NOTICE OF FILING

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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.

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Defence to ~~Fifth~~ Sixth Amended Statement of Claim

No. NSD173 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Greensill Bank AG

First Applicant

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG

Second Applicant

Insurance Australia Limited and others ~~lists~~ named in the Schedule

First Respondent

To the Applicants' (Greensill Bank AG (**Greensill Bank**)) and Dr Michael Frege in his capacity as insolvency administrator for Greensill Bank) Fifth Amended Statement of Claim (**ASOC**) filed 14 April 2025, the Fourth Respondent, Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), (**TMNF**), says as follows.

Preliminary matters

A. As pleaded further in **Annexure A** to this Defence, the Second Respondent, BCC Trade Credit Pty Ltd (**BCC**), alleges that it was induced to enter into the relevant insurance instruments by reason of non-disclosures and misrepresentations by or on behalf of Greensill Bank, Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Ltd (**GCUK**) (together, the **Greensill Group**) as to the underlying risks being presented to it for trade credit insurance throughout the relevant period. Given the nature of the matters in issue, discovery and compulsory disclosure will be sought by TMNF. In addition, TMNF continues to investigate the circumstances in which the Policy (as that term is defined in paragraph 65(a) of this Defence) and its purported endorsements came to be issued, including but not limited to the conduct of the Greensill Group, and their agents, in

Filed on behalf of (name & role of party) Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), Fourth Respondent
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procuring the same. Additional facts may come to light as a result of discovery, disclosure and further investigation, in which case an amended Defence will be filed at an appropriate future time.

B. Nothing in this pleading should be understood as an affirmation of any of the documents referred to herein, or as a waiver of any rights to argue that those documents are void or voidable. In particular, and without limiting the generality of the foregoing, all references in this pleading to the Policy and to any purported endorsement thereto should be read, where applicable, as though it was followed by the words 'if valid' in parentheses. TMNF does not admit that the Policy and its endorsements are valid, and to the extent that the pleading sets out coverage defences that are based on the wording of the Policy and its endorsements, it should be understood that those defences arise only in the alternative to TMNF's primary position that the Policy and its endorsements are invalid.

C. Save where expressly stated to the contrary, this pleading adopts the sub-headings and definitions used in the ASOC where appropriate for convenience only.

A. PARTIES

1. TMNF admits paragraph 1 of the ASOC.

2. TMNF admits paragraph 2 of the ASOC.

3. TMNF admits paragraph 3 of the ASOC.

4. TMNF admits paragraph 4 of the ASOC.

5. In response to paragraph 5 of the ASOC, TMNF:

    a. admits subparagraph (a);

    b. admits subparagraph (b);

    c. admits subparagraph (c);

    d. admits subparagraph (d) insofar as it relates to IAL; and

    e. says, in response to subparagraph (d) insofar as it relates to IAGA, that:

        i. on 28 July 2017, Mr Brereton signed a document styled "Individual Authorisation Agreement" (**the IAGA Individual Authorisation Notice**);

ii. the IAGA Individual Authorisation Notice referred to "BCC Trade Credit Pty Ltd [having] entered into an Authorised Representative Agreement with IAGA" (**the IAGA AAR Agreement**);

iii. it is not aware of the existence of an executed version of the IAGA AAR Agreement;

iv. in the premises, does not know and cannot admit the paragraph insofar as it relates to IAGA;

f. as to subparagraph (e):

i. admits the paragraph insofar as it relates to IAL;

ii. says, insofar as the paragraph relates to IAGA, that it does not know and therefore cannot admit the paragraph; and

g. admits subparagraph (f).

6. In response to paragraph 6 of the ASOC, TMNF:

a. says that on 11 March 2016, Mr Brereton entered into a contract of employment with Bond and Credit Company Pty Ltd (**Bond**) (**the Contract of Employment**) and was employed by Bond until 8 July 2020;

b. says that Mr Brereton's role was "Head of Trade Credit", but says that TMNF was not a party to the Contract of Employment, and that Mr Brereton was never an employee of BCC;

c. admits subparagraph (c);

d. as to subparagraph (d), admits that Mr Brereton had the authority that was conferred on him by the Brereton-CGU Authorisation Agreement;

e. as to subparagraph (e), admits that from 1 August 2017 to 30 June 2019 Mr Brereton was the responsible underwriting officer designated by IAL and an Authorised Representative appointed by CGU under the Brereton-CGU Authorisation Agreement, which was statutorily novated to IAL by virtue of the orders made by this Court on 20 July 2017 under s 17F(1) of the *Insurance Act 1973* (Cth);

f. as to subparagraph (f), admits that Mr Brereton had the authority that was conferred on him by the Brereton-CGU Authorisation Agreement as statutorily novated to IAL; and

g. otherwise denies the paragraph.

6A. In response to paragraph 6A, TMNF:

a. says that from 11 March 2004, it has held Australian Financial Services Licence (**AFSL**) number 246548;

b. says that from 20 October 2004, it has been registered in Australia as a foreign company (overseas);

c. says that it is in the business of providing non-life insurance; and

d. otherwise admits the paragraph.

6B-6C. TMNF does not plead to paragraphs 6B and 6C of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

B. AGENCY AGREEMENTS BETWEEN BCC AND IAL

B1. Agency arrangements between CGU and BCC

7. TMNF admits paragraph 7 of the ASOC.

8. TMNF admits paragraph 8 of the ASOC.

9. TMNF admits paragraph 9 of the ASOC.

10. In response to paragraph 10 of the ASOC, TMNF:

a. admits subparagraph (a);

b. admits subparagraph (b);

c. relies on the terms of the CGU AAR Agreement and the Authorisation Notice for their full terms and effect; and

d. otherwise admits the paragraph.

11. TMNF admits paragraph 11 of the ASOC.

12. TMNF admits paragraph 12 of the ASOC.

13. TMNF admits paragraph 13 of the ASOC.

14. TMNF admits paragraph 14 of the ASOC.

15. In response to paragraph 15 of the ASOC, TMNF:

    a. says that BCC's authority to enter into trade credit insurance as CGU's agent was subject to the limitations on that authority contained in the CGU AAR Agreement, including the requirement in clause 2.1(c) that entry into any trade credit insurance be in accordance with the Underwriting Manual; and

    b. otherwise admits the paragraph.

16. In response to paragraph 16 of the ASOC, TMNF:

    a. says that paragraph 16 is a paraphrase of clause 3.1(a) of the CGU AAR Agreement;

    b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

    c. otherwise admits the paragraph.

17. In response to paragraph 17 of the ASOC, TMNF:

    a. says that paragraph 17 is a paraphrase of clause 8.1 of the CGU AAR Agreement;

    b. says that the amounts that it was permitted to deduct from any payment of Premiums to CGU under clause 8.1 were any amounts due to it under clause 3.1, not only commissions;

    c. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

    d. otherwise admits the paragraph.

18. In response to paragraph 18 of the ASOC, TMNF:

    a. says that paragraph 18 is a paraphrase of clause 4.5(a) of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

19. In response to paragraph 19 of the ASOC, TMNF:

a. says that paragraph 19 is a paraphrase of clause 4.5(b) of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

20. In response to paragraph 20 of the ASOC, TMNF:

a. says that paragraph 20 is a paraphrase of clause 7 of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

21. In response to paragraph 21 of the ASOC, TMNF:

a. says that paragraph 21 is a paraphrase of section 2, page 9 of the Underwriting Manual Version 1.0;

b. refers to the relevant terms of the Underwriting Manual Version 1.0 for their full force and effect; and

c. otherwise admits the paragraph.

B2. Transfer of CGU's business to IAL

22. In response to paragraph 22 of the ASOC, TMNF:

a. refers to the order of the Federal Court of Australia made on 20 July 2017, including Annexure A thereto, which contained the terms of the scheme for the transfer of the insurance business of CGU to IAL, for their full terms and effect; and

b. otherwise admits the paragraph.

23. In response to paragraph 23 of the ASOC, TMNF:

    a. refers to and repeats paragraph 22 of this Defence; and

    b. otherwise admits the paragraph.

B3. Agency arrangements between BCC and IAL

24. TMNF admits paragraph 24 of the ASOC.

25. TMNF admits paragraph 25 of the ASOC.

26. In response to paragraph 26 of the ASOC, TMNF:

    a. admits that IAL permitted BCC to act on its behalf pursuant to the CGU AAR Agreement and Authorisation Notice;

    b. relies on the CGU AAR Agreement and Authorisation Notice for their full force and effect; and

    c. otherwise does not know and therefore cannot admit the paragraph.

27. TMNF does not know and therefore cannot admit paragraph 27 of the ASOC.

28. In response to paragraph 28 of the ASOC, TMNF:

    a. relies on the terms of the letter for their full force and effect; and

    b. otherwise admits the paragraph.

29. In response to paragraph 29 of the ASOC, TMNF:

    a. says that the To Whom It May Concern Letter stated that BCC was arranging insurance under an authority provided by IAL and acts as an Authorised Representative of IAGA;

    b. relies on the terms of the letter for their full force and effect; and

    c. otherwise denies the paragraph.

30. In response to paragraph 30 of the ASOC, TMNF:

    a. says that the allegation that the To Whom It May Concern Letter was a “continuing representation” for an unspecified period of time is ambiguous and embarrassing, and liable to be struck out; and

b. under cover of that objection, denies the paragraph.

31. In response to paragraph 31 of the ASOC, TMNF:

a. says that paragraph 31 is a paraphrase of section 2, pages 9 and 10 of the Underwriting Manual Version 2.0;

b. refers to the relevant terms of the Underwriting Manual Version 2.0 for their full force and effect; and

c. otherwise admits the paragraph.

32. In response to paragraph 32 of the ASOC, TMNF:

a. says that paragraph 32 is a paraphrase of section 1, pages 8 and 9 of the Underwriting Manual Version 3.0;

b. refers to the relevant terms of the Underwriting Manual Version 3.0 for their full force and effect; and

c. otherwise admits the paragraph.

33. TMNF admits paragraph 33 of the ASOC.

34. In response to paragraph 34 of the ASOC, TMNF:

a. says that paragraph 34 is a paraphrase of the clauses of the IAL AAR Agreement to which it refers;

b. refers to the relevant terms of the IAL AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

35. In response to paragraph 35 of the ASOC, TMNF:

a. admits that in the period 9 April 2019 to 30 June 2019, BCC was an authorised representative of IAL for the purposes of Chapter 7 of the Corporations Act;

b. admits that BCC's authority so to act in that period was regulated by, and subject to the limitations contained in, the IAL AAR Agreement;

c. denies that the CGU AAR Agreement (as transferred) continued to have effect from 9 April 2019, but says instead that the IAL AAR Agreement superseded and terminated the CGU AAR Agreement from that date onwards;

Particulars

IAL AAR Agreement, cl 20.9(a).

d. refers to the relevant terms of the instruments pleaded to in paragraph 35 for their full force and effect; and

e. otherwise admits the paragraph.

36. In response to paragraph 36 of the ASOC, TMNF:

a. says that its authority to issue and vary trade credit insurance as IAL's agent was subject to the limitations on that authority contained in the CGU AAR Agreement and IAL AAR Agreement; and

b. otherwise admits the paragraph.

B4. Agency arrangements between BCC, IAL and Tokio Marine

37. TMNF admits paragraph 37 of the ASOC.

38. In response to paragraph 38 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the PACAO to which it refers;

b. refers to the relevant terms of the PACAO for their full force and effect; and

c. otherwise admits the paragraph.

