification: cl. 6.1.2.

21. The Member Access Agreement at Appendix 2 to the NMC Health Execution Agreement provided that (with defined terms having the meaning assigned in the Member Access Agreement):

(a) pursuant to completion of the relevant application process, Demica has granted approval for NMC Health to join as a Member of the Demica Community and has assigned to it the Member Classification of Buyer: cl. 2.1;

(b) For NMC Health to be able to fully access the Supply Chain Finance Services Demica provides through the Platform, NMC Health as a Member shall conclude its Platform membership by (i) the execution of the Member Access Agreement, and (ii) the execution of a Buyer Tracking and Settlement Services Agreement: cl. 2.2;

(c) In order for NMC Health to perform its obligations under the Demica Platform Agreement, NMC Health appoints Demica to perform the services set out more fully in the Buyer Tracking and Settlement Services Agreement: cl. 5.

E.2 The Buyer Tracking and Settlement Services Agreement

22. On around 24 May 2018, NMC Health and Demica entered into a Buyer Tracking and Settlement Services Agreement (the **BTSSA**).

Particulars

The BTSSA was in writing and was signed on behalf of NMC Health under power of attorney (CSA.0001.0001.3226).

23. The BTSSA provided for certain of NMC Health's payables (that is, amounts that NMC Health was required to pay to certain of its suppliers in return for goods and/or services) to be uploaded onto the Platform and "approved" for possible financing by a funder, according to the following process (with defined terms having the meaning assigned in the BTSSA):

(a) NMC Health authorises Demica to track its Payables. Demica will extract and upload the Payables onto the Platform. NMC Health acknowledges and agrees that those Payables that fit the Eligibility Criteria are "Approved" and will be shown as "Approved" on the Platform and/or be signified as available for financing and/or payment. Those Payables that do not fit the Eligibility Criteria will be displayed as "Unapproved" or otherwise shown as unavailable. If no Eligibility Criteria for Payables have been entered then those respective Payables will be displayed as "Unapproved" or otherwise shown as unavailable: cl. 2.1;

(b) Demica will assist NMC Health to select Suppliers that would satisfy the requirements to become a Member of the Demica Community: cl. 2.3;

(c) Suppliers who become Members can sell their Receivables that correspond with Approved Payables by making an Advanced Payment Request: definition of Supplier and Advanced Payment Request;

(d) NMC Health creates and assumes, in respect of all Approved Payables which are the subject of an Advanced Payment Request, an independent, irrevocable, unconditional, legal, valid, transferable and binding obligation of NMC Health in favour of the Supplier (or, in the event of acceptance of an Advanced Payment Request by a Funder, in favour of the relevant Funder) to pay or procure the payment to the relevant Designated Account by 12:00 London time on the relevant Payment Date (and where

such day is not a Business Day, the immediately preceding Business Day) an amount equal to and in the same currency as the Certified Amount without deduction, withholding or counterclaim and without exercising any right of set-off under the underlying relationship or otherwise, and such amount shall be due and payable by NMC Health on the Payment Date (and where such day is not a Business Day, the immediately preceding Business Day): cl. 6.1;

(e) On the occurrence of a Default Event, all obligations to make payment under clause 6.1 then unpaid shall become immediately due and payable without any further action by the Funder: cl. 6.1;

(f) Where any Certified Amount is not paid in accordance with clause 6.1 (**Default Event**), NMC Health agrees that it may be subject to a late payment charge by the Funder which shall be equal to the statutory interest rate for the late commercial payments charged in England and Wales, unless otherwise agreed between NMC Health and the Funder: cl. 6.2;

(g) NMC Health appoints Demica, and Demica accepts and undertakes, to carry out the settlement of the Certified Amounts by instructing or seeking to instruct the Settlement Bank to pay any amounts that are due and payable by NMC Health to a Funder under the BTSSA and NMC Health undertakes to provide enough funds in the Settlement Account for Demica to execute its instructions: cll. 7.1, 7.7;

(h) Upon the Transfer of any Receivables related to Approved Payables by a Supplier to a Funder on the Platform and in order to perfect such Transfer the Supplier shall notify NMC Health of such sale and assignment by (i) Electronic Message, or (ii) where required pursuant to any Applicable Law, any other method which the Supplier deems necessary to perfect such sale and assignment: cl. 8.

E.3 The GCUK Execution Agreement

24. On around 1 June 2018, GCUK and Demica entered into an Execution Agreement (**GCUK Execution Agreement**), which incorporated the terms of a Demica Platform Agreement and a Member Access Agreement and governed the terms on which GCUK could use the Platform.

Particulars

The Execution Agreement was in writing and signed on behalf of GCUK and Demica (CSA.0001.0001.3241). The Demica Platform Agreement formed Appendix 1 to the Execution Agreement and the Member Access Agreement formed Appendix 2 to the Execution Agreement. Terms used in the Demica Platform Agreement and the Member Access Agreement were defined in the Common Definitions and Interpretations Schedule.

25. The Demica Platform Agreement at Appendix 1 of the GCUK Execution Agreement provided that from the period that GCUK became a Member, Demica granted GCUK a limited, nonexclusive, non-transferable, licence to access and use the Platform in such capacity as afforded to its Member Classification solely for the purposes contemplated in the Demica Community Agreements: cl. 3.1.2.

26. The Member Access Agreement at Appendix 2 to the GCUK Execution Agreement provided that:

(a) Demica had granted approval to GCUK to join as a Member of the Demica Community and had assigned to GCUK the Membership Classification of Funder: cl. 2.1;

(b) For GCUK to be able to purchase Approved Payables on the Platform, the relevant Buyer (being NMC Health) must execute the BTSSA and GCUK must complete on its Dashboard the Eligibility Criteria on which GCUK agrees to finance the purchase of the Approved Payables from the Suppliers: cl. 5.1;

(c) Pursuant to the terms and conditions set out in the Member Access Agreement, all rights, title, and interests to Approved Payables purchased by GCUK in accordance therewith shall be Transferred to GCUK as a matter of law: cl. 5.2;

(d) The purchase price of the Approved Payables Transferred to GCUK shall be the Net Amount, being the Certified Amount less the Fee: cl. 6.2;

(e) In order for GCUK to provide its services to Members on the Platform, GCUK must have (i) completed all internal processes and received all internal approvals and authorisations to purchase the Approved Payables

that meet GCUK's Eligibility Criteria, and (ii) provided Demica with the Eligibility Criteria selected for the purpose of the Approved Payables for the particular Buyer (being NMC Health), (including, but not limited to, an allocated Advance Payment Limit for NMC Health): cl. 8.1;

(f) Where all the provisions of clause 8 of the Member Access Agreement have been satisfied, GCUK is expected but not obliged to provide its services to Members of the Platform, including, but not limited to, financial services that involve the purchase of the Approved Payables by accepting the Advance Payment Requests of a Supplier: cl. 8.3;

(g) An Advance Payment Request placed by a Supplier shall constitute an Approved Advanced Payment Request where (i) a BTSSA has been validly executed by NMC Health and Demica and is in full force and effect, (ii) Payables have been uploaded to the Platform and made available in accordance with the terms and conditions of the BTSSA, and (iii) such Approved Payables that are the subject of the Advance Payment Request meets the Eligibility Criteria of GCUK set NMC Health (including any Advance Payment Limit): cl. 8.4;

(h) GCUK agrees that with respect to the payment of the Net Amount, it shall instruct such payment to the Settlement Bank to debit the Net Amount from the Settlement Account to pay the Designated Bank account of the relevant Supplier such amount: cl. 9.1.

27. Terms in the BTSSA, the Demica Platform Agreements and the Member Access Agreements were defined in the Common Definitions and Interpretations Schedule as follows:

(a) **Advance Payment Limited** meant the amount set in the Eligibility Criteria by a Funder;

(b) **Advance Payment Request** meant a Supplier's request via the Platform (on a Manual Basis or Automatic Basis) to receive early payment of an Approved Payable prior to the Payment Date of the Approved Payable by agreeing to Transfer such Approved Payable to a Funder on a True Sale basis;

(c) **Approved Advance Payment Request** meant the acceptance and

endorsement of an Advance Payment Request by a Funder;

(d) **Approved Payable** meant those Payables and Receivables that have been communicated by a Buyer or an Associated Company to the Platform with the status “approved” showing that the Buyer or an Associated Company has validated and confirmed the Payable or Receivable for payment to the relevant Supplier;

(e) **Certified Amount** meant the Original Amount(s) of an Approved Payable to be paid by the Buyer less the amount of any relevant Credit Note(s) as shown on the Platform immediately before the Advance Payment Request;

(f) **Credit Note** meant the document issued by a Supplier or the Supplier’s Authorised Representative, as applicable, on behalf of the Supplier setting out an amount to be offset against the future purchases of a Buyer from such Supplier;

(g) **Dashboard** meant the principal interface overview page on the Platform, collating, supporting and indexing relevant information and providing access to such other information such as Electronic Messages;

(h) **Eligibility Criteria** meant the criteria specified by a Funder from time to time as set out on the “Programme Management” page accessed via the Dashboard, pursuant to which the Approved Payables are screened prior to being designated as available to the Supplier to finance (such criteria may be amended from time to time on request of the Funder to Demica in writing);

(h.i) **Funder** meant an individual, a company, or a special-purpose vehicle created by a group of companies who has joined the Demica Community as a Member to provide financial services on the Platform to other Members of the Demica Community to assist them to optimise their trade processes and working capital;

(i) **Original Amount** meant the total amount of a Payable including any applicable tax as communicated by the Buyer or an Associated Company to the Platform, including all taxes, duties and levies, but net of any discounts, credits or other allowances which may have been applied by

the Buyer or an Associated Company;

(j) **Payable** meant an account receivable which comprises rights to receive any and all present and future payments of money due and payable, whether due now or payable in the future as a result of the supply of goods and/or services by a Supplier to a Buyer;

(k) **Payment Date** meant the date on which a Payable is due to be paid as communicated by the Buyer or an Associated Company to the Platform;

(l) **Platform** meant a web-based proprietary technology developed, owned and operated by Demica that, among other things, enables Members to be linked together to organise themselves to improve interaction between themselves, to optimise their workflows, transactions, and working capital processes and where applicable achieve lower cost of funds;

(m) **Platform Cut-Off Time** meant 11:00am London time;

(n) **Receivable** meant the same as Payable;

(o) **Supplier** meant a company or individual that sells goods and services to the buyer who accesses the Platform in order to (i) view the status of orders and confirmed invoices; (ii) when admitted as a full Member to the Demica Community can elect to sell and assign its Receivables related to Approved Payables, thus optimising its trade processes and working capital;

(p) **Supply Chain Finance Services** meant the set of solutions provided to the Members on the Platform supported by Demica, Funders and Third-Party Providers;

(q) **Transfer** meant the sale, assignment or transfer or purported sale, assignment or transfer of an Approved Payable (whether in whole or in part);

(r) **True Sale** meant a transfer of title to a Receivable which will not be affected by the subsequent insolvency of a transferring party.

28. The Applicant relies on the entirety of the BTSSA, the Demica Platform Agreements and the Member Access Agreements as if those documents were

set out in this Statement of Claim.

E.4 NMC Health Plc Guarantee

29. On around 11 June 2018, NMC Health Plc executed a guarantee by which it guaranteed the obligations of NMC Health under the BTSSA (**NMC Plc Guarantee**).

Particulars

The NMC Plc Guarantee was in writing and was signed on behalf of NMC Health Plc and GCUK (CSA.0001.0001.3235).

F NMC HEALTH NOTE PROGRAMME

F.1 Supply Chain Finance Trust Deed

30. On or around 12 June 2018, GCUK, Lagoon Park and Citibank N.A., London Branch (**Citibank**) executed a Supply Chain Finance Trust Deed.

Particulars

The Supply Chain Finance Trust Deed is in writing and is signed by and on behalf of GCUK, Citi and Lagoon Park (CSA.0001.0001.3247).

31. ~~Pursuant to~~ t<u>T</u>he Supply Chain Finance Trust Deed (with defined terms having the meaning assigned in the Supply Chain Finance Trust Deed) <u>provided that</u>:

(a) GCUK declared a bare trust over the Eligible Accounts Receivable in favour of Citi;

(b) Citi declared a bare trust in favour of GCUK and Lagoon Park over the proceeds of such Eligible Accounts Receivable and over the balance from time to time standing to the credit of the trust account that Citi maintained in respect of NMC Health and NMC Health Plc (**Citi Trust**); and

(c) **Eligible Accounts Receivable** meant the benefit of an unconditional undertaking given by the Obligor (identified in the appendix as NMC Health and NMC Health Plc) under the Customer Agreement (identified in the appendix as the BTSSA) to or for the benefit of GCUK, to pay or cause to be paid an amount equal to the amount of any receivables

payable by the Obligor to a Supplier in respect of goods and/or services provided by such Supplier to the Obligor, the payment details of which unconditional undertakings are either set out in the Customer Agreement or loaded onto the Platform by the Obligor or otherwise evidenced through written payment details provided or by written records held for or with respect to the Obligor and which receivables have been transferred to GCUK provided that no such receivable shall have a maturity date which falls more than the number of days specified in the appendix (that number being 364 days) after the date on which such receivable was so transferred to GCUK and further provided that such payment undertaking shall be included in an instrument acknowledging indebtedness within article 77 of the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001* issued by one and only one body corporate.

F.2 Master Trust Deed

32. On 19 October 2015, Lagoon Park and Citi entered into a Master Trust Deed, which was supplemented from time to time, including on 20 September 2016, 5 December 2016 and again on 26 November 2018 (**Master Trust Deed**).

33. Pursuant to the Master Trust Deed, between 16 September 2019 and 7 January 2020, Lagoon Park issued notes (**NMC Notes**) that were secured by Lagoon Park's beneficial interest in the trust property the subject of the Citi Trust.

Particulars

The Master Trust Deed was in writing and dated 19 October 2015 (CSA.0001.0008.2619). It was supplemented by Supplemental Master Trust Deeds dated 20 September 2016 (CSA.0001.0001.3245), 5 December 2016 (CSA.0023.0002.9850) and 26 November 2018 (CSA.0001.0006.1218).

Lagoon Park is organised to have "compartments", each of which has a distinct legal capacity as a matter of Luxembourg law and the assets of which form a part of its distinct estate. Each series of notes issued by Lagoon Park were issued for a separate compartment. The NMC Notes were in Compartment GT.

The NMC Notes the subject of this claim have International Securities

Identification Numbers (**ISIN**): XS1795720447; XS1795720793; XS1795720876; XS1795721254; XS1795721502; XS1994336524; XS1994336953; XS1994337092; XS1994337175; XS1994337258; XS1994337332; XS1994337415; XS1994337506; XS1994337688; XS1994337761; XS1994337845; XS1994337928; XS1994338066; XS1994338140; XS1994338223; XS1994338496; XS1994336797; XS1994336870; XS1994338819.

33A. From October 2019 to January 2020, Credit Suisse Virtuoso:

(a) acquired the NMC Notes; and

(b) paid a total amount of US$113,493,580 in consideration for the NMC Notes.

Particulars

The NMC Notes were acquired by Credit Suisse Virtuoso between October 2019 and January 2020 following Lagoon Park Capital SA entering instructions into the Clearstream clearing system to process the transfer of the NMC Notes to a Euroclear account in the name of Credit Suisse Luxembourg S.A. as Credit Suisse Virtuoso's custodian (#46517). On the same day that each of the NMC Notes were transferred, cash was debited from Credit Suisse Virtuoso's custodian account and paid to an account in the name of Lagoon Park Capital SA via the broker, Morgan Stanley (London).

34. On or about 23 October 2020, 23 of the 24 NMC Notes were transferred to Greensill Bank, with International Securities Identification Numbers (**ISIN**):

(a) XS1795720447

(b) XS1795720793

(c) XS1795720876

(d) XS1795721254

(e) XS1795721502

(f) XS1994336524

(g) XS1994336953

(h) XS1994337092

(i) XS1994337175

(j) XS1994337258

(k) XS1994337332

(l) XS1994337415

(m) XS1994337506

(n) XS1994337688

(o) XS1994337761

(p) XS1994337845

(q) XS1994337928

(r) XS1994338066

(s) XS1994338140

(t) XS1994338223

(u) XS1994338496

(v) XS1994336797

(w) XS1994336870

Particulars

On 15 October 2020, Credit Suisse Asset Management AG (Zurich), the delegated portfolio manager for Credit Suisse Virtuoso, instructed Credit Suisse (Luxembourg) S.A., the custodian bank of Credit Suisse Virtuoso, to process the transfer of 23 of the 24 NMC Notes from its Euroclear account (#46517) to a Citibank account in the name of Greensill Bank, free of payment (the trades settled on 22 October 2020). The respective counterparties entered instructions for the transfers into their respective

clearing systems (Euroclear for Credit Suisse Virtuoso, Clearstream for Greensill Bank). Following the transfer being completed, each counterparty confirmed to the other by email that their systems matched.

35. On or about 9 July 2021 the last of the NMC Notes was transferred to Greensill Bank, being ISIN XS1994338819.

Particulars

On 7 July 2021, Credit Suisse Asset Management AG (Zurich) instructed Credit Suisse (Luxembourg) S.A., the custodian bank of Credit Suisse Virtuoso, to process the transfer of the remaining NMC Note, ISIN XS1994338819, from its Euroclear account (#46517) to a Citibank account in the name of Greensill Bank, free of payment (the trade settled on 9 July 2021). The respective counterparties entered instructions for the transfers into their respective clearing systems (Euroclear for Credit Suisse Virtuoso, Clearstream for Greensill Bank). Following the transfer being completed, each counterparty confirmed to the other by email that their systems matched.

FA AGENT OF THE INSURER

FA.1 Agency arrangements between CGU and BCC and Brereton prior to the CGU Scheme

35A. In 2016 and 2017, CGU Insurance Limited (**CGU**) was a subsidiary of Insurance Australia Group Limited.

35B. On or about 28 July 2016, CGU and BCC entered into an agreement titled an "*Agency & Authorised Representative Agreement*" (**CGU AAR Agreement**).

35C. It was a term of the CGU AAR Agreement that:

(a) BCC was CGU's agent for the purposes set out in cll. 2.1 and 2.6: cll. 2.1, 2.6;

(b) by giving BCC the Authorisation Notice in the Authorisation Notice Schedule (**BCC Authorisation Notice**), BCC was CGU's "Authorised Representative" and was authorised to provide "Authorised Services" and to deal in, arrange and issue "Approved Products" in accordance with the

"Underwriting Manual": cl. 2.1;

(c) CGU would pay BCC commission on policies of trade credit insurance issued on behalf of CGU: cl. 3.1(a);

(d) BCC would collect and remit to CGU premiums received by BCC on account of policies of trade credit insurance issued by BCC on behalf of CGU, net of BCC's commission: cll. 3.1, 3.4, 8.1;

(e) BCC would maintain a bordereau of all trade credit insurance policies issued by BCC on behalf of CGU: cl. 4.5(a); ~~and~~

(f) BCC would provide a copy of the bordereau to CGU within seven business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to trade credit insurance policies issued by BCC on behalf of CGU: cl. 4.5(b)~~.~~;

(g) the "Commission Schedule" identified a single "Approved Product", namely, "Trade Credit Products";

(h) BCC must carry out the "Authorised Services" only through an "Authorised Individual": cl 2.2;

(i) BCC was not authorised to do anything on behalf of CGU that was not expressly authorised under the CGU AAR Agreement: cl 2.3;

(j) BCC must not, except to the extent expressly permitted by the CGU AAR Agreement or authorised in writing by CGU, enter into any contract or arrangement, do any acts, make any representations or incur any obligation (including accepting any risk) on behalf of CGU or the Insurer: cl 2.3(a);

(k) BCC must not, except to the extent expressly permitted by the CGU AAR Agreement or authorised in writing by CGU, vary or waive:

  (i) any term or requirement of any "Insurance Policy";

  (ii) any duty of a "Client" or any third party imposed by an "Applicable Law" relating to any "Insurance Policy" or proposed Insurance Policy, including the statutory duty of disclosure; or

(iii) any legal requirement relating to any "Insurance Application", any "Claim" or the administration, variation or cancellation of any "Insurance Policy": cl 2.3(b);

(l) the relationship between CGU and BCC created by the agreement was one of principal and agent for the purposes expressly permitted by the agreement only, and otherwise principal and independent contractor, and not one of employer and employee, joint venture or partnership: cl 2.6;

(m) BCC must comply with all written "Guidelines" given to BCC by CGU at any time in relation to (inter alia):

(i) the provision of "Authorised Services": cl 4.1(a); and

(ii) compliance with the "Applicable Laws" by BCC or CGU: cl 4.1(b);

(n) the "Guidelines" (being Underwriting Manual Version 1.0 and Underwriting Manual Version 2.0 referred to below at paragraphs 35JA and 35JE respectively) were taken to be incorporated into and form part of the CGU AAR Agreement: cl 4.2(a);

(o) BCC was to perform the "Authorised Services" and its obligations under the CGU AAR Agreement in accordance with the "Applicable Laws", in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly: cl 4.3;

(p) BCC may from time to time appoint one or more individuals as "Authorised Individuals" to provide the "Authorised Services" on the conditions set out in clause 5.4: cl 5.4;

(q) BCC would perform its obligations under the CGU AAR Agreement in accordance with the "Underwriting Manual": cl 7.1; and

(r) BCC would collect premium for the risks underwritten within authority; cl 8.1,

where:

(s) **Applicable Laws** meant (a) all laws (including acts, regulations and instruments); (b) all policies, guidelines, standards and requirements issued or imposed by a Regulator; (c) any conditions imposed on CGU's

AFSL notified by CGU to BCC; and (d) all industry codes of practice including the general insurance code of practice, to the extent that they relate to the conduct of the relevant party;

(t) **Approved Products** meant contracts of insurance issued or to be issued by CGU of the classes and types: (a) identified in the "Commission Schedule" to the CGU AAR Agreement; and (b) otherwise agreed between the parties in writing;

(u) **Authorisation Agreement** meant the agreement between BCC and an "Authorised Individual" appointing the "Authorised Individual" as CGU's authorised representative;

(v) **Authorisation Notice** meant, relevantly, an instrument in the form of the "Authorisation Notice Schedule" which appoints [BCC] as CGU's authorised representative;

(w) **Authorised Individual** meant an employee, officer or representative of BCC who has been appointed as an authorised representative of BCC or CGU in accordance with a duly executed "Authorisation Agreement" and whose appointment has not been terminated;

(x) **Authorised Services** meant the services which BCC is authorised by CGU to perform as specified in the "Authorisation Notice" and, if applicable, any claims handling services delegated to BCC in accordance with clause 9;

(y) **Client** meant any person to whom BCC had provided any of the "Authorised Services" on behalf of CGU or any person whom BCC has dealt with in connection with the possible provision of any of the "Authorised Services" to the person by BCC on behalf of CGU;

(z) **Commencement Date** meant 1 July 2016;

(aa) **Guidelines** meant the written authorisations, procedures, guidelines (including any claims handling guidelines issued pursuant to clause 9) directions and requirements notified or provided by CGU to BCC from time to time in relation to the provision of the "Authorised Services" by BCC or BCC's obligations under the CGU AAR Agreement and including the compliance manual; and

(bb) **Underwriting Manual** meant the underwriting manual agreed between the Parties, as varied from time to time in accordance with the CGU AAR Agreement, which may include procedures in relation to: (a) the pricing of the "Approved Products" subject to underwriting variants in relation to the individual "Approved Products"; (b) the provision of services by BCC in relation to the "Approved Products" including service level requirements; (c) BCC's performance of its obligations under the CGU AAR Agreement; and (d) BCC's compliance with applicable laws.

35D. On or around 28 July 2016, CGU provided the BCC Authorisation Notice to BCC (**BCC Authorisation Notice**).

35E. By the CGU AAR Agreement and the BCC Authorisation Notice, CGU appointed BCC as its agent, authorised to issue and vary "Approved Products" ~~trade credit insurance~~ on behalf of CGU.

35F. The BCC Authorisation Notice was a written notice given by CGU to BCC for the purpose of s 916A of the Corporations Act.

35G. Between 1 July 2016 and 30 July 2017, BCC was an authorised representative of CGU for the purposes of Part 7.6 of the Corporations Act.

35H. On or around 8 July 2016, CGU and Brereton entered into an agreement titled an "*Individual Authorisation Agreement*" (**Brereton Authorisation Agreement**).

35I. On or around 8 July 2016, CGU provided Brereton with a document titled "*Individual Authorisation Notice*" (**Brereton Authorisation Notice**).

35J. By the Brereton Authorisation Agreement and the Brereton Authorisation Notice:~~,~~

(a) CGU appointed Brereton as its agent~~, authorised to issue and vary trade credit insurance on behalf of CGU~~ to provide and perform the "Authorised Financial Services" in relation to "Approved Products" only on behalf of CGU, and for that purpose appointed Brereton as its authorised representative for the purposes of Chapter 7 of the Corporations Act from the "Effective Date" being 8 July 2016;

(b) **Approved Products** was defined to have the same meaning given to that term in the CGU AAR Agreement, such that "Approved Products"

were "Trade Credit Products", which could only be written using Approved Wording 1.3 (referred to in paragraph 35JC below) or Approved Wording 1.4 (referred in paragraph 35JD below);

(c) **Authorised Financial Services** meant that Brereton was authorised in accordance with the CGU AAR Agreement to: provide general advice, but not personal advice; deal in, arrange, acquire, issue, vary and dispose of "Approved Products"; collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an "Insurance Policy" for an "Approved Product"; and issue, negotiate and agree the terms of "Insurance Policies" for "Approved Products" as agent of CGU;

(d) Brereton must comply with and provide the "Authorised Services" in accordance with the CGU AAR Agreement as if Brereton were BCC; and

(e) Brereton must not cause BCC to breach any terms and conditions of the CGU AAR Agreement.

