NOTICE OF FILING

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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

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

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

Filed pursuant to Order of Thawley J dated 23 April 2026

IAL Annexure A

No. NSD 175 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 (ACN 000 016 722) and others named in the Schedule

First Respondent

Filed on behalf of (name & role of party)	Insurance Australia Limited – First Respondent
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Form 33

Rule 16.32

Annexure A: Prior misrepresentations and non-disclosures

This Annexure A has been prepared for the purposes of supplementing the defences filed by IAL in multiple proceedings. It uses internally defined terms rather than terms defined in the defences in those proceedings. IAL may seek leave to amend this Annexure A upon review of documents discovered by GCUK and GCPL.

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A POLICY DOCUMENTS AND DUTIES

1 Section G of this Annexure identifies all policies and endorsements purportedly issued by BCC Trade Credit Pty Ltd (**BCC**) to **Greensill** (being each of Greensill Bank AG (**Greensill Bank**), Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Pty Ltd (**GCUK**)) as relied on by the Greensill Applicants[1] as a basis for coverage in each of the Greensill Proceedings[2] (the **Relevant Policies and Endorsements**).

2 If, which is denied, the Relevant Policies and Endorsements were valid and binding on Insurance Australia Limited (**IAL**):

(a) the proper law of those policies and endorsements was the law of New South Wales; and

Particulars

Choice of law clauses in each of the Relevant Policies stipulate that they are to be governed and construed in accordance with the laws of New South Wales (Australia): Policy TB-03690 (B0509FINCW1900009) (CSA.0001.0008.0571) (**2019 Policy**), Policy TB-05369 (B0509FINCW1900040) (GBA.0004.0025.4709) (**Policy 5369**), and Policy TS-03088 (B0509FINCW1900008) (CSA.0001.0001.3228) (**Policy 3088**) cl 16.1.

(b) the *Insurance Contracts Act 1984* (Cth) (**Insurance Contracts Act**) applied to the policies and endorsements and to Greensill, IAL and BCC in respect of the policies and endorsements.

Particulars

Insurance Contracts Act, section 8.

3 Before each of the Relevant Policies and Endorsements was purportedly issued and before each was purportedly renewed or replaced, Greensill owed duties inter alia:

(a) not to make misrepresentations; and

(b) to disclose all matters known to it which it knew, or ought reasonably to have known, were material to the decision of the insurer whether to accept each risk and, if so, on what terms.

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[1] The applicants in the various "Greensill Proceedings" (as defined in footnote 2).

[2] NSD1039 of 2021 (**White Oak Proceeding**), NSD1216 of 2021 (**EHG Proceeding**), NSD106 of 2022 (**Catfoss Proceeding**), NSD110 of 2022 (**NMC Proceeding**), NSD169 of 2023 (**CS Global Proceeding**), NSD173 of 2023 (**A57 Proceeding**), NSD174 of 2023 (**Bluestone Proceeding**), NSD175 of 2023 (**LCL Proceeding**), NSD177 of 2023 (**Simec Proceeding**) and NSW 602 of 2023 (**Liberty Delta Proceeding**).

Particulars

The duties arise by operation of the general law and under the Insurance Contracts Act, section 21.

B ATTRIBUTION

Structure of the Greensill Group

4 GCPL was:

(a) the parent and holding company of the Greensill Group; and

(b) by reason of the matters referred to in paragraph 5(b) below:

(i) the ultimate owner of Greensill Bank from 2014 to 13 December 2018; and

(ii) the sole shareholder of Greensill Bank from 14 December 2018.

Particulars

GCPL's annual report and financial statements for the years ended 31 December 2014 to 31 December 2019.

5 GCUK was:

(a) at all times, a wholly owned subsidiary of GCPL;

Particulars

GCUK's annual report and financial statements for the years ended 31 December 2014 to 31 December 2019.

(b) the majority shareholder, and then sole shareholder, of Greensill Bank from 2014 until 14 December 2018, when GCUK transferred its shareholding to GCPL.

Particulars

GCUK's annual report and financial statements for the years ended 31 December 2014 to 31 December 2018.

6 In the premises of paragraphs 4 and 5 above, Greensill Bank was, at all relevant times, under the ultimate control of GCPL.

SCF Business

7 GCPL conducted most of the Greensill Group's supply chain finance (**SCF**) business through two core operating entities, being GCUK and Greensill Bank, where:

(a) GCUK originated SCF programmes for companies and obtained funding for those programmes, including from Greensill Bank;

(b) Greensill Bank:

(i) operated as a financier to the group, with most of its assets being trade receivables from transactions originated by GCUK through its SCF programmes; and

(ii) acted on behalf of GCUK in the origination process in countries within the European Economic Area where regulations only permitted SCF transactions to be carried out by a credit institution; and

Particulars

Issuer Rating Report for Greensill Bank dated 29 August 2019 by Scope Rating (CSA.5000.0003.3030).

Insurer Information Pack dated 27 February 2018 (MAR.0004.0004.2942).

Supply Chain Overview dated February 2017 (BCC.0001.0001.0026).

(c) the operational relationship between GCUK and Greensill Bank was governed by successive service level agreements (**SLAs**) and an Origination Framework Agreement.

Particulars

Service Level Agreement dated 18 August 2016 between GCUK and Greensill Bank and attachments (**2016 SLA**) (GBA.0004.0027.1314, GBA.0004.0027.1320, GBA.0004.0027.1319, GBA.0004.0027.1321, GBA.0004.0027.1316, GBA.0004.0027.1323, GBA.0004.0027.1311, GBA.0004.0027.1312, GBA.0004.0027.1318, GBA.0004.0027.1313, GBA.0004.0027.1315, GBA.0004.0027.1317, GBA.0004.0027.1310 and GBA.0004.0027.1322).

Service Level Agreement dated 13 January 2020 between GCUK and Greensill Bank and attachments (**2020 SLA**) (GBA.0004.0027.4509, GBA.0004.0027.4510, GBA.0004.0027.4511, GBA.0004.0027.4512 and GBA.0004.0027.4513).

Origination Framework Agreement between GCUK (as Originating Agent and Funding Agent), Greensill Bank and other entities in the Greensill Group dated 5 September 2016 as amended and restated on 6 December 2017 and 6 March 2018 (GBA.0004.0024.0047).

Greensill Bank 'Business and risk strategy' paper dated April 2018 (GBA.0004.0027.4165 at 0021).

8 The Greensill Group's business model operated such that:

(a) GCUK was responsible for the entire infrastructure of the SCF business and the coordination of services between GCUK and Greensill Bank under the SLAs;

(b) Greensill Bank's core functions included:

(i) the acquisition of SCF assets originated by GCUK and assumption of the primary credit risks associated with those assets; and

(ii) the refinancing and liquidity management of SCF portfolios acquired from GCUK;

(c) GCUK and Greensill Bank were interdependent, both economically and operationally; and

(d) Greensill Bank relied on GCUK for, among other things:

(i) the provision of all necessary documentation, data and information necessary for Greensill Bank to carry out its role as described in paragraph 7(b) above; and

(ii) the performance of obligations under trade credit insurance policies obtained by GCUK for the benefit of Greensill Bank.

Particulars

Greensill Bank 'Business risk and strategy' paper dated April 2018 (GBA.0004.0027.4165 at 0011).

Letter dated 11 September 2020 from BaFin to Greensill Bank (GBA.0004.0016.3950).

Letter dated 19 February 2021 from BaFin to Greensill Bank (GBA.0004.0026.9963).

Roles and responsibilities of key personnel

9 At all material times, Lex Greensill was:

(a) the founder of the Greensill Group;

(b) the Chief Executive Officer and a major shareholder of GCPL;

Particulars

ASIC company search for GCPL.

'Intro to Greensill' PowerPoint Presentation dated 3 March 2020 (AGB.0002.0002.4371).

'Greensill Capital Pty Limited - % equity shares' PowerPoint Presentation dated November 2017, which noted that Lex Greensill held a 32.65% equity stake in GCPL at the relevant time (GBA.0004.0026.9460).

Greensill Equity Deck dated 22 October 2020, which noted that Lex Greensill held a 28.06% equity stake in GCPL at the relevant time (GBA.0004.0024.1117 at 0057).

(c) the Chief Executive Officer of GCUK;

Particulars

GCUK's annual report and financial statements for the years ended 31 December 2014 to 31 December 2019.

Letter dated 19 February 2021 from BaFin to Greensill Bank (GBA.0004.0026.9963).

(d) a *wirtschaftlich berechtigte* ('beneficial owner') of Greensill Bank, through his shareholdings in GCPL; and

Particulars

Greensill Bank's filing on the German Transparency Register for the period 5 April 2017 to 15 March 2021.

(e) a member of the Greensill Credit Committee, as described in paragraph 12 below.

10 Further, GCPL, GCUK and Greensill Bank had common directors and senior management personnel, including:

(a) Lex Greensill, who held the positions described in paragraph 9 above;

(b) Maurice Thompson, who was:

(i) a registered director, and the chairman, of GCUK from 25 September 2014 to 22 January 2018;

(ii) a registered director, and the chairman, of GCPL from 22 January 2018 to 5 March 2021; and

(iii) the chairman of the supervisory board, or *Vorsitzender des Aufsichtsrates* of Greensill Bank;

Particulars

ASIC company search of GPCL.

GCUK's filing with the Companies House: https://find-and-update.company-information.service.gov.uk/company/08126173 (accessed on 25 October 2024).

Greensill 'Supply Chain Finance Overview' presentation dated June 2016 (MAR.0004.0001.0080).

Greensill presentation to Credit Suisse/MUFG dated July 2019 (CSA.5000.0003.3351).

Greensill Group Board Directors and Senior Management dated August 2020 (AGB.0002.0002.4371).

(c) William Roland Hartley-Urquhart, who was:

(i) a registered director of GCPL between 6 November 2015 and 11 February 2021;

(ii) a registered director of GCUK between 20 May 2015 and 22 January 2018;

(iii) the Global Head of Origination of the Greensill Group from at least 2016;

(iv) the Vice Chairman of the Greensill Group from 2017; and

(v) a member of the Greensill Credit Committee, as described in paragraph 12 below;

Particulars

ASIC company search of GPCL.

GCUK's filing with the Companies House: https://find-and-update.company-information.service.gov.uk/company/08126173 (accessed on 25 October 2024).

Greensill 'Supply Chain Finance Overview' presentation dated June 2016 (MAR.0004.0001.0080).

Greensill presentation to Credit Suisse/MUFG dated July 2019 (CSA.5000.0003.3351).

Greensill Group Board Directors and Senior Management dated August 2020 (AGB.0002.0002.4371).

Email dated 19 January 2017 from Lex Greensill to Greensill Capital Core Team (GBA.0004.0005.8810).

Presentation slides titled 'Greensill Group Board Directors' and 'Greensill Group Senior Management' dated August 2020 (AGB.0002.0002.4371).

(d) Danyon Lloyd, who was:

(i) on the executive board or *Vorstand* of Greensill Bank, first as Chief Executive Officer/Chairman and then Chief Operating Officer, from at least 2015 until at least October 2019; and

(ii) a member of the Greensill Credit Committee, as described in paragraph 12 below.

Particulars

Email from Ingo Natusch (Head of Risk Monitoring Department) of Auditing Association of German Banks to Markus Nünnerich (Chief Risk Officer) of Greensill Bank dated 1 December 2015 (GBA.0004.0025.4729).

Greensill 'Supply Chain Finance Overview' presentation dated June 2016 (MAR.0004.0001.0080).

Presentation titled 'Management Meeting – Greensill Bank' (GBA.0004.0014.8473).

11 At all relevant times, the Greensill Group had a Credit Committee responsible for:

(a) all matters relating to GCUK's credit exposures, including credit risk evaluation and management; and

(b) subject to any delegation levels, approving the establishment of, and changes to, credit facilities extended by GCUK.

Particulars

The governance arrangements of the Credit Committee, including quorum, membership and further delegations, were covered in the Credit Committee's Terms of Reference published by GCUK and updated from time to time.

Credit Committee Terms of Reference dated 25 September 2015 (AGB.0003.0001.0713).

Credit Committee Terms of Reference dated 16 December 2016 (BCC.0001.0001.0413).

Credit Committee Terms of Reference dated 12 July 2019 (AGB.0002.0006.0377).

Credit Committee Terms of Reference dated 1 June 2020 (MAR.0004.0004.2944).

Greensill Credit Policy (v1) dated September 2019 (BCC.0001.0005.5813).

Greensill Capital Credit Approval Grid dated 28 March 2018 (BCC.0001.0001.0411).

12 Pursuant to the Credit Committee's Terms of Reference:

(a) the members of the Credit Committee included board members of companies in the Greensill Group and Designated Credit Officers (**DCO**), including:

(i) Lex Greensill, as CEO, from September 2015 until 11 July 2019;

(ii) Danyon Lloyd, as a DCO, from September 2015 until 11 July 2019; and

(iii) William Roland Hartley-Urquhart, as a DCO, from September 2015 until 11 February 2021;

(b) all credit transactions required approval from the relevant 'Sponsor';

(c) the 'Sponsor' of a transaction was the relevant Global or Regional Heads of Origination, Product Vertical Heads, or the CEO of GCUK; and

(d) certain types of credit transactions could be approved by individuals holding delegated authority from the Credit Committee.

Placement of the Relevant Policies and Endorsements

13 At all relevant times, trade credit insurance was an integral part of the Greensill Group's SCF business and was used by:

(a) GCUK to meet investor requirements that its SCF assets be insured; and

(b) Greensill Bank as a 'credit risk mitigant' in order to reduce its capital requirements under European and German banking regulations.

Particulars

'Greensill Overview' document prepared by GCUK and provided to Tokio Marine on 17 January 2017 (MAR.0004.0001.0081).

Email from Julian Macey-Dare of Marsh to Eddie Feather of Marsh dated 12 May 2017, titled 'Greensill Capital' (MAR.0004.0001.0361).

Email from Julian Macey-Dare to Danyon Lloyd (Chief Executive Officer) of Greensill Bank dated 24 January 2018, titled 'FW: Confidential: BaFin / CRM recognition of our policies' (AGB.0002.0003.3900).

Grant Thorton's Joint Administrators' proposals for GCUK and Greensill Capital Management (UK) Limited dated 28 April 2021 (TMA.0001.0005.1886).

14 The Master Policies (under which GCPL and GCUK were insured) and the Parallel Policies (under which GCPL and Greensill Bank were insured) formed part of an integrated policy scheme for the benefit of the Greensill Group's SCF business.

Particulars

The operation of the Master and Parallel Policies as a 'common scheme' is demonstrated by the premium calculation. Under the Parallel Policies, the premium was set at USD1, which was, in and of itself, commercially disproportionate to the risk purportedly being underwritten. It is to be inferred that the premium set under the Master Policies was intended to reflect the risk that was purportedly being underwritten across both policies.

15 In obtaining placement of the Relevant Policies and Endorsements, the general practice of the officers, employees and agents of GCUK involved in this process was:

(a) to make representations to Greg Brereton (**Brereton**) and BCC, on behalf of each of GCPL and Greensill Bank, for the purpose of complying with GCPL's and Greensill Bank's duty of disclosure under the Insurance Contracts Act;

(b) in making such representations, not to differentiate between the Master Policies and the Parallel Policies, or the respective positions of each of GCUK, GCPL and Greensill Bank; and

(c) thereafter to assume responsibility for effecting the administrative arrangements necessary to place the Relevant Policies and Endorsements on behalf of each of GCPL and Greensill Bank.

Particulars

This general practice is evidenced by the conduct of GCUK in respect of each of the risks described in Section D of this Annexure.

The letter from GCUK and Greensill Bank to Chubb European Group SE dated 16 November 2020, which stated: 'The interests of GCUK and [Greensill Bank] are aligned in this regard, and whilst there are a number of differences between the two policies, neither GCUK nor [Greensill Bank] differentiates between what they are required to do under their respective policies. Both entities commonly share information and each would be expected to be aware of any material facts know[n] to the other. Any obligation including but not limited to any report or notice or the disclosure of any fact or circumstance that either GCUK or [Greensill Bank] may be obliged to provide you under the policies will be provided regardless of whether the obligation has or has not arisen under their respective policies' (MAR.0004.0004.6391).

In March 2021, Lex Greensill gave a witness statement in insolvency proceedings in respect of GCUK, which referred to the relationship between GCUK and Greensill Bank at paragraph 5.19. In particular, Lex Greensill set out how GCUK and Greensill Bank relied upon each other in respect of the GFG asset receivables and the interconnected nature of their relationship (BCC.0001.0009.4357).

16 Further, under the terms of each of the 2016 SLA and 2020 SLA between GCUK and Greensill Bank, GCUK was required, with respect to the Relevant Policies and Endorsements, to:

(a) provide Greensill Bank with all necessary support to ensure compliance with its insurance obligations;

(b) fulfil Greensill Bank's reporting obligations, including the preparation and transmission of monthly insurance reports; and

(c) for any insurance claim, prepare the claim form for Greensill Bank to forward to the Insurer and supply any necessary documentation.

Particulars

IAL refers to the particulars to paragraph 7 above.

17 In the premises of paragraph 15 above, GCPL authorised GCUK to act on its behalf in the placement of the Relevant Policies and Endorsements.

Particulars

GCUK's authority can be implied or inferred from GCPL's conduct and the surrounding circumstances, including:

(a) GCPL's acquiescence to the placement of the Relevant Policies and Endorsements on its behalf, according to the general practice identified in paragraph 15 above;

(b) GCPL's payment of insurance premiums on GCUK's behalf under the Master Policies (Exhibit MJB-1 to Matthew James Byrnes' affidavit in the White Oak Proceeding, page 36); and

(c) GCPL's execution of the Relevant Policies: see the 2019 Policy and Policy 5369.

18 In the premises of paragraphs 15 and 16 above, Greensill Bank authorised GCUK to act on its behalf in the placement of the Relevant Policies and Endorsements.

Particulars

GCUK's authority can be implied or inferred from Greensill Bank's conduct and the surrounding circumstances, including:

(a) Greensill Bank's acquiescence to the placement of the Relevant Policies and Endorsements on its behalf, according to the general practice identified in paragraph 15 above;

(b) Greensill Bank's knowledge and involvement in the placement of the Relevant Policies and Endorsements, including the email from Danyon Lloyd to Lex Greensill, copying Julian Macey-Dare, John Whelan (Deputy General Counsel) of GCUK and others, dated 23 February 2018 (AGB.0002.0003.3958);

(c) Greensill Bank's execution of the Relevant Policies: see the 2019 Policy, Policy 5369 and Policy 3088; and

(d) that Greensill Bank authorised GCUK to perform services to ensure its compliance with the Relevant Policies as described in paragraph 16 above.

Attribution of conduct and knowledge to GCPL

19 The insured risks referred to in this section are those set out in Section D below.

20 The conduct and knowledge of Lex Greensill pleaded in connection with each of the insured risks is to be attributed to GCPL by reason of:

(a) his position as CEO and co-founder of GCPL, such that he was part of the directing mind and will of GCPL; and/or

(b) the fact that he obtained knowledge of the relevant matters by virtue of his position and his involvement in the management of the Greensill Group's SCF business; and/or

(c) the fact that he procured insurance coverage on behalf of GCPL in respect of at least a significant number of the insured risks.

21 The conduct and knowledge of William Roland Hartley-Urquhart pleaded in connection with each of the insured risks is to be attributed to GCPL by reason of:

(a) his position as a director of GCPL, such that he was part of the directing mind and will of GCPL; and/or

(b) the fact that he obtained knowledge of the relevant matters by virtue of his position and his involvement in the management of the Greensill Group's SCF business.

22 Further or alternatively to paragraphs 20 and 21 above:

(a) at all material times, GCUK:

(i) was responsible for arranging the placement of the Relevant Policies and Endorsements on behalf of GCPL; and/or

(ii) was an agent of GCPL and acted within the scope of its authority in respect of the placement of the Relevant Policies and Endorsements,

such that its conduct and knowledge in connection with each of the insured risks is to be attributed to GCPL; and

Particulars

IAL refers to the particulars to paragraph 17 above.

(b) for the purposes of subparagraph (a), the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the arrangement of insurance for and/or GCUK's dealings in connection with the insured risks as pleaded in Section D is to be attributed to GCUK.

23 Further or alternatively to paragraphs 20, 21 and 22 above:

(a) in the circumstances described in paragraphs 4 to 15 and 17 above, the conduct and knowledge of GCUK in respect of each of the insured risks is to be attributed to GCPL as a special rule of attribution; and

Particulars

Attribution of knowledge arises as a special rule of attribution having regard to the legislative scheme and policy of Part IV of the Insurance Contracts Act.

(b) for the purposes of subparagraph (a), the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the arrangement of insurance for, and/or GCUK's dealings in connection with, the insured risks – as pleaded in Section D – are to be attributed to GCUK.

Attribution of conduct and knowledge to Greensill Bank

24 The insured risks referred to in this section are those set out in Section D below.

25 Lex Greensill:

(a) by reason of the matters described in paragraphs 8 and 9 above, exercised controlling influence over Greensill Bank at all times;

Particulars

IAL refers to the particulars to paragraphs 8 and 9 above.

Letter dated 19 February 2021 from BaFin to Greensill Bank (GBA.0004.0026.9963 at 0004 and 0006).

Letter dated 11 September 2020 from BaFin to Greensill Bank (GBA.0004.0016.3950).

(b) was involved in the conduct of the affairs of Greensill Bank and its day to day management;

Particulars

Email from Danyon Lloyd to Lex Greensill dated 22 October 2016 (GBA.0004.0019.6163).

Email from Lex Greensill to Thorbjörn Karp (Prufungsverband deutscher Banken e.V. (**PVDB**)), copying Maurice Thompson (Director) of GCUK, Markus Nünnerich (Chief Executive Officer) of Greensill Bank, Danyon Lloyd (Chief Operating Officer) of Greensill Bank and PVDB representatives, dated 17 July 2019 (GBA.0004.0018.5608).

Email from Lex Greensill to Markus Nünnerich dated 31 July 2019 (GBA.0004.0007.5248).

Email from Markus Nünnerich to Danyon Lloyd dated 26 November 2019 (AGB.0003.0003.3816).

Email from Markus Nünnerich to Lex Greensill dated 2 December 2019 (GBA.0004.0007.4948).

Email from Markus Nünnerich to Lex Greensill dated 22 January 2020 (GBA.0004.0007.4990).

Email from Markus Nünnerich to Danyon Lloyd and Lex Greensill dated 25 February 2020 (AGB.0003.0003.3824).

Email from Markus Nünnerich to Lex Greensill and Maurice Thompson and Danyon Lloyd, copying others dated 4 March 2020 (GBA.0004.0028.1714).

Email from Markus Nünnerich to Lex Greensill dated 23 June 2020 (GBA.0004.0007.5114).

Email from Lex Greensill to Markus Nünnerich dated 29 June 2020 (AGB.0003.0003.3946).

Email from Lex Greensill to Markus Nünnerich and Danyon Lloyd dated 23 July 2020, attaching a GFG Reduction Roadmap (AGB.0003.0003.3944 and AGB.0003.0003.3945).

Email from Lex Greensill to Neil Garrod (Chief Financial Officer) of GCUK, copying Markus Nünnerich and Danyon Lloyd, dated 28 August 2020 (GBA.0004.0007.4705).

Email from Markus Nünnerich to Lex Greensill, copying in Maurice Thompson, dated 4 November 2020 (AGB.0003.0003.3907).

Email from Raimund Roeseler (Chief Executive Director, Banking Supervision) of BaFin to Lex Greensill dated 1 March 2021 (AGB.0003.0003.3927).

Email from Lex Greensill to Raimund Roeseler dated 2 March 2021 (AGB.0003.0003.3926).

Email from Edward Smith of Marsh to Julian Macey-Dare of Marsh dated 13 October 2020 (MAR.0004.0004.5113).

Lex Greensill was an attendee at meetings of the Vorsitzender des Aufsichtsrates or supervisory board of Greensill Bank: GCU.0012.0006.9813; (GCU.0012.0006.9814; GCU.0012.0006.9815; GCU.0012.0006.9816; GCU.0012.0006.9817; GCU.0012.0006.9818; GCU.0012.0006.9819; GCU.0012.0006.9820.

(c) was a person upon whose instructions Greensill Bank and its officers were accustomed to acting, and did so act;

Particulars

Email from Danyon Lloyd to Lex Greensill dated 29 July 2016 (GBA.0004.0019.6155).

Email from Lex Greensill to Markus Nünnerich dated 16 November 2019 (GBA.0004.0007.4677).

Email from Markus Nünnerich to Lex Greensill, copying Maurice Thompson and Danyon Lloyd, dated 19 November 2019 (GBA.0004.0007.5067).

Email from Lex Greensill to Markus Nünnerich dated 17 August 2020 (GBA.0004.0007.5237).

Email from Markus Nünnerich to Lex Greensill, copying Danyon Lloyd, dated 30 September 2020 (GBA.0004.0007.4853).

Emails from Markus Nünnerich to Lex Greensill dated 3 and 4 November 2020 (GBA.0004.0007.4824; GBA.0004.0007.4825).

(d) procured insurance coverage on behalf of Greensill Bank in respect of at least a significant number of the insured risks;

Particulars

Email from Lex Greensill to Edward Smith of Marsh dated 19 March 2019, in which he gave the order on behalf of both GCUK and Greensill Bank to bind Endorsement 4 in respect of Liberty House Group Pte Ltd (AGB.0002.0002.2068).

Email from Lex Greensill to Raimund Roeseler dated 2 March 2021 (AGB.0003.0003.3926).

This is further evidenced by the correspondence between Lex Greensill and Brereton particularised in this Annexure A.

(e) corresponded with German banking regulators, including the Federal Financial Supervisory Authority (**BaFin**) and PVDB, regarding Greensill Bank's regulatory compliance and enforcement actions;

Particulars

Email from Lex Greensill to Thorbjörn Karp (PVDB), copying Maurice Thompson (Director) of GCUK, Markus Nünnerich (Chief Executive Officer) of Greensill Bank, Danyon Lloyd (Chief Operating Officer) of Greensill Bank and PVDB representatives, dated 17 July 2019 (GBA.0004.0018.5608).

Email from Lex Greensill to Raimund Roeseler of BaFin, copying Markus Nünnerich, Maurice Thompson and representatives of BaFin, dated 10 December 2020 (AGB.0003.0003.5092)).Greensill Bank Supervisory Board minutes of meeting dated 10 December 2020 (GBA.0004.0034.5281),

Emails between Lex Greensill and Raimund Roeseler of BaFin dated between 10 and 15 December 2020 (AGB.0003.0003.5092).

Email from Lex Greensill to Raimund Roeseler of BaFin, copying Markus Nünnerich, Maurice Thompson and representatives of BaFin, dated 1 February 2021 (AGB.0003.0003.4976).

Email from Raimund Roeseler of BaFin to Lex Greensill dated 1 March 2021 (AGB.0003.0003.3927).

Email from Lex Greensill to Raimund Roeseler dated 2 March 2021 (AGB.0003.0003.3926).

(f) by reason of the matters set out in suparagraphs (a) to (e) above, was a person who exercised significant influence and/or practical control over the affairs of Greensill Bank; and

(g) by reason of the matters set out in subparagraphs (a) to (e) above, was a *faktischer Geschäftsführer* of Greensill Bank under the law of Germany and/or a shadow director of Greensill Bank under the law of New South Wales.

26 By reason of any one or more of the matters set out in paragraph 25 above, the conduct and knowledge of Lex Greensill pleaded in connection with each of the insured risks is to be attributed to Greensill Bank.

27 The conduct and knowledge of Danyon Lloyd pleaded in connection with each of the insured risks is to be attributed to Greensill Bank by reason of:

(a) his position as the Chief Executive Officer/Chairman and then Chief Operating Officer of Greensill Bank, such that he was part of the directing mind and will of Greensill Bank; and/or

(b) the fact that he obtained knowledge of the relevant matters by virtue of his position and his involvement in the management of the Greensill Group's SCF business.

28 To the extent that Danyon Lloyd was aware of information that he knew was material to the decision to accept or renew the risk of insuring debts the subject of the proceedings (as pleaded below in respect of particular risks), Greensill Bank knew or was recklessly indifferent to the fact that the information had not been disclosed to BCC or the Insurer before the risk was accepted or renewed.

Particulars

(a) Danyon Lloyd knew the risks for which Greensill sought coverage under the Policy had characteristics that made them unattractive to a prudent underwriter of trade credit insurance (including rollovers of debt, underlying debts that were long-term and high-risk, and concentration of exposure to GFG-related obligors), with the consequence that it was likely that an underwriter with full knowledge of those characteristics would not have underwritten the risks.

(b) Danyon Lloyd knew that GCUK had an incentive not to make full and proper disclosure to BCC and the Insurer because the terms of the Policy purported to insulate Greensill Bank from any inaccuracy or omission in the information provided by GCUK to the Insurer.

(c) Danyon Lloyd was thereby on notice of the need to inquire of Marsh and GCUK as to whether full and accurate disclosure had been made to BCC and the Insurer.

(d) It is to be inferred that Danyon Lloyd:

(i) made such inquiries of Marsh and/or GCUK and was thereby aware that full or accurate disclosure had not been made to BCC and the Insurer of the matters which he knew were material to acceptance of the risk;

(ii) alternatively refrained from making such inquiry because he was aware of the probability that full or accurate disclosure of such matters had not been made; or

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

29 Further or alternatively to paragraphs 26 and 27 above:

(a) at all material times, GCUK was:

(i) responsible for arranging the placement of the Relevant Policies and Endorsements on behalf of Greensill Bank; and/or

(ii) an agent of Greensill Bank and acted within the scope of its authority in respect of the placement of the Relevant Policies and Endorsements,

such that its conduct and knowledge in connection with each of the insured risks is to be attributed to Greensill Bank; and

Particulars

IAL refers to the particulars to paragraphs 18 above.

(b) for the purposes of subparagraph (a), the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the arrangement of insurance for and/or GCUK's dealings in connection with the insured risks as pleaded in Section D is to be attributed to GCUK.

30 Further or alternatively to paragraphs 26, 27 and 29 above:

(a) in the circumstances described in paragraphs 4 to 16 and 18 above, the conduct and knowledge of GCUK in respect of each of the insured risks is to be attributed to Greensill Bank as a special rule of attribution; and

Particulars

Attribution of knowledge arises as a special rule of attribution having regard to the legislative scheme and policy of Part IV of the Insurance Contracts Act.

(b) for the purposes of subparagraph (a), the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the arrangement of insurance for and/or GCUK's dealings in connection with the insured risks as pleaded in Section D is to be attributed to GCUK.

C BACKGROUND REPRESENTATIONS & NON-DISCLOSURES BY GREENSILL

C1 SCF Representation

31 On or around 27 September 2017, Greensill, via its broker Marsh, represented to Brereton that:

(a) GCUK offered two types of SCF solutions to clients, being 'Traditional SCF' and 'Trade Advances (also known as Re-invoicing)';

(b) both 'Traditional SCF' and 'Trade Advances' were finance solutions that were based on the underlying trade of goods or services;

(c) the 'Traditional SCF' product offered by GCUK included the following features:

(i) GCUK had a legal agreement with the Buyer and the Supplier;

(ii) GCUK paid the Supplier;

(iii) the Supplier bore the cost through a discount paid on invoices; and

(iv) payment term extensions were to be done in conjunction with the Supplier as part of a contract renegotiation;

(d) the 'Trade Advances' product offered by GCUK included the following features:

(i) GCUK had a legal agreement with the Buyer and the Trade Advance Service Provider (**TASP**), while the Buyer had a legal agreement with the TASP;

(ii) GCUK provided the Buyer with the funds to pay the Supplier; and

(iii) the Buyer could push out payment terms up to 180 days without discussions with the Supplier;

(e) GCUK would only provide 'Trade Advances' to new clients classified as 'Lower Risk' or 'Low to Medium Risk' meaning, among other things, that:

(i) GCUK would collect physical or electronic underlying invoices that evidenced trade; and

(ii) the underlying invoices would only be provided by suppliers unrelated to the client, or to subsidiaries of the client in legitimate cases,

(**SCF Representation**).

Particulars

Email from Ewan Berkemeier of Marsh to Brereton, with the subject 'RE: Some queries....', dated 27 September 2017 and attachment titled 'Greensill Capital - SCF Underwriting Guidelines: Version 2.2 - October 2016' (BCC.0001.0001.0039 and BCC.0001.0001.0042).

32 Greensill repeated the SCF Representation to Brereton on or around 18 May 2018.

Particulars

Email from Ewan Berkemeier of Marsh to Brereton, with the subject 'RE: Oracle Subcontractor Direct Financing', dated 18 May 2018 and attachment titled 'Greensill Capital – SCF Underwriting Guidelines: Version 4.0 – March 2018' (BCC.0001.0001.0410 and BCC.0001.0001.0412).

33 The SCF Representation was a continuing representation made before entry into each of the Relevant Policies and Endorsements listed in Schedule G.

C2 Future Accounts Receivable Representation[3]

34 In or around February 2019, the concept of a 'future accounts receivable facility' was first presented by Greensill to Brereton, in the context of a presentation regarding a proposed facility for Liberty OneSteel (Primary) UK Ltd (the **Liberty OneSteel AR Facility**).

Particulars

PowerPoint presentation presented by Greensill to Brereton in or about February 2019 titled “Future Receivables Financing for Liberty OneSteel (Primary) UK Ltd” (CSA.0023.0001.7325).

35 The abovementioned presentation represented that the Liberty OneSteel AR Facility would operate in circumstances whereby GCUK would purchase future accounts receivable from a Seller where:

(a) there was an existing commercial relationship between the Seller and the Account Debtors;

[3] This paragraph is substantially the same as paragraph 509A(a) of the BCC defence in the CS Global Proceedings.

(b) GCUK would lend against inventory to be sold to pre-determined Account Debtors under existing sales contracts, with the borrowing base of available inventory to be tested monthly;

(c) the borrowing base of existing inventory able to be sold to Account Debtors under existing sales contracts would be valued by an independent third-party valuer by way of a desktop audit report within 30 days of the end of each month and an on-site audit report within 75 days of the end of each half-year;

(d) GCUK would enter into a receivables purchase agreement with the Seller under which the accounts receivable to be created under the existing sales contracts with the Account Debtors by the sale of existing inventory to the Account Debtors would be assigned to GCUK; and

(e) when the Seller requests a loan from GCUK it will provide a utilisation request indicating details of the Account Debtors to whom the existing inventory will be sold and in what amounts.

36 In the premises of paragraph 35 above, Greensill represented that a 'future accounts receivable facility' had the following general features:

(a) account debtors under the facility would be parties to existing sales contracts with the seller;

(b) the amounts of future accounts receivable to be financed would be supported at the time of drawdown by existing inventory; and

(c) that the seller's existing inventory would be independently valued or verified on a periodic basis,

(**Future Accounts Receivable Representation**).

37 The Future Accounts Receivable Representation was a continuing representation made before entry into each of the Relevant Policies and Endorsements listed in Schedule G, which were negotiated or executed on or from around February 2019.

C3 GFG and GAM

GFG

38 At all material times, the Gupta Family Group Alliance (**GFG**) was a group of companies that were associated with and ultimately controlled by Mr Sanjeev Gupta.

39 At all material times, GFG included the following companies:

(a) Liberty Commodities Limited (**LCL**) which is, and was at all material times, incorporated under the laws of the United Kingdom and wholly owned by Liberty Commodities Group;

(b) Liberty MDR Treasury Company UK Ltd (**Liberty TCUK**) which is, and was at all material times, incorporated under the laws of the United Kingdom;

(c) Liberty Speciality Steel UK Limited (**SSUK**) which is, and was at all material times, incorporated under the laws of the United Kingdom;

(d) Simec Group Ltd (**Simec**) which is, and was at all material times, incorporated under the laws of Hong Kong;

(e) Liberty Galati & Skopje Limited (**Galati**), Liberty Ostrava Limited (**Ostrava**), Liberty Liege Limited (**Liege**) and Liberty Dudelange Limited (**Dudelange**) which are all companies incorporated in England and Wales (together, the **Delta HoldCos**);

(f) Liberty House Group Pte Ltd (**Liberty House**) which is, and was at all material times, incorporated under the laws of Singapore;

(g) Liberty France Aluminium Holdco (**Liberty France**) which is, and was at all material times, incorporated under the laws of the United Kingdom; and

(h) Westford Limited (**Westford**) which was at all material times, incorporated under the laws of Hong Kong and carried on business as a commodities trading house and provided trade finance lending.

40 From around 2015, GCUK commenced providing credit facilities to GFG companies.

Particulars

The first facilities were provided to Simec and LCL in around October 2015.

GAM

41 In the period 2015 to 2018, GCUK raised funds for its credit facilities from funds managed by GAM Holding AG (**GAM**).

42 The financing arranged by GCUK for GFG included the following debt securities bought by funds managed by GAM:

(a) Kinlochleven power plant (**KLL**) Notes, which had the following features:

(i) the KLL Notes had a total value of approximately GBP323.7 million;

(ii) the KLL Notes were arranged by GCUK to raise financing for GFG's acquisition of the Alcan Aluminium UK Limited from Rio Tinto; and

(iii) the KLL Notes were backed by a guarantee from the Scottish Government.

Particulars

Document titled "KLL Series Supplement (36273562_1)[4].pdf" which describes the underlying transaction in Annexure B dated 26 April 2017 (GCU.0010.0001.5958).

(b) Little Red Boxes (**LRB**) Notes, which had the following features:

(i) the LRB Notes had a total value of approximately GBP614 million;

(ii) the LRB Notes were arranged by GCUK to raise financing for GFG's acquisition of Arrium.

Particulars

(a) In or around April 2019, GAM announced that GFG had agreed to repurchase all Liberty Industries PPA Ltd bonds (being, bonds secured by GFG's biofuel generators and referred to as 'Little Red Boxes' (the **LRB Bonds**)) held by GAM at the value at which they were purchased: https://www.reuters.com/article/world/exclusive-gam-whistle-blower-concerns-focused-on-bonds-sold-by-metals-tycoon-idUSKCN1S40UA/.

(b) In 2017, GAM had purchased more than GBP550 million worth of LRB Bonds: https://www.reuters.com/article/world/exclusive-gam-whistle-blower-concerns-focused-on-bonds-sold-by-metals-tycoon-idUSKCN1S40UA/.

(c) On or around 15 July 2019, the GFG repurchased from GAM approximately GBP614 million worth of LRB Bonds: https://www.afr.com/companies/manufacturing/how-sanjeev-gupta-s-empire-is-fuelled-by-opaque-funding-20190927-p52vns.

C4 GFG Liquidity Issues and rolling

43 By no later than March 2019, and at all relevant time thereafter:

(a) the GFG companies were GCUK's single largest relationship group;

Particulars

GCUK board paper on GFG facilities dated October 2018 (GCU.0004.0019.0241), which states (at _0005) "The GFG Alliance relationship

is also the largest single relationship group both in terms of total facility sizing and overall outstandings, representing 15.7% and 35.1%(1) respectively." The same paper (at 0008) records that GCUK had total outstandings of GBP 3.3 bn on facilities provided to GFG companies.

(b) the GFG companies were interdependent, such that defaults by one GFG company increased the risk of default of other entities in the group; and

Particulars

Document with filename "GFG Alliance RCAP – Aug 2017 v9-9-17" dated 9 August 2017 (GCU.0004.0003.0073), sent to Lex Greensill and Danyon Lloyd (amongst others) on 10 August 2017 (GCU.0004.0003.0065). This document states "*This is the first group combined RCAP for the GFG Alliance Group. Given the level of recent activity with the Group and the interlocking dependencies of the two main arms, Liberty House ("LHG") and SIMEC, it is now essential for aggregation purposes that these groups now be treated as one combined Group for credit and exposure reporting purposes".*

Document with filename "GFG SIMEC Group CAPvFCC" dated 8 November 2018 (GCU.0004.0020.7139), sent to Lex Greensill and Danyon Lloyd (amongst others) on 15 November 2018 (GCU.0004.0020.7136). This document states "The majority of revenue is generated by other group entities, and the repayment of our facility is reliant upon the performance of the group, not the SIMEC Group Limited entity standalone".

Document with filename "GFG-Liberty Primary Receivables CreditApplicatoin Report 07-02-2019vCC" dated 7 February 2019 (GCU.0005.0005.9558), sent to Lex Greensill and Danyon Lloyd (amongst others) on 15 November 2018 (GCU.0004.0020.7136). This document states "The majority of revenue is generated by other group entities, and the repayment of our facility is reliant upon the performance of the group, not the SIMEC Group Limited entity standalone".

The particulars to 44 below are repeated.

(c) GCUK had sold to its investors interests in the payment of debts owed by GFG companies to GCUK;

(d) GCUK would be exposed to significant losses if GFG companies failed to pay their debts to GCUK, and GCUK in turn failed to satisfy its corresponding obligations to its investors referrable to such debts.

Particulars

Email from Lex Greensill to Sanjeev Gupta on 1 September 2016 with subject "Greensill" (GCU.0001.0004.7933), in which Lex Greensill states "*What you and*

I agreed at the time is that you have a bullet-proof position provided we are trading. The only non-bullet proof position is insolvency – and you and I agreed (given our respective mutuality of risk – I am exposed to a $20mm insurance first loss deductible if you default, and I am providing a privileged position whereby we provide you with facilities at cost and access to all of our capabilities) that we could both take a commercial view."

Email from Brett Downes to Lex Greensill on 7 April 2018 (GCU.0004.0011.0051) with subject "LOSUK Update" in which Brett Downes states "One of the Concentration Risk issues arising from the Risk Committee work so far is to manage the Gupta relationship and this has fallen on me to talk to you. We have concentration risk not only from a revenue perspective but also from an exposure perspective".

Email from Scott Newby to Danyon Lloyd, Brett Downes (amongst others) at GCUK dated 15 May 2018 attaching a presentation with title 'Greensill – Concentration Risk Update April / May 2018' dated 14 May 2018, which at page 11 identified the risk that Greensill Capital's level of exposure to GFG had created a risk of significant damage to the financial results and health of Greensill Capital in a worst case scenario (GCU.0009.0003.3235).

Email from Sophie Dyke to Brett Downes, Danyon Lloyd (amongst others) at GCUK dated 16 October 2018 attaching a presentation with title 'Exposure Monitoring Update: GFG Alliance – September 2018' dated 16 October 2018, which identified that Greensill Capital's level of exposure to GFG had created a risk of significant damage to the financial results and health of Greensill Capital in a worst case scenario (GCU.0009.0005.5235).

44 By no later than March 2019, and at all relevant times thereafter:

(a) GFG was in serious financial difficulty and GFG companies were unable to meet their debt commitments to GCUK on time or at all without incurring further debts to GCUK (the **GFG Liquidity Issues**);

Particulars

In late 2018, Lex Greensill and Sanjeev Gupta agreed that proceeds from the Liberty France facility would be used to discharge maturities owed by Westford and SIMEC:

(a) Email from Lex Greensill to Sanjeev Gupta dated 20 September 2018 (GCU.0005.0002.0321), in which Lex states: "Monday 24 October – We are going to do an initial draw down under the Aluminium Dunkirk SCF facility such that the net proceeds are $30mm. These proceeds will not be paid to Westford or Liberty House Group, but will be

retained by Greensill and discharge the $30mm maturity due by SIMEC on Monday 24 October."

(b) Email from Lex Greensill to Sanjeev Gupta on 29 September 2018, with subject "RE: Westford rolls" (GCU.0004.0018.3890), recording Lex Greensill's discussions with Sanjeev Gupta about the repayment Westford maturities due in October 2018. Sanjeev Gupta asks "Let me know what u think of prepaying and redrawing this coming week ahead of AD".

(c) Email from Lex Greensill to Sanjeev Gupta on 1 October 2018, with subject "RE: Aluminium France Industries UK Ltd – Signature Mandate" (GCU.0004.0018.4768), recording Lex Greensill's discussions with Sanjeev Gupta regarding the intended use for funds drawn down on the Aluminium France facility. Lex Greensill comments in respect of the Aluminium France drawdown "I am sure you can look after the onward payment to WTS of exactly USD$20mm. Can you let Westford know that they need to flip that into our trust account".

(d) Email from Lex Greensill to Valerie Kirkaldy on 1 October 2018, with subject "Westford" (GCU.0010.0005.2462), confirming the plan for Westford to repay their October 2018 maturities in one go. Lex Greensill notes "Westford are looking to pay all their October maturities on Wednesday".

(e) Email from Sanjeev Gupta to Lex Greensill on 1 October 2018, with subject "Re: Westford" (GCU.0004.0018.4822), recording an agreement between Lex Greensill and Sanjeev Gupta not to inform their respective teams that funds from the Aluminium France facility were to be used to repay Westford maturities. Lex Greensill notes "Please ensure that my team are not told that you are using the AD cash to fund the Westford maturity."

(f) Email from Ludwig Sels to Chris Bates on 3 October 2018, with subject "Re: Westford" (GCU.0005.0002.2898), recording confirmation that GCUK had received funds from Westford in payment of their October 2018 maturities.

In early 2019, notes with a value of approximately GBP1.3bn (relating to the LRB and KLL projects referred to in paragraph 42) were due to be repaid by GFG companies to the Swiss asset manager GAM.

The GFG borrowers were unable to repay the GAM funds and required urgent bridging loans and re-financing, as recorded in:

(g) Email from Henry Middleditch to Lex Greensill on 8 January 2019, with subject "KLL/LRB Strategy Summary" (GCU.0005.0004.6331) recording the strategy for LRB and KLL as discussed with Lex Greensill.

(h) Email from Lex Greensill to David Solo on 18 February 2019, with subject "FT inquiry" (GCU.0004.0023.8887), recording Lex Greensill discussions with Sanjeev Gupta about repurchasing and refinancing LRB notes. Lex Greensill notes that "I speak to Gupta about this daily. It is my highest priority".

(i) Email from David Solo to Ludwig Sels on 27 February 2019 with subject 'CS plan' (GCU.0010.0007.4342), in which Mr Solo explains that Credit Suisse needs to take over GAM Funds due to "significant cash demand on GFG to get GAM repaid early that is limiting the ability to meaningfully reduce the programs, which is in all of our interest to support".

(j) Email from Alexandra Hayes to Danyon Lloyd with subject Re: SSUK Future Receivables" dated 8 March 2019 (GCU.0013.0005.0166) in which Alexandra Hayes states "Danyon - to bring you up to speed, we have been asked to put in place a new Future Receivables deal for Liberty's Speciality Steel UK Ltd entity by the end of quarter in order to be able to fund up to £200mm thereby enabling GFG to buy back the KLL notes that are currently sat in GAM. We intend the structure to be similar to the new Primary ARP deal but without the underlying loan".

Funds from facilities were being distributed to other GFG entities as intercompany loans or for related party financing:

(k) Document with filename "GFG Liberty Commodities AR-CreditApplicationReport vFCC 01-2019" (GCU.0005.0004.8540), sent to Lex Greensill and Danyon Lloyd (amongst others) on 14 January 2019 (GCU.0005.0004.8539). This document states "*Funds will be used for working capital within LCL and LCG as well as being distributed via intercompany loans to other GFG Alliance entities".*

(l) Document with filename "GFG- Liberty Primary Receivables CreditApplicationReport 14-02-2019vCC" (GCU.0007.0002.4596), sent to Lex Greensill and Danyon Lloyd (amongst others) on 14 February 2019 (GCU.0007.0002.4593). This document states (in respect of Liberty Onesteel (Primary) UK Ltd) "*the management forecasts also show all free cash flow being used to repay intercompany borrowings which is the aforementioned trading balances, so we anticipate spare liquidity generated from these funds to be used for this purpose".* In respect of the same facility:

    (i) Email from Danyon Lloyd dated 8 February 2019 (GCU.0005.0005.9557) to Brett Downes copying Lex Greensill stating: "The insistence in the credit application that this is a loan is

very unhelpful for funding at GB. As you know, GB has to look through to the Account Debtors to fund this."

(ii) Email from Brett Downes dated 15 February 2019 (GCU.0005.0006.2308) to Lex Greensill, Danyon Lloyd and others approving the facility on the basis that there is no increase as "it appears totally reliant on cross group support."

(b) GFG borrowers had repeatedly defaulted on their obligation to pay principal or interest to GCUK in accordance with the terms of facilities (**GFG Defaults**); and

Particulars

Email from Sanjeev Gupta to Lex Greensill on 11 September 2016 with subject "Re: Target list update UPDATE" (GCU.0001.0004.9818) in which Mr Gupta states "*also wanted to ask how and when the interest reduction will work from. I am assuming from the date I became a shareholder, or will it be from roll over dates?"*

Email from Sanjeev Gupta to Lex Greensill on 2 March 2017 with subject "Re: Follow Ups" (GCU.0001.0008.7027) in which Mr Gupta states "IN THE MEANTIME IF YOU ARE INDEED ABLE TO DO THE ROLL OVERS FROM YOUR OWN WHILE WAITING FOR EH *[Euler Hermes]* (ONLY SMALL ONES PAID AND COMING UP FOR NOW I THINK) IT WOULD BE A STRONG SIGNAL OF SUPPORT WHICH I COULD CERTAINLY CAPITALISE ON INTERNALLY "

Email from Sanjeev Gupta to Lex Greensill on 11 April 2017 with subject "Re: Scottish Government" (GCU.0001.0009.4881) in which Mr Gupta states "- *SIMEC dues today we will pay last week's one which you roll very kindly uninsured for now. The second that became due yesterday we will wait till Zurich sorted in the next couple of days and roll using that*

- last but not least can I send you 4-5 buyers all capable of 10-20m like Bliss, for a 50-100m draw on your stack?"

Email from Sanjeev Gupta to Lex Greensill on 8 April 2017 (following a visit by Mr Gupta to Lex Greensill's family home) with subject "Thank you for a special morning" (GCU.0001.0009.4644), in which Mr Gupta states "*I will ensure SIMEC pushes out the overdues immediately. Thank you again for agreeing rolling these yet again with your own funds*".

Emails between Lex Greensill and various other GCUK employees on 20 April 2017 with subject "Simec and Liberty payments Not Received" (GCU.0009.0001.6308).

Email from Lex Greensill to John Luu (GCUK) on 8 September 2017 with subject "SIMEC Trade" (GCU.0004.0003.9258), in which Lex Greensill states "*Sanjeev wants all the cash now FFS. Just stagger the maturities and have them draw the lot now!*"

Email from Lex Greensill to Sanjeev Gupta and Jay Hambro (Simec) on 20 September 2018 with subject "AD and SIMEC" (GCU.0005.0002.0321), recording that GCUK proposed to "pre-pay" Simec maturity using its own cash then apply drawdowns under the Aluminium Dunkirk SCF facility to repay itself.

Email from Lex Greensill to Sanjeev Gupta on 2 October 2018 with subject "Westford" (GCU.0004.0018.4822), where Lex Greensill states "*Please ensure that my team are not told that you are using the AD [Aluminium Dunkirk] cash to fund the Westford maturity*". Mr Gupta replies "*Won't sir, in fact won't tell mine either*".

Email from Ivan Jesensky (GCUK) to Lex Greensill, and others, on 2 January 2019 with subject "Liberty/SIMEC/OneSteel" (GCU.0004.0022.5366), in which Mr Jesensky tells Lex Greensill that Liberty owes GCUK USD3.55m "as we topped up the maturity payment on their behalf back in October". In the same email, Mr Jesensky records that GCUK are the current noteholder for USD6m for LCL, AUD10m for Liberty OneSteel MDR, and GBP13.3m for OneSteel TCUK Multi-obliger.

Email from Lex Greensill to Al Eadie (GCUK) on 18 January 2019 with subject "Westford Maturity – Urgent top-up required" (GCU.0009.0007.0163), in which Lex Greensill instructs Mr Eadie to arrange for $2.3mm maturity on Westford facility to be paid by GCUK.

Email from Lex Greensill to Ludwig Sels (GCUK) on 11 February 2019 with subject "Trade Acceptance_2019-02-07-25-58" (GCU.0004.0023.6670), in which Lex Greensill instructs Mr Sels to top up a $3.6m payment due from Simec which had not been received.

Emails between Brett Downes and Lex Greensill on 19 February 2019 with subject "RE: UPDATED DETAILS AS DISCUSSED" (GCU.0004.0023.8946; GCU.0004.0023.8950) in response to a request from Lex Greensill to add new limits to the Liberty Commodities AR programme in which Brett tells Lex "*At present we have some US$300m approved for a company that cannot in any way repay that amount. We are by far the largest financier by a country mile. Other banks are running from them, including HSBC*."

Emails between Brett Downes and Lex Greensill on 19 February 2019 with subject "Liberty AR" (GCU.0004.0023.9813) in response to a request from Lex Greensill to add new limits to the Liberty Commodities AR programme in which

Brett tells Lex "*Pretty hard to support when SIMEC can't make a single payment on time, and expect draws immediately. They are behind again. LCL is not much better.*"

Email from Ludwig Sels to Zara Hayes on 6 March 2019 with subject "Re: Today's current Short positions" regarding a request to top up USD5.8 million in maturities from Liberty House and Liberty Aluminium Holdco: *"If we still can, can we please top up CS positions ie Liberty Aluminium Holdco AND Liberty House. Brett should ALWAYS be on these type of emails. Lex has verbally agreed these top ups."*

With respect to the period after March 2019, IAL further refers to and repeats Section G of Annexure B to this Defence and each of the "GFG Companies' Failures to Pay" (as that term is defined therein) that occurred on the dates pleaded and particularised in Annexure B.

(c) GCUK had a practice of "topping up" or "bridging" payments due under the GFG facilities by:

(i) using funds from its own balance sheet or from Greensill Bank to repay investors in notes linked to debts owed by GFG borrowers; or

(ii) using funds from facilities advanced to other GFG borrowers,

(the **GFG Top Up Practice**).

Particulars

The particulars to paragraph (b) are repeated.

Emails from Zara Hayes (Middle Office, GCUK) to Lex Greensill on 11 March 2019 with subject "Late Payment Process" (GCU.0004.0024.6060), which discuss the process for "topping up an Obligor, where the maturity payments have not been received". The email attaches a presentation titled "Late Payments Top Up Process" (GCU.0004.0024.6061) that describes the process including the role of the "Top Up Team". Various GFG customers are listed as "Escalation Obligors" on p. 6 of the presentation.

Emails between Lex Greensill and Zara Hayes (Middle Office, GCUK) on 11-12 March 2019 with subject "Late Payment Process" (GCU.0005.0007.4062), whereby Lex Greensill approves the top up process described in the presentation mentioned in the preceding particular.

Email from Lex Greensill to Ludwig Sels, George Pavlou, Zara Hayes, Henry Middleditch and a group email for the "Top Up Team" on 13 March 2019 with subject "Potential Top ups 13th March 2019" (GCU.0009.0007.9779), in which Lex Greensill directs that Liberty House Group be topped up from GCUK funds.

45 The GFG Liquidity Issues, GFG Defaults and GFG Top Up Practice continued up until GCUK went into administration in 2021.

Particulars

The particulars to paragraph 44(b) are repeated.

46 By no later than March 2019, and at all times thereafter, Lex Greensill was aware of:

(a) the GFG Liquidity Issues;

(b) the GFG Defaults or, alternatively, some of the GFG Defaults; and

(c) the GFG Top Up Practice.

Particulars

Lex Greensill's knowledge is evidenced by his receipt of the emails or documents referred particularised in paragraph 44 above.

47 By no later than March 2019, and at all times thereafter, Danyon Lloyd was aware of:

(a) the GFG Defaults;

(b) alternatively, some of the GFG Defaults; and

(c) the GFG Top Up Practice.

Particulars

Email from Alan Parks to Lex Greensill copying Danyon Lloyd and others with subject "EOD Balances" (GCU.0001.0005.8527) dated 24 October 2016 which states "*$1m due in from GB tomorrow to cover SIMEC".*

Email from Danyon Lloyd to Tanja Royla (Greensill Bank) with subject "Fwd: Updated Loss payee Limit tracker" (GCU.0004.0017.3442) dated 4 September 2018 which states "*As discussed, please try and transfer additional funds to our Citi account so we can bridge a payment to SIMEC till Credit Suisse funds tomorrow*". Later in the email chain, Lex Greensill emails Danyon Lloyd and states "*We can top up with GC cash.*"

Email from Al Eadie to Brett Downes and others copying Danyon Lloyd and others with subject "Liquidity" (GCU.0004.0024.1878) dated 27 February 2019 which states "*Given GCUK balance sheet is being spanked by GFG currently we should be careful committing to any GCUK funding of assets this week*."

Credit Application Report for Liberty Commodities dated 28 March 2019 (GCU.0005.0008.2401) circulated to Danyon Lloyd and others on 29 May 2019 (GCU.0005.0008.2399) which states that "*Funds will be used for working capital*

within LCL and LCG as well as being distributed via intercompany loans to other GFG Alliance entities."

Email from Ivan Jesensky to Danyon Lloyd, Lex Greensill and others subject "RE: The plan…" (GCU.0005.0013.1901) dated 10 July 2019 which records the proposal to raise funds and clear space in Greensill Bank for Liberty Delta and states earlier in the chain "*IF GB raises EUR250m on top of the above (and no surprises !) we can fund the amount needed for LRB (this is a stretch and we may be EUR 20 short ,ie need to use our own B/S). We spoke to Danyon and we believe we are very close if this all happens."*

Email from Danyon Lloyd to Lex Greensill dated 11 October 2019 subject "LibCom AR" in which Mr Lloyd states "*Have built a model that should allow GB to bridge the LibCom assets for two weeks from Monday*."

Danyon Lloyd's knowledge is to further be inferred from the fact that he was copied on GCUK's EOD balance reports from at least October 2016 (GCU.0001.0005.6408), which from around November 2018 included a "key movements" summary which recorded, amongst other things, top ups or payments made by GCUK (e.g. GCU.0004.0022.4265; GCU.0005.0007.5625) from on or around 18 March 2019, the EOD balance reports included a dedicated "top up's" section which recorded the amount of money paid by GCUK to cover a maturity (GCU.0005.0007.7015).