39. TMNF admits paragraph 39 of the ASOC.

B5. BCC administered trade credit insurance policies as agent for IAL

40. In response to paragraph 40 of the ASOC, TMNF:

a. admits that on and from 1 August 2017, BCC periodically provided IAL with Bordereaux in the form of an Excel spreadsheet providing details of trade credit insurance policies written on behalf of IAL (the **Bordereaux**);

b. otherwise denies the paragraph.

41. TMNF admits paragraph 41 of the ASOC.

42. TMNF admits paragraph 42 of the ASOC.

43. In response to paragraph 43 of the ASOC, TMNF:

a. says that the allegation is ambiguous and embarrassing in that it does not identify the "trade credit insurance policies" the subject of the allegation;

b. under cover of that objection:

i. admits that it remitted premiums to IAL in respect of trade credit insurance for which IAL was the named insurer; and

ii. otherwise denies the paragraph.

44. In response to paragraph 44 of the ASOC, TMNF:

a. says that the allegation is ambiguous and embarrassing in that it does not identify the "trade credit insurance policies" the subject of the allegation;

b. under cover of that objection:

i. admits that it received commission in respect of trade credit insurance for which IAL was the named insurer; and

ii. otherwise denies the paragraph.

45. In response to paragraph 45 of the ASOC, TMNF:

a. admits that IAL permitted BCC to act on its behalf pursuant to the CGU AAR Agreement, Authorisation Notice and the IAL AAR Agreement;

b. relies on the CGU AAR Agreement, Authorisation Notice and the IAL AAR Agreement for their full force and effect; and

c. otherwise does not know and therefore cannot admit the paragraph.

C. Agency arrangements between Greg Brereton, CGU and IAL

C1. Agency arrangements between Greg Brereton and CGU

46. TMNF admits paragraph 46 of the ASOC.

47. In response to paragraph 47 of the ASOC, TMNF:

    a. says that pursuant to the Brereton CGU Authorisation, CGU authorised Mr Brereton to provide and perform the Authorised Financial Services in relation to the Approved Products on behalf of CGU and for that purpose it appointed Mr Brereton as its authorised representative for the purposes of Chapter 7 of the Corporations Act from the Effective Date (being 8 July 2016);

    b. relies on the terms of the Brereton CGU Authorisation for its full terms and effect; and

    c. otherwise admits the paragraph.

48. TMNF admits paragraph 48 of the ASOC.

49. In response to paragraph 49 of the ASOC, TMNF:

    a. says that the paragraph is a paraphrase of the clauses of the Brereton CGU Authorisation to which it refers;

    b. relies on the relevant terms of the Brereton CGU Authorisation for their full force and effect; and

    c. otherwise admits the paragraph.

50. In response to paragraph 50 of the ASOC, TMNF:

    a. says that the paragraph is a paraphrase of the clauses of the Brereton CGU Authorisation and the CGU AAR Agreement to which it refers;

    b. relies on the Brereton CGU Authorisation and the CGU AAR Agreement for their full terms and effect; and

    c. otherwise admits the paragraph.

51. In response to paragraph 51 of the ASOC, TMNF:

    a. admits that CGU authorised Mr Brereton to act on its behalf pursuant to the CGU AAR Agreement and the Brereton CGU Authorisation in the manner authorised by those instruments;

    b. relies on the CGU AAR Agreement and Authorisation Notice for their full force and effect; and

c. otherwise admits the paragraph.

52. In response to paragraph 52 of the ASOC, TMNF:

a. says that paragraph 52 is a paraphrase of section 2, page 9 of the Underwriting Manual Version 1.0;

b. refers to the relevant terms of the Underwriting Manual Version 1.0 for their full force and effect; and

c. otherwise admits the paragraph.

C2. Agency arrangements between Greg Brereton, IAL and IAGA

53. TMNF admits paragraph 53 of the ASOC.

54. In response to paragraph 54 of the ASOC, TMNF:

a. says that on 29 January 2016, IAGA (which at that time was named Allied Global Underwriting Pty Ltd) became a wholly owned subsidiary of CGU;

b. says that at all material times until its deregistration on 15 April 2019, CGU was a subsidiary of Insurance Australia Group Limited; and

c. otherwise admits the paragraph.

55. TMNF admits paragraph 55 of the ASOC.

56. TMNF admits paragraph 56 of the ASOC.

57. In response to paragraph 57 of the ASOC, TMNF:

a. says that the Brereton IAGA Authorisation applied only to 'Approved Products' as defined in the IAGA AAR Agreement;

b. refers to and repeats paragraph 5(e) of this Defence and says that it does not know if the IAGA AAR Agreement was executed;

c. will refer to the Brereton IAGA Authorisation for its full terms and effect; and

d. otherwise does not know and therefore cannot admit the paragraph.

58. TMNF does not know and therefore cannot admit paragraph 58 of the ASOC.

59. In response to paragraph 59 of the ASOC, TMNF:

a. refers to and repeats paragraph 57 of this Defence;

b. says that the paragraph is a paraphrase of the clauses of the Brereton IAGA Authorisation to which it refers;

c. relies on the Brereton IAGA Authorisation for its full terms and effect; and

d. otherwise does not know and therefore cannot admit the paragraph.

60. In response to paragraph 60 of the ASOC, TMNF:

a. refers to and repeats paragraph 57 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

61. In response to paragraph 61 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the document styled "Delegated Authority for Head of Trade Credit effective 1st July 2018" (**Delegated Authority**) to which it refers;

b. relies on the Delegated Authority for its full force and effect; and

c. otherwise admits the paragraph.

62. In response to paragraph 62 of the ASOC, TMNF:

a. says that paragraph 62 is a paraphrase of section 2, pages 9 and 10 of the Underwriting Manual Version 2.0;

b. refers to the relevant terms of the Underwriting Manual Version 2.0 for their full force and effect; and

c. otherwise admits the paragraph.

63. TMNF admits paragraph 63 of the ASOC.

64. In response to paragraph 64 of the ASOC, TMNF:

a. as to IAL:

i. admits that IAL authorised Mr Brereton to act on its behalf pursuant to the CGU AAR Agreement (as transferred to IAL) and the Brereton CGU

Authorisation (as transferred to IAL) in the manner authorised by those instruments;

ii. relies on the CGU AAR Agreement and Brereton CGU Authorisation for their full terms and effect; and

iii. otherwise does not know and therefore cannot admit the paragraph;

b. as to IAGA:

i. refers to and repeats paragraphs 57 of this Defence; and

ii. otherwise does not know and therefore cannot admit the paragraph.

DA. REGULATORY REQUIREMENTS

DA1. Membership of the German Deposit Protection Fund

64A–64Q. In response to paragraphs 64A to 64Q of the ASOC, TMNF does not know and therefore cannot admit those paragraphs.

DA2. Capital Requirements Regulation (EU) No. 575/2013

64R–64Z. In response to paragraphs 64R to 64Z of the ASOC, TMNF does not know and therefore cannot admit those paragraphs.

D. Policy 3690

D1. Entry into Policy 3690

65. In response to paragraph 66 of the ASOC, TMNF:

a. admits that on or about 13 March 2019, Mr Brereton signed a document styled 'Comprehensive Trade Credit Insurance Policy TB-03690' which listed as its parties GCPL, Greensill Bank, and "BCC TRADE CREDIT PTY LTD with its registered office at Level 16, 347 Kent Street, Sydney NSW 2000, CORPORATE AUTHORISED REPRESENTATIVE OF INSURANCE AUSTRALIA LTD (ABN: 11000016722; AFSL: 238 291)" (**the Policy**);

b. says that:

i. the CGU AAR Agreement required policies written by BCC as corporate representative of IAL to be in accordance with the Underwriting Guidelines as in force from time to time;

ii. the policy wording for the Policy was not consistent with the wording specified in the then current Underwriting Guidelines;

Particulars

The relevant Underwriting Guidelines (referred to as 'Underwriting Manuals' in the CGU AAR Agreement) at the time the Policy was written was the version dated 13 July 2018 [TOK.001.00129459].

iii. TMNF does not know whether IAL otherwise approved and authorised the wording used by Mr Brereton in underwriting the Policy;

iv. TMNF does not know whether IAL subsequently ratified and authorised Mr Brereton's actions in executing the Policy on its behalf;

c. by reason of the matters pleaded in paragraph 65(b) of this Defence, otherwise does not know and therefore cannot admit the paragraph.

~~66.~~ [Not used]

66A. In response to paragraph 66A of the ASOC, TMNF:

a. repeats paragraph 65 above;

b. admits that Greensill Bank's representatives signed the Policy on or about 14 March 2019; and

c. otherwise does not admit the paragraph.

67. In response to paragraph 67 of the ASOC, TMNF:

a. admits that "Insured" is defined in the Policy to mean GCPL and Greensill Bank; and

b. otherwise denies the paragraph.

68. In response to paragraph 68 of the ASOC, TMNF:

a. admits that "Insurer" was defined in the Policy to mean IAL;

b. says that by reason of the matters pleaded in paragraph 65 of this Defence, TMNF does not know and therefore cannot admit whether IAL entered into the Policy and/or its purported endorsements by it or Mr Brereton's conduct;

c. says further that if it is found that:

i. Mr Brereton;

ii. (to the extent that Mr Brereton had authority to bind BCC) BCC; and /or

iii. (to the extent that Mr Brereton and/or BCC had authority to bind IAL) IAL;

entered into the Policy or any purported endorsement thereto (which is not admitted), and IAL or BCC thereby assumed any risk or liability under those instruments, Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into those agreements and/or assumed that risk or liability by reason of the information provided by the Greensill Group when procuring the cover (as pleaded further below) and the misrepresentations and non-disclosures by the Greensill Group pleaded in Annexure A to this Defence (the **Prior Misrepresentations and Non-Disclosures**).

69. TMNF admits paragraph 69 of the ASOC.

70. In response to paragraph 70 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 68 of this Defence;

b. says that the original Policy Period of the Policy was 22 February 2019 to 22 February 2020;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

71. TMNF admits paragraph 71 of the ASOC.

72. TMNF admits paragraph 72 of the ASOC.

D2. Key terms of Policy 3690

73. In response to paragraph 73 of the ASOC, TMNF:

a. admits paragraph 73(a);

b. admits paragraph 73(b);

c. admits paragraph 73(c), save that the definition of ‘Claim Form’ refers to a ‘specimen’ rather than a ‘pro forma version’ being included in Schedule 3;

d. admits paragraph 73(d), save that the definition of 'Claim Offer Letter' refers to a 'specimen' rather than a 'pro forma version' being included in Schedule 4;

e. admits paragraph 73(e);

f. admits paragraph 73(f);

g. admits paragraph 73(g);

h. in relation to paragraph 73(h):

   i. says that 'Debt' was defined to mean, as the context requires, a debt of the type described in the relevant 'Debt Endorsement';

   ii. says that 'Debt Endorsement' was defined to mean an endorsement to the policy that describes the nature of a debt that is after the date of such endorsement able to be a 'Debt' for the purpose of the policy, and which may contain amendments to the terms of the policy in so far as the policy relates to such 'Debts' and 'Assets' derived therefrom;

   iii. says that relevant Debt Endorsement relied upon by Greensill Bank in making the claim under the Policy the subject of the proceeding is the document described as 'Debt Endorsement 1' dated 13 March 2019 (**Debt Endorsement 1**); and

   iv. otherwise denies the paragraph;

i. in relation to paragraph 73(i) of the ASOC;

   i. refers to and repeats paragraph 73(h) of this Defence; and

   ii. otherwise denies the paragraph;

j. admits paragraph 73(j) of the ASOC;

k. in relation to paragraph 73(k):

   i. says that Schedule 7 provided that the Debt was required to meet the following criteria at the time of the acquisition of the relevant Asset by the Insured:

A. the obligor (being the Customer) was not an Affiliate of any of the parties to the Transaction Documents (other than any Origination Documentation);

B. the obligor is not Insolvent, which term was defined to mean in respect of an entity any corporate action, legal proceedings or other procedure or step taken for its winding up, dissolution, liquidation, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, custodian, trustee or similar officer in respect of such entity or all or a substantial part of its revenues and assets (or any analogous procedure or step taken in any jurisdiction);

C. the debt satisfied any further criteria set out in the relevant Debt Endorsement relating to the Debt;

ii. says that the form of Debt Endorsement appended to the Policy (and incorporated in debt endorsements including Debt Endorsement 1) further required that the Eligible Debt arises under a Customer Agreement that is in full force and effect and to the best of the Insured's knowledge, after reasonable due diligence, constitutes the legal, valid and binding obligation of the Customer enforceable against such Customer in accordance with its terms, subject to no offset, counterclaim, defence or other adverse claim;

iii. in relation to the effect (if any) of Endorsement 23, refers to and repeats what is pleaded in Section D8 of this Defence (below); and

iv. otherwise denies the paragraph.

l. admits paragraph 73(l);

m. admits paragraph 73(m);

n. admits paragraph 73(n);

o. in relation to paragraph 73(o);

i. says that paragraph 73(o) is a paraphrase of paragraph (III) of the definition of Loss in the Policy;

ii. relies on the definition of Loss for its full force and effect;

iii. in relation to the effect (if any) of Endorsement 23, refers to and repeats what is pleaded in Section D8 of this Defence (below); and

iv. otherwise denies the paragraph;

p. admits paragraph 73(p);

q. admits paragraph 73(q);

r. admits paragraph 73(r);

s. admits paragraph 73(s); and

t. otherwise refers to and repeats paragraph 65 of this Defence, and relies on the terms of the Policy for their full force and effect.

74. In response to paragraph 74 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68 and 73 of this Defence;

b. says that on the proper construction of the Policy, IAL agreed, subject to the terms, conditions and limitations of the policy, to indemnify the Insured for the Insured Percentage of all Losses suffered by the Insured and caused by and resulting from the occurrence of an Insured Cause;

c. says that the terms, conditions and limitations of the Policy included the following:

i. that the Insured acknowledges and agrees that it has a duty to IAL of fair presentation in respect of the policy and the risks insured thereunder (cl 7.1);

ii. that IAL was not liable to indemnify the Insured in respect of any Loss in respect of which the Insured has failed to comply with its obligations under the policy where such failure has a 'Material Policy Impact' (cl 9.7); and

iii. that if the Insured makes any statement, report or Claim, knowing it to be false or fraudulent, or the Insured knowingly conceals any material fact, the policy may be declared void by IAL and all Claims payments hereunder after such false or fraudulent statements reports or Claim shall be forfeited (cl 15.4);

d. relies on the terms of the Policy for their full force and effect; and

e. otherwise denies the paragraph.

75. In response to paragraph 75 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 74 of this Defence;

b. admits that cl 4.1 of the Policy provided that IAL's liability to indemnify the Insured for a Loss shall, subject to the terms, conditions and limitations of the policy, apply only in respect of Assets owned by the Insured (or a Loss Payee) during the Policy Period;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

76. In response to paragraph 76 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 75 of this Defence;

b. admits that cl 4.1 of the Policy contained a term to the effect pleaded in that paragraph;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

77. In response to paragraph 77 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 75 of this Defence;

b. says that cl 10 of the Policy set out the claims procedure for Claims under the policy;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

78. In response to paragraph 78 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 75 of this Defence;

b. says that cl 14 of the Policy set out the relevant addresses for notices under the policy, and nominated BCC's address (attention to Mr Brereton) as the address for service of notices on IAL, unless otherwise notified by IAL;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

79. In response to paragraph 79 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 75 of this Defence;

b. says that cl 5.5 of the Policy set out when Assets would attach to the policy;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

D3. BCC had authority to enter into Policy 3690

(A) Actual authority

80. In response to paragraph 80 of the ASOC, TMNF:

a. refers to and repeats paragraph 65 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph.

(B) Ostensible authority

80A–80BS. TMNF does not plead to paragraphs 80A to 80BS of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

81. In response to paragraph 81 of the ASOC:

a. says that the existence of the alleged ostensible authority depends upon IAL having made a representation to the relevant third party; and

b. in the premises, does not know and therefore cannot admit the paragraph.

(C) Statutory responsibility

82. In response to paragraph 82 of the ASOC, TMNF:

a. admits that:

i. from 1 August 2017 to 30 June 2019, BCC was an authorised representative of IAL;

ii. on and from 1 July 2019, BCC continued to administer trade credit insurance products arranged by it and issued by IAL pursuant to the PACAO;

b. admits that to the extent BCC was authorised to act as IAL's representative or agent in the circumstances identified in paragraph 82(a) of this Defence, it was a representative of IAL as that term is defined in s 910 of the Corporations Act; and

c. admits that the conduct alleged at paragraph 82 of the ASOC related to the provision of a financial service;

d. denies that Greensill Bank could reasonably be expected to rely on that conduct and did, in fact, rely in good faith on that conduct, by reason of the Prior Misrepresentations and Non-Disclosures; and

e. otherwise does not know and therefore cannot admit the paragraph.

D4. Greg Brereton had authority to enter into Policy 3690

83. In response to paragraph 83 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 80 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

84. In response to paragraph 84 of the ASOC, TMNF:

a. refers to and repeats paragraph 81 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

85. In response to paragraph 85 of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

D5. Endorsements 9, 17 and 18 to Policy 3690

86. In response to paragraph 86 of the ASOC, TMNF:

a. admits that on or about 13 March 2019, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 9 and which purported to vary the terms of the Policy;

b. says that the document was not executed by any representative of Greensill Bank or GCPL;

c. refers to and repeats paragraph 65 of this Defence;

d. further and alternatively, says that the document was not an 'Endorsement' within the meaning of the Policy and did not validly vary the Policy as:

i. the policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

ii. further and alternatively, clause 15.3(a) of the Policy provided that any variation of the policy could only be effected in writing signed by or on behalf of each party, and the document signed on 21 June 2019 was not signed on behalf of GCPL or Greensill Bank (and for the avoidance of doubt, Greensill Bank is hereby notified by this Defence that any authority (if any) that Mr Brereton or BCC had to execute the document has been withdrawn, with the result that the document is no longer open to execution by any other party); and

e. otherwise denies the paragraph.

87. In response to paragraph 87 of the ASOC, TMNF:

a. refers to and repeats paragraph 86 of this Defence; and

b. otherwise denies the paragraph.

88. In response to paragraph 88 of the ASOC, TMNF:

a. refers to and repeats paragraph 86 of this Defence; and

b. otherwise denies the paragraph.

89. In response to paragraph 89 of the ASOC, TMNF:

a. refers to and repeats paragraph 86 of this Defence;

b. says that paragraph 89 is a paraphrase of the sections of the document styled 'Endorsement 9' to which it relates;

c. refers to the terms of the document styled ‘Endorsement 9’ for their full force and effect; and

d. otherwise denies the paragraph.

90. In response to paragraph 90 of the ASOC, TMNF:

a. admits that on or about 21 June 2019, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an ‘Endorsement’ bearing the number 17 and which purported to extend the policy period;

b. says that the document was not executed by any representative of Greensill Bank or GCPL;

b. refers to and repeats paragraphs 65 of this Defence;

c. further and alternatively, repeats paragraph 86(d) of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 90 of the ASOC; and

d. otherwise denies the paragraph.

91. In response to paragraph 91 of the ASOC, TMNF:

a. refers to and repeats paragraph 90 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

92. In response to paragraph 92 of the ASOC, TMNF:

a. refers to and repeats paragraph 90 of this Defence; and

b. otherwise denies the paragraph.

93. In response to paragraph 93 of the ASOC, TMNF:

a. denies the paragraph;

b. refers to and repeats paragraphs 90 to 92 of this Defence; and

c. in the premises, says that if the Policy is valid, it expired on 22 February 2020.

94. In response to paragraph 94 of the ASOC, TMNF:

a. admits that on or about 27 June 2019, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 18 and which purported to extend the policy period;

b. says that the document was not executed by any representative of Greensill Bank or GCPL;

c. refers to and repeats paragraph 65 of this Defence;

d. further or alternatively, refers to and repeats sub-paragraph 86(d) of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 94 of the ASOC; and

e. otherwise denies the paragraph.

95. In response to paragraph 95 of the ASOC, TMNF:

a. refers to and repeats paragraph 94 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

96. In response to paragraph 96 of the ASOC, TMNF:

a. refers to and repeats paragraph 94 of this Defence; and

b. otherwise denies the paragraph.

97. In response to paragraph 97 of the ASOC, TMNF:

a. denies the paragraph;

b. refers to and repeats paragraphs 94 to 96 of this Defence; and

c. in the premises, says that if the Policy is valid, it expired on 22 February 2020.

D6. BCC had authority to execute Endorsements 9, 17 and 18

98. In response to paragraph 98 of the ASOC, TMNF:

a. refers to and repeats paragraphs 31 to 36, 65 and 80 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph

99. In response to paragraph 99 of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 99 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

D7. Greg Brereton had authority to execute Endorsements 9, 17 and 18

100. In response to paragraph 100 of the ASOC, TMNF:

a. refers to and repeats paragraphs 31 to 36, 65 and 83 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph.

101. In response to paragraph 101 of the ASOC, TMNF:

a. refers to and repeats paragraph 85 of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 101 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

D8. Endorsement 23 to Policy 3690

102. In response to paragraph 102 of the ASOC, TMNF:

a. admits that on or about 5 February 2020, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 23 and which purported to vary the terms of the Policy;

b. says that the document was not executed by any representative of Greensill Bank or GCPL;

c. refers to and repeats paragraph 65 of this Defence;

d. further or alternatively, refers to and repeats sub-paragraph 86(d) of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 102 of the ASOC; and

e. otherwise denies the paragraph.

103. In response to paragraph 103 of the ASOC, TMNF:

a. refers to and repeats paragraph 102 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

104. In response to paragraph 104 of the ASOC, TMNF:

a. refers to and repeats paragraph 102 of this Defence; and

b. otherwise denies the paragraph.

105. In response to paragraph 105 of the ASOC, TMNF:

a. refers to and repeats paragraph 65 and 102 of this Defence;

b. says that paragraph 105 is a paraphrase of the sections of the document styled 'Endorsement 23' to which it relates;

c. refers to the terms of the document styled 'Endorsement 23' for their full force and effect; and

d. otherwise denies the paragraph.

106. In response to paragraph 106 of the ASOC, TMNF:

a. refers to and repeats paragraph 65 and 102 of this Defence;

b. says that paragraph 106 is a paraphrase of the sections of the document styled 'Endorsement 23' to which it relates;

c. refers to the terms of the document styled 'Endorsement 23' for their full force and effect; and

d. otherwise denies the paragraph.

D9. BCC had authority to execute Endorsement 23

107. In response to paragraph 107 of the ASOC, TMNF:

a. refers to and repeats paragraphs 32 to 36, 65 and 80 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph

108. In response to paragraph 108 of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 108 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

108A. In response to paragraph 108A of the ASOC, TMNF:

a. says that Endorsement 23 was not, and did not purport to be, an endorsement to a policy of insurance issued by TMNF but was an endorsement to a policy of insurance issued by IAL;

b. says that BCC and/or Brereton made a disclosure for the purposes of s 917D(b) and (c) of the Corporations Act when executing the relevant policies and endorsements, by disclosing that BCC was acting not on behalf of TMNF but on behalf of another Licensee, being IAL;

c. denies that Greensill Bank could reasonably be expected to rely on that conduct and did, in fact, rely in good faith on that conduct, by reason of the Prior Misrepresentations and Non-Disclosures; and

d. [Not used]

e. otherwise denies the paragraph.