35JA In or around June 2016, a document titled "BCC Trade Credit Pty Ltd Underwriting Manual … (Version 1.0)" was issued (**Underwriting Manual Version 1.0**), being the "Underwriting Manual", further and alternatively "Guidelines" for the purposes of the CGU AAR Agreement, and which provided that:

(a) trade credit insurance was a general insurance policy and risk management product that covered the payment risk of corporate entities, resulting from the delivery of goods and services: p 7;

(b) trade credit insurance paid an agreed percentage of an invoice or receivable that remained unpaid as a result of protracted default, insolvency or bankruptcy, and trade credit insurance was purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors: p 7;

(c) the insurance protection afforded under a trade credit transaction involved:

(i) a "Buyer" who receives goods or services from and trade credit from a "Seller" and who makes payments for goods or services to

the "Seller";

(ii) a "Seller" who supplied goods or services and trade credit to the "Buyer" and who receives payments for goods or services from the "Buyer"; and

(iii) a "Credit Insurer" who provides insurance to the "Seller", who receives premiums from the "Seller" and who has a right of subrogation in respect of the "Buyer": p 7;

(d) trade credit insurance was a business insurance product that indemnified a seller against losses from non-payment of a commercial trade debt: p 13;

(e) BCC was authorised to bind insurance policies only in the nature of the product listed in "2 – Trade Credit Insurance Products" and not for other product lines or risk categories: p 8;

(f) BCC was required always to act within the authority and terms of the applicable agency agreement in the conduct of its business and underwrite business within the scope and limits in accordance with the Underwriting Manual Version 1.0: p 8;

(g) the "Maximum Limits" that could be underwritten and accepted by BCC were:

(i) Whole of Turnover Limit: AUD 50 million, but only under the "Special Acceptance" stipulation referred to at sub-paragraph (h) below;

(ii) Major Debtors / Multi Buyer Limit: AUD 40 million, but only under the "Special Acceptance" stipulation referred to at sub-paragraph (h) below; and

(iii) Single Risks Limit: AUD 35 million: p 9;

(h) BCC's authority was up to AUD 35 million, with policies and buyers with limits up to AUD 50 million for Whole of Turnover Policies and up to AUD 40 million for Major Debtors / Multi-Buyer policies considered by "Special Acceptance" by CGU and its reinsurers: p 9;

(i) BCC was authorised only to issue policies to Australian customers in Australia: p 9;

(j) the maximum credit limit / credit term BCC was required to set for each policy written within authority was 180 days: p 9;

(k) the maximum indemnity limit BCC was required to adhere to for each policy written within authority was 90% of the Debt, being accounts receivable of the insured: p 9;

(l) the standard policy term was 12 months and policy periods beyond 15 months were to be referred to CGU for approval, but in any case would be no longer than 24 months: p 11;

(m) BCC was authorised only to use authorised endorsement clauses: pp 12, 14, 16;

(n) BCC was authorised to provide three types of trade credit insurance products for Australian clients that were transacting domestically or overseas, being Comprehensive / Whole of Turnover, Major Debtors / Multi-Buyer and Single Risks cover, and to do so using the same core base wording (as recorded in Appendix 2 of the Underwriting Manual Version 1.0) with the application of select mandatory endorsements: p 16;

(o) the minimum premium BCC was to set for each policy written within authority was $10,000: p 26;

(p) there was a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured must bear for each loss or series of losses, must be set for each policy written within authority: p 28; and

(q) there were various “exclusions” from the risks that BCC was authorised to write, including any “financial guarantees that cover a purely monetary debt”, “Insolvent risks” and “Intercompany sales”: p 31.

35JB On or around 22 July 2016, CGU approved a set of “Policy Endorsement Clauses” (**Approved Endorsements**) for use by BCC in accordance with the terms of the Underwriting Manual Version 1.0 and subsequent versions, and:

(a) at all material times thereafter, CGU and IAL did not approve any additional endorsement clauses for use by BCC; and

(b) at all material times thereafter, BCC did not have authority to issue endorsements that were not Approved Endorsements.

35JC In or around October 2016, CGU issued the following approved wording (**Approved Wording 1.3**), being the "core base wording" for the purposes of the Underwriting Manual Version 1.0 and the Trade Credit Products listed in the Commission Schedule to the CGU AAR Agreement:

(a) "Trade Credit Insurance Whole of Turnover" dated October 2016 (Version WOT 1.3) (IAG.0001809750.0001.0004);

(b) "Trade Credit Insurance Multi Buyer" dated October 2016 (Version MB 1.3) (IAG.0001809750.0001.0003); and

(c) "Trade Credit Insurance Single Risk" dated October 2016 (Version SR 1.3) (IAG.0001809750.0001.0002).

35JD In or around August 2017, IAL issued the following approved wording (**Approved Wording 1.4**), which came into effect on 1 August 2017, being the "core base wording" for the purposes of the Underwriting Manual Version 1.0 and the "Trade Credit Products" listed in the Commission Schedule to the CGU AAR Agreement:

(a) "Trade Credit Insurance Whole of Turnover" dated August 2017 (Version WOT 1.4) (IAG.0000022998.0003);

(b) "Trade Credit Insurance Multi Buyer" dated August 2017 (Version MB 1.4) (IAG.0000022998.0002); and

(c) "Trade Credit Insurance Single Risk" dated August 2017 (Version SR 1.4) (IAG.0000022998.0001).

35JE In or around July 2018, a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines … (Version 2.0)" was issued (**Underwriting Manual Version 2.0**), being the "Underwriting Manual", further or alternatively "Guidelines" for the purposes of the CGU AAR Agreement, and which set out again the matters pleaded at sub-paragraphs 35JA(a) to (e), (i) to (l), (o) to (q)

and also provided:

(a) BCC was required to at all times act within the authority and terms of the applicable agency agreement (being the CGU AAR Agreement) in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 2.0: p 8;

(b) BCC was authorised to write three products being the Whole of Turnover approved wording Version WOT 1.4 August 2017; Multi Buyers approved wording Version MB 1.4 August 2017; and Single Risks approved wording Version SR 1.4 August 2017: p 9;

(c) the "Maximum Limits" that may be underwritten and accepted by BCC were:

(i) Whole of Turnover Limit: AUD 50 million;

(ii) Major Debtor / Multi Buyer Limit: AUD 50 million; and

(iii) Single Risks Limit: AUD 50 million: p 9;

(d) BCC's binding authority is up to AUD 50 million, with policies and buyers with limits up to AUD 75 million considered by Special Acceptance: p 9;

(e) BCC's authority limits referred to in sub-paragraphs 35JE(c), (d) and (f) of this Statement of Claim was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons: pp 9, 56; and

(f) where a policy was issued in a foreign currency the maximum limit was to be no more than 95% of the AUD Binder Limit BCC was authorised to transact at the time cover was arranged: p 29.

35K. The Brereton Authorisation Notice was a written notice given by CGU to Brereton for the purpose of s 916A of the Corporations Act.

35L. Between 1 July 2016 and 30 July 2017, Brereton was an authorised representative of CGU for the purposes of Part 7.6 of the Corporations Act.

FA.2 The CGU Scheme

35M. On 20 July 2017, the Federal Court of Australia made an order under s 17F of the *Insurance Act 1973* (Cth) (**Insurance Act**) confirming, without modification and with effect from 1 August 2017, a scheme for the transfer of the insurance business of CGU to the Insurer.

35N. On 1 August 2017, by operation of the order referred to at paragraph 35M above and s 17G of the Insurance Act, the scheme for the transfer of the insurance business of CGU to the Insurer:

(a) became binding on all persons; and

(b) took effect.

35O. On 1 August 2017:

(a) the CGU AAR Agreement was transferred from CGU to the Insurer; and

(b) the BCC Authorisation Notice was transferred from CGU to the Insurer.

35P. By reason of the matters pleaded at paragraphs 35M to 35O above, on 1 August 2017:

(a) BCC became the agent of the Insurer, authorised to issue and vary trade credit insurance on behalf of the Insurer; and

(b) BCC became the authorised representative of the Insurer for the purposes of Part 7.6 of the Corporations Act.

35Q. The CGU AAR Agreement remained in force until at least 9 April ~~September~~ 2019.

35R. The BCC Authorisation Notice remained in force until at least 9 April ~~September~~ 2019.

35S. On 1 August 2017:

(a) the Brereton Authorisation Agreement was transferred from CGU to the Insurer; and

(b) the Brereton Authorisation Notice was transferred from CGU to the Insurer.

35T. By reason of the matters pleaded at paragraph 35S above:

(a) Brereton became the agent of the Insurer, authorised to issue and vary trade credit insurance on behalf of the Insurer; and

(b) Brereton became the authorised representative of the Insurer for the purposes of Part 7.6 of the Corporations Act.

35U. The Brereton Authorisation Agreement remained in force until at least 8 July 2020, alternatively until at least 9 September 2019.

35V. The Brereton Authorisation Notice remained in force until at least 8 July 2020, alternatively until at least 9 September 2019.

35W. [NOT USED]~~On 1 August 2017, the Insurer published a statement (**To Whom It May Concern Letter**) which represented that BCC was authorised to issue trade credit insurance as the agent of the Insurer.~~

35X. [NOT USED]~~The To Whom It May Concern Letter did not qualify the representation as to BCC's authority to issue trade credit insurance as the agent of the Insurer.~~

35Y. [NOT USED]~~At all material times, the representation in the To Whom it May Concern Letter was a continuing representation.~~

FA.3 IAL Agencies Agreements

35ZZ. At all material times, IAG Agencies Pty Limited (IAGA) and the Insurer have been wholly owned subsidiaries of Insurance Australia Group Limited.

35ZA. On and from 1 August 2017, IAGA had authority to issue and vary policies of trade credit insurance on behalf of the Insurer.

35ZB. At all material times prior to about 1 April 2019, IAGA owned 50% of BCC's issued shares.

35ZC. On or about 28 March 2019~~July 2017~~, the Insurer and BCC entered into an agreement titled an "*Agency & Authorised Representative Agreement*" (**IAL AAR Agreement**).

35ZD. It was a term of the IAL AAR Agreement that:

(a) BCC was the Insurer's agent for the purposes set out in cll. 2.1 and 2.5: cll. 2.1, 2.5;

(b) by giving BCC the Authorisation Notice in the Authorisation Notice Schedule (**BCC/IAL Authorisation Notice**), BCC was the Insurer's Authorised Representative: cl. 2.1;

(c) the Insurer would pay BCC commission on policies of trade credit insurance issued on behalf of the Insurer: cl. 3.1(a);

(d) BCC would collect and remit to the Insurer premiums received by BCC on account of policies of trade credit insurance issued by BCC on behalf of the Insurer, net of BCC's commission: cll. 3.1, 3.3, 8.1;

(e) BCC would maintain a bordereau of all trade credit insurance policies issued by BCC on behalf of the Insurer: cl. 4.5(a); and

(f) BCC would provide a copy of the bordereau to the Insurer within 14 business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to trade credit insurance policies issued by BCC on behalf of the Insurer, in the manner and form requested by the Insurer from time to time: cl. 4.5(b);~~.~~

(g) the Insurer authorised BCC, from the Commencement Date and for the Term of the agreement to provide the "Authorised Services" and to deal in, arrange and issue "Approved Products" in accordance with the applicable "Underwriting Manual" and specifically as follows (cl 2.1):

    (i) BCC was not permitted to bind new Insurance Policies on behalf of IAL after 30 June 2019 and new Insurance Policies issued prior to that date were not to exceed a policy term of 12 months;

    (ii) BCC was not permitted to bind renewal Insurance Policies on behalf of IAL with renewal inception dates after 30 June 2019. This included:

        (A) any Insurance Policies issued as a 2-year conditional contract. Second year renewal was not to be written with IAL as the insurer; and

(B) any extensions of policy due date;

(iii) renewal Insurance Policies due prior to the inception date of 30 June 2019 were not to exceed 12 months;

(iv) BCC could, unless the Insurer notified BCC otherwise, provide cover under a cover note upon the expiry of an Insurance Policy for policies where a renewal offer had been made. The interim cover would be in the same terms and conditions as the renewal offer for a maximum period of 30 days starting on the expiry date of the Insurance Policy but in any event was not to extend beyond 30 June 2019;

(v) BCC was authorised to bind mid-term Insurance Policy alterations where IAL was the Insurer provided that those changes were permitted by Underwriting Manual Version 3.0 (as defined at paragraph 35ZDA below) after prudent underwriting judgment had been applied; and

(vi) no extensions of due dates were permitted;

(h) BCC was obliged to carry out the "Authorised Services" through an "Authorised Individual": cl 2.2;

(i) BCC was not authorised to do anything on behalf of the Insurer that was not expressly authorised by the IAL AAR Agreement: cl 2.3;

(j) BCC was prohibited, except to the extent expressly permitted by the IAL AAR Agreement or authorised in writing by the Insurer, from entering into any contract or arrangement, doing any acts, making any representations or incurring any obligations (including accepting any risk) on behalf of the Insurer: cl 2.3(a);

(k) BCC was prohibited, except to the extent expressly permitted by the IAL AAR Agreement or authorised in writing by the Insurer, from varying or waiving:

(i) any term or requirement of any Insurance Policy;

(ii) any duty of a Client or any third party imposed by an Applicable

Law relating to any Insurance Policy or proposed Insurance Policy, including the statutory duty of disclosure; or

(iii) any legal requirement relating to any Insurance Application, any Claim or the administration, variation or cancellation of any Insurance Policy: cl 2.3(b);

(l) the relationship between the Insurer and BCC created by the IAL AAR Agreement was one of principal and agent for the purposes expressly permitted by the IAL AAR Agreement only, and otherwise principal and independent contractor, and not one of employer and employee, joint venture or partnership: cl 2.5;

(m) BCC must comply with all reasonable written Guidelines given to BCC by the Insurer at any time in relation to the provision of the Authorised Services: cl 4.1(a);

(n) the Guidelines (being Underwriting Manual Version 3.0 referred to at paragraph 35ZDA below) were taken to be incorporated into and form part of the IAL AAR Agreement: cl 4.2;

(o) BCC was to perform the Authorised Services and the obligations under the IAL AAR Agreement in accordance with the Applicable Laws, in a prompt and professional manner, exercising reasonable care and skill, fairly, efficiently and honestly: cl 4.3;

(p) the Insurer could in its complete discretion appoint or refuse to appoint a person as an authorised representative and BCC was prohibited from authorising any person to provide any Authorised Services on its behalf or on behalf of IAL: cl 5.1;

(q) BCC would perform its obligations under the IAL AAR Agreement in accordance with the Underwriting Manual: cl 7.1; and

(r) BCC would collect a premium for risks written within its authority: cl 8.1.

35ZDA On around 9 April 2019, a document titled "BCC Trade Credit Pty Ltd Underwriting Guidelines … (Version 3.0)" (**Underwriting Manual Version 3.0**) being the "Underwriting Manual", further or alternatively "Guidelines" for the purposes of the IAL AAR Agreement, came into effect and limited BCC's

acceptance authority for IAL business effective from that date.

35ZDB The Underwriting Manual Version 3.0 contained the express terms pleaded at paragraphs 35JA(a) to (e), (i) to (k), (m), (o) to (q) and at 35JE(f) as well as the following express terms:

(a) BCC was required always to act within the authority and the terms of the applicable agency agreement, being the IAL AAR Agreement, in the conduct of its business and underwrite business within the scope and limits in accordance with the Underwriting Manual Version 3.0: p 8;

(b) BCC was not permitted to quote or bind new business on behalf of the Insurer after the Effective Date, being 30 June 2019: p 8;

(c) any new insurance policies issued prior to 30 June 2019 were not to exceed a policy term of 12 months: p 8;

(d) any new business issued prior to 30 June 2019 was to adhere to the Underwriting Manual Version 3.0: p 8;

(e) BCC was not permitted to bind renewal business on behalf of the Insurer with renewal inception after the Effective Date, being 30 June 2019: p 8;

(f) any renewal business due prior to the inception date of 30 June 2019 must not exceed 12 months: p 8;

(g) BCC was authorised to bind mid-term policy alterations where the Insurer was the insurer provided those changes were permitted under the Underwriting Manual Version 3.0 after prudent underwriting judgement had been applied, with no extensions of due date permitted: pp 8, 9;

(h) the Maximum Limits that could be underwritten and accepted by BCC were (p 10):

(i) Whole of Turnover Limit: AUD 50 million;

(ii) Major Debtors Limit: AUD 50 million; and

(iii) Single Risks Limit: AUD 50 million;

(i) Maximum Limits of AUD 75 million per Buyer or Buyer Group, with Limits above AUD 50 million and below AUD 75 million referred to the lead reinsurer, and with the Insurer having final acceptance authority on those risks: p 9;

(j) the limits set out at sub-paragraphs 35JA(g), (h) and 35JE(f) of this Statement of Claim was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons: pp 9, 57;

(k) BCC was authorised to write three Trade Credit Insurance Products only, being Approved Wording 1.4 as follows:

(i) Whole of Turnover approved wording version WOT 1.4;

(ii) Multi Buyers approved wording MB 1.4; and

(iii) Single Risks approved wording Version SR 1.4; and

(l) BCC would continue to manage claims on behalf of the Insurer under management of TMMA via the PACAO (as defined in paragraph 35ZN below).

35ZE. [NOT USED]~~On or about 28 July 2017, the Insurer provided the BCC/IAL Authorisation Notice to BCC~~.

35ZF. By the IAL AAR Agreement and the BCC~~/IAL~~ Authorisation Notice, the Insurer appointed BCC as its agent, authorised to issue and vary trade credit insurance on behalf of the Insurer.

35ZG. The BCC~~/IAL~~ Authorisation Notice was a written notice given by the Insurer to BCC for the purposes of s 916A of the Corporations Act.

35ZH. Between 28 July 2017 and 30 June 2019, BCC was an authorised representative of the Insurer for the purposes of Part 7.6 of the Corporations Act.

35ZI. On or about 28 July 2017, IAGA, on behalf of the Insurer, and Brereton entered into an agreement titled "*Individual Authorisation Agreement*" (**IAL/Brereton Authorisation Agreement**).

35ZJ. On or around 28 July 2017, IAGA, on behalf of the Insurer, provided Brereton with a document titled "*Individual Authorisation Notice*" (**IAL/Brereton Authorisation Notice**).

35ZK. By the IAL/Brereton Authorisation Agreement and the IAL/Brereton Authorisation Notice, the Insurer appointed Brereton as its agent, authorised to issue and vary trade credit insurance on behalf of the Insurer.

35ZL. The IAL/Brereton Individual Authorisation Notice was written notice given by the Insurer to Brereton for the purposes of s 916A of the Corporations Act.

35ZM. Between 28 July 2017 and 30 June 2019, Brereton was an authorised representative of the Insurer for the purposes of Part 7.6 of the Corporations Act.

FA.4 Administration of the policies

35ZN. On or around 9 April 2019, the Insurer, Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455) (**TMMA**), the Australian managing agent of TMNF, and Bond entered into an agreement titled the "*Policy and Claims Administration Outsourcing Deed*" (**PACAO**). The PACAO described TMMA and Bond (defined as BCC in the PACAO) together as the Administrator.

35ZO. Pursuant to the PACAO:

(a) the Insurer authorised the Administrator to provide the following "Services":

(i) customer service (including service availability, customer contact and complaints management);

(ii) claims processing (including claims processing, error management, document retention, claim lodgement and claim authorisation and claims payment);

(iii) policy administration (including modifications of policies, extensions of bonds and premium collection and remittance); and

(iv) preparing management reports: cll. 1.1, 5.1 and Schedules 3, 4, 5; and

(b) the Administrator was required to provide the Insurer with Quarterly

Reports, including bordereau reports: cl. 7, Schedule 1.

35ZP. On and from 9 April 2019, the Insurer permitted BCC to provide the services of the Administrator under the PACAO.

35ZQ. On and from 1 July 2019, BCC has acted as the Insurer's agent to administer trade credit insurance policies issued by the Insurer on or before 30 June 2019.

FA.5 Conduct of the Insurer's trade credit insurance business

35ZR. [NOT USED]~~As pleaded in more detail at paragraphs 35ZS to 35ZZR below, in the period from at least August 2017 to February 2021, the Insurer conducted itself in a manner that evidences that BCC was duly authorised to enter into Policy TS-03088.~~

35ZS. On and from 1 August 2017, BCC provided bordereaux to the Insurer.

35ZT. The bordereaux that BCC provided to the Insurer ~~referred to (or BCC and Brereton otherwise informed the Insurer of)~~:

(a) [NOT USED]~~trade credit insurance policies of entities in the Greensill Group;~~

(b) [NOT USED]~~Policy TS-03088 (as defined at paragraph 36 below);~~

(c) [NOT USED]~~endorsements to Policy TS-03088; and~~

(d) referred to the existence of trade credit insurance policy~~ies~~ TB-03691 (**2019 Master Policy**), ~~the 2019 Policy (as defined at paragraph 35ZZA below)~~ and TS-03087 ~~and endorsements to those policies.~~;

(e) did not refer to:

(iv) 2018 Policy TS-03088 or Policy TS-03088 or any endorsements purportedly issued under those policies;

(v) the 2018 Policy (as defined in paragraph 35ZZAAC below) or any endorsements purportedly issued under the 2018 Policy; or

(vi) the 2019 Policy (as defined in paragraph 35ZZA below) or any endorsements purportedly issued under the 2019 Policy;

(f) did not disclose that BCC had issued policies without using the Approved Wording 1.3 and Approved Wording 1.4;

(g) disclosed that there was only one insured under each of the 2019 Master Policy and TS-03087, being GCPL, which is and was a company domiciled in Australia;

(h) did not disclose that GCUK was a named insured;

(i) did not disclose that GBAG was a named insured;

(j) did not disclose that any overseas entity was a named insured under each of the 2019 Master Policy, 2019 Policy and TS-03087;

(k) did not disclose that any policies issued by BCC on behalf of the Insurer had an insured percentage of 100%;

(l) did not disclose that BCC had issued endorsements that had not been approved by CGU or IAL and/or were not in the form of the Approved Endorsements;

(m) prior to April 2021, did not disclose foreign exchange adjustments to premium for the 2019 Master Policy or the 2019 Policy and thereby failed to disclose information that would indicate that the insured was not an Australian domiciled company;

(n) prior to April 2021, did not disclose the extent of the risks purportedly underwritten by BCC on behalf of IAL under the 2019 Master Policy or the 2019 Policy;

(o) did not, until 9 June 2021, disclose that BCC had purported to renew TS-03087 with such renewal to apply for the period 1 March 2019 to 29 February 2020 (the original policy period purportedly being 9 February 2018 to 1 March 2019) by which time the renewed policy period had passed;

(p) did not, until 9 June 2021, disclose that BCC had purported to extend the due date of TS-03087 as renewed from 29 February 2020 to 15 May 2020 and then to 15 June 2020 and then to 30 June 2020 by which time the policy expiry date (as purportedly extended) had passed; and

(q) did not, until 11 June 2021, disclose that BCC had received premium for TS-03087 as purportedly renewed and extended.

35ZU. [NOT USED]~~On and from 1 August 2017, the Insurer permitted BCC to collect premiums under policies of trade credit insurance for which the Insurer was named as the insurer.~~

35ZV. [NOT USED]~~On and from 1 August 2017, BCC remitted premiums to the Insurer in respect of trade credit insurance for which the Insurer was named as the insurer.~~

35ZW. [NOT USED]~~On and from 1 August 2017, the Insurer paid commission to BCC on policies of trade credit insurance for which the Insurer was named as the insurer.~~

35ZX. [NOT USED]~~On and from 1 August 2017, the Insurer permitted BCC:~~

~~(a) to provide general advice in relation to trade credit insurance on the Insurer's behalf;~~

~~(b) to deal in, arrange, issue and vary policies of trade credit insurance on the Insurer's behalf;~~

~~(c) to deal with client monies on the Insurer's behalf;~~

~~(d) to issue, negotiate and agree the terms of policies of trade credit insurance on the Insurer's behalf; and~~

~~(e) to act in the management of the Insurer's trade credit insurance business.~~

35ZY. On or around 15 December 2017, ~~GCPL and Greensill Bank (each an Insured) and the Insurer entered into~~ BCC, purportedly as agent and corporate authorised representative of the Insurer, issued two separate contracts of insurance evidenced by a Comprehensive Trade Credit Insurance Policy TW-02924, with no unique market reference number, relating to Liberty OneSteel (MDR) UK Limited (**LOS Policy**).

Particulars

The LOS Policy was in writing and dated 15 December 2017 (CMS.007.001.1542).

35ZZAA. [NOT USED]~~The Insurer entered into the LOS Policy through its agent and corporate authorised representative, BCC.~~

~~**Particulars**~~

~~The LOS Policy was in writing and dated 15 December 2017 (CMS.007.001.1542).~~

35ZZAAA. On or around 20 April 2018, BCC, purportedly as agent and corporate authorised representative of the Insurer, issued ~~the Insurer, Greensill Bank and GCPL entered into~~ Comprehensive Trade Credit Insurance Policy TS-03088 with unique market reference B0509FINCW18000~~0~~19 (**2018 Policy TS-03088**).

Particulars

The 2018 Policy TS-03088 was in writing and dated 20 April 2018 (CSA.0001.0035.0804).

35ZZAAB. [NOT USED]~~The Insurer entered into the 2018 Policy TS-03088 through its agent and corporate authorised representative, BCC.~~

~~**Particulars**~~

~~The 2018 Policy TS-03088 was in writing and dated 20 April 2018 (CSA.0001.0035.0804).~~

35ZZAAC. On or around 15 June 2018, BCC and Brereton, purportedly as agent and corporate authorised representative of the Insurer, issued ~~GCPL and Greensill Bank (each an Insured) and the Insurer entered into~~ two separate contracts of insurance evidenced by a Comprehensive Trade Credit Insurance Policy TB-03690 with unique market reference B0509FINCW1800045, with an initial Policy Period of 27 December 2017 to 27 December 2018 (**2018 Policy**).