48 The GFG Liquidity Issues, GFG Defaults and GFG Top Up Practice were each a matter which:

(a) Lex Greensill knew were material to the decision to accept or renew the risk of insuring debts owed to entities associated with Sanjeev Gupta, including GFG members; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of GFG companies being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

The pleadings and particulars at paragraph 43 above are also repeated.

49 Further or in the alternative to paragraph 48 above, the GFG Liquidity Issues, GFG Defaults and GFG Top Up Practice were a matter which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by entities associated with Sanjeev Gupta, including GFG members.

Particulars

IAL refers to the particulars to paragraph 48 above.

50 The GFG Defaults and GFG Top Up Practice were a matter which:

(a) Danyon Lloyd knew were material to the decision to accept or renew the risk of insuring debts owed to entities associated with Sanjeev Gupta, including GFG members; or

(b) alternatively to paragraph (a) in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of GFG companies being unable to repay the amounts advanced to them.

51 Further or in the alternative to paragraph 50 above, the GFG Defaults and GFG Top Up Practice were a matter which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by entities associated with Sanjeev Gupta, including GFG members.

Particulars

IAL refers to the particulars to paragraph 48 above.

52 The GFG Liquidity Issues were not disclosed to BCC, Greg Brereton or IAL before entry into any of the Relevant Policies and Endorsements negotiated or executed after March 2019 (the **GFG Liquidity Issues Non-Disclosure**).

53 The GFG Defaults were not disclosed to BCC, Greg Brereton or IAL before entry into any of the Relevant Policies and Endorsements negotiated or executed after March 2019 (the **GFG Defaults Non-Disclosure**).

54 The GFG Top Up Practice was not disclosed to BCC, Greg Brereton or IAL before entry into any of the Relevant Policies and Endorsements negotiated or executed after March 2019 (the **GFG Top Up Practice Non-Disclosure**).

C5 Liberty Group Fraud Non-Disclosure

The Credit Suisse Concerns

55 In or around November 2017, Credit Suisse told Lex Greensill about concerns it held regarding the Liberty House Group and other companies ultimately owned by Sanjeev Gupta, which formed part of GFG. Those concerns:

(a) arose from 'adverse referrals' made to the International Maritime Bureau (**IMB**) in relation to 'issues resulting from financing the retrading of ship-based cargo multiple times while that cargo was in transit'; and

(b) resulted in Liberty Group being placed on an 'internal blacklist' by Credit Suisse,

(the **Credit Suisse Concerns**).

Particulars

Memorandum prepared by GCUK, titled 'Liberty Group: Commodity Trading and Shipping Practices', dated 6 August 2018 (CSA.5000.0001.1644) (the **Greensill Investigation Memorandum**).

56 In early-2018, the Credit Suisse Concerns were again raised with Lex Greensill.

Particulars

The Greensill Investigation Memorandum (CSA.5000.0001.1644).

57 On or around 6 August 2018, in response to the Credit Suisse Concerns, GCUK prepared the Greensill Investigation Memorandum. This memorandum:

(a) recorded the steps undertaken by GCUK to investigate the Credit Suisse Concerns, comprising:

(b) requesting and obtaining from the IMB copies of all information it held on the Liberty House Group;

(c) meeting with Simon Grenfell, Head of Financial Structuring and a Director at Wyelands Bank (formerly Tungsten Bank, which was purchased by Sanjeev Gupta in December 2016);

Particulars

Email from IMB to Michael Gemein dated 8 December 2017 (CSA.5000.0003.0870).

(d) meeting with representatives of Clyde & Co, solicitors for the Liberty House Group; and

(e) discrete enquiries with certain individuals within the commodities trading sector;

(f) provided an explanation for the concerns raised by the IMB that would not be accepted by any person familiar with international shipping practice; and

(g) concluded that the issues raised by the IMB did not give rise to any improper business practices on the part of Liberty House Group or Sanjeev Gupta.

Particulars

The Greensill Investigation Memorandum (CSA.5000.0001.1644).

58 Having regard to the matters set out in paragraph 57(a) above, the Greensill Investigation Memorandum was substantially prepared in consultation with sources not independent of Sanjeev Gupta and Liberty House Group, and who could be relied upon to give opinions not adverse to Sanjeev Gupta or Liberty House Group and their interests.

The Diligence Paper Findings

59 On or around 11 December 2018, Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM) received an email from Michel Degen, Head of Asset Management & EMEA [Europe, Middle East, and Africa] at Credit Suisse. By this email, marked as 'Important', Michel Degen:

(a) attached an extract from a report prepared by the fraud investigative firm Diligence International Group into the affairs of Liberty House Group, titled 'Involvement in Carousel Fraud and Use of Proxies' dated 22 November 2018 (the **Diligence Paper**); and

(b) indicated that the parties would 'need to discuss [the Diligence Paper] asap' as Credit Suisse would 'need answers'.

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo, with the subject 're: Important', dated 11 December 2018 and attached Diligence Report dated 22 November 2018 (CSA.5000.0002.1866 and CSA.5000.0002.1867).

60 The Diligence Paper contained, among other things, the following findings in relation to Liberty House Group and its Executive Chairman Sanjeev Gupta:

(a) that Liberty House Group had 'willingly participated in an important carousel fraud with a set of Dubai based companies'. The nature of this scheme was that Liberty and others had covertly traded commodities between related entities before they were sold to end customers, in order to 'increase their turnover [and] increase their cash flow position while leaving unrelated companies with the risks of those trades';

(b) that this carousel scheme was facilitated through various fraudulent practices, including but not limited to 'fake bill of ladings, undeclared related parties transactions, carousel of funds, undeclared use of proxy companies, multiple financing for the goods and fabricating paper trade';

(c) that 'an overwhelming number of trades' listed in various excel spreadsheets connected with the Liberty House Group 'were simply fake';

(d) that Liberty House Group and Sanjeev Gupta were a 'clear participant in the fraud', alongside the companies Ushdev International, Westford Trade Services (now known as Westford Limited as of 2 August 2019) and Sea Horse Shipping, and 'benefited largely from the carousel system'; and

(e) that Liberty House Group played an 'instrumental role' in the fraud through 'the extent of the proxies they have used' in order to mask the involvement of multiple entities associated with the Liberty House Group in transacting with the same commodities;

(the **Diligence Paper Findings**).

61 The Diligence Paper Findings were broader in scope and supported by specific evidence not addressed in the earlier Greensill Investigation Memorandum.

The Liberty Group Fraud Non-Disclosure

62 The Credit Suisse Concerns were matters:

(a) which Lex Greensill knew were material to the decision to accept or renew the risk of insuring debts owed by the Liberty House Group, Westford or other GFG members; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Liberty House Group companies being unable to repay the amounts advanced to them.

63 Further or in the alternative to paragraph 62 above, the Credit Suisse Concerns were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by the Liberty House Group, Westford or other GFG members.

Particulars

IAL refers to the particulars to paragraph 62 above.

64 In the circumstances described in paragraph 58 above, the Greensill Investigation Memorandum was not capable of satisfying Lex Greensill, or a reasonable person in the position of Lex Greensill, that the Credit Suisse Concerns did not need to be disclosed to Brereton, BCC or IAL in compliance with Greensill's duty of disclosure under section 21 of the Insurance Contracts Act.

65 The Diligence Paper Findings were matters:

(a) which Lex Greensill knew were material to the decision to accept or renew the risk of insuring debts owed by the Liberty House Group, Westford or other GFG members; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore

directly on the risk of Liberty House Group companies being unable to repay the amounts advanced to them.

66 Further or in the alternative to paragraph 65 above, the Diligence Paper Findings were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by the Liberty House Group, Westford or other GFG members.

Particulars

IAL refers to the particulars to paragraph 65 above.

67 In the circumstances described in paragraphs 58 and 61 above, the Greensill Investigation Memorandum was not capable of satisfying Lex Greensill, or a reasonable person in the position of Lex Greensill, that the Diligence Paper Findings did not need to be disclosed to Brereton, BCC or IAL in compliance with Greensill's duty of disclosure under section 21 of the Insurance Contracts Act.

68 The Credit Suisse Concerns and the Diligence Paper Findings were not disclosed to BCC, Brereton or IAL before entry into any of the Relevant Policies and Endorsements negotiated or executed after November 2017 (the **Liberty Group Fraud Non-Disclosure**).

D SPECIFIC MISREPRESENTATIONS AND NON-DISCLOSURES

D1 Liberty TCUK

D1.1 Policy and Endorsements

69 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Liberty MDR Treasury Company UK Ltd (**Liberty TCUK**) was endorsed as a customer under the 2019 Policy by means of:

(a) Customer Endorsement No 54, dated 4 April 2019 and effective 22 February 2019;

(b) Customer Endorsement No 54(i), dated 2 May 2019 and effective 22 February 2019; and

(c) Customer Endorsement No 54(i) dated 16 April 2020 and effective 22 February 2019,

(**Liberty TCUK Endorsements**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 132.

D1.2 Liberty TCUK Misrepresentations

70 On or around 25 May 2018, Lex Greensill attended a meeting with Greg Brereton in relation to a proposal for a new accounts receivable purchase programme for SSUK.

Particulars

Email from John Whelan to Greg Brereton dated 25 May 2018, copy to Lex Greensill, Brett Downes and others (AGB.0002.0007.0275).

71 On or around 25 May 2018, John Whelan of GCUK provided documents to Greg Brereton relating to the new accounts receivable purchase programme proposal referred to in paragraph 70 above (**Liberty TCUK Facility Proposal**). The documents included a draft of the Underlying Seller RPA and a draft of the Ultimate Buyer RPA (among other proposed transaction documents).

Particulars

Email from John Whelan to Greg Brereton dated 25 May 2018, copy to Lex Greensill, Brett Downes and others (AGB.0002.0007.0275), attaching the following documents:

(a) a presentation slide deck describing the proposed programme, payment flows and 'true up' mechanism (AGB.0002.0007.0276);

(b) draft deed of cross guarantee (AGB.0002.0007.0278);

(c) draft Security Agreement between Liberty TCUK and GCUK (AGB.0002.0007.0279);

(d) draft True Up Side Letter between Liberty TCUK, OneSteel Trading Pty Limited and GCUK (AGB.0002.0007.0280);

(e) draft Ultimate Buyer RPA between GCUK (as 'Buyer'), Liberty TCUK (as 'Seller') and OneSteel Trading Pty Limited (as 'Parent') (AGB.0002.0007.0281);

(f) draft Underlying Seller RPA between Liberty TCUK (as 'Buyer') and SSUK (as 'Seller' and 'Seller Representative') (AGB.0002.0007.0282); and

(g) draft endorsements for insurance coverage in respect of the proposed facility (AGB.0002.0007.0283, AGB.0002.0007.0284, AGB.0002.0007.0285, AGB.0002.0007.0286, AGB.0002.0007.0287, AGB.0002.0007.0288).

72 On or around 25 May 2018, John Whelan of GCUK emailed Greg Brereton to confirm that under the Liberty TCUK Facility Proposal, GCUK would need to place 'limits on the account debtors (for non-payment of the AR [accounts receivable]) and a contingent limit on Liberty [TCUK] (for non-payment in relation to its repurchase obligation…)'.

Particulars

Email from John Whelan to Greg Brereton (copy to Lex Greensill, Brett Downes and others) dated 25 May 2018 (AGB.0002.0009.1190).

73 In the premises of paragraphs 70 and 72 above, GCUK represented that the proposed Liberty TCUK facility (**Liberty TCUK Risk**) had the following general features:

(a) an 'accounts receivable purchase programme' for which there were account debtors from which SSUK would receive 'collections';

(b) the structure of the facility would involve:

(i) an underlying RPA [receivables purchase agreement], whereby SSUK would assign receivables to Liberty TCUK;

(ii) a second RPA between Liberty TCUK and GCUK, whereby Liberty TCUK would assign the same receivables to GCUK;

(c) the obligations of Liberty TCUK under its RPA would be guaranteed by 'Liberty OneSteel AUS entities, SSUK and OneSteel Trading Pty Limited';

(d) GCUK would 'take a floating charge over all the asserts of Liberty [TCUK], including the Liberty [TCUK] accounts into which collections are paid by SSUK';

(e) credit limits would be placed on account debtors for 'non-payment of the AR' [accounts receivable]; and

(f) contingent limits would be placed on Liberty TCUK for 'non-payment in relation to its repurchase obligation' under the facilities.

Particulars

IAL repeats the particulars at paragraphs 70 and 72 above.

74 At a time presently unknown to IAL (but by no later than June 2018):

(a) Sanjeev Gupta, purporting to act on behalf of each of Liberty TCUK and SSUK, signed a document styled a 'Receivables Purchase Deed' and dated June 2018;

(b) representatives of GCUK, Liberty TCUK and Liberty OneSteel signed a document styled a 'Receivables Purchase Deed'.

75 IAL otherwise repeats paragraphs 490 and 497A of its Defence in proceeding no. NSD169/2023 dated 31 July 2025.

76 On or about 22 June 2018, GCUK (through its broker Marsh) requested that BCC extend cover in relation to the Liberty TCUK Risk. This request purported to be for insurance coverage under Policy TW-03137 and the LOS Policy.

Particulars

Email from Ewan Berkemeier to Greg Brereton dated 22 June 2018, copy to Edward Smith and John Whelan (AGB.0002.0009.1308), and attaching copies of documents purporting to be endorsements under Policy TW-03137 and the LOS Policy (AGB.0002.0009.1309, AGB.0002.0009.1310, AGB.0002.0009.1311, AGB.0002.0009.1312, AGB.0002.0009.1313).

77 On or around 22 June 2018, Brereton provided GCUK (through its broker Marsh) with signed copies of endorsements purportedly issued under Policy TW-03137 and the LOS Policy in respect of the Liberty TCUK Risk.

Particulars

Email from Greg Brereton to Ewan Berkemeier dated 22 June 2018 (AGB.0002.0002.0621), attaching signed copies of endorsements purportedly issued under Policy TW-03137 and the LOS Policy (AGB.0002.0002.0622).

78 At a time presently unknown to IAL, Sanjeev Gupta, purporting to act on behalf of various entities and Sanjay Tohani purporting to act on behalf of Liberty Steel Newport Ltd and Liberty Merchant Bar Plc, signed a document styled a 'Deed of Amendment and Restatement' and dated 29 August 2018 (CSA.0001.0006.8676).

79 IAL otherwise repeats paragraphs 491 and 498 of its Defence in proceeding no. NSD169/2023 dated 31 July 2025.

80 On or around 3 April 2019, GCUK (through its broker Marsh) wrote to Greg Brereton with respect to updates to the Liberty TCUK facility and to request that BCC extend coverage under the Master Policy (TB-03691) and the 2019 Policy to the Liberty TCUK Risk.

Particulars

Email from Edward Smith (Senior Vice President) of Marsh to Greg Brereton, copying Ewan Berkemeier, Angus Ward, Alexandre Weiss Bueno and Paul William Nash of Marsh, dated 3 April 2019 (BCC.0001.0001.2534), attaching (amongst other documents) an unsigned copy of Customer Endorsement 54 purportedly issued under the Master Policy (TB-03691) (BCC.0001.0001.2538) and the 2019 Policy (BCC.0001.0001.2541).

81 On or around 4 April 2019, Greg Brereton provided GCUK (through its broker Marsh) with signed copies of Customer Endorsement No 54, purportedly issued under the Master Policy (TB-03691) and the 2019 Policy in respect of Liberty TCUK.

Particulars

Email from Greg Brereton to Edward Smith, copying Ewan Berkemeier, Angus Ward, Alexandre Weiss Bueno and Paul William Nash of Marsh, dated 4 April 2019 (MAR.0004.0002.1486), attaching copies of Customer Endorsement No 54 purportedly issued under the Master Policy (TB-03691) and the 2019 Policy (MAR.0004.0002.1487, pages 3 to 4 and 9 to 10).

82 On or around 4 April 2019, Angus Ward of Marsh forwarded signed copies of Customer Endorsement No 54 to Sophie Dyke and Craig Pinnington of GCUK.

Particulars

Email from Angus Ward of Marsh to Sophie Dyke and Craig Pinnington of GCUK, copying Edward Smith, Paul William Nash and Alexandre Weiss Bueno of Marsh dated 4 April 2019 (GCU.0009.0008.4681), attaching copies of Customer

Endorsement No 54 purportedly issued under the Master Policy (TB-03691) (GCU.0009.0008.4685) and the 2019 Policy (GCU.0009.0008.4683).

83 On or around 10 April 2019, GCUK wrote to Greg Brereton with respect to further updates to the Liberty TCUK Risk. Among other matters, in this email, GCUK described its intention for 'the cover for new assets to fall under policies TB-03690 and TB-03691'.

Particulars

Email from John Whelan to Greg Brereton and Craig Pinnington of GCUK, copying Edward Smith, Julian Macey-Dare, Angus Ward, Paul William Nash and Alexandre Weiss Bueno of Marsh and Sophie Dyke of GCUK, dated 10 April 2019 (MAR.0004.0002.2399), attaching copies of unnumbered customer endorsements purportedly issued under the Master Policy (TB-03691) (MAR.0004.0002.2402) and the 2019 Policy (MAR.0004.0002.2401).

84 At a time presently unknown to IAL, a representative of GCUK, Sanjeev Gupta, Sanjay Tohani and an unknown person (purporting to act on behalf of various entities) signed a document styled a 'Deed of Amendment and Restatement' and dated 12 April 2019 (CSA.0001.0006.8634).

85 IAL otherwise repeats paragraphs 491 and 498 of its Defence in proceeding no. NSD169/2023 dated 31 July 2025.

86 On or around 1 May 2019, Greg Brereton provided GCUK with signed copies of unnumbered customer endorsements purportedly issued under the Master Policy (TB-03691) and the 2019 Policy in respect of the Liberty TCUK Risk.

Particulars

Email from Brereton to Sophie Syke, John Whelan and Craig Pinnington of GCUK, copying Edward Smith, Julian Macey-Dare, Angus Ward, Paul William Nash and Alexandre Weiss Bueno of Marsh dated 1 May 2019 (BCC.0001.0002.3129), attaching copies of unnumbered customer endorsements purportedly issued under the Master Policy (TB-03691) and the 2019 Policy (BCC.0001.0002.3130, pages 1 to 2 and 4 to 5).

87 On or around 2 May 2019, GCUK (through its broker Marsh) provided a signed copy of Customer Endorsement No 54(i) purportedly issued under the 2019 Policy in respect of the Liberty TCUK facility to Greensill Bank.

Particulars

Email from Angus Ward to 'Danyon' ('scf@greensill-bank.com'), copying Edward Smith and Alexandre Weiss Bueno of Marsh dated 2 May 2019

(GBA.0004.0004.8642), attaching a copy of Customer Endorsement No 54(i) purportedly issued under the 2019 Policy (GBA.0004.0004.8644).

88 On or around 15 April 2020, GCUK wrote to Brereton with respect to updates to the Liberty TCUK Risk.

Particulars

Email from John Whelan (Deputy General Counsel) of GCUK to Brereton, Edward Smith of Marsh and Angus Ward of Marsh, copying Lex Greensill, Tom Kennedy (Assistant General Counsel) of GCUK and Henry Middleditch (Vice President) of GCUK dated 14 April 2020 (BCC.0001.0001.5960) attaching (amongst others things):

(a) an unsigned Amended and Restated Receivables Purchase Deed between GCUK, Liberty TCUK and Liberty House (BCC.0001.0001.5968); and

(b) unsigned copies of the Customer Endorsement No 54(i) in respect of Liberty TCUK under the Master Policy (TB-03691) and the 2019 Policy (BCC.0001.0001.5964 and BCC.0001.0001.5965).

89 On or around 16 April 2020, Brereton provided GCUK with signed copies of Customer Endorsement No 54(i), purportedly issued under the Master Policy (TB-03691) and the 2019 Policy in respect of the Liberty TCUK Risk.

Particulars

Email from Brereton to John Whelan, copying Lex Greensill, Tom Kennedy and Henry Middleditch dated 16 April 2020 (AGB.0002.0002.3513), attaching copies of Customer Endorsement No 54(i) purportedly issued under the Master Policy (TB-03691) and the 2019 Policy (AGB.0002.0002.3514, pages 1 to 3 and 10 to 12).

Liberty TCUK Future AR Facility Misrepresentation

90 In the communications referred to in paragraphs 88 and 89 above, GCUK:

(a) represented that the updates to the Liberty TCUK facility were to 'take future AR'; and

(b) did not inform Brereton that the future accounts receivable facility between GCUK and Liberty TCUK operated, or was intended to operate, in a manner different from that conveyed by the Future Accounts Receivable Representation (defined in paragraph 36 above), in that the facility did not have one or more of the characteristics conveyed by the representation.

91 By reason of the matters pleaded in section C2 and paragraphs 36, 88 and 89 above, GCUK represented to Brereton that the updated facility to Liberty TCUK would operate as follows:

(a) GCUK would lend funds to Liberty TCUK against or in respect of future accounts receivable;

(b) account debtors would be parties to existing sales contracts;

(c) the amounts of future accounts receivable to be financed would be supported at the time of drawdown by existing inventory;

(d) the seller's existing inventory would be independently valued or verified on a periodic basis,

(the **Liberty TCUK Future AR Facility Misrepresentation**).

92 The Liberty TCUK Future AR Facility Misrepresentation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Representations were misleading

93 The Liberty TCUK Future AR Facility Misrepresentation referred to in paragraph 91 above was false and/or misleading because:

(a) GCUK did not intend to, and did not, require that alleged account debtors under the Liberty TCUK Risk be parties to existing sales contracts with an Underlying Seller;

Particulars

Many if not all of the account debtors were not verified by GCUK or confirmed by audit to be existing customers of the Underlying Sellers or to have been existing customers of the Underlying Sellers pursuant to existing sales contracts with the relevant Underlying Sellers, as evidenced by:

(a) Email from Brett Downes to Ricardo Oliveira of GCUK with the subject 'TCUK upload' dated 27 December 2018 (GCU.0009.0006.7025), in which Brett Downes stated: *'I think when the AR Programme split is going to happen we need to really be careful and do a deep-dive into the TCUK programme as its full of rubbish. […] They do absolutely minimal credit checks as a company […].'*

(b) Email from Craig Pinnington of GCUK to Brett Downes with the subject line 'TCUK' dated 15 January 2019 (GCU.0009.0006.9546). In response to an update from Brett Downes that 'Lex [Greensill] caught me last night and

asked for an additional three commodity names to go into TCUK AR', Craig Pinnington responded: '*I don't like them either. I'm concerned that they may not even exist in some cases, lots of non-financial red flags on the names before and the three that Wilson had sent over earlier- Director changes, original and second set of director left, random and large share capital changes.'*

(c) Email chain dated 29 April 2020 between (among others) Henry Middleditch, Craig Pinnington, Johanna Roberts, Tom Kennedy and Lex Greensill (GCU.0007.0003.0837) concerning a 'TCUK Letter for CS' in which:

(i) Craig Pinnington writes in an email at 11.30am: *'Are we happy with the phrase in the centre of the document 'As part of the TCUK Facility's eligibility criteria, there must be contracts in place between the Underlying Sellers and the debtors or else indemnification is required'. It seems to invite questions';*

(ii) Johanna Roberts responds via email at 11.43am: *'I doubt we have seen any, Craig?';*

(iii) Craig Pinnington replies at 12.00pm: *'Jo, I think you looked at Chevron recently as an exceptional case, and we did discuss some of their contracts with JLR and auto suppliers in the onboarding process for LAT and LPS, but didn't strictly review any wording in the contracts. We did contract reviews on the Liberty Primary Future receivable program but that was only 9 account debtors so it was physically doable';*

(iv) Johanna Roberts responds via email at 12.32pm: *'Ah yes, actually it was only individual purchase orders I reviewed. The sheer number of debtors on TCUK would preclude a full review, but we could cherry pick some of the larger ones.'*

(b) GCUK did not intend to, and did not, require that the amounts of future accounts receivable financed under the Liberty TCUK facility be supported at the time of drawdown by existing inventory valued on a monthly basis by a third party independent valuer;

Particulars

No Valuation Reports in respect of any of the alleged debts in Table 9.1 of Annexure P to the SOC have been provided to the Insurer despite requests.

None of the alleged debts in Table 9.1 of Annexure P to the SOC became the subject of an actual account receivable owing by an Account Debtor.

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

(a) Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [32]);

(b) in the first quarter of 2020, Sanjeev Gupta requested, and Lex Greensill provided, confirmation that the financing provided to his companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice (Third Witness Statement Sanjeev Gupta in Case No. CR-2021- 000622 before the UK Insolvency and Companies Court [35]-[36]);

(c) in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [49]).

Further particulars may be provided after completion of discovery by GCUK.

(c) In the premises of paragraphs (a) to (b), GCUK did not intend to provide a facility to Liberty TCUK having the characteristics referred to in paragraph 91.

Knowledge of falsity of representations

94 Lex Greensill knew each of the matters set out in paragraph 93 above.

Particulars

IAL refers to the particulars to paragraph 93 above.

The knowledge of Lex Greensill is to be inferred from his involvement in GCUK's dealings with Liberty TCUK, and from his direct involvement in correspondence with BCC associated with the Liberty TCUK Risk, as demonstrated by:

(a) the April 2020 Liberty TCUK Credit Application (GCU.0005.0025.3962), which:

(i) identifies Lex Greensill as part of the 'Facility Team' in respect of the application (page 1);

(ii) notes that 'GFG is amongst Greensill's largest exposures, if not its largest' and that '[t]here is a very strong relationship between the two firms and open and constant communication, in particular between Lex and Sanjeev (GFG Executive Chairman) (page 14);

(b) the Minutes of the Greensill Credit Committee Meeting held on or about 15 April 2020, during which the application was considered and approved (GCU.0014.0001.8949) and which note, among other matters, that Lex Greensill 'asked for this restructure' (page 2);

(c) the particulars to paragraphs 88 and 89 above, which evidence Lex Greensill's involvement in the request for cover in respect of the Liberty TCUK Risk; and

(d) the fact that the matters set out in paragraph 93 above occurred from the time that cover was issued and was a practice that occurred in other financing provided by Greensill to GFG companies, including the SSUK Risk (and in that respect, IAL refers to paragraphs 155 and 157 below).

The knowledge of Lex Greensill of the arrangements between GCUK and Liberty TCUK is also to be inferred from the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

(a) a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

(b) that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

(c) that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

(d) that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements […] were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

95 The knowledge of Lex Greensill of each of the matters set out in paragraph 94 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

96 The knowledge of Lex Greensill of the matters set out in 94 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20 and 22 and 23 above.

97 Further and in the alternative to paragraph 94 above:

(a) William Roland Hartley-Urquhart (Vice Chairman of the Greensill Group) and Brett Downes (Chief Risk Officer) of GCUK knew the matters set out in 93 above; and

Particulars

IAL refers to the particulars at 94 and 93 above.

The knowledge of William Roland Hartley-Urquhart is to be inferred from his involvement in the Greensill Credit Committee (as set out in paragraph 10(c) above) and specifically his participation in the Greensill Credit Committee meeting held on or about 14 April 2020 during which the credit application to amend the Liberty TCUK Risk to include future accounts receivables was approved (GCU.0014.0001.8949).

The knowledge of Brett Downes is to be inferred from:

(a) his involvement in dealings with Liberty TCUK and other risks involving the Liberty Group (namely the SSUK Risk and the Liberty House Risk); and

(b) his participation in the Greensill Credit Committee meeting held on or about 15 April 2020 and his comments in respect of the Liberty TCUK Risk, as recorded in the minutes of that meeting (GCU.0014.0001.8949)

(b) Brett Downes (Chief Risk Officer), Henry Middleditch and Craig Pinnington (Senior Credit Analyst) of GCUK knew the matters set out in paragraph 93 above.

Particulars

IAL repeats the particulars to paragraphs 93 above.

98 The knowledge of the abovementioned officers and employees of GCUK of each of the matters identified in paragraph 97 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars at paragraph 29 and 30 above.

99 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraph 97 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars at paragraph 22 and 23 above.

Knowledge of materiality of representations

100 Each of the matters referred to in paragraphs 90 and 91 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK facility, including the decision to enter into each of the Liberty TCUK Endorsements;

(b) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

(c) alternatively to paragraphs (a) and (b), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

101 Each of the matters referred to in paragraph 93 above was a matter

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

102 The knowledge of Lex Greensill of each of the matters set out in paragraphs 90 and 91 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 25, 29 and 30 above.

103 The knowledge of Lex Greensill of the matters set out in paragraphs 100 and 101 above is to be attributed to GCPL

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

104 Further and in the alternative to paragraph 100 above, each of the matters referred to in paragraphs 90 and 91 above was a matter:

(a) which other officers or employees of GCUK – comprising Brett Downes (Chief Risk Officer), Henry Middleditch and Craig Pinnington (Senior Credit Analyst) – knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

(b) alternatively to paragraph (a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

105 Further and in the alternative to paragraph 101 above, each of the matters referred to in paragraph 93 above was a matter:

(a) which other officers or employees of GCUK – comprising William Roland Hartley-Urquhart (Vice Chairman of the Greensill Group) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

(b) alternatively to paragraph (a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

106 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraphs 103 and 104 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars at paragraph 29 and 30 above.

107 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraphs 103 and 104 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars at paragraph 22 and 23 above.

Misrepresentations were fraudulent

108 In the premises of paragraphs 90 to 92, 93, 94, 95, 96, 97 to 99, 101 to 103, 105 to 107 above:

(a) Greensill misrepresented the risk presented by the Liberty TCUK Risk;

(b) the Liberty TCUK Future AR Facility Misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to renew insurance cover in respect of the Liberty TCUK Risk.

109 If Greensill had not made the Liberty TCUK Future AR Facility Misrepresentation, insurance cover would not have been issued in respect of the Liberty TCUK Risk at all, or, in the alternative, on the same terms in which it purportedly was written.

110 By reason of the matters pleaded in paragraphs 108 to 109 above, IAL is entitled to avoid the Liberty TCUK Endorsements.

Innocent Misrepresentation

111 In the alternative to the matters pleaded in paragraphs 108 to 110 above, by reason of the matters pleaded in paragraphs 100, 101 and 109, IAL is entitled to reduce its liability under the Liberty TCUK Endorsements to nil (or such other amount as the Court may

determine would place IAL in the same position as if the Liberty TCUK Future AR Facility Misrepresentation had not occurred).

D1.3 Liberty TCUK Non-Disclosures

Knowledge of underlying matters

112 At the time of requesting insurance cover for the Liberty TCUK Risk, including on each occasion that GCUK provided a draft Customer Endorsement to Brereton with a view to that endorsement being accepted and signed by Brereton on behalf of BCC, Lex Greensill knew:

(a) the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 44.

(b) the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group (of which Liberty TCUK was affiliated) and Sanjeev Gupta (who was personal Guarantor of the Liberty TCUK facility risk) in prior dishonest and fraudulent conduct.

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're: Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

Personal Guarantee of Sanjeev Gupta dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

(c) the facility was or would be used, in part, to service GFG's intercompany loans and other intercompany transactions to manage repayment of other facilities;

Particulars

The GCUK Credit Application Report submitted to the Greensill Credit Committee on 11 March 2019 (GCU.0005.0007.3686) states that:

> *'The funds will be used for working capital within LHG [Liberty House Group] as well as being distributed via intercompany loans to other GFG alliance entities' (page 17); and*

'The client has confirmed funds will be used for […] intercompany transactions (there is a lot of cross selling amongst the GFG alliance and hence these AP will be paid more quickly through using the funds derived from this new facility)' (page 17).

GCUK Credit Application submitted to the Greensill Credit Committee on 28 March 2019 (GCU.0005.0008.2205, page 16).

Email exchange between Henry Middleditch, Lex Greensill, Patrick Davis and other GCUK personnel with the subject 'RE: KLL, LRB, Lochaber Maturity Repayment using TCUK proceeds' dated 17 January 2019 (GCU.0004.0022.9484).

(d) Liberty TCUK, and GFG, did not have the capacity to repay the Liberty TCUK facility, such that GCUK would regularly roll maturities on the Liberty TCUK facility and exercise a 'top up' process to hold the maturities on GCUK's balance sheet;

Particulars

In March 2019, Lex Greensill was alerted to increasing late payments by Liberty, with the result that GCUK was required to 'bridge USD 12.5mm under the TCUK facility' (GCU.0004.0024.6470).

The practice of rolling maturities and exercising a 'top up' process to cover Liberty TCUK's maturity payments under the Liberty TCUK facility from GCUK's balance sheet is evidenced from the following documents:

(a) Document titled 'Late Payments Top Up Process' dated February 2019 (GCU.0004.0024.6061). The 'OneSteel TCUK Multi Obligor Program 2018' is listed in the 'Escalation Obligor List' at Appendix i (page 6).

(b) Email from Lex Greensill to Patrick Davis, copy to Henry Middleditch and others, dated 15 February 2019, with the subject 'TCUK Trade 21 Feb' (GCU.0004.0023.8310)

(c) Email from Lex Greensill to Brett Downes, with the subject 'Liberty Trade Updates' dated 25 March 2019 (GCU.0004.0025.0696). As shown in the underlying email chain;

(i) On or around 25 March 2019, Lex Greensill approved a request to roll insurance for three commodity traders, 'Sterling' [Sterling Resources International Ltd], 'VS International' [VS International UK Ltd] and 'AIC' [AIC Commodities GmbH] 'to go to CS' [Credit Suisse] and for 'Greensill […] [to] bridge off our balance sheet'.

(ii) In response, on or around 25 March 2019, Brett Downes sent an email Lex Greensill and stated: 'We did not discuss bridging. I am not keen on that. These names will never get repaid now, so we need to hold this amount from any drawdown from SSUK. It is getting too complicated managing this name now.'

(iii) On or around 25 March 2019, Lex Greensill replied: 'I am not keen either, Brett. This ensures nothing breaks, sir.'

(d) Email from Lex Greensill to Henry Middleditch dated 16 April 2019 with the subject 'OneSteel TCUK', approving a top-up of GBP 16.5 million and EUR 160,968.08 (GCU.0005.0009.2393).

(e) Email from Henry Middleditch to Al Eadie and 'Support Ops UK' team of GCUK, copying Lex Greensill, with the subject 'TCUK Maturity Cover' dated 9 July 2019 (GCU.0004.0027.7058). The request was approved by Lex Greensill be reply email dated 9 July 2019 (GCU.0004.0027.7059).

(f) Email from Lex Greensill to Al Eadie, Henry Middleditch and Greensill Payments Team, with the subject 'TCUK Maturity Cover (Tuesday)' dated 14 January 2020 (GCU.0005.0021.4517), approving GCUK to cover EUR 11.2 million equivalent cover in respect of the Liberty TCUK facility.

(g) Email from Henry Middleditch to Lex Greensill, copying (among others) Brett Downes, with the subject 'GFG Maturity Cover Request W/C 6th April' dated 6 April 2020 (GCU.0005.0025.0368), requesting approval for GCUK to cover GBP 10 million for Liberty TCUK maturities due on 7 April 2020.

(h) GCUK had a practice of permitting Liberty TCUK to draw on the Liberty TCUK facility in order to cover payment obligations without Liberty TCUK in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to Liberty TCUK. This practice is evident from the documents identified immediately above in the particulars to this paragraph 112, and is further pleaded at Section C.2 of Annexure B to this defence.

(e) the matters set out at in section C2 and paragraph 93.

Particulars

IAL refers to the particulars to paragraph 94 above.

113 At the time of requesting the amendment to cover for the Liberty TCUK Risk to allow for future account receivables in April 2020, Lex Greensill knew:

(a) the matters set out in paragraph 112;

(b) that the GFG Liquidity Issues had still not been resolved and had in fact worsened;

(c) that Liberty TCUK had failed to disclose up-to-date financial information to GCUK, and GCUK was therefore unable to accurately assess the financial position of Liberty TCUK and GFG;

Particulars

April 2020 Greensill Credit Committee Meeting Minutes (GCU.0014.0001.8949). Lex Greensill is recorded as attending and participating in the meeting.

The meeting minutes record the following comments:

(a) 'HM [Henry Middleditch] also confirmed that financial forecasting for the company is difficult at present. Financials are a sticking point, we are pushing hard for these. However, there is nothing available to us other than AFS [audited financial statements] from March 2019' (page 1).

(b) 'BD [Brett Downes] is concerned about restructuring the facility when we are totally unaware if they have any capacity to repay us, or even if they are insolvent, if the management have no idea about where they stand with cashflow or financials' (page 1).

(c) 'BD [Brett Downes] was concerned that we have no evidence that this group of companies makes any money or can repay anything. Whilst FR [future receivables] makes sense, all we are doing is 'moving deckchairs' instead of sitting down with the companies, acknowledging no financials or plans, they owe us a large amount of money, and working out a way to move forward rather than re-cut the facility' (page 2).

Lex Greensill's knowledge can further be inferred from the following:

(d) Email from Henry Middleditch to Al Eadie copying Lex Greensill dated 13 January 2020 subject line 'TCUK Maturity Cover (Tuesday)' (GCU.0005.0021.4518) which states: 'As a heads up, TCUK may need EUR 11.2mm equiv [sic] cover tomorrow. Will have a clearer picture mid-morning tomorrow but wanted to give plenty of warning' and Lex Greensill responds 'Approved'.B. Email from Valerie Kirkaldy to various Greensill teams copying Lex Greensill dated 14 January 2020 subject line 'TCUK Maturity Cover (Tuesday)' (GCU.0005.0021.4646] which states: 'As per the below, Greensill will need to cover the maturity payments due today for TCUK and retain the proceeds to cover this payment from the new trade on Friday'.

(e) Email from Valerie Kirkaldy to Lex Greensill dated 9 March 2020 subject line 'Request to cover MDR Maturity payment' (GCU.0006.0001.4626] which states: 'We have received the below request from Liberty, asking if GC can cover the TCUK maturities due tomorrow…This would need to stay on our Balance Sheet until Friday, when their new trade will be processed and we can retain the proceeds from this' and Lex Greensill responds 'Approved'.

(f) Email from Henry Middleditch to Lex Greensill dated 3 April 2020 subject line 'RE: GFG SSUK and TCUK upcoming maturities' (GCU.0005.0024.9588) which states: 'GFG are going to need maturity support next week on TCUK and SSUK FR. Don't quite have final numbers, but I expect to be: *TCUK - GC to cover the full c.£20 owed on Tuesday, get back c.£5 on Thursday from new trade and the remainder once converted to FR (funding date: ~13th April). Will aim to keep initial cover to a minimum' and Lex Greensill responds 'I am supportive, Henry.'

(d) the purpose of the conversion of the Liberty TCUK facility to a future accounts receivable facility was to support GFG to address the GFG Liquidity Issues in circumstances where GCUK had a very large exposure to companies in GFG, and a corresponding exposure to investors who had acquired interests in the payment of those debts;

Particulars

Email from Brett Downes to Andrew Kuyk and Divya Eapen dated 14 April 2020 subject line 'TCUK -0 Were you aware' (GCU.0009.0014.7288), reporting on a call with Henry Middleditch. Mr Downes states "Just to make it even more spicy, the funds are being used to fund Liberty Lochaber, KLL, and some other deal we have where we have transferred the risk to third parties (probably LRB) because the company cannot pay'.

The April 2020 Greensill Credit Committee Meeting Minutes (GCU.0014.0001.8949) record that:

(a) 'Lex's plan is to move away from funding the GFG businesses on our core balance sheets (GB and CS) that are bringing greater stress to those. He feels that choices are limited, we either move to FR [future receivables], or we are filing for administration' (page 2);

(b) ‘Only if we can keep Liberty stable, immediately recognising as discussed previously that GFG is all on watchlist, and we will work closely with them to get them through this period. No good to say no or even delay the process for actioning this, a strong request for credit committee's support' (page 3);

(c) 'He [Lex] discussed situation [sic] with Sanjeev Gupta 3 weeks ago and confirmed they do not have the liquidity to be able to have the facility amortise as it would as they do not have eligible receivables to put into the facility' (page 2); and

(d) comments from Andrew Kuyk, in response to a suggestion from Brett Downes that rather than transition to a future receivables facility Greensill should instead look to freeze the facility, that: 'a 'standstill' may trigger reporting requirement [sic] eg Infrabuild bond documentation, and whilst this would be the normal course of action with a distressed business it cannot be so with Liberty' (page 3).

Further particulars may be provided after completion of discovery by GCUK.

(e) that GCUK proposed to restructure the Liberty TCUK facility as a future accounts receivable facility, rather than putting the existing GFG facilities on standstill, to circumvent restrictions on insurance coverage because GCUK was aware that Brereton 'doesn't insure loans'.

Particulars

The April 2020 Greensill Credit Committee Meeting Minutes (GCU.0014.0001.8949) record that 'Lex confirmed that in addition to AK's [Andrew Kuyk's] and DE's [Divya Eapen's] points that insurance won't work if we have it if we freeze the facilities. BD [Brett Downes] challenged, but Lex countered that Greg doesn't insure loans, which is what a standstill would make it' (page 3).

Further particulars may be provided after completion of discovery by GCUK.

114 The knowledge of Lex Greensill of each of the matters in paragraphs 112 and 113 is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

115 The knowledge of Lex Greensill of each of the matters in paragraphs 112 and 113 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 20, 22 and 23 above.

116 Further or in the alternative to paragraph 112 above, Danyon Lloyd knew the matters set out in paragraphs 112(a), 112(c) and 112(d) and the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

(a) his position within GCUK's Credit Committee;

(b) the document titled 'Credit Application Report – Amendment – Liberty MDR Treasury Company UK LTD – 223651297' dated 11 March 2019 (GCU.0005.0007.5610) which was sent to the Credit Committee on or around the same date (GCU.0005.0007.5606);

(c) IAL refers to the particulars at paragraph 112(c) above;

(d) Email from Tariq Akrouk to Danyon Lloyd dated 20 March 2019 (GCU.0009.0008.0867) attaching a spreadsheet of Liberty assets with all programs on a daily basis (GCU.0005.0007.7833). Henry Middleditch replies, stating that 'TCUK is 140mm usd expected to roll but perhaps assume 150mm for any surprises'; and

(e) the emails particularised at paragraph 47.

117 The knowledge of Danyon Lloyd of the matters in paragraphs 112(a), 112(c) and 112(d) above and the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 27 and 28 above.

118 Further or in the alternative to paragraphs 112 to 113, at the time of requesting cover for the Liberty TCUK Risk, William Roland Hartley-Urquhart (Vice Chairman of the Greensill Group), Brett Downes (Chief Risk Officer), Henry Middleditch and Craig Pinnington (Senior Credit Analyst) of GCUK variously knew each of the matters set out in paragraphs 112(c) and 112(d) and/or 113 above.

Particulars

IAL refers to the particulars to paragraphs 112(c) and 112(d) above.

119 The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraph 118 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

120 The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraph 118 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

Knowledge of materiality

121 Each of the matters referred to in paragraphs 112 and 113 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

122 Further or in the alternative to 121 above, each of the matters referred to in paragraphs 112 and 113 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk.

Particulars

IAL refers to the particulars in 121 above.

123 The knowledge of Lex Greensill of the each of the matters set out in paragraphs 112 and 113 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

124 The knowledge of Lex Greensill of each of the matters set out in paragraphs 121 and 122 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

125 Further or in the alternative to paragraph 121 above, each of the matters referred to in paragraphs 112(c) and/or 112(d) and/or 113 above was a matter:

(a) which William Roland Hartley-Urquhart (Vice Chairman of the Greensill Group), Brett Downes (Chief Risk Officer), Henry Middleditch and Craig Pinnington (Senior Credit Analyst) of GCUK variously knew was relevant to the decision to extend insurance cover in respect of the Liberty TCUK Risk and, if so, on what terms; or

(b) alternatively to paragraph (a), in respect of which Roland Hartley-Urquhart, Brett Downes, Henry Middleditch and Craig Pinnington were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Roland Hartley-Urquhart, Brett Downes, Henry Middleditch and Craig Pinnington is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill and as the non-disclosures bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and thus upon the nature of the Liberty TCUK Risk.

126 Further or in the alternative to paragraph 125 above, each of the matters referred to in paragraphs 112 and 113 above was a matter which a reasonable person in the position of the abovementioned officers and employees of GCUK could be expected to know was relevant to the decision to extend insurance cover in respect of the Liberty TCUK Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 125 above.

127 he knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraphs 125 and 126 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

128 The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraphs 125 and 126 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

129 Further or in the alternative to paragraphs 121, 125 and 126 above, the matters referred to in paragraphs 112(a), 112(c) and 112(d) above were matters:

(a) which Danyon Lloyd knew were relevant to the decision to accept the Liberty TCUK Risk and, if so, on what terms; or

(b) alternatively to paragraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Liberty TCUK Risk.

130 Further or in the alternative to paragraph 129 above, each of the matters referred to in paragraphs 112(a), 112(c) and 112(d) above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were relevant to the decision to extend insurance cover in respect of the Liberty TCUK Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 129 above.

131 The knowledge of Danyon Lloyd of the matters in paragraphs 112(a), 112(c) and 112(d) above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above and Danyon Lloyd's position as CEO of Greensill Bank.

Breach of duty of disclosure

132 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 112 and 113 above before the cover was placed for the Liberty TCUK Risk.

133 Greensill's failure to disclose the matters referred to in paragraphs 112 and 113 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 112 to 131 above.

Fraudulent non-disclosure

134 By reason of the matters pleaded in paragraphs 121, 123, 124, 125 and 127 to 131 above, Greensill's failure to disclose the matters referred to in paragraphs 112 and 113 above was fraudulent.

135 The cover for the Liberty TCUK Risk would not have been issued if the matters referred to in paragraphs 112 and 113 above had been disclosed.

136 In the alternative to the allegation in paragraph 135 above, the cover for the Liberty TCUK Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 112 and 113 above had been disclosed.

137 By reason of the matters pleaded in paragraphs 134 to 136 above, IAL is entitled to avoid the Liberty TCUK Endorsement.

Innocent non-disclosure

138 In the alternative to the matters pleaded in paragraphs 134 to 137 above, and by reason of the matters pleaded in paragraphs 132, 133, 135 and 136 above, IAL is entitled to reduce its liability under the Liberty TCUK Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D2 SSUK

D2.1 Policy and Endorsements

139 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Speciality Steel UK Limited (**SSUK**) was endorsed as a customer under the 2019 Policy by means of an unnumbered endorsement dated 10 June 2019 and effective 22 February 2019 (**SSUK Endorsement**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 137.

D2.2 SSUK Misrepresentations

SSUK Future AR Facility Representations

140 On or around 2 April 2019, Craig Pinnington sent an email to Greg Brereton with respect to cover for SSUK (**SSUK Risk**), attaching a spreadsheet with the title 'SSUK Future receivables request'. In that email, Craig Pinnington explained that the attached spreadsheet identified 'account debtors' and 'proposed limits' for each account debtor in connection with the SSUK Risk, and that '[w]e have reviewed the credit of these companies and their groups, and the limit proposed is the lower of the credit line or the expected sales during the year.'

Particulars

Email from Craig Pinnington (Senior Credit Analyst) of GCUK to Brereton, copying Brett Downes (Chief Risk Officer) of GCUK and Sophie Dyke (Insurance Analyst) of GCUK with subject 'SSUK Future receivables account debtors', dated 2 April 2019 (BCC.0001.0001.2524), attaching a spreadsheet titled 'SSUK Future receivables request.xlsx' (BCC.0001.0001.2525).

141 On or around 8 April 2019, Craig Pinnington sent a further email to Greg Brereton with respect to cover for the SSUK Risk.

Particulars

Email from Craig Pinnington to Greg Brereton and Edward Smith of Marsh, copying Brett Downes , John Whelan and Sophie Dyke with subject ‘SSUK Future receivables request’ dated 8 April 2019 (AGB.0002.0001.1364), attaching a spreadsheet titled 'SSUK Future receivables request08-04-2019.xlsx' (AGB.0002.0001.1365).

142 The email containing that request in paragraph 141 was subsequently forwarded to Lex Greensill.

Particulars

Email from Craig Pinnington to Brett Downes and Lex Greensill, copying Greg Brereton, John Whelan, Sophie Dyke and Patrick Davis (Project Manager) of GCUK, with subject 'FW: SSUK Future receivables insurance request', dated 8 April 2019 (BCC.0001.0001.2562 and BCC.0001.0001.2653).

143 On or around 8 April 2019, as a further email to the email referred to in paragraph 142 above, GCUK sent an email to Greg Brereton, attaching unsigned customer endorsements with respect to the SSUK Risk under the Master Policy (TB-03691) and the 2019 Policy.

Particulars

Email from John Whelan to Greg Brereton, copying Sophie Dyke, Patrick Davis, Craig Pinnington, Brett Downes, Lex Greensill and Edward Smith, with the subject 'Re: SSUK Future receivables insurance request', dated 8 April 2019 (AGB.0002.0001.1366), attaching unsigned Customer Endorsements in respect of SSUK under the Master Policy (TB-03691) and the 2019 Policy (AGB.0002.0001.1367, AGB.0002.0001.1368, AGB.0002.0001.1369 and AGB.0002.0001.1370).

144 In the communications referred to in paragraphs 140 to 143 above, GCUK:

(a) described the proposal as a 'receivables program' for which there were 'account debtors';

(b) described the 'borrowing base' as comprising 'PPE, Stocks and AR'; and

(c) stated that GCUK intended that the facility would:

(i) concern 'approved account debtors', a list of which was said to be attached;

(ii) be 'secured against all assets';

(iii) be '[c]apped by sum of maximum lines against approved account debtors'; and

(iv) include 'the usual seller endorsements under each of GC's and GB's policy'; and

(d) did not inform Greg Brereton that the future accounts receivable facility between GCUK and SSUK operated, or was intended to operate, in a manner different from that conveyed by the Future Accounts Receivable Representation (defined in paragraph 36 above).

Particulars

IAL refers to the particulars in paragraphs 140 to 143 above.

145 By reason of the matters pleaded in paragraphs 36 and 140 to 144 above, GCUK represented that GCUK intended to provide a facility to SSUK under which:

(a) GCUK would lend funds to SSUK against or in respect of future accounts receivable;

(b) account debtors would be parties to existing sales contracts;

(c) the amounts of future accounts receivable to be financed would be supported at the time of drawdown by existing inventory; and

(d) the seller's existing inventory would be independently valued or verified on a periodic basis,

(**SSUK Future AR Facility Misrepresentation**).

146 The SSUK Future AR Facility Misrepresentation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 22, 23, 29 and 30 above.

SSUK Purpose representation

147 By reason of the matters pleaded in paragraphs 140 to 144 above, GCUK represented that GCUK intended to provide a facility to SSUK under which GCUK would lend funds to SSUK to finance trade between SSUK and its customers or account debtors (**SSUK Purpose Misrepresentation**).

148 The SSUK Purpose Misrepresentation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 22, 23, 29 and 30 above.

SSUK Account Debtor representations

149 On or around 9 April 2019, Greg Brereton was presented with spreadsheets and/or emails from GCUK and/or Marsh, acting on behalf of GCPL and Greensill Bank (and GCUK to the extent that a corresponding customer endorsement was being proposed for the Master Policy) identifying proposed account debtors, with a view to such proposed

account debtors being agreed by Greg Brereton on behalf of BCC as authorised representative of IAL.

Particulars

IAL refers to the particulars in paragraph 140 above.

Email from Craig Pinnington to Greg Brereton and Edward Smith, copying Brett Downes, John Whelan and Sophie Dyke, with subject 'RE: SSUK Future receivables request' dated 9 April 2019 (BCC.0001.0002.2978).

150 The emails referred to in paragraph 149 above were subsequently forwarded or sent to Lex Greensill.

Particulars

IAL refers to the particulars in paragraph 142 above.

Emails between Greg Brereton and Lex Greensill dated 9 April 2019, copying Craig Pinnington, Brett Downes, John Whelan, Sophie Dyke, Edward Smith and Julian Macey-Dare of Marsh, with subject 'Re: SSUK Future receivables request' dated 9 April 2019 (BCC.0001.0002.2988).

151 Each such submission of a proposed account debtor as pleaded in paragraph 149 above constituted a representation by GCUK that each account debtor it proposed (referred to in the spreadsheet and/or email, as applicable) was either a customer of SSUK, or was an entity that GCUK intended to require to become, and would become, a customer of SSUK (the **SSUK Account Debtor Representations**).

152 The SSUK Account Debtor Representations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 22, 23, 29 and 30 above.

153 On or around 7 June 2019, Marsh emailed Greg Brereton, attaching proposed customer endorsements in respect of the SSUK Risk.

Particulars

Email from Ewan Berkemeier of Marsh to Greg Brereton, copying Angus Ward of Marsh, Alexandre Weiss Bueno of Marsh and Edward Smith, with subject 'Greensill pending open items – action required' dated 7 June 2019, attaching (amongst other things) a draft form of an unnumbered endorsement in respect of the SSUK Risk (MAR.0003.0002.3962 and MAR.0003.0002.3971).

154 On or around 10 June 2019, Greg Brereton provided Marsh with a signed copy of an unnumbered customer endorsement, under which SSUK was purportedly endorsed as a customer under the Master Policy (TB-03691) and the 2019 Policy.

Particulars

Email from Greg Brereton to John Whelan, Ewan Berkemeier, copying Angus Ward, Edward Smith and Alexandre Weiss Bueno, with subject 'Re: Greensill pending open items – action required' dated 10 June 2019 and attachment (MAR.0003.0002.3994 and MAR.0003.0002.3995).

Representations were misleading

155 The SSUK Future AR Facility Misrepresentation referred to in paragraph 145 above was false and/or misleading because the SSUK Risk was a loan facility in which:

(a) GCUK knew, or alternatively believed, that, at the time of the SSUK Future AR Facility Misrepresentation, SSUK intended:

(i) that a portion of the facility would be diverted from SSUK to manage repayment of other facilities, including, for example 'KLL' [KLL Holdings] and 'LRB' [Little Red Boxes];

Particulars

Email from Alexandra Hayes of GCUK to Danyon Lloyd of Greensill Bank, copying Brett Downes of GCUK, with subject 'SSUK Future Receivables', dated 8 March 2019 (GCU.0009.0007.8655).

Email from Brett Downes to Alexandra Hayes, Craig Pinnington and others, with subject 'RE: Speciality Steels info pack with financials', dated 11 March 2019 (GCU.0010.0007.7530).

Email from Sanjeev Gupta to Lex Greensill, with subject 'RE: LSS Greensill Facility', dated 14 March 2019 (GCU.0005.0007.4945).

Email from Barnaby Lynch of GCUK to Lex Greensill, copying Henry Middleditch of GCUK, with subject 'KLL Refi', dated 27 March 2019 (GCU.0004.0025.1858).

Email chain between Lex Greensill, Barnaby Lynch and Henry Middleditch, with subject 'Re: KLL Timings', dated 1 April 2019 (GCU.0004.0025.3552).

Email chain between Brett Downes, Alexandra Hayes, Craig Pinnington and others, with subject 'RE: SSUK FR deal- Account debtor analysis', dated 1 April 2019 (GCU.0010.0008.1392).

Email from Barnaby Lynch to John Whelen and others, copying Lex Greensill and others, with subject 'KLL Trades', dated 2 April 2019, attaching a presentation

titled 'KLL Bridge Structure_vGC4.pptx' (GCU.0005.0008.4480 and GCU.0005.0008.4481).

Email from Alexandra Hayes to Lex Greensill and Brett Downes, copying others, with subject 'FW: Receivables', dated 2 April 2019 (GCU.0005.0008.4106).

Email from Lex Greensill to Alexandra Hayes, copying Brett Downes and others, with subject 'Re: Receivables', dated 3 April 2019 (GCU.0005.0008.4596).

The GCUK Credit Application for SSUK dated 4 April 2019 (CSA.0001.0007.0515) at page 16.

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: SSUK Facility', dated 4 April 2019 (GCU.0005.0008.5429)

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: Limit on receivables | New Facility', dated 5 April 2019 (GCU.0005.0008.6568).

Email from Lex Greensill to Barnaby Lynch, with subject 'Re: KLL urgent question', dated 9 April 2019 (GCU.0005.0008.8883).

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019 (GCU.0004.0026.3400).

(ii) that of the GBP150 million initial draw:

(A) approximately GBP120 million (or alternatively, GBP150 million) would be immediately moved to Simec (or alternatively, to GCUK on trust for Simec) to facilitate the repayment of wider GFG facilities, including the buyback of KLL notes from Swiss fund manager, GAM;

(B) approximately GBP20 million would be used by SSUK for their normal operations, described by GCUK as 'working capital buffers';

(C) approximately GBP10 million would cover fees to Greensill for the facility and to provide SSUK the ability to absorb financial shocks in the coming months; and

Particulars

Email from Alexandra Hayes of GCUK to Danyon Lloyd of Greensill Bank, copying Brett Downes of GCUK, with subject 'SSUK Future Receivables', dated 8 March 2019 (GCU.0009.0007.8655).

Email from Brett Downes to Alexandra Hayes, Craig Pinnington and others, with subject 'RE: Speciality Steels info pack with financials', dated 11 March 2019 (GCU.0010.0007.7530).

Email from Sanjeev Gupta to Lex Greensill, with subject 'RE: LSS Greensill Facility', dated 14 March 2019 (GCU.0005.0007.4945).

Email from Barnaby Lynch of GCUK to Lex Greensill, copying Henry Middleditch of GCUK, with subject 'KLL Refi', dated 27 March 2019 (GCU.0004.0025.1858).

Email chain between Lex Greensill, Barnaby Lynch and Henry Middleditch, with subject 'Re: KLL Timings', dated 1 April 2019 (GCU.0004.0025.3552).

Email chain between Brett Downes, Alexandra Hayes, Craig Pinnington and others, with subject 'RE: SSUK FR deal- Account debtor analysis', dated 1 April 2019 (GCU.0010.0008.1392).

Email from Barnaby Lynch to John Whelen and others, copying Lex Greensill and others, with subject 'KLL Trades', dated 2 April 2019, attaching a presentation titled 'KLL Bridge Structure_vGC4.pptx' (GCU.0005.0008.4480 and GCU.0005.0008.4481).

Email from Alexandra Hayes to Lex Greensill and Brett Downes, copying others, with subject 'FW: Receivables', dated 2 April 2019 (GCU.0005.0008.4106).