D10. Greg Brereton had authority to execute Endorsement 23

109. In response to paragraph 109 of the ASOC, TMNF:

a. refers to and repeats paragraphs 32 to 36, 65 and 83 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph

110. In response to paragraph 110 of the ASOC, TMNF:

a. refers to and repeats paragraph 85 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 110 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

110A. In response to paragraph 110A of the ASOC, TMNF:

a. refers to and repeats paragraph 108A of this Defence; and

b. otherwise denies the paragraph.

E. THE ATLANTIC 57 TRANSACTION

E1. Parties to the Transaction

111. TMNF admits paragraph 111 of the ASOC.

111A. TMNF admits paragraph 111A of the ASOC.

112. TMNF admits paragraph 112 of the ASOC.

113. TMNF admits paragraph 113 of the ASOC.

114. TMNF admits paragraph 114 of the ASOC.

E1.A The Promissory Notes

114A-114D. In response to paragraphs 114A to 114D of the ASOC, TMNF does not know and therefore cannot admit those paragraphs.

E2. The Customer and Supplier Agreements

115A. In respect of paragraphs 115 to 158 of the ASOC, TMNF says generally that:

a. it was not, and is not alleged to be, a party to the documents identified in those paragraphs;

b. Greensill Bank does not allege (and it would not be in a position to admit, in any event) that paragraphs 115 to 158 of the ASOC exhaustively identify the documents that govern the relationship that exists between the parties to those documents; and

c. It will seek disclosure in relation to the matters the subject of paragraphs 115 to 158 of the ASOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced.

115. TMNF admits paragraph 115 of the ASOC.

116. In response to paragraph 116 of the ASOC, TMNF:

a. says that paragraph 116 is a paraphrase of clause 2.2 of the Customer Agreement;

b. refers to the relevant terms of the Customer Agreement for their full force and effect;

c. says that an "Account Receivable" within the meaning of clause 2.2 of the Customer Agreement was defined relevantly as meaning a right to payments of money due as a result of the "Underlying Relationship";

d. says that the "Underlying Relationship" was defined in the Customer Agreement as a business relationship or purported business relationship between a Customer and a Supplier; and

e. otherwise admits the paragraph.

117. In response to paragraph 117 of the ASOC, TMNF:

a. admits that GCUK signed a copy of a supplier agreement with Grenda on 28 September 2016;

b. says that Grenda signed a counterpart of the same agreement on an unknown date; and

c. otherwise does not know and therefore cannot admit the paragraph.

118. In response to paragraph 118 of the ASOC, TMNF:

a. says that paragraph 118 is a paraphrase of the clauses of the Supplier Agreement to which it relates;

b. refers to the relevant terms of the Supplier Agreement for their full force and effect (if any);

c. says that an "Account Receivable" within the meaning of clause 2.1 of the Supplier Agreement was defined relevantly as meaning a right to payments of money due as a result of the "Underlying Relationship";

d. says that the "Underlying Relationship" was defined in the Supplier Agreement as a business relationship or purported business relationship between a Customer and Supplier; and

e. otherwise admits the paragraph.

119. In response to paragraph 119 of the ASOC, TMNF:

a. says that paragraph 119 is a paraphrase of the clauses of the Supplier Agreement to which it relates;

b. refers to the relevant terms of the Supplier Agreement for their full force and effect (if any);

c. says that clauses 2.3 and 2.4 of the Supplier Agreement applied only to a transfer an "Account Receivable" as defined in the Supplier Agreement, which required that the right to payment result from a business relationship between a Customer and Supplier; and

d. otherwise admits the paragraph.

120. In response to paragraph 120 of the ASOC, TMNF:

a. says that, according to a Secured Promissory Note and Pledge Agreement between Atlantic 57 LLC and Grenda dated 21 September 2016 (**Secured Promissory Note and Pledge Agreement**):

i. on 1 May 2014, Atlantic 57 LLC issued a secured promissory note to Grenda under which it owed Grenda USD 21,023,400.00 (**the Original Note**); and

ii. as at 21 September 2016, the outstanding principal amount of the Original Note equalled USD 21,023,400.00, and the accrued and unpaid interest thereon equalled USD 19,701,600,00, which added to an aggregate amount outstanding under the Original Note of USD 40,725,000.00; and

Particulars

Secured Promissory Note and Pledge Agreement between Atlantic 57 LLC and Grenda Investments Limited dated 21 September 2016 (filed in Supreme Court of State of New York proceedings *Telconet Asia Limited F/K/A Genii Telecommunications Limited v Grenda Investments Limited and Atlantic 57 LLC* (Index No 656554/2017) on 1 May 2018 as Exhibit G with NYSCEF Doc No 25).

b. otherwise does not know and therefore cannot admit the paragraph.

121. In response to paragraph 121 of the ASOC, TMNF:

a. admits that on 29 September 2016, Atlantic 57 and Grenda executed a letter agreement under which Atlantic 57 irrevocably and unconditionally undertook to pay Grenda on or before 22 September 2017 the sum of USD 22,600,000;

b. says that, according to the Secured Promissory Note and Pledge Agreement, the Original Note was on 21 September 2016 to be replaced by a note issued by Atlantic 57 LLC to Grenda of USD 17,725,000 and a note issued by Atlantic 57 LLC to Atlantic 57 of USD 23,000,000; and

c. otherwise does not know and therefore cannot admit the paragraph.

122. In response to paragraph 122 of the ASOC, TMNF:

a. repeats paragraphs 120 and 121 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

123. TMNF admits paragraph 123 of the ASOC.

124. TMNF does not know and therefore cannot admit paragraph 124 of the ASOC.

125. In response to paragraph 125 of the ASOC, TMNF:

a. refers to and repeats paragraphs 118, 119 and 124 of this Defence;

b. says that on 28 September 2016, GCUK and Grenda entered into a side letter, under which GCUK agreed to pay USD 12,636,553.80 to Grenda for the transfer by Grenda to GCUK of an irrevocable receivable from Atlantic 57 to Grenda in the amount of USD 22,600,000 with a maturity date of 22 September 2017, with the difference between these sums being referable to the following fees and other amounts payable to GCUK:

i. a sum of USD 4,600,000, being the difference between the Relevant Account Receivable and the Net FI Amount;

ii. an arrangement fee of USD 1,000,000 payable by Grenda to GCUK;

iii. an amount of USD 4,000,266.68 for the proposed subscription by Grenda of 10,537 new “A” class shares in the capital of GCPL;

iv. an amount of USD 265,679.50 as full and final repayment of all amounts outstanding under a loan agreement dated 8 July 2015 between GCUK and Neil Edward Hobday;

v. an amount of USD 97,500 for GCUK’s actual incurred and documented legal and other costs and expenses; and

Particulars

Side letter between Grenda Investments Limited and Greensill Capital (UK) Limited dated 28 September 2016.

c. otherwise does not know and therefore cannot admit the paragraph.

126. In response to paragraph 126 of the ASOC, TMNF:

a. denies that the transactions pleaded in paragraphs 122 to 125 of the ASOC constituted supply chain finance;

b. says that those transactions constituted a term loan to a property investor from which fees and other amounts (totalling USD9,963,446.20) were paid to GCUK in connection with the loan;

c. says that Atlantic 57 was not a trading company and did not engage in any trade or business with customers or suppliers and consequently did not depend upon a supply chain of goods and/or services for the purposes of engaging in any trade or business;

d. says that the First Receivable pleaded in paragraph 121 of the ASOC was not an Account Receivable for the purpose of the Customer Agreement and Supplier Agreement as it did not result from a business relationship between a Customer and Supplier; and

e. otherwise does not know and therefore cannot admit the paragraph.

127. TMNF does not know and therefore cannot admit paragraph 127 of the ASOC.

128. As to paragraph 128 of the ASOC, TMNF:

a. admits paragraph 128(a);

b. admits paragraph 128(b); and

c. otherwise does not know and therefore cannot admit the paragraph.

129. In response to paragraph 129 of the ASOC, TMNF:

a. refers to and repeats paragraphs 118, 119 and 128 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

130. In response to paragraph 130 of the ASOC, TMNF:

a. denies that the transactions pleaded in paragraphs 127 to 129 of the ASOC constituted supply chain finance;

b. says that those transactions constituted a term loan to a property investor from which fees and other amounts (totalling USD15,463,446.20) were paid to GCUK in connection with the loan;

c. says that Atlantic 57 was not a trading company and did not engage in any trade or business with customers or suppliers and consequently did not depend upon a supply chain of goods and/or services for the purposes of engaging in any trade or business;

d. says that the Second Receivable pleaded in paragraph 128 of the ASOC was not an Account Receivable for the purpose of the Customer Agreement and Supplier Agreement as it did not result from a business relationship between a Customer and Supplier; and

e. otherwise does not know and therefore cannot admit the paragraph.

131. TMNF does not know and therefore cannot admit paragraph 131 of the ASOC.

132. In response to paragraph 132 of the ASOC, TMNF:

a. repeats paragraphs 127, 130 and 131 of this Defence;

b. otherwise does not know and therefore cannot admit the paragraph.

E3. The Atlantic 57 IPUs

133. TMNF admits paragraph 133 of the ASOC.

134. In response to paragraph 134 of the ASOC, TMNF:

a. says that paragraph 134 is a paraphrase of the parts of the Instalment Payment Agreement to which it relates;

b. refers to the relevant terms of the Instalment Payment Agreement for their full force and effect;

c. says that, under the Instalment Payment Agreement, each Repayment Amount due from Atlantic 57 to GCUK had a term of 720 days unless agreed otherwise by GCUK; and

d. otherwise admits the paragraph.

135. In response to paragraph 135 of the ASOC, TMNF:

a. says further that clause 3 of the Instalment Payment Agreement relevantly provided that:

i. Atlantic 57 had independently entered into underlying business relationships with relevant third parties prior to the applicable Payable being due for discharge and the submission of the relevant PAUF; and

ii. GCUK was not an agent or representative of any third party to whom a Payable may be owed;

b. says that a "Payable" within the meaning of the Instalment Payment Agreement was an amount owing by Atlantic 57 to a third party pursuant to an underlying business relationship between Atlantic 57 and the third party;

c. says that any indebtedness of Atlantic 57 to GCUK as a result of the loan transactions pleaded in paragraphs 122 to 132 of the ASOC was not a Payable within the meaning of the Instalment Payment Agreement; and

d. otherwise admits the paragraph.

136. In response to paragraph 136 of the ASOC, TMNF:

a. admits that on 11 September 2018, Atlantic 57 executed a letter enclosing a series of purported PAUFs set out in a 24-month schedule of drawdown amounts, drawdown dates, maturity dates and repayment amounts, and purported to authorise GCUK to submit each PAUF onto GCUK's on-line trade financing platform;

b. says that none of the 2018 PAUFs was a valid PAUF within the meaning of the Instalment Payment Agreement, as they were not created in respect of a Payable, but were rather for the repayment of a term loan owing by Atlantic 57 to GCUK; and

c. otherwise denies the paragraph.