35ZZBD. [NOT USED]~~The Insurer entered into the 2018 Policy through its agent and corporate authorised representative, BCC.~~

35ZZA. On or around 13 March 2019, BCC and Brereton, purportedly as agent and corporate authorised representative of the Insurer, issued ~~GCPL and Greensill Bank (each an Insured) and the Insurer entered into~~ two separate contracts of insurance evidenced by a Comprehensive Trade Credit Insurance Policy TB-03690 with unique market reference B0509FINCW1900009 (**2019 Policy**).

35ZZB. [NOT USED]~~The Insurer entered into the 2019 Policy through its agent and corporate authorised representative, BCC.~~

35ZZC. On or around 6 March 2019, BCC and Brereton, purportedly as agent and corporate authorised representative of the Insurer, issued ~~GCPL and Greensill Bank (each an Insured) entered into~~ Policy TS-03088 (as defined at paragraph 36 below).

35ZZD. [NOT USED]~~The Insurer entered into Policy TS-03088 through its agent and corporate authorised representative, BCC.~~

35ZZE. It was ~~within~~ outside the actual authority of BCC as the Insurer‘s agent to enter into each of the LOS Policy, the 2018 Policy, the 2019 Policy, the 2018 Policy TS-03088 and Policy TS-03088 on the Insurer’s behalf.

Particulars

Credit Suisse relies on the matters pleaded in paragraphs 9, 35C, 35H, 35ZC, 35ZZC to 35ZZE of the Insurer’s defence filed in this proceeding on 1 May 2026.

The Affidavit of Bradley Forbes Robson sworn on 13 February 2026, [72], [75], [85], [92]-[93], [112], [119], [121], [126]-[128], [141], [163]-[166].

The Affidavit of Twain Abbott affirmed on 13 February 2026, [33]-[36], [47], [49]-[52], [57]-[70], [200], [243]-[270], [334]-[340], [344], [373]-[374].

~~This is to be inferred from the fact that the Insurer subsequently accepted and paid a claim under Policy TS-03088, as pleaded below.~~

35ZZF. It was ~~within~~ outside the actual authority of Brereton as agent for the Insurer to enter into each of the LOS Policy, the 2018 Policy, the 2019 Policy, the 2018 Policy TS-03088 and Policy TS-03088 on the Insurer’s behalf.

Particulars

Credit Suisse relies on the matters pleaded in paragraphs 9, 35C, 35H, 35ZC, 35ZZC to 35ZZE of the Insurer’s defence filed in this proceeding on 1 May 2026.

The Affidavit of Bradley Forbes Robson sworn on 13 February 2026, [72], [75], [85], [92]-[93], [112], [119], [121], [126]-[128], [141], [163]-[166].

The Affidavit of Twain Abbott affirmed on 13 February 2026, [33]-[36], [47], [49]-[52], [57]-[70], [200], [243]-[270], [334]-[340], [344], [373]-[374].

~~This is to be inferred from the fact that the Insurer subsequently accepted and paid a claim under Policy TS-03088, as pleaded below.~~

35ZZG. It was ~~within~~ outside the actual authority of Brereton as Head of Trade Credit at BCC to execute each of the LOS Policy, the 2018 Policy, the 2019 Policy, the 2018 Policy TS-03088 and Policy TS-03088 on behalf of BCC.

Particulars

Credit Suisse relies on the matters pleaded in paragraphs 9, 35C, 35H, 35ZC, 35ZZC to 35ZZE of the Insurer's defence filed in this proceeding on 1 May 2026.

The Affidavit of Bradley Forbes Robson sworn on 13 February 2026, [72], [75], [85], [92]-[93], [112], [119], [121], [126]-[128], [141], [163]-[166].

The Affidavit of Twain Abbott affirmed on 13 February 2026, [33]-[36], [47], [49]-[52], [57]-[70], [200], [243]-[270], [334]-[340], [344], [373]-[374].

~~This is to be inferred from the fact that the Insurer subsequently accepted and paid a claim under Policy TS-03088, as pleaded below.~~

35ZZH. [NOT USED]~~On or around 3 June 2020, Greensill Bank made a claim under Policy TS-03088 (the **NMC Claim**).~~

~~**Particulars**~~

~~The NMC Claim Form was submitted by Greensill Bank and is dated 2 June 2020 claiming the amount of US$19,485,913.96 (CSA.0001.0002.1154; CSA.0001.0002.1155; CSA.0001.0002.1156; CSA.0001.0002.1157; CSA.0001.0002.1158).~~

35ZZHA. [NOT USED]~~On 19 June 2020, the Insurer sent a request for information to one or more entities within the Greensill Group in relation to the NMC Claim.~~

~~Particulars~~

~~The request is referenced in the attachment to an email from Jonathan Lane (GCUK) to Kennedys (solicitors for BCC) dated 30 July 2020 (CSA.0001.0006.1306; CSA.0001.0006.1309).~~

~~Further particulars may be provided after further discovery and evidence.~~

35ZZHB. [NOT USED]~~On 25 September 2020, Clyde & Co (solicitors for the Insurer), by email to Herbert Smith Freehills (solicitors for GCUK), represented that:~~

~~(a) Policy TS-03088 had been issued by BCC on behalf of IAL;~~

~~(b) the Insurer had investigated the NMC Claim; and~~

~~(c) based on circumstances known to the Insurer as at 25 September 2020, the Insurer had determined that indemnity was available under Policy TS-03088 for a portion of the NMC Claim.~~

~~Particulars~~

~~The representations were express and comprised the statements in the email from Avryl Lattin (Clyde & Co) to Paul Lewis (Herbert Smith Freehills) sent on 25 September 2020 (CSA.0001.0006.1744) where Clyde & Co stated: "IAL has now completed its investigations in relation to Greensill Bank AG's claim for indemnity made 3 June 2020 … under trade credit policy No. TS-03088 issued by BCC Trade & Credit on behalf of IAL" and "Based on currently known circumstances IAL has determined that indemnity is available for the pre Muddy Waters report funded NMC invoices".~~

35ZZHC. [NOT USED]~~The representations pleaded at paragraph 35ZZHB above were made with the authority and knowledge of the Insurer.~~

35ZZI. [NOT USED]~~By Claim Offer Letter sent on or around 8 October 2020, the Insurer agreed to provide and subsequently paid a partial indemnity of US$14,733,471.04.~~

Particulars

Claim Offer Letter from BCC on behalf of the Insurer dated 8 October 2020 (CSA.0001.0001.3281).

35ZZJ. [NOT USED]The Claim Offer Letter was sent by BCC with the knowledge of the Insurer.

35ZZK. [NOT USED]The Claim Offer Letter was sent by BCC with the authority of the Insurer.

35ZZL. [NOT USED]On 26 February 2021, Clyde & Co, by letter to Herbert Smith Freehills, represented that the Insurer had entered into Policy TS-03088 by the Insurer's authorised representative, BCC.

Particulars

The representation was made to Herbert Smith Freehills. The representation was partly express and partly implied. Insofar as it was express, it comprised the statement on page 1 of the letter, where Clyde & Co stated, "*Insurer: BCC Trade Credit Pty Ltd, Corporate Authorised Representative of Insurance Australia Ltd*", "*Policy no: TS-03088 / B0509FINCW1900008*" and "*the above excess policy (Policy) issued by BCC Trade Credit Pty Ltd (BCC) as corporate authorised representative of IAL*"; and on page 4 of the letter where Clyde & Co stated, "*IAL reserves all of its rights under the policy…".* The representation was implied by those express statements read in the context of the balance of the letter (CSA.0001.0001.3271).

35ZZM. [NOT USED]The representation pleaded at paragraph 35ZZL above was made with the authority and the knowledge of the Insurer.

35ZZN. [NOT USED]On 6 July 2021, Clyde & Co, by letter sent to Herbert Smith Freehills, again represented that the Insurer had entered into Policy TS-03088 by the Insurer's authorised representative, BCC.

Particulars

The representation was made to Herbert Smith Freehills. The representation was partly express and partly implied. To the extent that it

~~was express, it was comprised of the statements on page 1 of the letter, where Clyde & Co stated, *"Insurer: BCC Trade Credit Pty Ltd, Corporate Authorised Representative of Insurance Australia Ltd"*, *"Policy no: TS-03088 / B0509FINCW1900008 (the Policy)"*; on page 2 where Clyde & Co stated *"…the Policy issued by BCC on behalf of IAL…"*; on page 2 where Clyde & Co stated *"the Policy issued by IAL to GBAG and Greensill Capital…"*; and on page 3 where Clyde & Co stated *"IAL reserves all of its rights under the Policy."* Insofar as the representation was implied, it was implied by these express statements read in the context of the balance of the letter (CSA.0001.0001.3250).~~

35ZZO. [NOT USED]~~The representation pleaded at paragraph 35ZZN above was made with the knowledge and authority of the Insurer.~~

35ZZP. At all times between 1 August 2017 and 8 July 2020, BCC was a representative of the Insurer as that term is defined in s 910A of the Corporations Act.

35ZZQ. At all times between 1 August 2017 and 8 July 2020, Brereton was a representative of the Insurer as that term is defined in s 910A of the Corporations Act.

35ZZR. At all times since at least 22 February 2019, the Insurer has held an Australian financial services licence issued under s 913B of the Corporations Act, permitting the Insurer to carry on in Australia the business of issuing and varying policies of general insurance.

35ZZS. At all times from 1 July 2019, BCC was the authorised representative of TMNF and a representative of TMNF as that term is defined in s 910A of the Corporations Act.

35ZZT. At all times since 1 July 2019, Brereton was a representative of TMNF as that term is defined in s 910A of the Corporations Act.

35ZZU. At all times since at least 1 July 2019, TMNF has held an Australian financial services licence issued under s 913B of the Corporations Act, permitting TMNF to carry out in Australia the business of issuing and varying policies of general insurance.

35ZZV. At all material times from 9 April 2019:

(a) TMMA has owned 100% of the shareholding in Bond and 0.01% of the shareholding in BCC; and

(b) Bond has owned 99.9% of the shareholding in BCC.

G THE INSURANCE POLICY

36. On around 6 March 2019, BCC and Brereton issued, purportedly as agent and corporate authorised representative of the Insurer, ~~GCPL and Greensill Bank (each an **Insured**) entered into two separate contracts of insurance evidenced by a~~ Comprehensive Trade Credit Insurance Policy TS-03088 with unique market reference B0509FINCW1900008, with an initial Policy Period from 1 March 2019 to 1 March 2020 (**Policy TS-03088**).

Particulars

Policy TS-03088 was in writing and comprised the policy wording signed by BCC as authorised representative of the Insurer on or about 6 March 2019 and each of the endorsements to Policy TS-03088, each of which were signed by BCC as agent and authorised representative of the Insurer (CSA.0001.0001.3228).

37. Policy TS-03088 contained express written terms to the effect that the Insurer agreed to indemnify the Insured for the Insured Percentage of all Losses suffered by the Insured and caused by or resulting from the occurrence of an Insured Cause and any such amount payable by the Insurer is to be paid to the Insured, where:

(a) **Insured Percentage** means, in respect of a Customer, the Insured Percentage as stated in the relevant Customer Endorsement;

(b) **Customer** means a "Customer" endorsed to Policy TS-03088 under a Customer Endorsement, being a debtor in respect of a Debt and including any successor in title or at law to such debtor;

(c) **Eligible Customer** is undefined as a composite phrase;

(d) **Eligible** means, in the context of a Customer and/or a Customer Group, a Customer and/or a Customer Group in relation to which all the warranties set out in Policy TS-03088 (including compliance with the Eligibility

Criteria) are satisfied at the time of the purchase by the Insured of the Asset derived from such Debt;

(e) **Customer Limit** means, in respect of a Customer, the amount recorded in an Endorsement to Policy TS-03088, and which is the Insurer's maximum liability for the aggregate of all Losses insured under Policy TS-03088 for the Customer;

(f) **Debt** means as the context requires, a debt of the type described in the relevant Debt Endorsement;

(g) **Eligible Debt** means, at any time, any Debt which satisfied the following criteria at the time of acquisition of the relevant Asset by the Insured:

(i) the obligor (being the Customer) of which (a) is not an Affiliate of any of the parties to the Transaction Documents (other than any Origination Documentation); (b) is not a government or a governmental subdivision or agency, other than a legal entity that does not benefit from immunity from being sued for non-payment of debt or breach of contract; (c) is a corporate entity and not an individual or sole trader or partnership; (d) is not insolvent and (e) has a Customer Limit established in accordance with the terms of Policy TS-03088;

(ii) in relation to which the Due Date does not exceed the Maximum Tenor;

(iii) which is not outstanding after its Due Date;

(iv) which is denominated and payable only in an Approved Currency;

(v) which satisfies any further criteria set out in the relevant Debt Endorsement relating to that Debt.

(h) **Loss** or **Losses** means:

(i) In respect of a Direct Asset owned by the Insured, the amount equal to the difference between:

(A) the Expected Allocation of the Insured in respect of such Asset; and

(B) the amount actually paid by the Customer or on its behalf in respect of such Asset; and

(ii) in respect of an Asset (which is neither a Direct Asset nor a Note) owned by the Insured, the amount equal to the difference between:

(A) the Expected Allocation of the Insured in respect of such asset, and

(B) the Insured's pro rata pari passu entitlement under the relevant Participant Trust in respect of any amounts actually paid by the Customer or on its behalf to the Trustee in respect of the Eligible Debt from which such Asset is derived; and

(iii) in respect of an Asset (which is a Note) owned by the Insured immediately prior to the payment of a Claim (which for the avoidance of doubt shall also include the Expected Allocation of the Insured in respect of each Asset acquired by the Insured from a Loss Payee after the occurrence of the Insured Cause but prior to payment of such Claim), the amount equal to the difference between:

(A) the Expected Allocation of the Insured in respect of such Asset; and

(B) the Insured's entitlement under the Master Trust Deed (including, but not limited to, the benefit of any Mortgaged Property as defined in the Master Trust Deed).

(i) **Expected Allocation** means, where an Asset is (i) a Direct Asset, the Face Amount of the relevant Eligible Debt, or to the extent only part of the Eligible Debt comprises the Direct Asset, the amount due to the Insured in relation to such Eligible Debt, or (ii) neither a Direct Asset or a Note, in relation to any such Asset and the Insured, the expected distribution to the Insured of its entitlement to Trust Property consistent with the Asset acquired by it, as shown from time to time in a Trust Certificate, or (iii) where an Asset is a Note, in relation to any such Asset and the Insured, the Final Redemption Amount or aggregate of the 'Instalment Amounts' (as set out in the relevant 'Pricing Supplement' as defined in the Master

Trust Deed) of the relevant Asset.

(j) **Face Amount** means the amount of the Debt as shown in the File relating thereto inclusive of VAT.

(k) **File** means the file and/or records held by the Servicer in the form from time to time specified in the Transaction Documents relating to each Debt which forms part of the Trust Property (which may include the Platform).

(l) **Asset** means either (i) a Direct Asset, or (ii) an indirect beneficial ownership interest in an Eligible Debt acquired by virtue of a participation in the Trust Property held subject to the relevant Participant Trust, or (iii) a Note relating to Eligible Debt(s) issued by the SPV in order to raise funds to allow the SPV to purchase a participation in the relevant Participant Trust, or Eligible Debts as the case may be;

(m) **Direct Asset** means a direct ownership interest in an Eligible Debt.

(n) **Insured Cause** means the failure of the Customer to make payment of an Eligible Debt on or before the Backstop Date for any reason.

(o) **Backstop Date** means the day falling forty-five (45) days after the Due Date for payment of the Eligible Debt.

Particulars

Policy Wording, cll. 1.1, 3.1, Schedule 1, Schedule 7 (CSA.0001.0001.3228).

38. In this Statement of Claim, capitalised terms have the same meaning as in Policy TS-03088 unless otherwise defined.

39. ~~By~~ Debt Endorsement 1 to Policy TS-03088 dated 6 March 2019 provided:

(a) **Debt** means a debt related to goods and/or services supplied under a Contract but owing pursuant to a Customer Agreement, namely the benefit of an unconditional undertaking given by the Customer to the Servicer, pursuant to the transfer or purported transfer of the relevant Supplier's entire right, title and interest in and to an account receivable payable by the Customer or an Affiliate to such Supplier, to pay or to cause to be paid an amount equal to the amount of any receivables

payable by the Customer, or by an Affiliate approved by the Servicer under the Origination Documentation, to such Supplier in respect of goods and/or services provided by such Supplier to the Customer or such Affiliate, which are acceptable to the Servicer pursuant to the relevant Origination Documentation, evidenced by payment details loaded onto the Platform by the Customer or by any Affiliate as agent for the Customer and which receivables have been transferred or have been purportedly transferred to the Servicer;

(b) **Origination Documentation** means all and any documentation relating to supply chain financing between the Servicer or an Affiliate of the Servicer or a third party and, among others, a Customer and a Relevant Supplier including (1) an agreement for the transfer of receivables by such Supplier to the Servicer or an Affiliate of the Servicer or a third party and (2) the Customer Agreement (each a **SCF Document**);

(c) **Supplier** means any person that has executed a receivables purchase agreement with the Servicer (or an Affiliate of the Servicer or third party); and

(d) **Customer Agreement** means the agreement between the Servicer and the Customer under which the Customer has an irrevocable and unconditional obligation to pay Eligible Debts to the Servicer as a consequence of the acquisition by the Servicer directly from a Supplier (or indirectly from a Supplier via an Affiliate of the Servicer or a third party) of one or more account receivables relating to the supply of goods/or services provided by such Supplier to such Customer or its Affiliate.

Particulars

See (A) of Endorsement 1 to Policy TS-03088 (CSA.0001.0001.3230).

40. By Customer Endorsement 4 to Policy TS-03088 dated 6 March 2019 (effective from 1 March 2019), NMC Health Plc was endorsed as a Customer with a Customer Limit of US$25 million and a Maximum Tenor of 180 days from the date that GCUK acquires the Debt. Customer Endorsement 4 also provided an extension of cover for the Insured against NMC Health.

40A. ~~By~~ Endorsement 9 to Policy TS-03088 dated 26 February 2020 (effective from

28 February 2020), provided that the Policy Period was extended to 15 April 2020.

41. ~~By~~ Endorsement 10 to Policy TS-03088 dated 15 April 2020 (effective from 9 April 2020), provided that the Policy Period was extended to 15 May 2020.

42. ~~By~~ Endorsement 11 to Policy TS-03088 dated 15 May 2020 (effective from 7 May 2020), provided that the Policy Period was extended to 15 June 2020.

43. ~~By~~ Endorsement 12 to Policy TS-03088 dated 16 June 2020 (effective from 9 June 2020), provided that the Policy Period was extended to 30 June 2020.

G.1 Loss Payee Endorsement

44. ~~By~~ Endorsement 3 to Policy TS-03088 dated 6 March 2019, ~~the Insurer agreed~~ provided that effective from 1 March 2019, Credit Suisse Virtuoso was endorsed as a Loss Payee under Policy TS-03088 (**Loss Payee Endorsement**).

Particulars

Endorsement 3 was executed by BCC on behalf of the Insurer on 6 March 2019 (CSA.0001.0001.3244).

45. It was an express term of the Loss Payee Endorsement that:

(a) Claim payments due under Policy TS-03088 with respect to any Loss suffered by the Insured arising out of Assets acquired by the Insured from the Loss Payee prior to such Claim payment shall be paid to the Loss Payee to the extent that the Claim has been accepted by the Insurer with respect to such Assets, and up to a maximum of the amount specified as the maximum amount that would be payable to the Loss Payee in respect of the relevant Customer as is set out in the Limit Endorsement as at the date on which the Loss Payee last acquired any Asset in respect of which such Loss was suffered; and

(b) any payment made by the Insurer to the Loss Payee constitutes a valid discharge of the Insurer's obligations to the Insured in respect of the Claim payment due under this policy in respect of the relevant Customer.

46. ~~By~~ Limit Endorsement 8 to Policy TS-03088 dated 6 March 2019 (effective from 1 March 2019), ~~the Insurer agreed~~ provided that the maximum pay out to a

Loss Payee in respect of NMC Health Plc was US$25 million.

47. In the premises, including the matters pleaded above in paragraphs 44 to 46, Credit Suisse Virtuoso agreed to acquire the NMC Notes and pay the sums required to acquire them in consideration for not only the rights under the NMC Notes, but also on the basis that the Loss Payee would be endorsed as a Loss Payee on Policy TS-03088.

G.2A Other Endorsements

47AA. On or around 15 December 2017, Brereton executed Loss Payee Endorsement 2 to the LOS Policy for and on behalf of BCC.

47BB. On or around 20 April 2018, Brereton executed Loss Payee Endorsement 3 to 2018 Policy TS-03088 for and on behalf of BCC.

47CC. On or around 1 June 2018, Brereton executed Loss Payee Limit Endorsement 5 to 2018 Policy TS-03088 for and on behalf of BCC.

47DD. On or around 13 March 2019, Brereton executed Loss Payee Endorsement 5 to the 2019 Policy for and on behalf of BCC.

47EE. On or around 13 March 2019, Brereton executed Loss Payee Limit Endorsement 11 to the 2019 Policy for and on behalf of BCC.

G.2 BCC as agent of the Insurer

47A. ~~The Insurer~~ BCC and Brereton purported to execute ~~entered into~~:

(a) Policy TS-03088 referred to in paragraph 36 above;

(b) Debt Endorsement 1 referred to in paragraph 39 above;

(c) Customer Endorsement 4 referred to in paragraph 40 above;

(c1) Endorsement 9 referred to in paragraph 40A above;

(d) Endorsement 10 referred to in paragraph 41 above;

(e) Endorsement 11 referred to in paragraph 42 above;

(f) Endorsement 12 referred to in paragraph 43 above;

(g) Loss Payee Endorsement referred to in paragraph 44 above;

(h) Limit Endorsement 8 referred to at paragraph 46 above; and

(i) the other endorsements referred to in paragraphs 47AA to 47EE above,

on behalf of the Insurer ~~by the conduct of BCC and Brereton~~.

Particulars

Policy TS-03088 and the various endorsements were executed by Brereton purportedly for and on behalf of BCC as agent and authorised representative of the Insurer.

47B. The conduct of BCC and Brereton referred to in paragraph 47A above was not within the actual authority of BCC and Brereton.

Particulars

Credit Suisse Virtuoso relies on section FA above.

Credit Suisse relies on the matters pleaded in paragraphs 9, 35C, 35H, 35ZC, 35ZZC to 35ZZE of the Insurer's defence filed in this proceeding on 1 May 2026.

The Affidavit of Bradley Forbes Robson sworn on 13 February 2026, [72], [75], [85], [92]-[93], [112], [119], [121], [126]-[128], [141], [163]-[166].

The Affidavit of Twain Abbott affirmed on 13 February 2026, [33]-[36], [47], [49]-[52], [57]-[70], [200], [243]-[270], [334]-[340], [344], [373]-[374].

~~In addition, that BCC and Brereton had actual authority to engage in the conduct pleaded at paragraphs 47A above is implied from the course of dealing between BCC and Brereton on the one hand and the Insurer on the other hand up to 30 June 2019 during which time (i) BCC and Brereton executed documents of the type referred to in paragraph 47A above; and (ii) BCC and Brereton provided bordereau to the Insurer in respect of policies referred to in such documents.~~

~~Further particulars may be provided following further discovery and evidence.~~

47C. [NOT USED]~~Further and in the alternative to paragraph 47B above, the conduct of BCC and Brereton referred to in paragraph 47A above was within the ostensible authority of BCC and Brereton.~~

~~Particulars~~

~~Credit Suisse Virtuoso repeats the particulars to paragraph 47B above. Further:~~

~~(i) the Insurer took no reasonable steps to ensure third parties dealing with BCC and Brereton were informed of the limits of any termination of their authority; and~~

~~(ii) if BCC and Brereton acted without actual authority, the Insurer failed to take reasonable steps to ensure that BCC and Brereton acted within the scope of their authority, in circumstances where it was reasonable to expect that third parties would deal with BCC and Brereton on the assumption they were acting as authorised agents of the Insurer, including for the reasons set out in the particulars to paragraph 47B above and would thereby suffer loss.~~

~~Further particulars may be provided after further discovery and evidence.~~

47D. [NOT USED]~~Further and in the alternative to paragraphs 47B and 47C above, the conduct of BCC and Brereton referred to in paragraphs 47A above was conduct:~~

~~(a) that related to the provision of a financial service;~~

~~(b) on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;~~

~~(c) on which Credit Suisse Virtuoso did in fact rely in good faith when entering into the Loss Payee Endorsement and when acquiring the NMC Notes; and~~

~~(d) for which the Insurer is responsible, as between the Insurer and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively, s 917C of the Corporations Act), whether or not BCC~~

~~and/or Brereton acted within the scope of their authority; and~~

~~(e) further and alternatively to sub-paragraph (d) above, to the extent the conduct occurred on or after 1 July 2019, it was conduct for which TMNF is responsible, or partly responsible, as between TMNF and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively, s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority.~~

48. [NOT USED]

49. [NOT USED]

50. [NOT USED]

51. [NOT USED]

G.3 [NOT USED]~~Debt Endorsement~~

52. [NOT USED]~~The NMC Plc Guarantee is a "Customer Agreement" within the meaning of that term as defined in Part (A) of Debt Endorsement 1.~~

53. [NOT USED]~~The BTSSA, or alternatively the arrangement comprising the NMC Health Execution Agreement, the BTSSA and the GCUK Execution Agreement together, constituted a "Customer Agreement" within the meaning of that terms as defined in Part A of Debt Endorsement 1.~~

54. [NOT USED]~~NMC Health Plc's payment obligations under the NMC Plc Guarantee pleaded at paragraph 29 above (**NMC Plc Payment Obligations**) and NMC Health's payment obligations under the BTSSA pleaded at paragraph 23 above (**NMC Health Payment Obligations**) were each a "Debt" within the meaning of that term as defined in Part (A) of Debt Endorsement 1 and therefore an "Eligible Debt" within the meaning of that term as defined in Policy TS-03088.~~

55. [NOT USED]

56. [NOT USED]

57. [NOT USED]

58. [NOT USED]

59. [NOT USED]

60. [NOT USED]

61. [NOT USED]

62. [NOT USED]

63. [NOT USED]

H POWER OF ATTORNEY

64. On 31 January 2019, Greensill Bank appointed Credit Suisse Virtuoso as its attorney to do in Greensill Bank's name any act, matter or thing which Credit Suisse Virtuoso considers necessary or desirable for the protection, preservation or enjoyment of Credit Suisse Virtuoso's interest as Loss Payee under, amongst other policies, Policy TS-03088.