Email from Lex Greensill to Alexandra Hayes, copying Brett Downes and others, with subject 'Re: Receivables', dated 3 April 2019 (GCU.0005.0008.4596).

The GCUK Credit Application for SSUK dated 4 April 2019 (CSA.0001.0007.0515), page 10.

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: SSUK Facility', dated 4 April 2019 (GCU.0005.0008.5429)

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: Limit on receivables | New Facility', dated 5 April 2019 (GCU.0005.0008.6568).

Email from Lex Greensill to Barnaby Lynch, with subject 'Re: KLL urgent question', dated 9 April 2019 (GCU.0005.0008.8883).

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019 (GCU.0004.0026.3400).

(iii) that subsequent tranches would be used to repay other facilities;

Particulars

The GCUK Credit Application for SSUK dated 4 April 2019 (CSA.0001.0007.0515), page 10.

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: SSUK Facility', dated 4 April 2019 (GCU.0005.0008.5429)

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019 (GCU.0004.0026.3400).

(b) there was no maximum duration, or in the alternative, a duration longer than 275 days;

Particulars

The GCUK Credit Application for SSUK dated 4 April 2019, which relevantly stated 'the facility is in place for 4 years on an uncommitted basis throughout' (CSA.0001.0007.0515, page 4).

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019, which relevantly stated 'Tenor (days): Facility - 365, Roll - 275' (GCU.0004.0026.3400, page 1).

(c) GCUK did not intend to, and did not, require that Account Debtors be parties to existing sales contracts with an Underlying Seller;

(d) GCUK did not intend to, and did not, require that the amounts of future accounts receivable financed under the SSUK facility be supported at the time of drawdown by existing inventory valued on a monthly basis by a third party independent valuer; and

Particulars

No Valuation Reports in respect of any of the alleged debts in Table 14.1 of Annexure P to the SOC have been provided to the Insurer despite requests.

None of the alleged debts in Table 14.1 of Annexure P to the SOC became the subject of an actual account receivable owing by an Account Debtor.

The invoices submitted in respect of the Account Debtors show a pattern of identical transactions. It is inherently implausible that such a level of consistency would be achieved in amounts expected to be owed by Account Debtors referable to real world transactions. GCUK's acceptance of these invoices indicates that

GCUK must have known that the invoices were not genuine and did not object to it.

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

(a) Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [32]);

(b) in the first quarter of 2020, Sanjeev Gupta requested, and Lex Greensill provided, confirmation that the financing provided to his companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [16]);

(c) in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [49]).

Zurich Insurance Company Limited Defence in CL-2023-000136 before the High Court of England and Wales at [25-26] and [66-70].

Further particulars will be provided after completion of discovery by GCUK.

(e) in the premises of sub-paragraphs (a) to (d) GCUK did not intend to provide a facility to SSUK having the characteristics referred to in paragraph 145.

156 The SSUK Purpose Misrepresentation referred to in paragraph 147 was false and/or misleading because the SSUK Risk was a loan facility in which:

(a) GCUK knew, or alternatively believed, that, at the time of the SSUK Purpose Misrepresentation, SSUK intended that a significant portion of the funds drawn be immediately moved to Simec (or alternatively, to GCUK on trust for Simec) to facilitate the repayment of wider GFG facilities, including the buyback of KLL notes from GAM;

Particulars

GCUK, SSUK and Simec entered into an arrangement by which the funds drawn on GCUK by SSUK were intended to be used to facilitate a transaction chain that

caused Simec to, in substance, buy back KLL notes from GAM. This arrangement can be inferred from:

(a) the particulars to sub-paragraph 155(a) above;

(b) email from Lex Greensill to James Doran of GCUK, copying others, with subject 'RE: WSJ' dated 9 August 2018 (GCU.0004.0016.1898);

(c) email from Lex Greensill to David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM) of GCUK, with subject 'Re: MS & GFG' dated 25 October 2018 (GCU.0004.0019.9022);

(d) email from Henry Middleditch to Lex Greensill, with subject 'KLL/LRB Strategy Summary', dated 8 January 2019 (GCU.0005.0004.6331);

(e) email from Henry Middleditch to Lex Greensill, copying others, with subject 'LRB/KLL Strategy and KLL Documents', dated 8 January 2019, attaching a document titled 'LRB&KLL Strategy Final.docx' (GCU.0005.0004.6494 and GCU.0005.0004.6495);

(f) email from Lex Greensill to Jay Hambro (Chief Investment Officer) of GFG and Sanjeev Gupta, with subject 'RE: KLL/ Lochaber info request', dated 11 January 2019 (GCU.0005.0004.8195);

(g) email from Henry Middleditch to Lex Greensill, copying others, with subject 'LRB/KLL Strategy and KLL Documents', dated 7 February 2019, attaching a document titled 'LRB&KLL Strategy Final.docx' (GCU.0005.0005.8860 and GCU.0005.0005.8861);

(h) email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: GAM KLL buy back', dated 15 February 2019 (GCU.0005.0006.2445);

(i) email from Barnaby Lynch to Lex Greensill, copying others, with subject 'RE: KLL Bridge – Update', dated 20 February 2020, attaching a document titled 'KLL Bridge Structure_v2.pdf' (GCU.0007.0002.4669 and GCU.0007.0002.4670); and

(j) email from Sanjeev Gupta to Lex Greensill, with subject 'Recap of some of the cooking we did in Bunderburg', dated 5 March 2019 (GCU.0005.0007.0412).

(b) by reason of sub-paragraph (a), GCUK knew, or alternatively believed, that, at the time of the SSUK Purpose Misrepresentation, SSUK did not intend that funds advanced by GCUK would be used to finance trade, or intended future trade, with SSUK and its customers (or account debtors).

Particulars

IAL refers to the particulars to sub-paragraph 155(a) above.

157 The SSUK Account Debtor Representations referred to in paragraph 151 were false and/or misleading because:

(a) having regard to the Future Accounts Receivable Representation at paragraph 36 above, the concept of future accounts receivable was used by GCUK, and understood by Greg Brereton, to refer to receivables arising from existing sales contracts with predefined customers, as verified and audited on a periodic basis; and

(b) while GCUK represented that the SSUK Risk involved future accounts receivable, and, relatedly, receivables arising from existing sales contracts with predefined customers, as verified and audited on a periodic basis, in fact the SSUK Risk was a loan facility in which:

(i) GCUK did not require that Account Debtors be parties to existing sales contracts with an Underlying Seller;

Particulars

IAL refers to the particulars in paragraph 155 above.

Further particulars may be provided after completion of discovery by GCUK.

(ii) GCUK understood the intention of SSUK to be as pleaded in paragraph 155(a). above.

Particulars

IAL refers to the particulars in paragraph 155(a). above.

Knowledge of falsity of representations

158 Lex Greensill knew each of the matters set out in paragraph 155 above.

Particulars

IAL refers to the particulars in paragraph 155 above.

The knowledge of Lex Greensill is to be inferred from his involvement in GCUK's dealings with SSUK, and from his direct involvement in correspondence with BCC associated with the SSUK Risk, as demonstrated by:

(a) Credit Application Report for SSUK dated 4 April 2019 (CSA.0001.0007.0515, page 2), which identifies Lex Greensill as the 'GC Relationship Owner' in respect of the application;

(b) the particulars to paragraph 142 above, which evidences Lex Greensill's involvement in the request for cover in respect of the SSUK Risk; and

(c) the fact that the matters set out in paragraph 155(c) above occurred from the time that cover was issued and was a practice that occurred in other financing provided by Greensill to GFG companies, including Liberty House as set out in paragraph 278(b) below.

The knowledge of Lex Greensill is to be further inferred from the following matters:

(a) Lex Greensill and GCUK would provide advice to GCUK's customers on the structure of the customer's debt facilities and overall capital structure (for example, GCU.0005.0007.0413, GCU.0005.0008.6570); and

(b) Notwithstanding the fact that GCUK held itself out as a supply chain finance company, GCUK would regularly design debt facilities for its customers that were not linked to the genuine underlying trade of its customers (for example, GCU.0007.0002.4670; GCU.0009.0005.5676, GCU.0004.0015.9384).

The knowledge of Lex Greensill of the arrangements between GCUK and SSUK is also to be inferred from the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

(a) a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

(b) that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

(c) that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

(d) that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements…were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

159 Lex Greensill knew each of the matters set out in paragraph 156 above.

Particulars

IAL refers to the particulars in paragraph 156 above.

160 Lex Greensill knew each of the matters set out in paragraph 157 above.

Particulars

IAL refers to the particulars to paragraph 157 above.

161 The knowledge of Lex Greensill of each of the matters set out in paragraphs 158, 159 and 166 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

162 The knowledge of Lex Greensill of the matters set out in paragraphs 158, 159 and 160 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

163 Further and in the alternative to paragraph 158 above, John Whelan (Deputy General Counsel), Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew the matters set out in paragraph 155(a) above.

Particulars

IAL refers to the particulars to paragraph 155(a) above.

The knowledge of Craig Pinnington can be inferred from:

(a) his position as the submitter of the application; and

(b) his involvement in dealings with other risks involving the Liberty Group, namely the Liberty House Risk.

The knowledge of Brett Downes can be inferred from his involvement in dealings with SSUK and other risks involving the Liberty Group, namely the LCL Risk and the Liberty House Risk.

The knowledge of John Whelan can be inferred from his involvement in dealings with SSUK and other risks involving the Liberty Group namely the Liberty House Risk.

164 Further and in the alternative to paragraph 159 above, other officers and employees of GCUK – comprising Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew the matters set out in paragraph 156 above.

Particulars

IAL refers to the particulars in paragraph 156 above.

165 Further and in the alternative to paragraph 160 above, officers and employees of GCUK – comprising Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew the matters set out in paragraph 157 above.

Particulars

IAL refers to the particulars to paragraphs 157 and 163 above.

166 The knowledge of the abovementioned officers and employees of GCUK of each of the matters identified in paragraphs 163, 164 and 165 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraph 29 and 30 above.

167 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraphs 163, 164 and 165 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

Knowledge of materiality of representations

168 Each of the matters referred to in paragraph 155 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of SSUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

169 Each of the matters referred to in paragraph 156 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

IAL refers to the particulars in paragraph 168 above.

170 Each of the matters referred to in paragraph 157 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

IAL refers to the particulars to paragraph 168 above.

171 The knowledge of Lex Greensill of the matters set out in paragraphs 168, 169 and 170 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

172 The knowledge of Lex Greensill of the matters set out in paragraphs 168 and 169 and 170 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

173 Further and in the alternative to paragraph 168 above, each of the matters referred to in paragraphs 155(a) above was a matter:

(a) which other officers or employees of GCUK – comprising John Whelan (Deputy General Counsel), Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

(b) alternatively to subparagraph 173(a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

174 Further and in the alternative to paragraph 169 above, each of the matters referred to in paragraph 156 above was a matter:

(a) which other officers or employees of GCUK – comprising John Whelan (Deputy General Counsel), Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

(b) alternatively to subparagraph (a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

175 Further and in the alternative to paragraph 170 above, each of the matters referred to in paragraph 157 above was a matter:

(a) which other officers or employees of GCUK – comprising John Whelan (Deputy General Counsel), Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

(b) alternatively to subparagraph (a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

176 The knowledge of the abovementioned officers and employees of GCUK of the matters set out in paragraphs 173 to 175 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

177 The knowledge of the abovementioned officers and employees of GCUK of the matters set out in paragraphs 173 to 174 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Misrepresentations were fraudulent

178 In the premises of paragraphs 140 to 146, 155, 158, 161, 162, 163, 166, 167, 168, 171, 172, 173, 176 and 177 above:

(a) Greensill misrepresented the risk presented by the SSUK Risk;

(b) the SSUK Future AR Facility Misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the SSUK Risk.

179 In the premises of paragraphs 140 to 146, 156, 158, 159, 161, 162, 163, 164, 166, 167, 169, 171, 172, 174, 176 and 177 above:

(a) Greensill misrepresented the risk presented by the SSUK Risk;

(b) the SSUK Purpose Misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the SSUK Risk.

180 In the premises of paragraphs 140 to 146, 157, 160, 161, 162, 165, 166, 167, 170, 171, 172, 175, 176 and 177 above:

(a) Greensill misrepresented the risk presented by the SSUK Risk;

(b) the SSUK Account Debtor Representations were knowingly false and fraudulent; and

(c) the misrepresentations were known to be material to the decision whether to renew insurance cover in respect of the SSUK Risk.

181 If Greensill had not made the SSUK Future AR Facility Misrepresentation, insurance cover would not have been issued in respect of the SSUK Risk at all or, in the alternative, on the same terms in which it purportedly was written.

182 If Greensill had not made the SSUK Purpose Misrepresentation, insurance cover would not have been issued in respect of the SSUK Risk at all or, in the alternative, on the same terms in which it purportedly was written.

183 If Greensill had not made the SSUK Account Debtor Representations, insurance cover would not have been issued in respect of the SSUK Risk at all or, in the alternative, on the same terms in which it purportedly was written.

184 By reason of the matters pleaded in paragraphs 155 to 183 above, IAL is entitled to avoid the SSUK Endorsement.

Innocent misrepresentation

185 In the alternative to the matters pleaded in paragraphs 178 to 184 above, by reason of the matters pleaded in paragraphs 155, 156, 157, 181, 182 and 183 above, IAL is entitled to reduce its liability under the SSUK Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the SSUK Future AR Facility Misrepresentation, the SSUK Purpose Misrepresentation and the SSUK Account Debtor Representations had not occurred).

D2.3 SSUK Non-Disclosures

Knowledge of material underlying non-disclosures

186 At the time of requesting insurance cover for the SSUK Risk, Lex Greensill knew:

(a) the matters set out in paragraphs 36, 155, 156 and 157 above;

Particulars

IAL refers to the particulars for paragraphs 158, 159 and 160.

(b) the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 44.

(c) the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group (of which SSUK was affiliated) and Sanjeev Gupta (who was personal Guarantor of the SSUK facility risk) in prior dishonest and fraudulent conduct.

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're:

Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

187 The knowledge of Lex Greensill of the matters in paragraph 186 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

188 The knowledge of Lex Greensill of the matters in paragraph 186 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

189 Further or in the alternative to paragraph 186 above, at the time of requesting insurance cover for the SSUK Risk, John Whelan (Deputy General Counsel of GCUK), Craig Pinnington (Senior Credit Analyst of GCUK) and Brett Downes (Chief Risk Officer of GCUK) knew each of the matters set out in paragraphs 186(a) and 186(b) above.

Particulars

IAL refers to the particulars in paragraphs 163, 164 and 165 above.

190 The knowledge of the aforementioned officers and employees of GCUK of each of the matters in paragraph 189 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

191 The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraph 189 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

192 Further or in the alternative to paragraphs 186 and 189 above, at the time of requesting insurance cover for the SSUK Risk, Danyon Lloyd of Greensill Bank knew:

(a) the matters pleaded in paragraphs 155 and 156;

(b) the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

Email from Alexandra Hayes of GCUK to Danyon Lloyd of Greensill Bank, copying Brett Downes of GCUK, with subject 'SSUK Future Receivables', dated 8 March 2019 (GCU.0009.0007.8655).

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes, Danyon Lloyd and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019 (GCU.0004.0026.3400).

The knowledge of Danyon Lloyd is otherwise to be inferred from:

(a) the involvement of Danyon Lloyd in Greensill's dealings with SSUK;

(b) Danyon Lloyd's position with GCUK's Credit Committee; and

(c) the emails particularised at paragraph 43 above.

193 The knowledge of Danyon Lloyd of the matters pleaded in paragraphs 155 and 156 above is to be attributed to Greensill Bank.

Particulars

IAL refers to and repeats the particulars to paragraphs 27, 28 and 190 above.

Knowledge of materiality

194 Each of the matters referred to in paragraph 186 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk and, if so, on what terms; or

(b) alternatively to subparagraph 194(a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of SSUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

195 Further or in the alternative to paragraph 194 above, each of the matters referred to in paragraph 186 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the SSUK Risk.

Particulars

IAL refers to the particulars in paragraph 194 above.

196 The knowledge of Lex Greensill of each of the matters set out in paragraphs 194 and 195 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26 above.

197 The knowledge of Lex Greensill of each of the matters set out in paragraphs 194 and 195 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20 above.

198 Further and in the alternative to paragraph 194 above, each of the matters referred to in paragraph 186 above was a matter:

(a) which John Whelan (Deputy General Counsel of GCUK), Craig Pinnington (Senior Credit Analyst of GCUK) and Brett Downes (Chief Risk Officer of GCUK) knew was relevant to the decision to extend insurance cover in respect of the SSUK Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which John Whelan, Craig Pinnington and Brett Downes was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of John Whelan, Craig Pinnington and Brett Downes is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the risk of SSUK being unable to repay the amounts advanced to it and thus upon the SSUK Risk.

199 Further or in the alternative to paragraph 198 above, each of the matters referred to in paragraph 186 above was a matter which a reasonable person in the position of the

abovementioned officers and employees of GCUK could be expected to know was relevant to the decision to extend insurance cover in respect of the SSUK Risk and, if so, on what terms.

Particulars

IAL refers to the particulars in paragraph 198 above.

200 The knowledge of the abovementioned officers and employees of GCUK of the matters in paragraphs 198 and 199 above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

201 The knowledge of the abovementioned officers and employees of GCUK of the matters in paragraphs 198 and 199 above can be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

202 Further or in the alternative to paragraphs 194 and 198 above, each of the matters referred to in paragraph 186 above was a matter:

(a) which Danyon Lloyd knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred from his knowledge of the AIG Steilmann Claim Letter.

Danyon Lloyd's knowledge is to be further inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) was a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747;

GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the SSUK Risk.

203 Further or in the alternative to paragraphs 195 and 199 above, each of the matters referred to in paragraph 192 above was a matter which a reasonable person in the position of Danyon Lloyd could be expected to know was relevant to the decision to extend insurance cover in respect of the SSUK Risk and, if so, on what terms.

Particulars

IAL refers to and repeats the particulars to paragraph 202 above.

204 The knowledge of Danyon Lloyd of the matters pleaded in paragraphs 202 and 203 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above.

Breach of duty of disclosure

205 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 186 above before the cover was placed for the SSUK Risk.

206 Greensill's failure to disclose the matters referred to in paragraph 186 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 187 to 201 above.

Fraudulent non-disclosure

207 By reason of the matters pleaded in paragraphs 187, 188, 190, 191, 194, 196, 197, 198, 200 and 201 above, Greensill's failure to disclose the matters referred to in paragraph 186 above was fraudulent.

208 The cover for the SSUK Risk would not have been issued if the matters referred to in paragraph 186 above had been disclosed.

209 In the alternative to the allegation in paragraph 208 above, the cover for the SSUK Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 186 had been disclosed.

210 By reason of the matters pleaded in paragraphs 207 to 209 above, IAL is entitled to avoid the SSUK Endorsement.

Innocent non-disclosure

211 In the alternative to the matters pleaded in paragraphs 207 to 208 above, and by reason of the matters pleaded in paragraphs 205, 206, 208 and 209 above, IAL is entitled to reduce its liability under the SSUK Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D3 Westford

D3.1 Policy and Endorsements

213 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Westford was endorsed as a customer under the 2019 Policy by means of Customer Endorsement No 139 dated 2 July 2020 (**Westford Endorsement**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 136.

D3.2 Westford Misrepresentations

214 In or around early October 2018, GCUK inquired about the provision of insurance for various risks, including in respect of financing provided by GCUK to Westford (then known as Westford Trade Services Limited) (**Westford Risk**). In support of that request, GCUK provided Brereton with a 'Credit Analysis Pack' with respect to the Westford Risk.

Particulars

Email from Lex Greensill to Brereton dated 1 October 2018 (BCC.0001.0001.0930), attaching an Excel spreadsheet titled 'HIF TBCC InsReq vf 01102018' (BCC.0001.0001.0931).

Email from Sophie Dyke (Insurance Analyst) of GCUK to Brereton, copying Lex Greensill, Brett Downes (Chief Risk Officer) of GCUK and others, dated 3 October 2018 (AGB.0002.0002.0985), attaching (among other documents) a Credit Analysis Pack for Westford dated May 2018 (AGB.0002.0002.0998).

215 GCUK's 'Credit Analysis Pack' represented to BCC, among other matters, that:

(a) the Westford Risk related to 're-invoicing', with a trade tenor of 120 days;

(b) the financing arrangement was for Westford's 'continued working capital requirements',

(the **Westford Financing Misrepresentations**).

216 The Westford Financing Misrepresentations were continuing representations.

217 The Westford Financing Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to 17, 18, 20, 22, 23, 26, 29 and 30.

218 On or around 8 October 2018, Westford was purportedly endorsed as a customer by Customer Endorsement 1 under Policy TB-04278 and Policy TB-04271 with effect from 8 October 2018, and with a limit of USD11 million and a maximum tenor of 180 days.

Particulars

Email from Brereton to Ewan Berkemeier and Edward Smith of Marsh dated 8 October 2018 (AGB.0002.0009.1484) attaching a PDF containing various documents including signed copies of BCC Policy TB-04278, BCC Policy TB-04271 and Customer Endorsement 1 (AGB.0002.0009.1485).

Email exchange between Brereton, Ewan Berkemeier, Edward Smith of Marsh and Brett Downes dated 9 October 2018 (BCC.0001.0001.1047) attaching a PDF containing the 'Insurance Portfolio Limitsv2' schedule referred to in Customer Endorsement 1 (BCC.0001.0001.1048).

219 Policy TB-04278 and Policy TB-04271 subsequently expired on 8 October 2019.

220 Subsequently on or around 18 to 20 June 2020, GCUK requested that BCC once again extend insurance cover in respect of the Westford Risk.

Particulars

Emails between Lex Greensill and Brereton, copying Edward Smith of Marsh, Ewan Berkemeier of Marsh, and Lindsey Sherrill (Chief of Staff) of GCUK, between 18 to 20 June 2020 (MAR.0003.0003.2812).

221 On or around 21 June 2020, Brereton purported to agree to provide cover in respect of the Westford Risk up to a limit of USD51 million and a deductible of USD40 million.

Particulars

Emails between Lex Greensill, Brereton and Edward Smith, copying Ewan Berkemeier, Angus Ward of Marsh, and Linsey Sherrill on 18, 20, 21 and 22 June 2020 (AGB.0002.0001.3018).

222 On or around 22 June 2020, Marsh sent an email to GCUK attaching documents relating to the request for cover for the Westford Risk and stated 'If all okay please give us the order to bind'.

Particulars

Email from Angus Ward to Craig Pinnington (Senior Credit Analyst) of GCUK, Edward Smith, Margarita Diagileva (Insurance Analyst) of GCUK and Arslan Gill (Insurance Analyst) of GCUK, copying Flavia Pritchard of Marsh, dated 22 June 2020 (MAR.0003.0003.2860) attaching two unsigned Customer Endorsements No 139 for Westford (MAR.0003.0003.2861 and MAR.0003.0003.2862).

223 On or around 23 June 2020, GCUK instructed Marsh to bind cover for the Westford Risk.

Particulars

Email from Craig Pinnington to Angus Ward, Edward Smith, Margarita Diagileva and Arslan Gill, copying Flavia Pritchard, dated 23 June 2020 (MAR.0003.0003.2868).

224 On or around 23 June 2020, Marsh sent an email to Brereton which attached an unsigned copy of Customer Endorsement No 139 and stated that 'Greensill have confirmed NKORL [no known or reported losses] and have given us the order to bind.'

Particulars

Email from Angus Ward to Greg Brereton and Edward Smith, copying Ewan Berkemeier and Flavia Pritchard dated 23 June 2020 attaching two unsigned Customer Endorsements No 139 (MAR.0003.0003.2874, MAR.0003.0003.2875 and MAR.0003.0003.2876).

225 On or around 2 July 2020, Brereton provided GCUK, via its broker, Marsh, with signed copies of Customer Endorsement No 139, which purported, with effect from 22 June 2020, to endorse Westford as a Customer under the 2019 Policy in respect of the Westford Risk with an Aggregate Customer Limit of USD51 million.

Particulars

Email from Greg Brereton to Angus Ward and Edward Smith dated 2 July 2020 attaching a PDF containing signed endorsements (BCC.0001.0007.9651 and BCC.0001.0007.9652).

Representations were misleading

226 The Westford Financing Misrepresentations were false and/or misleading because:

(a) having regard to the SCF Representation at paragraph 31 above, the concept of 're-invoicing' was used by Greensill, and understood by Brereton, to refer to a form of short-term financing referable to genuine underlying invoices that evidence trade;

(b) while GCUK represented that the Westford Risk involved 'reinvoicing' with a trade tenor of 120 days, or alternatively 180 days, and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact:

(i) the Westford Risk related to a financing facility with no maximum duration or, in the alternative, a duration longer than 120 or 180 days; and

(ii) Greensill did not intend that the financing facility be based on the underlying trade of goods or services, or alternatively did not maintain a continuing satisfaction that the financing facility was so based.

Particulars

GCUK's practice was to 'roll' all or part of Westford's maturity payment obligations, thereby effectively extending the term of the facility, as indicated by the email between GCUK personnel, Johanna Roberts and Theirry Lassy-Taty dated 24 June 2020 with the subject line 'RE: Westford – Increase in facility from $22.04Mn to $62.04Mn' (GCU.0013.0008.6605), stating: '*A roll is when they cannot afford to repay, so the programmed is "rolled" for the next maturity….It "rolled" in January because Westford could not afford to repay ie GFG could not afford to repay*'.

The fact that the facility was not based on underlying invoices evidencing trade of goods or services, or alternatively that it was not intended by GCUK that the invoices would relate to the trade of goods or services, may be inferred from (in addition to the above):

(a) email exchange between GCUK personnel including Valerie Kirkaldy, Brett Downes and Lex Greensill (among others) dated 21 June 2018 with respect to a drawdown under the Westford facility (GCU.0004.0013.9736). Ms Kirkaldy states: 'Completely understand that we need an underlying invoice for the drawdowns…however from a conversation myself and Ludwig had with Lex yesterday evening, Lex advised the clients would drawdown the full amounts from the beginning'. Mr Downes then says to Lex Greensill: 'Lex is this true? Why would we not get underlying invoices to show there is actually trade going on here?';

(b) email exchange between Lex Greensill and Valerie Kirkaldy (and others at GCUK) dated 26 June 2018 (GCU.0004.0014.1702);

(c) email exchange between Lex Greensill and Valerie Kirkaldy (GCUK) between 17 to 18 January 2019 (GCU.0005.0005.1000), in which Lex Greensill states: '… I should have asked you to get in touch with Westford to arrange new trades on this facility to roll it forward. Could you please urgently arrange for a new PAUF that rolls all of these forward (and ensures the maturity amounts are spread out as before). (This would mean we are offering notes out on Monday for the maturities from yesterday and also today and then each day of the subsequent maturities.) We can waive

the need for invoices (so as not to slow the process down). You should let Ludwig know that I would like these offered to CS High Income Fund.' He further states, 'I should add that it is fine if (as a consequence of the additional interest when we roll these amounts forward) if we exceed the credit limit slightly. I will approve same';

(d) the fact that:

(i) GCUK would prepare 'PAUFs' for Westford under the facility, which would detail new invoices in replacement of old invoices that were due to mature (effectively extending the maturities) (GCU.0005.0002.3004; GCU.0005.0005.1000; GCU.0009.0011.6295; GCU.0009.0007.0317; GCU.0009.0009.1116);

(ii) on occasion, Lex Greensill would instruct GCUK as to how the PAUFs were to be prepared for the Westford Risk, including that the maturities were to be ‘rolled’ forward (GCU.0005.0005.1000);

(iii) Sanjeev Gupta was, on occasion, involved in the preparation of new 'trades' for Westford (GCU.0005.0021.1313); and

(iv) the funds borrowed under the Westford facility were not intended to be, or in fact, paid to suppliers in connection with the purported underlying invoices, but instead were at least initially retained as cash collateral via a tripartite agreement between Liberty, Westford and Greensill. This is explained in an email between GCUK personnel, Johanna Roberts and Thierry Lassy-Taty, dated 24 June 2020 (GCU.0013.0008.6605), in which Lassy-Taty notes: "But this is a SCF (Re-Invoicing) deal, so the funding is supposed to go directly to the suppliers, Westford is not supposed to get any monies. Is that correct? If yes how Westford could get the USD40m and then, lend them to Liberty";

(e) GCUK had a practice of permitting Westford to draw on the Westford facility in order to cover payment obligations without Westford in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to Westford. This practice is evident from the documents identified immediately above in the particulars to this paragraph and is further pleaded at Section C.8 of Annexure B to this defence.

Further particulars may be provided after completion of discovery by GCUK.

Knowledge of falsity of representations

227 Lex Greensill knew each of the matters set out in paragraph 226 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

(a) his involvement in GCUK's dealings with Westford, and from his direct involvement in correspondence regarding the Westford Risk set out in the particulars to paragraphs 214, 220, 221 and 226 above and 240 below;

(b) Lex Greensill's position of seniority within GCUK as the Chief Executive Officer; and

(c) Lex Greensill's role as 'Sponsor' and 'Facility team member' for the Westford facility, and his involvement in the approval of the Westford facility as demonstrated by:

(i) email exchange between Lex Greensill and other members of the Credit Risk Team dated 18 June 2018, approving the Westford facility and identifying Lex Greensill as the 'Sponsor' (GBA.0004.0015.3697);

(ii) email from Pamela Nnoko (Senior Credit Analyst) of GCUK to Lex Greensill, Danyon Lloyd, Craig Pinnington and other GCUK personnel dated 26 June 2018, confirming final approvals from the Credit Committee and Board for the Westford facility (GBA.0004.0028.4170) and attaching a 'Credit Analysis Pack' dated May 2018 for Westford (GBA.0004.0028.4171);

(iii) document titled 'Credit Application Redacted Report – Amendment' for Westford Limited dated 26 August 2020 (CSA.0001.0006.2285), which identifies Lex Greensill as a member of the 'Facility Team'; and

(iv) the particulars to paragraph 240(d) and 240(e) below.

Further particulars may be provided after completion of discovery by GCUK.

228 The knowledge of Lex Greensill of each of the matters set out in paragraph 226 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30.

229 The knowledge of Lex Greensill of the matters set out in paragraph 226 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

230 *Knowledge of materiality of representations*

231 Each of the matters referred to in paragraph 226 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Westford Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Westford being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

232 Further or in the alternative to paragraph 231 above, each (alternatively, one or more) of the matters referred to in paragraph 226 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Westford Risk.

233 The knowledge of Lex Greensill of the matters set out in paragraphs 231 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30.

234 The knowledge of Lex Greensill of the matters set out in paragraphs 231 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

Misrepresentations were fraudulent

235 In the premises of paragraphs 226 to 234 above:

(a) Greensill misrepresented the risk presented by the Westford Risk;

(b) the Westford Financing Misrepresentations were knowingly false and fraudulent; and

(c) the misrepresentations were known to be material to the decision whether to extend insurance cover in respect of the Westford Risk.

236 If Greensill had not made the Westford Financing Misrepresentations, insurance cover would not have been issued in respect of the Westford Risk at all or, in the alternative, on the same terms in which it purportedly was written.

237 By reason of the matters pleaded in paragraphs 226 to 236 above, IAL is entitled to avoid the Westford Endorsement.

Innocent misrepresentation

238 In the alternative to the matters pleaded in paragraphs 235 to 237 above, by reason of the matters pleaded in paragraphs 226 to 236 above, IAL is entitled to reduce its liability under the Westford Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the Westford Misrepresentations had not been made).

D3.3 Westford Non-Disclosures

239 *Knowledge of underlying matters*

240 At the time the insurance cover was requested and purportedly provided for the Westford Risk under the 2019 Policy, Lex Greensill knew:

(a) the matters referred to in paragraph 226 above;

Particulars

IAL repeats the particulars to paragraph 227 above.

(b) that the Westford Risk was being used as a vehicle to fund entities within GFG;

Particulars

Westford directed funds borrowed under the Westford facility to entities within GFG. This is evidenced in, or can otherwise be inferred from the following:

(a) email dated 8 October 2019 from Ricardo Oliveira (GCUK) to members of the Greensill Credit Committee, and including Lex Greensill (among others), containing minutes of a Credit Committee meeting on 27 September 2019 (GCU.0005.0017.1903). The minutes record: '…we [GCUK] approved a deal for them [Westford], funded it and later found out that the sole purpose of the request was to fund another client…they were impacted by the G.C. Restrictive strategy on the GFG exposure as part of their invoices related to the [GFG] group';

(b) email from Brett Downes to Myrjam Tschoeke (GCUK) and Sean Hanafin (GCUK) dated 8 October 2019 stating (GCU.0014.0003.0556): 'I have spoken to everyone on CC [Greensill Credit Committee] except you both to date about these two names […] While the funding for these two names was done with non GFG invoices. I learned that Sanjeev did [a] deal with both companies to borrow the $20m we lend them to help the settlement of [Infrabuild]'. Lex Greensill was at all material times a member of the Greensill Credit Committee;

(c) meeting notes from an 'in-camera credit committee' meeting dated 13 January 2020 and attended by members of the Greensill Credit Committee, including Brett Downes (GCU.0009.0013.5482). Those notes record: 'a concern was raised 'regarding the purpose of lending, which was for funds to be onward lent to Sanjeev Gupta. Noted this would cause serious friction with CS [Credit Suisse] if it comes to light. BD [Brett Downes] commented we should not be doing this. The reason for the extension is that SKG has not repaid the balances to Westford & Phoenix, as such they will not pay their maturities to Greensill. The borrowing was to support the equity injection required for the InfraBuild bond issuance';

(d) email from Henry Middleditch to Lex Greensill that same day, being 13 January 2020 (GCU.0005.0021.4369), stating “Just summarising the follow ups from the CC call to discuss at 5pm (to be confirmed in the minutes from credit) Westford & Phoenix: In principle agreement to extend for 6 months in two consolidated $20mm issuances on the basis that $40m liquidity is maintained on GCUK balance sheet that can be immediate deployed'.

Further to the above, Westford was reliant on GFG to pay its maturities in connection with funds borrowed under the Westford facility. This can be inferred from the following:

(a) from time to time, including on 28 September 2018 and other occasions, details of Westford's maturities would be forwarded onto Sanjeev Gupta

for payment, including by Lex Greensill (e.g. GCU.0004.0018.3890; GCU.0005.0005.0883; GCU.0005.0013.9721);

(b) in or around October 2018, USD27m borrowed from GCUK under a facility with Aluminium Dunkerque France Industries UK Ltd was used to repay maturities owed under the Westford facility (GCU.0004.0018.4768; GCU.0005.0016.8404);

(c) emails between Lex Greensill and Sanjeev Gupta on or around 2 October 2018, in which Lex says, '*Please ensure that my team are not told that you are using the AD* [Aluminium Dunkirk] *cash to fund the Westford maturity*' (GCU.0004.0018.4823);

(d) email from Johanna Roberts (GCUK) to Thierry Lassy-Taty (GCUK) dated 24 June 2020 (GCU.0013.0008.6605), stating: *'It "rolled" in January because Westford could not afford to repay ie GFG could not afford to repay…basically it is another GFG loan…'*;

(e) messages exchanged between Craig Pinnington (GCUK) and Thierry Lassy-Taty (GCUK) dated 22 June 2020 (GCU.0009.0016.1475), in which Mr Pinnington states: *'it is a bad risk. I don't support it but will see how the discussion goes. Westford are purely acting as vehicle for GFG to 'roll'/not-repay'*;

IAL relies on the particulars to paragraph 240(l) below.

IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(c) GCUK ceased trading with Westford in or around early to mid-2019 when the initial facility was closed off due to concerns with Westford's performance under the facility and relationship with GFG;

Particulars

As at early to mid-2019, Westford owed approximately USD21,015,894 in outstanding maturities under the initial facility.

Email from Brett Downes to Lex Greensill dated 30 March 2019 (GCU.0004.0025.3248), stating: *'Lex this is pushing it. This is Simec not Liberty. This has to stop. Westford is next month and must be repaid. He needs to repay and we need to get rid of the crazy stuff. People are seeing this internally and people are not comfortable. These things add up. I have a feeling collection accounts use is also getting out of hand. We need to clean up…We can't keep doing this and I am feeling really really worried...'.*

Email from Brett Downes to GCUK personnel dated 23 April 2019 (GCU.0013.0005.4948), stating: *'…under no circumstances are we to trade any further Westford from today. Any maturities that cannot be paid by Westford are to remain overdue and/or funded from our balance sheet. Maturities that are attempted to be paid by third parties cannot be accepted. This is extremely important for a number of reasons. Please advise how we deal with each and every maturity*'.

Email from Brett Downes to Lex Greensill dated 19 July 2019 (GCU.0014.0003.0703), stating: *'Westford is also a major AML/CTF issue, not least because it is the same as Phoenix as it is not a real exposure to this name but a shadow exposure which is a major franchise issue for the firm and your name. CS are not fans either'.*

Email exchange between Lex Greensill and Sanjeev Gupta, dated 29 July 2019 (GCU.0005.0013.9721).

Email from Brett Downes to Lex Greensill dated 31 July 2019 (GCU.0009.0010.6853), stating: *'Under no circumstances will we trade any further. They must repay. Board level decision'*.

Meeting notes from a Greensill Credit Committee on 27 September 2019 (GCU.0005.0017.1911), recording concerns that: *'Westford had a lot of problems in previous time: We received adverse information about its dealings* with *various clients that could cause sanction issues; Also, we approved a deal for them, funded it and later found out that the sole purpose of the request was to fund another client; and They were impacted by the G.C. Restrictive strategy on the GFG exposure as part of their invoices related to the group. We decided to exit and commenced recovery of all outstanding balances, which took time…Restarting the facility at USD20million is the max we can do but subject to the review of the KYC processes, and under no circumstances will we receive or accept any invoices for GFG.*'

GCUK spreadsheet titled 'GFG Facility Summary Sheet - BWD Update 25-4-19' (GCU.0005.0013.6475), which records:

(a) Under the tab titled 'Cover Sheet Comments': 'Mr Gupta has been a good friend of the firm to date…However, the firm's relationship has to change and we can no longer agree to the types of deal we have done this week, nor carousel type trades like Westford and Phoenix where we are potentially exposed to Money Laundering issues'. The document further records: 'Mr Gupta was warned that they should not be sending us any more commodity traders for funding that have ML/TF [Money Laundering/Terrorism Financing] issues as we had a couple of hits in 2018. This has worked as they improved their internal systems. However we

were faced with a fresh issue last week when a repayment for Phoenix came to us from a third party. When I advised it had to go back, Phoenix concocted an email purporting to show this was okay. The money has been returned, however if it had not been I would have had to complete and file a Suspicious Activity Report. I now have to write a file note for this and for the Westford trades. Do I think there has been money laundering no, if I did I would fill in a SAR, but this is just not acceptable and places me at risk personally.';

(b) Under the tab titled 'Summary Sheet', at row 22 regarding Westford: 'During 2018 Credit Suisse showed Greensill a due diligence report it had commissioned into Mr Gupta. That report was terrible in the sense it was discredited by our own internal due diligence report from a reputable source. However in the CS report it mentioned carousel trades with Westford. In hearing this the senior management team including Lex agreed to remove Westford from further trades. Unfortunately this has not occurred as again this is in effect SIMEC/Liberty debt and it is not being repaid by Mr Gupta. The CRO is writing a file note about the exposure. This needs to be cleared at the next opportunity. We cannot roll any more trades as this I [sic] now serious. Insurance is invalid. The facility is now Watchlisted and is considered impaired.'

IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(d) in or around September 2019, GCUK was asked to reinstate the Westford facility following discussions between Lex Greensill and Sanjeev Gupta. The reinstatement request was not approved by the Greensill Credit Committee when it considered the request at its meeting on 27 September 2019;

Particulars

Email from Sanjeev Gupta to Lex Greensill dated 8 September 2019 (GCU.0005.0015.6104).

Minutes from meeting of the Greensill Credit Committee dated 27 September 2019 (GCU.0005.0017.1911).

IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(e) subsequently on or around 30 September 2019, the Greensill Credit Committee granted temporary 'one off' approval for the reinstatement of the Westford facility for USD20m with a tenor of 120 days and with additional conditions

imposed, including that 'no underlying invoice can be from the GFG group' (**Reinstated Facility**). This approval was formalised at the Greensill Credit Committee on 11 October 2019;

Particulars

Email from Brett Downes (GCUK) to members of the Greensill Credit Committee, and copied to Lex Greensill (among others) dated 11 October 2019 (GCU.0009.0011.8173), stating: '…I am comfortable to approve the existing trades as one offs. We need to see the trades repaid in full and remind format for a couple of days/weeks…we also need to complete the full AML/CTF audit of both of these companies…I would also suggest that CC has an in camera meeting with Lex on both of these names before the maturities to determine the future of the support'.

Minutes from meeting of the Greensill Credit Committee held on 11 October 2019 approving reinstatement as a 'one-off' with a limit of US20m and a tenor of 120 days (GCU.0009.0012.0030).

Email from Gaurav Sanan (GCUK) to Lex Greensill dated 16 October 2019 (GCU.0005.0017.5399) providing an update on approval of the Westford Reinstated Facility, and attaching a Credit Application Report for the Westford Risk dated 10 October 2019 (GCU.0005.0017.5400).

IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(f) Westford failed to meet its first repayment obligations under the Reinstated Facility, and as a result the facility was 'rolled' against the advice of GCUK's Chief Risk Officer, Brett Downes;

Particulars

Westford was required to repay GCUK a total of USD20m on the reinstated facility in scheduled tranches of around USD2.5m starting from 3 January 2020. Westford failed to pay its first instalment obligation due on 3 January 2020 (GCU.0005.0021.1742; GCU.0005.0021.3982). As a result, Westford requested that the facility be extended for an additional 180 days with GCUK covering the currently due 'rolls'. This was approved by the majority of the Greensill Credit Committee on or around 13 January 2020, but voted against by Brett Downes (Chief Risk Officer) (GCU.0009.0013.5482). On 14 January 2020, Lex Greensill approved GCUK covering all overdue and upcoming maturities for Westford from *'Greensill's balance sheet with new assets issued with a 6 month tenor'* (GCU.0014.0003.2189; GCU.0005.0021.4560). On 16 January 2020, GCUK sen Hande Elmener (CEO of Westford) a 'PAUF' letter to be signed and returned by

Westford which extended all maturity dates (GCU.0009.0012.9797; GCU.0009.0012.9798).

Email from Ilkka Tales (GCUK) to Lex Greensill dated 7 January 2020 (GCU.0005.0021.1770), forwarding an email from Brett Downes to GCUK personnel regarding Westford's request for 'rollover' in which Mr Downes stated: *'…I will not support. Credit Committee was quite clear last time it is for one roll. You are more than welcome to try and see if you can get the votes, but from an AML/CTF* [Anti-Money Laundering / Counter-Terrorism Financing] *perspective alone I cannot and will not approve. They must repay and we must remove them as a client.'*

Email from Gaurav Sanan (GCUK) to Lex Greensill dated 7 January 2020 (GCU.0005.0021.1742) providing a status update on the Westford risk.

IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(g) that Westford had a history of non-payment and was reliant on GFG to repay its maturities (despite the condition imposed in or around September 2019 that no underlying invoices could be GFG invoices);

Particulars

Email from Lex Greensill to Ludwig Sels dated 13 August 2019 with subject line 'Westford next steps' (GCU.0009.0010.8552) stating *'We will pay the maturities each day in order to avoid a series event of default. We will get our cash back at the end of the week once W settle post Eid'*.

IAL repeats the particulars to paragraphs 240(b) and 240(c) above.

There were concerns within GCUK about the reputational risk associated with the Westford risk, including with Credit Suisse as its investor:

(a) Email from Ivan Jesensky (GCUK) to Gaurav Sanan (GCUK), Valerie Kirkaldy (GCUK) and others dated 6 January 2020 (GCU.0009.0012.8340), stating with respect to Westford's delayed payments: 'it's the reputation risk, especially with Westford given the previous history. CS [Credit Suisse] are no doubt aware this client is a bad payer.'

(b) Email from Ivan Jesensky (GCUK) to Ludwig Sels (GCUK), Brett Downes and others at GCUK dated 9 January 2020 (GCU.0009.0012.8799), stating: 'I'm very concerned about Westford and Phoenix, we have been in this situation before and it will cause a lot of noise at CS [Credit Suisse]'.

Despite the condition that no underlying invoices could be GFG invoices, Westford was still reliant on GFG to repay its maturities:

(c) Email from Lex Greensill to Johanna Roberts (GCUK) dated 22 April 2020, responding to an email from Johanna Roberts to the Greensill mailing address 'GFGMC@greensill.com' (GCU.0009.0015.7982), that stated: '*In January the* [Westford] *facility was extended because Liberty had insufficient liquidity to repay us';* and

(d) IAL repeats the particulars to paragraph 240(l) below.

Further, there were also more general concerns within GCUK about the Westford risk, including Westford's capacity to pay:

(a) Email exchange between David Keeling (GCUK) and Chris Tinsley (GCUK) dated 23 September 2019, forwarding an exchange with Brett Downes regarding the reinstatement of the Westford facility (GCU.0009.0011.4978);

(b) Messages exchanged between David Keeling (GCUK) and Chris Tinsley (GCUK) on 23 September 2019 (GCU.0009.0011.5571);

(c) Email exchange between Westford personnel and GCUK personnel, including Gaurav Sanan (GCUK), dated between 15 November 2019 and 3 January 2020 inclusive (GCU.0009.0012.8109), regarding Westford's financials. On 24 December 2019, Mr Sanan noted concerns about Westford's financial statements including a 'significant decline' in the projected financials and *'Cash positions shows* [sic] *a deteriorating trend.'*

IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(h) that GCUK, Westford and Liberty House intended to enter into (or had entered into):

(i) the undated letter of agreement between Westford and GCUK (IAL.500.002.5018) (**Westford Letter of Agreement**), which contained terms to the effect that:

(A) Westford shall deliver a PAUF dated 25 August 2020 (**Applicable PAUF**) to GCUK under the terms of the Westford Customer Agreement, which among other items, shall include a Certified Amount in the sum of USD40 million (the **Applicable Certified Amount**);

(B) GCUK understands there is a loan agreement between Westford, as lender, and Liberty House, as borrower, for an amount of at least USD40 million that has been entered into or will be entered into on or prior to the date of the letter agreement (the **Loan Agreement**);

(C) GCUK understands that Westford intends to meet its obligation to lend to Liberty House on 25, 26, 27 and 28 August 2020 using monies it receives from GCUK following delivery of the Applicable PAUF;

(D) separately, Liberty House intends to pay GCUK an amount of USD40 million as collateral for monies, debts and liabilities of any nature from time to time due or owing from a "GFG Group Member" to GCUK or any company, partnership or other entity directly or indirectly controlled by GCPL (the **Cash Collateral**);

(E) Westford acknowledges and agrees that upon acceptance of the Applicable PAUF and the processing thereof, GCUK shall retain an amount equal to the Applicable Certified Amount as the Cash Collateral, which shall satisfy (i) GCUK's obligation to pay any Net FI Amount (as that term is defined in any applicable Supplier Agreement); (ii) Westford's lending of USD40 million to Liberty House under the terms of the Loan Agreement; and (iii) Liberty's payment of the Cash Collateral; and

(F) GCUK and Westford agree that GCUK shall earn a fee (Fee) in an amount of USD525,000 payable no later than 25 August 2020 into a Designated Account, to be notified by GCUK to Westford;

(i) the undated letter of agreement of agreement between Liberty House and GCUK (IAL.500.002.5017) (**Liberty House Letter of Agreement**);

(i) GCUK understands that under the terms of the Loan Agreement, Liberty House has to repay Westford an amount of at least USD40 million on 23 November 2020; and

(ii) upon that understanding, GCUK may therefore, at its discretion, release the Cash Collateral and apply the Cash Collateral as

repayment by Westford of amounts drawn down under the Westford Customer Agreement on their maturity dates of 20 and 23 November 2020, and accordingly Liberty House agree that upon such payment USD40 million will be deducted from the amounts Liberty House owe to Westford under the Loan Agreement;

Particulars

IAL relies on the full terms and effect of the:

(a) Westford Letter of Agreement, being the undated letter of agreement between Westford and GCUK (IAL.500.002.5018); and

(b) Liberty House Letter of Agreement, being the undated letter of agreement of agreement between Liberty House and GCUK (IAL.500.002.5017).

Document titled 'Credit Application Redacted Report – Amendment' for Westford Limited dated 26 August 2020 (CSA.0001.0006.2285) at page 5, which sets out, in summary form, details of the 'new structure'.

As to the knowledge of Lex Greensill, IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(j) that under the Westford Letter of Agreement and the Liberty House Letter of Agreement, USD40 million of the amount advanced (or to be advanced) under the Westford Customer Agreement was to be held by GCUK as collateral for debts owed by members of GFG to GCUK;

Particulars

The Westford Letter of Agreement (IAL.500.002.5018), which on page 1 sets out the terms agreed between those parties including (among other things) that:

(a) Westford shall deliver a PAUF dated 25 August 2020 to Greensill under the Westford Customer Agreement in the amount of USD40 million;

(b) Greensill understands there is a loan agreement between Westford, as lender, and Liberty House, as borrower, for an amount of at least USD40 million that had been entered into, or will be entered into, prior to the letter of agreement;

(c) Greensill understands that Westford intends to meet an obligation to lend Liberty an amount of USD40 million under the abovementioned loan agreement on dates in August 2020 by using the monies it receives from GCUK following delivery of the PAUF; and

(d) Separately, Liberty intends to pay to GCUK the amount of USD40 million as collateral for monies, debts and liability of any nature from time to time due or owing from a GFG Group Member (as defined in the letter) to GCUK.

The Liberty House Letter of Agreement (IAL.500.002.5017) which on page 1 sets out the terms agreed between those parties including (among other things) that:

(a) Under the Westford Customer Agreement, Westford shall drawdown funds from GCUK in an amount equal to USD40 million;

(b) Greensill understands that there is a loan agreement between Westford, as lender, and Liberty House, as borrower, for an amount of at least USD40 million;

(c) Greensill understands that Westford intends to meet an obligation to lend Liberty an amount of USD40 million under the terms of the above mentioned loan agreement on 24 and 25 August 2020 by using the drawdown amount it receives from GCUK;

(d) Separately, Liberty House hereby agree to pay to GCUK an amount of USD40 million as collateral for monies, debts and liabilities of any nature from time to time due or owing from a GFG Group member to GCUK;

(e) Liberty acknowledges and agrees that upon the funding of the drawdown amount, GCUK shall retain an amount equal to the drawdown amount [USD40 million] as the cash collateral; and

(f) Greensill understands that under the terms of the loan agreement between Liberty and Westford, Liberty has to repay Westford an amount of at least USD40 million by 23 November 2020.

As to the knowledge of Lex Greensill, IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(k) at the time those arrangements were proposed, entities within the "GFG group" had already defaulted on making repayments to GCUK;

Particulars

As to the defaults by entities within the GFG group:

(a) for a period of four months commencing no later than December 2019, Liberty OneSteel (Primary) UK Pty Ltd, defaulted in repaying amounts owing by it to GCUK;

(b) IAL repeats paragraph 44 above and the particulars thereto;

(c) document titled 'Greensill Board Papers – 21 April 2020' (GBA.0004.0024.8080), which in a section titled 'GFG Update' states:

(i) 'GFG accounts for 28% of total outstandings and dominates the assets placed at Greensill Bank (73%)'; and

(ii) In April 2020, 'all GFG facilities were added to the Watchlist and assigned an ORR of 8. This will further increase the EL [Expected Loss] relative to the presented Q1 2020 figures'.

As to the knowledge of Lex Greensill, IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided after completion of discovery by GCUK.

(l) that repayment by Westford to GCUK under the Westford Customer Agreement was entirely dependent upon receipt of monies from GFG;

Particulars

Document titled 'Greensill Board Papers – 21 April 2020' (GBA.0004.0024.8080), which identifies on page 90 that Westford is 'consolidated into GFG for reporting purposes as repayment is totally dependent on receipt of monies from GFG'.

Document titled 'Chief Risk Officer Report for Quarter End – March 2020' (GBA.0004.0026.0839).

Document titled “Credit Application Report – Amendment Westford Limited”, dated 26 August 2020 which states *'On maturity (90 days), GFG has to repay Westford, who have to repay us. There will be no cash movement out of Greensill. Cash sitting in GCUK (cash collateral from GFG + upfront spread paid by Westford) will be used to settle the notes. In a Westford insolvency, we have the right to put the Westford debt back to LHG. We will then have the right under our documents with LHG to be able to set off the cash in GCUK against this position.*' (GCU.0009.0017.5737)

Email from Lex Greensill to Sanjeev Gupta dated 4 October 2020 informing him that the Westford facility *'continues (as discussed)'* (GCU.0005.0021.1253).

Email from Lex Greensill to Gaurav Sanan (GCUK) dated 15 May 2020, stating (GCU.0005.0026.8742): *'We will not be extending or rolling over the facility. Given market conditions, we will be looking to Sanjeev Gupta – who guaranteed this facility – to attend to repayment. Brett and the credit team are aware. I will look after this directly with Sanjeev – if Hande has any questions, I suggest you direct her to Sanjeev*.'

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

Further to the above, the knowledge of Lex Greensill is to be inferred from:

(a) paragraph 9 above and the particulars thereto, which refer to the senior roles held by Lex Greensill and his involvement in the Greensill Credit Committee;

(b) the particulars to paragraphs 220 and 221 above, which refer to Lex Greensill's direct involvement in correspondence with BCC regarding the Westford Risk;

(c) the particulars to paragraphs 227 and 240(a); and

(d) Lex Greensill's direct involvement with Liberty House, as demonstrated by:

(i) Credit Analysis Pack for Liberty House dated 4 October 2017 (MAR.0003.0001.2203, page 2), which identifies Lex Greensill as a 'GC Relationship Owner' in respect of the facility;

(ii) the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

(A) a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

(B) that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

(C) that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

(D) that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements…were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

Further particulars may be provided after completion of discovery by GCUK.

(m) that the approved Reinstated Facility limit was only USD21.1m, but GCUK intended to increase the facility limit to USD62.01m after the procurement of insurance to facilitate the arrangement with Liberty House referred to at paragraphs 240(j) to 240(l) above;

Particulars

As to the approved facility limit, IAL relies on:

(a) the Greensill Credit Committee approval on or around 14 January 2020 to increase the Reinstated Facility limit from USD20m to USD21.1m (GCU.0005.0021.4808); and

(b) the Greensill Credit Committee approval on or around 24 August 2020 to increase the Reinstated Facility limit from USD21.1m to USD62.04m, noting that insurance had then been obtained (CSA.0001.0006.2285, GCU.0009.0017.5732, GCU.0009.0017.5733).

(c) As to Lex's knowledge, IAL repeats the particulars to paragraph 227 above.

Further particulars may be provided following the completion of discovery by GCUK.

(n) the Liberty Group Fraud Non-Disclosure, which implicated Westford and Sanjeev Gupta in prior dishonest and fraudulent conduct;

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're: Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

GCUK spreadsheet titled 'GFG Facility Summary Sheet - BWD Update 25-4-19' (GCU.0005.0013.6475), including worksheet titled ‘Cover Sheet Comments’, rows 7, 13 and 14.

Further particulars may be provided following the completion of discovery by GCUK.

(o) further or alternatively to the above, the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure.

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 44.

241 The knowledge of Lex Greensill of the matters in paragraph 240 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

242 The knowledge of Lex Greensill of the matters in paragraph 240 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 20, 22 and 23 above.

243 Further or in the alternative to paragraph 241 above, at the time the insurance cover was requested and purportedly provided for the Westford Risk under the 2019 Policy, Brett Downes (Chief Risk Officer) of GCUK knew each (alternatively, one or more) of the matters set out in paragraph 240 above.

Particulars

The knowledge of Brett Downes is also to be inferred from:

(a) his direct involvement with the Westford Risk as evidenced by the correspondence particularised throughout paragraph 240 above;

(b) email from Brett Downes to Andew Kyuk (GCUK) dated 14 January 2020 with the subject line 'RE: Westford and Phoenix Rolls' (GCU.0010.0011.5755); and

(c) Brett Downes' senior position within GCUK as Chief Risk Officer and member of the Greensill Credit Committee.

Further particulars may be provided after completion of discovery by GCUK.

244 The knowledge of Brett Downes identified in paragraph 243 above is to attributed to Greensill Bank.

Particulars

IAL refers to the particulars to particulars to paragraphs 29 and 30 above.

245 The knowledge of Brett Downes identified in paragraph 243 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Knowledge of materiality

246 Each (alternatively, one or more) of the matters referred to in paragraph 240 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Westford Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Westford being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

247 Further or in the alternative to paragraph 246 above, each (alternatively, one or more) of the matters referred to in paragraph 240 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Westford Risk.

248 The knowledge of Lex Greensill of the matters set out in paragraphs 246 and 247 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

249 The knowledge of Lex Greensill of the matters set out in paragraphs 246 and 247 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

250 Further and in the alternative to paragraph 246 above, each (alternatively, one or more) of the matters referred to in paragraph 240 above were matters:

(a) which Brett Downes (Chief Risk Officer) of GCUK knew were material to the decision whether to extend insurance cover in respect of the Westford Risk; or

(b) alternatively to subparagraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes' knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the non-disclosures/misrepresentations bore directly on the risk of Westford being unable to repay the amounts advanced to it and thus upon the nature of the Westford Risk.

251 Further or in the alternative to paragraph 250 above, each (alternatively, one or more) of the matters referred to in paragraph 240 above was a matter which a reasonable person in the position of Brett Downes could be expected to know was material to the decision whether to extend insurance cover in respect of the Westford Risk.

252 The knowledge of Brett Downes of the matters set out in paragraphs 250 and 251 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 29 and 30 above.

253 The knowledge of Brett Downes of the matters set out in paragraph paragraphs 250 and 251 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Breach of duty of disclosure

254 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 240 above before the cover was placed for the Westford Risk.

255 Greensill's failure to disclose the matters referred to in paragraph 240 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 241 to 253 above.