137. TMNF does not know and therefore cannot admit paragraph 137 of the ASOC.

138. In response to paragraph 138 of the ASOC, TMNF:

a. says that the initial drawdown amount under the 2018 PAUFs exceeded the amount of the Second Receivable; and

Particulars

The amount of the Second Receivable was USD 28,100,000. The initial drawdown amount under the 2018 PAUFs was USD 36,432,505.

b. otherwise does not know and therefore cannot admit the paragraph.

139. In response to paragraph 139 of the ASOC, TMNF:

a. says that the effect of the conduct alleged in paragraph 139 of the ASOC is that the term loan from GCUK to Atlantic 57 was maintained throughout the period 14 September 2018 to 29 April 2019, with interest capitalised on the loan and Atlantic 57 making no principal or interest payments on the loan;

b. repeats paragraph 136 of this Defence and says that any 2018 PAUFs issued between 14 September 2018 to 29 April 2019 were not valid PAUFs within the meaning of the Instalment Payment Agreement; and

c. otherwise does not know and therefore cannot admit the paragraph.

140. In response to paragraph 140 of the ASOC, TMNF:

a. admits that on 29 April 2019, GCUK and Atlantic 57 signed a letter agreement broadly to the effect pleaded;

b. says that none of the 2019 PAUFs was a valid PAUF within the meaning of the Instalment Payment Agreement, as they were not created in respect of a Payable, but were rather for the repayment of a term loan owing from Atlantic 57 to GCUK; and

c. otherwise denies the paragraph.

141. TMNF does not know and therefore cannot admit paragraph 141 of the ASOC.

142. In response to paragraph 142 of the ASOC, TMNF:

a. says that the effect of the conduct alleged in paragraph 142 of the ASOC is that the term loan from GCUK to Atlantic 57 was maintained throughout the period 29 April 2019 to 13 August 2020, with interest capitalised on the loan and Atlantic 57 making no principal or interest payments on the loan;

b. repeats paragraph 136 of this Defence and says that any 2019 PAUFs issued between 29 April 2019 to 13 August 2020 were not valid PAUFs within the meaning of the Instalment Payment Agreement; and

c. otherwise does not know and therefore cannot admit the paragraph.

143. In response to paragraph 143 of the ASOC, TMNF:

a. denies that the Independent Payment Undertakings were transferred by GCUK to Hoffman, validly or at all;

b. says that the transfer or assignment of payment obligations by GCUK to Hoffman was relevantly governed by the Master Assignment Agreement between those entities and Citibank N.A., London Branch dated 21 December 2017, which relevantly provided that:

i. GCUK could from time to time offer to assign and sell with full title guarantee the whole, but not part, of any Payment Obligation and all of its Additional Rights in respect thereof to Hoffman and that Hoffman at its sole direction may agree to purchase such Payment Obligation and the Additional Rights relating thereto from GCUK (cl 2.1);

ii. each offer of a Payment Obligation and its Additional Rights to Hoffman pursuant to clause 2.1 in respect of any Business Day shall be made by GCUK delivering an Offer File in respect of such Payment Obligation (and containing the relevant details thereof) to Hoffman attached to an e-mail from an Authorised User and password protected at any time before the relevant Cut-Off Offer Time on such Business Day (an "**Offer**") (cl 2.2);

iii. an Offer could be accepted by Hoffman at any time before the relevant Cut-Off Acceptance Time at which time, if not accepted, the Offer will lapse. Acceptance of an offer shall be effected by Hoffman (prior to the Offer lapsing) returning the Offer File to GCUK attached to an e-mail from an Authorised User and password protected, marked as "Accepted" (an **"Acceptance"**) (cl 2.3);

iv. "Offer File" was defined to mean, in respect of any Payment Obligation that GCUK proposes to assign to a Compartment of the Purchaser hereunder, an electronic file or data feed identifying (i) the Compartment of the Purchaser to which the electronic file or data feed is to be delivered and subsequent Offer made, and (ii) such Payment Obligation, which shall include the following information in respect of such Payment Obligation:

A. Maturity Amount;

B. Currency;

C. Maturity Date;

D. Relevant Obligor;

E. Related Party (if applicable);

F. Intermediary Party (if applicable);

G. Settlement Date;

H. Purchase Price;

I. Identifier;

J. Invoice Ref; and

K. Product Code

in the form set out in Schedule 2 (cl 1.2, definition of "Offer File");

v. "Relevant Obligor" was defined to mean, in respect of any Payment Obligation, each entity that is liable for payment of such Payment Obligation, as identified as such in the Offer File relating to such Payment Obligation (cl 1.2, definition of "Relevant Obligor");

vi. "Invoice Ref" was defined to mean, in respect of an Accounts Receivable, the Supplier invoice reference number relating thereto as specified in the relevant Offer File (cl 1.2, definition of "Invoice Ref");

vii. "Accounts Receivable" was defined to mean, in respect of any Payment Obligation of a relevant type (as described in the Product Schedule relating thereto), the right or purported right of a Supplier (or GCUK as the

transferee of a Supplier) to receive any and all present and future payments of moneys due from the Relevant Obligor or a Related Party as a result of a business relationship or purported business relationship between the Supplier and the Relevant Obligor or a Related Party, whether or not earned by performance, and in relation to which such Payment Obligation is given, as identified in the relevant Offer File by reference to the Invoice Ref; and

viii. "Supplier" was defined to mean, in respect of any Payment Obligation, any party who has entered into an agreement for the transfer or settlement of the related Accounts Receivable owed to it by the Relevant Obligor or a Related Party;

c. does not know and therefore cannot admit that cl 2.1 to 2.3 of the Master Assignment Agreement were followed, on the basis that:

i. there were prepared from time to time a number of Greensill-branded spreadsheets styled as "Note Offer Reports";

ii. it does not appear that these Note Offer Reports were emailed by GCUK in accordance with cl 2.2 of the Master Assignment Agreement by way of Offer;

iii. it does not appear that the Note Offer Reports were emailed from Hoffman back to GCUK in accordance with cl 2.3 of the Master Assignment Agreement by way of Acceptance;

iv. even if the Note Offer Reports had been so emailed, they do not contain an "Invoice Reference" for the underlying Payment Obligation (being the Supplier invoice reference number relating thereto) as required by the Master Assignment Agreement; and

v. says that, in the premises, the "Note Offer Reports" failed to identify the underlying payment obligations to which they related in a manner consistent with the requirements of the Master Assignment Agreement;

d. says further, as a result, that the notes that Hoffman issued were not backed by the Independent Payment Undertakings, as the Independent Payment Undertakings were never validly assigned by GCUK to Hoffman;

e. does not know and therefore cannot admit whether Greensill Bank purchased the notes referred to at sub-paragraph 143(b) of the ASOC; and

f. otherwise denies the paragraph.

144. In response to paragraph 144 of the ASOC, TMNF:

a. admits that on 13 August 2020, GCUK and Atlantic 57 signed a letter agreement broadly to the effect pleaded;

b. says that none of the 2020 PAUFs was a valid PAUF within the meaning of the Instalment Payment Agreement, as they were not created in respect of a Payable, but were rather for the repayment of a term loan owing from Atlantic 57 to GCUK; and

c. otherwise denies the paragraph.

145. TMNF does not know and therefore cannot admit paragraph 145 of the ASOC.

146. In response to paragraph 146 of the ASOC, TMNF:

a. says that the effect of the conduct alleged in paragraph 146 of the ASOC is that the term loan from GCUK to Atlantic 57 was maintained throughout the period 13 August 2020 to 10 May 2021, with interest capitalised on the loan and Atlantic 57 making no principal or interest payments on the loan;

b. repeats paragraph 136 of this Defence and says that any 2020 PAUFs issued in the period between 13 August 2020 to 17 February 2021 were not valid PAUFs within the meaning of the Independent Payment Agreement; and

c. otherwise does not know and therefore cannot admit the paragraph.

147. In response to paragraph 147 of the ASOC, TMNF:

a. refers to and repeats paragraphs 135, 144 and 146 of this Defence; and

b. otherwise denies the paragraph.

148. In response to paragraph 148 of the ASOC, TMNF:

a. refers to and repeats paragraphs 135, 144 and 146 of this Defence; and

b. otherwise denies the paragraph.

149. In response to paragraph 149 of the ASOC, TMNF:

a. refers to and repeats paragraphs 135, 144 and 146 of this Defence; and

b. otherwise denies the paragraph.

149A. In response to paragraph 149A of the ASOC, TMNF:

a. refers to and repeats paragraphs 135, 144 and 146 of this Defence; and

b. otherwise denies the paragraph.

150. In response to paragraph 150 of the ASOC, TMNF:

a. denies that the transactions pleaded in paragraphs 136 to 149 of the ASOC constituted supply chain finance;

b. says that those transactions constituted a term loan to a property investor from which fees and other amounts (totalling USD27,363,445.20) were paid to GCUK in connection with the loan;

c. says that Atlantic 57 was not a trading company and did not engage in any trade or business with customers or suppliers and consequently did not depend upon a supply chain of goods and/or services for the purposes of engaging in any trade or business;

d. says that none of the Second Receivable pleaded in paragraph 128 of the ASOC or the maturing Independent Payment Undertakings pleaded in paragraph 150 was an Account Receivable for the purpose of the Customer Agreement and Supplier Agreement as they did not result from a business relationship between a Customer and Supplier; and

e. otherwise does not know and therefore cannot admit the paragraph.

151. In response to paragraph 151 of the ASOC, TMNF:

a. refers to and repeats paragraphs 130 and 150 of this Defence; and

b. otherwise denies the paragraph.

E4. The Atlantic 57 IPU Notes

152. TMNF does not know and therefore cannot admit paragraph 152 of the ASOC.

153. TMNF does not know and therefore cannot admit paragraph 153 of the ASOC.

153A. In response to paragraph 153A of the ASOC, TMNF:

a. admits that representatives of Hoffman S.àr.l. (**Hoffman**) and Citibank N.A., London Branch (**Citibank**) signed a document styled "Lagoon Farm: Master Trust Deed" dated 13 October 2017 (**Master Trust Deed**);

b. says that the signatures on the Master Trust Deed are undated;

c. does not know and therefore cannot admit that the Master Trust Deed or any supplementary deeds or documents were valid, that they were properly executed or that they represented the entire agreement between the parties in relation to the matters they dealt with;

d. otherwise does not know and therefore cannot admit the paragraph.

153B. In response to paragraph 153B of the ASOC, TMNF:

a. repeats paragraph 153A above; and

b. otherwise does not know and therefore cannot admit the paragraph.

153C. In response to paragraph 153C of the ASOC, TMNF:

a. repeats paragraph 153A above; and

b. otherwise does not know and therefore cannot admit the paragraph.

153D. In response to paragraph 153D of the ASOC, TMNF:

a. repeats paragraph 153A above; and

b. otherwise does not know and therefore cannot admit the paragraph.