Particulars

The Power of Attorney was in writing and executed as a deed on 31 January 2019 (CSA.0001.0001.3187).

I NMC HEALTH'S FAILURE TO PAY

65. On 2 March 2020, NMC Health Plc requested an informal standstill arrangement with its creditors.

66. On 3 March 2020, NMC Health failed to pay an aggregate Certified Amount of US$6,890,610, which was due on that day.

Particulars

The following NMC Notes matured on 3 March 2020: (i) XS1795720793 in the sum of US$3,921,658; (ii) XS1795720447 in the sum of US$2,968,952. The underlying supplier invoices in respect of those NMC Notes are (i) IVTSEP0048216 dated 5 September 2019 in the sum of US$3,921,658 and (ii) AIT/INV/2-19- 6119 dated 5 September 2019 in the sum of US$2,968,952.

67. Since 3 March 2020, NMC Health has failed to make payments in accordance with the NMC Health Payment Obligations under the BTSSA and NMC Health Plc has failed to make payments in accordance with the NMC Plc Payment Obligations under the NMC Plc Guarantee (**Payment Failures**)(~~**Eligible Debts**~~).

Particulars

Details of the Payment Failures ~~Eligible Debts~~ in respect of which NMC Health and NMC Health Plc has failed to make a payment are set out in the Claim Form submitted by Greensill Bank to BCC on or about 2 June 2020.

The Payment Date for each Certified Amount was recorded on the Platform, in accordance with the terms of the BTSSA.

68. [NOT USED]~~The failures to pay pleaded in paragraphs 66 and 67 above are Insured Causes under Policy TS-03088 (**NMC Insured Causes**).~~

69. [NOT USED]

J CLAIMS ON THE POLICY

70. The Insured submitted a Claim to BCC as the corporate authorised representative of the Insurer, in respect of the Payment Failures ~~NMC Insured Causes~~.

Particulars

Credit Suisse Virtuoso repeats the particulars to paragraph 35ZZH above.

71. [NOT USED]~~Greensill Bank, or alternatively Credit Suisse Virtuoso, has suffered a Loss within the meaning of Policy TS-03088 as a result of the NMC Insured Causes.~~

~~Particulars~~

~~Details of the NMC Note in respect of which the Insured, or alternatively Credit Suisse Virtuoso, has suffered a Loss within the meaning of Policy TS-03088 are set out in the table at Annexure A to this Statement of Claim.~~

~~The Loss is the amount of the Balance of the Expected Allocation.~~

J.1 [NOT USED]~~INSURER'S CLAIM DECISION~~

72. [NOT USED]~~On or around 8 October 2020, the Insurer agreed to provide and subsequently paid a partial indemnity of US$14,733,471.04, which comprised Loss relating to Advance Payment Requests that were accepted by GCUK for funding on or before 17 December 2019.~~

73. [NOT USED]~~In the premises pleaded in paragraphs 70 to 72 above, the Insurer has an obligation to indemnify the Insured or alternatively Credit Suisse Virtuoso as Loss Payee for the balance of the Loss particularised at paragraph 71 above, being US$4,752,442.90.~~

K [NOT USED]~~BREACH OF POLICY BY INSURER~~

74. [NOT USED]~~From 26 February 2021 to 27 September 2021, solicitors for the Insurer wrote to the Insured and to Credit Suisse Virtuoso and amongst other things requested further information in respect of the balance of the Claim.~~

~~Particulars~~

~~Letter from Clyde & Co to Herbert Smith Freehills dated 26 February 2021 (CSA.0001.0001.3271); Letter from Clyde & Co to Herbert Smith Freehills dated 6 July 2021 (CSA.0001.0001.3250); Letter from Clyde & Co to Gilbert + Tobin dated 27 September 2021 (CSA.0001.0001.3270).~~

75. [NOT USED]~~The solicitors for the Insured provided a detailed explanation of the Claim, including all reasonably available information in response to the Insurer's requests as pleaded at paragraph 74 above.~~

~~Particulars~~

~~Letter from Herbert Smith Freehills to Clyde & Co dated 10 June 2021 (CSA.0001.0001.3264); Letter from Gilbert + Tobin to Clyde & Co dated 27 August 2021 (CSA.0001.0001.3268); Letter from Gilbert + Tobin to Clyde & Co dated 9 February 2022 (CSA.0001.0001.3273).~~

76. [NOT USED]~~As at the date of filing this Statement of Claim, the Insurer has not indemnified or paid the Insured or Credit Suisse Virtuoso, the balance of the Claim under Policy TS 03088 in respect of the Loss pleaded in paragraph 71~~

~~above.~~

76A. The Insurer has publicly taken the position that Policy TS-03088 was not validly entered into.

Particulars

Defence filed by the Insurer on 1 April 2022 in proceeding NSD110/2022 – *Credit Suisse Virtuoso SICAV-SIF - Credit Suisse (Lux) Supply Chain Finance Fund v Insurance Australia Limited* at paragraph 36 (CSA.0001.0008.0114).

Amended Defence filed by the Insurer on 27 June 2022 in proceeding NSD110/2022 – Credit Suisse Virtuoso SICAV-SIF - Credit Suisse (Lux) Supply Chain Finance Fund v Insurance Australia Limited at paragraph 36 (CSA.0021.0001.0040).

77. [NOT USED]~~In the premises pleaded at paragraphs 70 to 75 above, the Insurer has all the information necessary to know that it is obliged to indemnify or pay the Insured and/or Credit Suisse Virtuoso the balance of the Claim under Policy TS-03088 in respect of the NMC Insured Causes.~~

78. [NOT USED]~~In the premises, the Insurer has, in breach of section 57 of the *Insurance Contracts Act 1984* (Cth), unreasonably withheld payment under Policy TS-03088 from Credit Suisse Virtuoso and/or the Insured.~~

79. [NOT USED]~~The Insurer's failure to indemnify or pay the Insured or Credit Suisse Virtuoso under Policy TS-03088 is wrongful and in breach of the terms of Policy TS-03088.~~

~~Particulars~~

~~The Insurer has breached clauses 1.1, 5.1 and 11.3 of Policy TS-03088 (CSA.0001.0001.3228).~~

L CLAIMS AGAINST BCC AND BRERETON

80. [NOT USED]~~The allegations in the balance of this section are pleaded in the alternative to the allegations pleaded against the Insurer above.~~

81. [NOT USED]~~By its Defence, the Insurer denies that BCC and Brereton had~~

~~actual or ostensible authority to engage in the conduct referred to in paragraph 47A above as its agent or otherwise on its behalf.~~

82. [NOT USED]~~If, which is denied, BCC and Brereton had no actual authority, such that they were not authorised, to engage in the conduct referred to in paragraph 47A above (or any part of that conduct) as the Insurer's agent or otherwise on its behalf, Credit Suisse Virtuoso pleads as follows:~~

L.1 Knowledge of BCC and Brereton

83. BCC and Brereton knew the terms of the LOS Policy, 2018 Policy TS-03088, Policy TS-03088, 2018 Policy and the 2019 Policy (**Policies**) from at least the date that Brereton executed each of those policies respectively.

Particulars

Brereton's knowledge of the Policies is to be inferred from the fact that he signed them.

84. At all material times, BCC and Brereton knew the Policies provided that any Loss under those policies may be paid, after agreement with the Insured, to a Loss Payee, if agreed by the Insurer and evidenced by an endorsement under the Policies.

Particulars

LOS Policy wording, clause 15.3(d) (CMS.007.001.1542).

Policy TS-03088 wording, clauses 1.1, 15.3(d) (CSA.0001.0001.3228).

2018 Policy wording, clauses 1.1, 15.3(d) (GBA.0004.0004.0301).

2018 Policy TS-03088 wording, clause 15.3(d) (CSA.0001.0035.0804).

2019 Policy wording, clauses 1.1, 15.3(d) (CSA.0001.0001.3171).

85. From time to time during the Policy Period, BCC and Brereton entered into and executed endorsements under the Policies (or purportedly under the Policies), including the Loss Payee Endorsement referred to in paragraph 44 above.

86. At all material times, BCC and Brereton each knew and understood that:

(a) some or all of the Assets the subject of the Policies would be acquired by one or more Loss Payees;

(ba) by executing the Policies and the endorsements to those Policies, BCC and Brereton represented that those documents were executed by BCC in its capacity as Corporate Authorised Representative of the Insurer and within the actual authority conferred upon it by the Insurer in that capacity;

(bb) to third parties (including, without limitation, prospective acquirers of such Assets), it would appear from each of the Policies that the Policies were:

(i) executed by Brereton for and on behalf of BCC as Corporate Authorised Representative of the Insurer;

(ii) executed with the actual authority of the Insurer; and

(iii) binding on the Insurer;

(bc) to third parties (including, without limitation, prospective acquirers of such Assets), it would appear from each of the endorsements to the Policies executed by Brereton that the endorsements and the relevant Policies were:

(i) executed by Brereton for and on behalf of BCC as Corporate Authorised Representative of the Insurer;

(ii) executed with the actual authority of the Insurer; and

(iii) binding on the Insurer;

(bd) to third parties (including, without limitation, prospective acquirers of such Assets), it would appear from each of the Policies and the endorsements to the Policies that the cover the subject of the Policies would, according to their terms, operate in specified circumstances to the benefit of persons endorsed as Loss Payees under the Policies;

(be) the acquirers or potential acquirers of such Assets included, or might include, Credit Suisse, Credit Suisse Virtuoso and/or entities or funds associated with Credit Suisse;

(bf) the manner and capacity in which BCC and Brereton executed or

purported to execute the Policies (and the endorsements thereto), would facilitate the insureds under the Policies representing to third parties (including, without limitation, prospective acquirers of Assets) that the Policies were binding on and enforceable against the Insurer;

(b) those potential acquirers of Assets or Loss Payees would or would likely rely on the Policies, including the endorsements to those Policies, in purchasing or otherwise investing in Assets the subject of the Policies; and

(ca) potential acquirers of Assets or Loss Payees would not, or would likely not, acquire Assets under the Policies if:

(i) Brereton and BCC did not have actual authority from the Insurer to execute the Policies (and endorsements thereto) on its behalf; or

(ii) there was a real question as to whether Brereton and BCC had actual authority from the Insurer to execute the Policies (and endorsements thereto) on its behalf; or

(iii) the Insurer was not, or may not, be bound by the Policies by reason of the circumstance that BCC and Brereton lacked, or may have lacked, actual authority to execute the Policies (and endorsements thereto);

and those potential acquirers or Loss Payees knew or suspected those matters;

(cb) if:

(i) Brereton and BCC did not have actual authority from the Insurer to execute the Policies (and endorsements thereto) on its behalf; and/or

(ii) there was a real question as to whether Brereton and BCC had actual authority from the Insurer to execute the Policies (and endorsements thereto) on its behalf; and/or

(iii) the Insurer was not bound by the Policies;

there was a likelihood that third parties (including potential acquirers of

Assets or Loss Payees) would be misled or deceived by Brereton's actions in executing the Policies and endorsements thereto purportedly for BCC as Corporate Authorised Representative of the Insurer; and

(c) potential acquirers of Assets and Loss Payees would or would likely rely on the manner and capacity in which BCC and Brereton executed or purported to execute the Policies, including the endorsements thereto, in purchasing or otherwise investing in Assets the subject of the Policies.

Particulars

Brereton's knowledge is to be inferred from:

(i) Brereton's awareness of the Loss Payee Endorsements, which is to be inferred from the fact that he signed them;

(ii) the objective commercial purpose of the Loss Payee Endorsements is to provide Loss Payees with benefits under the Policies, which benefits are described in:

A. the email from Julian Macey-Dare (Marsh) to Brereton dated 27 September 2017 (CSA.0001.0002.1248);

B. the email from John Whelan to Brereton and others dated 13 December 2017 (CMS.007.001.0509); and

C. the email exchange between John Whelan and PwC dated 8 February 2018, and forwarded to Brereton on 19 February 2018 (CMS.007.001.1817);

(iii) the email exchange between Lex Greensill and Brereton and others on 26 February 2019 (MMC_GCUK08_00005094); and

(iv) the email from Brereton to Lex Greensill dated 9 April 2019 and Lex Greensill's response (MMC_GCUK08_00007575).

Brereton's knowledge is to be attributed to BCC.

Additional particulars may be provided following further discovery and evidence.

87. When BCC and Brereton entered into and executed the Policies, the Loss Payee Endorsement referred to in paragraph 44 above, and the other endorsements referred to in paragraph 47A above, they each knew and understood that:

(aa) at least some of those Policies and endorsements (or the representations therein) would, or would likely, be transmitted to Loss Payees, including Credit Suisse Virtuoso or, alternatively, funds or entities associated with Credit Suisse;

(a) some or all of the Assets the subject of the Policies would be acquired by Credit Suisse Virtuoso or, alternatively, funds or entities associated with Credit Suisse;

(b) Loss Payees, including Credit Suisse Virtuoso or, alternatively, funds or entities associated with Credit Suisse, would or would likely rely on the existence and terms of the Policies, including any endorsements thereto, in purchasing or otherwise investing in Assets the subject of the Policies; and

(c) Credit Suisse Virtuoso or, alternatively, funds or entities associated with Credit Suisse, would or would likely rely on the manner and capacity in which BCC and Brereton executed or purported to execute the Policies, including the endorsements thereto, in purchasing or otherwise investing in Assets the subject of the Policies.

Particulars

Credit Suisse Virtuoso repeats the particulars to paragraph 86 above.

87A BCC and Brereton knew of:

(a) the existence and terms of:

(i) the CGU AAR Agreement in force between 1 August 2017 and 9 April 2019 referred to in paragraph 35B above;

(ii) the BCC Authorisation Notice referred to in paragraph 35C above;

(iii) the CGU/Brereton Authorisation Agreement referred to in paragraph 9(f) of IAL's Defence;

(iv) the CGU/Brereton Authorisation Notice referred to in paragraph 9(f) of IAL's Defence;

(v) the Delegated Authority for Head of Business Unit of Trade Credit Effective 1st July 2017 (BCC.0001.0007.2654);

(vi) the Delegated Authority for Head of Business Unit of Trade Credit Effective 1st July 2018 (BCC.0001.0007.2655);

(vii) the Underwriting Manual Version 1.0 referred to in paragraph 9(h) of IAL's Defence;

(viii) the Approved Endorsements referred in paragraph 9(i) of IAL's Defence;

(ix) the Approved Wording 1.3 referred to in paragraph 9(j) of IAL's Defence;

(x) the Approved Wording 1.4 referred to in paragraph 9(k) of IAL's Defence;

(xi) the Underwriting Manual Version 2.0 referred to in paragraph 9(p) of IAL's Defence;

(xii) the IAL AAR Agreement in force between 9 April 2019 and 30 June 2019 and referred to in paragraph 35ZC above;

(xiii) the IAL/Brereton Authorisation Agreement and accompanying IAL/Brereton Authorisation Notice referred to in paragraphs 35ZI and 35ZJ above; and

(xiv) the email from Brereton to Andrew Ross and others dated 24 July 2019 (BCC.0001.0007.6213),

(together, the **Authority Documents**) from around the time that each of those documents came into existence; and

(b) at the time of executing the Policies (or the endorsements thereto), that BCC and Brereton did not have actual authority as was necessary to make an agreement on the terms of those Policies (including the endorsements thereto).

Particulars

In addition to Brereton's admissions (particularised below), Brereton's knowledge is to be inferred from the terms of the Authority Documents insofar as they were in force at the time that any particular Policy or endorsement was executed and Brereton's position as Head of Trade Credit at BCC, as well as the following documents, evidence and circumstances:

(i) Email from Twain Abbott (CGU) to Brereton dated 10 February 2017 (IAL.500.007.1396);

(ii) Email from Scott Newland to Brereton and Toby Guy dated 1 June 2018 (and earlier email in that chain) (BCC.0001.0007.2227);

(iii) the draft Underwriting Manual Version 1.0 (BCC.0001.0007.1929), which records track changes from Brereton; ~~and~~

(iv) Email from Brereton to Scott Newland and Toby Guy dated 2 July 2019 and attachment (BCC.0001.0007.5992; BCC.0001.0007.5993);

(v) Affidavit of Twain Abbott affirmed on 13 February 2026 at [75], [245]; and

(vi) the circumstances that Brereton altered his authority limits in Tinubu to exceed the limits prescribed by the Authority Documents (BCC.0001.0003.0886; BCC.0001.0008.0599).

It is also to be inferred from Brereton's later admissions that he knowingly acted outside his authority in signing policies and endorsements relating to Greensill, and his actions in concealing the extent of that conduct, as recorded in the following documents:

(vii) Email from Mark Callahan to Toby Guy dated 2 July 2020 (TMA.0001.0008.1014);

(viii) Email from Toby Guy to Matt Barron and Mark Callahan dated 5 July 2020 (TMA.SUB.00000005_0001);

(ix) Email from Mark Callahan to Barry Cook and others dated 7 July

2020 (TMA.0001.0008.1111);

(x) Notes of meeting between Matt Barron, Toby Guy, Greg Brereton and Craig James on 6 July 2020 (including the admissions of Brereton recorded therein) (TMA.SUB.00000021_0001);

(xi) Final Status Report: Risk Management Incident dated 24 July 2020 (TMA.SUB.00000027_0001); and

(xii) Screenshot from the CIS Database (as defined in paragraph 87B below) illustrating that Brereton modified the CIS Database to nominate himself, rather than Marsh, as the broker for the 2019 Master Policy and then cancelled that policy (BCC.0001.0016.0153).

Brereton's knowledge is to be attributed to BCC.

87B Brereton failed to record the existence and terms of all of the Policies and their endorsements on the Credit Insurance Suite Database (**CIS Database**) which BCC used to administer policies on behalf of IAL, and to report to IAL about those policies in bordereaux.

Particulars

Other than the LOS Policy, that Brereton did not upload the Policies or their endorsements to the CIS Database is to be inferred from the absence from BCC's discovery of CIS Database entries for those policies (equivalent to, for example, BCC.0001.0016.0614, which relates to the LOS Policy), and is also evidenced by the following documents:

(i) Notes of meeting between Matt Barron, Toby Guy, Brereton and Craig James on 6 July 2020 (including the admissions of Brereton recorded therein) (TMA.SUB.00000021_0001);

(ii) Email from Dilek Izciler to Murray Ironfield dated 3 July 2020 (BCC.0001.0005.2592);

(iii) Email from Toby Guy to Benjamin Le Forestier dated 5 July 2020 (TMA.0001.0007.0081); and

(iv) Email from Benjamin Le Forestier to Toby Guy dated 6 July 2020

(TMA.0001.0007.0127).

87C. At least at the time that the Policies and their endorsements were executed, BCC and Brereton knew that:

(a) the existence and terms of all of the Policies and their endorsements were not known to the Insurer;

Particulars

Brereton's knowledge is to be inferred from:

(i) Brereton's position as Head of Trade Credit at BCC;

(ii) the fact that Brereton failed to record the existence and terms of all the Policies and their endorsements on the CIS Database which BCC used to administer policies on behalf of IAL, and to report to IAL about those policies in bordereaux as pleaded above at paragraph 87B; ~~and~~

(iii) a screenshot from the CIS Database illustrating that Brereton modified the database to nominate himself, rather than Marsh, as the broker for the 2019 Master Policy and then cancelled that policy (BCC.0001.0016.0153)~~.~~;

(iv) Emails exchanged between Toby Guy and Greg Brereton on or around 15 November 2018 in relation to the presentation "Trade Credit 2018/10 Underwriting Results" (BCC.0001.0003.1851; BCC.0001.0003.1852; BCC.0001.0003.1853; BCC.0001.0003.1854), and the email from Toby Guy to Brad Robson (IAG), Phyong Ly (CGU) and Twain Abbott (CGU), copying Brereton, on 16 November 2018 attaching the final version of that presentation (IAL.500.005.0077; IAL.500.005.0078), which recorded incorrect exposures for Vodafone Pty Limited (see GCU.0009.0004.5514 and BCC.0001.0003.1586) and Shop Direct Limited (BCC.0001.0002.1753) and failed to record in the top 20 buyers: Bluestone Resources with a customer limit of USD 40m (MAR.0003.0001.3917); Atlantic 57 with a customer limit of USD 40m and Aluminium Dunkerque SAS with a customer limit of USD 60m (BCC.0001.0001.1061), and U Mobile Sdn Bhd with a

customer limit of USD 50m (BCC.0001.0001.0929);

(v) Email from Brereton to Toby Guy on 3 December 2018, in response to an inquiry from IAG, incorrectly stating that IAG's total commitment to the "GFG Group" was $42 million (BCC.0001.0003.2125) when in fact IAG's purported exposure to the GFG Group was much more extensive (BCC.0001.0003.1218; BCC.0001.0007.3347; BCC.0001.0001.1239); and

(vi) Email from Brereton to Twain Abbott (CGU) on or around 12 December 2018, stating that Brereton was "aware that we probably cannot carry past $50 million" (BCC.0001.0004.1676), when IAG's purported exposure at that stage already far exceeded $50 million (see the particulars at (v) above).

Brereton's knowledge is to be attributed to BCC.

(b) in the premises of paragraphs 83, 87, 87A and 87C(a) above, Brereton's actions in executing the Policies and the endorsements thereto were likely to:

(i) mislead third parties (including, without limitation, prospective acquirers of Assets and Loss Payees) that BCC and Brereton had actual authority to bind the Insurer to the Policies (and the endorsements thereto) when that was not the case; and

(ii) cause or facilitate Assets being promoted to possible acquirers for sale or investment on a false basis, being that the Assets were supported by cover under Policies executed with the actual authority of the Insurer; and

(c) further, or in the alternative, in the premises of paragraphs 87A and 87C(a) above:

(i) if a claim was made by the Insured or a Loss Payee under the Policies and their endorsements, it was likely the Insurer would decline to indemnify on the ground that the Policies were not binding or enforceable against it; and

(ii) if the Insurer declined to indemnify the Insured or a Loss Payee on

the ground that the Policy TS-03088 and its Endorsements were invalid and unenforceable, the Loss Payee(s) would suffer a loss.

Particulars

Credit Suisse Virtuoso refers to and repeats paragraph 87 above and its particulars.

L.2 **BCC/Brereton Conduct ~~Breach of warranties of authority~~**

88. BCC and Brereton executed:

(aa) the LOS Policy referred to at paragraph 35ZY above;

(ab) 2019 Policy referred to at paragraph 35ZZA above;

(ac) 2018 Policy TS-03088 referred to at paragraph 35ZZAAA above;

(ad) 2018 Policy referred to at paragraph 35ZZAAC above;

(a) Policy TS-03088 referred to in paragraph 36 above;

(b) Debt Endorsement 1 referred to in paragraph 39 above;

(c) Customer Endorsement 4 referred to in paragraph 40 above;

(c1) Endorsement 9 referred to in paragraph 40A above;

(d) Endorsement 10 referred to in paragraph 41 above;

(e) Endorsement 11 referred to in paragraph 42 above;

(f) Endorsement 12 referred to in paragraph 43 above;

(g) Loss Payee Endorsement 3 referred to in paragraph 44 above;

(h) Limit Endorsement 8 referred to in paragraph 46 above; and

(i) the other endorsements referred to in paragraphs 47AA to 47EE above,

on or about the dates that those documents bear (**BCC/Brereton Conduct**).

89. [NOT USED]~~By engaging in the BCC/Brereton Conduct referred to at paragraph 88 above, BCC:~~

(a) represented that it was the agent of the Insurer;

(b) represented and warranted that it had such authority from the Insurer as was necessary to make the documents pleaded in paragraph 88 binding on the Insurer;

(c) induced the Insured and Credit Suisse Virtuoso to enter into the agreement recorded in each of the documents referred to in paragraph 88 above with BCC as agent for the Insurer; and

(d) represented and warranted to the Insured and to Credit Suisse Virtuoso that BCC was authorised to make an agreement on the terms of each of the documents referred to in paragraph 88 above on behalf of the Insurer as its agent,

(together, **BCC's Warranties of Authority**).