Fraudulent non-disclosure

256 By reason of the matters pleaded in paragraphs 248 to 253 above Greensill's failure to disclose the matters referred to in paragraph 240 above was fraudulent.

257 The cover for the Westford Risk would not have been issued if the matters referred to in paragraph 240 above had been disclosed.

258 In the alternative to the allegation in paragraph 257 above, the cover for Westford Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 240 above had been disclosed.

259 By reason of the matters pleaded in paragraphs 256 to 258 above, IAL is entitled to avoid the Westford Endorsement.

Innocent non-disclosure

260 In the alternative to the matters pleaded in paragraphs 256 to 259 above, and by reason of the matters pleaded in paragraphs 254, 255, 257 and 258 above, IAL is entitled to reduce its liability under the Westford Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D4 Liberty House

D4.1 Policy and Endorsements

262 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Liberty House Group Pte Ltd (**Liberty House**) was endorsed as a customer under the 2019 Policy by means of Customer Endorsement No 122 dated 16 March 2020 (the **Liberty House Endorsement**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraphs 133 and 474.

D4.2 Liberty House Misrepresentations

Representations

263 On or around 7 December 2017, Lex Greensill sent an email to Brereton and John Whelan to inquire about the provision of insurance cover with respect to the Liberty OneSteel AR Portfolio. In that email, Lex Greensill said 'In order to aid your discussions, John Whelan from our legal team will shortly sent you the form of debt endorsements for this programme. These would work with the standard Greensill insurance policy documentation previously shared with you by Marsh and my team'.

Particulars

Email from Lex Greensill to Brereton and John Whelan (Deputy General Counsel) of GCUK, with subject 'Liberty OneSteel AR', dated 7 December 2017 (MAR.0003.0001.1753).

264 On or around 13 December 2017, John Whelan sent an email to Lex Greensill and Brereton, enclosing draft copies of the proposed Greensill insurance policy documentation and related documents with respect to the Liberty OneSteel facility.

Particulars

Email from John Whelan of Greensill to Brereton, with the subject Re: Liberty OneSteel AR', dated 13 December 2017 and its attachments (MAR.0003.0001.1753).

265 On or around 13 December 2017, Brereton sent an email addressed to John Whelan and Lex Greensill in response to John Whelan's email to say 'I understand that the process runs a Master Policy with the noted deductibles and a secondary policy under which the risks are attached (for assignment purposes) at 100% indemnity. That said the underwriter will always answer to the "Master policy"'.

Particulars

Email from Brereton to Lex Greensill, with the subject 'RE: Liberty OneSteel AR', dated 13 December 2017 (BCC.0001.0002.0245).

266 On or around 13 December 2017, Lex Greensill responded to Brereton's email to say 'Your understanding below is correct on the distinction between the Master and Parallel Policies'.

Particulars

Email from Lex Greensill to Brereton, with the subject 'RE: Liberty OneSteel AR', dated 13 December 2017 (BCC.0001.0002.0245).

267 In or around the period 11 March 2020 to 15 March 2020, GCUK requested that BCC extend insurance cover in respect of a re-invoicing facility provided by GCUK to Liberty House (the **Liberty House Risk**).

Particulars

Discussion between Lex Greensill and Brereton on or about 11 March 2020, during which Lex Greensill requested that BCC provide $20m of reinvoicing cover on the same terms (on the basis of a 50% indemnity).

Email from Craig Pinnington (Senior Credit Analyst) of GCUK to Edward Smith of Marsh, Angus Ward of Marsh and Alexandre Weiss Bueno of Marsh, copying Margarita Diagileva (Insurance Analyst) of GCUK on 13 March 2020 with the subject 'TBCC cover for LHG reinvoicing' (MAR.0003.0002.9444), in which GCUK relayed details of a message from Lex Greensill which referred to a discussion with BCC earlier that week.

Email from Craig Pinnington to Brereton, copying Margarita Diagileva, John Whelan and Lex Greensill on 15 March 2020 with the subject 'LHG endorsements', attaching an unsigned Customer Endorsement No 122 in respect of Liberty House under the 2019 Policy (MAR.0002.0001.2968 and MAR.0002.0001.2969), and which proposed an effective date of 11 March 2020 with reference to when the relevant agreements were made.

268 On 13 March 2020, GCUK emailed Marsh and requested that Marsh prepare endorsements for BCC to extend insurance cover to Liberty House. In making this request, GCUK are produced a prior communication from Lex Greensill in which Lex Greensill relayed his discussion with BCC in the following terms: 'TBCC have agreed to provide $20mm of LHG reinvoicing cover on the same terms (although the indemnity will be 50%)'.

Particulars

Email from Craig Pinnington to Edward Smith, Angus Ward and Alexandre Weiss Bueno, copying Margarita Diagileva on 13 March 2020 with the subject 'TBCC cover for LHG reinvoicing' (MAR.0003.0002.9444).

269 The reference to the 'same terms' in paragraph 268 above, referred to cover provided by Zurich Insurance Plc (**Zurich**), effective 1 September 2019 which was provided on the following terms:

(a) USD20 million customer limit;

(b) 90% indemnity;

(c) USD18 million maximum limit of liability;

(d) Maximum 180 day tenor; and

(e) Premium rate: 1.2% per annum.

Particulars

IAL refers to the particulars to paragraph 268 above.

Customer Endorsement No 4(I), Zurich Policy Number 711715719 issued to GCUK by Zurich dated 30 August 2019, effective 1 September 2019 (MAR.0003.0002.9217).

270 On 15 March 2020, GCUK emailed Brereton, attaching proposed Customer Endorsements in respect of the Liberty House Risk. GCUK noted that the proposed Customer Endorsements were 'in line with your [Brereton's] agreement with Lex' and confirmed 'NKORL [no known or reported losses] (and have confirmed separately as well to Marsh)' and requested that Brereton sign and return the endorsements.

Particulars

Email from Craig Pinnington to Brereton, copying Margarita Diagileva, John Whelan and Lex Greensill on 15 March 2020 with the subject 'LHG endorsements' (MAR.0002.0001.2968), attaching proposed Customer Endorsement No 122 to the Master Policy (TB-03691) (MAR.0002.0001.2970) and proposed Customer Endorsement No 122 to the 2019 Policy (MAR.0002.0001.2969).

Proposed Customer Endorsement No 122 to the Master Policy provided, relevantly, that:

(a) the Customer Name was Liberty House Group Pte Ltd;

(b) the Maximum Tenor was 180 days;

(c) the Aggregate Customer Limit as at the date of the Endorsement was USD20 million;

(d) the Insured Percentage was 50%; and

(e) the Maximum Limit of Liability as at the date of the Endorsement was USD10 million.

Proposed Endorsement No 122 to the 2019 Policy was on similar terms to Customer Endorsement No 122 to the Master Policy, save for, relevantly, that:

(a) the Maximum Limit of Liability as at the date of the Endorsement was USD20 million; and

(b) the Insured Percentage was 100%.

271 On or around 15 March 2020, Brereton returned to GCUK signed copies of a document styled “Customer Endorsement No 122”, under which Liberty House was described as being endorsed as a customer under the Master Policy (TB-03691) and the 2019 Policy.

Particulars

Email from Brereton to Craig Pinnington, copying Margarita Diagileva, Arslan Gill (Insurance Analyst) of GCUK, John Whelan and Lex Greensill, with the subject 'RE: LHG endorsements', dated 15 March 2020 and attached Customer Endorsement No 122 (BCC.0001.0001.5582 and BCC.0001.0001.5583). The endorsements were issued on similar terms to the proposed Customer Endorsements referred to in paragraph 271.

272 By reason of the matters pleaded in paragraphs 263 to 266 above, at all material times, including at the time GCUK and/or Marsh made the requests referred to in paragraphs 267 to 271 above and at the time Brereton signed the documents referred to in paragraph 272 and provided those documents to GCUK, Greensill represented to Brereton that:

(a) the policy documents provided to Brereton were 'marked up against the previous version you have seen, with the Liberty OneSteel transaction in mind';

(b) Greensill used a master and parallel policy structure;

(c) under the master and parallel policy structure, the master policy would be issued to GCUK and GCPL, and the parallel policy would be issued to Greensill Bank and GCPL;

(d) Greensill Bank and the loss payee would buy notes that were over-collateralised by a factor 'of at least 100/95', where the over-collateralisation of the note

'represents the first loss position [Greensill Bank] would take in relation to the insured debts';

(e) because GCUK did not hold any notes but would hold the accounts receivable directly, GCUK would have a first loss on each portfolio under the master policy; and

(f) as a result of the above matters the structure of the master and parallel policies meant that the loss position between Greensill Bank and GCUK under the master and parallel policy structure would always be the same.

273 Further by reason of the representations referred to in paragraph 272 above (and the conduct referred to therein), at all material times, including at the time GCUK and/or Marsh made the requests referred to in paragraphs 267 to 270 above and at the time Brereton signed the documents referred to in paragraph 271 and provided those documents to GCUK, Greensill represented to Brereton that:

(a) the effect of the endorsement;

(b) its intention in requesting the endorsement; and

(c) its understanding of the effect of the endorsement,

was to limit the maximum exposure of the Insurer in respect of the cover to 50% of the Aggregate Customer Limit (**Liberty House Aggregate Customer Limit Misrepresentation**).

Particulars

With respect to paragraph 273(a) IAL refers to and repeats the allegation in paragraph 272 above and the particulars to paragraph 271 above.

With respect to paragraphs 273(b) and 273(c), the representations were implied by the matters alleged in paragraph 272 above and the matters alleged in paragraph 270 above (and the particulars thereto).

274 By reason of the matters pleaded in paragraphs 267 to 271, at all material times, including at the time GCUK and/or Marsh made the requests referred to in paragraphs 267 to 270 above and at the time Brereton signed the documents referred to in paragraph 271 and provided those documents to GCUK, Greensill represented to Brereton that the Liberty House Risk related to a 're-invoicing' facility with a maximum tenor of 180 days (**Liberty House Facility Misrepresentation**).

Particulars

The representation may be inferred from the email from Craig Pinnington (Senior Credit Analyst) of GCUK to Edward Smith of Marsh, Angus Ward of Marsh and Alexandre Weiss Bueno of Marsh, copying Margarita Diagileva (Insurance Analyst) of GCUK on 13 March 2020 with the subject 'TBCC cover for LHG reinvoicing' (MAR.0003.0002.9444), in which GCUK relayed details of a message from Lex Greensill which referred to a discussion with BCC earlier that week in connection with 'LHG reinvoicing cover'.

275 Further, at all material times, including at the time Greensill and/or Marsh made the requests referred to in paragraphs 267 to 270 above and at the time Brereton signed the documents referred to in paragraph 271 and provided those documents to GCUK, Greensill represented to Brereton that there had been no defaults or non-payments under the Liberty House facility, and there was no basis to expect a future default (the **Liberty House No Default Misrepresentation**).

Particulars

The Liberty House No Default Misrepresentation was partly express and party implied.

In so far as it was express, the correspondence referred to and particularised in paragraph 270 stated that GCUK had confirmed there were ‘NKORL’ [no known or reported losses].

In so far as it was implied, it was implied by the fact that at no time prior to the request to provide insurance cover, or prior to the signing and delivery of the documents referred to in paragraph 271 above, was Brereton informed of any defaults or non-payments under the 're-invoicing' facility subject of the Liberty House Risk, which matters would have been material to Brereton’s decision to execute and deliver those documents.

276 Each of the Liberty House Aggregate Customer Limit Misrepresentation, the Liberty House Facility Duration Misrepresentation and the Liberty House No Default Misrepresentation were continuing representations.

277 The Liberty House Aggregate Customer Limit Misrepresentation, the Liberty House Facility Misrepresentation and the Liberty House No Default Misrepresentation were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 20, 21, 22, 23, 26, 27, 29 and 30 above.

Representations were misleading

278 The Liberty House Facility Misrepresentation was false and/or misleading because:

(a) having regard to the SCF Representation at paragraph 31 above, the concept of 're-invoicing' was used by GCUK, and understood by Brereton, to refer to a form of short-term financing referable to genuine underlying invoices that evidence trade; and

(b) while GCUK represented that the Liberty House Risk involved 'reinvoicing' with 'a maximum tenor of 180 days', and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact:

(i) the Liberty House Risk related to a financing facility with no maximum duration or, in the alternative, a duration longer than 180 days; and

(ii) Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facility be based on the underlying trade of goods or services by Liberty House.

Particulars

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

(a) Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [32]);

(b) in the first quarter of 2020, Sanjeev Gupta requested, and Lex Greensill provided, confirmation that the financing provided to his companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [16]);

(c) in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [49]).

Zurich Insurance Company Limited Defence in CL-2023-000136 before the High Court of England and Wales at [25-26] and [66-70].

Under the Liberty House Customer Agreement and the Bramid Supplier Agreement, having regard to the definition of “Account Receivables”, there could be payment obligations whether or not there was an actual supply or goods or services, an actual promise to supply goods or services, or an actual, definite, probable or intended payment obligation, or an actual business relationship (IAL.500.002.2228 and IAL.500.002.2242).

The nature of financing provided to Liberty House involved:

(a) Liberty House submitting invoices to GCUK which purported to be for the purchase of specified quantities of nickel briquettes, with payment terms described as 'Cash Against Documents', and with one of the following entities described as the 'seller':

  (i) Aar Tee Commodities (UK) Ltd (eg, GCU.0004.0017.7394);

  (ii) AIC Commodities (Asia) Ltd (eg, CSA.0001.0008.2646);

  (iii) Inter Globe Enterprises Ltd (eg, AGB.0002.0002.1688);

  (iv) Metallics Trading Pte Ltd (eg, GCU.0009.0011.1576)

  (v) Pan Pacific Trading Ltd (eg, GCU.0009.0002.1675);

  (vi) Paras Metallics Pte Ltd (eg, AGB.0002.0002.1690);

  (vii) Secant Trading DMCC (eg, CSA.0001.0008.2640);

  (viii) Taurus Metallurgicals Limited (eg, TMA.0001.0005.5445);

  (ix) UBG Commodities HK Ltd (eg, GCU.0004.0014.1219); and

  (x) Vision Commodities HK Ltd (eg, GCU.0009.0019.7829).

(b) Shortly before the maturity date of the outstanding invoices in connection with the Liberty House Risk, Liberty House would submit new invoices to replace the outstanding invoices that were due to mature (eg, IAL.500.002.2236).

The fact that the invoices uploaded by Liberty House did not relate to any physical trade of goods or transfer of title to goods may be inferred from the fact that:

(a) entities within GFG had been referred to the IMB due to issues concerning paperwork connected to shipments of various commodities, most commonly LME nickel (CSA.5000.0003.0870); and

(b) a number of financial institutions had ceased to provide funding to the commodities trading business of GFG due to concerns about the paperwork provided by entities within GFG: J Farchy, M Burton and G

Finch, As Sanjeev Gupta Rose From Trader to Tycoon, Several Banks Backed Away (16 April 2021), Bloomberg, https://www.bloomberg.com/news/articles/2021-04-16/as-sanjeev-gupta-liberty-house-rose-from-trader-to-tycoon-banks-backed-away (accessed on 25 October 2024) and D Griffin and J Farchy, A Credit Suisse Unit Blacklisted Gupta as Another Bankrolled Him (28 May 2021), Bloomberg, https://www.bloomberg.com/news/articles/2021-05-28/a-credit-suisse-unit-blacklisted-gupta-as-another-bankrolled-him (accessed on 25 October 2024).

The fact that invoices uploaded by Liberty House did not relate to the physical trade of goods or transfer of title to goods, or alternatively that it was not intended by GCUK that the invoices uploaded by Liberty House and accepted by GCUK relate to the physical trade of goods or transfer of title to goods, may be further inferred from the fact that:

(a) GCUK understood that Liberty House itself did not engage in trading activities, but rather derived its revenues from dividends paid by subsidiary companies of Liberty House (GCU.0009.0005.9032);

(b) Credit Suisse Group AG had informed GCUK about concerns with entities within GFG, including Liberty House, and in response, GCUK obtained from the IMB all information held by the IMB concerning entities within GFG: Memo prepared by GCUK, with title 'Liberty Group: Commodity Trading and Shipping Practices', dated 6 August 2018 (CSA.5000.0001.1644);

(c) Liberty House would describe the upload of invoices as replacing an invoice that was due to mature (IAL.500.002.2236); and

(d) GCUK did not consider that it was necessary to provide Zurich with supporting documents, such as bills of lading, with respect to invoices in connection with the Liberty House Risk when requested to do so (AGB.0002.0002.1682).

Further particulars may be provided after completion of discovery by GCUK.

279 The Liberty House Aggregate Customer Limit Misrepresentation was false and/or misleading because it was neither the intention nor understanding of Greensill that the effect of Endorsement No 122 would be to limit the Insurer's maximum exposure under the 2019 Policy to 50% of the Aggregate Customer Limit.

Particulars

The fact that Greensill understood and intended that the Insurer's maximum exposure under the 2019 Policy was not to be limited to 50% of the Aggregate Customer Limit is to be inferred from:

(a) The insurance coverage previously provided by Zurich issued to Greensill Bank with respect to the Liberty House Risk provided for a Maximum Limit of Liability of USD20 million (MAR.0004.0002.7793);

(b) The insurance coverage previously provided by Zurich with respect to the Liberty House Risk had expired on 29 February 2020, and Zurich had communicated to Greensill, either directly or through Marsh, that it would not extend cover with respect to the Liberty House Risk (AGB.0002.0002.3233);

(c) Under the Liberty House facility, Greensill was unable to accept invoices from Liberty House to replace maturing invoices unless insurance was 'in place' (IAL.500.002.2236); and

(d) The email from Angus Ward of Marsh to Credit Suisse, with the subject 'Greensill – Loss Payee Limit Tracker 16/03/2020', dated 17 March 2020, which stated 'Please find updated Loss Payee limit tracker attached – new TBCC limit for Liberty House Group added', and attached an Excel spreadsheet which described the limit for 'Liberty House Group Pte Ltd' under the "BCC Standalone Policy TB-03690' as '20,000,000' (AGB.0002.0001.5142 and AGB.0002.0001.5143).

Further particulars may be provided following completion of discovery by GCUK.

280 The Liberty House No Default Misrepresentation was false and/or misleading because:

(a) prior to 10 March 2020, there were known defaults and/or instances of non-payments with respect to the 're-invoicing' facility subject of the Liberty House Risk; and

Particulars

Email from Ludwig Sels to Zara Hayes, copying Brett Downes among others, with subject 'Re: Today's current Short positions', dated 6 March 2019 (GCU.0009.0007.8159). Mr Sels states '[i]f we still can, can we please top up CS positions ie Liberty Aluminium Holdco AND Liberty House…Lex has verbally agreed these top ups.'

Email from Henry Middleditch (GCUK) to Lex Greensill, copying Brett Downes, Craig Pinnington and Patrick Davis, with subject 'Liberty Late Payments', dated 7 March 2019 (GCU.0004.0024.4664).

Email from Brett Downes to David Keeling, copying others, with the subject 'RE: Potential Top Ups 13th March 2019', dated 13 March 2019 (GCU.0009.0007.9771).

GCUK had a practice of permitting Liberty House to draw on the 're-invoicing' facility subject of the Liberty House Risk in order to cover payment obligations without Liberty House in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to Liberty House. This practice is evident from the documents identified immediately above in the particulars to this paragraph 280, and is further pleaded at Section C.6 of Annexure B to this defence.

(b) GCUK anticipated that there would be future defaults by Liberty House under the facility.

Particulars

The fact that GCUK anticipated that there would be future defaults by Liberty House can be inferred from the following:

(a) Liberty House had regularly failed to make payments to GCUK to GCUK as and when they fell due under the facility; and

(b) There were no reasonable grounds to expect that similar future defaults would not occur.

Knowledge of falsity of representations

281 Lex Greensill knew that Credit Suisse would require 100% indemnity of the Aggregate Customer Limit under the 2019 Policy in order for Credit Suisse to purchase notes related to the Liberty House Risk.

Particulars

Email from Luc Mathys of Credit Suisse to Lex Greensill, with the subject 'FW: Missing Insurance', dated 3 October 2019 (CSA.5000.0003.3372).

282 Lex Greensill knew the matters set out in paragraphs 278 and 280 above.

Particulars

IAL refers to and repeats the particulars to paragraph 278 above.

Lex Greensill's knowledge is to be inferred from his direct involvement in company's dealings with Liberty House and in correspondence with BCC associated with the Liberty House Risk, as demonstrated by:

(a) Credit Analysis Pack for Liberty House dated 4 October 2017 (MAR.0003.0001.2203, page 2), which identifies Lex Greensill as a 'GC Relationship Owner' in respect of the facility; and

(b) The particulars to paragraphs 267 and 270 above, which refer to Lex Greensill's involvement in the request for cover in respect of the Liberty House Risk.

The knowledge of Lex Greensill is to be further inferred from the following matters:

(a) Lex Greensill and GCUK would provide advice to GCUK's customers on the structure of the customer's debt facilities and overall capital structure (for example, GCU.0005.0007.0413, GCU.0005.0008.6570); and

(b) Notwithstanding the fact that GCUK held itself out as a supply chain finance company, GCUK would regularly design debt facilities for its customers that were not linked to the genuine underlying trade of its customers (for example, GCU.0007.0002.4670; GCU.0009.0005.5676, GCU.0004.0015.9384).

The knowledge of Lex Greensill of the arrangements between GCUK and Liberty House is also to be inferred from the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

(c) a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

(d) that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

(e) that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

(f) that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements…were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

Further particulars will be provided after completion of discovery by GCUK.

283 Lex Greensill knew the matters set out in paragraphs 272, 273 and 279 above.

Particulars

IAL refers to and repeats the particulars to paragraph 279 above.

The knowledge of Lex Greensill of the effect of Endorsement No 122 is evident from the fact that:

(a) Lex Greensill knew that Brereton understood the indemnity with respect to the Liberty House Risk was to be 50% (MAR.0003.0002.9444);

(b) Lex Greensill had confirmed to Brereton that the underwriter would always answer to the 'master policy' (BCC.0001.0002.0245);

(c) the notes programme with respect to the Liberty House Risk was not amended in a manner to ensure that the insurer's maximum exposure under the 2019 Policy was the same as the insurer's maximum exposure under the Master Policy (TB-03691).

Further particulars will be provided after completion of discovery by GCUK.

284 The knowledge of Lex Greensill pleaded in paragraphs 282 and 283 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

285 The knowledge of Lex Greensill pleaded in paragraphs 282 and 283 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

286 Further and in the alternative to paragraph 282 above, another officer and employee of GCUK – Craig Pinnington (Senior Credit Analyst) – knew the matters set out in paragraph 278(b) above.

Particulars

IAL refers to and repeats the particulars to paragraph 278(b) above.

In an email from Craig Pinnington to Edward Smith, Sophie Dyke (Insurance Analyst) of GCUK and Brett Downes (Chief Risk Officer) of GCUK on 22 February 2019, GCUK was unable to provide Zurich with any bills of lading with respect to invoices in connection with the Liberty House Risk when requested to do so (AGB.0002.0002.1682).

The knowledge of Craig Pinnington is otherwise to be inferred from his involvement of in dealings with Liberty House and other risks involving the Liberty Group, namely the SSUK Risk.

287 The knowledge of Craig Pinnington pleaded in paragraph 286 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in 29 and 30 above.

288 The knowledge of Craig Pinnington pleaded in paragraph 286 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Knowledge of materiality of representations

289 Each of the matters referred to in paragraphs 278, 279 and 280 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty House Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Liberty House being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

290 The knowledge of Lex Greensill of the matters set out in paragraph 289 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

291 The knowledge of Lex Greensill of the matters set out in paragraph 289 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

292 Further and in the alternative to paragraph 289 above, each of the matters pleaded in paragraph 278(b) above were matters:

(a) which another officer and employee of GCUK – Craig Pinnington (Senior Credit Analyst) – knew were material to the decision whether to extend or renew insurance cover in respect of the Liberty House Risk; or

(b) alternatively to subparagraph (a), in respect of which the abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

293 Further or in the alternative to 292 above, each of the matters referred to in paragraph 278(b) above were matters which a reasonable person in the position of Craig Pinnington could be expected to know was material to the decision whether to extend insurance cover in respect of the Liberty France Risk.

Particulars

IAL refers to the particulars in 292 above.

294 The knowledge of Craig Pinnington of the matters pleaded in paragraph 292 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

295 The knowledge of Craig Pinnington of the matters pleaded in paragraph 292 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

Misrepresentations were fraudulent

296 In the premises of paragraphs 264 to 295 above:

(a) Greensill misrepresented the risk presented by the Liberty House Risk; and

(b) the misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover with respect to the Liberty House Risk.

297 If Greensill had not made the Liberty House Aggregate Customer Limit Misrepresentation, the Liberty House Facility Misrepresentation or the Liberty House No Default Misrepresentation, insurance cover would not have been issued in respect of the Liberty House Risk at all or, in the alternative, on the same terms in which it purportedly was written.

298 By reason of the matters pleaded in paragraphs 296 to 297 above, IAL is entitled to avoid the Liberty House Endorsement.

Innocent misrepresentation

299 In the alternative to the matters pleaded in paragraphs 296 to 298 above, by reason of the matters pleaded in paragraphs 272 to 298 above, IAL is entitled to reduce its liability under the Liberty House Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D4.3 Liberty House Non-Disclosures

Knowledge of material underlying non-disclosures

300 At the time of requesting insurance cover for the Liberty House Risk, Lex Greensill knew:

(a) the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 44.

(b) the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group and Sanjeev Gupta (who was personal Guarantor of the Liberty House facility risk) in prior dishonest and fraudulent conduct.

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're:

Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

301 The knowledge of Lex Greensill of the matters in paragraph 300 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

302 The knowledge of Lex Greensill of the matters in paragraph 300 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 20, 22 and 23 above.

Knowledge of materiality

303 Each of the matters referred to in paragraph 300 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty House Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Liberty House being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

304 Further or in the alternative to paragraph 303 above, each of the matters referred to in paragraph 300 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend insurance cover in respect of the Liberty House Risk.

Particulars

IAL refers to the particulars in paragraph 303 above.

305 The knowledge of Lex Greensill of the matters set out in paragraphs 303 and 304 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 26, 29 and 30 above.

306 The knowledge of Lex Greensill of the matters set out in paragraphs 303 and 304 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 20, 22 and 23 above.

Breach of duty of disclosure

307 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 300 above before the cover was placed for the Liberty House Risk.

308 Greensill's failure to disclose the matters referred to in paragraph 300 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 301 to 306 above.

Fraudulent non-disclosure

309 By reason of the matters pleaded in paragraphs 301, 302, 303, 305 and 306 above, Greensill's failure to disclose the matters referred to in paragraph 300 above was fraudulent.

310 The cover for the Liberty House Risk would not have been issued if the matters referred to in in paragraph 300 above had been disclosed.

311 In the alternative to the allegation in paragraph 310 above, the cover for the Liberty House Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 300 above had been disclosed.

312 By reason of the matters pleaded in paragraphs 309 to 311 above, IAL is entitled to avoid the Liberty House Endorsement.

Innocent non-disclosure

313 In the alternative to the matters pleaded in paragraphs 309 to 312 above, and by reason of the matters pleaded in paragraphs 307, 308, 310 and 311 above, IAL is entitled to reduce its liability under the Liberty House Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D5 Liberty Commodities Limited

D5.1 Policy and Endorsements

314 In Federal Court of Australia proceedings no. NSD169/2023 (**CS Global Proceeding**), no. NSD175/2023 (**LCL Proceeding**) and no. NSD 1039/2021 (**White Oak Proceeding**), the applicants allege that Liberty Commodities Limited (a company incorporated in England & Wales (company number 03349135)) (**LCL**), among others, was endorsed as a customer under the 2019 Policy by means of Customer Endorsements No 19, 19(i) and 19(ii) dated 13 March 2019.

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 128.

Fifth Amended Statement of Claim in proceeding no. NSD175/2023 dated 11 June 2025 at paragraph 145.

Fifth Amended Statement of Claim in proceeding NSD1039/2021 dated 5 December 2025 at paragraph 46.

315 The applicants in the LCL Proceeding allege that, on and from 13 March 2019, various further endorsements to the 2019 Policy were executed by BCC, including the following endorsements as defined in the Amended Statement of Claim:

(a) the Customer Endorsements;

(b) the RPA Debt Endorsement;

(c) the other Liberty Endorsements; and

(d) the LCL Endorsement.

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD175/2023 dated 11 June 2025 at paragraphs 139, 140, 145 and 147.

316 The applicants in the CS Global Proceeding allege that, on and from 13 March 2019, various further endorsements to the 2019 Policy were executed by BCC, including the following endorsements as defined in the Sixth Amended Statement of Claim:

(a) Endorsements 1, 2, 2(iii) and 2(iv);

(b) the Customer Endorsements;

(c) the Virtuoso Loss Payee Endorsement (Endorsement 3);

(d) the Nova Loss Payee Endorsement (Endorsement 6);

(e) the Liberty TCUK Endorsement;

(f) the Liberty Commodities RPA; and

(g) the SSUK Endorsement.

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 128.

317 The applicant in the White Oak Proceeding (NSD1039/2021) alleges that, on and from 13 March 2019, various further endorsements to the 2019 Policy were executed by BCC, including the following endorsements as defined in White Oak's Fifth Amended Statement of Claim:

(a) Endorsement 18;

(b) the Customer Endorsements;

(c) the RPA Debt Endorsement;

(d) the Liberty Endorsement;

(e) the LCL Endorsement; and

(f) the Loss Payee Endorsement.

Particulars

Fifth Amended Statement of Claim in proceeding NSD1039/2021 dated 5 December 2025 at paragraph 41A.

D5.2 LCL Misrepresentations

Representations

318 On or around 15 October 2018, GCUK prepared a draft term sheet setting out the indicative principal terms and conditions to provide a "Limited Recourse Accounts Receivable Purchase Facility" to LCL.

Particulars

Email from Henry Middleditch of GCUK to Lex Greensill, with the subject 'Liberty Commodities AR', dated 15 October 2018 (GCU.0004.0019.3454), attaching a copy of the draft term sheet (GCU.0004.0019.3455).

319 On or around 25 October 2018, Craig Pinnington of GCUK provided documents to GCUK's Credit Committee which related to a request for approval of an accounts receivable facility with a USD100 million limit to be provided by GCUK to LCL (the **LCL Facility**). The documents comprised a Credit Analysis Pack, Relationship Credit Analysis Pack and a spreadsheet titled 'GFG Facility Summary Sheet – 19-10-18'.

Particulars

Email from Craig Pinnington, with the subject 'Credit approval request- GFG Alliance Liberty Commodities Limited', dated 25 October 2018 (GCU.0004.0019.9367).

Credit Analysis Pack dated 25 October 2018 (GCU.0004.0019.9368).

Relationship Credit Analysis Pack dated 25 October 2018 (GCU.0004.0019.9369).

GFG Facility Summary Sheet (GCU.0004.0019.9370).

320 On or around 26 October 2018, GCUK's Credit Committee approved provision of the LCL Facility.

Particulars

The approval is recorded in the minutes of a meeting of GCUK's Credit Committee held on 26 October 2018 (GCU.0007.0002.2400).

321 On or around 29 October 2018, GCUK as Buyer, LCL as Seller Representative and Servicer, and certain other parties entered into a Receivables Purchase Deed.

Particulars

Receivables Purchase Deed (GCU.0004.0020.0283).

322 On or around 9 November 2018, GCUK (through its broker, Marsh) requested that BCC extend cover in relation to the LCL Facility (the **LCL Risk**). This request was initially for the financing of accounts receivable associated with two purported account debtors of LCL, Gulf Petrochem FZC (**Gulf**) and Phoenix Commodities Pvt Ltd (**Phoenix**).

Particulars

Email from Edward Smith to Brereton, with the subject 'Greensill Request - Gulf/Phoenix', dated 9 November 2018 (BCC.0001.0001.1210).

323 On or around 9 November 2018, Brereton replied to this request to say 'I can confirm on this one as you have requested'.

Particulars

Email from Brereton to Edward Smith, with the subject 'RE: Greensill Request - Gulf/Phoenix', dated 9 November 2018 (AGB.0002.0003.5834).

324 On or around 13 November 2018, Customer Endorsement No 47 was signed by BCC and provided to Marsh by which LCL, Liberty FE Trade DMCC and Liberty Commodities Group were endorsed under the Policy TB-03690 (B0509FINCW1800045) (**2018 Policy**). Signed Customer Endorsements for Gulf and Phoenix were also provided to Marsh.

Particulars

Email from Brereton to Edward Smith, with the subject 'RE: Greensill Request - Gulf/Phoenix', dated 13 November 2018 and attached PDF (BCC.0001.0002.2007 and BCC.0001.0002.2008).

325 Subsequently, Customer Endorsements 19, 19(i) and 19(ii) were signed, effective from 1 March 2019, by which LCL, Liberty FE Trade DMCC and Liberty Commodities Group were endorsed as customers under the 2019 Policy.

Particulars

Customer Endorsement No 19, 19(i) and 19(ii) executed by Brereton for and on behalf of BCC dated 13 March 2019, 29 January 2020 and 29 April 2020, respectively.

326 On and from 21 November 2018, further endorsements were executed by BCC and provided to Marsh, in order to continue to extend cover for the LCL Risk to the accounts receivable of other alleged account debtors of LCL. The Customer Endorsements under which claims have been made are as follows:

(a) the following Customer Endorsements pleaded at paragraph 139 of the Fifth Amended Statement of Claim in the LCL Proceeding:

(i) Customer Endorsement No 20 for Trafigura Pte Ltd dated 13 March 2019;

(ii) Customer Endorsement No 36(i) for Aperam Sourcing SCA dated 24 May 2019;

(iii) Customer Endorsement No 68 for ArcelorMittal Sourcing SCA dated 24 May 2019;

(iv) Customer Endorsement No 69 (i) for Salzgitter Flachstahl GmbH dated 28 June 2019;

(v) Customer Endorsement No 99 for JFE Steel Corporation dated 14 August 2019;

(vi) Customer Endorsement No 74(i) for Allegheny Technologies Incorporated dated 23 September 2019;

(vii) Customer Endorsement No 60(ii) for Voestalpine Böhler Edelstahl GmbH dated 1 October 2019;

(viii) Customer Endorsement No 61(ii) for BGH Edelstahl Freital GmbH dated 1 October 2019;

(ix) Customer Endorsement No 63(ii) for RPS Rohstoff-, Press- und Schneid-Betrieb Siegen GmbH dated 1 October 2019;

(x) Customer Endorsement No 66(ii) for Wieland Werke AG dated 1 October 2019;

(xi) Customer Endorsement No 83(i) for Aktien-Gesellschaft der Dillinger Hüttenwerke dated 1 October 2019;

(xii) Customer Endorsement No 105 for Saarstahl Aktiengesellschaft dated 1 October 2019;

(xiii) Customer Endorsement No 100(i) for Panasonic Corporation dated 29 January 2020;

(xiv) Customer Endorsement No 45(iii) for Cargill, Incorporated dated 24 February 2020;

(xv) Customer Endorsement No 46(iii) for Outokumpu Oyj dated 24 February 2020; and

(xvi) Customer Endorsement No 72(ii) for Mitsubishi Corporation International (Europe) PLC dated 25 June 2020;

(b) the following Customer Endorsements pleaded at paragraph 46 of White Oak's Fourth Amended Statement of Claim in the White Oak Proceeding:

(i) Customer Endorsement No 111(i) for Howmet Aerospace Inc dated 2 July 2020;

(ii) Customer Endorsement No 101(i) for Marubeni Corporation dated 24 February 2020;

(iii) Customer Endorsement No 90(ii) for Mitsui Bussan Metals Co Ltd dated 24 February 2020;

(iv) Customer Endorsement No 91(iii) for Posco International Corporation dated 24 February 2020;

(v) Customer Endorsement No 119 for Samsung Electronics Co Ltd dated 26 February 2020;

(vi) Customer Endorsement No 64(iv) for Sumitomo Corporation Europe Limited dated 25 June 2020;

(vii) Customer Endorsement No 47(v) for Thyssenkrupp Materials Trading GmbH dated 24 February 2020; and

(viii) Customer Endorsement No 73(i) for Toyota Tsusho Asia Pacific Pte Ltd dated 1 October 2019; and

(c) the following Customer Endorsements pleaded at paragraph 128 of the Sixth Amended Statement of Claim in the CS Global Proceeding:

(i) Customer Endorsement No 94(ii) for Acerinox SA;

(ii) Customer Endorsement No 103 for AMAG Austria Metall AG;

(iii) Customer Endorsement No 92(i)) for Baosteel Resources International Company Limited;

(iv) Customer Endorsement No 135 for LG International Corporation;

(v) Customer Endorsement No 89 for Minmetals Cheerglory Limited;

(vi) Customer Endorsement No 95(ii)) for Nucor Trading SA;

(vii) Customer Endorsement No 136 for Sorin Corporation;

(viii) Customer Endorsement No 114 for SSAB AB;

(ix) Customer Endorsement No 112 for Tenaris S.A.; and

(x) Customer Endorsement No 81(i) for Universal Stainless & Alloy Products, Inc.

327 The endorsements identified in paragraphs 315 to 316 and 326 above are hereafter referred to as the **LCL Endorsements**.

328 Each of the Customer Endorsements identified in paragraph 326 above was provided in draft form by GCUK (through its broker, Marsh) to Brereton, with a view to that endorsement being accepted and signed by Brereton on behalf of BCC.

Particulars

Email from Edward Smith of Marsh to Brereton, with the subject 'RE: Greensill Standalone Renewal' dated 4 March 2019 (regarding Trafigura Pte Ltd) (BCC.0001.0001.1912).

Email from Angus Ward of Marsh to Brereton, with the subject 'RE: Liberty Commodities AR Increase Requests' dated 16 May 2019 (regarding Aperam Sourcing SCA, and ArcelorMittal Sourcing SCA) (BCC.0001.0001.2802).

Email from Angus Ward of Marsh to Brereton, with the subject ‘RE: Greensill - Liberty Commodities AR account debtor increases' dated 24 June 2019 (regarding Salzgitter Flachstahl GmbH) (AGB.0002.0001.1631).

Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - Liberty Commodities AR account debtors' dated 27 June 2019 (regarding Minmetals Cheerglory Limited and Universal Stainless & Alloy Products, Inc.) (BCC.0001.0001.3162).

Email from Edward Smith of Marsh to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR additional account debtor' dated 13 August 2019 (regarding JFE Steel Corporation) (BCC.0001.0001.3603), which was forwarded to Lex Greensill on 14 August 2019 (AGB.0002.0001.5935).

Email from Angus Ward of Marsh to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 20 September 2019 (regarding Allegheny Technologies Incorporated) (BCC.0001.0001.4033).

Email from Edward Smith of Marsh to Brereton, copying Lex Greensill, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 26 September 2019 (regarding Aktien-Gesellschaft der Dillinger Hüttenwerke, Toyota Tshusho Asia Pacific Pte Ltd, Acerinox SA, AMAG Austria Metall AG, Voestalpine Böhler Edelstahl GmbH, BHG Edelstahl Freital GmbH, Wieland Werke AG, RPS Rohstoff- Press- und Schneid-Betrieb Siegen GmbH and Saarstahl Atkiengesellschaft) (BCC.0001.0001.4079).

Email from Angus Ward of Marsh to Brereton, with the subject 'RE: Liberty Commodities Debtors for Tuesday' dated 14 October 2019 (regarding Baosteel Resources International Company Limited, SSAB AB and Tenaris S.A) (BCC.0001.0001.4185).

Email from Angus Ward of Marsh to Brereton, with the subject 'RE: Greensill Request - Liberty/Panasonic Increase Request' dated 28 January 2020 (regarding Panasonic Corporation) (MMC_GCUK08_00014923).

Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - LCL Increase Request' dated 24 February 2020 (regarding Marubeni Corporation, Mitsui Bussan Metals Co Ltd, Thyssenkrupp Materials Trading GmbH, Nucor Trading SA and Posco International Corporation) (BCC.0001.0001.5420).

Email chain from Angus Ward of Marsh to Brereton, with the subject 'RE: Greensill – LCL Increase Request' dated 24 February 2020 (regarding Outokumpu Oyj and Cargill, Incorporated) (BCC.0001.0001.5420).

Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - LCL Increase Request' dated 25 February 2020 (regarding Samsung Electronics Co Ltd) (BCC.0001.0001.5463).

Email from Angus Ward of Marsh to Brereton, with the subject 'RE: GREENSILL/LCL - AR Increase Limit Request - 18/05/2020' dated 19 May 2020 (regarding Mitsubishi Corporation International (Europe) PLC and Sumitomo Corporation Europe Limited) (BCC.0001.0001.6956)).

Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - Liberty Commodities Additional Names' dated 23 June 2020 (regarding LG International Corporation and Sorin Corporation) (BCC.0001.0001.6961).

Email from Angus Ward of Marsh to Brereton, with the subject 'Greensill -Arconic Name Change Endorsements' dated 26 June 2020 (regarding HowmetAerospace Inc) (BCC.0001.0001.7034).

329 By the correspondence referred to in paragraph 328 above, GCUK represented that the customer referred to in each draft Customer Endorsement was a genuine customer of LCL (the **LCL Genuine Customer Misrepresentations**).

330 The LCL Genuine Customer Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 20, 22, 23, 26, 29 and 30 above.

331 In providing the draft Customer Endorsements identified in paragraph 326 above to Brereton for acceptance, or in other correspondence, GCUK (through its broker, Marsh)

confirmed that each relevant customer – with the exception of Panasonic Corporation - had 'NKORL' [no known or reported losses].

Particulars

Relevant emails include:

(a) Email from Edward Smith to Brereton, with the subject 'RE: Greensill - Liberty commodities AR - Trafigura cover', dated 20 November 2018 (MAR.0006.0001.1399).

(b) Email from Edward Smith to Brereton, with the subject 'RE: Greensill Request - Liberty commodities AR', dated 11 January 2019 (MAR.0003.0001.9026).

(c) Email from Edward Smith to Brereton, with the subject 'RE: Greensill Standalone Renewal', dated 4 March 2019 (MAR.0006.0001.2011).

(d) Email from Angus Ward to Brereton, with the subject 'Greensill | LCL AR - New account debtors', dated 18 April 2019 (BCC.0001.0001.2645).

(e) Email from Angus Ward to Brereton, with the subject 'RE: Liberty Commodities AR Increase Requests' dated 16 May 2019 (BCC.0001.0001.2802).

(f) Email from Angus Ward to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities new AR debtor', dated 29 May 2019 (AGB.0002.0001.1569).

(g) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR account debtor increases', dated 24 June 2019 (AGB.0002.0001.1631).

(h) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR account debtors', dated 28 June 2019 (AGB.0002.0001.1657).

(i) Email from Edward Smith to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR additional account debtor' dated 13 August 2019 (BCC.0001.0001.3603), which was forwarded to Lex Greensill on 14 August 2019 (AGB.0003.0001.1040).

(j) Email from Angus Ward to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 20 September 2019 (BCC.0001.0001.4033), which was forwarded to Craig Pinnington (Senior Credit Analyst) at GCUK on 16 October 2019 (CSA.0001.0006.6764).

(k) Email from Edward Smith to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits', dated 26 September 2019 (MAR.0012.0001.1244).

(l) Email from Angus Ward to Brereton, with the subject 'RE: Liberty Commodities Debtors for Tuesday', dated 15 October 2019 (AGB.0002.0001.1892).

(m) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - LCL Increase Request' dated 25 February 2020 (BCC.0001.0001.5420).

(n) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - LCL Increase Request' dated 25 February 2020 (BCC.0001.0002.4895).

(o) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - Liberty Commodities Additional Names', dated 23 June 2020 (AGB.0002.0001.3064).

332 Prior to each instance on which GCUK (through its broker, Marsh) communicated to Brereton that a particular relevant customer had no known or reported losses, GCUK communicated to Marsh that the particular customer had no known or reported losses.

Particulars

Relevant emails include:

(a) Email from Sophie Dyke to Edward Smith, with the subject 'RE: Liberty commodities AR- Trafigura cover', dated 20 November 2018 (AGB.0002.0002.1321).

(b) Email from Sophie Dyke to Angus Ward, with the subject 'RE: LCL AR- New account debtors', dated 19 April 2019 (AGB.0002.0003.2781).

(c) Email from Sophie Dyke to Angus Ward, with the subject 'RE: Liberty Commodities AR Increase Requests', dated 15 May 2019 (AGB.0002.0003.2811).

(d) Email from Sophie Dyke to Angus Ward, with the subject 'RE: Liberty Commodities AR account debtor increases', dated 24 June 2019 (AGB.0002.0003.3084).

(e) Email from Craig Pinnington to Angus Ward, with the subject 'RE: Liberty Commodities AR account debtor increases', dated 28 June 2019 (AGB.0002.0003.3097).

(f) Email from Sophie Dyke to Edward Smith, with the subject 'RE: Liberty Commodities AR account debtor increases', dated 13 August 2019 (AGB.0002.0001.5934).

(g) Email from Sophie Dyke to Edward Smith, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits', dated 26 September 2019 (MAR.0003.0002.6557).

(h) Email from Sophie Dyke to Angus Ward, with the subject 'RE: Liberty Commodities Debtors for Tuesday', dated 15 October 2019 (AGB.0002.0003.5109).

(i) Email from Arslan Gill to Angus Ward, with the subject 'RE: LCL - AR Increase Limit Request – Posco', dated 25 February 2020 (MAR.0004.0003.2135).

(j) Email from Craig Pinnington to Angus Ward, with the subject 'RE: BCC - Liberty Commodities Additional Names', dated 23 June 2020 (MAR.0003.0003.2867).

333 By the correspondence referred to in paragraph 331 above, GCUK represented that:

(a) Invoices were issued in relation to genuine trades with those customers; and

(b) GCUK had in fact considered or reviewed the customer's trading history with LCL in a way that enabled it to confirm that the trading history did not include any defaults by the relevant customer,

(the **LCL Genuine Trades Misrepresentations**).

334 The LCL Genuine Trades Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 20, 22, 23, 26, 29 and 30 above.

335 In the instances particularised below, the correspondence exchanged between Marsh (on behalf of GCUK) and Brereton – prior to BCC's acceptance of the relevant Customer Endorsement contained statements to the effect that the customer in question had a strong financial position or had been assigned a particular credit rating.

Particulars

Email from Edward Smith to Brereton, with the subject 'RE: Greensill Request - Liberty commodities AR', dated 9 January 2019 (MAR.0003.0001.9026).

Email from Angus Ward to Brereton, with the subject 'Greensill - Liberty Commodities Limited AR account debtor requests', dated 30 May 2019 (regarding Toyota Tsusho Asia Pacific Pte Ltd and Allegheny Technologies Incorporated) (AGB.0002.0001.1573).

Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - Liberty Commodities AR account debtors' dated 27 June 2019 (regarding Baosteel Resources International Company Limited, Posco Daewoo Corporation, Mitsui Bussan Metals Co Limited, Minmetals Cheerglory Limited, NUCOR Trading SA, Mitsubishi Corporation International (Europe) PLC, and Universal Stainless & Alloy Products Inc) (AGB.0002.0001.1653).

Email from Edward Smith to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR additional account debtor', dated 6 August 2019 (regarding JFE Steel Corporation and Panasonic Corporation) (BCC.0001.0001.3603).

Email chain between Angus Ward, Lex Greensill and Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 26 September 2019 (regarding Saarstahl Aktiengesellschaft) (AGB.0002.0001.1821).

Email from Edward Smith to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits', dated 30 September 2019 (regarding SSAB AB and Tenaris S.A.) (BCC.0001.0002.4001).

Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 1 October 2019 (regarding Howmet Aerospace (formerly Arconic Inc.) and Baosteel Resources International) (AGB.0002.0001.1866).

Email from Edward Smith of Marsh to Brereton, with the subject 'Greensill – Liberty Commodities Additional Names' dated 21 May 2020 (regarding Sorin Corporation and LG International Corporation) (AGB.0002.0001.2980).

Further particulars may be provided after completion of discovery by GCUK.

336 By the correspondence referred to in paragraph 335 above, GCUK represented that:

(a) the identity and creditworthiness of those customers was relevant to the risk; and

(b) the creditworthiness of those customers had been assessed,

(the **LCL Customer Creditworthiness Misrepresentations**).

337 The LCL Customer Creditworthiness Misrepresentations were representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 20, 22, 23, 26, 29 and 30 above.

338 On each instance that a Customer Endorsement identified in paragraph 326 above was provided in draft form by GCUK (through its broker, Marsh) to Brereton, the draft customer endorsement recorded a maximum tenor of 90 days.

339 On or around 28 April 2020, a copy of the LCL Receivables Purchase Deed dated 29 October 2018 was provided to Brereton by Edward Smith of Marsh. The Deed was signed by Sanjeev Gupta on behalf of LCL, and included terms to the effect that:

(a) the information in the request in respect of any Proposed Receivables was true and correct (Schedule 6(a));

(b) the Proposed Receivables were Eligible Receivables (Schedule 6(c));

(c) the maximum Discount Period for Eligible Receivables was 90 days (unless otherwise agreed in writing) (definition of 'Eligible Receivable' subparagraph (i));

(d) LCL was the legal and beneficial owner of the Proposed Receivables (clause 2.6);

(e) no information provided by LCL was misleading or inaccurate in any material respect (Schedule 6 (m)); and

(f) the Receivables were secured, by way of a Group Guarantee from each Subsidiary Guarantor and the Parent and an individual Security Agreement (clause 2.1(b); definitions of 'Group Guarantee', 'Subsidiary Guarantor' and 'Parent').

Particulars

Email from Edward Smith to Brereton, with the subject Greensill Liberty Commodities Policy Endorsements', dated 28 April 2020, attaching a copy of the LCL Receivables Purchase Deed (BCC.0001.0001.6470).

LCL Receivables Purchase Deed dated 29 October 2018 (CSA.0001.0006.6317).

340 By reason of the matters referred to in paragraphs 338 to 339 above, GCUK represented that the finance to be provided by Greensill would be short-term financing secured by genuine receivables (the **LCL Short-term Financing Misrepresentation**).

341 The LCL Short-term Financing Misrepresentation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 20, 22, 23, 26, 29 and 30 above.

342 On 26 June 2020, Lex Greensill informed Brereton that:

(a) LCL had a practice of requesting early settlement from a particular purported account debtor, Trafigura;

(b) LCL did not arrange for funds from Trafigura to be swept to the Greensill collection account until the original due date (plus buffer period), meaning LCL benefited from the Trafigura cash for longer than envisaged;

(c) LCL had informed GCUK that Trafigura was the only customer for which it took early settlements and GCUK had no reason to believe or evidence to suggest otherwise; and

(d) LCL had a spotless trading history with GCUK over a period of years.

Particulars

Email from Lex Greensill to Brereton, with the subject 'Liberty Commodities AR Facility', dated 26 June 2020 (AGB.0002.0001.3168).

343 By reason of the matters referred to in paragraphs 331, 332, 338, 339 and 342 above, GCUK represented that, with the exception relating to Trafigura identified in Lex Greensill's email dated 26 June 2020:

(a) LCL did not retain the benefit of finance advanced under the LCL Facility, or cash collections from account debtors, for longer than the period permitted under the LCL Facility; and

(b) there were no material issues with LCL's performance under the LCL Facility,

(the **LCL Facility Performance Misrepresentations**).

344 The LCL Facility Performance Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 20, 22, 23, 26, 29 and 30 above.

Representations were misleading

345 At the time of their alleged default in early-to-mid 2021, each of the LCL customers the subject of Customer Endorsements under which claims have been made in the LCL Proceeding, CS Global Proceeding and White Oak Proceeding were solvent.

Particulars

Trafigura Pte Ltd: Registered as active as at 21 November 2024 on Singaporean registry (Accounting and Corporate Regulatory Authority Singapore).

Aperam Sourcing SCA: Annual Report 2021, page 118.

ArcelorMittal Sourcing SCA: Annual Report 2021, page 241.

Salzgitter Flachstahl GmbH: Registered as active at 21 November 2024 on German company register (Bundesanzeiger Verlad).

JFE Steel Corporation: Registered as active by Orbis database of companies as at 22 November 2024.

Allegheny Technologies Incorporated: Annual Report 2021, page 1.

Voestalpine Böhler Edelstahl GmbH: Registered as active at 21 November 2024 on the Austrian commercial register (Die Österreichischen Justiz).

BGH Edelstahl Freital GmbH: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

RPS Rohstoff-, Press- und Schneid-Betrieb Siegen GmbH: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

Wieland Werke AG: Company documents lodged with Unternehmens register for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

Aktien-Gesellschaft der Dillinger Hüttenwerke: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

Saarstahl Aktiengesellschaft: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

Panasonic Corporation: 2021 Annual Report, page 2.

Cargill, Incorporated: 2021 Annual Report, page 2.

Outokumpu Oyj: 2021 Annual Report, page 5.

Mitsubishi Corporation International (Europe) PLC: Annual Report and Financial Statements 2021 and 2022.

Howmet Aerospace Inc: 2021 Annual Report, page 1.

Marubeni Corporation: 2021 Annual Report, page 148.

Mitsui Bussan Metals Co Ltd: Company website trading news from 2021. Registered as active by Orbis database of companies as at 22 November 2024.

Samsung Electronics Co Ltd: 2021 Annual Report.

Sumitomo Corporation Europe Limited: 2021 Annual Report.

Thyssenkrupp Materials Trading GmbH: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

Toyota Tsusho Asia Pacific Pte Ltd: Registered as active as at 21 November 2024 on Singaporean registry (Accounting and Corporate Regulatory Authority Singapore).

Acerinox SA: 2021 Auditor´s Report, Annual Accounts at 31 December 2021.

AMAG Austria Metall AG: Financial Report 2021, page 2.

Baosteel Resources International Company Limited: Registered as active by Orbis database of companies as at 22 November 2024.

LG International Corporation: Name changed to LX International Corp (a holding company of LG Corporation). Annual Report 2022.

Minmetals Cheerglory Limited: Orbis database indicates company was active and trading in 2021.

Nucor Trading SA: 2021 Annual Report, page 3.

Sorin Corporation: Name changed to KZ Trading Co Ltd August 2024. Registered as active by Orbis database of companies as at 22 November 2024, which indicates company was trading in 2021.

SSAB AB: Annual Report 2021, page 109.

Tenaris S.A: Annual Report 2021, page 7.

Universal Stainless & Alloy Products, Inc.: 2021 Annual Report, page 23.

346 With regard to each of the customers named in the particulars below, the LCL Genuine Customer Misrepresentations referred to in paragraph 329 above were false and/or misleading because, at the time that they were made, the customers put forward as putative obligors of LCL:

(a) had no trading relationship with LCL; and

(b) did not owe debts to LCL.

Particulars

Exhibit MJA-9 to Matt James Andrews' affidavit in the White Oak Proceeding (MJA-9 Exhibit), comprising the letter from Allen & Overy dated 7 May 2021 to Taylor Wessing LLP (MJA-9 Exhibit, page 1423) (BCC.0001.0013.006425) and, among others, the following exhibits:

(a) *Regarding JFE Corporation*: Letter from Ashurst to Kennedys dated 22 May 2023, re: 'Alleged Trading Between JFE Steel Corporation and Liberty Commodities Limited', which stated: 'JFE has not entered into any transaction with Liberty Commodities Limited (Liberty); and accordingly, there are no amounts that are outstanding owed by JFE to Liberty.' (MJA-9 Exhibit, page 1587) (BCC.0001.0019.0513).

(b) *Regarding RPS Rohstoff-, Press- und Schneid-Betrieb Siegen GmbH*: Email from Gunnar Kohlschein, CEO of RPS Rohstoff-, Press- und Schneid-Betrieb Siegen GmbH, to Matt Andrews of Kennedys, dated 24 November 2022, which stated, among other things: '…we did not knowingly deal with any company that is or was partially or wholly owned by Mr. Gupta….we are not aware that we at RPS would have received any invoice for a nickel shipment from a company that is or was owned in whole or in part by Mr. Gupta. However, we are sure that we never received a nickel delivery or an invoice for such a delivery from LCL…' (MJA-9 Exhibit, page 1635) (BCC.0001.0019.0305).

(c) *Regarding Wieland-Werke AG*: Letter from Wieland-Werke AG to Kennedys dated 17 November 2022, re: 'Trading between Wieland-Werke AG and Liberty Commodities Limited', which stated, among other things: 'According to our books and records and to the best of our knowledge, there has never been any business relationship, whether directly or indirectly, between Wieland-Werke AG and Liberty Commodities Limited, Liberty Commodities Group Pte Ltd. or Greensill Capital (UK) Limited.' (MJA-9 Exhibit, page 1699) (BCC.0001.0019.0296).

(d) *Regarding Mitsui Bussan Metals Co Ltd*: Letter from K&L Gates, on behalf of Mitsui Bussan Metals Co Ltd, to Kennedys dated 2 December 2022, which stated, among other things: 'MBM has no trading or transactional history with Liberty Commodities Limited (LCL). No sums are owing or outstanding from MBM to LCL.' (MJA-9 Exhibit, page 1610) (BCC.0001.0019.0310).

(e) *Regarding Toyota Tsusho Asia Pacific Pte Ltd*: Email from Ang Hou Fu, Senior Legal Counsel, Toyota Tsusho Asia Pacific Pte Ltd, to Kennedys dated 23 March 2023, which stated, among other things: 'We confirm we have no business or trading relationship with Liberty Commodities Limited.

Accordingly, we have no record of the invoices described in your Schedule.' (MJA-9 Exhibit, page 1682) (BCC.0001.0019.0463).

(f) *Regarding Acerinox SA*: Letter from Acerinox SA to Kennedys dated 14 November 2022, which stated, among other things: 'Acerinox, S.A. has never developed any business or commercial relationship with Liberty Commodities Limited. Therefore, Acerinox, S.A. does not owe any amount to the mentioned entity, we do not recognize the Alleged Invoice and therefore we consider it as non-existing or non-valid.' (MJA-9 Exhibit, page 1529) (BCC.0001.0019.0288).