153E. In response to paragraph 153E of the ASOC, TMNF:

a. admits that representatives of GCUK, Hoffman and Citibank signed a document styled "Master Assignment Agreement" dated 21 December 2017, with Hoffman as "Initial Purchaser" and Citibank as "Note Trustee" (**MAA**);

b. says that the signatures on the MAA are undated;

c. does not know and therefore cannot admit that MAA was valid, that it was properly executed or that it represented the entire agreement between the parties in relation to the matters it dealt with;

d. says that :

i. it was a term of the MAA that GCUK may from time to time offer to assign and sell with full title guarantee the whole, but not part, of any "Payment Obligation" and all of its "Additional Rights" in respect thereof to "Purchaser" and such "Purchaser" at its sole discretion may agree to purchase such "Payment Obligation" and the "Additional Rights" relating thereto from GCUK (cl 2.1); and

ii. it was a term of the MAA that, on the terms and subject to the conditions set forth in the MAA, GCUK hereby sells, transfers, assigns, sets over and otherwise conveys absolutely with full title guarantee to the relevant "Purchaser", and the relevant "Purchaser" hereby purchases, all of GCUK's right, title and interest in, to and under each "Payment Obligation", and all of GCUK's "Additional Rights" relating thereto, which are the subject of an "Acceptance" provide to GCUK in accordance with Clause 2.3, with effect as the date falling on or before the relevant Cut-Off Settlement Time on which GCUK receives the Purchase Price in respect of such "Payment Obligations" and "Additional Rights" (cl 3);

e. says further that:

i. "Payment Obligation" was defined to mean, in respect of any "Offer" or any "Assignment", a payment obligation owed by the "Relevant Obligor" and having the details and being of the type specified in the relevant "Offer File";

ii. there was no "Payment Obligation" in existence unless there was in fact a payment obligation owed by the "Relevant Obligor"; and

f. otherwise does not know and therefore cannot admit the paragraph.

153F. In response to paragraph 153F of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clause of the MAA to which it refers;

b. refers to the relevant terms of the MAA for their full force and effect; and

c. otherwise admits the paragraph.

153G. In response to paragraph 153G of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

154. In response to paragraph 154 of the ASOC, TMNF:

a. refers to and repeats subparagraphs 143(a)–(c) of this Defence; and

b. otherwise denies the paragraph.

155. In response to paragraph 155 of the ASOC, TMNF:

a. admits that it has been provided with documents purporting to be notes issued by Hoffman under the Master Trust Deed on the dates particularised;

b. does not know who generated those documents, the dates on which they did so, or how they came into the possession of Greensill Bank; and

c. otherwise does not know and therefore cannot admit the paragraph.

156. In response to paragraph 156 of the ASOC, TMNF:

a. refers to and repeats subparagraphs 143(a)–(d) of this Defence; and

b. otherwise denies the paragraph.

157. TMNF does not know and therefore cannot admit the paragraph.

158. In response to paragraph 158 of the ASOC, TMNF:

a. repeats paragraph 155 of this Defence;

b. refers to and repeats subparagraphs 143(a)–(d) and paragraphs 154 and 156 of this Defence, and says that the Atlantic 57 Notes did not constitute Notes for the purposes of the Policy as they were not secured over corresponding Atlantic 57 IPUs and therefore were not backed by payment obligations acquired by Hoffman as required under the Master Trust Deed and the Issue Documents;

c. says further that none of the Atlantic 57 IPUs attached to the Policy, because each of them was purportedly created after 22 February 2020, being the date on which the Policy expired; and

d. otherwise denies the paragraph.

E5. Insuring the Atlantic 57 IPUs

159. In response to paragraph 159 of the ASOC, TMNF:

a. admits that on or around 13 March 2019, Debt Endorsement 1 was signed by Mr Brereton;

b. refers to and repeats paragraphs 65, 68 and 73 of this Defence;

c. further or alternatively, says that Debt Endorsement 1 was not a valid "Debt Endorsement" under the Policy because, on the proper construction of the Policy, as the Policy did not authorise the issue of a "Debt Endorsement" that purported to operate retrospectively;

d. says further that if it is found that:

i. Mr Brereton;

ii. (to the extent that Mr Brereton had authority to bind BCC) BCC: and/or

iii. (to the extent that Mr Brereton and/or BCC had authority to bind IAL) IAL;

entered into Debt Endorsement 1 (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or Debt Endorsement 1, Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures with the consequence pleaded in paragraph 224 of this Defence; and

e. otherwise does not know and therefore cannot admit the paragraph.

160. In response to paragraph 160 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68 and 159 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

160A. In response to paragraph 160A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 160A of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

161. In response to paragraph 161 of the ASOC, TMNF:

a. admits that on or around 13 March 2019, a document styled "Customer Endorsement 4" to the Policy was signed by Mr Brereton;

b. refers to and repeats paragraphs 65 and 68 of this Defence;

c. further or alternatively, says that Customer Endorsement 4 was not a valid "Customer Endorsement" under the Policy because, on the proper construction of that policy:

i. the Policy did not authorise the issue of a "Customer Endorsement" that purported to operate retrospectively; and

ii. Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate, whereas Customer Endorsement 4 did not express a percentage premium rate (but rather a fixed dollar amount of $1); and

d. otherwise does not know and therefore cannot admit the paragraph.

162. In response to paragraph 162 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68 and 161 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

162A. In response to paragraph 162A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 162A of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

163. In response to paragraph 163 of the ASOC, TMNF:

a. refers to and repeats paragraphs 161 and 162 of this Defence;

b. admits that Customer Endorsement 4:

i. purportedly endorsed Atlantic 57 as a Customer for the purpose of the Policy;

ii. purportedly stated that the Insured Percentage for Atlantic 57 was 100%;

iii. purportedly stated that the Aggregate Customer Limit for Atlantic 57 was USD 40,000,000; and

iv. purportedly specified that the maximum tenor was 180 days from the date the Insured acquires the Debt (as those terms were defined);

c. says that Customer Endorsement 4 did not make any reference to Independent Payment Undertakings; and

d. otherwise does not know and therefore cannot admit the paragraph.

164. In response to paragraph 164 of the ASOC, TMNF:

a. refers to and repeats paragraphs 126, 128, 130, 135, 136, 140, 150, 151 and 159 of this Defence;

b. says that, in the premises, the purported Debts did not originate in the course of supply chain finance, and accordingly are not debts for the purposes of Part C of Debt Endorsement 1;

c. says further that:

i. Part C of Debt Endorsement 1 provided that "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 or for the benefit of the Servicer to pay or to cause to be paid an amount equal to the amount of any receivables which the Servicer (or an Affiliate of the Servicer or a third party) has settled or agreed to settle in respect of goods and/or services provided by such Supplier to the Customer;

ii. "Contract" was defined in the Policy to mean the written agreement, order form, invoice or other written document customarily used or accepted by the relevant Supplier to evidence the agreement between that Supplier and the Customer or an Affiliate of such Customer, relating to or for the sale of goods and/or the rendering or services;

iii. "Customer Agreement" was defined in Part C of Debt Endorsement 1 to mean the agreement between the Servicer or a Program Partner 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 Servicer (or an Affiliate of the Servicer or a third party) settling or agreeing to settle one or more account receivables relating to the supply of goods and/or services provided by a Supplier to the Customer or its Affiliate;

iv. the Instalment Payment Agreement was not a "Customer Agreement" because it was not an agreement whereby GCUK settled or agreed to

settle one or more account receivables relating to the supply of goods and/or services provided by a Supplier to Atlantic 57, but rather was an agreement whereby GCUK extended a term loan owing from Atlantic 57 to itself;

v. says that the Atlantic 57 IPUs were not "Debts" because they were not debts related to goods and/or services supplied under a Contract as defined in the Policy; and

vi. says further that the Atlantic 57 IPUs were not "Debts" because they were not undertakings given for the benefit of GCUK settling or agreeing to settle a receivable in respect of goods and/or services provided by a Supplier to Atlantic 57; and

d. otherwise denies the paragraph.

165. In response to paragraph 165 of the ASOC, TMNF:

a. does not know and therefore cannot admit paragraph 165(a);

b. admits paragraph 165(b);

c. does not know and therefore cannot admit paragraph 165(c);

d. refers to and repeats paragraphs 161 and 163 of this Defence, and in the premises denies paragraph 165(d);

e. says that GCUK and Atlantic 57 adopted a practice of "rolling" the indebtedness under the term loan owing by Atlantic 57 to GCUK, by substituting each maturing PAUF with a new PAUF for a similar or higher amount on or around the date of maturity, with the consequence that GCUK did not require Atlantic 57 to repay any part of the term loan between September 2016 and May 2021, and says that the real tenor of the debts purchased by GCUK thus exceeded the maximum tenor of 180 days, and accordingly denies paragraph 165(e);

f. says that, in the premises, the Atlantic 57 IPUs were in substance extensions, granted by GCUK for a fee, of repayment amounts due on the term loan owing from Atlantic 57 to GCUK which were outstanding after their original Due Date, and accordingly denies paragraph 165(f);

g. admits paragraph 165(g); and

h. says further that, in the premises of paragraphs 94 to 97 of this Defence, none of the alleged debts set out at paragraph 152 of the ASOC was covered by the Policy, as the Policy expired on 22 February 2020, and each of those alleged debts came into existence after that date.

E6. Default by Atlantic 57

166. TMNF does not know and therefore cannot admit paragraph 166 of the ASOC.

167. In response to paragraph 167 of the ASOC, TMNF:

a. refers to and repeats paragraph 115A and 166 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

168. In response to paragraph 168 of the ASOC, TMNF:

a. refers to and repeats paragraphs 115A and 166 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

169. In response to paragraph 169 of the ASOC, TMNF:

a. admits that on 12 May 2021, Grant Thornton UK LLP sent a letter to Atlantic 57 headed “Default and Reservation of Rights”;

b. says that the letter does not make any specific reference to Atlantic 57 IPU reference #ATL01090221101; and

c. otherwise admits the paragraph.

170. TMNF does not know and therefore cannot admit paragraph 170 of the ASOC.

171. TMNF does not know and therefore cannot admit paragraph 171 of the ASOC.

172. TMNF does not know and therefore cannot admit paragraph 172 of the ASOC.

173. In response to paragraph 173 of the ASOC, TMNF:

a. refers to and repeats paragraphs 115A, 170, 171 and 172 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

174. In response to paragraph 174 of the ASOC, TMNF:

a. admits that on 4 June 2021, Grant Thornton UK LLP sent a letter to Atlantic 57 headed “Reservation of Rights”;

b. says that the letter does not identify the specific independent payment undertakings to which it relates; and

c. otherwise admits the paragraph.

175. TMNF does not know and therefore cannot admit paragraph 175 of the ASOC.

176. In response to paragraph 176 of the ASOC, TMNF:

a. refers to and repeats paragraphs 126, 128, 130, 135, 136, 140, 143, 144, 150, 151, 158, 159, 161, 164 and 165 of this Defence; and

b. in the premises, denies the paragraph.

E9. Notification and claim by Greensill Bank under Policy 3690

177. TMNF admits paragraph 177 of the ASOC.

178. TMNF admits paragraph 178 of the ASOC.

179. TMNF admits paragraph 179 of the ASOC.

180. TMNF admits paragraph 180 of the ASOC.

181. TMNF does not know and therefore cannot admit paragraph 181 of the ASOC.

182. In response to paragraph 182 of the ASOC, TMNF:

a. refers to and repeats paragraphs 126, 128, 130, 135, 136, 140, 143, 144, 150, 151, 158, 159, 161, 164, 165 and 176 of this Defence;

b. in the premises, denies the paragraph; and

c. says further, or alternatively, that if the Policy and the relevant endorsements were validly issued and there was a “Loss” as defined in the Policy, then it does not know:

i. the extent to which Greensill Bank has made recoveries in respect of any alleged debts the subject of the claim, but says that any loss claimable by Greensill Bank will be reduced by the amount of any such recoveries; and

ii. what steps GCPL and Greensill Bank have taken to mitigate Loss (if any), and reserves its right to allege that any indemnity payment should be reduced pursuant to cl 10.7 of the Policy following discovery and disclosure in this proceeding.

183. In response to paragraph 183 of the ASOC, TMNF:

a. refers to and repeats paragraph 182 of this Defence; and

b. in the premises, denies the paragraph.