Particulars

BCC's Warranties of Authority were express or implied by:

(i) BCC's execution (via signature and stamp) of the Policies including the endorsements referred to in paragraph 88 above;

(ii) express statements in the execution block of the Policies and the documents referred to at subparagraphs 88(b) to (i) above, that the document was signed "*for and on behalf of [BCC] Corporate Authorised Representative of Insurance Australia Ltd*";

(iii) [NOT USED]

(iv) express statements in the Policy Wording for the LOS Policy and Policy TS-03088 that BCC was the "*Corporate Authorised Representative of Insurance Australia Ltd*" (pp 1, 18 and 44);

(iva) express statements in the Policy wording for the 2018 Policy and 2019 Policy that BCC was the "*Corporate Authorised Representative of Insurance Australia Ltd":* pages 1, 2, 16 and 44;

(v) Clause 14.1 of the policy wording for the Policies; and

(vi) ~~the documents referred to at paragraph 88 above were expressly issued by BCC as "*Corporate Authorised Representative of Insurance Australia Ltd*".~~

90. [NOT USED]~~By engaging in the BCC/Brereton Conduct referred to at paragraph 88 above, Brereton:~~

~~(a) represented that BCC was the agent of the Insurer;~~

~~(b) represented that he had such authority from the Insurer as was necessary to make the documents pleaded in paragraph 88 binding on the Insurer;~~

~~(c) induced the Insured and Credit Suisse Virtuoso to enter into the agreement recorded in each of the documents referred to in paragraph 88 above with BCC as agent for the Insurer;~~

~~(d) represented and warranted to the Insured and to Credit Suisse Virtuoso that BCC was authorised to make an agreement on the terms of each of the documents referred to in paragraph 88 above on behalf of the Insurer as its agent; and~~

~~(e) represented and warranted to the Insured and to Credit Suisse Virtuoso that Brereton was authorised to execute or send (as the case may be) each of the documents referred to at paragraph 88 above on behalf of BCC,~~

~~(together, **Brereton's Warranties of Authority**).~~

~~Particulars~~

~~Brereton's Warranties of Authority were express and implied by:~~

~~(i) Brereton's conduct in signing and stamping Policy TS-03088 and endorsements referred to in paragraph 88 above;~~

~~(ii) the particulars to paragraph 89 above are repeated; and~~

(iii) ~~Brereton's conduct in causing the documents referred to in paragraph 88 above to be sent to GCUK (as the 'Servicer' under Policy TS- 03088) and/or to Marsh.~~

91. [NOT USED]~~Induced by and relying upon BCC's Warranties of Authority and Brereton's Warranties of Authority, Credit Suisse Virtuoso acquired the NMC Notes referred to in paragraph 33 above.~~

92. [NOT USED]~~If, which is denied, BCC was not authorised to make an agreement on the terms set out in each of the documents referred to in paragraph 88 above on behalf of the insurer as agent, then BCC breached BCC's Warranties of Authority.~~

93. [NOT USED]~~If, which is denied:~~

~~(a) BCC was not authorised to make an agreement on the terms of each of the documents referred to in paragraph 88 above on behalf of the insurer as agent; and/or~~

(b) ~~Brereton was not authorised to execute or send (as the case may be) each of the documents referred to in paragraph 88 above on behalf of BCC, then Brereton breached Brereton's Warranties of Authority.~~

94. [NOT USED]~~By reason of BCC's or Brereton's breaches of their respective warranties of authority, Credit Suisse Virtuoso has suffered loss or damage.~~

~~Particulars~~

~~Credit Suisse Virtuoso has lost the benefit of Policy TS-03088, being the amount which would have been payable to Credit Suisse Virtuoso by the Insurer in respect of the Claims under Policy TS-03088.~~

94A [NOT USED]~~BCC's Warranties of Authority and Brereton's Warranties of Authority and any breaches of those warranties of authority pleaded at paragraphs 92 and 93 above was conduct:~~

~~(a) that related to the provision of a financial service;~~

~~(b) on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;~~

~~(c) on which Credit Suisse Virtuoso did in fact rely in good faith when entering into the Loss Payee Endorsements and when acquiring the NMC Notes;~~

~~(d) for which the Insurer is responsible, as between the Insurer and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority; and~~

~~(e) further and alternatively to sub-paragraph (d) above, to the extent the breaches of the warranties of authority occurred on or after 1 July 2019, it was conduct for which TMNF is responsible, or partly responsible, as between TMNF and Credit Suisse Virtuoso, by operation of ss 917A and 917B (or alternatively, s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority.~~

94B [NOT USED]~~By reason of the matters pleaded at paragraphs 88 to 94A above, the Insurer, further and alternatively TMNF, is liable for the loss suffered by Credit Suisse Virtuoso pleaded at paragraph 94 above.~~

L.3 Misleading or deceptive conduct

95. By engaging in the BCC/Brereton Conduct, BCC represented:

(aa) to Credit Suisse Virtuoso; and, or alternatively,

(ab) to a class of persons that included, at least, the Insureds, potential acquirers of Assets, Loss Payees and Marsh;

that:

(a) BCC was the agent of the Insurer;

(b) BCC was the Corporate Authorised Representative of the Insurer;

(c) BCC had actual authority to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent (**BCC Actual Authority Representations**); and

Particulars

The BCC Actual Authority Representations included, for the avoidance of doubt, that BCC was acting within the terms of its agency, and within its authority limits from the Insurer, by making an agreement on the terms of each of the documents.

(d) each of the documents referred to at paragraph 88 above was to BCC's knowledge binding upon the Insurer (**BCC Binding on Insurer Representations**),

(together, **BCC's Representations**).

Particulars

~~The particulars to paragraph 89 above are repeated.~~

BCC's Representations were express or implied by:

(i) BCC's execution (via signature and stamp) of the Policies including the endorsements referred to at paragraph 88 above;

(ii) express statements in the execution block of the Policies and the documents referred to at subparagraphs 88(b) and (d) to (i) above that the document was signed *"for and on behalf of [BCC] Corporate Authorised Representative of Insurance Australia Ltd"*;

(iii) express statements in the policy wording for the 2018 Policy and the 2019 Policy that BCC was the *"Corporate Authorised Representative of Insurance Australia Ltd"*: pages 1, 2, 16 and 44;

(iv) express statements in the policy wording for the LOS Policy and Policy TS-03088 that BCC was the *"Corporate Authorised Representative of Insurance Australia Ltd"*: pages 1, 18, and 44;

(v) clause 14.1 of the policy wording of the Policies; and

(vi) the documents described at paragraph 88(a) to (i) above were expressly issued by BCC as *"Corporate Authorised Representative of Insurance Australia Ltd"*.

96. At all material times, BCC failed to disclose to Credit Suisse Virtuoso, Credit Suisse Asset Management AG (Zurich), or to the Insured that BCC did not have actual authority to make the agreement on the terms of each of the documents referred to at paragraph 88 above (**BCC's Omissions**).

97. By engaging in the BCC/Brereton Conduct, Brereton represented:

(aa) to Credit Suisse Virtuoso; and, or alternatively,

(ab) to a class of persons that included, at least, the Insureds, potential acquirers of Assets, Loss Payees and Marsh;

that:

(a) BCC was the agent of the Insurer;

(b) BCC was the Corporate Authorised Representative of the Insurer;

(c) BCC had actual authority to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent BCC (**Brereton's BCC Actual Authority Representations**);

Particulars

Brereton's BCC Actual Authority Representations included, for the avoidance of doubt, that BCC was acting within the terms of its agency, and within its authority limits from the Insurer, by making an agreement on the terms of each of the documents.

(d) Brereton had actual authority to execute and send (as the case may be) each of the documents referred to at paragraph 88 above on behalf of BCC (**Brereton Actual Authority Representations**); and

(e) each of the documents referred to at paragraph 88 above was to BCC's knowledge binding upon the Insurer (**Brereton Binding on Insurer Representations**),

(together, **Brereton's Representations**).

Particulars

~~The particulars to paragraph 90 above are repeated.~~

Brereton's Representations were express and implied by:

(i) Brereton's conduct in signing and stamping the 2019 Policy and endorsements referred to at paragraph 88 above;

(ii) the particulars to paragraph 97 above are repeated; and

(iii) Brereton's conduct in causing the documents referred to at paragraph 88 above to be sent to GCUK (as the 'Servicer' under the 2019 Policy) and/or to Marsh.

98. At all material times, Brereton failed to disclose to Credit Suisse Virtuoso, Credit Suisse Asset Management AG (Zurich), or to the Insured that:

(a) BCC did not have actual authority to make the agreement on the terms of each of the documents referred to at paragraph 88 above; and

(b) Brereton did not have actual authority to execute and send (as the case may be) each of the documents referred to at paragraph 88 above,

(together, **Brereton's Omissions**).

99. BCC's Representations and Brereton's Representations were:

(a) continuing representations; and

(b) not withdrawn or corrected at any material time.

100. The conduct of BCC pleaded at paragraphs 95 and 96 above and the conduct of Brereton pleaded at paragraphs 97 and 98 above was conduct:

(a) in relation to a financial service within the meaning of s 1041H of the Corporations Act;

(b) in trade or commerce within the meaning of s 18 of the Australian Consumer Law; and/or

(c) in trade or commerce and in relation to financial services within the meaning of s 12DA of the ASIC Act.

101. ~~If, which is denied,~~ Given BCC did not have actual authority to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent, then:

(a) the conduct of BCC pleaded at paragraphs 95 and 96 above was misleading or deceptive or likely to mislead or deceive; and

(b) by engaging in the conduct pleaded at paragraphs 95 and 96 BCC contravened s 1041H of the Corporations Act, s 18 of the Australian

Consumer Law and/or s 12DA of the ASIC Act.

102. ~~If, which is denied~~ Given:

(a) BCC did not have actual authority to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent; and/or

(b) Brereton did not have actual authority to execute or send (as the case may be) each of the documents referred to at paragraph 88 above on behalf of BCC,

then:

(c) Brereton's conduct pleaded at paragraphs 97 and 98 above was misleading or deceptive or likely to mislead or deceive; and

(d) by engaging in the conduct pleaded at paragraphs 97 and 98 above, Brereton contravened s 1041H of the Corporations Act, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act.

103. But for:

(a) BCC's Representations and BCC's Omissions; and/or

(b) Brereton's Representations and Brereton's Omissions,

Credit Suisse Virtuoso would not have purchased the NMC Notes ~~referred to in paragraph 33 above~~.

104. In the premises, Credit Suisse Virtuoso has suffered loss or damage by the contraventions of BCC and Brereton pleaded at paragraphs 101 and 102 above.

Particulars

Credit Suisse Virtuoso's loss is the amount of US$113,493,580, being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes ~~referred to at paragraph 33 above~~, plus any costs incurred to recover amounts owed in respect of the relevant Payment Failures ~~Eligible Debts~~ (**Recovery Costs**), less any amount received by Credit Suisse Virtuoso in respect of those NMC Notes.

104A. The conduct of BCC and Brereton pleaded in paragraphs 95 to 102 above was conduct:

(a) that related to the provision of a financial service;

(b) on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;

(c) on which Credit Suisse Virtuoso did in fact rely in good faith when entering into the Loss Payee Endorsement and when acquiring the NMC Notes;

(d) for which the Insurer is responsible, as between the Insurer and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively, s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority; and

(e) further and alternatively to sub-paragraph (d) above, to the extent the conduct pleaded at paragraphs 95 to 102 occurred on or after 1 July 2019, it was conduct for which TMNF is responsible, or partly responsible, as between TMNF and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority.

Particulars

Credit Suisse refers to paragraphs 35ZH, 35ZM, 35ZN to 35ZQ, and 35ZZT to 35ZZV above.

With few exceptions, Brereton Representations and BCC Representations made after 1 July 2019 were made under cover of emails from Brereton which described BCC as “A member of the Tokio Marine Group”.

104B. By reason of the matters pleaded at paragraphs 95 to 103 and 104A above, the Insurer, further and alternatively TMNF, is liable for the loss suffered by Credit Suisse Virtuoso pleaded at paragraph 104 above.

Particulars

(i) The Insurer and/or TMNF is liable for the conduct of Brereton and BCC for the reasons pleaded in paragraph 104A above.

(ii) The conduct and knowledge of Brereton prior to around 8 July 2020 is to be attributed to BCC in circumstances where: (i) Brereton was employed by Bond as BCC's Head of Trade Credit; and (ii) Brereton was responsible for dealing with the Greensill Group, Marsh and Credit Suisse Virtuoso regarding Policy TS-03088 and the endorsements thereto on behalf of BCC.

L.4 Section 1041E Claim

105. ~~If, which is denied,~~ Given BCC did not have actual authority to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent, then:

(a) the BCC Actual Authority Representations were false in a material particular or materially misleading;

(ba) the BCC Actual Authority Representations were likely to induce persons in Australia to apply for financial products, or alternatively, to acquire financial products;

(b) at the time the BCC Actual Authority Representations were made, BCC ought reasonably to have been aware of the scope and limits of its authority (if any) to make an agreement on behalf of the Insurer as its agent;

(c) BCC knew or ought reasonably to have known that the BCC Actual Authority Representations were false in a material particular or materially misleading at the time they were made, or alternatively did not care whether the BCC Actual Authority Representations were true or false at the time they were made; and

(d) by making the BCC Actual Authority Representations, and by failing to correct those representations at any material time, BCC engaged in conduct which contravened s 1041E of the Corporations Act.

Particulars

As to BCC's knowledge, Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above, and the particulars thereto.

106. ~~If, which is denied~~ Given:

(a) BCC did not have actual authority to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent; and/or

(b) Brereton did not have actual authority to execute or send (as the case may be) each of the documents referred to at paragraph 88 above on behalf of BCC, then:

(c) Brereton's BCC Actual Authority Representations and/or the Brereton Actual Authority Representations were false in a material particular or materially misleading; and

(da) Brereton's BCC Actual Authority Representations and/or the Brereton Actual Authority Representations were likely to induce persons in Australia to apply for financial products, or alternatively, to acquire financial products;

(d) at the time Brereton's BCC Actual Authority Representations and/or the Brereton Actual Authority Representations were made, Brereton ought reasonably to have been aware of the scope and limits of:

(i) BCC's actual authority (if any) to make an agreement on behalf of the Insurer as its agent; and

(ii) Brereton's actual authority (if any) to execute documents on behalf of BCC;

(e) Brereton knew or ought reasonably to have known that Brereton's BCC Actual Authority Representations and/or the Brereton Actual Authority Representations were false in a material particular or materially misleading at the time they were made, or alternatively did not care whether Brereton's BCC Actual Authority Representations and/or the Brereton Actual Authority Representations were true or false at the time

they were made; and

(f) by making Brereton's BCC Actual Authority Representations and/or the Brereton Actual Authority Representations, and by failing to correct those representations at any material time, Brereton engaged in conduct which contravened s 1041E of the Corporations Act.

Particulars

As to Brereton's knowledge, Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above, and the particulars thereto.

107A ~~If, which is denied,~~ Given that to BCC's knowledge BCC did not have authority (actual or otherwise) to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent, then:

(a) the BCC Binding on Insurer Representations were false in a material particular or materially misleading;

(ba) the BCC Binding on Insurer Representations were likely to induce persons in Australia to apply for financial products, or alternatively, to acquire financial products;

(b) at the time that the BCC Binding on Insurer Representations were made:

(i) BCC knew or ought reasonably to have been aware of the scope and limits of its actual authority (if any) to make an agreement on behalf of the Insurer as its agent;

(ii) BCC could not and did not know whether the conduct of the Insurer would ultimately give rise to an estoppel that would prevent the Insurer from relying on the absence of actual authority to decline to indemnify under the Policies;

(c) BCC knew or ought reasonably to have known that the BCC Binding on Insurer Representations were false in a material particular or materially misleading at the time they were made, or alternatively did not care whether the BCC Binding on Insurer Representations were true or false at the time they were made; and

(d) by making the BCC Binding on Insurer Representations, and by failing to correct those representations at any material time, BCC engaged in conduct which contravened s 1041E of the Corporations Act.

Particulars

As to BCC's knowledge, Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above, and the particulars thereto.

107B ~~If, which is denied~~ Given that to Brereton's knowledge:

(a) BCC did not have authority (actual or otherwise) to make an agreement in the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent; and/or

(b) Brereton did not have authority (actual or otherwise) to execute or send (as the case may be) each of the documents referred to at paragraph 88 above on behalf of BCC,

then:

(c) the Brereton Binding on Insurer Representations were false in a material particular or materially misleading;

(da) the Brereton Binding on Insurer Representations were likely to induce persons in Australia to apply for financial products, or alternatively, to acquire financial products;

(d) at the time the Brereton Binding on Insurer Representations were made, Brereton knew or ought reasonably to have been aware of the scope and limits of:

(i) BCC's actual authority (if any) to make an agreement on behalf of the Insurer as its agent; and

(ii) Brereton's actual authority (if any) to execute documents on behalf of BCC;

(e) Brereton knew or ought reasonably to have known that the Brereton Binding on Insurer Representations were false in a material particular or materially misleading at the time they were made, or alternatively did not

care whether the Brereton Binding on Insurer Representations were true or false at the time they were made; and

(f) by making the Brereton Binding on Insurer Representations, and by failing to correct those representations at any material time, Brereton engaged in conduct which contravened s 1041E of the Corporations Act.

Particulars

As to Brereton's knowledge, Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above, and the particulars thereto.

As to Brereton's knowledge of the absence of any ostensible authority, at the time that each of the Policies and endorsements were executed, Brereton could not have known, and did not know, whether the conduct of the Insurer would ultimately give rise to an estoppel that would prevent the Insurer from relying on the absence of actual authority to decline to indemnify under the Policies. It is to be inferred from that fact that, at least, Mr Brereton did not care about the existence of any ostensible authority.

107. But for:

(a) the BCC Actual Authority Representations;

(b) the BCC Binding on Insurer Representations;

(c) Brereton's BCC Actual Authority Representations;

(d) the Brereton Actual Authority Representations; and/or

(e) the Brereton Binding on Insurer Representations,

Credit Suisse Virtuoso would not have purchased the NMC Notes ~~referred to in paragraph 33 above~~.

108. In the premises, Credit Suisse Virtuoso has suffered loss or damage by the contraventions of BCC and Brereton pleaded at paragraphs 105 and 107B above.

Particulars

Credit Suisse Virtuoso's loss is the amount of US$113,493,580, being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes referred to at paragraph 33 above, plus Recovery Costs in respect of those NMC Notes, less any amount received by Credit Suisse Virtuoso in respect of the NMC Notes.

108A. The conduct of BCC and Brereton pleaded in paragraphs 95, 97, 105 and 106 to 107B above was conduct:

(a) that related to the provision of a financial service;

(b) on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;

(c) on which Credit Suisse Virtuoso did in fact rely in good faith when entering into the Loss Payee Endorsement and when acquiring the NMC Notes;

(d) for which the Insurer is responsible, as between the Insurer and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively, s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority; and

(e) further and alternatively to sub-paragraph (d) above, to the extent the conduct pleaded at paragraphs 105 to 107B occurred on or after 1 July 2019, it was conduct for which TMNF is responsible, or partly responsible, as between TMNF and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively, s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority.

Particulars

Credit Suisse refers to paragraphs 35ZH, 35ZM, 35ZN to 35ZQ, and 35ZZT to 35ZZV above.

With few exceptions, Brereton Representations and BCC Representations made after 1 July 2019 were made under cover of emails from Brereton which described BCC as "A member of the Tokio Marine Group".

108B. By reason of the matters pleaded at paragraphs 105 to 107B and 108A above, the Insurer, further and alternatively TMNF, is liable for the loss suffered by Credit Suisse Virtuoso pleaded at paragraph 108 above.

L.5 Deceit

108ZA. ~~If, which is denied,~~ Given BCC did not have actual authority to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent, then:

(a) the BCC Actual Authority Representations were false;

(b) at the time that the BCC Actual Authority Representations were made, BCC knew of, or was recklessly indifferent as to, the scope and limits of its actual authority to make an agreement on behalf of the Insurer as agent;

(c) at the time that the BCC Actual Authority Representations were made, BCC knew that the BCC Actual Authority Representations were false, or was recklessly indifferent as to whether or not they were true; and

(d) at the time that the BCC Actual Authority Representations were made, BCC intended that a class of persons including, at least, potential acquirers of Assets and Loss Payees under the Policies, of which Credit Suisse Virtuoso was one, would rely on the BCC Actual Authority Representations when purchasing Assets.

Particulars

Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above and the particulars thereto.

108ZB. ~~If, which is denied~~ Given:

(a) BCC did not have actual authority to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent; and/or

(b) Brereton did not have actual authority to execute or send (as the case may be) each of the documents referred to at paragraph 88 above on behalf of BCC,

then:

(c) Brereton's BCC Actual Authority Representations and/or the Brereton Actual Authority Representations were false;

(d) at the time that Brereton's BCC Actual Authority Representations and the Brereton Actual Authority Representations were made, Brereton knew of, or was recklessly indifferent as to, the scope and limits of:

(i) BCC's authority to make an agreement on behalf of the Insurer as agent; and

(ii) Brereton's authority to execute documents on behalf of BCC;

(e) at the time that Brereton's BCC Actual Authority Representations were made, Brereton knew that those representations were false, or was recklessly indifferent as to whether or not they were true;

(f) at the time that the Brereton Actual Authority Representations were made, Brereton knew that those representations were false, or was recklessly indifferent as to whether or not they were true; and

(g) at the time Brereton's BCC Actual Authority Representations and the Brereton Actual Authority Representations were made, Brereton intended that a class of persons including, at least, potential acquirers of Assets and Loss Payees under Policies, of which Credit Suisse Virtuoso was one, would rely on those representations when purchasing Assets.

Particulars

Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above and the particulars thereto.

108ZC. ~~If, which is denied,~~ Given that to BCC's knowledge, it ~~BCC~~ did not have authority (actual or otherwise) to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent, then:

(a) the BCC Binding on Insurer Representations were false;

(b) at the time that the BCC Binding on Insurer Representations were made,

BCC knew those representations were false, or was recklessly indifferent as to whether or not they were true; and

Particulars

As to Brereton's and BCC's knowledge of the absence of any actual authority, Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above and the particulars thereto.

As to Brereton's knowledge of the absence of any ostensible authority, at the time that each of the Policies and endorsements were executed Brereton could not have known, and did not know, whether the conduct of the Insurer would ultimately give rise to an estoppel that would prevent the Insurer from relying on the absence of actual authority to decline to indemnify under the Policies. It is to be inferred from that fact that he was, at least, recklessly indifferent to the existence of any ostensible authority.

Brereton's knowledge, or lack thereof, is to be attributed to BCC.

(c) at the time that the BCC Binding on Insurer Representations were made, BCC intended that a class of persons including, at least, potential acquirers of Assets and Loss Payees under the Policies, of which Credit Suisse Virtuoso was one, would rely on the BCC Binding on Insurer Representations when purchasing Assets.

Particulars

Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above and the particulars thereto.

108ZD. ~~If, which is denied,~~ Given that to Brereton's knowledge, BCC did not have authority (actual or otherwise) to make an agreement on the terms of each of the documents referred to at paragraph 88 above on behalf of the Insurer as its agent, then:

(a) the Brereton Binding on Insurer Representations were false;

(b) at the time that the Brereton Binding on Insurer Representations were made, Brereton knew those representations were false, or was recklessly indifferent as to whether or not they were true; and

Particulars

As to Brereton's knowledge of the absence of any actual authority, Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above and the particulars thereto.

As to Brereton's knowledge of the absence of any ostensible authority, Credit Suisse Virtuoso refers to and repeats the particulars to 108ZC(b) above.

(c) at the time that the Brereton Binding on Insurer Representations were made, BCC intended that a class of persons including, at least, potential acquirers of Assets and Loss Payees under the Policies, of which Credit Suisse Virtuoso was one, would rely on the BCC Binding on Insurer Representations when purchasing Assets.

Particulars

Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above and the particulars thereto.

108ZE. ~~If, which is denied,~~ Given that to the knowledge of BCC, each of the documents referred to at paragraph 88 above was not binding on the Insurer from the dates they were executed or sent (as the case may be) by Brereton, then:

(a) the BCC Binding on Insurer Representations were false;

(b) at the time that the BCC Binding on Insurer Representations were made, BCC knew those representations were false, or was recklessly indifferent as to whether or not they were true; and

Particulars

Brereton knew that the BCC Binding on Insurer Representations were false because:

(a) he knew of the absence of the necessary actual authority. Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above and the particulars thereto;

(b) he had no knowledge of any adequate ostensible authority. Credit

Suisse Virtuoso refers to and repeats the particulars to 108ZC (b) above.

Brereton's knowledge is to be attributed to BCC.

(c) at the time that the BCC Binding on Insurer Representations were made, BCC intended that a class of persons including, at least, potential acquirers of Assets and Loss Payees under the Policies, of which Credit Suisse Virtuoso was one, would rely on the BCC Binding on Insurer Representations when purchasing Assets.

Particulars

Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above and the particulars thereto.

108ZF. ~~If, which is denied,~~ Given that to the knowledge of Brereton, each of the documents referred to at paragraph 88 above was not binding on the Insurer from the dates they were executed or sent (as the case may be) by Brereton, then:

(a) the Brereton Binding on Insurer Representations were false;

(b) at the time that the Brereton Binding on Insurer Representations were made, Brereton knew those representations were false, or was recklessly indifferent as to whether or not they were true; and

Particulars

Credit Suisse Virtuoso refers to and repeats the particulars to paragraph 108ZE above.

(c) at the time that the Brereton Binding on Insurer Representations were made, Brereton intended that a class of persons including, at least, potential acquirers of Assets and Loss Payees under the Policies, of which Credit Suisse Virtuoso was one, would rely on the BCC Binding on Insurer Representation when purchasing Assets.

Particulars

Credit Suisse Virtuoso refers to and repeats paragraphs 83 to 87C above

and the particulars thereto.

108ZG. Credit Suisse received and ultimately acted upon:

(a) the BCC Actual Authority Representations;

(b) the BCC Binding on Insurer Representations;

(c) Brereton's BCC Actual Authority Representations;

(d) the Brereton Actual Authority Representations; and/or~~;~~

(e) the Brereton Binding on Insurer Representations.