(g) *Regarding AMAG Austria Metall AG*: Letter from Markus Dorner, General Counsel AMAG Austria Metall AG, to Kennedys dated 8 November 2022, which stated, among other things: 'We have never had any business relationship with Liberty Commodities at any time. We have diligently investigated the matter internally and we do not find any records of invoices or an underlying business relationship which would have led to such claims. As outlined in various media reports, we assume that fake or future non existing AMAG receivables have been sold by Liberty Commodities.' (MJA-9 Exhibit, page 1538) (BCC.0001.0019.0210).

(h) *Regarding Nucor Trading SA*: Letter from Johan Lundberg, Managing Director, Nuncor Trading SA, to Kennedys dated 7 October 2022, which stated: '…I can [assure] you that we never had any business with Liberty Commodities, although I am aware that they used our name when issuing a fake invoices for their supply chain finance scheme.' (MJA-9 Exhibit, page 1612) (BCC.0001.0019.0157).

(i) *Regarding SSAB AB*: Email from Johan Paulsson, Chief Legal Counsel SSAB Group, to Kennedys dated 10 November 2022, which stated, among other things: 'SSAB AB therefore has no business relationship with Liberty Commodities or any other Liberty company. I therefore question how SSAB AB can be referred to as a debtor in this case.' (MJA-9 Exhibit, page 1659) (BCC.0001.0019.0219).

(j) *Regarding Tenaris S.A.*: Letter from Tenaris S.A. to Kennedys dated 27 February 2023, which stated: 'Neither Tenaris S.A. nor any of its subsidiaries ever engaged in trading activities with Liberty Commodities Limited (LCL), and no such entity exists on our records … We confirm that no amount remains outstanding between Tenaris and LCL'. (MJA-9 Exhibit, page 1670) (BCC.0001.0019.0378).

(k) *Regarding RPS Siegen, AMAG Austria, Salzgitter Flachstahl, and Voestalpine Bohler Edelstahl*: Article of Robert Smith, Cynthia O'Murchu and Owen Walker in the *Financial Times* dated 10 April 2021, titled

'Suspect Sanjeev Gupta invoices used in Greensill loans raise fraud concerns', which stated: 'Six European metals companies named in Credit Suisse's fund accounts – RPS Siegen, AMAG Austria, KME Germany, Salzgitter Flachstahl, Voestalpine Bohler Edelstahl and Trimet Aluminium – all confirmed to the FT they had never traded with Liberty Commodities' (MJA-9 Exhibit, page 1414) (CSA.6000.0002.0314).

The absence of these genuine customer relationships can also be inferred from the fact that the debts remain unpaid despite the solvency of the alleged debtors, as pleaded in paragraph 345 above.

Further particulars may be provided after completion of discovery by GCUK.

347 The LCL Genuine Trades Misrepresentations referred to in paragraph 333 above were false and/or misleading because the customer invoices alleged to have been defaulted upon, as the basis of the claims made in the LCL Proceeding, CS Global Proceeding and White Oak Proceeding were not genuine invoices.

Particulars

IAL refers to paragraphs 345 and 346 above. In circumstances where:

(a) no trading relationship existed and/or no debts were owed between LCL and the customers particularised in paragraph 346; and

(b) the alleged debts remain unpaid by alleged customers that are still solvent,

it can be inferred that the customer invoices alleged to have been defaulted upon in the relevant proceedings were not genuine.

The following exhibits to the letter from Allen & Overy dated 7 May 2021 to Taylor Wessing LLP (MJA-9 Exhibit, page 1423 and following) (BCC.0001.0013.006425):

(a) *With regard to Trafigura Pte Ltd*: Article of Robert Smith and Neil Hume in the *Financial Times* dated 2 June 2021, titled 'Trafigura warned Credit Suisse over Gupta invoice last year', which stated, among other things: 'However, Trafigura executives told bankers at Credit Suisse that they did not believe this invoice was genuine, according to the people familiar with the discussions' (MJA-9 Exhibit, page 1418).

(b) *With regard to Aperam Sourcing SCA*: Email from Carl Landuydt of Aperam Sourcing SCA to Matt Andrews of Kennedys dated 9 November 2022, with the subject line 'Alleged Trading between Aperam Sourcing SCA and Liberty Commodities Limited', which stated: 'The invoices listed under items 4(a) to 4(g) of your letter are unknown to us. To the best of our knowledge, these invoices were never received by us and we could not

find any records of such invoices with our accounting team...' (MJA-9 Exhibit, page 1542) (BCC.0001.0019.0212).

(c) *With regard to ArcelorMittal Sourcing SCA*: Letter from ArcelorMittal Sourcing to Kennedys dated 11 November 2022, which stated: 'AMS confirms hereby that it has not received and does not have in its accounting records (already audited) any invoice with such reference and amount, therefore such invoice was never due for payment to Liberty or to any other third party. Additionally, please consider that as of today there is no pending amount to be paid by AMS to Liberty' (MJA-9 Exhibit, page 1552) (BCC.0001.0019.0233).

(d) *With regard to Cargill, Incorporated*: Email from Cheryl Toh of Cargill to Lucy Stafford of Kennedys dated 31 March 2023 with the subject line 'RE: Alleged Trading between Cargill Incorporated and Liberty Commodities Limited', which stated: 'I confirm that we did not identify any transactions by Cargill, Incorporated as referenced in your schedule' (MJA-9 Exhibit, page 1558) (BCC.0001.0019.0467).

(e) *With regard to Mitsubishi Corporation International (Europe) Plc*: Email from Mitsubishi Corporation International (Europe) Plc to Kennedys dated 14 November 2024 with the subject 'Alleged Trading between Mitsubishi Corporation International (Europe) PLC and Liberty Commodities Limited', which stated: '…Mitsubishi Corporation International (Europe) Plc only had one purchase spot business 5 years ago (April 2017) with Liberty Commodities and the payment under that purchase had been completely performed. We are not aware of the existence of the invoices mentioned in the Letter of Demand' (MJA-9 Exhibit, page 1605) (BCC.0001.0019.0283).

(f) *With regard to Posco International Corporation*: Email from Posco International Corporation to Kennedys dated 15 December 2022, which stated: 'Posco International Corporation has not engaged in said transactions with LCL… neither the amounts listed at point 4 in the Letter nor any other amounts currently remain outstanding as between LCL and Posco International Corporation' (MJA-9 Exhibit, page 1629) (BCC.0001.0019.0333).

(g) *With regard to Thyssenkrupp Materials Trading GmbH*: Letter from Rainer Piwinski, Head of Finance, Governance & Risk at Thyssenkrupp Materials Trading GmbH to Kennedys dated 20 October 2022, which stated, among other things: 'There are no amounts outstanding between thyssenkrupp Materials Trading GmbH and LCL. There are no records regarding any of the amounts listed in your letter, neither with regard to the invoices indicated nor the representations; they do not relate to any transactions

carried out between Thyssenkrupp Materials Trading GmbH and LCL' (MJA-9 Exhibit, page 1675) (BCC.0001.0019.0171).

(h) *With regard to Universal Stainless & Alloy Products, Inc*.: Universal Stainless & Alloy Products, Inc. confirmed via voicemail with Matt Andrews of Kennedys that it had no record of a USD39m trade with LCL (MJA-9 Exhibit, page 2011).

More broadly, the alleged defaults forming the basis of the LCL claim submitted on 1 March 2022 occurred within a very short period of time. Of the defaults of the 17 Account Debtors claimed under the Comprehensive Trade Credit Insurance Policy Claim Form and the attached Appendix 1 to the Claim Form dated 1 March 2022, the first default is said to have occurred on 3 March 2021 and the final default on 20 May 2021 (IAL.500.002.4231 and IAL.500.002.4233). It is inherently implausible that such a large number of defaults of genuine and solvent obligors operating in several different countries around the world would have occurred within a period of less than three months.

See also Appendix 1 to the Claim Form dated 28 February 2022 in respect of the Notes purchased at issuance by Credit Suisse Virtuoso SICAV-SIF, wherein the first default is said to have occurred on 2 March 2021 and the final default on 20 May 2021 (IAL.500.002.2171 and IAL.500.002.1972).

See further the email from Rehana Box of Ashurst to Serena Arabian (Claims Manager) of BCC dated 24 May 2021 and the enclosed schedule of receivables the subject of White Oak's claims 1–10 (BCC.0001.0006.1056). The schedule of receivables indicates that all of the alleged defaults occurred within the period 4 March 2021 to 20 May 2021.

Further particulars may be provided after completion of discovery by GCUK.

348 The LCL Customer Creditworthiness Misrepresentations referred to in paragraph 336 above were false and/or misleading because:

(a) the identity and creditworthiness of those customers was not relevant to the risk; and

(b) the creditworthiness of those customers had not been assessed by GCUK.

Particulars

IAL refers to paragraphs 346 and 347 above.

The credit risk that GCUK considered was not that of the customers but of LCL. This is evident from the following documents:

(a) Email from Brett Downes, with the subject 'RE: UPDATED DETAILS AS DISCUSSED' dated 19 February 2019 (GCU.0004.0023.8946).

(b) Email from Sanjeev Gupta, with the subject 'Fwd: Update on Current Situation' dated 24 April 2019 (GCU.0005.0009.5420).

(c) Email from Brett Downes, with the subject 'RE:Liberty' dated 29 May 2019 (GCU.0009.0009.5095).

(d) Email from Brett Downes to Lex Greensill, with the subject 'RE: Liberty Primary & Commodities', dated 12 June 2019 (GCU.0004.0027.1545).

(e) Email from Brett Downes, with the subject 'GFG - File Note and LCL Request - Friday 14th June 2019', dated 19 June 2019 (GCU.0004.0027.3234).

(f) Email from Brett Downes, with the subject 'RE: Greensill AR / Liberty Submissions 74 – 11/08/2019" dated 12 August 2019 (GCU.0005.0014.5370).

(g) Document titled 'Liberty weekly credit & insurance review' dated 5 August 2019 (GCU.0015.0001.0345).

(h) Email from Craig Pinnington, with the subject "LCL AR Submission" dated 22 August 2019 (GCU.0009.0011.0390).

(i) Email Gloria Millia, with the subject "Greensill Capital – CREDIT COMMITTEE MEETING – MINUTES Friday 23rd August 2019" dated 2 September 2019 (GCU.0009.0011.1386).

(j) Email from Craig Pinnington to Brett Downes, with the subject 'FW: LCL AR – Tuesday's Maturity' (GCU.0010.0010.7976).

(k) Email from Craig Pinnington, with the subject "FW: LCL AR – Today's Maturity" (GCU.0009.0012.2385).

(l) Email from Brett Downes, with the subject "RE: LCL" (GCU.0014.0003.1042).

349 The LCL Short-term Financing Misrepresentation referred to in paragraph 340 above was false and/or misleading because the form of financing provided by Greensill was, in effect, unsecured and long-term.

Particulars

The financing was effectively unsecured as a result of the absence of genuine receivables owed to LCL from the obligors endorsed to the 2019 Policy.

GCUK had a practice of funding all or part of the cost of LCL's maturity payment obligations which effectively extended the term of the finance GCUK provided to LCL. This practice is evident from the following documents:

(a) email from Henry Middleditch, with the subject 'Liberty Commodities AR L: Trafigura to GB tomorrow.', dated 15 January 2019 (GCU.0009.0006.9389);

(b) email from Lex Greensill, with the subject 'RE: Liberty commodities AR utilisation and insurance', dated 11 February 2019 (GCU.0005.0006.1670);

(c) email from Lex Greensill, with the subject 'Re: Liberty Commodities Maturities', dated 9 April 2019 (GCU.0005.0008.8722);

(d) email from Lex Greensill, with the subject 'Re: LibCom maturity Tuesday', dated 26 April 2019 (GCU.0004.0026.1236);

(e) email from Lex Greensill, with the subject 'Re: LibCom AR Maturity', dated 14 May 2019 (GCU.0004.0026.4812);

(f) email from Lex Greensill, with the subject 'RE: LibCom Maturity Payment Tomorrow', dated 20 May 2019 (GCU.0005.0010.6705);

(g) email from Andrew McKnight, with the subject 'LCL 57', dated 4 June 2019 (GCU.0004.0026.9758);

(h) email from Craig Pinnington, with the subject 'RE: LCL', dated 5 June 2019 (GCU.0013.0005.8405);

(i) email from Joanne Bowley, with the subject 'FW: LCL 70', dated 31 July 2019 (GCU.0004.0028.0831);

(j) document titled ‘Liberty weekly credit & insurance review’ dated 5 August 2019 (GCU.0015.0001.0345);

(k) email from Lex Greensill, with the subject 'Re: LCL AR Maturity Cover', dated 27 August 2019 (GCU.0005.0015.1060);

(l) email from Lex Greensill, with the subject 'RE: LCL maturity tomorrow', dated 16 September 2019 (GCU.0005.0015.9269);

(m) email from Lex Greensill, with the subject 'RE: LCL AR - Tomorrow's Maturity', dated 21 October 2019 (GCU.0005.0017.7893);

(n) email from Lex Greensill, with the subject 'RE: LCL AR - Tomorrow's Maturity', dated 25 November 2019 (GCU.0001.0010.7762);

(o) email from Lex Greensill, with the subject 'FW: LCL Xmas Maturities', dated 20 December 2019 (GCU.0005.0020.7366);

(p) email from William Brown, with the subject 'RE: LCL Maturity Payments', dated 7 April 2020 (GCU.0010.0012.8148);

(q) email from Lex Greensill, with the subject 'RE: LCL AR maturity cover', dated 14 April 2020 (GCU.0005.0025.4099);

(r) email from Lex Greensill, with the subject 'RE: URGENT FOR APPROVAL: LCL financial information', dated 29 April 2020 (GCU.0017.0002.0171);

(s) email from Henry Middleditch, with the subject 'RE: LCL Approval for today', dated 29 April 2020 (GCU.0013.0008.1974);

(t) email from Becci Miller, with the subject 'RE: WhiteOak - GFG', dated 13 May 2020 (GCU.0010.0013.3248);

(u) email from David Ndafundje, with the subject 'FW: Completed: LCL USD Top up request 26.05.20', dated 26 May 2020 (GCU.0010.0013.4939) and its attachment (GCU.0010.0013.4940);

(v) email from Connor Argue, with the subject 'RE: LCL 128- Payment today', dated 2 June 2020 (GCU.0009.0015.7551);

(w) email from Becci Miller, with the subject 'RE: Greensill / WhiteOak', dated 3 June 2020 (GCU.0009.0015.7803);

(x) email from Joanne Bowley, with the subject 'Verdi - Rolls', dated 25 June 2020 (GCU.0005.0028.9554);

(y) email from David Ndafundje, with the subject 'LCL top up request 22.07.20 and 23.07.20', dated 21 July 2020 (GCU.0009.0016.7842) and its attachments (GCU.0009.0016.7843; GCU.0009.0016.7844);

(z) email from Valerie Kirkaldy, with the subject 'FW: URGENT ACTION REQUIRED : Today --- LCL AR', dated 19 August 2020 (GCU.0009.0017.3760);

(aa) email from Lex Greensill, with the subject 'Re: URGENT APPROVAL REQUIRED: LCL w/c 21st September', dated 23 September 2020 (GCU.0009.0018.1242);

(bb) email from Becci Miller, with the subject 'RE: GBM Flow', dated 9 October 2020 (GCU.0009.0018.6891);

(cc) email from Rosie Cavanagh, with the subject 'RE: LCL Support - Approval Required', dated 21 October 2020 (GCU.0010.0015.7265);

(dd) spreadsheet titled '20201028_List of Roll Progs - Comparison' (GCU.0006.0003.5560);

(ee) document titled 'LCL Drawdown Request User Guide' (GCU.0009.0021.8806);

(ff) email from Lex Greensill, with the subject 'RE: URGENT APPROVAL REQUIRED: LCL w/c 9th November', dated 10 November 2020 (GCU.0006.0003.9548);

(gg) email from Lex Greensill, with the subject 'Re: LCL Maturity Today', dated 12 January 2021 (GCU.0009.0020.8214); and

(hh) email from Lex Greensill, with the subject 'FW: APPROVAL REQUESTED - LCL Maturity Cover', dated 2 February 2021 (GCU.0006.0005.4706).

GCUK had a practice of permitting LCL to draw on the LCL Facility in order to cover payment obligations without LCL in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to LCL. This practice is evident from the documents identified immediately above in the particulars to this paragraph 349, and is further pleaded at Section C.1 of Annexure B to this defence.

In relation to the long-term nature of the financing, see the sworn Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court (Exhibit SG3), where Sanjeev Gupta states that:

(a) Lex Greensill would often say words to the effect of 'you don’t have to worry about the documents' and 'the documents are irrelevant' [at 32];

(b) in the first quarter of 2020, he requested, and Lex Greensill provided, confirmation that the financing provided to Sanjeev Gupta's companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months’ notice [at 36];

(c) from the start of their relationship, Lex Greensill had assured him that 'the financing provided by GCUK to GFG was long-term financing' as it 'would not have been commercially sensible … to be reliant on capital that could have been withdrawn on short notice' [at 33-34]; and

(d) in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' [at 50].

Further particulars may be provided after completion of discovery by GCUK.

350 The LCL Facility Performance Misrepresentations referred to in paragraph 343 above were false and/or misleading because:

(a) LCL had retained the benefit of finance advanced under the LCL Facility, or cash collections from account debtors, for longer than the period permitted under the LCL Facility; and/or

Particulars

IAL repeats the particulars to paragraph 349.

Email from Brett Downes, with the subject 'GFG - File Note and LCL Request - Friday 14th June 2019', dated 19 June 2019 (GCU.0004.0027.3234).

LCL had failed to pay maturities under the LCL Facility when they fell due for payment, from which it can be inferred that any funds received from purported account debtors (if any) were retained by LCL for other purposes. LCL's failure to pay maturities due under the LCL Facility when they fell due for payment is evidenced by, or may be inferred from, the following correspondence:

(a) email from Brett Downes to Lex Greensill, with the subject 'Re: Liberty AR', dated 20 February 2019 (GCU.0005.0006.5317);

(b) email from Henry Middleditch, with the subject 'RE: Credit Check – Potential Top Ups/Late Payments – 26th March 2019', dated 26 March 2019 (GCU.0004.0025.1241);

(c) email from Sanjeev Gupta, with the subject 'Recap with Lex re KLL and LRB refi', dated 11 April 2019 (GCU.0005.0008.9837);

(d) email from Brett Downes to Lex Greensill, with the subject 'RE: Liberty Primary & Commodities', dated 12 June 2019 (GCU.0004.0027.1545);

(e) email from Craig Pinnington to Henry Middleditch, with the subject RE: Greensill AR / Liberty Submission 58 - 06/06/2019, dated 12 June 2019 (GCU.0009.0009.7309);

(f) email from Brett Downes, with the subject 'GFG - File Note and LCL Request - Friday 14th June 2019', dated 19 June 2019 (GCU.0004.0027.3234); and

(g) document titled ‘GFG REC June 19’ dated 18 July 2019 (GCU.0014.0003.2341);

(b) there were material issues with LCL's performance under the LCL Facility.

Particulars

IAL repeats the particulars to paragraphs 348, 349 and 350 above.

Email from Brett Downes, with the subject 'RE: GFG – Request for Maturity Assistance', dated 6 April 2020 (GCU.0009.0014.5397).

On 29 May 2020 and several occasions thereafter, LCL had requested that GCUK permit a deferral of its interest repayment obligations and fund part of the cost of its maturity payment obligations (GCU.0009.0018.5774). It can be inferred from these requests that LCL lacked the financial capacity to meet those obligations itself as and when they fell due.

Knowledge of falsity of representations

351 Lex Greensill knew the matters set out in paragraph 346 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

(a) his direct involvement in dealings with LCL, including the following items: GCU.0005.0006.5317, GCU.0004.0025.1241, GCU.0005.0008.9837, GCU.0004.0027.1545, GCU.0004.0027.3234, AGB.0002.0001.1359, AGB.0002.0001.1397, AGB.0002.0001.1399, AGB.0002.0001.1430, AGB.0002.0001.1451 and AGB.0002.0001.1821;

(b) Lex Greensill's senior position within Greensill; and

(c) the email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're: Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

Further particulars may be provided after completion of discovery by GCUK.

352 Lex Greensill knew the matters set out in paragraph 347 above.

Particulars

IAL repeats the particulars to paragraph 351 above.

Further particulars may be provided after completion of discovery by GCUK.

353 Lex Greensill knew the matters set out in paragraph 348 above.

Particulars

Lex Greensill was personally involved in, and at times copied into the relevant correspondence with Brereton and BCC in which the LCL Customer Creditworthiness Misrepresentations were made:

(a) Email chain between Edward Smith and Brereton, copying Lex Greensill, with the subject 'RE: Greensill Request - Liberty Commodities AR New

Limits' dated 26 September 2019, which included 11 of the LCL Endorsements set out in paragraph 326 above (BCC.0001.0001.4079).

(b) Email from Lex Greensill to Brereton, with the subject 'Liberty Commodities Debtors for Tuesday' dated 1 October 2019, where Lex Greensill stated to Brereton, amongst other things, '…I would like to ask if you could please expedite your analysis on the below names. We are funding on Wednesday so a response tomorrow morning would be much appreciated' (AGB.0002.0001.1889).

(c) Email chain between Angus Ward, Edward Smith and Brereton, copying Lex Greensill, with the subject 'RE: Greensill – LCL Increase Request' dated 19 February 2020, which stated, among other things, 'Greensill would like to put this in place today so if you could sign and return the attached endorsements as soon as you can that would be much appreciated. We have had the order to bind and confirmation of NKORL' (AGB.0002.0001.2140).

IAL otherwise refers to the particulars in paragraph 351 above.

Further particulars may be provided after completion of discovery by GCUK.

354 Lex Greensill knew the matters set out in paragraph 349 above.

Particulars

The knowledge of Lex Greensill is evident from the testimony of Sanjeev Gupta to the UK Insolvency and Companies Court as to the statements made to him by Lex Greensill: see Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 dated 22 August 2022 (Exhibit SG3).

Further particulars may be provided after completion of discovery by GCUK.

355 Lex Greensill knew the matters set out in paragraph 350 above.

Particulars

Lex Greensill was personally involved in, and at times copied into the relevant correspondence with Brereton and BCC in which the LCL Facility Performance Misrepresentations were made.

IAL repeats the particulars to paragraphs 350 and 351 above.

Further particulars may be provided before trial.

356 The knowledge of Lex Greensill of the matters set out in paragraphs 351 to 355 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

357 The knowledge of Lex Greensill of the matters set out in paragraphs 351 to 355 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

358 Further and in the alternative to paragraph 351 above, Brett Downes (Chief Risk Officer of GCUK) knew the matters set out in paragraph 346 above.

Particulars

The knowledge of Brett Downes is to be inferred from:

(a) his direct involvement in dealings with LCL, including the following items: GCU.0005.0006.5317, GCU.0004.0027.1545, GCU.0004.0027.3234, AGB.0002.0001.0734, AGB.0002.0001.6143, AGB.0002.0003.3020, AGB.0002.0003.4968, MAR.0004.0002.8179, MMC_GCUK12_00001505 and MMC_GCUK15_00000227;

(b) Brett Downes' senior position within GCUK as Chief Risk Officer; and

(c) the representations made by GCUK that it conducted due diligence of all clients of Greensill's SCF solutions (BCC.0001.0001.0412).

Further particulars may be provided after completion of discovery by GCUK.

359 Further and in the alternative to paragraph 352 above, Brett Downes knew the matters set out in paragraph 347 above.

Particulars

IAL refers to the particulars in paragraph 358 above.

Further particulars may be provided after completion of discovery by GCUK.

360 Further and in the alternative to paragraph 353 above, Brett Downes knew the matters set out in paragraph 348 above.

Particulars

IAL refers to the particulars in paragraph 358 above.

Further particulars may be provided after completion of discovery by GCUK.

361 Further and in the alternative to paragraph 354 above, Brett Downes knew the matters set out in paragraph 349 above.

Particulars

IAL refers to the particulars in paragraph 358 above.

Further particulars may be provided after completion of discovery by GCUK.

362 Further and in the alternative to paragraph 355 above, Brett Downes knew the matters set out in paragraph 350 above.

Particulars

IAL refers to the particulars to paragraphs 350 and 358 above.

Further particulars may be provided before trial.

363 The knowledge of Brett Downes identified in paragraphs 358 to 362 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

364 The knowledge of Brett Downes identified in paragraphs 358 to 362 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

365 Further and in the alternative to paragraphs 351 and 358 above, Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK knew the matters set out in paragraph 346 above.

Particulars

The knowledge of Craig Pinnington is to be inferred from his direct involvement in dealings with LCL, including the following items: GCU.0004.0019.9367, GCU.0014.0001.3855, GCU.0009.0007.1535, GCU.0009.0007.4733, GCU.0009.0009.8292, GCU.0013.0006.5053, GCU.0009.0011.4520, GCU.0005.0016.4957, GCU.0010.0010.7976, GCU.0009.0011.0390, GCU.0009.0012.2385, GCU.0013.0005.8405, and GCU.0009.0009.7309.

The knowledge of Henry Middleditch is to be inferred from his direct involvement in dealings with LCL, including the following items: GCU.0004.0019.3454, AGB.0002.0001.5935, AGB.0003.0001.1040, AGB.0002.0001.5934, GCU.0004.0027.3234, GCU.0015.0001.0345, GCU.0009.0011.1386, GCU.0009.0012.2385, GCU.0009.0006.9389, GCU.0005.0006.1670, GCU.0005.0008.8722, GCU.0004.0026.1236, GCU.0004.0026.4812, GCU.0005.0010.6705, GCU.0013.0005.8405, GCU.0004.0028.0831,

GCU.0005.0015.1060, GCU.0005.0015.9269, GCU.0005.0017.7893, GCU.0001.0010.7762, GCU.0017.0002.0171, GCU.0013.0008.1974, GCU.0010.0013.3248, GCU.0009.0017.3760, GCU.0009.0018.1242, GCU.0006.0003.9548, GCU.0009.0020.8214.

Further particulars may be provided before trial.

366 Further and in the alternative to paragraphs 352 and 359 above, Craig Pinnington and Henry Middleditch knew the matters set out in paragraph 347 above.

Particulars

IAL refers to the particulars to paragraph 365 above.

Further particulars may be provided before trial.

367 Further and in the alternative to paragraphs 353 and 360 above, Craig Pinnington and Henry Middleditch knew the matters set out in paragraph 348 above.

Particulars

IAL refers to the particulars to paragraph 365 above.

Further particulars may be provided before trial.

368 Further and in the alternative to paragraphs 354 and 361 above, Craig Pinnington and Henry Middleditch knew the matters set out in paragraph 349 above.

Particulars

IAL refers to the particulars to paragraph 365 above.

Further particulars may be provided before trial.

369 Further and in the alternative to paragraphs 355 and 362 above, Craig Pinnington and Henry Middleditch knew the matters set out in paragraph 350 above.

Particulars

IAL refers to the particulars to paragraphs 350 and 365 above.

Further particulars may be provided before trial.

370 The knowledge of Craig Pinnington and Henry Middleditch identified in paragraphs 365 to 369 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 29 and 30 above.

371 The knowledge of Craig Pinnington and Henry Middleditch identified in paragraphs 365 to 369 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars to paragraphs 22 and 23 above.

Knowledge of materiality of representations

372 Each of the matters referred to in paragraphs 346 to 350 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the LCL Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill was personally involved in, and at times copied into the relevant correspondence with Brereton and BCC associated with the placement or renewal of the LCL Risk:

(a) Email chain between Edward Smith and Brereton, copying Lex Greensill, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 26 September 2019, which included 11 of the LCL Endorsements set out in paragraph 325 above (BCC.0001.0001.4079).

(b) Email from Lex Greensill to Brereton, with the subject 'Liberty Commodities Debtors for Tuesday' dated 1 October 2019, where Lex Greensill stated to Brereton, amongst other things, '…I would like to ask if you could please expedite your analysis on the below names. We are funding on Wednesday so a response tomorrow morning would be much appreciated.' (AGB.0002.0001.1867).

(c) Email chain between Angus Ward, Edward Smith and Brereton, with Lex Greensill copied, with the subject 'RE: Greensill – LCL Increase Request' dated 19 February 2020, which stated, among other things, 'Greensill would like to put this in place today so if you could sign and return the attached endorsements as soon as you can that would be much appreciated. We have had the order to bind and confirmation of NKORL' (AGB.0002.0001.2140).

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of LCL being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

373 Further or in the alternative to paragraph 372 above, each of the matters referred to in paragraphs 346 to 350 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the LCL Risk.

374 The knowledge of Lex Greensill of the matters set out in paragraph 372 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

375 The knowledge of Lex Greensill of the matters set out in paragraph 372 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

376 Further and in the alternative to paragraph 372 above, each of the matters referred to in paragraphs 346 to 350 above were matters:

(a) which Brett Downes knew were material to the decision whether to extend insurance cover in respect of the LCL Risk; or

(b) alternatively to subparagraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes was personally involved in, and at times copied into the relevant correspondence with Brereton and BCC associated with the placement or renewal of the LCL Risk:

(a) email chain from Brett Downes to Lex Greensill, copying Brereton, with the subject line 'RE: TBCC asks' dated 1 March 2019, where Brett Downes

wrote to Lex Greensill: 'Lex, as discussed, can you please discuss with Greg: Liberty Commodities AR …' (AGB.0002.0001.0734);

(b) email from Brett Downes to Angus Ward, with the subject 'RE: Liberty Commodities Debtors for Tuesday' dated 30 October 2019 (AGB.0002.0001.6143);

(c) email from Brett Downes to Edward Smith, with Lex Greensill copied on previous emails, dated 8 January 2019 with the subject 'FW: Additional account debtors for Liberty Commodities AR program' (AGB.0002.0003.4968);

(d) email chain between Brett Downes, Craig Pinnington and Sophie Dyke (Insurance Analyst) of GCUK, and Edward Smith and Angus Ward, with the subject line 'RE: Liberty Commodities AR New Limit Requests' (MAR.0004.0002.8179); and

(e) email from Brett Downes to Edward Smith with the subject line 'FW: LibCom insurance – URGENT' dated 18 February 2020 (MMC_GCUK15_00000227), where Brett Downes stated, among other things: *'…we need urgent clarification on Liberty Commodities insurance from Zurich and TBCC…. In short it is my belief that insurance will cover us for 90% of the 90% we advance, ie the amount actually out the door. This is logical because insurers know we have skin on the game… It may be in the end we were clever enough to get this past the insurers'*.

Brett Downes' knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the LCL Risk.

377 Further or in the alternative to paragraph 376 above, each of the matters referred to in paragraphs 346 to 350 above was a matter which a reasonable person in the position of Brett Downes could be expected to know was material to the decision whether to extend insurance cover in respect of the LCL Risk.

378 The knowledge of Brett Downes of the matters set out in in paragraph 376 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

379 The knowledge of Brett Downes of the matters set out in paragraph 376 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

380 Further and in the alternative to paragraphs 372 and 376 above, each of the matters referred to in paragraphs 346 to 350 above were matters:

(a) which Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK knew were material to the decision whether to extend insurance cover in respect of the LCL Risk; or

(b) alternatively to subparagraph (a), in respect of which Craig Pinnington and Henry Middleditch were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Craig Pinnington was personally involved in, and at times copied into the relevant correspondence with Brereton and BCC associated with the placement or renewal of the LCL Risk:

(a) Email from Craig Pinnington to Brereton with the subject line 'Liberty commodities Limited AR – account debtor limits' dated 3 May 2019, requesting 'additional account debtor limits of the Liberty Commodities AR programme from BCC today' (BCC.0001.0002.3138);

(b) Email from Sophie Dyke to Lex Greensill, Brereton and Craig Pinnington with the subject line 'RE: Liberty commodities Limited AR – account debtor limits' dated 3 May 2019, further discussing the additional account debtor requests following the correspondence above (MAR.0004.0002.4052);

(c) Email from Craig Pinnington to Angus Ward and Sophie Dyke with subject line 'RE: Liberty Commodities AR account debtor increases' dated 28 June 2019, where Craig Pinnington confirms NKORL for requested increases for Minmetals Cheerglory and Posco Daewoo (AGB.0002.0003.3097);

(d) Email from Craig Pinnington to Angus Ward, Arslan Gill and Margarita Diagileva with subject line 'RE: BCC – Liberty Commodities Additional Names' dated 23 June 2020. Craig Pinnington confirms NKORL following a request for additional account debtors, including LS-Nikko Copper Inc., LG International Corp. and Sorin Corporation (MAR.0003.0003.2867);

(e) Email from Lex Greensill to Brereton, copying in Craig Pinnington with subject line 'RE: Liberty Commodities AR' dated 30 April 2019. In regards to an increase on Cargill's limit, Lex Greensill asks 'Team Marsh, could you please formalise for use at Greensill Bank?' (AGB.0002.0001.1430);

(f) Email from Julian Macey-Dare to Lex Greensill, Craig Pinnington and Brereton with subject line 'RE: Liberty commodities Limited AR – account debtor limits' dated 3 May 2019, with requests for additional account debtors (AGB.0002.0001.1451)

(g) Email from Brereton to Edwards Smith and Lex Greensill, copying in Craig Pinnington with subject line 'RE: Liberty Commodities Debtors for Tuesday' dated 4 October 2019' regarding analysis on new debtors for the Liberty Commodities AR programme (AGB.0002.0001.1889).

Craig Pinnington's knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the nature of the LCL Risk.

Henry Middleditch was personally involved in, and at times copied into the relevant correspondence with Lex Greensill, Greensill and Marsh associated with the placement and renewal of the LCL Risk:

(h) Email from Lex Greensill to Craig Pinnington and Brereton, copying in Henry Middleditch with subject line 'RE: Liberty commodities Limited AR – account debtor limits', dated 3 May 2019. This email concerns a request for additional account debtor limits (BCC.0001.0002.3139).

(i) Email from Angus Ward to various Greensill personnel, copying in Henry Middleditch with subject line 'RE: Liberty Commodities Limited AR account debtor requests', dated 10 June 2019, attaching several signed new account debtor requests (GCU.0005.0011.5908).

(j) Email from Angus Ward to Sophie Dyke and Edward Smith, copying in Henry Middleditch with subject line 'RE: Liberty Commodities and Phoenix Global DMCC', dated 17 July 2019, regarding increasing existing account debtor limits (GCU.0009.0010.4346).

(k) Email from Angus Ward to Sophie Dyke and other Greensill personnel, copying in Henry Middleditch with subject matter 'RE: Liberty Commodities AR account debtor increases' dated 14 August 2019, confirming NKORL and attaching new account debtor increases (AGB.0003.0001.1040).

(l) Email from Edward Smith to Brereton and Lex Greensill, copying in Henry Middleditch with subject line 'Liberty Commodities Debtors for Tuesday', dated 1 October 2019, requesting new account debtors for Liberty Commodities AR programme (MMC_GCUK08_00013070).

(m) Email from Brereton to Henry Middleditch, copying in Lex Greensill with subject line 'RE: GREENSILL/LCL – AR Increase Limit Request –

18/05/2020', dated 19 May 2020, discussing limit increases for two account debtors under the Liberty Commodities AR facility (BCC.0001.0001.6749).

Henry Middleditch's knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the nature of the LCL Risk.

381 Further or in the alternative to paragraph 380 above, each of the matters referred to in paragraphs 346 to 350 above was a matter which a reasonable person in the position of Craig Pinnington or Henry Middleditch could be expected to know was material to the decision whether to extend insurance cover in respect of the LCL Risk.

382 The knowledge of Craig Pinnington and Henry Middleditch of the matters set out in in paragraph 380 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 29 and 30 above.

383 The knowledge of Craig Pinnington and Henry Middleditch of the matters set out in paragraph 380 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars to paragraphs 22 and 23 above.

Misrepresentations were fraudulent

384 In the premises of paragraphs 318 to 383 above:

(a) Greensill misrepresented the risk presented by the LCL Risk;

(b) the misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the LCL Risk.

385 If Greensill had not made the LCL Genuine Customer Misrepresentations, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.

386 If Greensill had not made the LCL Genuine Trades Misrepresentations, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.

387 If Greensill had not made the LCL Customer Creditworthiness Misrepresentations, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.

388 If Greensill had not made the LCL Facility Performance Misrepresentations, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.

389 By reason of the matters pleaded in paragraphs 346 to 388 above, IAL is entitled to avoid the LCL Endorsements.

Innocent misrepresentation

390 In the alternative to the matters pleaded in paragraphs 384 to 389 above, by reason of the matters pleaded in paragraphs 346 to 350, and 385 to 388 above, IAL is entitled to reduce its liability under the LCL Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the LCL Genuine Customer Misrepresentations, LCL Genuine Trades Misrepresentations, LCL Customer Creditworthiness Misrepresentations LCL Short-term Financing Misrepresentation and LCL Facility Performance Misrepresentation had not occurred).

D5.3 LCL Non-Disclosures

Knowledge of underlying matters

391 At the time of requesting insurance cover for the LCL Risk, including on each occasion that GCUK provided a draft Customer Endorsement to Brereton with a view to that endorsement being accepted and signed by Brereton on behalf of BCC, Lex Greensill knew:

(a) the true nature of the accounts receivable financing arrangements between Greensill and Liberty which involved, among other things, the provision of what was, in effect, unsecured long-term debt not backed by any genuine accounts receivables owed to LCL by customers endorsed to the 2019 Policy;

Particulars

The knowledge of Lex Greensill is evident from the testimony of Sanjeev Gupta to the UK Insolvency and Companies Court as to the statements made to him by Lex Greensill: see Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 dated 22 August 2022 (Exhibit SG3).

The knowledge of Lex Greensill is otherwise to be inferred from:

(a) the involvement of Lex Greensill and other employees in the company's dealings with LCL, including the following items: AGB.0002.0001.1867, AGB.0002.0001.1359, AGB.0002.0001.1397, AGB.0002.0001.1399, AGB.0002.0001.1430, AGB.0002.0001.1451 and AGB.0002.0001.1821; and

(b) Lex Greensill's senior position within Greensill.

Further particulars may be provided after completion of discovery by GCUK.

(b) LCL had retained, or would retain, the benefit of finance advanced under the LCL Facility, or cash collections from account debtors, for longer than the period permitted under the LCL Facility;

(c) there were material issues with LCL's performance under the LCL Facility;

Particulars

IAL repeats the particulars to paragraphs 348, 349 and 350 above.

(d) the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 44.

(e) the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group (of which LCL was affiliated) and Sanjeev Gupta (who was a director of LCL and a personal guarantor of the LCL Facility) in prior dishonest and fraudulent conduct.

Particulars

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

The knowledge of Lex Greensill is evident from the fact that the Diligence Paper was sent to Lex Greensill on 11 December 2018 (CSA.5000.0002.1866 and CSA.5000.0002.1867).

392 The knowledge of Lex Greensill of the matters in paragraph 391 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

393 The knowledge of Lex Greensill of the matters in paragraph 391 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

394 Further or in the alternative to paragraph 391 above, at the time of requesting insurance cover for the LCL Risk, Brett Downes knew each of the matters set out in paragraph 391(a), 391(b) and 391(e).

Particulars

The knowledge of Brett Downes is to be inferred from:

(a) the involvement of Brett Downes in the company's dealings with LCL, including the following items: GCU.0005.0006.5317, GCU.0004.0027.1545, GCU.0004.0027.3234, AGB.0002.0001.0734, AGB.0002.0001.6143, AGB.0002.0003.3020, AGB.0002.0003.4968, MAR.0004.0002.8179, MMC_GCUK12_00001505 and MMC_GCUK15_00000227;

(b) Brett Downes' senior position within GCUK as Chief Risk Officer; and

(c) the representations made by GCUK that it conducted due diligence of all clients of Greensill's SCF solutions (BCC.0001.0001.0412).

Further particulars may be provided after completion of discovery by GCUK.

395 The knowledge of Brett Downes of the matters in paragraph 391(a), 391(b) and 391(e) above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

396 The knowledge of Brett Downes of the matters in paragraph 391(a), 391(b) and 391(e) above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

397 Further or in the alternative to paragraphs 391 and 395 above, at the time of requesting insurance cover for the LCL Risk, Craig Pinnington and Henry Middleditch knew the matters set out in paragraph 391 above.

Particulars

The knowledge of Craig Pinnington is to be inferred from:

(a) the involvement of Craig Pinnington in the company's dealings with LCL, including the following items: BCC.0001.0002.3138, AGB.0002.0003.3097, MAR.0003.0003.2867, AGB.0002.0001.1430, AGB.0002.0001.1451 and AGB.0002.0001.1889; and

(b) Craig Pinnington's position within GCUK as Senior Credit Analyst; and

The knowledge of Henry Middleditch is to be inferred from the involvement of Henry Middleditch in the company's dealings with LCL, including the following items: GCU.0004.0019.3454, GCU.0005.0006.1670, GCU.0005.0008.8722, GCU.0004.0027.3234, AGB.0002.0001.5934, GCU.0009.0011.1386, GCU.0013.0008.1974.

Further particulars may be provided before trial.

398 The knowledge of Craig Pinnington and Henry Middleditch of the matters in paragraph 391 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraph 29 and 30 above.

399 The knowledge of Craig Pinnington and Henry Middleditch of the matters in paragraph 391 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars to paragraphs 22 and 23 above.

400 Further or in the alternative to paragraphs 391, 395 and 397 above, at the time of requesting insurance cover for the LCL Risk, Danyon Lloyd knew the matters set out in paragraphs 391(a), 391(b) and 391(c) above.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

(a) the involvement and knowledge of Danyon Lloyd in the company's dealings with LCL, including the following items: GCU.0005.0017.3912 GCU.0009.0011.8705 GCU.0009.0008.5727 GCU.0004.0025.6218 GCU.0005.0009.4276 GCU.0005.0012.5582 GCU.0009.0010.0382; and

(b) Danyon Lloyds' position within GCUK's credit committee.

401 The knowledge of Danyon Lloyd of the matters in paragraphs 391(a), 391(b) and 391(c) above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 27 and 28 above.

Knowledge of materiality

402 Each of the matters referred to in paragraph 391 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the LCL Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of LCL being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

403 Further or in the alternative to paragraph 402 above, each of the matters referred to in paragraph 391 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend insurance cover in respect of the LCL Risk.

Particulars

IAL refers to the particulars in paragraph 402 above.

404 The knowledge of Lex Greensill of the matters set out in paragraphs 402 and 403 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26 ,29 and 30 above.

405 The knowledge of Lex Greensill of the matters set out in paragraphs 402 and 403 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

406 Further or in the alternative to paragraph 402 above, each of the matters referred to in paragraph 391 above were matters:

(a) which Brett Downes knew were relevant to the decision to accept the LCL Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes' knowledge is to be inferred by virtue of his position and experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the LCL Risk.

407 Further or in the alternative to paragraph 406 above, each of the matters referred to in paragraph 391 above were matters which a reasonable person in the position of Brett Downes could be expected to know were relevant to the decision to extend insurance cover in respect of the LCL Risk and, if so, on what terms.

Particulars

IAL refers to the particulars in paragraph 406 above.

408 The knowledge of Brett Downes of the matters in paragraphs 406 and 407 above can be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

409 The knowledge of Brett Downes of the matters in paragraphs 406 and 407 above can be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

410 Further or in the alternative to paragraph 402 and 406 above, the matters referred to in paragraph 391 above were matters:

(a) which Craig Pinnington and Henry Middleditch knew were relevant to the decision to accept the LCL Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which Craig Pinnington and Henry Middleditch were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and as the non-disclosures bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the nature of the LCL Risk.

Henry Middleditch's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and as the non-disclosures bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the nature of the LCL Risk.

411 Further or in the alternative to paragraph 410 above, the matters referred to in paragraph 391 above were matters which a reasonable person in the position of Craig Pinnington or Henry Middleditch could be expected to know were relevant to the decision to extend insurance cover in respect of the LCL Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 410 above.

412 The knowledge of Craig Pinnington and Henry Middleditch of the matters in paragraphs 410 and 411 above can be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraph 29 and 30 above.

413 The knowledge of Craig Pinnington and Henry Middleditch of the matters in paragraphs 410 and 411 above can be attributed to GCPL.

Particulars

IAL refers to the particulars to paragraphs 22 and 23 above.

414 Further or in the alternative to paragraphs 402, 406 and 410 above, the matters referred to in paragraphs 391(a), 391(b), 391(c) and 400 above were matters:

(a) which Danyon Lloyd knew were relevant to the decision to accept the LCL Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the LCL Risk.

415 Further or in the alternative to paragraph 414 above, each of the matters referred to in paragraphs 391(a), 391(b), 391(c) and 400 above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were relevant to the decision to extend insurance cover in respect of the LCL Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 414 above.

416 The knowledge of Danyon Lloyd of the matters in paragraphs 414 and 415 above can be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 27 and 28 above.

Breach of duty of disclosure

417 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 391 above before the cover was placed or renewed for the LCL Risk.

418 Greensill's failure to disclose the matters referred to in paragraph 391 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 392 to 416 above.

Fraudulent non-disclosure

419 By reason of the matters pleaded in paragraphs 392, 393, 395, 396, 398, 399, 401, 402, 404 to 406, 408 and 409 to 416 above, Greensill's failure to disclose the matters referred to in paragraph 391 above was fraudulent.

420 The cover for the LCL Risk would not have been issued if the matters referred to in paragraphs 391 and 400 above had been disclosed.

421 In the alternative to the allegation in paragraph 420 above, the cover for the LCL Risk would not have been extended on the same terms if the matters referred to in paragraphs 391 and 400 above had been disclosed.

422 By reason of the matters pleaded in paragraphs 419 to 421 above, IAL is entitled to avoid the LCL Endorsements.

Innocent non-disclosure

423 In the alternative to the matters pleaded in paragraphs 419 to 422 above, and by reason of the matters pleaded in paragraphs 417, 418, 420 and 421 above, IAL is entitled to reduce its liability under the LCL Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D6 Atlantic 57

D6.1 Policy and Endorsements

425 In Federal Court of Australia proceeding no. NSD173/2023, the applicants allege that Atlantic 57 Consultancy Limited (company number 1892772), a limited liability company incorporated in the British Virgin Islands (**Atlantic 57**), was endorsed as a customer under the 2019 Policy by means of Customer Endorsement No 4 dated 13 March 2019 (**Atlantic 57 Endorsement**).

Particulars

Second Amended Statement of Claim in proceeding no. NSD173/2023 dated 14 March 2024 at paragraphs 161 and 163.

D6.2 Atlantic 57 Misrepresentations

Purpose representation

426 On or around 12 September 2018, Lex Greensill, on behalf of GCUK, requested that BCC extend insurance cover in respect of financing to be provided by Greensill to Atlantic 57 (**Atlantic 57 Risk**).

Particulars

Email from Lex Greensill to Greg Brereton dated 12 September 2018 and its attachment 'Atlantic 57 Consultancy Project Summary' (AGB.0003.0001.3869 and AGB.0003.0001.3870) (**Atlantic 57 Project Summary**).

427 In making the request, Lex Greensill represented to Greg Brereton that the primary purpose of the proposed facility, an 'Instalment Payment Agreement' with a facility limit of USD40 million (**Atlantic 57 IPA**), was to finance an equity stake in the Steinway Project.

Particulars

IAL refers to the particulars in paragraph 426 above.

The Atlantic 57 Project Summary, among other things, described the proposed facility as 'an Instalment Payment Agreement (“IPA") from Atlantic 57 Consultancy Limited (“A57C”), a company incorporated in the British Virgin Islands. This is a US$40m 2 year committed facility'.

428 In the premises of paragraph 427 above, GCUK represented to Greg Brereton that the Atlantic 57 Risk to be covered concerned financing issued by GCUK to Atlantic 57 for the sole purpose of funding, among other things, an equity stake in the Steinway Project (**A57 Purpose Representation**).

429 The Atlantic 57 Purpose Representation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 20, 22, 23, 26, 29 and 30 above.

430 On or around 15 September 2018, Greg Brereton purported to agree to provide cover in respect of the Atlantic 57 Risk up to a policy limit of USD40 million and with a base premium of 1.25% per annum.

Particulars

Emails from Lex Greensill to Greg Brereton dated 14 September 2018 and 15 September 2018 (BCC.0001.0002.1578), which stated, in relation to the Atlantic 57 Risk, 'We plan to close Atlantic 57 on Monday, so it would be great if you could return the executed endorsements to us by open of business in London on Monday'.

Email from Greg Brereton to Lex Greensill, copying to John Whelan (Deputy General Counsel) of GCUK, Brett Downes (Chief Risk Officer) of GCUK and Ewan Berkemeier of Marsh dated 15 September 2018 (BCC.0001.0002.1578).

431 On 17 September 2018, Greg Brereton provided Greensill with a signed copy of Customer Endorsement No 28 purportedly issued under the 2018 Policy in respect of the Atlantic 57 Risk, effective from 17 September 2018, and with a premium of USD1.

Particulars

Email from Greg Brereton to John Whelan and Ewan Berkemeier, copying Lex Greensill and Brett Downes, dated 17 September 2018 (AGB.0003.0001.0002), attaching a signed copy of Customer Endorsement No 28 to the 2018 Policy, purportedly signed for and on behalf of the Insurer by Greg Brereton as representative of BCC on or around 17 September 2018 (AGB.0003.0001.0003_0005). Customer Endorsement No 28 had a Maximum Tenor of 180 days from the date the Insured acquires the Debt.

Guarantor Representations

432 At the time of requesting insurance cover in respect of the Atlantic 57 Risk, Lex Greensill represented to Greg Brereton that:

(a) Andrew Ruhan, a proposed individual guarantor under the Atlantic 57 IPA, had assets with a combined total value of GBP161,570,000 and liabilities with a combined total value of GBP2, giving a net worth of GBP161,569,998; and

(b) the proposed personal guarantee from Andrew Ruhan had actual value that GCUK could call upon in the event of default under the Atlantic 57 IPA,

(**Guarantor Representations**).

Particulars

Email from Lex Greensill to Greg Brereton dated 12 September 2018 (BCC.0001.0002.1549).

Email from Vicky Birch to Lex Greensill, Brett Downes, Danyon Lloyd and others with the subject "GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – MINUTES" dated 20 September 2018 (GCU.0004.0018.0444).

Settlement Agreement

433 At the time of requesting insurance cover in respect of the Atlantic 57 Risk, Lex Greensill represented to Greg Brereton that there was a 'Settlement Agreement' under which Atlantic 57 LLC had a right to receive proceeds from or in respect of the Steinway Project, of which 54% was payable by Atlantic 57 LLC to Atlantic 57 (**Settlement Agreement Representation**).

Particulars

IAL refers to the particulars to paragraph 426 above.

GCUK used 'Settlement Agreement' to refer to a Limited Liability Company Agreement of Managing Member 111W57 LLC between Atlantic 57 LLC and the Property Markets Group and JDS Construction Group .

A57 Renewal

434 On or around 28 February 2019, Edward Smith of Marsh sent an email to GCUK, attaching documents relating to a requested renewal of cover for the Atlantic 57 Risk. Marsh asked GCUK to confirm 'NKORL' [no known or reported losses] and an order to bind.

Particulars

Email from Edward Smith of Marsh to Sophie Dyke (Insurance Analyst) of GCUK, copying Craig Pinnington (Senior Credit Analyst) of GCUK, and the email address, insurance@greensill.com (AGB.0002.0002.1743), attaching, among other documents, an unsigned Customer Endorsement No 4 for Atlantic 57 (AGB.0002.0002.1756).

435 On or around 28 February 2019, GCUK provided confirmation that there were no known or reported losses and instructed Marsh to renew cover under the 2019 Policy in respect of a number of risks, including the Atlantic 57 Risk.

Particulars

Email from Sophie Dyke to Edward Smith copying Craig Pinnington and the email address, insurance@greensill.com (MAR.0004.0001.9422).

436 On or around 28 February 2019 and 4 March 2019, Marsh emailed Greg Brereton documents relating to the requested renewal of the policy and renewal of cover for the Atlantic 57 Risk, including the Atlantic 57 Endorsement. On each occasion, Marsh confirmed that 'Greensill have confirmed NKORL' and had given Marsh the order to bind.

Particulars

Email from Edward Smith to Greg Brereton, copying Ewan Berkemeier and other Marsh representatives, dated 28 February 2019 (MAR.0004.0001.9510), attaching (among other things) unsigned Customer Endorsement No 4 to the 2018 Policy (MAR.0004.0001.9513).

Email from Edward Smith of Marsh to Greg Brereton, copying Ewan Berkemeier and other Marsh representatives, dated 4 March 2019 (MAR.0004.0001.9739), attaching, among other things, an unsigned Customer Endorsement No 4 to the 2019 Policy (MAR.0004.0001.9781).

437 By the correspondence referred to in paragraph 436, GCUK represented to Greg Brereton that Atlantic 57 had paid any purported instalments under the Atlantic 57 IPA that had fallen due (**A57 Repayment Representation**).

438 On or around 13 March 2019, Greg Brereton provided Greensill with a signed copy of the Atlantic 57 Endorsement to the 2019 Policy, which purported, with effect from 1 March 2019, to endorse Atlantic 57 as a 'Customer' under the 2019 Policy, with an 'Aggregate Customer Limit' of USD40 million.

Particulars

Email from Greg Brereton to Edward Smith, copying Ewan Berkemeier, dated 13 March 2019 (BCC.0001.0002.2777), attaching (among other endorsements) a signed copy of Customer Endorsement No 4 to the 2019 Policy (BCC.0001.0002.2778_0033).

Representations were misleading

439 The A57 Facility Purpose Representation referred to in paragraph 427 above was false and/or misleading because:

(a) the Atlantic 57 IPA was in fact an aged facility and not a new facility:

(i) on or around 21 September 2016, GCUK and Atlantic 57 appear to have entered into a Customer Agreement which purported to govern the assignment to GCUK of rights to accounts receivable owing to the Supplier;

Particulars

Customer Agreement dated 21 September 2016 (IAL.500.002.4904).

(ii) on or around 28 September 2016, GCUK and Grenda Investments Limited (company number 1733832) (**Grenda** or **Supplier**) appear to have entered into a Supplier Agreement which purported to govern the transfer of accounts receivable to the Supplier (**Supplier Agreement**);

Particulars

Supplier Agreement dated 28 September 2016 (IAL.500.002.4902).

(iii) on or around 28 September 2016, GCUK appears to have issued a side letter to Grenda (**Side Letter**) which purported to amend the Supplier Agreement and provided that the only account receivable 'that may be transferred by the Supplier to [GCUK] under the Supplier Agreement is the right to receive payments of money due and payable under the irrevocable receivable issued by- Atlantic 57 Consultancy Ltd. in favour of the Supplier on 21 September 2016 in the amount of USD22.6 million with a maturity date of 22 September 2017' (**First Receivable**);

Particulars

Side Letter dated 28 September 2016 (IAL.500.002.4903).

(iv) on or around 29 September 2016:

(A) a note for USD22.6 million was issued by Lagoon Park Capital SA (**Lagoon Park**), with a maturity date of 22 September 2017 (**First GAM Note**);

(B) the First GAM Note was acquired by GAM and allocated to its Absolute Return Bond Master Fund (**ARMF**), an investment fund;

Particulars

Distribution History Report for Atlantic 57 (BCC.0001.0006.7253).

Document with filename “NotesOffer_SPV1_XS1453932565_20160929” with created date 29 September 2016 (GCU.0001.0005.3593).

Document with filename ”GRE01_IXS1453932565_F_PC_N_V01_20160929” with created dated 29 September 2016 (GCU.0001.0005.3546).

Email from Lex Greensill to Danyon Lloyd (Chief Executive Officer) of Greensill Bank dated 30 September 2016 (GBA.0004.0009.2760), which states, in relation to the First GAM Note: 'It is the Andy Ruhan property trade. GAM bought 100% of it uninsured' (GBA.0004.0009.2760).

(v) the First GAM Note represented GAM's purchase of the right to the First Receivable payable by Atlantic 57 to GCUK by reason of the arrangements in subparagraphs i. and ii. in connection with an investment into the Steinway Project by Andrew Ruhan;

Particulars

Distribution History Report for Atlantic 57 (BCC.0001.0006.7253).

Distribution Report with Invoice Details for Atlantic 57 dated 14 June 2021 (BCC.0001.0006.7250).

Emails between Timothy Haywood and Lex Greensill, with the subject ‘RE: Steinway Proposal’ dated 16 September 2016 (GCU.0001.0005.1043).

Emails between Danyon Lloyd and Lex Greensill dated 30 September 2016 (GBA.0004.0009.2760).

(vi) on 22 September 2017, being the maturity date of the First GAM Note:

(A) Grenda rolled the USD22.6 million debt owed to it by Atlantic 57 under the First Account Receivable; and

(B) Atlantic 57 issued a new irrevocable receivable in favour of Grenda for USD28.1 million payable on or before 17 September 2018 (**Second Receivable**);

Particulars

Distribution History Report for Atlantic 57 (BCC.0001.0006.7253).

Distribution Report with Invoice Details for Atlantic 57 dated 14 June 2021 (BCC.0001.0006.7250).

Emails between Timothy Haywood and Lex Greensill, with the subject ‘RE: Steinway Proposal’ dated 16 September 2016 (GCU.0001.0005.1043)

Email from Tom Kennedy to Andy Ruhan copying Lex Greensill and Jonathan Lane, with the subject “FW: Steinway” dated 3 July 2017 (GCU.0001.0010.6759).

Letter 'Re: Irrevocable Receivable' dated 22 September 2017 from Atlantic 57 to Grenda (IAL.500.002.4906).

(vii) on 25 September 2017:

(A) the First GAM Note was recorded in GCUK's records as paid, 3 days after its maturity date on Friday, 22 September 2017;

(B) Lagoon Park issued a note for USD28.1 million backed by the Second Receivable, with a maturity date of 17 September 2018 (**Second GAM Note**); and

(C) the Second GAM Note was acquired by GAM and allocated to its ARMF;

Particulars

Distribution History Report for Atlantic 57 (BCC.0001.0006.7253).

Distribution Report with Invoice Details for Atlantic 57 dated 14 June 2021 (BCC.0001.0006.7250).

Email from Rozlyn Bennett to Greensill-exec@morganstanley.com dated 25 September 2017 (GCU.0010.0001.9051) attaching document with filename ”IXS1453932649_F_PC_N_V01_20170925” with created dated 22 September 2017 (GCU.0010.0001.9052).