F. CLAIMS

F1. Breach of Policy 3690 by Insurer

184. In response to paragraph 184 of the ASOC, TMNF:

a. admits that IAL has not paid to Greensill Bank the amount pleaded in paragraph 183 of the ASOC; and

b. otherwise denies the paragraph.

185. TMNF denies paragraph 185 of the ASOC.

185AA. In further answer to paragraphs 184 and 185 of the ASOC, TMNF:

a. says that none of the alleged debts attached to the Policy, because each of them was purportedly created after 22 February 2020, being the date on which the Policy expired; and

b. says further and in the alternative that a Stop Asset Acquisition Instruction prevented some or all of the debts the subject of the claim from attaching to the Policy, because

i. clause 8.3(a) of the Policy provided that a Stop Asset Acquisition Instruction would automatically be deemed to have been issued where a Customer has failed to pay a Debt on the relevant Due Date and such failure to pay has not been remedied within 10 Business Days;

ii. from at least 27 March 2019, GCUK did not require Atlantic 57 to repay its debts to GCUK arising under the 2018 PAUFs on their maturity dates, but instead “rolled” such debts by creating new Independent Payment Undertakings of equal or greater amounts on the maturity dates of the

debts arising under the 2018 PAUFs, such that Atlantic 57 was not required to make any repayments of principal or interest on the funds loaned to it by GCUK;

iii. accordingly, if the debts owed by Atlantic 57 to GCUK under the Independent Payment Undertakings were Debts within the meaning of the Policy, then Atlantic 57 failed to pay the Debts owed by to it GCUK on the relevant Due Date for those debts on each occasion that a Debt owing by it to GCUK was "rolled" rather than repaid;

iv. in the premises, a Stop Asset Acquisition Instruction under cl 8.3(a) was automatically deemed to have been issued 10 Business Days after the maturity date of the first payment obligation that GCUK permitted Atlantic 57 to "roll" rather than to repay (which occurred by no later than 10 April 2019), with the result that thereafter no further debts from Atlantic 57 attached to the Policy;

v. as a result, none of the Atlantic 57 IPUs pleaded in paragraph 149 of the ASOC attached to the Policy; and

vi. non-payment by Atlantic 57 of the Atlantic 57 IPUs did not constitute a Loss under the Policy.

F1A. Misleading or deceptive conduct by IAL

185A-185AM. TMNF does not plead to paragraphs 185A to 185AM of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

F2. Claims against BCC

Breach of Warranty of Authority

186. In response to paragraph 186 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 86 to 110 and 159 to 162 of this Defence;

b. insofar as the allegation concerns the Policy and the relevant endorsements:

i. does not know and therefore cannot admit whether Greensill Bank knew, or ought to have known, that Mr Brereton lacked authority to enter into the Policy and the relevant endorsements; and

ii. in the premises, does not know and therefore cannot admit whether Mr Brereton made the representations alleged or gave the BCC Warranties of Authority on behalf of BCC;

c. further or alternatively, if BCC did give the BCC Warranties of Authority in respect of any of the documents (which is not admitted), then:

i. it only did so by reason of the Prior Misrepresentations and Non-Disclosures which were fraudulent for the reasons pleaded further in Annexure A; and

ii. TMNF notes that BCC has, by its defence in this proceeding, avoided and rescinded any collateral contract between it and Greensill Bank containing the BCC Warranties of Authority on the basis it entered into the contract by reason of Greensill Bank's fraudulent non-disclosures and misrepresentations for the reasons pleaded further in Annexure A.

187. In response to paragraph 187 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 186 of this Defence; and

b. otherwise denies the paragraph.

188. TMNF denies paragraph 188 of the ASOC.

189. In response to paragraph 189 of the ASOC, TMNF:

a. says that, on 2 and 3 July 2020 , BCC and TMMA notified Greensill Bank's lead broker, Marsh Limited and/or Marsh Pty Ltd (**Marsh**), of concerns regarding Brereton's authority (**July Marsh Notifications**);

Particulars

i. Voice message from Mark Callahan (Executive Vice President of TMHCC and Director of TMMA) to Angus Ward (Marsh) on around 2 July 2020.

ii. Email from Mark Callahan to Angus Ward and others dated 2 July 2020 with subject line, "BCC on behalf of Tokio Marine" (CSA.0001.0015.0008).

iii. Phone conversation between Toby Guy (CEO of TMMA and Director of TMMA/BCC) and Julian Macey-Dare (Marsh) on around 3 July 2020.

b. repeats paragraphs 6B and 6C of the ASOC and says that the July Marsh Notifications were received by Marsh as agent for Greensill Bank;

c. says that, on 4 August 2020, BCC notified Greensill Bank that:

i. BCC had become aware that Brereton had sought to bind BCC to limits in relation to customers of the Greensill Group in circumstances where the customer limit was in excess of his delegated authority;

ii. as a result, BCC had commenced an investigation in relation to the dealings between the Greensill Group and Brereton;

iii. the investigation would consider the endorsements issued in relation to the Policy as well as all of Brereton's dealings with the Greensill Group in which he had acted outside the scope of his delegated authority;

iv. BCC and the Bond & Credit Company did not admit that they were on risk in relation to the documents under investigation; and

v. BCC would be in a position to inform the Greensill Group as to its position in relation to the documents under investigation upon the completion of the investigation;

Particulars

i. Letter from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 4 August 2020 (CSA.0001.0008.0327) (**4 August 2020 Letter**).

d. says that, by further letters dated 11 and 21 August 2020 (**11 and 21 August 2020 Letters**), BCC notified Greensill Bank that:

i. the investigation was continuing;

ii. BCC and the Bond & Credit Company did not admit that they were on risk in relation to the documents under investigation; and

iii. BCC and the Bond & Credit Company expressly reserved their rights;

Particulars

i. Letters from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 11 August 2020 (but sent on 14 August 2020) regarding Trade Credit Insurance Policy Numbers:

A. TW-06229 and TW-06230 (TMA.0001.0007.2353);

B. TW-06094 and TW-06095 (TMA.0001.0007.2352); and

C. TW-06165 and TW-06166 (TMA.0001.0007.2337).

ii. Letters from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 21 August 2020 regarding Trade Credit Insurance Policy Numbers:

A. TB-05370 and TB-05369 (TMA.0001.0007.2410);

B. TW-05411 and TW-05412 (TMA.0001.0007.2411);

C. TW-05782 and TW-05783 (TMA.0001.0007.2412);

D. TW-06259 and TW-06260 (TMA.0001.0007.2409); and

E. TW-06632 and TW-06633 (TMA.0001.0007.2413).

e. says that, on 28 August 2020, TMMA notified Greensill Bank that:

i. the investigation was continuing; and

ii. TMMA expressly reserved its rights, and specifically, any premium paid or right exercised under any of the documents under investigation was without prejudice to the right to either cancel, avoid, or pursue any other remedies pursuant to those documents once the investigation had been concluded;

Particulars

i. Letter from Mark Callahan to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 28 August 2020 (CSA.0001.0015.0006) (**28 August 2020 Letter**).

f. says that, on 1 September 2020, BCC notified Greensill Bank that:

i. the investigation was continuing; and

ii. TMNF and BCC reserved all rights in relation to the documents under investigation, including rights to cancel, avoid, or otherwise pursue remedies pursuant to those documents;

Particulars

i. Letter from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) dated 1 September 2020 (MMC_GCUK08_00022720) (**1 September 2020 Letter**).

g. says that each of the Atlantic 57 Notes referred to in paragraph 189 of the ASOC were allegedly acquired by Greensill Bank after receipt of:

i. the July Marsh Notifications;

ii. the 4 August 2020 Letter;

iii. the 11 and 21 August 2020 Letters;

iv. the 28 August 2020 Letter; and

v. the 1 September 2020 Letter

(together, the **BCC/TMMA Authority Notifications**);

h. denies that Greensill Bank's acquisition of the Atlantic 57 Notes after receipt of the BCC/TMMA Authority Notifications was in reliance upon the BCC Warranties of Authority or the BCC Authority Representations; and

g. otherwise denies the paragraph.

190. In response to paragraph 190 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 186 and 189 of this Defence;

b. otherwise denies the paragraph; and

c. says further that if BCC breached any BCC Warranties of Authority (which is denied), Greensill Bank has not suffered any loss as:

i. it was not entitled to be indemnified by IAL for the reasons pleaded in paragraphs 126, 128, 130, 135, 136, 140, 143, 144, 150, 151, 158, 159, 161, 164, 165,176 and 185A of this Defence; and

ii. further or alternatively, Greensill (including Greensill Bank) could not have obtained insurance coverage on the same or similar terms to the Policy from another insurer, had full disclosure been provided to the insurer.

190A. In response to paragraph 190A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 186 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 186 of the ASOC to the extent it occurred on or after 1 July 2019.

Misleading or Deceptive Conduct

191. In response to paragraph 191 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 186 of this Defence;

b. admits that Marsh included a signature block on each of the instruments to the effect that Mr Brereton was signing (purportedly) on behalf of BCC as authorised representative of IAL;

c. does not know and cannot admit whether Mr Brereton's conduct in signing those documents was understood by Greensill Bank as a representation by BCC that it had authority to enter into the instruments on behalf of IAL; and

d. in the premises, does not know and therefore cannot admit whether the representations alleged was made.

192. In response to paragraph 192 of the ASOC, TMNF:

a. refers to and repeats paragraphs 189 and 191 of this Defence;

b. says that any representation made impliedly by virtue of the signature block on the instruments was a representation that, at the time the document was signed, BCC had authority;

c. otherwise denies the paragraph.

193. In response to paragraph 193 of the ASOC, TMNF:

a. refers to and repeats paragraphs 191 and 192 of the Defence;

b. otherwise denies the paragraph;

c. in the alternative, says that if BCC made the BCC Authority Representations (which is not admitted):

i. admits that the BCC Authority Representations were conduct in relation to a financial service within the meaning of s 1041H of the *Corporations Act* or in trade or commerce in relation to financial services within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

ii. denies that the BCC Authority Representations were in trade or commerce within the meaning of s 18 of the Australian Consumer Law, by reason of operation of s 131A of the *Competition and Consumer Act 2010* (Cth) (**Competition and Consumer Act**).

194. TMNF denies paragraph 194 of the ASOC.

195. TMNF denies paragraph 195 of the ASOC.

196. TMNF denies paragraph 196 of the ASOC.

197. In response to paragraph 197 of the ASOC, TMNF:

a. repeats paragraph 189 above; and

b. otherwise denies the paragraph.

198. In response to paragraph 198 of the ASOC, TMNF:

a. denies the paragraph; and

b. says further that Greensill Bank could not reasonably have relied on the BCC Authority Representations (if made) in circumstances where it had induced BCC to enter into the relevant instruments by reason of the Prior Misrepresentations and Non-Disclosures.

199. In response to paragraph 199 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 189 and 190 to 198 of this Defence; and

b. otherwise denies the paragraph.

199A. In response to paragraph 199A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 191 to 193 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 191 to 193 of the ASOC to the extent it occurred on or after 1 July 2019.

199B. In further response to paragraphs 191 to 199 of the ASOC, to the extent that Greensill Bank has suffered loss by reason of any alleged contravening conduct by TMNF (which is denied), TMNF says that:

a. the claims are apportionable claims for the purposes of s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the Competition and Consumer Act;

b. Greensill Bank was contributorily negligent because it failed to undertake, or alternatively failed to undertake adequate, investigations and/or due diligence into the transactions referred to in the ASOC;

Particulars

A. Greensill Bank failed to undertake adequate, investigations and/or due diligence into each of the transactions referred to in the ASOC.