Particulars

(i) Credit Suisse received the representations either by:

A. receiving the Policies and their endorsements in the form signed by Brereton, as occurred in the case of the LOS Policy (CSA.5000.0001.0072 and CSA.5000.0001.0075); Loss Payee Endorsement 2 to the LOS Policy (CSA.5000.0001.0072 and CSA.5000.0001.0074); Loss Payee Endorsement 3 (Virtuoso) to the 2018 Policy (CSA.5000.0003.0778 and CSA.5000.0003.0779); Loss Payee Limit Endorsement 5 to the 2018 Policy (CSA.5000.0002.1285 and CSA.5000.0002.1289); Debt Endorsement 1 to TS-03088 (CSA.5000.0001.0495 and CSA.5000.0001.0496); Loss Payee Limit Endorsement 8 to TS 03088 (CSA.5000.0001.0505 and CSA.5000.0001.0509); 2019 Policy (CSA.5000.0001.0893 and CSA.5000.0001.0894); Debt Endorsement 1 to the 2019 Policy (CSA.5000.0001.0495 and CSA.5000.0001.0504); Loss Payee Endorsement 3 (Virtuoso) to the 2019 Policy (CSA.5000.0001.0470 and CSA.5000.0001.0479); Customer Endorsement 54(i) to the 2019 Policy (CSA.5000.0001.1568 and CSA.5000.0001.1570);

B. Marsh providing Limit Confirmation Trackers and Limit Confirmation Letters to Credit Suisse, including as listed in the

particulars to paragraph 108FF below and in Gilbert + Tobin's letter dated 5 April 2024, which conveyed the representations pleaded in subparagraphs 108JJ(c) to (e) below;

C. the email from Ludwig Sels to Lukas Haas dated 26 September 2018 (CSA.5000.0001.0212_0001); and

D. the email from Angus Ward to Luke Haas dated 20 December 2019 (MAR.0003.0002.8218).

(ii) Credit Suisse also relies upon:

A. the Affidavit of Ruzica Stowe affirmed 25 October 2024, [15]-[18], [29], [30], [40]-[44], [48], [49]-[59];

B. the Affidavit of Christian Mossdorf affirmed 25 October 2024, [34]-[36], [49]-[52], [57], [58]-[78], [83];

C. the Affidavit of Nina Egelhof affirmed 25 October 2024, [36]-[37]; and

D. the Affidavit of Guy Reiter sworn 25 October 2024, [118]-[126].

(iii) For the avoidance of doubt, Credit Suisse Virtuoso acted upon the representations by purchasing the NMC Notes in circumstances where the representations conveyed that BCC and Brereton were acting within their actual authority from the Insurer, which representations deterred further inquiry into BCC's and Brereton's authority and, without which, Credit Suisse Virtuoso would have made further inquiry into BCC and Brereton's authority to bind the Insurer before acquiring the NMC Notes.

108ZH. But for the representations referred to in 108ZG (or one or more of them), Credit Suisse Virtuoso would not have purchased the NMC Notes.

Particulars

The particulars to paragraph 108ZG are repeated.

108ZI. In the premises, Credit Suisse Virtuoso has suffered loss or damage by the

conduct of BCC and Brereton pleaded at paragraphs 108ZA to 108ZF above.

Particulars

Credit Suisse Virtuoso's loss being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes, plus Recovery Costs in respect of those NMC Notes, less any amount received by Credit Suisse Virtuoso in respect of those NMC Notes, plus interest.

108ZJ. The conduct of BCC and Brereton pleaded at paragraphs 95, 97 and 108ZA to 108ZF above was conduct:

(a) that related to the provision of a financial service;

(b) on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;

(c) on which Credit Suisse Virtuoso did in fact rely in good faith when entering into the Loss Payee Endorsements and when acquiring the NMC Notes;

(d) for which the Insurer is responsible, as between the Insurer and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority; and

(e) further and alternatively to sub-paragraph (d) above, to the extent the conduct pleaded at paragraphs 95 to 102 and 108ZA to 108ZF occurred on or after 1 July 2019, it was conduct for which TMNF is responsible, or partly responsible, as between TMNF and Credit Suisse Virtuoso, by operation of ss 917A and 917B of the Corporations Act (or alternatively s 917C of the Corporations Act), whether or not BCC and/or Brereton acted within the scope of their authority.

Particulars

Credit Suisse refers to paragraphs 35ZH, 35ZM, 35ZN to 35ZQ, and 35ZZT to 35ZZV above.

With few exceptions, Brereton Representations and BCC Representations made after 1 July 2019 were made under cover of

emails from Brereton which described BCC as “A member of the Tokio Marine Group”.

108ZK. By reason of the matters pleaded at paragraphs 108ZA to 108ZF and 108ZJ above, the Insurer, further and alternatively TMNF, is liable for the loss suffered by Credit Suisse Virtuoso pleaded at paragraph 108ZI above.

M [NOT USED]

108A. [NOT USED]

108B. [NOT USED]

108C. [NOT USED]

108D. [NOT USED]

108E. [NOT USED]

108F. [NOT USED]

108G. [NOT USED]

108H. [NOT USED]

108I. [NOT USED]

108J. [NOT USED]

108K. [NOT USED]

108L. [NOT USED]

108M. [NOT USED]

108N. [NOT USED]

108O. [NOT USED]

108P. [NOT USED]

108Q. [NOT USED]

108R. [NOT USED]

108S. [NOT USED]

108T. [NOT USED]

108U. [NOT USED]

108V. [NOT USED]

108W. [NOT USED]

108X. [NOT USED]

108Y. [NOT USED]

108Z. [NOT USED]

108AA. [NOT USED]

MA **[NOT USED]~~CLAIMS AGAINST THE INSURER~~**

MA.1 **[NOT USED]~~Misleading or deceptive conduct of Insurer directed toward GBAG~~**

108AB. [NOT USED]~~At paragraphs 192AI to 192AK of the Amended Statement of Claim filed by GBAG (**GBAG ASOC**) in proceeding NSD 174 of 2023 (which will be heard together with this proceeding), GBAG alleges that IAL made the Misleading Authority Representations and the Misleading Authority Omissions (as those terms are defined in the GBAG ASOC).~~

108AC. [NOT USED]~~If GBAG succeeds in establishing the alleged Misleading Authority Representations, or some of them, alternatively the Misleading Authority Omissions, or some of them, Credit Suisse Virtuoso pleads as follows.~~

108AD. [NOT USED]~~If, which is denied, IAL were to establish that the entry into Policy TS-03088 on IAL's behalf was not actually authorised, including (without limitation) by reason of any of the matters pleaded at paragraph 65 of the Amended Defence filed by IAL to the GBAG ASOC in proceeding NSD 174 of 2023, then each of the Misleading Authority Representations and each of the Misleading Authority Omissions (as defined in the GBAG ASOC) amounted to conduct that was misleading or deceptive or likely to mislead or deceive and IAL thereby engaged in conduct in contravention of s 1041H of the Corporations~~

~~Act, s 18 of the Australian Consumer Law, and s 12 of the ASIC Act.~~

108AE. [NOT USED]~~By reason of the matters pleaded in Part DA of the GBAG ASOC and paragraphs 108DDDD to 108JJJJ below, but for IAL's conduct in making each of the Misleading Authority Representations and each of the Misleading Authority Omissions (as defined in the GBAG ASOC):~~

~~(a) GCUK would not have arranged for BCC to issue and/or GBAG would not have entered into Policy TS-03088; and~~

~~(b) Credit Suisse Virtuoso would not have purchased the NMC Notes.~~

~~**Particulars**~~

~~The conduct comprising the Misleading Authority Representations and the Misleading Authority Omissions (as defined in the GBAG ASOC) is only relied upon to the extent that occurred before GBAG entered into Policy TS-03088.~~

108AF. [NOT USED]~~In the premises, Credit Suisse Virtuoso has suffered loss or damage by reason of the contraventions of IAL pleaded at paragraph 108AD above.~~

~~**Particulars**~~

~~Credit Suisse Virtuoso's loss being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes, plus Recovery Costs, less any amount received by Credit Suisse Virtuoso in respect of the NMC Notes, plus interest.~~

N CLAIMS AGAINST MARSH

N.1 Marsh's knowledge

108BB. By September 2017 at the latest, Marsh had been engaged as insurance broker by one or more of GCPL, GCUK and/or GBAG in respect of trade credit risks, including to:

(a) negotiate policy wording on behalf of GCPL, GCUK and/or GBAG to adapt to specific risk requirements and structure;

(b) bind coverage with carriers on behalf of GCPL, GCUK and/or GBAG; and

(c) confirm in writing to GCPL, GCUK and/or GBAG when cover under insurance policies had been bound and that no subjectivities or conditionalities remain.

Particulars

Letter from Julian Macey-Dare (Marsh) to GCUK dated 18 April 2016 (MAR.0001.0001.0003).

Letter from Julian Macey-Dare (Marsh) to Lex Greensill (GCUK) dated 3 March 2017 (MAR.0001.0001.0002).

Letter from Julian Macey-Dare (Marsh) to GCUK dated 15 June 2017 (MAR.0001.0001.0004).

108CC. By around December 2017 at the latest, Marsh knew that:

(a) GCPL, GCUK and/or GBAG were intending to endorse one or more loss payees to the policies of trade credit insurance that they were seeking to obtain;

(b) the loss payee in each case would be the purchaser of notes that were backed by the underlying debts that were to be insured debts under the policies (**Insured Notes**);

(c) the insurance being sought was for the benefit of, amongst others, the loss payees, who were to receive insurance payouts if there were defaults in respect of the insured debts; and

(d) one or more funds or entities associated with the investment bank, Credit Suisse, would be loss payees.

Particulars

Email from Lex Greensill to John Whelan (GCUK), copied to Ewan Berkemeier (Marsh Sydney) and others, dated 5 September 2017 (CMS.007.001.0016).

Email from Ewan Berkemeier (Marsh Sydney) to Scott Newland (BCC), dated 9 November 2017 (CMS.007.001.0450).

Email from John Whelan (GCUK) to Lex Greensill (GCUK) and Brereton (BCC), copied to Julian Macey-Dare (Marsh) and others, dated 13 December 2017 (CMS.007.001.0509).

Email from John Whelan (GCUK) to Brereton and Lex Greensill, copied to others, dated 13 December 2017 (CMS.007.001.0724).

Further particulars to be provided after further discovery and evidence.

108DD. By around December 2017, Marsh knew that GCPL, GCUK and/or GBAG would require Marsh to confirm to the relevant Credit Suisse funds that there was sufficient cover under a relevant trade credit insurance policy for the receivables backing each note that a Credit Suisse fund acquired.

Particulars

(i) Email from John Whelan (GCUK) to Edward Smith (Marsh) dated 6 October 2017 (MAR.0004.0001.0913).

(ii) Email from Edward Smith (Marsh) to Lex Greensill (GCUK), John Whelan (GCUK) and Brett Downes (GCUK), copied to Sophie Lettsome (GCUK) and Julian Macey-Dare (Marsh), dated 31 October 2017 (MAR.0003.0001.1565).

(iii) Email correspondence between Lex Greensill (GCUK), Julian Macey-Dare (Marsh), Edward Smith (Marsh) and Brett Downes (GCUK), dated 9 November 2017 (MAR.0003.0001.1585).

(iv) Email from Edward Smith (Marsh) to Julian Macey-Dare (Marsh) and John Whelan (GCUK), copied to Jason Austin (GCUK) and Brett Downes (GCUK), dated 13 December 2017 (MAR.0004.0001.1060).

(v) Email correspondence between Jason Austin (GCUK), Julian Macey-Dare (Marsh) and John Whelan (GCUK), copied to Edward Smith (Marsh) and others, dated between 13 December 2017 and 15 December 2017 (CMS.007.001.1514).

(vi) Email from John Whelan (GCUK) to Julian Macey-Dare (Marsh), copied to Edward Smith (Marsh) and others, 13 December 2017

(CMS.007.001.0796).

(vii) Email from John Whelan (GCUK) to Brereton and Lex Greensill, copied to Julian Macey-Dare (Marsh) and others, dated 14 December 2017 (BCC.0001.0005.0475).

(viii) Email from Sophie Dyke (GCUK) to Edward Smith (Marsh), copied to Brett Downes (GCUK) and David Keeling (GCUK), dated 8 February 2018 (MAR.0003.0001.2159) attaching the Limit Confirmation Tracker (MAR.0003.0001.2160).

(ix) Email from Sophie Dyke (GCUK) to Lukas Haas (Credit Suisse), copied to Michael Schmid (Credit Suisse) and others, dated 9 February 2018 (CSA.5000.0003.0571), attaching the Limit Confirmation Tracker (CSA.5000.0003.0572).

(x) Email correspondence between Edward Smith (Marsh) and Sophie Dyke (GCUK), dated 16 February 2018 (MAR.0003.0001.2209).

(xi) Email correspondence between Lukas Haas (Credit Suisse) and Edward Smith (Marsh), copied to Sophie Dyke (GCUK) and Ludwig Sels (GCUK), dated 7 March 2018 (MAR.0003.0001.2400).

(xii) Email from Edward Smith (Marsh) to Lukas Haas (Credit Suisse) and others, dated 26 June 2018 (MAR.0003.0001.4351).

(xiii) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 4, T190.18-21.

(xiv) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 5, T86.8-13; T190.25-191.3.

108EE. By around December 2017, Marsh knew, or alternatively ought to have known, that:

(a) the Insurer had issued a statement (the **To Whom It May Concern Letter**) on around 1 August 2017;

(b) the To Whom It May Concern Letter:

(i) was generic, in the sense that it was addressed “To Whom It May Concern”;

(ii) confirmed that BCC had authority to write the class of business, being trade credit insurance, for the Insurer;

(iii) did not refer to any limits to that authority; and

(iv) stated BCC was an authorised representative of IAG Agencies, but did not state BCC was an authorised representative of the Insurer;

(c) negotiations with BCC for the provision of trade credit insurance to GCPL, GCUK and/or GBAG had broken down in around October 2017 in circumstances where BCC had communicated various limitations on its authority to offer trade credit insurance including:

(i) a general quantum limit on authority, being around AUD 35 million, or alternatively around AUD 50 million;

(ii) limitations referable to the Customer’s credit rating;

(iii) that any quantum offered would need to take into account the exposures of BCC to the Customer under other trade credit insurance; and

(iv) that any departure from its standard wording would also require special acceptance by its insurer and/or reinsurer;

(d) the To Whom It May Concern Letter pre-dated events and communications from September 2017, which indicated that there were limitations (as pleaded in subparagraph (c) above) to BCC’s authority to generally bind the Insurer notwithstanding the terms of the To Whom It May Concern Letter;

(e) the wording proposed for the LOS Policy was bespoke, in a form materially different to trade credit insurance policies that are commonly used in the Australian market and/or materially different from the standard wording ordinarily used by BCC;

(f) the limit of liability proposed for the LOS Policy was substantial and materially higher than trade credit insurance policies that were commonly

used in the Australian market and/or substantially greater than the limits communicated in around October 2017; and

(g) BCC had not completed an Intermediary Questionnaire regarding BCC's authority to offer insurance on behalf of IAL or provided the underwriting agreement with IAL confirming the existence of BCC's underwriting authority, duration of agreement, risks covered and related limits (or any extract thereof).

Particulars

(ia) Email from Tushar Gupta (BCC) to Brad dePlater (Marsh) dated 10 August 2017 (MAR.0004.0001.0597) and attached To Whom It May Concern Letter dated 1 August 2017 (MAR.0004.0001.0600).

(i) Email from Ewan Berkemeier (Marsh Sydney) to Julian Macey-Dare (Marsh) dated 3 October 2017 (CMS.007.001.0142).

(ii) Email exchange between Ewan Berkemeier (Marsh Sydney) to Scott Newland (BCC) dated 3 and 4 October 2017 (CMS.007.001.0155).

(iii) Email from Scott Newland (BCC) to Ewan Berkemeier (Marsh Sydney) dated 5 October 2017 (CSA.0001.0002.1119).

(iv) Email exchange between Julian Macey-Dare (Marsh) to Scott Newland (BCC) dated 5 October 2017 (CMS.007.001.0264).

(v) Email from Toby Guy (BCC) to Ewan Berkemeier (Marsh Sydney) dated 10 October 2017 (CMS.007.001.0287).

(vi) Email exchange between Lex Greensill, Edward Smith (Marsh) and Julian Macey-Dare (Marsh) dated 10 and 11 October 2017 (CMS.007.001.0290).

(vii) Email exchange between Julian Macey-Dare (Marsh) and Ewan Berkemeier (Marsh Sydney) and others dated 14 and 15 December 2017 (CMS.007.001.1410 / CMS.007.001.1415).

(viii) Email from Ewan Berkemeier (Marsh Sydney) to Brereton (BCC) dated 15 December 2017 (CMS.007.001.1004) and Brereton's response (CMS.007.001.0009).

(ix) Emails from Brereton (BCC) to John Whelan (GCUK), Lex Greensill, Julian Macey-Dare (Marsh), Ewan Berkemeier (Marsh Sydney) and others dated 15 December 2017 (CMS.007.001.1533).

(x) Email from Ewan Berkemeier (Marsh Sydney) to Greg Brereton (BCC) dated 5 September 2017 and attached To Whom It May Concern Letter (MAR.0004.0001.0650; MAR.0004.0001.0656).

(xi) Email exchange between Julian Macey-Dare (Marsh), Ewan Berkemeier (Marsh Sydney), Lex Greensill and Brereton, dated 12 September 2017 (CMS.007.001.0093).

(xii) Email exchange between Brereton and Ewan Berkemeier (Marsh Sydney) dated 12 September 2017 (CSA.0001.0002.1039).

(xiii) Email exchange between Ewan Berkemeier (Marsh Sydney) and Brereton (BCC) dated 7 and 8 September 2017 (CSA.0001.0002.1132).

(xiv) Email exchange between Ewan Berkemeier (Marsh Sydney), Brereton and Lex Greensill dated 5 September 2017 (CMS.007.001.0016).

(xv) Email exchange between Julian Macey-Dare (Marsh), Ewan Berkemeier (Marsh Sydney), Brereton, Lex Greensill dated 12 and 14 September 2017 (CMS.007.001.0100).

(xvi) Email exchange between Julian Macey-Dare (Marsh), Ewan Berkemeier (Marsh Sydney), Brereton and Scott Newland (BCC), dated 15, 18, 19, 20 and 21 September 2017 (CMS.007.001.0120).

(xvii) Email exchange between Brereton and John Whelan (GCUK) dated 14 September 2017 (BCC.0001.0002.0134).

(xviii) Email from Julian Macey-Dare (Marsh) to John Whelan (GCUK) dated 21 September 2017 (CMS.007.001.0119).

(xix) Email from Julian Macey-Dare (Marsh) to Ewan Berkemeier (Marsh Sydney) and others dated 3 October 2017 (MAR.0003.0001.1310).

(xx) Email exchange between Ewan Berkemeier (Marsh Sydney) and

Scott Newland (BCC) dated 5 and 23 October 2017 (CSA.0001.0002.1230).

(xxi) Email exchange between Ewan Berkemeier (Marsh Sydney) and Scott Newland (BCC) dated 9 November 2017 (AGB.0002.0002.5291).

(xxii) Email exchange between Ewan Berkemeier (Marsh Sydney) and Scott Newland (BCC) dated 20 and 21 November 2017 (MAR.0003.0001.1638).

(xxiii) Credit Suisse Virtuoso repeats the particulars to the defence filed by the Insurer on 21 August 2024 at paragraph 29ZZ(g).

(xxiv) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 6, T69.14-70.17; T80.11-81.19; T125.8-126.8; T143.25-144.24; T208.8-20; T209.10-210.1; T211.5-19.

(xxv) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 7, T184.12-186.4; T188.11-21; T191.14-192.15; T194.13-17.

(xxvi) Email exchange between Ewan Berkemeier (Marsh Sydney), Lex Greensill (GCUK), Julian Macey-Dare (Marsh), Edward Smith (Marsh), Ilkka Tales and Matt Costello (both GCUK) dated 12 September 2017 (CMS.007.001.0093).

(xxvii) Email exchange between Ewan Berkemeier (Marsh Sydney) and Julian Macey-Dare (Marsh) dated 3 October 2017 (CMS.007.001.0142).

(xxviii) Email exchange between Ewan Berkemeier (Marsh Sydney) and Scott Newland (BCC) dated 4 October 2017 (CMS.007.001.0155).

(xxix) Email exchange between Ewan Berkemeier (Marsh Sydney) and Edward Smith (Marsh), copied to Julian Macey-Dare (Marsh), dated 9 and 10 October 2017 (MAR.0013.0001.0054).

(xxx) Email exchange between Greg Brereton (BCC) and Lex Greensill

(GCUK), copied to Edward Smith (Marsh Sydney) and others, dated 17 October 2017 (IAL.500.011.0513).

(xxxi) Email exchange between Edward Smith (Marsh), Julian Macey-Dare (Marsh) and Ewan Berkemeier (Marsh Sydney) dated 21 November 2017 (MAR.0003.0001.1636).

(xxxii) Email exchange between Ewan Berkemeier (Marsh Sydney), Julian Macey-Dare (Marsh), John Whelan (GCUK), Jason Austin (GCUK) and others dated 13 and 14 December 2017 (MAR.0004.0001.1166).

(xxxiii) Email exchange between John Whelan (GCUK), Jason Austin (GCUK), Julian Macey-Dare (Marsh), Edward Smith (Marsh) and Brett Downes (GCUK) dated 14 December 2017 (MAR.0004.0001.1166).

(xxxiv) Email from Brereton (BCC) to Ewan Berkemeier (Marsh Sydney) dated 14 December 2017 (MAR.0003.0001.1822) attaching the To Whom It May Concern Letter (MAR.0003.0001.1824).

(xxxv) Email exchange between Girshita Singh (Marsh Sydney) and Ewan Berkemeier (Marsh Sydney) dated 14 December 2017 (MAR.0004.0001.1093).

(xxxvi) Email exchange between Julian Macey-Dare (Marsh) and Ewan Berkemeier (Marsh Sydney) dated 14 December 2017 (MAR.0004.0001.1088).

(xxxvii) Email exchange between Ewan Berkemeier (Marsh Sydney), Chris McDermott (Marsh Sydney) and Eric Wojcik (Marsh Specialty) dated 14 December 2017 (MAR.0002.0001.0024).

(xxxviii) Email exchange between Ewan Berkemeier (Marsh Sydney), Brereton (BCC) and Scott Newland (BCC) dated 14 December 2017 (MAR.0002.0001.0035).

(xxxix) Email exchange between Julian Macey-Dare (Marsh) and Tim Smith (Marsh) dated 14 December 2017 (MAR.0004.0001.1086).

(xl) Email exchange between Greg Brereton (BCC), Julian Macey-Dare (Marsh), Ewan Berkemeier (Marsh Sydney), Edward Smith (Marsh), John Whelan, Lex Greensill, Brett Downes, Ilkka Tales and Matt Costello (all GCUK) dated 15 September 2017 (MAR.0003.0001.1171).

(xli) Marsh's knowledge is also to be inferred from the nature of the LOS Policy (CSA.5000.0001.0082; CSA.5000.0001.0083) and the endorsements to that policy.

108EEA. By around December 2017, Marsh knew, or alternatively ought to have known, that the only document or communication in its possession to which the Insurer was party purporting to confirm BCC's authority to bind the Insurer to policies and endorsements was the To Whom It May Concern Letter.

Particulars

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 6, T59.17-60.3; T60.21-61.10; T69.14-70.17; T80.11-81.19; T125.8-126.8; T143.25-144.24; T208.8-20; T209.10-210.1; T211.5-19.

Email from Tushar Gupta (BCC) to Brad dePlater (Marsh) dated 10 August 2017 (MAR.0004.0001.0597) and attached To Whom It May Concern Letter dated 1 August 2017 (MAR.0004.0001.0600).

Email exchange between Girshita Singh (Marsh Sydney) and Ewan Berkemeier (Marsh Sydney) dated 14 December 2017 (MAR.0004.0001.1093).

Email exchange between Julian Macey-Dare (Marsh) and Ewan Berkemeier (Marsh Sydney) dated 14 December 2017 (MAR.0004.0001.1088).

Email exchange between Ewan Berkemeier (Marsh Sydney), Julian Macey-Dare (Marsh), John Whelan (GCUK) and others dated 14 December 2017 (MAR.0004.0001.1166).

Email from Brereton (BCC) to Ewan Berkemeier (Marsh Sydney) dated 14 December 2017 (MAR.0003.0001.1822) attaching the To Whom It May

Concern Letter (MAR.0003.0001.1824).

Email exchange between Ewan Berkemeier (Marsh Sydney), Chris McDermott (Marsh Sydney) and Eric Wojcik (Marsh Specialty) dated 14 December 2017 (MAR.0002.0001.0024).

Email exchange between Ewan Berkemeier (Marsh Sydney), Greg Brereton (BCC) and Scott Newland (BCC) dated 14 December 2017 (MAR.0002.0001.0035).

Email exchange between Julian Macey-Dare (Marsh) and Tim Smith (Marsh) dated 14 December 2017 (MAR.0004.0001.1086).

Email from Edward Smith (Marsh) to Ewan Berkemeier (Marsh Sydney) dated 5 November 2020 (MAR.0006.0001.5317).

Email from Ewan Berkemeier (Marsh Sydney) to Edward Smith (Marsh) dated 5 November 2020 (MAR.0004.0004.6070), attaching the To Whom It May Concern Letter (MAR.0004.0004.6071).

Email from Ewan Berkemeier (Marsh Sydney) to Edward Smith (Marsh) and Julian Macey-Dare (Marsh), copied to Tim Smith (Marsh), dated 1 December 2020 (MAR.0003.0003.7404).

108EEB. From around December 2017, Marsh knew, or alternatively ought to have known that:

(a) Credit Suisse Virtuoso was relying upon the Limit Confirmation Letters and/or the Limit Confirmation Trackers (as described in paragraphs 108FF to 108HH below) to confirm that insurance was in place for each customer in sufficient amounts to provide coverage for the debts underpinning the NMC Notes; and

(b) the existence of insurance for each customer, and thereby the contents of the Limit Confirmation Letters and/or the Limit Confirmation Trackers, was relevant to Credit Suisse Virtuoso in deciding whether to advance funding in consideration for the NMC Notes.