Email from Rosalind Bell of Morgan Stanley dated 25 September 2017 (GCU.0012.0001.4661) attaching document with filename ”IXS1453932649_F_PC_N_V01_20170925” with created dated 22 September 2017 (GCU.0012.0001.4662).

(viii) by reason of the matters referred to in subparagraph (a) above, the Second GAM Note represented, in substance, a rollover of the debt under the First GAM Note, plus interest;

(b) the financing provided for under the Atlantic 57 IPA was in fact for:

(i) the primary purpose of repaying the Second GAM Note of USD28.1 million or, in other words, the refinancing of Atlantic 57's debt; and

Particulars

Email from Lex Greensill to Ludwig Sels, with the subject “Re: Assets…” dated 2 August 2018 (GCU.0004.0015.9070)

Email from Hannah Yang to Myrjam Tschoeke and others, with the subject “RE: Credit Approval Request – Atlantic 57 Consultancy Limited” dated 14 September 2018 (GCU.0009.0004.8869)

Credit Analysis Pack for Atlantic 57 submitted to the Credit Committee on 14 September 2018 (GBA.0004.0024.0276_0001) (**A57 Credit Analysis Pack**).

Email from Lex Greensill to Vesna Vladusic, with the subject “Re: Atlantic 57” dated 15 September 2018 (GCU.0010.0004.9602)

Period Review - Atlantic 57 dated 27 March 2020 (GBA.0004.0009.1518 at 0009 and 0022) (**Atlantic 57 Periodic Review**), which stated, among other things, that:

(a) 'The purpose of the facility is for the repayment of a US$28.1m GAM note maturing September 17th, 2018, and to cover legal fees and transaction costs'; and

(b) 'Grenda Investments Limited, a company incorporated in the British Virgin Island, has made a debt investment totalling US$40.725m into A57 LLC. Then the US$40.725m promissory note from A57 LLC to Grenda Investment has been cancelled and re-issued as a US$21.895m note to Grenda Investments and US$18.83m going to A57C.'

Investor Funds Credit and Payments dated 17 September 2018 (AGB.0003.0002.0088).

Email from Ian Little to Chris Lockhart, copying Ian Bryan, dated 14 September 2018 (AGB.0003.0002.0091), which refers to a payment of USD28,100,000 'to be made by Greensill' representing a 'maturity payment'.

Manual Payment Request dated 17 September 2018 for USD28,100,000 to the Atlantic 57 trust account (AGB.0003.0002.0092).

(ii) the ancillary purpose of paying the following costs and fees, namely:

(A) an amount of USD1 million to Anthony Stevens for providing a personal guarantee and indemnity in favour of GCUK in respect of in respect of Atlantic 57's obligations under the Atlantic 57 IPA;

Particulars

Atlantic 57 Periodic Review (GBA.0004.0009.1518 at 0009 and 0022).

Email from Ian Little to Chris Lockhart, copying Ian Bryan, dated 14 September 2018 (AGB.0003.0002.0091), which refers to a payment of USD1,000,000 by GCUK to Anthony Stevens.

Manual Payment Request dated 17 September 2018 for USD1 million to Anthony Stevens (AGB.0003.0002.0090).

Investor Funds Credit and Payments dated 17 September 2018 (AGB.0003.0002.0088).

Personal Guarantee dated 11 September 2018 between Anthony Stevens and GCUK (IAL.500.002.4889), which was executed by Anthony Stevens in the presence of Lex Greensill as witness.

(B) an amount of USD1 million to Grenda Investments for providing a company guarantee and indemnity in favour of GCUK in respect of Atlantic 57's obligations under the Atlantic 57 IPA, which appears to have been paid to Grenda's solicitors, Richard Slade and Company PLC;

Particulars

Atlantic 57 Periodic Review (GBA.0004.0009.1518 at 0009 and 0022).

Email from Ian Little to Chris Lockhart, copying Ian Bryan, dated 14 September 2018 (AGB.0003.0002.0091), which refers to a payment of USD1,000,000 by GCUK to Richard Slade.

Investor Funds Credit and Payments dated 17 September 2018 (AGB.0003.0002.0088).

Manual Payment Request dated 17 September 2018 for USD1 million to 'Richard Slade and Company PLC Client Account' (AGB.0003.0002.0091). Richard Slade & Company PLC is a law firm that acted for Anthony Stevens and Grenda in various proceedings from at least 2017 (see *Grenda Investments Ltd v Barton* [2017] EWHC 2372; *Richard Slade and Company Ltd & Anor v Guinevere Holdings Ltd & Anor* [2023] EWHC 1869 at [4] and [7]).

Company Guarantee dated 11 September 2018 between Grenda and GCUK (IAL.500.002.8683), which was executed by Anthony Stevens on behalf of Grenda, in the presence of Lex Greensill as witness.

(C) an amount of USD4,944,345 to GCUK for costs, fees and margins payable for the provision of the Atlantic 57 IPA; and

Particulars

Atlantic 57 Periodic Review (GBA.0004.0009.1518 at 0022).

Investor Funds Credit and Payments dated 17 September 2018 (GBA.0004.0009.1518), which records the fees retained by GCUK as USD6,332,505.

(D) an amount of USD1 million for the cost of insurance for the Atlantic 57 IPA;

Particulars

Atlantic 57 Periodic Review (GBA.0004.0009.1518 at 0022).

(c) Atlantic 57 LLC's equity stake in the Steinway Project had been extinguished after one of the project's lenders, Spruce Capital Partners, foreclosed on the project in 2017.

Particulars

IAL refers to the particulars to paragraph 445 below.

Email 'Fwd: Steinway Building /Ruhan Loan' from Tim Haywood to Lex Greensill dated 11 April 2018 (GCU.0004.0011.1505).

Email 'Re: Afternoon Andy' from Tim Haywood to Andy Ruhan, copying Lex Greensill, dated 10 May 2018 (GCU.0004.0012.2981).

Email "RE: Atlantic 57 question list" from Lex Greensill to David Keelings, Brett Downes and other GCUK employees, dated 11 September 2018 (GCU.0010.0004.8735).

440 The Guarantor Representations referred to in paragraph 432 above was misleading because, at the time it was made:

(a) less than a year earlier, Andrew Ruhan had represented that 'he [was] insolvent to the tune of £2m' in family law proceedings in the High Court of Justice (England & Wales);

(b) the proposed personal guarantee from Andrew Ruhan had no actual value which could be drawn upon in the event of default under the Atlantic 57 IPA.

Particulars

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

IAL refers to the particulars at paragraph 444 below.

441 The Settlement Agreement Representation referred to in paragraph 433 above was misleading because no Settlement Agreement, or other agreement which entitled Atlantic 57 LLC to receive proceeds from the Steinway Project, was ever entered into, either at the time the representation was made or subsequently.

Particulars

This can be inferred from email correspondence between Andy Ruhan, Anthony Stevens, Lex Greensill and other GCUK employees before and after the Settlement Agreement Representation regarding draft settlement documentation in relation to the Steinway Project below referring to the proposed Settlement Agreement, and subsequent proposed settlement documentation, and to the fact that they were still subject to agreement and execution.

Email “RE: Updated draft Amended & Restated LLC Agmt - privileged & confidential” from Lex Greensill to Andy Ruhan dated 30 July 2018 (GCU.0010.0004.8735).

Email from Andy Ruhan to Lex Greensill dated 12 July 2018 (GCU.0004.0015.0238), attaching a draft Amended and Restated Limited Liability Company Agreement of Manager Member 111W57 LLC between Manager JV Holdings 111W57 LLC and Atlantic 57 LLC (GCU.0004.0015.0243) and a draft General Mutual Release by Atlantic 57 LLC, 57 Madison LLC and Arthur Becker (GCU.0004.0015.0245).

Email from Lex Greensill to Andy Ruhan, copying Brett Downes and other GCUK employees, dated 7 September 2018 (GCU.0004.0017.5298).

Email “Re: A57” from Andy Ruhan to Hannah Yang, copying Lex Greensill, Brett Downes and other GCUK employees, dated 9 September 2018 (GCU.0004.0017.5576), attaching final draft of the “Amended and Restated Manager Member 111W57 LLC Agreement.DOCX' (GCU.0004.0017.5576).

Email “Re: Steinway” from Andy Ruhan to Lex Greensill dated 14 September 2018 (GCU.0005.0001.9697).

Email “Steinway” from Andy Ruhan to Lex Greensill, copying Kevin Maloney, dated 14 September 2018 (GCU.0005.0001.9697), and subsequent reply from Kevin Maloney (GCU.0004.0017.7954).

Emails from Andy Ruhan to Lex Greensill dated 16 September 2018 (GCU.0004.0017.8193; GCU.0004.0017.8231).

Email from Anthony Stevens to Steve Scott dated 23 June 2020 (GCU.0013.0008.6406).

Email from Anthony Stevens to Steve Scott dated 23 June 2020 (GCU.0010.0013.8030), attaching draft settlement documentation between Atlantic 57 LLC, Manager JV Holdings 111W57 LLC, PMG 111 W57 LLC and JDS 111W57th LLC (GCU.0010.0013.8031; GCU.0010.0013.8032; GCU.0010.0013.8033; GCU.0010.0013.8034).

442 The A57 Repayment Representation referred to in paragraph 437 was false and/or misleading because:

(a) between 17 September 2018 and 13 March 2019, 13 maturities fell due under the Atlantic 57 IPA;

Particulars

Maturities falling due on 26 September 2018, 10 October 2018, 24 October 2018, 7 November 2018, 21 November 2018, 5 December 2018, 19 December 2018, 2 January 2019, 16 January 2019, 39 January 2019, 13 February 2019, 27 February 2019 and 13 March 2019 are recorded in:

(a) Document titled "PAUF authorisation letter signed and dated 11-09-18" dated 11 September 2018 (GCU.0009.0004.9332).

(b) Document titled "DW_Distribution_history_-_for_Atlantic 57" with created date 1 May 2024 (GCU.9000.0001.0001).

(b) Atlantic 57 did not make any payments to GCUK between 17 September 2018 and 13 March 2019 as the facility operated by way of rolling of debt.

Particulars

Email Vesna Vladusic to Myrjam Tschoeke and other, with the subject "RE: Credit Approval Request – Atlantic 57 Consultancy Limited" dated 14 September 2018 (GCU.0009.0004.8890).

Email from James Hadley to Al Eadie, with the subject "RE: Atlantic 57" dated 18 September 2018 (GCU.0009.0004.9330).

Document titled "PAUF authorisation letter signed and dated 11-09-18" dated 11 September 2018 (GCU.0009.0004.9332).

Document titled "Deal Summary" with created date 24 September 2018 (GCU.0010.0005.1242).

Microsoft Outlook Appointment from Stephen Fleming with the subject "Atlantic 57 – Agenda: Numbered points below" dated 9 November 2018 (GCU.0002.0001.6056)

Document titled "IPA – background" with created date 15 November 2018 (GCU.0010.0005.9078).

Email Stephen Fleming to Nick Dugdale with the subject "FW: Follow up to IPA meeting" dated 12 March 2019 (GCU.0009.0007.9196).

Documented titled "Rolls" with created date 10 November 2020 (GCU.0014.0001.3198).

GCUK's practice of rolling debts the subject of the Atlantic 57 facility, without Atlantic 57 in fact repaying any amount to GCUK, is evident from the documents identified immediately above in the particulars to this paragraph and is further pleaded at Section F.1 of Annexure B to this defence.

Knowledge of falsity of representations

443 Lex Greensill knew the true purpose of the Atlantic 57 IPA as set out in paragraph 439 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

(a) his membership of the Credit Committee, which assessed and approved the financial accommodation provided to Atlantic 57;

(b) his role as Sponsor of the Atlantic 57 transaction and a member of the related 'Deal Team';

(c) his 'long established relationship' with Andrew Ruhan, in relation to which IAL refers to the particulars in paragraph 444 below; and

(d) his 'long established relationship' with Anthony Stevens (GBA.0004.0010.1624_0017), in respect of which IAL refers to the particulars in paragraph 470(e) below;

(e) the fact that he was the recipient or sender of emails particularised in paragraph 439 which referred to the fact that the primary purpose of the Atlantic 57 IPA was for the repayment of the Second GAM Note;

(f) the fact that he was the recipient or sender of emails particularised in paragraph 439(c) above which referred to the fact that Atlantic 57's equity stake had been wiped out on the foreclosure of the Steinway Project.

Credit Committee Terms of Reference dated 16 December 2016 (BCC.0001.0001.0413).

Email from Pamela Nnoko, to Lex Greensill, William Roland Harley-Urquhart and Danyon Lloyd and others dated 16 November 2018 (GBA.0004.0024.0275), attaching the A57 Credit Analysis Pack (GBA.0004.0024.0276).

The Atlantic 57 Periodic Review notes that 'Credit Approval was essentially provided at the outset of the [IPA] facility in September 2018' (GBA.0004.0009.1518_0020).

Further particulars may be provided after completion of discovery by GCUK.

444 Lex Greensill knew the matters set out in paragraph 440 above.

Particulars

Lex Greensill's knowledge can be inferred from the fact that he had a 'long established relationship' with Andrew Ruhan (GBA.0004.0010.1624_0017) arising by virtue of the matters referred to in paragraph 470(d) below.

Further the matters were highly publicised. For example, see:

(a) 'Property tycoon worth £200m, who was facing one of Britain's biggest divorce settlements, claims he is BROKE' published on 11 October 2017 in the Daily Mail Online (UK).

(b) 'Property tycoon's estranged wife denies paying a hitman to 'get rid of' her husband who's 'pleading poverty' in their bitter divorce battle' published on 12 October 2017 in the Daily Mail Online (UK).

(c) 'Wife denies hiring hitman to murder her tycoon husband' published on 13 October 2017 by The Sun (UK).

(d) 'Estranged wife questioned over plot to kill millionaire' published on 13 October 2017 in The Times (London).

Email from Vicky Birch to Lex Greensill, Brett Downes, Danyon Lloyd and others with the subject “GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – MINUTES” dated 20 September 2018 (GCU.0004.0018.0444)

445 Lex Greensill knew the matters set out in paragraph 441 above.

Particulars

Lex Greensill's knowledge can be inferred from the fact that he was the recipient or sender of emails particularised in paragraph 441 which referred to the fact that the Settlement Agreement had not yet been agreed or executed.

Lex Greensill knew the matters set out in paragraph 442 above.

Lex Greensill’s knowledge can be inferred from:

(a) his membership of the Credit Committee, which assessed and approved the financial accommodation provided to Atlantic 57;

(b) his role as Sponsor of the Atlantic 57 transaction;

(c) his 'long established relationship' with Andrew Ruhan, in relation to which IAL refers to the particulars in paragraph 444 below; and

(d) his 'long established relationship' with Anthony Stevens (GBA.0004.0010.1624_0017), in respect of which IAL refers to the particulars in paragraph 470(e) below.

446 The knowledge of Lex Greensill of the matters set out in paragraphs 443, 444 and 445 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 26, 29 and 30 above.

447 The knowledge of Lex Greensill of the matters set out in paragraphs 443, 444 and 445 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

448 Further and in the alternative to paragraph 446, Sophie Dyke (Insurance Analyst) of GCUK knew the matters set out in paragraph 442.

Particulars

The knowledge of Sophie Dyke is to be inferred from the following emails:

(a) Email from Pamela Nnoko to Sophie Dyke with the subject "A57" dated 17 September 2018 attaching document entitled "RCAP Atlantic 57 Consultancy FCC 14092018(2)" (GCU.0009.0004.9118 and GCU.0009.0004.9122)

(b) Email from Ian Bryan to Chris Lockhart and Stacey Ellams copying Sophie Dyke and others with the subject "RE Todays Trade Acceptance" dated 7 November 2018 (GCU.0013.0003.8521)

(c) Email from Sophie Dyke to Brett Downes with the subject "Atlantic 57 Tenor" dated 8 November 2018 (GCU.0009.0005.8548)

(d) Email from Stephen Fleming to Brett Downes and Vesna Vladusic copying Sophie Dyke, Mark Calvert-Jones and Al Eadie with the subject "Atlantic 57 Insurance: 182 day tenor issue" dated 22 November 2018 (GCU.0013.0004.0233)

449 The knowledge of Sophie Dyke of the matters set out in paragraph 442 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

450 The knowledge of Sophie Dyke of the matters set out in paragraph 442 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

Knowledge of materiality of representations

451 Each of the matters referred to in paragraph 439 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Atlantic 57 being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

452 Further or in the alternative to paragraph 451 above, each of the matters referred to in paragraphs 439 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

453 Each of the matters referred to in paragraphs 440, 441, and 442 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

IAL refers to the particulars in paragraph 451 above.

454 Further or in the alternative to paragraph 453 above, each of the matters referred to in paragraphs 440, 441 and 442 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

455 The knowledge of Lex Greensill of the matters set out in paragraphs 451 and 453 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

456 The knowledge of Lex Greensill of the matters set out in paragraphs 451 and 453 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

457 The matters referred to in paragraph 448 above were matters:

(a) which Sophie Dyke knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

(b) alternatively to subparagraph (a), in respect of which Sophie Dyke was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Email from Sophie Dyke to Edward Smith copied to others with the subject “RE: BCC Standalone Renewal Docs” dated 28 February 2019 (GCU.0009.0007.7014) Sophie Dyke’s knowledge is to be inferred as she was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly upon the Atlantic 57 Risk.

458 Further or in the alternative to paragraph 457 above, each of the matters referred to in paragraph 442 above was a matter which a reasonable person in the position of Sophie Dyke could be expected to know was material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

459 The knowledge of Sophie Dyke of the matters set out in paragraph 457 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

460 The knowledge of Sophie Dyke of the matters set out in paragraph 457 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Misrepresentations were fraudulent

461 In the premises of paragraphs 443, 446, 447, 451, 454 and 456 above:

(a) Greensill misrepresented the true purpose of the financial accommodation provided to Atlantic 57 under the Atlantic 57 IPA by making the A57 Purpose Representation;

(b) the A57 Purpose Representation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

462 In the premises of paragraphs 444, 446, 447, 452, 454 and 456 above:

(a) Greensill misrepresented the personal asset position of Andrew Ruhan by making the Guarantor Representations;

(b) the Guarantor Representations were knowingly false and fraudulent; and

(c) the misrepresentations were known to be material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

463 In the premises of paragraphs 445, 446, 447, 452, 454 and 456 above:

(a) Greensill misrepresented that Atlantic 57 LLC had a contractual right to proceeds from the Steinway Project, which Atlantic 57 could draw upon to meet its obligations under the Atlantic 57 IPA in making the Settlement Agreement Representation;

(b) the Settlement Agreement Representation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

464 In the premises of paragraphs 443, 446, 447, 448, 449, 450, 451, 454 and 456, 457, 458, 459 and 460 above:

(a) Greensill misrepresented that Atlantic 57 had been making payments in respect of maturities that had fallen due under the Atlantic 57 IPA;

(b) the A57 Repayment Representation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extent insurance cover in respect of the Atlantic 57 Risk.

465 If Greensill had not made the A57 Purpose Representation, insurance cover would not have been issued in respect of the Atlantic 57 Risk at all or, in the alternative, on the same terms in which it purportedly was written.

466 If Greensill had not made the Guarantor Representations, insurance cover would not have been issued in respect of the Atlantic 57 Risk at all or, in the alternative, on the same terms in which it purportedly was written.

467 If Greensill had not made the Settlement Agreement Representation, insurance cover would not have been issued in respect of the Atlantic 57 Risk at all or, in the alternative, on the same terms in which it purportedly was written.

468 By reason of the matters pleaded in paragraphs 465 to 467 above, IAL is entitled to avoid the Atlantic 57 Endorsement to the 2019 Policy.

Innocent misrepresentation

469 In the alternative to the matters pleaded in paragraphs 461 to 468 above, by reason of the matters pleaded in paragraphs 439, 440, 441, 442, 465, 466, 467 and 468 above, IAL is entitled to reduce its liability under the Atlantic 57 Endorsement to the 2019 Policy to nil (or such other amount as the Court may determine would place IAL in the same position as if the A57 Purpose Representation, the Guarantor Representations, and Settlement Agreement Representation had not occurred).

D6.3 Atlantic 57 Non-Disclosures

Knowledge of underlying matters

470 At the time insurance cover was purportedly renewed under the 2019 Policy, Lex Greensill knew:

(a) the matters set out in paragraphs 439(a) to (c) and 442(b) above;

Particulars

IAL refers to the particulars in paragraphs 439 and 442(b) above.

(b) in July 2018, Tim Haywood, the investment director business unit head of GAM's absolute return bond funds (**ARBF**) portfolio, which included the ARMF that held the Second GAM Note, was suspended over concerns about his conduct in respect of certain investment assets in the ARBF, specifically:

(i) his risk management procedures;

(ii) his failure to conduct or evidence sufficient due diligence; and

(iii) his failure to make accessible internal records of documents;

Particulars

Lex Greensill had a close relationship with Tim Haywood (investment director business unit head of GAM's ARBF portfolio) which involved the latter travelling on the former's private jet between 2016 and 2018. See the Financial Conduct Authority's Final Notice dated 29 March 2022: https://www.fca.org.uk/publication/final-notices/timothy-haywood-2022.pdf%20 (accessed on 25 October 2024).

'Inside the scandal that rocked GAM' published on 19 March 2019 by the Financial Times (CSA.5000.0003.6607).

GAM's press release dated 30 July 2018 and 25 September 2018 published on its website: https://www.gam.com/en/news-articles/press-releases/corporate/gam-holding-ag-suspension-of-an-investment-director (accessed on 25 October 2024) and https://www.gam.com/en/news-articles/press-releases/corporate/gam-holding-ag-response-to-media-speculation-sept18 (accessed on 25 October 2024).

Email from David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM) to Michel Degen of Credit Suisse dated 11 September 2018 (CSA.5000.0001.0191).

(c) in August 2018, GAM Investment Management Limited, the portfolio manager of the ARBF, including the ARMF, suspended the ARBF after a high level of redemption requests following the suspension of Tim Haywood and subsequently placed the funds into liquidation;

Particulars

GAM's press releases dated 1 August 2018 and 28 August 2019 published on its website: https://www.gam.com/en/news-articles/press-releases/corporate/gam-fund-boards-suspend-dealing-in-unconstrained-absolute-return-bond-funds (accessed on 25 October 2024) and https://www.gam.com/en/news-

articles/press-releases/corporate/gam-outlines-liquidation-plan-for-unconstrained-absolute-return-bond-funds (accessed on 25 October 2024).

Email from David Solo to Michel Degen dated 11 September 2018 (CSA.5000.0001.0191).

(d) in relation to Andrew Ruhan:

(i) the matters in paragraph 440; and

(ii) Andrew 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;

Particulars

Lex Greensill's knowledge can be assumed from the fact that he had a 'long established relationship' with each of the personal guarantors of Atlantic 57's payment obligations under the Atlantic 57 IPA, Andrew Ruhan and Anthony Stevens (GBA.0004.0010.1624_0017).

Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam) at [23(vi)], [75], [76].

Email from Vicky Birch to Lex Greensill, Brett Downes, Danyon Lloyd and others with the subject “GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – MINUTES” dated 20 September 2018 (GCU.0004.0018.0444).

(e) Anthony Stevens 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;

Particulars

IAL refers to the particulars in paragraph 470(d)(ii) above.

(f) Andrew Ruhan had a pre-existing relationship with Lex Greensill, by virtue of:

(i) his previous ownership interest in Greensill Bank (then known as NordFinanz Bank);

(ii) and his investment of AUD5,642,616 in GCPL on 14 December 2014; and

Particulars

Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam), 31.

(iii) business dealings and joint ventures between him, or his related entities, and GCUK; and

Particulars

GCUK Pipeline Reports dated 19 August 2016 (GBA.0004.0024.5595), 31 March 2017 (GBA.0004.0024.5705) and 23 August 2017 (GBA.0004.0024.5820).

(g) Anthony Stevens had a pre-existing relationship with Lex Greensill, by virtue of:

(i) Grenda's investment of USD4,000,266.68 in GCPL on or around 28 September 2016; and

Particulars

Side Letter dated 28 September 2016 (IAL.500.002.4903).

Email dated 30 September 2016 from Lex Greensill to Danyon Lloyd (GBA.0004.0009.2760).

Grenda and Atlantic 57's Registers of Members and Registers of Directors (GBA.0004.0009.1782).

Email dated 30 April 2019 from Michel Réthoret to Lex Greensill, confirming Anthony Stevens and his family as the beneficiaries of The Jades 2014 Trust (GBA.0004.0027.3414_0001).

(ii) Grenda's participation as an investor in GCUK's SCF Programmes from or around 2012.

Particulars

AIG Credit Insurance Proposal dated 23 January 2014 (MAR.0003.0001.0020_0013).

Email dated 10 June 2014 from Marsh to Euler Hermes (MAR.0003.0001.0029).

(h) a credit risk assessment paper in respect of Atlantic 57 dated 19 September 2018 from Scope Risk Solutions, a credit agency, (**A57 Risk Report**), had identified 'credit challenges' to the Steinway Project, including:

(i) deterioration of the Manhattan residential market, including price declines over the last 18 months, increased inventory levels and marketing times for properties;

(ii) previous construction delays on the project; and

(iii) unresolved legal issues surrounding the project.

Particulars

'Atlantic 57 Consultancy Limited – Assessment of Credit Risk – L3' paper dated 19 September 2018 by Scope Risk Solutions (GBA.0004.0004.2105).

Lex Greensill's knowledge of the A57 Risk Report is to be inferred from:

(a) his membership of the Credit Committee, which assessed and approved the financial accommodation provided to Atlantic 57. The A57 Risk Report formed a part of the associated documentation to the A57 Credit Analysis Pack. See the email from Pamela Nnoko to Roland Hartley-Urquhart, Michael Gilhuley, Brett Downs, Danyon Lloyd, Lex Greensill and Myrjam Tschoeke, copying other GCUK employees, dated 14 September 2018 (GCU.0004.0017.7667) attaching the A57 Credit Analysis Pack (GCU.0004.0017.7669) and Relationship Credit Analysis Pack for Atlantic 57 (GCU.0004.0017.7668);

(b) his roles as Sponsor of the Atlantic 57 transaction and a member of the corresponding 'Deal Team' and his involvement in the delivery of the A57 Risk Report by Scope Risk in those roles, as demonstrated by:

(i) Email 'FW: Scope Request Atlantic 57 Consultancy Limited (project development)' from David Keeling to Lex Greensill land other GCUK employees dated 10 September 2018 (GCU.0007.0002.1370).

(ii) Email from Lex Greensill to Andy Ruhan dated 11 September 2018 (GCU.0004.0017.7148).

(iii) Email from Vesna Vladusic to Lex Greensill dated 12 September 2018 (GCU.0004.0017.6797).

471 The knowledge of Lex Greensill of the matters in paragraph 470 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

472 The knowledge of Lex Greensill of the matters in paragraph 470 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20 and 22 and 23 above.

473 At the time insurance cover was purportedly renewed under the 2019 Policy, Danyon Lloyd knew the matters in paragraphs 439(a) and (b) above.

Particulars

Email from Lex Greensill to Danyon Lloyd (Chief Executive Officer) of Greensill Bank dated 30 September 2016 (GBA.0004.0009.2760).

Email from Brett Downes to Danyon Lloyd dated 14 September 2018 (GCU.0009.0004.8736)

Email from Pamela Nnoko to Lex Greensill, William Roland Hartley-Urquhart and Danyon Lloyd and others dated 14 September 2018 (GCU.0004.0017.7673)

Email from Pamela Nnoko, to Lex Greensill, William Roland Hartley-Urquhart and Danyon Lloyd and others dated 16 November 2018 (GBA.0004.0024.0275), attaching the A57 Credit Analysis Pack (GBA.0004.0024.0276).

474 The knowledge of Danyon Lloyd of the matters in paragraph 473 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above.

Knowledge of Materiality

475 Each of the matters referred to in paragraph 470 above were matters which:

(a) Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Atlantic 57 being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

476 Further or in the alternative to paragraph 475 above, each of the matters referred to in paragraph 470 above were matters which a reasonable person in the position of Lex

Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk.

Particulars

IAL refers to the particulars in paragraph 475 above.

477 The knowledge of Lex Greensill of the matters set out in paragraph 475 and 476 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

478 The knowledge of Lex Greensill of the matters set out in paragraphs 475 and 476 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

479 The matters referred to in paragraph 473 above were matters which:

(a) Danyon Lloyd knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

(b) alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Atlantic 57 Risk.

480 Further or in the alternative to paragraph 479 above, each of the matters referred to in paragraph 473 above were matters which a reasonable person in the position of Danyon

Lloyd could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk.

Particulars

IAL refers to the particulars in paragraph 479 above.

481 The knowledge of Danyon Lloyd of the matters set out in paragraph 479 and 480 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above.

Breach of duty of disclosure

482 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 470 and 473 above before the cover was placed or renewed for the Atlantic 57 Risk.

483 Greensill's failure to disclose the matters referred to in paragraph 470 and 473 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, in the premises of matters pleaded in paragraphs 475 to 481 above.

Fraudulent non-disclosure

484 By reason of the matters pleaded in paragraphs 475 to 481 above, Greensill's failure to disclose the matters referred to in paragraphs 470 and 473 above was fraudulent.

485 The cover for the Atlantic 57 Risk would not have been issued or renewed if one or more of the matters referred to in paragraphs 470(a), 470(d) to 470(e) and 473 above had been disclosed.

486 In the alternative to the allegation in paragraph 485 above, the cover for the Atlantic 57 Risk would not have been issued or renewed on the same terms if one or more of the matters referred to in paragraphs 470(a), 470(d) to 470(e) and 473 above had been disclosed.

487 By reason of the matters pleaded in paragraphs 484 to 486 above, IAL is entitled to avoid the Atlantic 57 Endorsement to the 2019 Policy.

Innocent non-disclosure

488 In the alternative to the matters pleaded in paragraphs 484 to 487, and by reason of the matters pleaded in paragraphs 482, 483, 485 and 487 above, IAL is entitled to reduce its liability under the Atlantic 57 Endorsement to the 2019 Policy to nil (or such other

amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D7 Liberty Delta

D7.1 Policy and Endorsements

489 In Federal Court of Australia proceeding no. NSD602/2023, the applicants allege that, on or about 26 June 2019, Greensill Bank, GCPL and IAL executed and entered into Policy 5369, with each of GCPL and Greensill Bank being an Insured, and IAL as Insurer.

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD602/2023 dated 11 June 2025 at paragraphs 66A, 67 and 68.

490 On or around that same date, the applicants allege that Liberty House Group Pte. Ltd (**Liberty House**) and each of:

(a) Liberty Galati & Skopje Limited (**Galati**);

(b) Liberty Ostrava Limited (**Ostrava**);

(c) Liberty Liege Limited (**Liege**); and

(d) Liberty Dudelange Limited (**Dudelange**),

(together, the **Delta HoldCos**), were endorsed as Customers under Policy 5369 by way of Customer Endorsements No. 1 - 4 dated 25 June 2019 (the **Delta HoldCo Customer Endorsements**).

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD602/2023 dated 11 June 2025 at paragraph 165.

491 During the Policy Period of Policy 5369, the applicants further allege that various other endorsements to Policy 5369 were executed by BCC, including:

(a) the Further Delta HoldCo Customer Endorsements;

(b) the Debt Endorsement;

(c) the Limit Endorsement; and

(d) the Account Debtor Endorsements.

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD602/2023 dated 11 June 2025 at paragraphs 168, 170, 176A and 179.

492 The endorsements identified in paragraphs 490 to 491 above are hereafter referred to as the **Liberty Delta Endorsements**.

D7.2 Liberty Delta Misrepresentations

Representations

493 On or around 4 June 2019, Lex Greensill attended a meeting with Brereton in relation to 'Project Delta'. Documentation prepared for that meeting described the Liberty Delta facility as financing the acquisition 'of seven European steel plants from ArcelorMittal' and that 'Greensill are looking to provide financing for the plants through 5-6 future receivables facilities'.

Particulars

Email from Lex Greensill to Daniel Shuttleworth (Chief of Staff to the CEO of GCUK), with the subject 'Printing for BCC', dated 4 June 2019 (GCU.0004.0026.9623), and its attachment entitled 'Delta Background for BCC 040619.docx' (GCU.0004.0026.9624).

494 On or around 20 June 2019, Lex Greensill wrote to Brereton in relation to 'Project Delta', which he described as 'Liberty's acquisition of some of ArcelorMittal's European plants'. By that email, GCUK requested that BCC provide insurance cover for certain risks associated with an accounts receivable financing program that GCUK planned to offer the Delta HoldCos (the **Liberty Delta Risk**).

Particulars

Email from Lex Greensill to Greg Brereton, with the subject 'Project Delta', dated 20 June 2019 (BCC.0001.0001.2995).

495 As part of this request, GCUK conveyed to BCC, among other matters, that:

(a) the financing arrangement to be put in place between Greensill and the Delta HoldCos was, in effect, 'a series of working capital facilities';

(b) the purpose of these working capital facilities, and the funds to be advanced to the Delta HoldCos, was to finance 'Liberty [House]'s acquisition of some of ArcelorMittal's European plants', being:

(i) Liège Steel Industry SA;

(ii) ArcelorMittal Dudelange S.A;

(iii) ArcelorMittal Ostrava a.s;

(iv) ArcelorMittal Galati S.A; and

(v) ArcelorMittal Skopje CRM,

(collectively, the **Delta OpCos**);

(c) the transaction structure would involve Greensill remitting funds to each of the Delta HoldCos to allow them to acquire the Delta OpCos, and receiving in exchange 'security over the shares in the targets and [Delta] Holdcos' and a 'negative pledge from the targets in respect of their dealings in their receivables'. Greensill would also take guarantees from the Delta HoldCos and from Liberty House, but not from the targets themselves;

(d) the working capital facilities to be put in place would reflect, at least in part, 'those you [BCC] have previously seen with Liberty Primary and Speciality Steel';

(e) Greensill would be 'funding [the Delta HoldCos] against future accounts receivable to start with', however it was 'expected the facilities will switch to normal RPA [receivables purchase agreement] terms in due course', and on that basis Greensill considered the arrangement to fit within 'the familiar AR [accounts receivable] type debt endorsement';

(f) the proposed facility limit was EUR2 billion, comprising:

(i) EUR700 million in respect of the Ostrava plant;

(ii) EUR700 million in respect of the Galati plant;

(iii) EUR300 million in respect of the Liege Steel plant;

(iv) EUR300 million in respect of the Dudelange plant; and

(g) the maximum tenor for accounts receivable purchased by Greensill under the facilities would be 180 days.

496 An attachment to Lex Greensill's abovementioned email was an Excel spreadsheet setting out, by reference to each of the Delta OpCos, a list of their account debtors. This document was described in the covering email as a 'list of debtors per facility'. In providing this information, GCUK represented to BCC that:

(a) the identity of the Delta OpCo's customers was relevant to the risk; and

(b) there were already (or alternatively, would be) genuine accounts receivable owed to the Delta OpCos and insured under Policy 5369.

497 In the premises of paragraphs 493 to 496 above, GCUK represented that:

(a) the primary purpose of the facilities was to finance the acquisition by Liberty House, as part of the GFG alliance, of the Delta OpCos;

(b) the facilities were a short term 'working capital facility';

(c) the maximum tenor for accounts receivable purchased by Greensill under the facilities would be 180 days;

(d) the facilities were of a 'familiar' type, and reflected financing arrangements that BCC had 'previously seen'; and

(e) the funding provided by Greensill would be secured against genuine 'future receivables' that Greensill intended to require would be owed by preexisting account debtors of the Delta OpCos,

(the **Liberty Delta Misrepresentations**).

498 The Liberty Delta Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 22, 23, 29 and 30 above.

499 On or around 23 June 2019, and apparently further to a discussion between (at least) Lex Greensill and Brereton on or around 21 June 2019, Brereton purported to agree to provide cover in relation to the Liberty Delta Risk.

Particulars

Email from Brereton to Edward Smith of Marsh and John Whelan (Deputy General Counsel) of GCUK, copying Lex Greensill, with the subject 'Project Delta', dated 23 June 2019 (BCC.0001.0002.3482).

500 On or around 25 June 2019, Brereton returned to Marsh an executed copy of Policy 5369, with a facility limit of EUR2.2 billion, and separately, a copy of the Delta HoldCo Customer Endorsements.

Particulars

Email from Brereton to Edward Smith and John Whelan, with the subject 'RE: Project Delta', dated 25 June 2019 (BCC.0001.0002.3488).

Further email from Brereton to Edward Smith and John Whelan, with the subject 'RE: Project Delta', dated 25 June 2019 (MAR.0004.0002.5721).

501 In the period following 25 June 2019, the balance of the Liberty Delta Endorsements were executed by BCC and provided to Marsh, in order to continue to extend cover for the Liberty Delta Risk.

502 At the same time that it was seeking the balance of the Liberty Delta Endorsements, GCUK (directly and/or through its broker Marsh) provided Brereton with spreadsheets in the same format as those described at paragraph 496 above, identifying proposed account debtors with a view to increasing the insured limits for those account debtors under Policy 5369. In providing this information, GCUK represented to BCC that:

(a) the identity of the Delta OpCo's customers was relevant to the risk; and

(b) there were already (or alternatively, would be) genuine accounts receivable owed to the Delta OpCo and insured under Policy 5369.

Particulars

Email from Craig Pinnington (Senior Credit Analyst) of GCUK to Brereton, with the subject 'Liberty Project Delta Named account debtor insurance requests' dated 5 July 2019 (AGB.0002.0001.3383, AGB.0002.0001.3384, AGB.0002.0001.3414)

Email from Ewan Berkemeier to Brereton, with the subject 'Greensill Urgent Items', dated 18 July 2019 (AGB.0002.0001.3413, BCC.0001.0002.3488).

Email from Henry Middleditch of GCUK to Brereton with the subject 'Delta_Insurance Increases' dated 12 August 2019 (GCU.0009.0010.8508; GCU.0009.0010.8509).

Email from Craig Pinnington of GCUK to Brereton with the subject 'Delta_Insurance Increases' dated 16 August 2019 (GBA.0004.0025.4399)

Email from Craig Pinnington to Brereton with the subject 'Liberty Delta- additional account debtor requests' dated 4 November 2019 (AGB.0002.0001.3477, AGB.0002.0001.3478).

Email from Craig Pinnington to Brereton with the subject 'Liberty Delta- additional account debtor requests' dated 9 November 2019 (AGB.0003.0002.2743; AGB.0003.0002.2744; AGB.0003.0002.2745).

Email from Craig Pinnington to Brereton with the subject 'RE: Liberty delta – additional account debtor requests' dated 13 November 2019 (AGB.0002.0001.3481; AGB.0002.0001.3482).

503 In the premises of paragraph 502 above, GCUK represented to BCC that the funding provided by Greensill would be secured against genuine 'future receivables' that

Greensill intended to require would be owed by pre-existing account debtors of the Delta OpCos (the **Further Liberty Delta Misrepresentations**).

Representations were misleading

504 The Liberty Delta Misrepresentations were false and/or misleading because, in respect of the representation set out in paragraph 497(a) above, a substantial proportion of the funds advanced under the facility were in fact proposed to be used for purposes other than the acquisition of the Delta OpCos, and Liberty House (or, alternatively, one or more GFG companies) in fact used those funds for those other purposes.

Particulars

The acquisition price for the Delta OpCos (ie, EUR740 million) was less than half the amount advanced by GCUK to SSUK (ie, approximately EUR2.18 billion). Liberty House ultimately paid only EUR600 million of the acquisition price to ArcelorMittal Holdings AG, and continues to be pursued through the UK and Singaporean courts for the outstanding EUR140 million of the acquisition price.

See orders made by the High Court of Justice in England and Wales in ArcelorMittal Holdings AG v Liberty House Group Pte Limited & Ors (CL-2023-000080), 24 February 2023; M Miner, ArcelorMittal Takes Legal Action Against Liberty Steel Over Unpaid Debt (9 November 2023): https://oilprice.com/Metals/Commodities/ArcelorMittal-Takes-Legal-Action-Against-Liberty-Steel-Over-Unpaid-Debt.html#:~:text=ArcelorMittal%20Takes%20Legal%20Action%20Against%20Liberty%20Steel%20Over%20Unpaid%20Debt,-By%20Metal%20Miner&text=ArcelorMittal%20has%20obtained%20a%20court,which%20dates%20back%20to%202019 (accessed on 25 October 2024).

See the judgment of the General Division of the High Court of Singapore in *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 (21 April 2025). In which, the Court ordered that Liberty House be placed under judicial management.

It may be inferred that a significant proportion of the funds GCUK proposed to advance, and did advance, were used to repay existing debts owed by GFG companies to GAM from the fact that:

(a) in or around April 2019, GAM announced that GFG had agreed to repurchase all Liberty Industries PPA Ltd bonds (being, bonds secured by GFG's biofuel generators and referred to as 'Little Red Boxes' (the **LRB Bonds**)) held by GAM at the value at which they were purchased: https://www.reuters.com/article/world/exclusive-gam-whistle-blower-

concerns-focused-on-bonds-sold-by-metals-tycoon-idUSKCN1S40UA/ (accessed on 25 October 2024);

(b) in 2017, GAM had purchased more than GBP550 million worth of LRB Bonds: https://www.reuters.com/article/world/exclusive-gam-whistle-blower-concerns-focused-on-bonds-sold-by-metals-tycoon-idUSKCN1S40UA/ (accessed on 25 October 2024);

(c) on 30 June 2019, the sale of the Delta OpCos completed for EUR740 million, with EUR610 million of that amount having been transferred from Liberty House to ArcelorMittal S.A. on 28 June 2019: ArcelorMittal 2019 Annual Report, https://corporate-media.arcelormittal.com/media/arflayy2/2019-parent-company-statutory-financial-statements.pdf (accessed on 25 October 2024);

(d) on or around 12 July 2019, SSUK submitted, and GCUK accepted, two drawdown files totalling approximately EUR1,594.5 million (sufficient both to fund the acquisition of the Delta OpCos and repurchase the LRB Bonds) (IAL.500.002.2662 and IAL.500.002.2667); and

(e) on or around 15 July 2019, the very next working day following SSUK's 12 July 2019 drawdown requests, GFG repurchased from GAM approximately GBP614 million worth of LRB Bonds (AGB.0003.0002.2590): 'How Sanjeev Gupta's empire is fuelled by opaque funding' (afr.com) (accessed on 25 October 2024) and 'Exclusive: GAM whistle blower concerns focused on bonds sold by metals tycoon | Reuters'_(accessed on 25 October 2024).

That a significant proportion of the funds were used to repay existing debts owed by GFG companies to GAM is supported by the following contemporaneous correspondence:

(a) Email from Henry Middleditch (Vice President) of GCUK to Myrjam Tschoeke of GCUK dated 4 June 2019, titled 'RE: Delta' (GCU.0004.0026.9661), in which Mr Middleditch states:

'The proposed project aims to achieve the following:

1. Enable the acquisition outlined below

2. Enable Liberty to pay down outstanding LRB from the proceeds

3. Consolidate GFG AR programmes in the long term.

There are three proposed stages to the project:

1. Future receivables facilities to enable points 1 & 2 above

2. Shift facilities to True Sale AR and reduce leverage

3. Exit: capital market investment/IPO (2 year horizon)'

(b) A Greensill Credit Application Report dated 20 June 2019 stated that the Liberty Delta facility would 'form part of the wider GFG strategy including paying down the LRB Facility with Liberty purchasing the outstanding notes directly from GAM and extinguishing them', and identified 'paydown of LRB' as one of the intended uses of the funds (AGB.0003.0001.5405 on page 6). That report listed Lex Greensill as the Relationship Owner (page 2) and was executed by Craig Pinnington (Senior Credit Analyst) of GCUK.

(c) On or around 21 June 2019, a Greensill Credit Committee meeting occurred. The minutes of that meeting state that 'Lex presented', suggesting that Lex Greensill had direct involvement in the establishment and placing of the Liberty Delta facility. The minutes of that meeting summarised the purpose of the Liberty Delta facility as follows (AGB.0003.0002.4066):

> 'Use of funds is for: the purchase price of the assets from Arcelor Mittal; lock box created to cover Capex of business for year $100m; clear arrearages between Liberty Group and Greensill; working capital for Delta group; and repurchase of LRB notes held by GAM at original price, which is of strategic importance
>
> Long run exit strategy for repayment is for this business to be IPO'd in Europe in c 2 years, potentially also including the iron ore and coal businesses from Australia. Have achieved 2 year timeframe within Australian business. Will also raise term debt at that time to repay our facility in full'.

(d) Emails between Debora Santosa and Ilkka Tales of GCUK on 3 July 2019 in which Ms Santosa states (GCU.0009.0010.0779): 'Project Delta – Large facility (EUR 900m) to allow them to do acquisitions in Romania, Italy, Luxembourg, etc…. part of the proceeds will be used to pay down other facilities (but not any of the Australian ones). Most likely LIB and Dunkirk (?) which are now in GAM'.

(e) Emails between Patrick Davis, Lex Greensill and others at GCUK dated 9 July 2019 in which Patrick Davis states (GCU.0007.0002.7351): 'my understanding of the week is as follows; … 4. **Delta** a. issuance Friday to GB (Assignment)12/07 i. Amount TBD 5. FX Swaps (EUR/AUD – GBP) to be fixed 14:4512/07 for LRB repurchase. 6. LRB Repurchase 15/07'.

(f) Emails between Mirja Knoechelmann, Jim Tapper, Ann Jones, Steven Hollands, Barnaby Lynch, Henry Middleditch, John Whelan, Al Eadie of

GCUK on 9 July 2019 in which Ms Knoechelman states (GCU.0009.0010.2315):

'We will raise the cash for the GBP 614.1m payment to GAM from the drawdown proceeds from the Liberty facility for Delta

Drawdown proceeds to be used to make payment to GAM will be in Euro'.

(g) Emails between Mirja Knoechelmann, Steven Hollands, Ann Jones, Jim Tapper, Al Eadie, Barnaby Lynch, Henry Middleditch, Tariq Akrouk, Zara Hayes and Rebecca Rogers of GCUK on 15 July 2019 in which Mirja Knoechelmann states (GCU.0009.0010.3778): 'Now that respective payments in a total amount of GBP 614,102,336.19 have been made and received by GAM could you confirm if there is any excess cash to be sent back to Liberty according to the Delta draw down requests (please see Delta drawdown amounts below)?'.

(h) A subsequent Greensill Credit Application Report dated 11 November 2019 (AGB.0003.0001.5404) confirmed this purpose (page 19) as follows:

'Re-financing LRB notes:

1. This facility enabled GFG to repurchase LRB notes from GAM which were receiving negative media attention. These are currently held by Liberty and continue to be serviced.

2. This has now been achieved and will not be impacted by the proposed facility increase.

3. However, it is being re-highlighted here as a considerable amount of the initial draw down was used to facilitate this hence their need for the increase.'

Page 4 of this report indicates that the purpose of the additional EUR200m advanced to Liberty Delta was to enable Liberty to service the facility, stating: 'The acquisition and its transition has been smooth. This increase will provide an incremental net notional of EUR 200mm that can be drawn against, enabling Liberty to service the facility: EUR 150m is being held aside for interest payments throughout FY2020, maintains a cash balance of 50mm as an operational minimum…'.

This report listed Lex Greensill as being on the 'Facility Team' (page 1), and was executed by Craig Pinnington.

(i) Bank statements for GCUK Citibank Accounts numbered 17057393 and 8014056663 are to be relied upon (noting that those statements are presently subject to a claim for confidentiality made by GCUK).

505 The Liberty Delta Misrepresentations were false and/or misleading because, in respect of the representations set out in paragraphs 497(b) and 497(c) above:

(a) the facility operated, in substance, as a form of term loan or long-term enterprise finance lending, first on an interest only basis (from 27 June 2019 until 30 April 2020), and then on an interest-free basis (from 30 April 2020 onwards);

Particulars

The effect of clause 1 of the side letters entered into between GCUK and each of the Delta HoldCos on or around 27 June 2019 (**Delta IPA Side Letters**) was that the full amount of the initial Drawdown Amount was loaned by GCUK at the direction of each Delta HoldCo on a term basis without any reference or regard to amounts actually owed to the Acquired Group (as defined in the Delta IPA Side Letters) by any Account Debtors.

Between 27 June 2019 and 27 April 2020, GCUK advanced to the Delta HoldCos amounts that were discounted from the Settlement Amount of each IPU to reflect an annualised interest rate of 4.25% over the tenor of the IPU. Expert Report of Mr Greg Halm dated 17 December 2025 at [25].

From 1 May 2020 until at least 8 January 2021, GCUK did not collect interest from the Delta HoldCos. Expert Report of Mr Greg Halm dated 17 December 2025 at [27].

The effect of clauses 3 and 4 of the IPA Supplementary Letters from 20 May 2020 was as follows:

(a) the Delta HoldCos were not required to submit Drawdown Files to maintain funding under the Delta IPAs;

(b) the Delta IPAs were operated in fact as a term loan without any reference or regard to amounts actually owed by Account Debtors to the Delta OpCos; and

(c) the Delta HoldCos had no obligation to repay the amounts owing by them to GCUK on each Maturity Date, as any obligation to do so was discharged by the simultaneous drawdown to occur automatically on each such date (ie, the Revolving Drawdown).

The effect of clauses 5 and 6 of the IPA Supplementary Letters from 20 May 2020 was as follows:

(a) the Delta HoldCos were not required to pay interest on funding provided by GCUK under the Delta IPAs; and

(b) an amount equal to LIBOR plus 4.25% per annum applied to the Repayment Amount was instead payable as a Facility Fee on written demand by GCUK.

Each of the IPA Supplementary Letters was signed by Jonathan Lane (General Counsel) of GCUK.

GCUK's practice of revolving drawdowns the subject of the Liberty Delta facilities from 1 May 2020, without the Delta HoldCos in fact paying any amount to GCUK, is evident from the IPA Supplementary Letters and is further pleaded at Section C.5 of Annexure B to this defence.

(b) the facility was provided to Liberty House on the agreement and understanding, between Lex Greensill (on behalf of the Greensill Group) and Sanjeev Gupta (on behalf of Liberty House, and the Delta HoldCos) that the funding advanced under the facility could not be withdrawn or required to be repaid to Greensill other than by Greensill giving at least three years' notice, regardless of the terms of the written contractual documents purporting to regulate the facility (including the Delta IPAs and related documents); and

Particulars

Email from Myrjam Tschoeke of GCUK to Tony Wonfor and Henry Middleditch of GCUK dated 4 June 2019, titled 'RE: Delta' (GCU.0004.0026.9661), in which Ms Tschoeke states that, if the transaction is to be 'a full corporate loan (as the IPA implies)', Greensill should have a '[f]ull financing plan including Sources and Uses, cashflow, etc. and analysis of the underlying assets as we will only be repaid from each asset independently'. Ms Tschoeke states that she would like to discuss a 'true AR deal' which would involve 'Collection into our account, no sweep mechanism'.

Greensill's Credit Application Report dated 20 June 2019 (AGB.0003.0001.5405), which at page 10 indicates that Liberty House and Greensill intended that Liberty would not make repayments when maturity dates transpired. Rather, 'Liberty will enter into an agreement up front which allows Greensill to automatically issue these rolls without needing to re-execute further agreements relating to that portfolio'.

The report listed Lex Greensill as the Relationship Owner (page 2) and was executed by Craig Pinnington.

Minutes of the Greensill Credit Committee Meeting on 21 June 2019 (GCU.0007.0002.7111), which at page 8 indicate that Greensill had a '[l]ong run exit strategy for repayment' at the time of an IPO of the Delta business, circa two

years following advancing the funds, and that Liberty will raise term debt at that time to repay the facility in full.

Greensill document titled 'Ostrava – EGAP: Working Capital Facility Credit Paper' dated 12 July 2020 (GBA.0005.0003.8771), which states on page 1: 'The Holdco Facilities carry an interest cost of roughly EUR90mm p.a (EUR 35mm of which is from Ostrava), with daily maturities and reissuances. Interest costs have been held as payment in kind (PIK) by Greensill for the last few months in light of COVID, standing today September 4 2020…' and includes multiple references to a tenor of three years.

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

(a) Lex Greensill gave repeated oral commitments that GFG Alliance's funding (which was understood to encompass all of the facilities that had been provided by Greensill to companies within GFG) could not be withdrawn without at 'least three years' warning and notice', whatever the written terms might state, and would often say to Sanjeev Gupta words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' [at 33-55]; and

(b) Lex Greensill also indicated to him that the financing provided by Greensill to GFG was long term financing, and the arrangement was referred to by both Lex Greensill and Sanjeev Gupta as 'evergreen' or 'perpetual' [at 34].

The letter sent for and on behalf of the Delta HoldCos to Grant Thornton UK LLP dated 7 April 2021 (GCU.0011.0001.0637) which states at paragraph 3: 'It was agreed and understood as between GCUK and the delta companies that GCUK was providing long term committed financing facilities to the Delta Companies'. The letter quotes a letter sent by GCUK to Baker Tilly MKM in connection with its consolidated statement, in which GCUK states (emphasis added): '… we wrote to each of the [Delta] companies confirming that **we will provide such companies with not less than 36 months' notice if we intend to terminate such agreements… in our opinion, such debts can be shown as non-current** in the consolidated financial statements of the Liberty Steel Group'.

Further particulars may be provided after completion of discovery by GCUK.

(c) the facility was used, in practice, for purposes that went substantially beyond those of a typical working capital facility, including to enable Liberty House, or other members of the GFG Companies, to make interest or other payments on pre-existing loans.

Particulars

(a) A Greensill document titled 'Greensill Capital – Credit Committee Meeting – MINUTES – 21 June 2019' dated 26 June 2019 (AGB.0003.0002.4066) which includes comments from Lex Greensill's presentation at Greensill's Credit Committee Meeting outlining the following purposes of the Facility:

(i) The purchase price of the assets from Arcelor Mittal;

(ii) Lock box created to cover Capex of business for year $100m;

(iii) Clear arrearages between Liberty Group and Greensill;

(iv) Working capital for Delta group; and

(v) Repurchase of LRB notes held by GAM at original price, which is of strategic importance,

(b) By 28 June 2019, the GFG Companies owed GCUK around USD56m in missed ‘interest’ payments that they had failed to pay on debts owing to GCUK by companies including Liberty Commodities, Liberty House, and Simec, and which payments GCUK had paid to the relevant trust account or collection account from its own balance sheet (GCU.0009.0010.0591).

(c) Greensill's Credit Application Report dated 11 November 2019 (AGB.0003.0001.5404) considers a EUR200 million increase in the size of the Liberty Delta facility. It notes that:

'This increase will provide an incremental net notional of EUR 200mm that can be drawn against, enabling Liberty to:

Service the facility: EUR 150mm is being held aside for interest payments throughout FY2020'.

(d) This report listed Lex Greensill as being on the 'Facility Team' (page 1), and was executed by Craig Pinnington, Senior Credit Analyst, GCUK.

Further particulars may be provided after completion of discovery by GCUK.

506 The Liberty Delta Misrepresentations were false and/or misleading because, in respect of the representations set out in paragraphs 497(d) and 497(e) above:

(a) in the premises of the Future Accounts Receivable Representation (referred to at paragraph 36 above), the concept of 'future receivables' was used by GCUK, and understood by BCC, to mean receivables arising under existing sales contracts with predefined customers, as verified and audited on a periodic basis;

(b) in actual fact, GCUK had no intention to require that the account debtors would be pre-existing customers of the Delta OpCos; and

Particulars

A vast majority of the GCUK Purchased Receivables set out at Annexure A to the applicants' Fifth Amended Statement of Claim dated 11 June 2025 have a corresponding purchased receivable value of EUR750,000 (ie, 2,113 line items or 96% of the total). It is inherently implausible that such a level of consistency would be achieved in amounts expected to be owed by Account Debtors referable to real world transactions.

It may be inferred that the amount of EUR750,000 was selected to avoid the operation of §18 of the German Banking Act, which required Greensill Bank to obtain the annual accounts of a borrower prior to granting a credit facility exceeding EUR750,000 unless an exception to the requirement was available. Further, Greensill Bank would automatically approve Account Debtors with amounts less than EUR750,000 (GBA.0004.0004.5845). The relevance of the EUR 750,000 is described in a report prepared by KPMG Germany, following its audit into the Greensill Policies, dated 11 December 2020 which states words to the effect of (GBA.0004.0029.8066):

"*Depending on the nature of the financing and the risk involved, two votes are generally required for credit decisions at the bank. Credit decisions are all decisions that increase the bank's risk position, such as granting credit, extensions, increases, overdrafts, etc. The bank has defined a risk relevance limit of EUR 750,000. For credit transactions (regardless of maturity) up to this limit, the bank waives the preparation of an individual credit decision including a vote. Thus, general approval is granted for credit lines up to an amount of EUR 750,000 with corresponding 100% insurance coverage*."

Email from Henry Middleditch of GCUK to Patrick Davis and others of GCUK dated 3 June 2019, titled 'RE: Questions & Next Steps: Project Delta' (GCU.0010.0008.9696), in which Mr Middleditch states in response to a question about investor requirements, 'GB ARE BRIEFED. THEIR DCL FOR DEBTORS IS EUR 750K (90 DAYS). WE ARE SEPARATELY REQUESTING INSURANCE DCLS OF 2MM. WE WILL AIM TO DO AS MUCH AS POSSIBLE BELOW DCLS OF 750 TO REDUCE CREDIT LIFT AT GB AND RELIANCE ON AM TO PROVIDE THE DATA.'