B. TMNF will seek discovery of the communications between Greensill Bank and the GCPL, GCUK and Lex Greensill in relation to the circumstances in which Greensill Bank acquired notes referrable to the transactions pleaded in the ASOC, related due diligence (if any) undertaken by Greensill Bank, and Greensill Bank's internal controls in relation to the notes they acquired.

c. Atlantic 57 is a concurrent wrongdoer, as its acts or omissions in not repaying any debts owed by it (if any such debts existed, which is not admitted) to GCUK or to Greensill Bank caused the damage or loss the subject of the claim;

d. GCUK is a concurrent wrongdoer as its acts or omissions in not recovering payments from Atlantic 57 referred to at subparagraph (b) of this Defence caused the damage or loss the subject of the claim;

e. if (which is denied) Greensill Bank believed that the notes which it acquired as pleaded in the ASOC were supported by insurance cover for the debts underlying the notes:

i. each of Lex Greensill, GCPL and GCUK is a concurrent wrongdoer on the basis that each of them misled Greensill Bank to hold such a belief in breach of a duty to Greensill Bank to exercise reasonable skill and care in his or its dealings with Greensill Bank relating to the notes; and

Particulars

TMNF was not privy to the communications between Greensill Bank and the representatives of GCPL, GCUK and Lex Greensill in relation to insurance cover allegedly obtained for the benefit of Greensill Bank. TMNF will seek discovery of those communications and may provide further particulars thereafter.

ii. each of Lex Greensill, GCPL and GCUK is a concurrent wrongdoer on the basis that he or it misled Greensill Bank by failing to disclose that they had made the Prior Misrepresentations and Non-Disclosures pleaded in Annexure A to this Defence and that it was likely that the insurance purportedly obtained in support of the notes acquitted by Greensill Bank was liable to be avoided accordingly;

e1. if the matters pleaded by GBAG at paragraphs [6B], [6C] and [224] to [283] of its Statement of Claim are established, then:

i. Marsh Pty Ltd is a concurrent wrongdoer for the reasons alleged in those paragraphs;

ii. Marsh Ltd is a concurrent wrongdoer because it:

A. provided the Marsh Broking Services (either together with or through Marsh Pty Ltd);

B. engaged in the same conduct constituting the Marsh Authority Representations (as pleaded at paragraphs [247] to [248]);

C. engaged in the same conduct constituting the Marsh Validity Representations (as pleaded at paragraphs [252] to [253]); and

D. in the premises, is liable to GBAG for the same contraventions and/or tortious conduct as pleaded against Marsh Pty Ltd at [258] to [277]; and

f. in the premises, the liability of TMNF to Greensill Bank in relation to their claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent TMNF's responsibility for the damage or loss, and the court may give judgment against TMNF for not more than that amount, pursuant to s 1041N of the Corporations Act, s 12GR of the ASIC Act or s 87CD of the Competition and Consumer Act.

Section 1041E Claim

200. TMNF denies paragraph 200 of the ASOC.

201. TMNF denies paragraph 201 of the ASOC.

202. In response to paragraph 202 of the ASOC, TMNF:

a. says that the allegation is embarrassing as it does not allege each of the elements of a contravention of s 1041E of the Corporations Act; and

b. otherwise denies the paragraph.

203. In response to paragraph 203 of the ASOC, TMNF:

a. refers to and repeats paragraphs 189 and 198 of this Defence; and

b. otherwise denies the paragraph.

204. In response to paragraph 204 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 189 and 190 to 198 of this Defence; and

b. otherwise denies the paragraph.

204A. In response to paragraph 204A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 191 to 193 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications); and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 191 to 193 of the ASOC to the extent it occurred on or after 1 July 2019.

F3. Claims against Greg Brereton

205-223. In response to paragraphs 205 to 223 (save for 209A and 218A, which are pleaded to below) of the ASOC, TMNF:

a. refers to and repeats paragraphs 186 to 204 of this Defence;

b. says that, for the reasons pleaded in paragraph 186 of this Defence, if Mr Brereton gave the Brereton Warranties of Authority, he is entitled to avoid or rescind any collateral contract between him and Greensill Bank containing those warranties on the basis he entered into the contract by reason of the Prior Misrepresentations and Non-Disclosures; and

c. otherwise does not know and therefore cannot admit the paragraphs, there being no allegations against TMNF.

209A. In response to paragraph 209A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 205 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 205 of the ASOC to the extent it occurred on or after 1 July 2019.

218A. In response to paragraph 218A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 210 to 212 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 210 to 212 of the ASOC to the extent it occurred on or after 1 July 2019.

223A. In response to paragraph 223A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 219 to 221 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 219 to 221 of the ASOC to the extent it occurred on or after 1 July 2019.

F4. Claims against Marsh and Marsh Pty Ltd

223B–283. TMNF does not plead to paragraphs 223B to 283 of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

G. PRIOR MISREPRESENTATIONS AND NON-DISCLOSURES

224. In further answer to the entirety of the claim, TMNF says that if the Policy and relevant endorsements were validly entered into on behalf of IAL by BCC (which is not admitted) then Greensill Bank has not suffered any loss or damage by reason of the matters alleged against TMNF, because, by reason of the Prior Misrepresentations and Non-Disclosures by and on behalf of the insureds alleged in Annexure A:

a. pursuant to cl 15.4 of the Policy or s 28(2) of the ICA, the 2019 90/10 Policies (as defined in paragraph 4 of Annexure A to this Defence) and any endorsements under the policies are liable to be avoided;

b. further or alternatively, pursuant to s 28(3) of the ICA, if the Policy and endorsements are not avoided, any right Greensill Bank has to indemnity is reduced to the amount that would place IAL in the position it would have been had the Prior Misrepresentations and Non-Disclosures not been made, that amount being nil; and

c. further or alternatively, pursuant to cl 9.7 of the Policy, Greensill Bank and/or GCPL had failed to comply with its duty of fair presentation and those failures together or separately had a 'Material Policy Impact' such that IAL has no liability to indemnify Greensill Bank for the loss claimed in the proceedings.

225. Further or in the alternative to paragraph 224, in further answer to the entirety of the claim TMNF says as follows:

a. when the Atlantic 57 risk was first presented to Mr Brereton in September 2018, Mr Brereton was provided with certain information regarding the nature of the risk proposed to be insured (**the Placement Information**);

Particulars

Emails between Lex Greensill, Greg Brereton, Vesna Vladusic, David Keeling, Pamela Nnoko, Brett Downes, Barnaby Lynch, John Whelan, Ewan Berkemeier, Edward G Smith in the period 12 to 15 September 2018.

b. the Placement Information did not disclose that GCUK had in fact extended a loan to Atlantic 57 from at least 28 September 2016, with the result that the facility was not a proposed facility but instead an aged GCUK facility in respect of which no payments of principal or interest had been made since inception of the facility on or about 28 September 2016;

c. the Placement Information did not disclose that:

i. a large component (in excess of USD15,000,000) of the finance to be extended to Atlantic 57 under the proposed Instalment Payment Agreement was for the purpose of rolling debts already owing from Atlantic 57 to GCUK for fees previously charged by GCUK in connection with the existing loan to Atlantic 57; and

ii. the indebtedness owing by Atlantic 57 to GCUK under the facility included a debt in respect of a $4m investment made by a third party in GCUK;

d. the Placement Information contained a representation that one of the proposed guarantors under the facility, Mr Andy Ruhan, had assets with a combined total value of £161,570,000 and liabilities with a combined total value of £2, giving a net worth of £161,569,998 (**the Andy Ruhan Representation**);

e. the Andy Ruhan Representation was misleading in circumstances where Mr Ruhan's publicly declared position in divorce proceedings in the High Court of Justice (England & Wales) as at 9 November 2017 was that "he is not [very rich]; indeed, he says he is insolvent to the tune of £2m";

Particulars

Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam) (**the Ruhan Proceedings**) at [4] (Mostyn LJ).

f. alternatively, the Placement Information failed to disclose that Mr Ruhan had been found in the Ruhan Proceedings to be a person who was prepared to misrepresent the state of his financial affairs for financial gain (**the Andy Ruhan Non-Disclosure**);

g. the Placement Information did not disclose that Andy Ruhan had a pre-existing relationship with Lex Greensill, by virtue of his previous ownership interest in Greensill Bank (then known as NordFinanz Bank), and his investment of AUD 5,642,616 in GCPL on 14 December 2012;

h. the Placement Information contained a representation that the other proposed guarantor under the facility, Mr Anthony Stevens, had assets with a combined total value of £226,000,000 and no debt (**the Anthony Stevens Representation**);

i. the Anthony Stevens Representation was misleading in circumstances where the High Court of Justice (England & Wales) had on 9 November 2017 found that Mr Stevens had acted as Mr Ruhan's nominee for the receipt of £92,000,000, that this sum was in truth Mr Ruhan's money, and that "inasmuch as the documents proclaim that Mr Stevens (or his creatures) were genuine parties to the agreement then they are shams";

Particulars

Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam) at [26], [33(ix)], [76] and [77] (Mostyn LJ).

j. alternatively, the Placement Information failed to disclose that Mr Stevens had been found in the Stevens Proceedings to be a person who was prepared to misrepresent the state of his financial affairs for financial gain (**the Anthony Stevens Non-Disclosure**);

k. in the premises, if the Policy and relevant endorsements were validly entered into on behalf of IAL by BCC (which is not admitted) then Greensill Bank has not suffered any loss or damage by reason of the matters alleged against TMNF, because, by reason of the foregoing misrepresentations and non-disclosures:

i. pursuant to s 28(3) of the ICA, any right Greensill Bank has to indemnity is reduced to the amount that would place IAL in the position it would have been had the foregoing misrepresentations and non-disclosures not been made, that amount being nil;

ii. had IAL or BCC been aware of the true position as pleaded in subparagraphs (b), (c), (e), (f), (g), (i) or (j) of this Defence, it would not have agreed to insure the Atlantic 57 risk; and

iii. further or alternatively, pursuant to cl 9.7 of the Policy, Greensill Bank and/or GCPL had failed to comply with its duty of fair presentation and those failures together or separately had a 'Material Policy Impact' such that IAL has no liability to indemnify Greensill Bank for the loss claimed in the proceedings.

Date: 1~~6~~ May ~~2025~~ 2026

Signed by Matt James Andrews
Lawyer for the Fourth Respondent
By his partner, Raylee Joy Hartwell

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

Certificate of lawyer

I, ~~Matt James Andrews~~ Raylee Joy Hartwell, certify to the Court that, in relation to the defence filed on behalf of the Fourth Respondent, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 1~~6~~ May ~~2025~~ 2026



Signed by Raylee Joy Hartwell as partner of Matt James Andrews, Lawyer for the Fourth Respondent

Schedule

NSD 173 of 2023

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

Second Applicant	Dr Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Second Respondent	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Third Respondent	Greg Brereton
Fourth Respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd (ARBN 000 438 291)

BCC CROSS-CLAIM

Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent:	Greensill Capital (UK) Ltd
Second Cross-respondent:	Greensill Bank AG
Third Cross-respondent:	Greensill Capital Pty Ltd (In Liquidation)

BCC/TMNF FIRST CROSS-CLAIM

First Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Second Cross-claimant:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
First Cross-respondent:	Marsh Pty Ltd (ACN 004 651 512)
Second Cross-respondent:	Marsh Limited

BCC/TMNF SECOND CROSS-CLAIM

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

IAL CROSS-CLAIM

Cross-claimant:	Insurance Australia Limited (ACN 000 016 722)
First Cross-respondent:	Marsh Limited
Second Cross-respondent:	Marsh Pty Ltd (ACN 004 651 512)
Third Cross-respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Fourth Cross-respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)