Particulars

(i) Marsh's knowledge is to be inferred from the matters pleaded in

paragraph 108CC above and the nature of the Limit Confirmation Letters and/or Limitation Confirmation Trackers, and further or alternatively, the documents particularised below.

(ii) Email from John Whelan (GCUK) to Brereton and Lex Greensill, copied to Julian Macey-Dare (Marsh) and others, dated 14 December 2017 (BCC.0001.0005.0475).

(iii) Email exchange between Ewan Berkemeier (Marsh Sydney), Julian Macey-Dare (Marsh), John Whelan (GCUK), Jason Austin (GCUK) and others dated 13 and 14 December 2017 (MAR.0004.0001.1166).

(iv) Email from Julian Macey-Dare (Marsh) to Sophie Dyke (GCUK), copied to John Whelan (GCUK) and others, dated 18 January 2018 (AGB.0002.0003.3887), attaching the Limit Confirmation Letter (AGB.0002.0003.3890).

(v) Email from Sophie Dyke (GCUK) to Edward Smith (Marsh) dated 16 February 2018 (CSA.5000.0001.0092).

(vi) Email from Sophie Dyke (GCUK) to Edward Smith (Marsh) and Julian Macey-Dare (Marsh), with Brett Downes (GCUK) copied, dated 14 March 2018 (AGB.0002.0003.3997).

(vii) Email from Edward Smith (Marsh) to Julian Macey-Dare (Marsh) and John Whelan (GCUK), copied to Brett Downes (GCUK), dated 22 May 2018 (MAR.0014.0001.0926).

(viii) Email from Julian Macey-Dare (Marsh) to John Whelan (GCUK) and Brett Downes (GCUK), with Lex Greensill and others copied, dated 6 December 2018 (MAR.0004.0001.7176).

(ix) Email from Andreas Asche (CSAM) to Angus Ward (Marsh) copying Edward Smith (Marsh) and others, dated 20 June 2019 (MAR.0003.0002.4338).

(x) Email dated 28 June 2019 from Andreas Asche (Credit Suisse Virtuoso) to Angus Ward (Marsh) and Edward Smith (Marsh) (MAR.0003.0002.4830).

(xi) Email exchange between Andreas Asche (Credit Suisse), Angus Ward (Marsh) and Edward Smith (Marsh), copied to Sophie Dyke (GCUK) and others, dated 1 July 2019 (CSA.5000.0002.2785).

(xii) Email from Angus Ward (Marsh) to Lukas Haas (Credit Suisse) and Ruzica Stowe (Credit Suisse), copied to Nina Egelhof (Credit Suisse) and others, dated 3 July 2019 (CSA.5000.0001.0679), attaching the Limit Confirmation Tracker (CSA.5000.0001.0680) and the draft Limit Confirmation Letter (CSA.5000.0001.0681).

(xiii) Email from Andreas Asche (Credit Suisse) to Angus Ward (Marsh) and Edward Smith (Marsh), copied to Sophie Dyke (GCUK) and others, dated 10 July 2019 (MAR.0003.0002.5179).

(xiv) Email from Edward Smith (Marsh) to Mark Pearce (GAM) and others, copied to Craig Pinnington (GCUK) and others, dated 28 February 2020 (MAR.0003.0002.9175).

(xv) Email from Julian Macey-Dare (Marsh) to Edward Smith (Marsh) and Ewan Berkemeier (Marsh Sydney) dated 14 August 2020 (MAR.0003.0003.5659).

(xvi) File note authored by Julian Macey-Dare (Marsh) dated 14 August 2020 (MAR.0004.0004.2651).

(xvii) Letter from Julian Macey-Dare (Marsh) to Lorna Croft (GCUK), dated 3 November 2020 (MAR.0003.0003.7092).

(xviii) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 4, T178.13-18; T182.8-13; T190.18-21.

(xix) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 5, T86.8-13; T190.25-191.3.

(xx) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 6, T185.17-186.9; T187.3-19; T188.13-189.12; T198.12-22.

(xxi) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 7, T165.14-166.2; T167.1-168.16; T170.6-18; T171.8-22; T172.5-9.

108EEC From around November 2018, Marsh knew there was:

(a) a general quantum limit on BCC's authority, being circa AUD 50 million per buyer limit; and

(b) a possibility of BCC's quantum limit on authority being extended by an additional AUD 25 million, subject to special acceptance from its insurer and/or reinsurer.

Particulars

Email from Brereton (BCC) to Edward Smith (Marsh) and others dated 23 November 2018 (BCC.0001.0002.2083).

108EED As at the date of placing each of the 2018 Policy TS-03088 and Policy TS-03088, Marsh also knew, or alternatively ought to have known, that:

(a) the wording proposed for each of the policies associated with GCUK was bespoke and in a form materially different to trade credit insurance policies that are commonly used in the Australian market and/or materially different from the standard wording ordinarily used by BCC;

(b) the limits of liability and, to the extent included, the discretionary credit limits, proposed for the policies associated with GCUK were substantial and materially higher than trade credit insurance policies that were commonly used in the Australian market, and/or substantially greater than the limits communicated in around October 2017; and

(c) BCC had not completed an Intermediary Questionnaire regarding BCC's authority to offer insurance on behalf of IAL or provided an extract of the underwriting agreement with IAL confirming the existence of BCC's underwriting authority, duration of agreement, risks covered and related limits (or any extract thereof).

Particulars

Marsh's knowledge is to be inferred from the nature of the 2018 Policy TS-03088 and Policy TS-03088 and the endorsements to those policies.

N.2 Misleading or deceptive conduct: limit confirmation trackers and letters

108FF. Marsh provided to Credit Suisse Virtuoso (as the case may be) an Excel spreadsheet called a Limit Confirmation Tracker (**Limit Confirmation Tracker**):

(a) between about February 2018 and February 2021, each time insurance cover was added for a new obligor or there was a change in insurance limits or limit allocations for any existing obligor; and

(b) between about July 2019 and February 2021, on or around the last day of each month.

Particulars

The Limit Confirmation Trackers, and the emails by which those documents were conveyed to Credit Suisse Virtuoso in the period February 2018 to February 2021, examples of which are: CSA.0001.0006.2931; CSA.0001.0006.2933; MMC_GCUK11_00000032; MMC_GCUK11_00000033; CSA.0001.0006.3750; CSA.0001.0006.3752; MMC_GCUK11_00000021; MMC_GCUK11_00000022; MMC_GCUK11_00001174; MMC_GCUK11_00001175; MMC_GCUK11_00001176; MMC_GCUK11_00001890; MMC_GCUK11_00001891; MMC_GCUK11_00001893.

108GG. Each Limit Confirmation Tracker recorded (amongst other information) for each listed customer of GCUK the total amount of insurance cover provided in respect of:

(a) Insured Notes that Credit Suisse Virtuoso had already acquired that were backed by receivables of that customer; and

(b) Insured Notes that were or would be offered for acquisition by Credit Suisse Virtuoso and would be backed by receivables of that customer,

and identified the insurance policies under which that cover had been provided.

Particulars

Typically, each Limit Confirmation Tracker listed the names of customers in one column on the left; insurance policy numbers were listed horizontally in a top row; and the total amount of insurance cover provided in respect of any individual customer was listed in a final column to the right.

108HH. Each updated Limit Confirmation Tracker was provided to Credit Suisse Virtuoso under cover of:

(a) a Loss Payee Limit Confirmation Letter (**Limit Confirmation Letter**); and/or

(b) an email from a Marsh employee.

Particulars

Credit Suisse Virtuoso repeats the particulars to paragraph 108FF above.

108II. Each Limit Confirmation Letter:

(a) was on Marsh letterhead;

(b) stated either:~~,~~

(i) *"We are writing to confirm the following insurance limits whereby the individual insurance coverage for each Obligor is outlined in the accompanying Excel file"*; ~~and~~ or

(ii) *"Assuming you will acquire the entire tranche of notes issued pursuant to the pricing supplement, we hereby confirm that in relation to each Relevant Claim backing such tranche of notes (and taking into account all current outstanding Relevant Claims payable by the same Customer(s), backing all other outstanding notes acquired and currently held by you or the Insured under the Hoffman Programme), there is sufficient availability of the Customer Limit to ensure that each such Relevant Claim is covered under the Policy in accordance with its terms"*; and

(c) recorded in a table a list of customers and the total amount of insurance

cover provided in respect of Insured Notes that Credit Suisse Virtuoso had already acquired and Insured Notes that would be offered for acquisition by Credit Suisse Virtuoso, consistently with the accompanying Limit Confirmation Tracker.

108IIA. Marsh stated to Credit Suisse Virtuoso:

(a) on 12 April 2018, that amounts to be funded and described in a letter and spreadsheet supplied by Marsh were within the approved limits written by the Insurer;

Particulars

Email dated 12 April 2018 from Edward Smith (Marsh) to Lukas Haas (Credit Suisse Virtuoso) and others (CSA.5000.0001.2897) attaching letter dated 12 April 2018 from Edward Smith on behalf of Marsh Ltd to Credit Suisse Virtuoso (CSA.5000.0001.2898) and Excel Spreadsheet dated 12 April 2018 and titled 'Account Debtor Rolling Values v16.xlsx' (CSA.5000.0001.2899).

(b) on 18 June 2018, that Marsh could confirm the attached Limit Confirmation Tracker was a correct reflection of Credit Suisse Virtuoso's position as at that date;

Particulars

Email dated 18 June 2018 from Edward Smith (Marsh) to Lukas Haas (Credit Suisse Virtuoso) and others (CSA.5000.0001.0137).

(c) on 17 May 2019, following the removal of certain customers from a Limit Confirmation Tracker, that Marsh could confirm that assets that had already been purchased are still covered under the previous limits;

Particulars

Email dated 17 May 2019 from Angus Ward (Marsh) to Lukas Haas (Credit Suisse Virtuoso) and others (MMC_GCUK11_00000741).

(d) on 1 October 2019, in the course of providing information typically contained in a Limit Confirmation Tracker, that insurance cover was valid now for the identified customers; and

Particulars

Email dated 1 October 2019 from Edward Smith (Marsh) to Lukas Haas (Credit Suisse Virtuoso) (MMC_GCUK14_00000712).

(e) on 10 February 2020, following a query regarding a Limit Confirmation Tracker, that Credit Suisse Virtuoso was fully insured for all notes it was currently holding.

Particulars

Email dated 10 February 2020 from Edward Smith (Marsh) to Lukas Haas (Credit Suisse Virtuoso) (CSA.5000.0001.1433).

108IIB. On 28 June 2019 Credit Suisse Virtuoso:

(a) informed Marsh that it was working on the assumption that the maximum insurance coverage amounts of the obligors which Marsh provided in the Limit Confirmation Trackers were true, fair and reviewed by Marsh; and

(b) requested that Marsh also provide Limit Confirmation Trackers formalised in a signed letter on a monthly basis.

Particulars

Email dated 28 June 2019 from Andreas Asche (Credit Suisse Virtuoso) to Angus Ward (Marsh) and Edward Smith (Marsh) (MAR.0003.0002.4830).

108IIC. In response to Credit Suisse Virtuoso's request on 28 June 2019, Marsh:

(a) provided the Limit Confirmation Trackers referred to in paragraph 108FF(b) above; and

(b) did not make any express statement to Credit Suisse regarding its working assumption pleaded in paragraph 108IIB(a) above.

108IID. At no point prior to February 2021, when Marsh sent the last Limit Confirmation Tracker and Limit Confirmation Letter to Credit Suisse Virtuoso, did Marsh inform Credit Suisse Virtuoso that:

(a) BCC was not, or might not have been, authorised to agree the terms of and issue, on behalf of the Insurer: (i) Policy TS-03088; (ii) the

endorsements thereto;

(b) Brereton was not, or might not have been, authorised to agree the terms of and issue, on behalf of the Insurer: (i) Policy TS-03088; (ii) the endorsements thereto;

(c) Policy TS-03088 and the endorsements thereto were not, or may not be, valid, enforceable and binding on the Insurer; or

(d) the contents of the Limit Confirmation Letters and Limit Confirmation Trackers were not true, fair and reviewed by Marsh.

108JJ. In the circumstances pleaded in paragraphs 108BB to 108IID, by sending each of:

(a) the Limit Confirmation Trackers; and, or alternatively,

(b) the Limit Confirmation Letters,

Marsh represented that at the time of sending the Limit Confirmation Trackers or the Limit Confirmation Letters as the case may be:

(c) BCC and Brereton were authorised to agree the terms of, and enter into Policy TS-03088 on behalf of the Insurer;

(d) BCC and Brereton were authorised to agree the terms of, and issue, the endorsements to Policy TS-03088 on behalf of the Insurer;

(e) Policy TS-03088 and the endorsements thereto were valid, enforceable and binding on the Insurer; and, or alternatively,

Particulars

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 4, T179.21-23.

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 6, T185.17-186.9; T188.13-20; T198.12-22.

Transcript of White Oak Commercial Finance Europe (Non-Levered)

Limited v Marsh Limited (Claim No. CL-2023-000294), Day 7, T152.1-13; T162.1-7; T164.1-9; T167.1-168.16.

(f) Marsh:

(i) had reasonable grounds for believing each of the matters in (c) to (e); and

(ii) was not aware of any matters that suggested each of (c) to (e) was not correct,

(each of (i) to (ii) is a **Marsh Reasonable Grounds Representation**),

(each of (c) to (f) is a **Marsh Authority Representation**).

108KK. Further and in the alternative, in the circumstances pleaded in paragraphs 108BB to 108IID, Marsh represented that at the time of sending the Limit Confirmation Trackers or the Limit Confirmation Letters as the case may be:

(a) Credit Suisse Virtuoso were entitled to receive the benefit of the cover under Policy TS-03088;

Particulars

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 4, T179.21-23.

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 6, T185.17-186.9; T188.13-20; T198.12-22.

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 7, T152.1-13; T162.1-7; T164.1-9.

(b) the NMC Notes held by Credit Suisse Virtuoso related to debts falling within the meaning of the term “Eligible Debt” as defined in Policy TS-03088;

(c) each of the NMC Notes held by Credit Suisse Virtuoso fell within the meaning of the term “Asset” as defined in Policy TS-03088;

(d) Policy TS-03088 would provide cover that was adequate and sufficient to cover the amounts advanced and to be advanced by Credit Suisse Virtuoso in consideration for the NMC Notes; and, or alternatively,

Particulars

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 4, T179.21-23.

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 6, T185.17-186.9; T188.13-20; T198.12-22.

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 7, T152.1-13; T162.1-7; T164.1-9.

(e) each Limit Confirmation Tracker and Limit Confirmation Letter (as the case may be) accurately reflected the available Customer Limit (as defined in Policy TS-03088) for the applicable Customer under the applicable policy, as at the date it was sent (**Marsh Limits Representation**),

Particulars

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 7, T171.8-22; T172.5-9.

(each of (a) to (e) is a **Marsh Policy Response Representation**).

108LL. The Marsh Authority Representations and the Marsh Policy Response Representations were made in trade and commerce.

108LLA. The Marsh Authority Representations and the Marsh Policy Response Representations were continuing representations that were not withdrawn or corrected at any time.

108MM. By reason of the matters alleged in paragraphs 108CC to 108LLA above, by making one or both of the Marsh Reasonable Grounds Representations, Marsh

engaged in conduct:

(a) that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL; and, or alternatively,

(b) in relation to financial services that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 12DA of the ASIC Act.

108NN. But for one or both of the Marsh Reasonable Grounds Representations, Credit Suisse Virtuoso would not have purchased the NMC Notes ~~referred to at paragraph 33A above~~.

108OO. In the premises, Credit Suisse Virtuoso has~~ve~~ suffered loss or damage by the contraventions of Marsh pleaded at paragraph 108MM above.

Particulars

Credit Suisse Virtuoso's loss being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes, plus Recovery Costs in respect of those NMC Notes, less any amount received by Credit Suisse Virtuoso in respect of those NMC Notes, plus interest.

108PP. Further and in the alternative, ~~if, as is alleged by certain of the Respondents in their defences in these proceedings~~ given:

(a) BCC and/or Brereton was not authorised to agree the terms of, or enter into, Policy TS-03088 on behalf of the Insurer;

(b) BCC and/or Brereton was not authorised to agree the terms of, or issue, the endorsements to Policy TS-03088 on behalf of the Insurer;

(c) Policy TS-03088 and the endorsements thereto are not binding on the Insurer;

(d) Credit Suisse Virtuoso is not entitled to receive the benefit of the cover under Policy TS-03088;

then, by making the Marsh Authority Representations, Marsh engaged in conduct:

(e) that was misleading or deceptive, or likely to mislead or deceive, in

contravention of s 18 of the ACL; and, or alternatively,

(f) in relation to financial services that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 12DA of the ASIC Act.

108PPA Further and in the alternative, if, as is alleged by certain of the Respondents in their defences in these proceedings:

(a) some or all of the debts backing the NMC Notes do not fall within the meaning of the term "Eligible Debt" as defined in Policy TS-03088;

(b) some or all of the NMC Notes acquired by Credit Suisse Virtuoso are not an "Asset" within the meaning of Policy TS-03088;

(c) Policy TS-03088 does not provide Credit Suisse Virtuoso with cover that is sufficient to cover the amounts advanced by Credit Suisse Virtuoso in consideration for the NMC Notes; and, or alternatively,

(d) if, and to the extent that the "Loss" exceeds the "Applicable Limit of Liability" or the "Maximum Limit of Liability" in respect of relevant "Customers" within the meaning of Policy TS-03088, there is no coverage,

then, by making the ~~Marsh Authority Representations and the~~ Marsh Policy Response Representations, Marsh engaged in conduct:

(e) that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL; and, or alternatively,

(f) in relation to financial services that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 12DA of the ASIC Act.

108QQ. But for the Marsh Authority Representations and the Marsh Policy Response Representations (or one or more of them), Credit Suisse Virtuoso would not have purchased the NMC Notes ~~referred to at paragraph 33A above~~.

108RR. In the premises, Credit Suisse Virtuoso has suffered loss or damage by the contraventions of Marsh pleaded at paragraph 108PP and/or 108PPA above.

Particulars

Credit Suisse Virtuoso's loss being the total amount paid by Credit Suisse

Virtuoso to acquire the NMC Notes, plus Recovery Costs in respect of those NMC Notes, less any amount received by Credit Suisse Virtuoso in respect of those NMC Notes, plus interest.

N.3 Governing law for negligence claims

108SS. The claims in negligence and negligent misstatement pleaded at paragraphs 108TT to 108YY and 108ZZ to 108GGG below are governed by the law of England and Wales, and are claims that are not subject to any Australian statutory proportionate liability regime.

N.4 Negligent misstatement

108TT. Marsh knew that Credit Suisse Virtuoso would rely on the Marsh Authority Representations and the Marsh Limits Representation (or one or more of them) when advancing funding in consideration for NMC Notes.

Particulars

This can be inferred from the matters set out in paragraphs 108BB to 108IID above.

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 5, T136.5-19.

Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 6, T187.3-19; T188.21-189.12.

108UU. By undertaking to send the Limit Confirmation Trackers and/or Limit Confirmation Letters, Marsh assumed a responsibility to exercise reasonable care to ensure that the sending of those documents did not convey representations that were inaccurate.

108VV. In the premises of paragraphs 108TT to 108UU above, Marsh owed Credit Suisse Virtuoso a duty to exercise reasonable skill and care to ensure that the sending of Limit Confirmation Trackers and/or Limit Confirmation Letters did not convey representations that were inaccurate.

Particulars

The circumstances that support the existence of a duty include:

(i) the knowledge of Marsh of the matters pleaded at paragraphs 108BB to 108IID and 108TT above;

(ii) the assumption of responsibility pleaded in paragraph 108UU above;

(iii) it was reasonably foreseeable that, as loss payee under Policy TS-03088, Credit Suisse Virtuoso would rely on the Marsh Authority Representations and the Marsh Limits Representation in advancing funding and acquiring Assets as defined in Policy TS-03088, and that Credit Suisse Virtuoso would suffer loss if Marsh failed to exercise reasonable care when sending the Limit Confirmation Trackers and the Limit Confirmation Letters;

(iv) it was reasonable for an entity in the position of Credit Suisse Virtuoso to rely on the Marsh Authority Representations and the Marsh Limits Representation;

(v) the imposition of a duty of care upon Marsh to Credit Suisse Virtuoso is analogous to well established categories of relationship in which a duty of care is owed;

(vi) Marsh and Credit Suisse Virtuoso were in a relationship of proximity; and

(vii) it is just and reasonable to impose a liability on Marsh for loss suffered by each of Credit Suisse Virtuoso resulting from its reliance on the Marsh Authority Representations and the Marsh Limits Representation.

108WW. In the premises of paragraphs 108CC to 108EED above, Marsh failed to exercise reasonable skill and care when making the Marsh Authority Representations.

Particulars

A reasonable entity in Marsh's position would not have sent the Limit Confirmation Trackers and Limit Confirmation Letters in circumstances

where Marsh:

(i) had the knowledge pleaded at paragraphs 108CC to 108EED; and

(ii) had not taken the steps pleaded in paragraph 108CCC(a) to (h) below.

108WWA. If~~, which is denied,~~ the circumstances in paragraph 108PPA(d)~~(h)~~ are established by any respondent, Marsh failed to exercise reasonable skill and care when making the Marsh Limits Representation.

Particulars

A reasonable entity in Marsh's position would not have sent the Limit Confirmation Trackers and Limit Confirmation Letters in circumstances where Marsh:

(i) had the knowledge pleaded at paragraphs 108CC to 108EED; and

(ii) had not taken the steps pleaded in paragraph 108CCC(i) below.

Loss and damage

108XX. If Marsh had not made the Marsh Authority Representations and the Marsh Limits Representation (or one or more of them), Credit Suisse Virtuoso would not have purchased the NMC Notes.

108YY. In the premises, Credit Suisse Virtuoso has suffered loss or damage:

(a) as the result of the breach of duty by Marsh pleaded at paragraph 108WW above; and/or

(b) if~~, which is denied,~~ the circumstances in paragraph 108PPA(d)~~(h)~~ are established by any respondent, as the result of the breach of duty by Marsh pleaded at paragraph 108WWA above.

Particulars

Credit Suisse Virtuoso's loss being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes, plus Recovery Costs in respect of those NMC Notes, less any amount received by Credit Suisse Virtuoso in respect of those NMC Notes, plus interest.

N.5 Negligence

Duty of Care

108ZZ. At all material times, Marsh owed to Credit Suisse Virtuoso a duty to use reasonable skill and care in obtaining a policy of trade credit insurance for the intended commercial transaction described in paragraph 108CC above (**Marsh Duty to Obtain Cover**).

Particulars

The circumstances that support the existence of a duty include:

(i) the knowledge of Marsh of the matters pleaded at paragraphs 108BB to 108EED above; and

(ii) it was reasonably foreseeable that, as a loss payee under Policy TS-03088, Credit Suisse Virtuoso would rely on Policy TS-03088 and its endorsements, and would suffer loss if Marsh failed to exercise reasonable care in obtaining a policy appropriate and adapted to the intended commercial transaction;

(iii) the terms of Marsh's retainer with GCUK, GCPL and/or GBAG (CSA.0001.0051.0002), pursuant to which Marsh was (among other things) contractually obliged to provide such a policy;

(iv) the imposition of a duty of care upon Marsh to Credit Suisse Virtuoso is analogous to well established categories of relationship in which a duty of care is owed;

(v) Marsh and Credit Suisse Virtuoso were in a relationship of proximity; and

(vi) it is fair, just and reasonable to impose a liability on Marsh for loss suffered by Credit Suisse Virtuoso resulting from Marsh’s failure to exercise reasonable care to obtain an appropriate policy.

108AAA. On around 14 December 2017, Marsh assumed a responsibility to loss payees in the position of Credit Suisse Virtuoso to confirm valid, binding and enforceable insurance was in place with respect to the NMC Notes and/or ascertain whether BCC and Brereton were authorised by the Insurer to enter

into insurance that provided for sufficient indemnity limits to cover losses of the loss payees.

Particulars

The assumption of responsibility is inferred from:

(i) the matters alleged at paragraphs 108BB to 108EEB above;

(ii) email exchange between Julian Macey-Dare (Marsh) and Ewan Berkemeier (Marsh Sydney) and others dated 14 and 15 December 2017 (CMS.007.001.1410 / CMS.007.001.1415);

(iii) email from Ewan Berkemeier (Marsh Sydney) to Brereton dated 15 December 2017 (CMS.007.001.1004) and Brereton's response (CMS.007.001.0009);

(iv) emails from Brereton to John Whelan (GCUK), Lex Greensill, Julian Macey-Dare (Marsh), Ewan Berkemeier (Marsh Sydney) and others dated 15 December 2017 (CMS.007.001.1533);

(v) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 4, T182.8-13; T190.18-21;

(vi) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 5, T86.8-13; T190.25-191.3; and

(vii) Transcript of White Oak Commercial Finance Europe (Non-Levered) Limited v Marsh Limited (Claim No. CL-2023-000294), Day 6, T185.17-186.9; T187.3-19; T188.13-189.12; T198.12-22.

Further particulars may be provided after further discovery and evidence.

108BBB. Further, at all material times, Marsh owed Credit Suisse Virtuoso a duty to exercise reasonable care in:

(a) its dealings with Credit Suisse Virtuoso, including in respect of the accuracy of the Limit Confirmation Letters and Limit Confirmation Trackers; and

(b) confirming valid, binding and enforceable insurance was in place with respect to the NMC Notes and/or confirming that BCC and Brereton were authorised by the Insurer to enter into insurance that provided for sufficient indemnity limits to cover losses of loss payees in respect of Insured Notes, (**Marsh Duty to Confirm Authority Limits**).