It may also be inferred that GCUK would split amounts greater than EUR750,000 expected to be owed by a single Account Debtor across multiple, EUR750,000 transactions, as evidenced by:

(a) Email from Tariq Akrouk of GCUK to Peter Mills of Wyelands Capital dated 18 November 2019, titled 'RE: Delta Trade 7' (AGB.0003.0003.5356), in which Mr Akrouk states: 'Please note that some of the larger names were broken down into 750k maturities as it eases things operationally, while also allowing maturity amounts to be more spread out for you'; and

(b) Emails between Mark Kavanagh (Head of Product Risk) of GCUK and Britta Pein-Willems of Greensill Bank dated 23 January 2020 titled 'WG: Max Invoice values on some Liberty Account debtors', and forwarded to Michel Meylacq of GCUK (GBA.0004.0004.5845), in which Mr Kavanagh asks: 'My question would be what if an AD had 2 invoices, both for EUR 750k each. This would mean the AD has EUR 1.5M. Does this trigger any different onboarding procedure. If I read the below onboarding document that you have previously sent me I would have to do much more due diligence in your shoes.' In response, Ms Pein-Willems states: 'As long as the tenor is < 90 days (even if we cash out EUR 125mm to you) and all 3 of the following requirements of Sec. 21,4 German Banking Act are fulfilled, we are allowed to refrain from checking the financials of the customer/group.'

Further, the alleged defaults forming the basis of the Liberty Delta claim submitted on 28 February 2022 occurred within a very short period of time. Of the defaults of 2,526 account debtors claimed under the Claim Form, the first default is said to have occurred on 2 March 2021 and the final default on 28 June 2021. It is inherently implausible that such a large number of defaults of genuine obligors operating in several different countries would occur within a period of less than four months. See Appendix 1 to the Claim Form submitted by Greensill Bank under Policy 5369 on 28 February 2022 (IAL.500.002.2413 and IAL.500.002.2887)

Many if not all of the account debtors were not verified by GCUK or confirmed by audit to be existing customers of the Delta OpCos or ever to have been existing customers of the Delta OpCos, as evidenced by:

(a) Emails between Tom Kennedy, Henry Middleditch and Tariq Akrouk of GCUK, dated 14 and 15 June 2019, titled 'RE: Project Delta structure' (GCU.0007.0002.6811), in which Mr Kennedy states: 'Greensill will neither document nor have visibility of the assignment/purchase arrangements between the target and the HoldCo that will transfer the receivables to HoldCo which will then allow HoldCo to sell them to Greensill, but Greensill will rely on this being done intergroup. Each Holdco will then use the funds it receives for the sale of the receivables to purchase the relevant target. Sufficient quantum will need to be raised by the Holdcos from the sale of the receivables on day 1 to allow Liberty to purchase the targets';

(b) The 20 June 2019 Credit Application Report, which stated: 'Detailed credit analysis of individual debtor names [provided by Arcelor Mittal] has not been possible under the timeframe'; and that ArcelorMittal (the seller) told GFG/GCUK that '[customer] default data from mills tracing back to individual customers is not recorded. Above [data] therefore represents a best estimate and does not guarantee 100% accuracy.' (AGB.0003.0001.5405);

(c) Email from Craig Pinnington of GCUK to Henry Middleditch and Tariq Akrouk of GCUK dated 4 July 2019, titled 'Additional account debtors' (GCU.0005.0012.8768), in which Mr Pinnington states: 'Still working through names, reckon I've potential for about €50m increase so far, which isn't stunning. We really need to expand into west and central Europe names if we are really going to get traction in increases';

(d) Email from Henry Middleditch of GCUK to Lex Greensill, Brett Downes (Chief Risk Officer) and Craig Pinnington of GCUK dated 5 July 2019, titled 'RE: Delta: Batch 2 Debtors' (GCU.0004.0027.6719), regarding issues onboarding a list of customers, in which Mr Middleditch states: 'It must be noted that it is not clear whether these are currently fully active customers';

(e) Skype messages between Patrick Davis and Henry Middleditch of GCUK dated 10 July 2019 (GCU.0009.0010.2481), in which Mr Davis asks: 'how many names are we thinking?' and 'are we backsolving from 750k again?', to which Mr Middleditch replies: 'yup' 'we need c.1000' 'to get to the 800mm';

(f) Email from Tariq Akrouk of GCUK to Britta Pein-Willems and Markus Adler of Greensill Bank dated 15 July 2019 titled 'Delta Trade 3' which states: 'I hope all is well. I wanted to let you know that we are looking to do a third trade this coming Thursday replicating what we did for the second trade last week; however this one will only be around ~270 names…From the list that Markus sent to Henry last week there were 153 names 'accepted, additional' names. There are also 73 names that were 'previously accepted' for Ostrava that we have included in the list attached. Further to this I was able to find addresses for almost all the names that were previously declined under the category 'declined, no full address'. If you could please review these names once more and confirm that they are accepted, that would be greatly appreciated… However, we will need at least a further 20 names from the 'Declined, possible group structure' category. What can we do today and tomorrow to get have these names included and accepted? As per usual, our team is at your disposal if we need to dig up compliance reports to locate the global ultimate parent or other info.' (GCU.0005.0013.4197);

(g) The 11 November 2019 Credit Application Report, which stated: 'The facility was set up in such a way where all Liberty customer across the local opco entities were provided EUR 750K (net notional) limits. In subsequent rolls, larger limits have been provided against customers that have larger AR balances and anticipated future AR. This was in part the result of not having full transparency on the debtor books at the point of acquisition.' and 'It is understood that at this moment, there will be a mismatch between some of the customers in the facility and those actually trading. The plan is rectify this, but it will not be imminent due to operational complexities.' (AGB.0003.0001.5404);

(h) Email from Britta Pein-Willems of Greensill Bank to Tariq Akrouk, Patrick Davis and Craig Pinnington of GCUK, dated 15 November 2019, titled 'RE: URGENT: RE: Same Day Direct Sales Offers 22/11/2019' (GBA.0004.0009.0513), which states: 'We have an issue with one of our Delta AD's: According to the German Handelsregister (register of companies) our customer Krohm Stahl International GmbH went into insolvency in 2010 … As this is one of our "Batch customers" we haven't been aware of the insolvency up to know [sic]';

(i) Email from Britta Pein-Willems of Greensill Bank to Mark Kavanagh of GCUK dated 23 January 2020, titled 'Max Invoice values on some Liberty Account debtors' (GBA.0004.0004.5845), which states: 'Regarding Delta it is also important to know, that we don't have to work out a Credit Application up to EUR 750k! We have implemented a kind of automatically granted approval for customers below EUR 750k. This speeds up the process, especially in cases like Delta where we had to onboard and approve 1,800 customers in 3 weeks!';

(j) Emails between Claudia Melcher and Julia Michaelis of Greensill Bank and Marty McGovern, Charles Mensah, Craig Pinnington, Kelly Cliffe, Henry Middleditch and Tariq Akrouk of GCUK, between 13 March 2020 and 3 April 2020, titled 'RE: Shareholder Structure rff - Rohr-Flansch- Fitting Handels GmbH (Delta6)' (GBA.0004.0026.3632), in which:

    (i) Mr Pinnington states: 'Guessing from the title it is an account debtor under the Liberty Delta program. We wouldn't have done full DD on them, just established ownership through a basic D&B check'; and

    (ii) Ms Cliffe states: 'As Greensill do not have a business relationship with AR Account Debtor's [sic] they do not fall under the requirement for us to conduct AML checks and we are therefore unable to assist…';

(k) Email from Divya Eapen to Lindsey Sherrill of GCUK dated 24 January 2021, titled 'Information', attaching 'Checklist.xlsx' amongst other documents (GCU.0006.0005.2694; GCU.0006.0005.2699) which states: 'GB onboards all names, with analysis carried out on limits above Eur 750k'.

Further particulars may be provided after completion of discovery by GCUK.

(c) GCUK's lending was not based on any assessment of the creditworthiness of any of the account debtors, or the likelihood of such account debtors becoming subject to payment obligations to sellers payable within 180 days of the advance sufficient to support the expected receivables, but was in the nature of long-term enterprise finance lending on an interest only basis largely or wholly unsecured by any actual receivables or expected receivables.

Particulars

This may be inferred from the particulars to paragraph 506(b) above.

Email from Tariq Akrouk of GCUK to Henry Middleditch of GCUK dated 6 June 2019, titled 'Project Delta Call Report 06.06.2019' (GCU.0009.0009.6068), in which it was stated: 'Will be taking all the names in the customer book and putting a limit of EUR 750m against all names to raise up to EUR 910m' and 'the question to GB is between these two files, can you get comfortable with this not being a loan'.

Email from Tariq Akrouk of GCUK to other GCUK personnel, dated 21 June 2019, providing instructions on the 'minimum data' required on account debtors (GCU.0005.0012.1908).

Email from Henry Middleditch of GCUK to Tariq Akrouk of GCUK dated 2 July 2019, titled 'RE: Top 20 Across Facilities' (GCU.0010.0009.3753), regarding due diligence of account debtors, in which Mr Middleditch states: 'Thanks. Looping in Craig [Pinnington]. Context here is that we are looking at names we could feasibly put up to 50mm limits against for the next draw. Need to get GB lined up ASAP so will need to request financials etc.'

Email from Britta Pein-Willems of Greensill Bank to Tariq Akrouk of GCUK dated 11 September 2019, titled 'RE: FW: Delta 5' (GBA.0004.0004.2863), in which Ms Pein-Willems states: 'What we do is to check the D&B report and the internet for general information (what is the customer's core business, does he have access to the money market is the company externally rated, negative information (late payments, financial penalties, worse external ratings, declaration in lieu of an oath, and so on…) and of course, if there are financials included in the D&B report we have a quick look at it as well. But at the end of the day it's a very, very,

veeeeeery short and superficially analysis. The credit line is insured, yes, so there is no risk. But I (and Helge) wonder whether the insurance company would pay out the money to us in an event of default with knowledge that we don't do an in-depth-analysis of the customer. I think we will (have to) re-work the simplified model soon (we haven't presented it yet to our auditors…) but currently we are working with the above process.'

Email from Tariq Akrouk of GCUK to Markus Adler and Britta Pein-Willems of Greensill Bank dated 15 September 2019, titled 'RE: Delta Trade 3' (GBA.0004.0024.3143), requesting approval for customers, in which Mr Akrouk states: 'However, we will need at least a further 20 names from the 'Declined, possible group structure' category. What can we do today and tomorrow to get have these names included and accepted? As per usual, our team is at your disposal if we need to dig up compliance reports to locate the global ultimate parent or other info.'

Emails between Charles Mensah, Johanna Roberts and Thierry Lassy-Taty of GCUK, copying Ricardo Oliveira of GCUK dated 19 October 2020, titled 'RE: GB DD Request' (GCU.0009.0018.8871).

Further particulars may be provided after completion of discovery by GCUK.

507 The Further Liberty Delta Misrepresentations were false and/or misleading because:

(a) in the premises of the Future Accounts Receivable Representation (referred to at paragraph 36 above), the concept of 'future receivables' was used by GCUK, and understood by BCC, to mean receivables arising under existing sales contracts with predefined customers, as verified and audited on a periodic basis;

(b) in actual fact, GCUK had no intention to require that the account debtors would be pre-existing customers of the Delta OpCos; and

(c) GCUK's lending was not based on any assessment of the creditworthiness of any of the account debtors, or the likelihood of such account debtors becoming subject to payment obligations to sellers payable within 180 days of the advance sufficient to support the expected receivables, but was in the nature of long-term enterprise finance lending on an interest only basis largely or wholly unsecured by any actual receivables or expected receivables

Particulars

IAL relies on the particulars to paragraph 506 above.

Knowledge of falsity of representations

508 Lex Greensill knew the matters set out in paragraph 504 above.

Particulars

On 28 April 2019, Lex Greensill received an email from Brett Downes of GCUK in which he expresses concerns about the broader GFG Group's ability to repay existing debts including those under the SSUK facility and states: 'Lex, I have been over the forecasts and am fine, but this is now really near the end of the line here…This additional A$70m makes it A$200m…Please can we stop this after this draw.…I get financing Arcelor Mittal may be the way out and will support, but be realistic. If this gets up, we are starting to talk EUR2,5bn and that cannot be funded. We have large refinancing risk here.' (GCU.0004.0025.0695)

It can be inferred that Lex Greensill was aware of the contents of the relevant Greensill Credit Application Reports in circumstances where:

(a) Lex Greensill was identified as the Relationship Owner on the face of the Greensill Credit Application Report dated 20 June 2019 (AGB.0003.0001.5405) (page 2);

(b) On 20 June 2019, Craig Pinnington sent Lex Greensill, among others, a draft of the Greensill Credit Application Report dated 20 June 2019 (GCU.0005.0012.0631, GCU.0005.0012.0670);

(c) On 21 June 2019, Henry Middleditch sent Lex Greensill a copy of the Greensill Credit Application Report dated 20 June 2019 (GCU.0005.0012.2273; GCU.0005.0012.2274);

(d) Lex Greensill presented to the Greensill Credit Committee on the Liberty Delta Risk on 21 June 2019 (Minutes of Credit Committee Meeting - AGB.0003.0002.4066);

(e) Lex Greensill was identified as being part of the 'Facility Team' on the face of the Greensill Credit Application Report dated 11 November 2019 (AGB.0003.0001.5404) (page 1); and

(f) Lex Greensill was (alternatively, had recently been) a member of the Greensill Credit Committee (AGB.0003.0002.4066).

On 4 June 2019, Lex Greensill was copied on an email from Henry Middleditch to Myrjam Tschoeke of GCUK, titled 'RE: Delta' (GCU.0004.0026.9661, page 2). In that email, Mr Middleditch described the Liberty Delta project as follows: '[t]he proposed project aims to achieve the following: 1. Enable the acquisitions outlined below 2. Enable Liberty to pay down outstanding LRB from the proceeds 3. Consolidate GFG AR programmes in the long term (i.e. Liberty Commodities)' (GCU.0004.0026.9661, page 2).

On 12 June 2019, Lex Greensill received an email from Brett Downes of GCUK in which he expressed concerns about the Liberty Primary and Commodities

facilities stating: 'Liberty remains a real problem in my mind. They cannot repay any maturities. I am afraid I do not believe they will ever be able to do this. Money is clearly going out somewhere, and we continue to run the slush fund…I am really worried now and can't think of a way out. Delta may not save us here. Where is the money going????' (GCU.0004.0027.1545).

On 21 June 2019, Lex Greensill presented to the Greensill Credit Committee on the Liberty Delta Risk (Minutes of Credit Committee Meeting - AGB.0003.0002.4066). Mr Greensill conveyed to the Greensill Credit Committee that:

(a) the use of the funds was for 'the purchase of the assets from Arcelor Mittal; lock box created to cover Capex of business for year $100m; clear arrearages between Liberty Group and Greensill; working capital for Delta group; and repurchase of LRB notes held by GAM at original price, which is of strategic importance'; and

(b) the facility '[e]nables us to ensure all liberty facilities are regularised and brought into good working order, and to end the GAM publicity'.

On 11 July 2019, Henry Middleditch sent Lex Greensill, among others, an email titled 'Delta: Trade Update', with a 'summary of the Delta trade updates' including that '3. GC makes up the difference for the LRB trade (expected EUR 90) 4. GC spots all or most EUR for GBP to do LRB (c.GBP 620 max/EUR 614 purchase price) 5. GC executes LRB trade as instructed by Liberty - just cash wire payments (not reliant on clearing systems)' (GCU.0005.0013.2571).

The knowledge of Lex Greensill is otherwise to be inferred from his direct involvement in the initial placement of the Liberty Delta Risk, including in the correspondence pleaded at paragraph 494 above, and by Lex Greensill's senior position within Greensill.

Further particulars may be provided after completion of discovery by GCUK.

509 Lex Greensill knew the matters set out in paragraph 505 above.

Particulars

The knowledge of Lex Greensill is evident from the testimony of Sanjeev Gupta to the UK Insolvency and Companies Court as to the statements made to him by Lex Greensill: see particulars to paragraph 505(b) above.

It can be inferred that Lex Greensill was aware of the contents of the relevant Greensill Credit Application Reports; see particulars to paragraph 508 above.

On 4 June 2019, Myrjam Tschoeke of GCUK sent Tony Wonfor and Henry Middleditch of GCUK an email titled 'RE:Delta', copying Lex Greensill, stating that the 'IPA implies' that 'this is a full corporate loan' (GCU.0004.0026.9661).

The Greensill document titled 'Ostrava – EGAP: Working Capital Facility Credit Paper' dated 12 July 2020, which states: '[t]he Holdco Facilities carry an interest cost of roughly EUR90mm p.a (EUR 35mm of which is from Ostrava), with daily maturities and reissuances. Interest costs have been held as payment in kind (PIK) by Greensill for the last few months in light of COVID, standing today September 4 2020…' (GBA.0005.0003.8771, page 1) and refers to a tenor of three years. Lex Greensill is listed as the 'Sponsor' on the document (page 20).

On 5 November 2020, Henry Middleditch sent an email to the GFG MC mailing group and Lex Greensill, titled 'RE: GFG MC Weekly: Actions Required', stating that a quorum of the 'GFG MC' had 'confirmed to remove receivables from security package' in response to the '[q]uery as to whether we should remove receivables from the security package for Ostrava and its subsidiaries given the Holdco facility. Reasons for include taking them off the table for the upcoming capex financing requirement or any other financing protecting our interests in the long run. Reason against is that its contradicts the Delta future receivable structure' (GCU.0006.0003.8760, pages 2-3).

The knowledge of Lex Greensill is otherwise to be inferred from his direct involvement in the initial placement of the Liberty Delta Risk, including in the correspondence pleaded at paragraph 494 above, and by Lex Greensill's senior position within Greensill.

Further particulars pay be provided after completion of discovery by GCUK.

510 Lex Greensill knew the matters set out in paragraph 506 above.

Particulars

(a) The contents of the Greensill Credit Application Report dated 20 June 2019 (AGB.0003.0001.5405). In particular, the Report states: 'Detailed credit analysis of individual debtor names has not been possible under the timeframe but would be required ahead of any incremental increase above the EUR 750k limit'. It can be inferred that Lex Greensill was aware of the contents of this report: see particulars to paragraph 508 above;

(b) On 5 July 2019, Henry Middleditch sent an email to Lex Greensill, titled 'Delta: Batch 2 Debtors' (GCU.0004.0027.6719), stating that 800 account debtor names had been identified for Galati 'with sufficient data such that D&B complete their searches. It must be noted that it is not clear whether these are currently fully active customers. The challenge we have with Galati is that the active customer lists provided only cover the last 12

months and do not appear to be full lists (there were roughly 300 names in total)' and that 'Liberty separately have provided two lists of customers they expect to onboard (100 for Galati and 50 for Ostrava)';

(c) The 'Liberty weekly credit & insurance review' PowerPoint dated 16 July 2019, which stated that: 'whilst full secured RPA position is being sought, GB needs to be taking RPAs not IPA, an undated RPA via SSUK has been proposed, if anything went unpaid the RPA gets signed and the receivables become due to GC, not just the IPA' (GCU.0009.0010.4148, page 11). The PowerPoint was prepared for consideration by Lex Greensill (see email from Craig Pinnington to Brett Downes on 18 July 2019 (GCU.0005.0013.5773; GCU.0005.0013.5775);

(d) On 14 August 2019, Henry Middleditch forwarded to Lex Greensill the email chain 'Delta_Insurance Increases', which included the email particularised at paragraph 502(b) above, noting 'FYI, re our discussion earlier' (GCU.0005.0014.6526);

(e) On 5 November 2020, Henry Middleditch sent an email to the GFG MC mailing group and Lex Greensill, titled 'RE: GFG MC Weekly: Actions Required', stating: 'Liberty have provided debtor names for the 6 businesses during the 1 year since acquisition (c.2400 debtors excluding Magona). Reconciliation with the debtors underlying the Delta facilities has so far matched c.900/2400 debtor names and an estimated EUR 900mm/EUR 2.2bn net notional. Full reconciliation unlikely to be possible against the full quantum and will require considerable reallocation of insurance and credit onboarding at GB. Notably, the original debtor book funded against includes 5 years of customers from the prior owner, ArcelorMittal'. The call notes record that the GFG MC 'viewed to be acceptable under insurance policy' the proposal of '[r]econciling the debtors and reallocating insurance as best as possible' (GCU.0006.0003.8760, p 3); and

(f) The contents of the Greensill Credit Application Report dated 11 November 2019 (AGB.0003.0001.5404). It can be inferred that Lex Greensill was aware of the contents of this report: see particulars to paragraph 508 above.

The knowledge of Lex Greensill is otherwise to be inferred from his direct involvement in the initial placement of the Liberty Delta Risk, including in the correspondence pleaded at paragraph 494 above, and by Lex Greensill's senior position within Greensill.

Further particulars may be provided after completion of discovery by GCUK.

511 Lex Greensill knew of the matters set out in paragraph 507 above.

Particulars

IAL refers to the particulars to paragraph 510 above.

512 The knowledge of Lex Greensill of the matters set out in paragraphs 504 to 507 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

513 The knowledge of Lex Greensill of the matters set out in paragraphs 504 to 507 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

Knowledge of materiality of representations

514 Each of the matters referred to in paragraphs 504 to 507 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty Delta Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge of the materiality of these representations is to be inferred from his decision to convey these matters to Brereton in advance of the placement of the Liberty Delta Risk.

It is also to be inferred from the following matters:

(a) On 18 June 2019, Myrjam Tschoeke of GCUK sent an email to Brett Downes and Craig Pinnington of GCUK, titled 'Re: Project Delta structure' (GCU.0013.0005.9476), stating that she 'took the liberty (!) to reach out to Lex and to voice my below concerns', including that:

(i) she was 'very concerned that the bank is being asked to book an IPA as an RPA under insurance from Day one. How can we state this is an IPA vis a vis regulators but treat it like an RPA in our own captive ? Disclosure to insurers and to the bank is key'; and

(ii) '[w]e are deeply deeply subordinated as there is no opco upstream guarantee. The only way out of breaches against our negative pledge is to call an EoD'.

(b) Ms Tschoeke and Lex Greensill exchanged emails on the same date to arrange a call (GCU.0005.0012.0085).

(c) The Minutes of the Greensill Credit Committee Meeting on 21 June 2019 recording Lex Greensill's presentation of the Liberty Delta Risk (AGB.0003.0002.4066). In particular, the minutes record Mr Greensill stating that the deal would be structured initially as an IPA, the proposal being to'[c]onvert the facility after an appropriate period, probably 30 days, to a receivables purchase facility which provides better form of protection'.

(d) On 5 November 2020, Henry Middleditch sent an email to the GFG MC mailing group and Lex Greensill, titled 'RE: GFG MC Weekly: Actions Required', stating that a quorum of the 'GFG MC' had 'confirmed to give up first ranking share pledge for either second ranking and/or bidco share pledge in Holdco' in response to the following action item for 'Galati': 'Replacing first ranking share pledge held by GC EUR 815mm Holdco Facility with a second ranking share pledge (or first ranking share pledge Bidco's shares in the Holdco) to facilitate Eur 180mm Exim-backed facilities at Opco. This would leave Holdco facility heavily subordinated. Liberty have agreed to a 25% reduction in the Holdco facility, although details provided. Further discussion advised between the GFG MC and Legal on the insurance disclosure requirements' (GCU.0006.0003.8760, page 2).

Lex Greensill's knowledge is further to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Liberty Delta being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

(c) alternatively to subparagraphs (a) and (b) above, which a reasonable person I the position of Lex Greensill could be expected to know were material to the decision whether to extend insurance cover in respect of the Liberty Delta Risk.

515 The knowledge of Lex Greensill of the matters set out in paragraph 514 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

516 The knowledge of Lex Greensill of the matters set out in paragraph 514 is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

Misrepresentations were fraudulent

517 In the premises of paragraphs 508 to 516 above:

(a) Greensill misrepresented the Liberty Delta Risk;

(b) the misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Liberty Delta Risk.

518 If Greensill had not made the Liberty Delta Misrepresentations or the Further Liberty Delta Misrepresentations, insurance cover would not have been issued in respect of the Liberty Delta Risk at all or, in the alternative, on the same terms in which it purportedly was written.

519 By reason of the matters pleaded in paragraphs 504 to 518 above, IAL is entitled to avoid Policy 5369 and each of the Liberty Delta Endorsements.

Innocent misrepresentation

520 In the alternative to the matters pleaded in paragraphs 517 to 519 above, by reason of the matters pleaded in paragraphs 504 to 506 and 518 above, IAL is entitled to reduce its liability under Policy 5369 and each of the Liberty Delta Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the Liberty Delta Misrepresentations had not occurred).

D7.3 Liberty Delta Non-Disclosures

Knowledge of underlying matters

521 At the time of requesting insurance cover for the Liberty Delta Risk, Lex Greensill knew:

(a) that a substantial proportion of the funds advanced under the facility were intended to be used for purposes other than the acquisition of the Delta HoldCos;

Particulars

See the particulars set out at paragraph 508 above.

(b) that in the premises of the Future Accounts Receivable Representation, Greensill's financing would not be secured against genuine 'future receivables', – as this term had been used by Greensill, and understood by Greg Brereton – and the approach would be entirely different in nature to what had been presented to BCC in the Liberty OneSteel AR Facility presentation dated February 2019;

Particulars

See the particulars set out at paragraph 509 above.

(c) the understanding, between Lex Greensill (on behalf of the Greensill Group) and Sanjeev Gupta (on behalf of Liberty House and the Delta HoldCos) that the funding advanced under the facility would not be withdrawn or required to be repaid by GCUK other than by giving at least three years' notice, regardless of the terms of the written contractual documents purporting to regulate the facility (including the Delta IPAs and related documents);

Particulars

See the particulars set out at paragraph 509 above.

(d) the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 44.

(e) the Liberty Group Fraud Non-Disclosure, which implicated Liberty House and Sanjeev Gupta in prior dishonest and fraudulent conduct;

Particulars

The knowledge of Lex Greensill is evident from the fact that the Diligence Paper was sent to him by Michel Degen of Credit Suisse on 11 December 2018 (CSA.5000.0002.1866 and CSA.5000.0002.1867).

(f) that GFG was in serious financial difficulty because it had negative working capital and was experiencing liquidity issues, such that Lex Greensill considered GFG could not service its interest payments without incurring further debt to do so;

Particulars

Greensill's Credit Application Report dated 20 June 2019 (AGB.0003.0001.5405), which stated:

(a) at page 20: 'Beyond the first year, the business appears to be in a position to service the EUR 90mm interest, however, the first-year falls EUR 20mm short based on their forecasts. The proposal here is that Greensill would be able to improve the free cash flow position, at least temporarily, through raising incremental proceeds. In orange below, EUR 100mm adjustment has been applied as a working capital plug that would be in place temporarily and largely focused on the first year'; and

(b) at page 26: 'The GFG group is low on cash and has negative working capital. As such the liquidity of the group is a concern and therefore so is there [sic] ability to repay the instalment amounts on a daily basis…'.

The 'Liberty weekly credit & insurance review' PowerPoint dated 16 July 2019, which refers to liquidity issues, including: '[s]tart of August looks a liquidity issue with lots of maturities coming due' and with respect to 'LCL AR', '[c]an they afford $58.5m at month end?' (GCU.0009.0010.4148, pages 3-4). On 20 July 2019, Brett Downes sent an email to Lex Greensill stating, 'I want to give you some background on the general feeling of the firm…Overall it is not wholly positive due mainly to Gupta and there is a general fear he will bring us down…. there have been a number of calls between various Board members and Distribution members, and me. Other senior executives have also asked a number of questions over the last two weeks regarding our strategy in regards to GFG. You may not fully understand the heightened worries that Board, Distribution, and some senior executives have around Gupta…. The recent efforts relating to creating space in the bank for GFG assets etc. has also caused heightened awareness within Operations and Distribution staff' and further 'we can't be in a position in 4 to 6 weeks' time…where we are continuing to increase facilities and exposures to Gupta' (GCU.0005.0013.6483).

The Greensill document titled 'GFG Board Update 20 July 2019 v1.03 no password' dated 21 July 2019, states at Tab 'July 2019 Update', 'Repayment: Mr Gupta's cash flexibility is currently very constrained. There have been too frequent problems with cash management, timely repayment, and due care in providing updated information. (UPDATE: This week will see one final increase

to the primary facility to accommodate that business' inability to cover some A$50m of maturities due under the Liberty MDR facility' (GCU.0005.0013.6525). The document also states '[t]his paper is being initially circulated to Lex…'. On 21 July 2019, Brett Downes sent Lex Greensill a document titled 'GFG Board Update 20 July 2019 v.1.03' which is password protected (GCU.0004.0027.8856; GCU.0004.0027.8857).

On 30 July 2019, Sanjeev Gupta sent an email to Lex Greensill setting out liquidity issues with 'Primary', 'Tahmoor South and Whyalla', 'LCL', 'UK', 'Delta' and 'Hande'. Mr Gupta stated: 'I can truly feel the pinch now, and the biggest thing I can do to mitigate your overall burden from us is the global AR line with JPM which I will make my highest priority to address while I'm in Oz. Meantime have to keep all the ships floating above water somehow' (GCU.0005.0013.9851).

(g) with respect to the Delta IPA Side Letters:

(i) that GCUK and the Delta HoldCos had entered into, or would shortly enter into, those agreements;

(ii) that, as a result of entering into those agreements, once Greensill Bank had advanced funds to GCUK to purchase interests in the payment of the Delta HoldCos' payment obligations (**Delta Notes**), Greensill Bank would not receive any interest or profit on the maturity of each Delta Note, unless and until the Delta HoldCos had defaulted upon their payment obligations to GCUK; and

(iii) accordingly:

(A) the lending by Greensill Bank was not ordinary commercial lending;

(B) the risk to Greensill Bank of investment in the Delta Notes was materially greater than the risk assumed by an ordinary trade credit financier in that any return earned by Greensill Bank on the investment was dependent on the Delta HoldCos defaulting in their payment obligations and the amount of any defaulted obligations being recovered in full from a trade credit insurer; and

(C) the Liberty Delta Debt Programme would be uneconomic for Greensill Bank unless the Delta HoldCos defaulted and a valid claim were made on the Liberty Delta Policy.

Particulars

Clause 7 to each of the Delta IPA Side Letters.

The interest-free nature of the risk for Greensill Bank is further pleaded in Section C.5.a of Annexure B to this Defence, which is referred to and repeated.

The knowledge of Lex Greensill is to be inferred from the fact that Mr Greensill, acting on behalf of GCUK, personally executed each of the Delta IPA Side Letters on or about 27 June 2019.

522 At the time of requesting insurance cover for the Liberty Delta Risk, Danyon Lloyd knew:

(a) the matters pleaded in paragraphs 521(a) and 521(e) above; and

(b) the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure.

Particulars

Greensill Credit Application Report dated 20 June 2019, which was sent to Danyon Lloyd on 20 June 2019 (GCU.0005.0012.1373; GCU.0005.0012.1380).

On 26 June 2019, David Keeling of GCUK sent an email containing minutes of the 21 June 2019 Credit Committee meeting to the Greensill Credit Committee, including Danyon Lloyd. This email includes minutes of Lex Greensill's presentation to the Credit Committee on the purpose and structure of the Liberty Delta Risk, in which the purpose of the facility was described as follows (AGB.0003.0002.4066):

> Use of funds is for: the purchase price of the assets from Arcelor Mittal; lock box created to cover Capex of business for year $100m; clear arrearages between Liberty Group and Greensill; working capital for Delta group; and repurchase of LRB notes held by GAM at original price, which is of strategic importance.
>
> Long run exit strategy for repayment is for this business to be IPO'd in Europe in c 2 years, potentially also including the iron ore and coal businesses from Australia. Have achieved 2 year timeframe within Australian business. Will also raise term debt at that time to repay our facility in full.

Email from Danyon Lloyd to Al Eadie (GCUK) on 28 June 2019 in Greensill EOD balance email chain, 'Thought the GFG stuff was now resolved…' (GCU.0009.0010.0382).

The knowledge of Danyon Lloyd is also to be inferred from the involvement and knowledge of Danyon Lloyd in the company's dealings with the facility, including the following items:

(a) On 24 June 2019, Henry Middleditch of GCUK sent an email to Britta Pein-Willems, with Danyon Lloyd and other Greensill Bank and GCUK personnel copied, attaching 'GB insurance policies' for Liberty Delta including endorsements (GCU.0009.0009.9106, attaching GCU.0009.0009.9107, GCU.0009.0009.9108, GCU.0009.0009.9109, GCU.0009.0009.9110, GCU.0009.0009.9111, GCU.0009.0009.9112, GCU.0009.0009.9113 attached);

(b) On 10 July 2019, Al Eadie (CFO of GCUK) copied Danyon Lloyd and others into an email chain titled 'LRB steps' (GCU.0013.0006.2345) in which it was stated, among other matters, that: 'Liberty is buying back a load of GBP note obligations it has to GAM funds (total €614m) and is funding by issuing new EUR notes to GB under delta 2, which are identical in structure to delta 1 (EUR 900m)…';

(c) On 11 July 2019, Henry Middleditch of GCUK sent an email to Lex Greensill and Danyon Lloyd, amongst others, providing a summary of Delta trade updates, including in relation to the proposed LRB trades. (GCU.0005.0013.2571);

(d) On 19 July 2019, Brett Downes sent an email to Danyon Lloyd attaching a draft PowerPoint titled 'GFG Weekly Call Review – July Month End Summary' including updates on Liberty Delta (GCU.0013.0006.2345 attaching GCU.0009.0010.4910);

(e) On 1 October 2019, Tariq Akrouk of GCUK emailed Britta Pein-Willems (Greensill Bank) titled 'Delta Facility Limit Increase' requesting review of names to increase the facility credit limit for Delta by 200m, which was forwarded to Greensill Bank personnel and Danyon Lloyd on 2 October 2019 (GCU.0010.0010.5769);

(f) On 31 March 2020, Markus Nunnerich sent an email to Danyon Lloyd, attaching a zip of materials titled 'Liberty for GB' (GCU.0010.0012.7111) attaching, amongst other documents, a Credit Application Report for Liberty Ostrava dated 11 March 2020 (GCU.0010.0012.7112);

(g) the emails particularised at paragraph at 44; and

(h) Danyon Lloyd's position on GCUK’s credit committee.

523 The knowledge of Lex Greensill of the matters in paragraph 521 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 26, 29 and 30 above.

524 The knowledge of Lex Greensill of the matters in paragraph 521 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 20, 22 and 23 above.

525 The knowledge of Danyon Lloyd of the matters in paragraphs 521(a) and 521(e) above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above and Danyon Lloyd's position as CEO of Greensill Bank.

Knowledge of materiality

526 Each of the matters referred to in paragraph 521 above were matters:

(a) which Lex Greensill knew were material to the decision to accept or renew the Liberty Delta Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013);

(d) the matters misrepresented or not disclosed bore directly on the risk of Liberty Delta being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured;

(e) in the case of the matter in paragraph 521(g), the matters not disclosed bore directly on the risk that Greensill Bank would make a claim on the policy.

527 Further or in the alternative to paragraph 526 above, each of the matters referred to in paragraph 521 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Liberty Delta Risk.

Particulars

IAL refers to the particulars to paragraph 526 above.

528 Each of the matters referred to in paragraphs 521(a) and 521(e) above were matters:

(a) which Danyon Lloyd knew were material to the decision to accept or renew the Liberty Delta Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) was a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Liberty Delta Risk.

529 Further or in the alternative to paragraph 528 above, each of the matters referred to in paragraphs 521(a) and 521(e) above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Liberty Delta Risk.

Particulars

IAL refers to the particulars to paragraph 528 above.

530 The knowledge of Lex Greensill of the matters in paragraphs 526 and 528 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

531 The knowledge of Lex Greensill of the matters in paragraphs 526 and 528 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

532 The knowledge of Danyon Lloyd of the matters in paragraphs 528 and 529 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above and Danyon Lloyd's position as CEO of Greensill Bank.

Breach of duty of disclosure

533 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 521 above before the cover was placed or renewed for the Liberty Delta Risk.

534 Greensill's failure to disclose the matters referred to in paragraph 521 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 523 to 531 above.

Fraudulent non-disclosure

535 By reason of the matters pleaded in paragraphs 521, 523. 524, 526, 530 and 531 above (concerning Lex Greensill’s knowledge), Greensill's failure to disclose the matters referred to in paragraph 521 above was fraudulent.

536 Further or alternatively, by reason of the matters pleaded in paragraphs 522, 525, 528, 529 and 532 above (concerning Danyon Lloyd’s knowledge), Greensill Bank's failure to disclose the matters referred to in paragraphs 521(a) and 521(e) above was fraudulent.

537 The cover for the Liberty Delta Risk would not have been issued if the matters referred to in paragraph 521, or any one of them, above had been disclosed.

538 In the alternative to the allegation in paragraph 537 above, the cover for the Liberty Delta Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 521 above, or any one of them, had been disclosed.

539 By reason of the matters pleaded in paragraphs 521 to 538 above, IAL is entitled to avoid Policy 5369 and each of the Liberty Delta Endorsements.

Innocent non-disclosure

540 In the alternative to the matters pleaded in paragraphs 535 to 539 above, and by reason of the matters pleaded in paragraphs 533, 534, 537 and 538 above, IAL is entitled to reduce its liability under Policy 5369 and each of the Liberty Delta Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D8 Simec

D8.1 Policy and Endorsements

541 In Federal Court of Australia proceedings no. NSD169/2023 and no. NSD177/2023, the applicants allege that, on or about 13 March 2019, Simec Group Limited (**Simec**) was endorsed as a customer under the 2019 Policy by means of Customer Endorsement No 2.

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 125.

Fifth Statement of Claim in proceeding no. NSD177/ 2023 dated 11 June 2025 at paragraphs 147 to 149.

542 The applicants further allege that:

(a) the Customer Limit for Simec was increased to USD45 million by means of Customer Endorsement No 2(i) dated 24 April 2019; and

(b) the Customer Limit for Simec was increased to USD95 million by means of Customer Endorsement No 2(ii) dated 31 January 2020.

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 125.

Fifth Amended Statement of Claim in proceeding no. NSD177/2023 dated 11 June 2025 at paragraphs 150 to 155.

543 The endorsements identified in paragraphs 541 to 542 above are hereafter referred to as the **Simec Endorsements**.

D8.2 Simec Misrepresentations

Representations

544 In the period 29 August 2018 to 31 August 2018, GCUK requested that BCC extend insurance cover in respect of 'straight SCF facilities' with tenors of 180 days provided by GCUK to Simec (the **Simec Risk**). This request was expressed as an 'immediate need from Greensill for cover' for 'another USD50 million combined on Liberty House, Liberty Commodities, SIMEC, and [Liberty OneSteel]'.

Particulars

Email from Edward Smith of Marsh to Brereton, with the subject 'Greensill - Liberty Request', dated 28 August 2018, and its attachments (BCC.0001.0001.0805).

Email from Lex Greensill to Brereton, with the subject 'Re: Greensill -Liberty Request', dated 31 August 2018 (BCC.0001.0002.1456).

545 On or around 31 August 2018, Brereton responded to the request (adding Lex Greensill to the email chain) stating that BCC already had 'a wide array of commitment on parts of Liberty, SIMEC, GFG etc', but that he would agree a 'new USD25 million on Simec Group Ltd' on the terms proposed by Marsh, to which Lex Greensill replied 'Many thanks Greg'.

Particulars

Email from Brereton to Edward Smith and Lex Greensill, with the subject 'RE: Greensill - Liberty Request', dated 31 August 2018 (AGB.0002.0001.0277).

Email from Lex Greensill to Brereton, with the subject 'RE: Greensill - Liberty Request', dated 31 August 2018 (BCC.0001.0002.1456).

546 On around 3 September 2018, GCUK (through its broker, Marsh) communicated to Brereton that GCUK had 'confirmed NKORL', meaning, ‘no known or reported losses’.

Particulars

Email from Edward Smith to Brereton, with the subject 'RE: Greensill - Liberty Request', dated 3 September 2018 and attached Customer Endorsement No 27 (BCC.0001.0001.0815 and BCC.0001.0001.0816).

547 In the period 3 to 4 September 2018, GCUK (via Marsh) provided to Brereton draft endorsements purportedly to give effect to Brereton’s agreement to extend insurance in respect of the Simec Risk. Brereton returned to Marsh a signed copy of Customer Endorsement No 27, which purported to endorse Simec as a customer under the Master Policy (TB-03691).

Particulars

IAL refers to paragraph 546 above.

Email from Brereton to Edward Smith, with the subject 'RE: Greensill - Liberty Request', dated 4 September 2018 and attached Customer Endorsement No 27 (BCC.0001.0005.0776 and BCC.0001.0005.0777).

548 In the period 4 October 2018 to 9 October 2018, GCUK made enquiries with Brereton (through its broker, Marsh) to ascertain whether BCC had 'any additional capacity' in

relation to the Simec Risk, and Brereton agreed to increase the level of insurance on 9 October 2018.

Particulars

Email from Edward Smith to Brereton, with the subject 'Greensill Request - SIMEC Group Limited', dated 4 October 2018 and attached Simec Group Consolidated Audited Financials (BCC.0001.0001.0956 and BCC.0001.0001.0957).

549 On around 10 October 2018, GCUK (through its broker Marsh) communicated to Brereton that GCUK had 'confirmed NKORL', meaning, ‘no known or reported losses’.

Particulars

Email from Edward Smith to Brereton, with the subject 'RE: Greensill Priority items for today', dated 10 October 2018 (AGB.0002.0001.0377).

550 On or around 10 October 2018, Brereton returned to Marsh a signed copy of Customer Endorsement No 27(i), under which cover in respect of the Simec Risk was increased to a limit of USD35 million with effect from 9 October 2018.

Particulars

Email from Brereton to Edward Smith and others, with the subject 'RE: Greensill Priority items for today', dated 10 October 2018 and attached Customer Endorsement No 27(i) (BCC.0001.0007.3346 and BCC.0001.0007.3347).

551 On or around 28 February 2019, Edward Smith of Marsh sent an email to Brereton attaching documents relating to a requested renewal of cover for the Simec Risk.

Particulars

Email from Edward Smith to Brereton, with the subject 'RE: Greensill Standalone Renewal', dated 28 February 2019 (BCC.0001.0001.1841).

552 On or around 1 March 2019, GCUK (through its broker, Marsh) communicated to Brereton that GCUK had 'confirmed NKORL', meaning 'no known or reported losses', and 'given [Marsh] the order to bind'.

Particulars

Email from Edward Smith to Brereton, with the subject 'RE: Greensill Standalone Renewal', dated 1 March 2019 (BCC.0001.0001.1841).

553 On or around 13 March 2019, Brereton returned to Marsh a signed copy of Customer Endorsement No 2, which purported, with effect from 1 March 2019, to endorse Simec

as a customer under the 2019 Policy, with an Aggregate Customer Limit of USD35 million.

Particulars

Email from Brereton to Marsh dated 13 March 2019 (BCC.0001.0002.2777 and BCC.0001.0002.2778).

554 On or around 7 April 2019, Brereton sent an email to Lex Greensill, with the subject 'Simec', in which he stated that he could 'agree USD10 million, per our discussion on Saturday evening'. In response, on or around 9 April 2019, Lex Greensill indicated that he would 'like to add this to our SIMEC SCF cover'.

Particulars

Email from Lex Greensill to Brereton, with the subject 'FW: Simec', dated 9 April 2019 (BCC.0001.0002.2991).

555 On or around 24 April 2019, Brereton provided Marsh with a signed copy of Customer Endorsement No 2(i) to the 2019 Policy, which purported, with effect from 9 April 2019, to increase the Aggregate Customer Limit to USD45 million.

Particulars

Email from Brereton to Angus Ward of Marsh, with the subject 'RE: Simec', dated 23 April 2019 (BCC.0001.0002.3060).

556 On or around 30 January 2020, Lex Greensill sent an email to Brereton, following a prior discussion between them, to request that BCC further extend the cover provided in relation to the Simec Risk. At the time of this request, GCUK represented, among other matters, that:

(a) the request related to the 'current SIMEC SCF re-invoicing cover';

(b) the proposed change was to increase the cover provided by IAL 'from $40mm on a 90% indemnity to $90mm with a 45% indemnity';

(c) the purpose of the request was to enable Greensill to finalise the renewal of cover from another existing insurance provider; and

(d) once insurance cover was reinstated with that other insurance provider, Greensill would immediately wish to reinstate the current cover of $40mm on a 90% indemnity basis.

Particulars

Email from Lex Greensill to Brereton, with the subject 'SIMEC', dated 30 January 2020 (BCC.0001.0002.4742).

557 On or around 30 January 2020, Angus Ward of Marsh sent an email to Brereton attaching two endorsements with respect to the Simec Risk with an aggregate customer limit of USD95 million, and indicated that Marsh had 'amended the insured percentage on the GCUK endorsement to 42.63% in order to keep your max liability as it was'.

Particulars

Email from Angus Ward to Brereton, with the subject 'RE: SIMEC', dated 30 January 2020 and attached endorsements (BCC.0001.0001.5246, BCC.0001.0001.5247 and BCC.0001.0001.5248).

558 On or around 30 January 2020, GCUK (through its broker Marsh) communicated to Brereton that GCUK had 'confirmed NKORL', meaning, ‘no known or reported losses’.

Particulars

Email from Angus Ward to Brereton, with the subject 'RE: SIMEC', dated 30 January 2020 and attached endorsements (BCC.0001.0001.5243).

559 Prior to his email of 30 January 2020 referred to in paragraph 557 above, Angus Ward sought and received instructions from GCUK to convey to Brereton the matters identified in paragraph 558 above.

Particulars

Email from Angus Ward to Edward Smith, copying Lex Greensill, with the subject 'RE: SIMEC', dated 30 January 2020 (AGB.0003.0002.3268).

Email from Sophie Dyke (Insurance Analyst) of GCUK to Angus Ward and Edward Smith, copying Lex Greensill, with the subject 'RE: SIMEC', dated 30 January 2020 (AGB.0003.0002.3268).

560 By the email from Angus Ward referred to in paragraph 557 above, GCUK (through its broker, Marsh) represented to BCC that the effect of the endorsements was to increase the Aggregate Customer Limit but reduce the Insured Percentage by a corresponding amount, with the effect that BCC's maximum liability with respect of the Simec Risk would remain the same.

Particulars

Email from Angus Ward to Brereton, with the subject 'RE: SIMEC', dated 30 January 2020 and attached endorsements (BCC.0001.0001.5246, BCC.0001.0001.5247 and BCC.0001.0001.5248).

561 In the premises of paragraphs 556 to 560 above, GCUK represented that:

(a) the Simec Risk was already subject to insurance cover from another pre-existing insurance provider;

(b) its request to increase Simec's Aggregate Customer Limit with IAL was to allow Greensill to renew cover with that other insurance provider;

(c) that:

(i) the effect of the endorsement;

(ii) Greensill's intention in requesting the endorsement; and

(iii) Greensill's understanding of the effect of the endorsement,

was not to alter the maximum liability underwritten by the Insurer with respect to the Simec Risk; and

Particulars

With respect to paragraph 561(c)(i) IAL refers to the particulars in paragraphs 556 and 557 above.

With respect to paragraphs 561(c)(ii) and 561(c)(iii), the representations were implied by the express representations alleged in paragraph 556 and 557 above.

(d) Greensill would seek to reduce the Aggregate Customer Limit once it had reinstated insurance cover with the other insurance provider,

(the **Simec Customer Endorsement 2(ii) Misrepresentations**).

562 The Simec Customer Endorsement 2(ii) Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 22 and 29 above.

563 Later that day, Brereton provided Marsh with signed copies of the two endorsements, which purported, with effect from 30 January 2020, to do the following in connection with the Simec Risk:

(a) with respect to Policy No. TB-03691, increase the Aggregate Customer Limit to USD95 million and decrease the Insured Percentage to 42.63%, such that IAL's Maximum Limit of Liability remained at USD40.5 million; and

(b) with respect to the 2019 Policy, increase the Aggregate Customer Limit to USD95 million, with a Maximum Limit of Liability of USD95 million,

(the **Simec January 2020 Cover Increase**).

Particulars

Email from Brereton to Angus Ward, with the subject 'RE: SIMEC', dated 30 January 2020 and attaching signed endorsements (BCC.0001.0001.5249 and BCC.0001.0001.5250).

564 At all material times, including at the time Greensill and/or Marsh made the requests referred to in paragraphs 544, 548, 551, 554, 556 and 557 and at the time Brereton signed the documents referred to in paragraphs 547, 550, 553, 555 and 563 and provided those documents to GCUK (via Marsh), Greensill represented to Brereton, among other matters, that:

(a) the financing arrangement in place between GCUK and Simec was a 'straight SCF [supply chain finance] facility'; and

(b) the Simec facility was for short-term lending with 'tenors of 180 days',

(the **Simec Financing Arrangements Misrepresentations**).

Particulars

Email from Edward Smith of Marsh to Brereton, with the subject 'Greensill - Liberty Request', dated 28 August 2018, and its attachments (BCC.0001.0001.0805).

Email from Lex Greensill to Brereton, with the subject 'Re: Greensill -Liberty Request', dated 31 August 2018 (BCC.0001.0002.1456).

565 The matters referred to in paragraph 564 above were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 22 and 29 above.

566 Further, at all material times including at the time of the requests for insurance and requests for renewal and the Simec January 2020 Cover Increase, and the signing and delivery of the documents by Brereton referred to in paragraphs 544 to 563 above, Greensill represented to Brereton that there had been no defaults or non-payments with respect to the Simec Risks, and that there was no basis to expect a future default (the **Simec No Default Misrepresentation**).

Particulars

This representation was partly express and party implied.

In so far as it was express, the correspondence referred to at paragraphs 546, 549, 552 and 558 above which stated that GCUK had confirmed there were 'NKORL' [no known or reported losses].

In so far as it was implied, it was implied by the fact that at no time prior to the requests for insurance and requests for renewal and the Simec January 2020 Cover Increase, or prior to the signing and delivery of the documents referred to in paragraphs 547, 550, 553 and 555 above, was Brereton told of any defaults or non-payments with respect to the Simec Risks or any concern about a future default, which matters would have been material to Brereton's decision to execute and deliver those documents.

The Simec No Default Misrepresentation were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

IAL refers to paragraphs 17, 18, 22 and 29 above.

Representations were misleading

567 The Simec Financing Arrangements Misrepresentations were false and/or misleading because:

(a) having regard to the SCF Representation at paragraph 31 above, the concept of a 'straight SCF facility' was used by Greensill, and understood by Brereton, as a form of short-term financing referable to genuine underlying invoices that evidence trade; and

(b) while GCUK represented that the Simec Risk related to an SCF Facility with 'a tenor of 180 days' and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact:

(i) the Simec Risk related to a financing facility with no maximum duration or, in the alternative, a duration longer than 180 days; and

(ii) Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facility be based on the underlying trade of goods or services by Simec.

Particulars

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

(a) Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' (Third Witness

Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [32]);

(b) in the first quarter of 2020, Sanjeev Gupta requested, and Lex Greensill provided, confirmation that the financing provided to his companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [16]);

(c) in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [49]).

Zurich Insurance Company Limited Defence in CL-2023-000136 before the High Court of England and Wales at [25-26] and [66-70].

The nature of the financing provided to Simec involved:

(a) Simec would submit invoices to GCUK which purported to be for the purchase of specified quantities of nickel briquettes, with payment terms described as 'Cash Against Documents', and with one of the following entities described as the 'seller':

(i) Aar Tee Commodities (UK) Ltd; (eg, CSA.0001.0067.0495);

(ii) AIC Commodities (Asia) Ltd (eg, AGB.0002.0002.1683);

(iii) Avon International Pte Ltd (AGB.0002.0003.5244);

(iv) Inter Globe Enterprises Ltd (eg, AGB.0003.0001.1759);

(v) Metallics Trading Pte Ltd (AGB.0002.0003.5244);

(vi) Pan Asia Commodities & Trading Pte Ltd (AGB.0002.0003.5244);

(vii) Pan Pacific Trading Ltd (eg, AGB.0002.0002.1693);

(viii) Paras Metallics Pte Ltd (AGB.0002.0003.5244);

(ix) Secant Trading DMCC; (eg, AGB.0003.0001.1765);

(x) Taurus Metallurgicals Limited (eg, AGB.0002.0002.2989); and

(xi) Vision Commodities HK Ltd. (eg, AGB.0003.0001.1742);

(b) shortly before the maturity date of the outstanding invoices in connection with the Simec Risk:

(i) Simec would submit new invoices to replace the outstanding invoices that were due to mature (eg, CSA.0001.0067.0493, AGB.0003.0001.1762, AGB.0003.0001.1775, GCU.0010.0001.9183, GCU.0009.0008.7242, GCU.0004.0025.4495);

(ii) Simec would not pay to GCUK the full amount of the outstanding invoices that were due to mature, nor would GCUK pay any amount to the purported suppliers named in the newly submitted invoices or alternatively pay an amount to Simec for the sole purpose of Simec paying the newly submitted invoices, but instead Simec would pay to GCUK the difference between the amount of the maturing invoices and the newly submitted invoices (AGB.0003.0001.1770 and CSA.0023.0002.0421 at page 10);

(c) as a result of regular failures by Simec to pay the full amount of the outstanding invoices as and when they fell due, GCUK would 'top up' or extend further financial accommodation to Simec in a manner described internally at GCUK as a 'free overdraft' (GCU.0004.0024.6060, GCU.0004.0024.3239, GCU.0009.0008.4392).

The fact that the invoices uploaded by Simec, or alternatively, the funding provided to Simec did not relate to any physical trade of goods or transfer of title to goods may be inferred from the fact that:

(a) entities within GFG had been referred to the IMB due to issues concerning paperwork connected to shipments of various commodities, most commonly LME nickel (CSA.5000.0003.0870);

(b) Aar Tee Commodities (UK) Ltd, which is the parent company of Taurus Metallurgicals Limited, had been referred to the IMB due to issues concerning bills of lading connected to shipments of nickel (CSA.5000.0003.0870);

(c) a number of financial institutions had ceased to provide funding to the commodities trading business of GFG due to concerns about the paperwork provided by entities within GFG: J Farchy, M Burton and G Finch, As Sanjeev Gupta Rose From Trader to Tycoon, Several Banks Backed Away (16 April 2021), Bloomberg, https://www.bloomberg.com/news/articles/2021-04-16/as-sanjeev-gupta-liberty-house-rose-from-trader-to-tycoon-banks-backed-away (accessed on 25 October 2024) and D Griffin and J Farchy, A Credit Suisse Unit Blacklisted Gupta as Another Bankrolled Him (28 May 2021), Bloomberg, https://www.bloomberg.com/news/articles/2021-05-28/a-credit-suisse-

unit-blacklisted-gupta-as-another-bankrolled-him (accessed on 25 October 2024).

GCUK's knowledge that the invoices uploaded by Simec, or alternatively, the funding provided to Simec, did not relate to any physical trade of goods or transfer of title to goods, or alternatively that it was not intended by GCUK that the invoices uploaded by Simec and accepted by GCUK relate to the physical trade of goods or transfer of title to goods, may be inferred from:

(a) Credit Suisse Group AG had informed GCUK about concerns with entities within GFG, including Simec, and in response, GCUK obtained from the IMB all information held by the IMB concerning entities within GFG: Memo prepared by GCUK, with title 'Liberty Group: Commodity Trading and Shipping Practices', dated 6 August 2018 (CSA.5000.0001.1644);

(b) the fact that GCUK would request Simec to upload new invoices shortly before the maturity date of outstanding invoices (AGB.0003.0001.1775) or alternatively Simec would describe the upload of invoices as replacing an invoice that was due to mature (CSA.0001.0067.0493, AGB.0003.0001.1762, GCU.0010.0001.9183, GCU.0009.0008.7242, GCU.0004.0025.4495);

(c) the fact that GCUK did not consider that it was necessary to provide Zurich with supporting documents, such as bills of lading, with respect to invoices in connection with the Simec Risk when requested to do so (AGB.0002.0002.1682);

(d) the fact that Simec would, in some instances, fail to pay maturities it owed to GCUK, and that GCUK would cover Simec's payment obligations from GCUK's own cash resources or by directing funds to be drawn down from other supply chain finance facilities, to enable GCUK to meet maturities owed to its investors referrable to the Simec debts (GCU.0005.0002.0321; GCU.0010.0008.1919; GCU.0004.0025.7616);

(e) the email from Lex Greensill to Brett Downes, with the subject 'RE: Simec', dated 8 April 2019, in which Lex Greensill states: 'Are you OK for me to bind this with BCC for SIMEC SCF? We would only use this insurance capacity to cover the Nexus run-off and the next insurance run off at the end of the month. This will also enable us to move the SIMEC we have on our balance sheet' (GCU.0005.0008.7460);

(f) the fact that GCUK would, in some instances, allow for funds to be drawn down by Simec without the provision of invoices (e.g. GCU.0004.0001.0091);

(g) the fact that GCUK was aware that Simec, in some instances, requested draw down amounts prior to providing an invoice (e.g GCU.0009.0001.6417; GCU.0004.0018.7960).

GCUK's practice of 'topping up' the debts the subject of the Simec reinvoicing facility, without Simec in fact paying amounts to GCUK, is evident from the documents identified immediately above in the particulars to this paragraph 567 and is further pleaded at Section C.4.b of Annexure B to this defence.

568 The Simec Customer Endorsement 2(ii) Misrepresentations referred to in paragraph 561 above were false and/or misleading because:

(a) while GCUK represented that the amendments given effect to by Endorsement 2(ii) would not alter the maximum liability underwritten by BCC with respect to the Simec Risk because the Insured Percentage was 42.63% of the Aggregate Customer Limit, it was neither the intention nor the understanding of Greensill that the effect of Customer Endorsement 2(ii) would be not to alter the maximum liability underwritten by the Insurer with respect to the Simec Risk;

Particulars

The fact that Greensill understood and intended that the Insurer's maximum liability would be increased is to be inferred from:

(a) The email from Sophie Dyke to Edward Smith and others, with the subject 'RE: Simec Group', dated 20 January 2020 (MAR.0002.0001.2640), which states 'We would need the Zurich limit in place before the end of Jan. We have assets which are maturing before the end of the month and Lex would like to extend the cover for a further 6 months to fund again';

(b) The email from Luc Mathys of Credit Suisse to Lex Greensill, with the subject 'FW: Missing Insurance', dated 3 October 2019, which states that unless insurance coverage covered the full position of the Simec notes within the fund portfolio then 'Greensill would need to buy the position out of the Virtuoso portfolio' (CSA.5000.0003.3372);

(c) The email from Angus Ward of Marsh to Credit Suisse, with the subject 'Greensill – Loss Payee Limit Tracker 31/01/2020', dated 31 January 2020, which stated 'Please see updated Loss Payee limit tracker attached – Simec has been updated', and attached an Excel spreadsheet which described the limit for 'Simec Group Ltd' under the 'BCC Standalone Policy TB-03690' as '67,685,890.30' (AGB.0002.0001.5142, AGB.0002.0001.5143).