Particulars

The salient features that support the existence of a duty include:

(i) the knowledge of Marsh of the matters pleaded at paragraphs 108BB to 108EED above;

(ii) the assumption of responsibility pleaded in paragraph 108AAA above;

(iii) it was reasonably foreseeable that, as a loss payee under Policy TS-03088, Credit Suisse Virtuoso would rely on Policy TS-03088 and its endorsements, and the manner in which BCC and/or Brereton executed those documents, in advancing funding and acquiring Assets as defined in Policy TS-03088;

(iv) it was reasonable for an entity in the position of Credit Suisse Virtuoso to proceed on the basis that Policy TS-03088 and its endorsements were not invalid or unenforceable by reason that they were executed in excess of authority;

(v) the terms and scope of BCC's and/or Brereton's authority or delegations from the Insurer were not publicly available and, on their terms, were confidential; and

(vi) it was within the control of Marsh to require further and better evidence of BCC's and Brereton's authority to bind the Insurer to Policy TS-03088;

(vii) the imposition of a duty of care upon Marsh to Credit Suisse Virtuoso in such circumstances is analogous to well established categories of relationship in which a duty of care is owed;

(viii) Marsh and Credit Suisse Virtuoso were in a relationship of

proximity; and

(ix) it is fair, just and reasonable to impose a liability on Marsh for loss suffered by Credit Suisse Virtuoso resulting from Marsh's failure to exercise reasonable care in respect of the matters alleged.

Further particulars may be provided after further discovery and evidence.

Precautions

108CCC. A reasonable person in the position of Marsh would have taken the following precautions to satisfy the Marsh Duty to Obtain Cover and/or the Marsh Duty to Confirm Authority Limits prior to sending any Limit Confirmation Trackers and Limit Confirmation Letters:

(aa) when onboarding BCC prior to the inception of any policy:

(i) obtaining a complete copy of:

(A) the agreement between BCC and the Insurer regarding agency, to ascertain the existence, duration of agreement and related limits on BCC's authority to bind the Insurer; and/or

(B) other documents referred to in that agreement relevant to the scope of BCC's authority, including any underwriting manual and guidelines referred to;

(iia) in the event that BCC did not provide the documents described in (i), contacting the Insurer to obtain that documentation;

(ii) not accepting the To Whom It May Concern Letter as sufficient evidence of BCC's and Brereton's authority to bind the Insurer;

(iii) performing searches of the Australian Securities and Investments Commission register to confirm BCC was an authorised representative of the Insurer and, if it was not, to investigate why that was so;

(iv) reviewing the documentation identified in sub-paragraph (i) above and requesting clarification from BCC regarding any anomalies in those documents;

(v) ensuring that a senior staff member who would not be involved in the placing of any risk under any policy reviewed the documentation referenced in sub-paragraph (i) above;

(vi) seeking from the Insurer direct written confirmation of BCC and Brereton's authority to bind the Insurer; and/or

(vii) establishing systems or processes to:

(A) review on an annual basis the ongoing authority of BCC and Brereton to bind the Insurer; and

(B) maintain a list of acceptable security identifying whether BCC and Brereton were approved by Marsh to underwrite insurance on behalf of the Insurer;

(ab) prior to the inception of 2018 Policy TS-03088 and/or Policy TS-03088:

(i) having taken the precautions described in sub-paragraph (aa) above, ensuring that BCC was still included on Marsh's list of acceptable security;

(ii) reviewing both 2018 Policy TS-03088 and Policy TS-03088 against the documents described in sub-paragraph (aa)(i) above to confirm that BCC had the authority to enter into 2018 Policy TS-03088 and Policy TS-03088 on behalf of the Insurer;

(iii) seeking from the Insurer direct written confirmation of BCC and Brereton's authority to bind the Insurer to an insurance policy that provided for sufficient indemnity limits to cover losses of the loss payees in the event the review described in sub-paragraph (ii) above raised any anomalies;

(ac) prior to issuing endorsements or amending the existing policies, reviewing each endorsement for any anomalies and confirming with the Insurer that BCC had authority to issue each endorsement;

(ad) prior to sending each Limit Confirmation Tracker and Limit Confirmation Letter, ensuring, or satisfying itself, that the total amount of insurance cover available in respect of each Customer was accurately reflected in

each Limit Confirmation Letter and Limit Confirmation Tracker, having regard to the terms of Policy TS-03088;

(ae) throughout the period in which Marsh was sending Limit Confirmation Trackers and Limit Confirmation Letters:

(i) reviewing accumulating GCUK exposures on an ongoing basis;

(ii) notifying their client of the significant concentration of risk through the risk acceptances of BCC and Brereton and potential implications for insurance recovery;

(iii) investigating the authority of BCC and Brereton to write the monetary limits that Brereton was agreeing to write, having regard to:

(A) the significant disparity between the limits being agreed to by BCC and the previous statement of limitation by BCC on its general authority to write trade credit insurance made in about October 2017;

(B) the objectively high customer and aggregate limits of cover being agreed to by Brereton; and

(C) the frequency of agreement of Brereton to high monetary limits, both on a customer and aggregate basis;

(iv) immediately seeking written confirmation from the Insurer of BCC and Brereton's authority, in particular, limits on authority to write risk;

(v) undertaking an annual review of BCC's authority to issue the non-standard policy wordings and endorsements, including requiring completion of Marsh's Intermediary Questionnaire annually;

(vi) cross-referencing the endorsement, limit amount and indemnity against the registered limit in the portal maintained by BCC;

(vii) maintaining a record of all bound policies and limits, inception dates and expiry dates of those limits bound by BCC;

(viii) notifying their client of the terms and conditions of the discretionary credit limits set out in the policy and the fact that discretionary credit limits are contingent upon compliance with the underwriting justification criteria and all other policy terms and conditions; and

(ix) notifying the loss payees of any risk that Marsh was aware of that the insurance in place with respect to the Notes would not respond to cover losses of the loss payees in respect of Insured Notes;

(af) at or around 9 April 2019, when TMMA acquired 100% of the shareholding in Bond (who owned 99.9% of the shareholding in BCC) and 0.01% of the shareholding in BCC:

(i) obtaining a complete copy of:

(A) the agreement between BCC and TMMA regarding agency, to ascertain the existence, duration of agreement and related limits on BCC's authority to bind TMMA; and/or

(B) other documents referred to in that agreement relevant to the scope of BCC's authority, including any underwriting manual and guidelines referred to;

(ii) reviewing the documentation identified in sub-paragraph (i) above and requesting clarification from BCC regarding any anomalies in those documents; and

(iii) ensuring that a senior staff member who would not be involved in the placing of any risk under any policy reviewed the documentation referenced in sub-paragraph (i) above; and

(ag) not proceed to place the insurances with BCC without obtaining written confirmation from the Insurer that BCC and Brereton had authority to issue insurance on the proposed wording(s) at the proposed limits in respect of the subject matter of the proposed insurance.

(a) [NOT USED]

(b) [NOT USED]

(c) [NOT USED]

(d) [NOT USED]

(e) [NOT USED]

(f) [NOT USED]

(g) [NOT USED]

(h) [NOT USED]

(i) [NOT USED]

108DDD. Further, or in the alternative, in circumstances where:

(a) Marsh had the knowledge pleaded at 108CC to 108EED above;

(b) Marsh had assumed the responsibility pleaded in paragraph 108AAA above and the responsibility pleaded in paragraph 108UU; and

(c) Marsh knew it had not taken the precautions pleaded in paragraph 108CCC,

a reasonable person in the position of Marsh would not have sent each of the Limit Confirmation Trackers and the Limit Confirmation Letters without first having sought from the Insurer direct written confirmation of BCC and Brereton's authority to bind the Insurer to an insurance policy that provided for sufficient indemnity limits to cover at least the limits set out in the relevant Limit Confirmation Tracker and/or Limit Confirmation Letter.

108EEE. In failing to take the precautions pleaded at paragraph 108CCC above, and, or alternatively, the precautions pleaded at paragraph 108DDD, Marsh breached the Marsh Duty to Obtain Cover and, or alternatively, the Marsh Duty to Confirm Authority Limits.

Loss and damage

108FFF. ~~If, which is denied,~~ Given BCC and~~/or~~ Brereton did not have actual authority to enter into insurance that provided for sufficient indemnity limits to cover losses of the loss payees, then but for Marsh's breach pleaded at paragraph 108EEE, Policy TS-03088 would not have been concluded and/or in any event, Credit Suisse Virtuoso would not have purchased the NMC Notes~~ referred to at paragraphs 33 to 33A above~~.

108FFFA. If~~, which is denied,~~ the circumstances in paragraph 108PPA(d)~~(h)~~ are established by any respondent, then but for Marsh's breach pleaded at paragraph 108EEE, Policy TS-03088 would not have been concluded and/or in any event, Credit Suisse Virtuoso would not have purchased the NMC Notes.

108GGG. In the premises, Credit Suisse Virtuoso ~~have~~ has suffered loss or damage as the result of the breach of duty by Marsh pleaded at paragraph 108EEE.

Particulars

Credit Suisse Virtuoso's loss being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes, plus Recovery Costs in respect of those NMC Notes, less any amount received by Credit Suisse Virtuoso in respect of those NMC Notes, plus interest.

N.6 [NOT USED]

108HHH. [NOT USED]

108III. [NOT USED]

108JJJ. [NOT USED]

108KKK. [NOT USED]

108LLL. [NOT USED]

108MMM. [NOT USED]

108NNN. [NOT USED]

108OOO. [NOT USED]

108PPP. [NOT USED]

108QQQ. [NOT USED]

108RRR. [NOT USED]

108SSS. [NOT USED]

N.7 [NOT USED]

108TTT. [NOT USED]

108UUU. [NOT USED]

108VVV. [NOT USED]

108WWW. [NOT USED]

108XXX. [NOT USED]

108YYY. [NOT USED]

108ZZZ. [NOT USED]

N.8 Section 1041E Claim

108AAAA. By reason of the matters alleged in paragraphs 108CC to 108EED above:

(a) the Marsh Reasonable Grounds Representations were false in a material particular or materially misleading;

(b) at the time the Marsh Reasonable Grounds Representations were made, Marsh ought reasonably to have known that the Marsh Authority Representations were false in a material particular or materially misleading at the time they were made; and

(c) by making the Marsh Reasonable Grounds Representations, and by failing to correct those representations at any material time, Marsh engaged in conduct which contravened s 1041E of the Corporations Act.

108BBBB. But for the Marsh Reasonable Grounds Representations, Credit Suisse Virtuoso would not have purchased the NMC Notes.

108CCCC. In the premises, Credit Suisse Virtuoso has suffered loss or damage by the contraventions by Marsh pleaded at paragraph 108AAAA above.

Particulars

Credit Suisse Virtuoso repeats the particulars to paragraph 108OO~~GGG~~ above.

N.9 [NOT USED]~~Misleading or deceptive conduct directed toward GBAG~~

108DDDD. [NOT USED]~~Credit Suisse Virtuoso repeats paragraphs 233A to 233E of the GBAG ASOC in proceeding NSD 174 of 2023 (which will be heard together with this proceeding).~~

108EEEE. [NOT USED]~~On 6 March 2019, Angus Ward on behalf of Marsh sent an executed copy of Policy TS-03088 by email to GBAG.~~

~~Particulars~~

~~Email from Angus Ward to GBAG dated 6 March 2019 attaching a copy of Policy TS-03088.~~

108FFFF. [NOT USED]~~The copy of Policy TS-03088 sent by Marsh to GBAG on 6 March 2019:~~

~~(a) bore the signature of Greg Brereton; and~~

~~(b) stated that Mr Brereton's signature was for and on behalf of BCC Trade Credit Pty Ltd Corporate Authorised Representative of Insurance Australia Ltd.~~

108GGGG. [NOT USED]~~Mr Ward did not inform GBAG in the email dated 6 March 2019 that (without any admission as to the below):~~

~~(a) BCC did not, or might not, have authority to execute Policy TS-03088 on behalf of IAL as its corporate authorised representative; or~~

~~(b) Mr Brereton did not, or might not, have authority to execute Policy TS-03088 on behalf of BCC as the corporate authorised representative of IAL.~~

108HHHH. [NOT USED]~~On or around 20 March 2019 GBAG entered into Policy TS-03088.~~

108IIII. [NOT USED]~~At no point before the entry into Policy TS-03088 by GBAG did Marsh inform GBAG that (without any admission as to the below):~~

~~(a) BCC did not, or might not, have authority to execute Policy TS-03088 on behalf of IAL as its corporate authorised representative;~~

~~(b) Mr Brereton did not, or might not, have authority to execute Policy TS-03088 on behalf of BCC as the corporate authorised representative of IAL;~~

(c) GBAG was required to pay a premium (or a commercial premium) to BCC in order for Policy TS-03088 to be valid and binding; or

(d) there was a risk that if GBAG did not pay a premium (or a commercial premium) to BCC, Policy TS-03088 would not be valid and binding.

108JJJJ. [NOT USED]By Marsh engaging in the conduct pleaded above at paragraphs 108DDDD to 108IIII, Marsh represented to GBAG that:

(a) BCC had authority to execute Policy TS-03088 on behalf of IAL as its corporate authorised representative;

(b) Mr Brereton had authority to execute Policy TS-03088 on behalf of BCC as the corporate authorised representative of IAL; and

(c) Marsh had taken reasonable steps to confirm the matters at paragraphs (a) and (b) above,

(**Marsh/GBAG Authority Representations**).

108KKKK. [NOT USED]The Marsh/GBAG Authority Representations were:

(a) continuing representations; and

(b) were not withdrawn or corrected at any material time.

108LLLL. [NOT USED]If, which is denied, IAL proves that BCC and/or Brereton did not have authority to execute Policy TS-03088, then by making the Marsh/GBAG Authority Representations, Marsh engaged in conduct:

(a) in trade or commerce;

(b) that was misleading or deceptive or likely to mislead or deceive; and

(c) in contravention of s 18 of the Australian Consumer Law.

108MMMM. [NOT USED]Further or alternatively, if, which is denied, IAL proves that BCC and/or Brereton did not have authority to execute Policy TS-03088, then by making the Marsh/GBAG Authority Representations, Marsh engaged in conduct:

(a) in relation to a financial service;

(b) that was misleading or deceptive, or likely to mislead or deceive; and

(c) in contravention of s 12DA of the ASIC Act.

108NNNN. [NOT USED]But for the conduct of Marsh pleaded at paragraph 108LLLL and/or 108MMMM above:

(a) GBAG would not have entered into Policy TS-03088; and

Particulars

Credit Suisse Virtuoso refers to Part DA of GBAG's ASOC.

(b) Credit Suisse Virtuoso would not have purchased the NMC Notes referred to in paragraph 33A above.

Particulars

If GBAG had not entered into Policy TS-03088, Credit Suisse Virtuoso would not have purchased the NMC Notes.

108OOOO. [NOT USED]In the premises, Credit Suisse Virtuoso has suffered loss or damage by the contraventions of Marsh pleaded at paragraphs 108LLLL and/or 108MMMM above.

Particulars

Credit Suisse Virtuoso's loss being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes, plus Recovery Costs, less any amount received by Credit Suisse Virtuoso in respect of the NMC Notes, plus interest.

108PPPP. [NOT USED]In Annexure A to IAL's Defence dated 20 December 2024 and BCC's Defence dated 7 March 2025, IAL and BCC allege (in summary) that:

(a) GCPL authorised GCUK to act on its behalf in the Placement of the Relevant Policies and Endorsements (as defined in Annexure A to IAL's and BCC's Defences);

(b) the conduct and knowledge of various GCUK directors, officers, employees and agents is to be attributed to GCPL;

(c) the conduct and knowledge of GCUK is to be attributed to GCPL;

(d) GCPL made various alleged misrepresentations and non-disclosures that entitle IAL to avoid the Relevant Policies and Endorsements (including the Parallel Policies and Endorsements) or otherwise reduce IAL's liability under the Relevant Policies and Endorsements (including the Parallel Policies and Endorsements) to nil; and

(e) if and in so far as the Court finds that GCPL, but not GBAG, made a representation or breached the duty of disclosure, IAL is entitled to avoid the policy as against GCUK, GCPL and GBAG or in the alternative, to reduce its liability to GBAG to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with or the misrepresentation had not been made),

(**GCPL Misrepresentations and Non-Disclosure Defence**).

Particulars

Annexure A to IAL's Defence dated 20 December 2024 including [17], [20]-[22] and [467].

Annexure A to BCC's Defence dated 7 March 2025 including [10A.17], [10A.20]-[10A.22] and [103].

108QQQQ. [NOT USED]Credit Suisse Virtuoso repeats paragraphs 284U to 284AA of the GBAG ASOC.

108RRRR. [NOT USED]At the time GBAG entered into Policy TS-03088, Marsh had not informed GBAG that (without any admission as to the below):

(a) GCPL's knowledge or conduct could affect GBAG's entitlement to indemnity under Policy TS-03088; or

(b) there was any risk that GCPL's knowledge or conduct could affect GBAG's entitlement to indemnity under Policy TS-03088.

108SSSS. [NOT USED]In the circumstances pleaded at paragraphs 108QQQQ and 108RRRR above, Marsh represented that:

(a) GBAG was insulated from any misrepresentations or non-disclosures in

~~respect of the customers and the risks to be covered under Policy TS-03088;~~

~~(b) Marsh had taken reasonable steps to ensure, or reasonably satisfy themselves of the matters in subparagraph (a) above; and/or~~

~~(c) there was no material risk to GBAG that it was not insulated from any misrepresentations or non-disclosures in respect of the customers and the risks to be covered under Policy TS-03088,~~

~~(**NMC Insulation Representations**).~~

108TTTT. [NOT USED]~~The NMC Insulation Representations were continuing and were not withdrawn at any material time.~~

108UUUU. [NOT USED]~~If (which is denied) either or both of IAL and BCC prove the GCPL Misrepresentations and Non-Disclosure Defence or that GCPL's knowledge and conduct otherwise effects GBAG's entitlement to indemnity under Policy TS-03088, then the NMC Insulation Representations were misleading or deceptive because:~~

~~(a) GBAG was not insulated from any misrepresentations and non-disclosures in respect of the customers and the risks to be covered under Policy TS-03088;~~

~~(b) Marsh had not taken reasonable steps to ensure, or reasonably satisfy themselves of the matters in paragraph 108RRRR (a) and (b); and/or~~

~~(c) there was a material risk that GBAG was not insulated from any misrepresentations or non-disclosures in respect of the customers and the risks to be covered under Policy TS-03088.~~

108VVVV. [NOT USED]~~GBAG:~~

~~(a) relied upon the NMC Insulation Representations in entering into Policy TS-03088; and~~

~~(b) would not have entered into Policy TS-03088 if the NMC Insulation Representations had not been made.~~

Particulars

Credit Suisse Virtuoso refers to Part DA of GBAG's ASOC.

108WWWW. [NOT USED]If (which is denied), IAL and/or BCC prove the GCPL Misrepresentations and Non-Disclosure Defence or that GCPL's knowledge and conduct otherwise effects GBAG's entitlement to indemnity under Policy TS-03088, then by making the NMC Insulation Representations, Marsh engaged in conduct:

(a) in trade or commerce;

(b) that was misleading or deceptive, or likely to mislead or deceive; and

(c) in contravention of s 18 of the Australian Consumer Law.

108XXXX. [NOT USED]Further or alternatively, if (which is denied), IAL and/or BCC prove the GCPL Misrepresentations and Non-Disclosure Defence or that GCPL's knowledge and conduct otherwise effects GBAG's entitlement to indemnity under Policy TS- 03088, then by making the NMC Insulation Representations, Marsh engaged in conduct:

(a) in relation to a financial service;

(b) that was misleading or deceptive or likely to mislead or deceive; and

(c) in contravention of s 12DA of the ASIC Act.

108YYYY. [NOT USED]But for the contraventions pleaded at paragraphs 108WWWW and/or 108XXXX, Credit Suisse Virtuoso would not have purchased the NMC Notes referred to in paragraph 33A above.

Particulars

If GBAG had not entered into Policy TS-03088, Credit Suisse Virtuoso would not have purchased the NMC Notes.

108ZZZZ. [NOT USED]In the premises, Credit Suisse Virtuoso has suffered loss or damage by the contraventions of Marsh pleaded at paragraphs 108WWWW and/or 108XXXX above.

~~**Particulars**~~

~~Credit Suisse Virtuoso's loss being the total amount paid by Credit Suisse Virtuoso to acquire the NMC Notes, plus Recovery Costs , less any amount received by Credit Suisse Virtuoso in respect of the NMC Notes, plus interest.~~

O THE RELIEF SOUGHT

109. The Applicant seeks the relief outlined in the Sixth Amended Originating Application.

Date: ~~7 January~~ 2 July 2026



Signed by Crispian Lynch
Lawyer for the Applicant

This pleading was prepared by Michael Jones SC, Robert Yezerski SC, Amelia Smith, Amy Campbell, Hannah Ryan, Sefton Powrie and Jacob Saulwick.

Certificate of lawyer

I Crispian Lynch certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~7 January~~ 2 July 2026



Signed by Crispian Lynch
Lawyer for the Applicant

SCHEDULE

Greensill Bank AG

Second Respondent

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG

Third Respondent

BCC Trade Credit Pty Ltd (ACN 608 296 233)

Fourth Respondent

Greg Brereton

Fifth Respondent

Tokio Marine & Nichido Fire Insurance Co Ltd (ARBN 000 438 291)
Sixth Respondent

Marsh Limited
Seventh Respondent

CROSS CLAIM

Greensill Bank AG
~~**First**~~ **Cross-Claimant**

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Second Cross-Claimant

Insurance Australia Limited (ACN 000 016 722)
Cross-Respondent

CROSS CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Cross-Claimant

Greensill Capital (UK) Ltd
~~**First**~~ **Cross-Respondent**

Greensill Bank AG
Second Cross-Respondent

Greensill Capital Pty Ltd (in liquidation)
Third Cross-Respondent

CROSS CLAIM

Marsh Limited
Cross-Claimant

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Cross-Respondent

Greg Brereton
Second Cross-Respondent

Insurance Australia Limited (ACN 000 016 722)
Third Cross Respondent

Tokio Marine & Nichido Fire Insurance Co Ltd (ARBN 000 438 291)
Fourth Cross-Respondent

~~Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)~~
~~**Fifth Cross-Respondent**~~

CROSS CLAIM

Marsh Limited
Cross-Claimant

UBS Asset Management (Europe) S.A.
Cross-Respondent

UBS Asset Management Switzerland AG
Second Cross-Respondent

UBS Fund Administration Services Luxembourg SA
Third Cross-Respondent

CROSS CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Cross-Claimant

~~Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)~~
~~**Second Cross-Claimant**~~

Tokio Marine & Nichido Fire Insurance Co Ltd (ARBN 000 438 291)
~~**Third**~~ **Second Cross-Claimant**

Marsh Pty Ltd (ACN 004 651 512)
Cross-Respondent

Marsh Limited
Second Cross-Respondent

CROSS CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Cross-Claimant

~~Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)~~
~~**Second Cross-Claimant**~~

Tokio Marine & Nichido Fire Insurance Co Ltd (ARBN 000 438 291)
~~**Third**~~ **Second Cross-Claimant**

Insurance Australia Limited (ACN 000 016 722)
Cross-Respondent

CROSS CLAIM

Insurance Australia Limited (ACN 000 016 722)
Cross-Claimant

Marsh Limited
Cross-Respondent

Marsh Pty Ltd (ACN 004 651 512)
Second Cross-Respondent

UBS Asset Management (Europe) S.A.
Third Cross-Respondent

UBS Asset Management Switzerland AG
Fourth Cross-Respondent

UBS Fund Administration Services Luxembourg
Fifth Cross-Respondent

Tokio Marine & Nichido Fire Insurance Co Ltd (ARBN 000 438 291)
Sixth Cross-Respondent

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Seventh Cross-Respondent

CROSS CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Cross-Claimant

Tokio Marine & Nichido Fire Insurance Co Ltd (ARBN 000 438 291)
Second Cross-Claimant

~~Tokio Marine Management (Australasia) Pty Ltd (ARBN 001 488 455)~~
~~**Third Cross-Claimant**~~

UBS Asset Management (Europe) S.A.
Cross-Respondent

UBS Asset Management Switzerland AG
Second Cross-Respondent

UBS Fund Administration Services Luxembourg S.A.
Third Cross-Respondent

Annexure A

No.	ISIN	Issue Date[1]	Counterparty for acquisition	First Transfer Date[2]	Name of Loss Payee	Expected Allocation	Cash Amount paid by Loss Payee	Currency	Maturity Date	First date transferred to Greensill Bank by Loss Payee	Second Transfer Date[3]	Balance of the Expected Allocation[4]	Date transferred to Greensill Bank by Loss Payee[5]	Counterparty for transfers to Greensill Bank
1.	XS1994338819	07/01/20	Citibank as Issuing and Paying Agent	07/01/20	Credit Suisse Virtuoso	6,215,694	6,112,379	USD	30/06/20	25/02/21	25/02/21	4,752,442	09/07/21	Citibank as custodian for Greensill Bank

[1] The date on which the note was issued by the issuer.

[2] The date on which the note was first transferred to the Loss Payee which held the note until it was first transferred from the Loss Payee to Greensill Bank.

[3] The date on which the note was transferred for the second time to the Loss Payee which held the note until it was transferred from the Loss Payee to Greensill Bank.

[4] The note was transferred to Greensill Bank on 25/02/21 at the quantity of USD 6,215,694 and transferred back to the Loss Payee on the same date at a reduced quantity of USD 4,752,442.

[5] The date on which the note was acquired by Greensill Bank from the Loss Payee.