Further particulars may be provided following completion of discovery by GCUK.

(b) while GCUK represented that the Simec Risk was subject to insurance cover from another existing insurance provider, in fact, the policy previously held with Zurich (being the other insurance provider) had expired on 1 September 2019;

Particulars

Email from Sophie Dyke to Edward Smith and others, with the subject 'Simec Group', dated 20 January 2020 (MAR.0002.0001.2639), which was later emailed to Lex Greensill on 21 January 2020 (GCU.0005.0021.8323).

(c) while GCUK represented that its purpose in requesting an increase to the Aggregate Customer Limit was to allow Greensill to renew cover with another existing insurance provider, in fact, the true purpose was to enable Greensill to fund the Simec assets due to mature at or after the end of January 2020 as the result of an agreement in or around July 2019 between Simec and GCUK to roll the entirety of Simec's outstanding maturities on a date before 30 August 2019.

Particulars

Email from Sophie Dyke to Edward Smith and others, with the subject 'RE: Simec Group', dated 20 January 2020 (MAR.0002.0001.2640).

Email from Valerie Kirkaldy to Lex Greensill with the subject line 'SIMEC Maturities' attaching a document entitled 'SIMEC Repurchase plan' (GCU.0005.0013.7166).

Email from Lex Greensill to Valerie Kirkaldy dated 23 July 2019 with the subject line 'SIMEC Maturities' (GCU.0005.0013.7299).

Email from Henry Middleditch copying Lex Greensill with the subject line 'SIMEC Repurchase Plan' (GCU.0004.0028.0322).

Simec's failure to pay the debts in the amount of USD21,750,852 on 30 January 2020, and GCUK's payment of moneys into the relevant collection account in order to fund the maturity of the investor notes associated with those debts, is pleaded in Annexure B to this defence at Section C.4.b and Schedule SIM-1.

569 The Simec No Default Misrepresentation was false and/or misleading because:

(a) by at least October 2018, GCUK was funding maturities or 'topping up' the facility and/or rolling those maturities;

Particulars

Email from Chris Bates to Jason Austin and Al Eadie dated 17 October 2018 with the subject line "Top up authorisation?" (GCU.0009.0005.5444).

Email from Chris Lockhart to Valerie Kirkaldy and others dated 11 December 2018 with the subject line “RE: SIMEC Trade” (GCU.0005.0003.5716).

Email from Joanne Bowley to Lex Greensill and others dated 11 December 2018 with the subject line “EOD Balances” (GCU.0005.0003.5746).

GCUK’s practice of ‘topping up’ the debts the subject of the Simec reinvoicing facility, without Simec in fact paying amounts to GCUK, is further pleaded at Section C.4.b of Annexure B to this defence.

(b) by at least April 2017 and variously thereafter, it was known within Greensill that Simec was regularly failing to make payments to GCUK as and when they fell due and therefore had not satisfied or was unable to satisfy the maturities owed by it;

Particulars

Email from Sanjeev Gupta to Lex Greensill dated 8 April 2017 (GCU.0001.0009.4638) and later emails to which Lex Greensill was copied (GCU.0005.0003.5716, GCU.0004.0023.6670; GCU.0004.0023.9813; GCU.0009.0017.1515; GCU.0004.0025.7615).

Simec’s inclusion on the list of obligors who 'often pay late or who [Greensill] usually have to top up' (GCU.0004.0024.6060 and attachment).

IAL further refers to the particulars to paragraph 567 of this Annexure A.

(c) by no later than 27 January 2020, it was known within Greensill that Simec could not afford to make the payments due under the facility; and

Particulars

Email recording discussion between Val Kirkaldy and Craig Pinnington dated 27 January 2020 (GCU.0010.0011.8226) which records the following conversation with respect to the Simec Risk:

> Craig Pinnington: 'I still don’t have a party line response for the strategy of why we are looking to extend now when we previously were looking to run off.'
>
> Val Kirkaldy: 'does Henry have any more info on this than we do?...'and also, is there a reason (apart from can’t afford to pay us) for us not decreasing the facility?'
>
> Craig Pinnington 'that's the problem. I think the reason is exactly that they can't. I would consider a more floaty response, overall consistent aim to reduce re-invoicing and we have achieved that.'

(d) GCUK anticipated that there would be future defaults by Simec under the facility.

Particulars

The fact that GCUK anticipated that there would be future defaults by Simec can be inferred from the following:

(a) Simec had regularly failed to make payments to GCUK to GCUK as and when they fell due under the facility; and

(b) There were no reasonable grounds to expect that similar future defaults would not occur.

Knowledge of falsity of representations

570 Lex Greensill knew the matters set out in paragraphs 567 above.

Particulars

The knowledge of Lex Greensill as to the Simec Financing Arrangements Misrepresentations is evident from the fact that Lex Greensill described the Simec Risk as 'Simec SCF cover' (BCC.0001.0002.2991) or 'SIMEC SCF reinvoicing cover' (BCC.0001.0002.4742) in emails with Brereton.

The knowledge of Lex Greensill that the financing of Simec was a facility with no maximum duration or, in the alternative, a duration longer than 180 days is evident from:

(a) the testimony of Sanjeev Gupta to the UK Insolvency and Companies Court as to the statements made to him by Lex Greensill: see the particulars to paragraph 567 above; and

(b) the Credit Analysis pack for Simec dated 9 August 2017 (GCU.0007.0001.6169; GBA.0004.0028.3431, page 2), which identifies Lex Greensill as the Sponsor of the facility.

The knowledge of Lex Greensill is to be further inferred from the following matters:

(a) Lex Greensill and GCUK would provide advice to GCUK's customers on the structure of the customer's debt facilities and overall capital structure (for example, GCU.0005.0007.0413, GCU.0005.0008.6570); and

(b) notwithstanding the fact that GCUK held itself out as a supply chain finance company, GCUK would regularly design debt facilities for its customers that were not linked to the genuine underlying trade of its customers (for

example, GCU.0007.0002.4670; GCU.0009.0005.5676, GCU.0004.0015.9384).

The knowledge of Lex Greensill that Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facility would be based on the underlying trade of goods or services by Simec, and that Simec had not satisfied or was unable to satisfy the maturities owed by it, is evident from the fact that:

(a) Lex Greensill suggested that GCUK 'pre-pay' the maturities owed by Simec to GCUK using its own funds or by directing that other supply chain finance facilities be drawn down and those amounts be retained by GCUK to satisfy maturities owed by Simec (GCU.0005.0002.0321);

(b) Lex Greensill was made aware, at least by 8 April 2017, that Simec regularly failed to make payments to GCUK as and when they fell due and from time to time, GCUK would 'top up' or pay the entirety of outstanding maturities owed by Simec (GCU.0005.0003.5716; GCU.0004.0023.6670; GCU.0004.0023.9813; GCU.0009.0017.1515; GCU.0004.0025.7615; GCU.0001.0009.4638);

(c) Lex Greensill was made aware, at least by 11 March 2019, that Simec regularly failed to make payments to GCUK as and when they fell due and that GCUK intended to implement a process to 'streamline the process for topping up an Obligor, where the maturity payments have not been received' (GCU.0004.0024.6060); and

(d) Lex Greensill was made aware, at least by 4 April 2019, that Simec would submit new invoices to replace the outstanding invoices that were due to mature (GCU.0004.0025.4494 and its attachment GCU.0004.0025.4495; GCU.0004.0025.4620).

The knowledge of Lex Greensill of the arrangements between GCUK and Simec is also to be inferred from the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

(a) a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

(b) that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

(c) that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

(d) that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements…were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

The knowledge of Lex Greensill is otherwise to be inferred from his direct involvement in dealings with Simec and in the placement of the Simec Risk.

Further particulars may be provided after completion of discovery by GCUK.

571 At all material times, Greensill Bank and Credit Suisse required 100% indemnity of the Aggregate Customer Limit under the 2019 Policy in order for either Greensill Bank or Credit Suisse to purchase notes related to the Simec Risk.

Particulars

Email from Luc Mathys of Credit Suisse to Lex Greensill, with the subject 'FW: Missing Insurance', dated 3 October 2019 (CSA.5000.0003.3372).

Email from Sophie Dyke to Edward Smith and others, with the subject 'RE: Simec Group', dated 20 January 2020 (MAR.0002.0001.2640), which states 'We would need the Zurich limit in place before the end of Jan. We have assets which are maturing before the end of the month and Lex would like to extend the cover for a further 6 months to fund again'.

572 Lex Greensill knew the matters set out in paragraph 568 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

(a) the emails referred to in paragraph 571 above;

(b) emails between Lex Greensill and Brett Downes regarding reinstatement of the expired cover (GCU.0005.0021.8323);

(c) the email from Lex Greensill to Brereton, with the subject 'SIMEC', dated 30 January 2020 (BCC.0001.0002.4742);

(d) Lex Greensill had confirmed to Brereton that the underwriter would always answer to the 'master policy' (BCC.0001.0002.0245);

(e) the notes programme with respect to the Simec Risk was not amended in a manner to ensure that the insurer's maximum exposure under the 2019 Policy (TB-03690) was the same as the insurer's maximum exposure under the master policy (TB-03691);

(f) the involvement of Lex Greensill in the company's dealings concerning the level of insurance cover in connection with Simec Risk, and from Lex Greensill's direct involvement in correspondence with BCC associated with

the Simec Risk, including the following items: CSA.5000.0003.3372, AGB.0002.0001.6544 and AGB.0002.0002.0805; and

(g) Lex Greensill's senior position within Greensill.

573 Lex Greensill knew the matters set out in paragraph 569 above.

Particulars

IAL refers to the particulars to paragraph 569 above.

574 The knowledge of Lex Greensill of the matters set out in paragraphs 567 to 568 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

575 The knowledge of Lex Greensill of the matters set out in paragraphs 567 to 568 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

576 Further or in the alternative to paragraph 570, Sophie Dyke (Insurance Analyst) of GCUK knew the matters set out in paragraph 569

Particulars

The knowledge of Sophie Dyke is to be inferred from the following:

(a) Email from Rajeev Gandhi to Brett Downes copied to Sophie Dyke and others with the subject 'RE: Simec and Liberty payments Not Received' dated 25 April 2017 (GCU.0001.0009.8320);

(b) Email from Sophie Dyke to Chris Lockhart with the subject 'RE: Buy Offers Overdue Status_2017-08-16-10-30-14' dated 16 August 2017 (GCU.0013.0001.5227);

(c) Email from Sophie Dyke to Brett Downes with the subject 'Re: Simec Group Outstanding' dated 22 August 2017 (GCU.0009.0001.9680);

(d) Email from Ludwig Sels to Sophie Dyke with the subject 'Fwd: Simec' dated 9 April 2018 (GCU.0009.0003.1237);

(e) Email from Sophie Dyke to Chris Lockhart with the subject 'RE: SIMEC trade' dated 18 June 2018 (GCU.0004.0013.7553).

577 The knowledge of Sophie Dyke of the matters set out in paragraph 569 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

578 The knowledge of Sophie Dyke of the matters set out in paragraph 569 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

Knowledge of materiality of representations

579 Each of the matters referred to in paragraphs 567 to 569 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Simec Risk; or

(b) alternatively to paragraph 579(a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(b) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(c) the matters misrepresented or not disclosed bore directly on the risk of Simec being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

580 Further or in the alternative to paragraph 579 above, each (alternatively, one or more) of the matters referred to in paragraphs 567 to 569 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Simec Risk.

581 The knowledge of Lex Greensill of the matters set out in paragraph 579 is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

582 The knowledge of Lex Greensill of the matters set out in paragraph 579 is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

583 The matters referred to in paragraph 569 above were matters:

(a) which Sophie Dyke knew were material to the decision whether to extend or renew insurance cover in respect of the Simec Risk; or

(b) alternatively to paragraph (a) in respect of which Sophie Dyke was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Sophie Dyke's knowledge is to be inferred as she was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly upon the Simec Risk.

584 The knowledge of Sophie Dyke of the matters set out in paragraph 583 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

585 The knowledge of Sophie Dyke of the matters set out in paragraph 583 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

Misrepresentations were fraudulent

586 In the premises of paragraphs 570 to 585:

(a) Greensill misrepresented the Simec Risk;

(b) the misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend or renew insurance cover in respect of the Simec Risk.

587 If Greensill had not made the Simec Financing Arrangements Misrepresentations, the Simec Customer Endorsement 2(ii) Misrepresentations, insurance cover would not have been extended or renewed in respect of the Simec Risk, including in respect of the Simec

Endorsements at all or, in the alternative, on the same terms in which it purportedly was written.

588 By reason of the matters pleaded in paragraphs 586 and 587 above, IAL is entitled to avoid the Simec Endorsements.

Innocent misrepresentation

589 In the alternative to the matters pleaded in 586, 587 and 588, by reason of the matters pleaded in 567, 568, 569 and 587 above, IAL is entitled to reduce its liability under the Simec Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the Simec Financing Arrangements Misrepresentation, the Simec Endorsement 2(ii) Misrepresentations and the Simec No Default Misrepresentations had not occurred).

D8.3 Simec Non-Disclosures

Knowledge of underlying matters

590 At the time of requesting insurance cover for the Simec Risk, and at the time the cover was purportedly renewed under the 2019 Policy, Lex Greensill knew:

(a) the Simec facility was related to a financing facility with no maximum duration or, in the alternative, a duration longer than 180 days;

Particulars

IAL repeats the particulars at paragraph 567 above.

(b) Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facility be based on the underlying trade of goods or services by Simec;

Particulars

IAL repeats the particulars at paragraph 567 above.

(c) the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 44.

(d) the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group (an affiliate of Simec as part of GFG) and Sanjeev Gupta (who was personal

Guarantor of the Simec Risk and often communicated with Lex Greensill directly in relation to the Simec Risk) in prior dishonest and fraudulent conduct.

Particulars

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

The knowledge of Lex Greensill is evident from the fact that the Diligence Paper was sent to Lex Greensill on 11 December 2018 (CSA.5000.0002.1866 and CSA.5000.0002.1867).

591 At the time of requesting the Simec January 2020 Cover Increase, Lex Greensill was also aware that:

(a) in around July 2019, he had approved a plan agreed between Simec and GCUK referred to internally within GCUK as the 'Simec Repurchase plan' whereby Simec provided invoices to:

(i) fund GCUK's repurchase of SIMEC notes held by investors; and

(ii) replace all upcoming Simec maturities with new trades for a tenor of 180 days;

(b) the maturities extended by reason of the 'SIMEC Repurchase Plan' referred to in paragraph 591(a) above would become due and payable from around 30 January 2020 onwards; and

(c) cover was required to extend the above maturities for a further 180 days.

Particulars

The knowledge of Lex Greensill is evident from the following:

(a) Email from Valerie Kirkaldy to Lex Greensill with the subject line 'SIMEC Maturities' attaching a document entitled 'SIMEC Repurchase plan' (GCU.0005.0013.7166);

(b) Email from Lex Greensill to Valerie Kirkaldy dated 23 July 2019 with the subject line 'SIMEC Maturities' (GCU.0005.0013.7299); and

(c) Email from Henry Middleditch copying Lex Greensill with the subject line 'SIMEC Repurchase Plan' (GCU.0004.0028.0322).

592 Further, Lex Greensill was aware that at the time of requesting insurance cover for the Simec Risk, and at the time the cover was purportedly renewed under the 2019 Policy and at the time of the Simec January 2020 Cover Increase:

(a) there had been defaults or non-payments under the Simec facility; and

(b) GCUK anticipated that there would be future defaults under the Simec facility.

Particulars

IAL repeats the particulars to paragraphs 567, 569, 570 and 591 above.

Further, the knowledge of Lex Greensill is evident from the following:

(a) Email from Brett Downes to Lex Greensill dated 20 February 2019 with the subject line 'Liberty AR' (GCU.0005.0006.5317);

(b) Email from Valerie Kirkaldy to Lex Greensill dated 20 February 2019 with the subject line 'SIMEC late payment on maturities' (GCU.0005.0006.8305);

(c) Email from Al Eadie to Lex Greensill, Brett Downes and others dated 7 March 2019 with the subject line 'SIMEC payment' (GCU.0004.0024.4917); and

(d) Email from Brett Downes to Lex Greensill dated 19 January 2020 with the subject line 'Re: Simec: (GCU.0005.0021.7273).

593 The knowledge of Lex Greensill of the matter in paragraphs 590 to 592 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

594 The knowledge of Lex Greensill of the matters in paragraphs 590 to 592 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

595 Further or in the alternative to paragraphs 590 to 594 above, Danyon Lloyd knew:

(a) the matters set out in paragraphs 590 to 592 above; and

(b) the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure.

Particulars

The involvement and knowledge of Danyon Lloyd in the company's dealings with Simec, including the following items GCU.0004.0011.0156; GBA.0004.0008.6290; GCU.0005.0003.5746; GBA.0004.0024.3200; GCU.0004.0023.8544.

Danyon Lloyd's position within GCUK’s credit committee.

596 The knowledge of Danyon Lloyd of the matters referred to in paragraphs 590 to 592 above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above and Danyon Lloyd's position as CEO of Greensill Bank.

Knowledge of materiality

597 The matter referred to in paragraphs 590 to 592 above were matters:

(a) which Lex Greensill knew was material to the decision whether to extend or renew insurance cover in respect of the Simec Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(b) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(c) the matters misrepresented or not disclosed bore directly on the risk of Simec being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

598 Further, or in the alternative to paragraph 597 above, each of the matters referred to in paragraphs 590 to 592 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Simec Risk.

Particulars

IAL refers to the particulars in paragraph 597 above.

599 The knowledge of Lex Greensill of the matters set out in paragraphs 597 and 598 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

600 The knowledge of Lex Greensill of the matters set out in paragraphs 597 and 598 is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

601 Further or in the alternative to paragraph 597 above, the matters referred to in paragraphs 590 to 592 above were matters:

(a) which Danyon Lloyd knew were relevant to the decision to accept the Simec Risk and, if so, on what terms; or

(b) alternatively to paragraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Simec Risk.

602 Further or in the alternative to paragraph 601 above, each of the matters referred to in paragraphs 590 to 592 above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were relevant to the decision to extend insurance cover in respect of the Simec Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 601 above.

603 The knowledge of Danyon Lloyd of the matters in paragraphs 601 and 602 above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above and Danyon Lloyd's position as CEO of Greensill Bank.

Breach of duty of disclosure

604 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 590 to 592 above before the cover was placed or renewed for the Simec Risk.

605 Greensill's failure to disclose the matters referred to in paragraphs 590 to 592 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 593 and 603 above.

Fraudulent non-disclosure

606 By reason of the matters pleaded in paragraph 597 and 601 above, Greensill's failure to disclose the matters referred to in paragraphs 590 to 592 above was fraudulent.

607 The cover for the Simec Risk would not have been issued if the matters referred to in paragraphs 590 to 592 above had been disclosed.

608 In the alternative to the allegation in paragraph 607 above, the cover for the Simec Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 590 to 592 had been disclosed.

609 By reason of the matters pleaded in paragraphs 606 to 608 above, IAL is entitled to avoid the Relevant Simec Endorsements.

Innocent non-disclosure

610 In the alternative to the matters pleaded in 606 to 609 above, and by reason of the matters pleaded in paragraphs 604, 605, 607 and 608 above, IAL is entitled to reduce its liability under the Simec Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D9 Kerry Ireland

D9.1 Policy and Endorsements

611 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Kerry Ireland Investments Limited (**Kerry Ireland**) was endorsed as a customer under the 2019 Policy by means of Customer Endorsement No 138 dated 25 June 2020 (**Kerry Ireland Endorsement**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 135.

612 Kerry Ireland:

(a) between 19 December 2019 and 20 December 2021, held 100% of the issued shares in M.I.S. Motorsport Limited (formerly named Kerry Leeds Investments Limited) (**Kerry Leeds**);

(b) at all material times had Dermot Andrew Hanafin as its sole shareholder; and

(c) between 13 November 2019 and 5 August 2020, had Dermot Andrew Hanafin as its sole director.

613 Kerry Leeds:

(a) between 7 January 2020 and 20 December 2021, had Dermot Andrew Hanafin as its director; and

(b) between about 27 October 2017 and 19 December 2019, had Dermot Andrew Hanafin as its sole shareholder.

614 Dermot Andrew Hanafin is a relative of Sean Hanafin, who at all material times was a director of GCUK and involved in the funding GCUK provided to Kerry Ireland and/or Kerry Leeds.

Particulars

In support of the fact that Sean Hanafin was involved in GCUK's funding of Kerry Leeds and/or Kerry Ireland, IAL presently relies on the following documents:

(a) email from Dermot Andrew Hanafin to Sean Hanafin dated 6 November 2019 (GCU.0012.0005.0329);

(b) email from Dermot Andrew Hanafin to Sean Hanafin dated 6 December 2019 (GCU.0009.0012.4896);

(c) email from Sean Hanafin to Dermot Andrew Hanafin dated 23 December 2019 enquiring about 'Kerry Leeds Outstanding Items for Fundings' (GCU.0009.0012.7273);

(d) email exchange between Dermot Andrew Hanafin and Sean Hanafin dated 30 December 2019 (GCU.0013.0007.2863);

(e) email from Dermot Andrew Hanafin to Sean Hanafin dated 11 February 2020 (GCU.0012.0005.3377) where Dermot states: 'All the guarantees need to be on Kerry Ireland Investments Ltd – presume you can agree and smooth over with Fortune & Lex?';

(f) email exchange between Sean Hanafin, Stewart Cape and Dermot Andrew Hanafin between 24 and 25 February 2020 (GCU.0009.0013.6876);

(g) email from Dermot Andrew Hanafin to Sean Hanafin dated 2 March 2020 (GCU.0009.0013.8498) requesting he assist to 'speed [Credit Committee approval] up with Andrew?';

(h) email from Dermot Andrew Hanafin to Sean Hanafin dated 7 April 2020 (GCU.0010.0012.8097).

Further particulars maybe provided after completion of discovery by GCUK.

D9.2 Kerry Ireland Misrepresentations

615 In or around January 2020, GCUK requested that Marsh arrange insurance cover for financing provided by GCUK to Kerry Leeds and/or Kerry Ireland (**Kerry Ireland Risk**).

Particulars

Email from Craig Pinnington (Senior Credit Analyst) of GCUK to Edward Smith of Marsh and Angus Ward of Marsh, copying Arslan Gill (Insurance Analyst) and Sophie Dyke (Insurance Analyst) of GCUK, dated 20 January 2020 (MAR.0003.0002.8485) and attaching:

(a) document titled 'Kerry Leeds Insurance Overview' (MAR.0003.0002.8486); and

(b) document titled 'Kerry Leeds Investments Overview' (MAR.0003.0002.8487).

Email from Craig Pinnington to Edward Smith and Angus Ward, copying Arslan Gill and Sophie Dyke, dated 30 January 2020 (MAR.0003.0002.8672).

616 On or around 5 May 2020, GCUK sent an email to Marsh providing insurance disclosure documents in respect of the facility programmes offered by GCUK to its customers, and instructed Marsh to provide those documents to the insurers.

Particulars

Email from John Whelan (Deputy General Counsel) of GCUK to Edward Smith, copying Angus Ward and Craig Pinnington, dated 4 May 2020 (CSA.0001.0007.3402) attaching (among other documents):

(a) document titled 'Greensill insurance disclose pack – May 2020 – clean' (CSA.0001.0007.3405); and

(b) a document titled 'Lagoon Farm (Hoffman) - Product Annex - Supplier IPU; Supplier IPU Origination Model' (CSA.0001.0007.3420).

617 On or around 12 May 2020, Marsh sent an email to Brereton providing the GCUK disclosure documents referred to in paragraph 616 above in respect of the general facility programmes offered by GCUK to its customers.

Particulars

Email from Angus Ward to Brereton, copying Ewan Berkemeier of Marsh, Julian Macey-Dare of Marsh and Edward Smith, dated 12 May 2020 (BCC.0001.0001.6688), attaching (among other documents):

(a) a document titled 'Greensill insurance disclose pack – May 2020 – clean' (BCC.0001.0001.6707); and

(b) a document titled 'Lagoon Farm (Hoffman) - Product Annex - Supplier IPU; Supplier IPU Origination Model' (BCC.0001.0001.6704).

618 On or around 28 May 2020, GCUK (through its broker, Marsh) requested that BCC provide insurance cover with respect to the Kerry Ireland Risk with an insurance limit of USD2.9 million. The relevant obligor was expressed to be 'Kerry Leeds Investment Limited'.

Particulars

Email from Craig Pinnington to Edward Smith of Marsh and Brereton, copying Lex Greensill, Andrew Kuyk (Chief Credit Officer) of GCUK, Mark Kavanagh (Head of Product Risk) of GCUK and Michael Gilhuely (Managing Director) of GCUK, dated 28 May 2020 (CSA.0001.0006.8696), attaching a document titled 'HIF Shortfall obligors 28-05-2020' (CSA.0001.0006.8699).

619 In the premises of 616 and 618 above, in making the request for cover with respect to the Kerry Ireland Risk, GCUK (via its broker, Marsh) represented to Brereton, among other matters, that:

(a) the Kerry Leeds facility was a 'Seller Centric Accounts Receivables Finance' product with a 'Supplier Irrevocable Payment Undertaking' (**Supplier IPU**) subtype (**Kerry Ireland Risk**);

Particulars

Document titled 'HIF Shortfall obligors 28-05-2020' (CSA.0001.0006.8699) attached to the email referred to in the particulars to paragraph 618 above, which identifies (among other things) the 'Product Type' for the Kerry Leeds facility as 'Seller Centric Accounts Receivables Finance' and the 'Sub Type' as 'SIPU'.

(b) Greensill's Supplier IPU financing product was a variation of its 'typical accounts receivable purchase programmes' and involved:

(i) acquiring accounts receivable from one or more sellers, with one or many thousands of underlying account debtors;

(ii) the seller (or an affiliate thereof) providing Greensill with an irrevocable payment undertaking (**IPU**) relating to the underlying accounts receivable, such that Greensill has its primary recourse to the party providing the IPU rather than the underlying account debtors;

(iii) Greensill typically requesting that the insurer insure non-payment by the entity providing the IPU, namely the seller of the accounts receivable to Greensill; and

Particulars

IAL repeats the particulars to paragraph 619(a) above.

Document titled 'Greensill insurance disclose pack – May 2020 – clean' (BCC.0001.0001.6707) page 2, under the heading 'Supplier IPU model'. This document was attached to the email referred to in the particulars to paragraph 616 above.

(c) the Kerry Ireland Risk, being a Supplier IPU product, involved accounts receivable financing, in respect of debts owed to Kerry Leeds (and/or Kerry Ireland) in respect of the supply of goods and/or services,

(the **Kerry Ireland Misrepresentations**).

Particulars

IAL repeats the particulars to paragraphs 619(a) and 619(b) above.

Document titled 'Lagoon Farm (Hoffman) - Product Annex - Supplier IPU; Supplier IPU Origination Model' (BCC.0001.0001.6704) attached to the email

referred to in the particulars to paragraph 616 above. This document provides a comprehensive explanation of a typical Supplier IPU programme, including on page 6 (emphasis added):

(a) 'Simultaneously or close to the time of the submission by the Relevant Obligor of each Payment Obligation File to the Relevant Claims Seller or such Intermediary Party (as the case may be), the Relevant Claims Seller or an Intermediary Party or an affiliate thereof (as the case may be) will agree to purchase from the Relevant Obligor or an affiliate thereof ("Supplier"), pursuant to a receivables transfer agreement (a "Receivables Transfer Agreement"), **a corresponding portfolio of accounts receivable** (each an "Accounts Receivable" and together the "Relevant Portfolio") **owed by debtors** (each a "Debtor") in one or more jurisdictions (each a "Relevant Jurisdiction"), pursuant to certain contracts of the type (the "Contract Type") specified in the relevant Series Supplement (each a "Contract") pursuant to which the **Debtor has agreed to pay the consideration agreed for goods sold and/or services rendered under their relevant Contract**'; and

(b) 'Each Accounts Receivable acquired pursuant to the Receivables Transfer Agreement represents the part of the scheduled payment payable by a Debtor to the Supplier pursuant to the relevant Contract in consideration for the **goods sold and/or services rendered under the relevant Contract**.'

In addition to the above, the fact that the Kerry Ireland Risk was represented to be in respect of genuine accounts receivable, as opposed to future accounts receivable, can be inferred from the fact that future receivables are not referred to in the document titled 'Lagoon Farm (Hoffman) - Product Annex - Supplier IPU; Supplier IPU Origination Model' (BCC.0001.0001.6704).

620 The Kerry Ireland Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 22, 23, 29 and 30 above.

621 On around 17 June 2020, GCUK (via its broker Marsh) requested an increase to the proposed insurance limit for the Kerry Ireland Risk to USD3 million. The relevant obligor remained expressed to be 'Kerry Leeds'.

Particulars

Email from Edward Smith to Brereton, copying Ewan Berkemeier, Angus Ward and Flavia Pritchard of Marsh, dated 17 June 2020 (MAR.0004.0003.7556),

attaching a document titled 'HIF shortfall obligors 28-05-2020' (MAR.0004.0003.7557).

622 On or around 18 June 2020, Brereton responded to GCUK's request and purported to agree to extend cover with respect to the Kerry Ireland Risk, with Kerry Leeds as the relevant obligor and a limit of USD3 million.

Particulars

Emails between Brereton and Edward Smith, copying Ewan Berkemeier, Angus Ward and Flavia Pritchard, dated 18 June 2020 (BCC.0001.0002.5501).

623 On or around 19 June 2020, GCUK sent an email to Marsh providing further details relating to the request for insurance cover for the Kerry Ireland Risk, including noting that the relevant obligor was to be 'Kerry Ireland Investments'.

Particulars

Email from Craig Pinnington to Edward Smith, copying email address insurance@greensill.com, Angus Ward and Flavia Pritchard, dated 19 June 2020 (MAR.0003.0003.2745), attaching a document titled 'HIF SOL Insurance request details' (MAR.0003.0003.2747).

624 On or around 19 June 2020, Marsh sent an email to GCUK attaching documents related to the request for cover for the Kerry Ireland Risk, and asked GCUK to confirm 'NKORL' [no known or reported losses] and an order to bind.

Particulars

Email from Edward Smith to Craig Pinnington, copying the email address insurance@greensill.com, Angus Ward and Flavia Pritchard, dated 19 June 2020 (MAR.0003.0003.2778) attaching:

(a) two unsigned versions of Endorsement 138 (MAR.0003.0003.2781 and MAR.0003.0003.2782); and

(b) document titled 'Deductible Portfolio Limits' (MAR.0003.0003.2780) which identifies the relevant obligor as 'Kerry Ireland Investments Limited'.

625 On or around 19 June 2020, GCUK provided confirmation to Marsh that there were no known or reported losses and instructed Marsh to bind cover under the 2019 Policy for the Kerry Ireland Risk.

Particulars

Email from Craig Pinnington to Edward Smith, copying email address insurance@greensill.com, Angus Ward and Flavia Pritchard, dated 19 June 2020 (AGB.0002.0002.3998).

Email from Craig Pinnington to Edward Smith and Arslan Gill, copying email address insurance@greensill.com, Angus Ward and Flavia Pritchard, dated 19 June 2020 (MAR.0003.0003.2799).

626 On or around 19 June 2020, a representative of Marsh sent an email to Brereton which attached documents relating to the request for cover, including a spreadsheet titled 'Deductible Portfolio Limits' which identified the relevant obligor as 'Kerry Ireland Investments Limited' and not Kerry Leeds. In that email, Marsh stated 'Greensill have confirmed NKORL [no known or reported losses] and have given us the order to bind'.

Particulars

Email from Edward Smith to Brereton, copying Angus Ward and Flavia Pritchard, dated 19 June 2020 (MAR.0003.0003.2788) and attachments:

(a) document titled 'Deductible Portfolio Limits' (MAR.0003.0003.2789), identifying Kerry Ireland as the relevant obligor (among others); and

(b) two unsigned versions of Customer Endorsement No 138 (MAR.0003.0003.2790 and MAR.0003.0003.2791).

627 On or around 25 June 2020, Brereton provided GCUK (via its broker Marsh) with a signed copy of Customer Endorsement No 138 to the 2019 Policy, which allegedly purported, with effect from 12 June 2020, to endorse Kerry Ireland as a Customer under the 2019 Policy, with an Account Debtor Sublimit of USD3 million and a tenor of 1095 days.

Particulars

Customer Endorsement No 138 was executed by BCC on behalf of the Insurer on 25 June 2020 (CSA.0001.0006.8940).

Email from Brereton to Edward Smith, copying Ewan Berkemeier, dated 25 June 2020 (MAR.0003.0003.2950), attaching Customer Endorsement No 138 to the 2019 Policy signed by BCC (MAR.0003.0003.2951).

Representations were misleading

628 The Kerry Ireland Misrepresentations referred to in paragraph 619 above were false and/or misleading because:

(a) while GCUK represented that the Supplier IPU was to provide funding secured by accounts receivable, in fact the Kerry Leeds (and/or Kerry Ireland) facility was a long term corporate loan primarily intended to fund Kerry Ireland’s acquisition of the business known as 'MIS Motorsports';

Particulars

Emails exchanged between Craig Pinnington and Edward Smith, copying Arslan Gill and Sophie Dyke, on the following dates:

(a) 20 January 2020 (MAR.0003.0002.8485), in which Craig Pinnington states 'it [the facility] is different to our typical business lines and is more of an acquisition funding strategy…'.;

(b) 3 February 2020 (MAR.0004.0003.1320), in which Edward Smith states 'This isn't really one we can assist with as essentially Kerry Leeds is an insurer and we generally don't have other insurers willing to front for another'; and

(c) 7 February 2020 (MMC_GCUK14_00001021), in which Craig Pinnington states 'Kerry Leeds –…it [the facility] is purely a corporate loan structure. On a separate note, if by shopping this name we can build contacts of insurers that are keen to consider these corporate loan like deals, that will help us for future deals as we expect more of this to come this year rather than purely trade receivables based transactions'.

Greensill document titled 'Weekly Obligor Reporting' dated 21 June 2021 (CSA.5000.0002.8526), which states on page 16 under the heading 'Overview' that 'the purpose of the facility was to facilitate the acquisition of MIS Motorsports, providing motorsport insurance to wealthy individuals'.

Brian Carey, 'Double trouble in Greensill's Irish Loans car crash', The Times (online, 3 December 2023): https://www.thetimes.com/article/double-trouble-in-greensills-irish-loans-car-crash-cct8xdzhx (accessed on 25 October 2024).

Further particulars may be provided after completion of discovery by GCUK.

(b) the Supplier IPU facility had been drawn down based solely on the 'projected revenue' of Kerry Leeds (**Loan Funds**), being purported future accounts receivables; and

Particulars

Administrators' statement of proposals for Kerry Ireland Investments Limited dated 16 February 2022 (CSA.0001.0001.5242), which states on page 5 that 'In December 2019, the funds of £10m were advanced to the Company [Kerry Ireland] under the PUD [defined below]. It is understood that further funds were expected to be advanced by GC(UK) to facilitate future acquisitions by the Company'.

In support of the fact that the draw down and Supplier IPU was in respect of purported future accounts receivables, IAL presently relies on the following documents:

(a) Offer Notice of Kerry Leeds to GCUK dated 6 January 2020 (BCC.0001.0006.6746), and accompanying Offer File dated 6 January 2020 (BCC.0001.0006.6782) which refers to 'projected revenue' of Kerry Ireland;

(b) document titled 'Kerry Leeds Investment Overview' dated January 2020 (MAR.0003.0002.8487), which states on page 5 that 'The future receivables are the Kerry Leeds receipts which are in the form [of] net commission from insurance underwriters for the brokerage Kerry Leeds originate and place';

(c) email from Tim Armstrong (GCUK) to GCUK personnel including Andrew Kuyk and Craig Pinnington dated 14 November 2019 (GCU.0012.0005.0591), which states: 'My view on how we structure this is that it should be a Future Receivable deal with the future receivables generated by an agreed list / portfolio of existing customers. The performance of the receivables is then underwritten via an IPU from MIS Insurance';

(d) email from Craig Pinnington (GCUK) to Fortune Gweru (GCUK), Tariq Akrouk (GCUK), Tim Armstrong (GCUK) and Ben Allmond (GCUK) dated 22 November 2019 (GCU.0009.0012.3093) and attached document titled 'Early Read Report M.I.S Motorsport Limited' dated 20 November 2019 (GCU.0009.0012.3094) which states on page 4 that: 'the facility will be a SIPU where Greensill will purchase the Future Receivables that MIS expects to generate, along with an IPU for that amount. It will also incorporate monthly cash paid rolls…the future receivables are the MIS receipts which are in the form net commission from insurance underwriters for the brokerage MIS originate and place';

(e) email from Liam Carden (GCUK) to Brett Downes (GCUK), Ludwig Sels (GCUK), Andrew Kuyk (GCUK) and others dated 6 January 2020 (GCU.0009.0012.8304) and attached document titled ‘Credit Application Report – Amendment Kerry Leeds Investments Limited’ dated 20 December 2019 (GCU.0009.0012.8306) which states on page 4 that: 'the facility will be a SIPU where Greensill will purchase the Future Receivables that Kerry Leeds expects to generate, along with an IPU for that amount. It will also incorporate monthly cash paid rolls…the future receivables are the Kerry Leeds receipts which are in the form net commission from insurance underwriters for the brokerage Kerry Leeds originate and place';

(f) email from Ben Allmond (GCUK) to Dermot Andrew Hanafin dated 23 December 2019 which states 'we have prepared a draft offer file based on expense future premium payments for the next 3 years' (GCU.0013.0007.2741); and

(g) email from Fortune Gweru to Wendy Burrton (GCUK), Susanne Lohneiss (GCUK), Andrew Kuyk (GCUK) and Helen Hubert (GCUK) dated 27 January 2021 (GCU.0013.0010.4978) stating 'the Kerry Ireland deal is structured as a future receivables deal with multiple IPUs'.

Further particulars may be provided after completion of discovery by GCUK.

(c) the Loan Funds had been, or alternatively were intended to be applied by Kerry Ireland for purposes other than GCUK providing funding secured by accounts receivable, including a payment of GBP7.5 million to Dermot Andrew Hanafin personally as consideration for Kerry Ireland acquiring his ownership share in Kerry Leeds, which was the parent company of, 'MIS Motorsports'.

Particulars

The payment to Dermot Andrew Hanafin is demonstrated by:

(a) IAL repeats the particulars to paragraph 614 above.

(b) Administrators' statement of proposals for Kerry Ireland Investments Limited dated 16 February 2022 (CSA.0001.0001.5242) which states on page 5 'Of the funds initially loaned to the Company under the PUD, £7.5m is understood to have been used to purchase the share capital of MIS, a specialist motorsports insurance brokerage, from Dermot Hanafin on 19 December 2019';

(c) Brian Carey, 'Double trouble in Greensill's Irish Loans car crash', The Times (online, 3 December 2023) https://www.thetimes.com/article/double-trouble-in-greensills-irish-loans-car-crash-cct8xdzhx (accessed on 25 October 2024);

(d) Greensill document titled 'Kerry Leeds Investment Overview' dated January 2020 (MAR.0003.0002.8487), which states on page 7 'Full cash trap – where no company shall distribute excess funds after regular operating costs (other than an initial £7.5m from our financing proceeds which shall go to Dermot Hannafin [CEO of Kerry Leeds])'. This document was provided by Craig Pinnington to Marsh on 20 January 2020, as particularised at paragraph 615 above; and

(e) 'Kerry Leeds / Kerry Ireland' presentation document (CSA.0001.0001.5266), which states 'In January 2020 £10m was

borrowed by Kerry Leeds and later transferred to its parent company Kerry Ireland investments…£7.5m of the proceeds was used by Kerry Ireland to purchase MIS…A further £1.4m was used to settle deferred payments due from Dermot Hanafin to Lockton, from whom he purchased the business for £1.4m (and £1.4m deferred) in 2018 (so £2.8m total);

(f) document titled 'Early Read Report' dated 20 November 2019 (GCU.0001.0010.7713);

(g) email from Craig Pinnington (GCUK) to Andrew Kuyk (GCUK), Myrjam Tshoeke (GCUK) and copied to the Greensill 'credit risk team' dated 4 December 2019 (GCU.0009.0012.4444), attaching a 'Credit Application Report' also dated 4 December 2019 (GCU.0009.0012.4445). The covering email stated: 'Please find attached paper to support request for a GBP10m SIPU facility, with 3 year tenor. This will be used to fund MIS Motorsport, a well-established insurance broker in the High Net Worth Individual space focussing on insuring track-based racing';

(h) email from Mr Paul Johnson (Mills Reeve) to Ben Allmond (GCUK) and copied to Dermot Andrew Hanafin dated 10 December 2019 (GCU.0009.0012.5110), stating: 'We had always understood that Kerry Ireland would acquire Kerry Leeds (which has the MIS business and the receivables). This would happen prior to drawdown of the Greensil [sic] funding but the consideration for this would be paid once the funding had been drawn down. What has been suggested is that the shares in Kerry Leeds are sold for £7.5m and this amount is paid to Dermot from the Greensil [sic] funding…There are a number of reasons for structuring the process in this way…Dermot will pay 20% tax on the sale rather than be paid a dividend or other distribution which would incur a much higher tax rate…The documentation we have received is all pretty much acceptable…save for the fact that £7.5m of the amount drawn down will be paid personally to Dermot. Hopefully this is agreed from Greensil's [sic] perspective'. This email was forwarded by Dermot Andrew Hanafin to Sean Hanafin on the same date;

(i) email from Fortune Gweru (GUCK) to Ben Allmond (GCUK) and others at GCUK dated 12 December 2019 (GCU.0010.0011.3121) stating: 'Am sending Dermot the tables below with the team on copy so we separate the sources and uses as they relate to the acquisition group from those of Dermot in his personal capacity'. This email was forwarded to Craig Pinnginton (GCUK) on 18 December 2019 (GCU.0009.0012.6566);

(j) email from Bence Osvath (GCUK) to Craig Pinnington (GCUK), Andrew Kuyk (GCUK) and others dated 29 April 2020 (GCU.0005.0025.9750),

attaching a document titled 'Credit Application Report' dated 23 April 2020 (GCU.0005.0025.9753), which states on page 27 under the heading "Sources and Uses" that: 'utilisation of cash proceeds by Dermot Hanafin from 100% sale of equity in Kerry Leeds to Kerry Ireland GBP 7, 500,000';

(k) email exchange between Alexandra Hayes (GCUK) and Tariq Arouk (GCUK) between 25 and 26 February 2020 (GCU.0009.0013.7497) in which Ms Hayes queried: 'do we have any recourse to the £7.5mm that has gone to Dermot Hannafin?.. How is it going to get repaid if it is not linked directly to insurance proceeds coming in?';

(l) email from David Fitzpatrick (GCUK) to Brett Downes (GCUK) and others dated 5 May 2020 (GCU.0009.0015.2704), attaching a document titled 'Credit Application Report' dated 29 April 2020 (GCU.0009.0015.2708), which similarly states on page 27 under the heading "Sources and Uses" that: 'utilisation of cash proceeds by Dermot Hanafin from 100% sale of equity in Kerry Leeds to Kerry Ireland GBP 7, 500,000'; and

(m) email from Michel Meylacq (GCUK) to the Greensill Bank Corporate Development team and others at Greensill Bank dated 15 October 2020 (GCU.0009.0018.8290), attaching a document titled 'Credit Application Report' dated 13 October 2020 (GCU.0009.0018.8291), which indicates on page 9 under the heading ‘Financial Analysis’ 7,500,000.00 being paid in cash for share consideration.

Further particulars to be provided after completion of discovery by GCUK.

Knowledge of falsity of representations

629 Craig Pinnington (Senior Credit Analyst of GCUK) knew of the matters set out in paragraph 628 above.

Particulars

IAL refers to the particulars to paragraph 628 above.

The knowledge of Craig Pinnington is to be further inferred from:

(a) his role as a Senior Credit Analyst of GCUK and Designated Senior Credit Analyst for Greensill, as demonstrated by:

(i) document titled 'Greensill Group Approval Committees Terms of Reference, Version: 1 June 2020' (AGB.0002.0002.4372), which on page 17 (Appendix 4) identifies Craig Pinnington as a 'Designated Senior Credit Analyst' as of 1 July 2019;

(ii) document titled 'Credit Policy' (GBA.0004.0024.1326), which refers to the role of Credit Analysts;

(b) the particulars to paragraphs 615, 616, 618 and 623 to 625 above, which refer to Craig Pinnington's involvement in the:

(i) general disclosure of GCUK's facility programmes; and

(ii) dealings with Kerry Ireland and/or Kerry Leeds, including the placement of insurance cover for the Kerry Ireland Risk.

Further particulars may be provided after completion of discovery by GCUK.

630 The knowledge of Craig Pinnington of GCUK of the matters identified in paragraph 629 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph paragraphs 29 and 30 above.

631 The knowledge of Craig Pinnington of GCUK of the matters identified in paragraph 629 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

632 Further or in the alternative, Brett Downes (Chief Risk Officer of GCUK) knew of the matters set out in paragraph 628 above.

Particulars

IAL refers to the particulars to paragraph 628 above.

The knowledge of Brett Downes is to be further inferred from:

(a) his senior position as the Chief Risk Officer of GCUK for Greensill, as demonstrated by document titled 'Greensill Group Approval Committees Terms of Reference, Version: 1 June 2020' (AGB.0002.0002.4372), which on page 17 (Appendix 4) identifies Brett Downes as the Chief Risk Officer' as of 5 May 2015 until 26 May 2020; and

(b) his involvement in the general disclosure of GCUK's facility programmes and specifically with correspondence and documents associated with the Kerry Ireland Risk.

Further particulars may be provided after completion of discovery by GCUK.

633 The knowledge of Brett Downes of GCUK of the matters identified in paragraph 632 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

634 The knowledge of Brett Downes of GCUK of the matters identified in paragraph 234 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Knowledge of the materiality of representations

635 Each of the matters referred to in paragraph 628 above was a matter:

(a) which Craig Pinnington knew was material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk; or

(b) alternatively to subparagraph (a), in respect of which Craig Pinnington was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of his position as Senior Credit Analyst of GCUK and Designated Senior Credit Analyst of Greensill, and his experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the nature of the Kerry Ireland Risk.

636 Further, or in the alternative to paragraph 635 above, each of the matters referred to in paragraph 628 above was a matter which a reasonable person in the position of Craig Pinnington could be expected to know were material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk.

637 The knowledge of Craig Pinnington of the matters set out in paragraph 635 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

638 The knowledge of Craig Pinnington of the matters set out in paragraph 635 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

639 Each of the matters referred to in paragraph 628 above was a matter:

(a) which Brett Downes knew was material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk; or

(b) alternatively to subparagraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Brett Downes' knowledge is to be inferred by virtue of his position as Chief Risk Officer and member of the Greensill Credit Committee and as the misrepresentations bore directly on the nature of the Kerry Ireland Risk.

640 Further, or in the alternative to paragraph 639 above, each of the matters referred to in paragraph 628 above was a matter which a reasonable person in the position of Brett Downes could be expected to know were material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk.

641 The knowledge of Brett Downes of the matters set out in paragraph 639 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

642 The knowledge of Brett Downes of the matters set out in paragraph 639 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Misrepresentations were fraudulent

643 In the premises of paragraphs 635 to 642 above:

(a) Greensill misrepresented the risk presented by the Kerry Ireland Risk;

(b) the misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk.

644 If Greensill had not made the Kerry Ireland Misrepresentations, insurance cover would not have been issued in respect of the Kerry Ireland Risk at all or, in the alternative, on the same terms in which it purportedly was written.

645 By reason of the matters pleaded in paragraphs 643 to 644 above, IAL is entitled to avoid the Kerry Ireland Endorsement.

Innocent misrepresentation

646 In the alternative to the matters pleaded in paragraphs 643 to 645 above, by reason of the matters pleaded in paragraphs 628 and 644 above, IAL is entitled to reduce its liability under the Kerry Ireland Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the Kerry Ireland Misrepresentations had not occurred).

D9.3 Kerry Ireland Non-Disclosures

Knowledge of underlying matters

647 At the time the insurance cover for the Kerry Ireland Risk was purportedly provided under the 2019 Policy, Craig Pinnington knew:

(a) each of the matters set out in paragraph 628 above;

Particulars

IAL refers to the particulars to paragraph 628 above.

As to the knowledge of Craig Pinnington, IAL repeats the particulars to paragraph 629 above.

(b) there were concerns about Kerry Ireland and/or Kerry Leeds' ability to meet its repayment obligations under the facility, and to prevent a default:

(i) Dermot Andrew Hanafin, on occasion, had to personally cover repayment obligations; and

(ii) GCUK was required to use 'evergreen rolls' to extend the repayment terms;

Particulars

Kerry Ireland was a non-trading ultimate parent company and therefore relied on the trading activities of its subsidiaries, including MIS Motorsport, to generate profits for the group.

By at least 2 April 2020, MIS Motorsport was effectively not trading and was facing financial difficulties. This is evidenced by or can otherwise be inferred from the following:

(a) email exchange between GCUK personnel, Dermot Andrew Hanafin and others dated 2 to 7 April 2020 (GCU.0010.0012.8095) in which Mr Hanafin

stated: '…MIS Motorsport is effectively not trading because of the Covid19, and I am personally funding our obligations. Going forward it has been agreed with Fortune & I subject to approval that we will pay the interest only going forward and not the full receivable, to ease the facility going forward'. Fortune Gweru (GCUK) responded stating: '…I believe we may have a point of confusion which came about as I was speculating last week about how we address the rolls given you don't have any receivables at the moment.'

(b) email exchange between Fortune Gweru (GCUK), David Fitzpatrick (GCUK) and Tariq Akrouk (GCUK) dated 3 April 2020 (GCU.0012.0005.5806), in which Ms Gweru queried whether the facility could be changed to a “cashless” roll before Mr Fitzpatrick confirms that the facility is a “cash roll”, which to change would require credit approval and structural operational changes to the product which is “not a position they would generally support for a credit of this nature as the facility begins to look more like “core” debt and the structure is weakened”;

(c) WhatsApp messages exchanged between Fortune Gweru (GCUK) and Andrew Kuyk (GCUK) which refer to Dermot Andrew Hanafin paying 'the last few interest bills out of his own cash' (GCU.0019.0001.0021) (page 110);

(d) as to the knowledge of Craig Pinnington, IAL repeats the particulars to paragraph 629 above.

The fact that GCUK was required to use 'evergreen rolls' to extend the facility repayment terms to avoid default is evidenced by, or can otherwise be inferred from the following:

(e) email exchange between Brett Downes (GCUK), Andrew Kuyk (GCUK) and Craig Pinnington (GCUK) dated 22 May 2020 (GCU.0013.0008.3944), in which Mr Pinnington states: 'I don't see that we will be able to get insurance on these unless we take a significant deductible…Kerry Leeds is also a deal which while not technically committed does rely on evergreen rolls and a stop in those would potentially cause the default of the facility'. Mr Downes responds: 'We cannot seek insurance for any name that is breaching covenants or is a poorly structured credit…Greg [Brereton] is not the answer here';

(f) email from Craig Pinnington (GCUK) to Lex Greensill and Brett Downes (GCUK) dated 22 May 2020, seeking their approval regarding the facility, which similarly describes it as ‘a deal which while not technically committed does rely on evergreen rolls’ (GCU.0005.0027.1966); and/or

(g) GCUK's practice of rolling the debts the subject of the Kerry Ireland facility, without Kerry Ireland's and/or Kerry Leeds' in fact repaying any amount to GCUK, is evident from the documents identified immediately above in the particulars to this subparagraph 647(b)(ii) and is further pleaded at Section F.3 of Annexure B to this defence.

(c) further to the performance issues referred to in (b) above, the Kerry Ireland Risk was not supported by any security over tangible assets of Kerry Ireland and/or Kerry Leeds, but merely purported accounts receivables that were not being generated at the time.

Particulars

Email from David Fitzpatrick (Vice President of GCUK) to Andrew Kuyk (GCUK), and Craig Pinnington (GCUK) dated 1 April 2020 (GCU.0009.0014.4649) stating: 'The security in Kerry Leeds that is being released was not over any tangible assets (as insurance brokers rarely have any) so essentially just the receivables and these are protected by having the security in Kerry Ireland along with potentially a cash sweep'.

648 The knowledge of Craig Pinnington of the matters set out in paragraph 647 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

649 The knowledge of Craig Pinnington of the matters set out in paragraph 647 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

650 Further or in the alternative to paragraph 647 above, at the time the insurance cover was purportedly provided for the Kerry Ireland Risk under the 2019 Policy, Brett Downes of GCUK knew each of the matters set out in paragraph 647 above.

Particulars

The knowledge of Brett Downes is also to be inferred from:

(a) his direct involvement with the Kerry Ireland Risk as evidenced by the correspondence and documents particularised throughout paragraphs 628 and 647 above; and

(b) Brett Downes' senior position within GCUK as Chief Risk Officer and member of the Greensill Credit Committee.

Further particulars may be provided after completion of discovery by GCUK.

651 The knowledge of Brett Downes identified in paragraph 647 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

652 The knowledge of Brett Downes identified in paragraph 647 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

Knowledge of materiality

653 Each of the matters referred to in paragraph 647 above was a matter:

(a) which Craig Pinnington knew was material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk; or

(b) alternatively to paragraph (a), in respect of which Craig Pinnington was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of his position as Senior Credit Analyst of GCUK and Designated Senior Credit Analyst of Greensill, and experience in placing insurance on behalf of Greensill and as the non-disclosures bore directly on the nature of the Kerry Ireland Risk.

654 Further or in the alternative to paragraph 653 above, each of the matters referred to in paragraph 647 above was a matter which a reasonable person in the position of Craig Pinnington could be expected to know was material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk.

Particulars

IAL refers to the particulars to paragraph 653 above.

655 The knowledge of Craig Pinnington of the matters set out in paragraphs 653 and 654 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

656 The knowledge of Craig Pinnington of the matters set out in paragraphs 653 and 654 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

657 Further and in the alternative to paragraph 653 above, each of the matters referred to in paragraph 647 above were matters:

(a) which Brett Downes (Chief Risk Officer) of GCUK knew were material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk; or

(b) alternatively to paragraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes' knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the non-disclosures/misrepresentations bore directly on the risk of Kerry Ireland being unable to repay the amounts advanced to it and thus upon the nature of the Kerry Ireland Risk.

658 The knowledge of Brett Downes of the matters set out in 657 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

659 The knowledge of Brett Downes of the matters set out in 657 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Breach of duty of disclosure

660 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 647 above before the cover was placed for the Kerry Ireland Risk.

661 Greensill's failure to disclose the matters referred to in paragraph 647 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 653 to 656 above.

Fraudulent non-disclosure

662 By reason of the matters pleaded in paragraphs 653, 655 and 656 above, Greensill's failure to disclose the matters referred to in paragraph 647 above was fraudulent.

663 The cover for the Kerry Ireland Risk would not have been issued if the matters referred to in paragraph 647 above had been disclosed.

664 In the alternative to the allegation in paragraph 662 above, the cover for the Kerry Ireland Risk would not have been issued on the same terms if the matters referred to in paragraph 647 above had been disclosed.

665 By reason of the matters pleaded in paragraphs 662 to 664 above, IAL is entitled to avoid the Kerry Ireland Endorsement.

Innocent non-disclosure

666 In the alternative to the matters pleaded in paragraphs 662 to 665 above, and by reason of the matters pleaded in paragraphs 660, 661, 663 and 664 above, IAL is entitled to reduce its liability under the Kerry Ireland Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D10 Bauer

D10.1 Policy and endorsements

667 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Bauer's Intelligent Transportation Inc (**Bauer**) was endorsed as a customer under the 2019 Policy (TB-03690) by means of Customer Endorsement No 138 dated 25 June 2020 (**Bauer Endorsement**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 135.

D10.2 Bauer Misrepresentations

Representations

668 On or around 6 April 2020, GCUK instructed Marsh to have BCC extend insurance cover in respect of existing financing provided by Greensill Capital Investments Limited (**GCIL**) to Bauer (**Bauer Risk**).

Particulars

Email from Adam Cherubini (Director, Origination) of GCUK to Edward Smith of Marsh, Angus Ward of Marsh, Paul William Nash of Marsh and Alexandre Weiss Bueno of Marsh, copying insurance@greensill.com, Mireia Just (Director, Origination) of GCUK and Rachelle Bower (Analyst, Origination) of GCUK, dated 6 April 2020 (CSA.0001.0006.8704) and its attachments:

(a) document titled 'FY 2018 – Annual Report' (CSA.0001.0006.8706);

(b) document titled 'FY 2017 – Annual Report' (CSA.0001.0006.8707);

(c) document titled 'Q3 2019 – Income Statement' (CSA.0001.0006.8708);

(d) document titled 'Q3 2019 – Balance Sheet' (CSA.0001.0006.8709);

(e) presentation deck titled 'Bauer's Intelligent Transportation – Instalment Payment Facility April 2020' (CSA.0001.0006.8710).

669 At the time of the instruction, GCUK conveyed to Marsh, among other matters:

(a) on each draw date notes with a maturity of up to 12 months are issued;

(b) the maximum tenor of the underlying notes was to be 1 year;

(c) the issue of notes was structured such that Bauer has the obligation to make repayments once a month; and

(d) all repayments to date had been made by Bauer on time.

Particulars

IAL refers to the particulars in paragraph 668 above.

670 On or around 6 April 2020, Marsh requested that BCC extend insurance cover in respect of the Bauer Risk and conveyed the matters in paragraph 669.

Particulars

Email from Edward Smith of Marsh to Brereton, copying Ewan Berkemeier of Marsh and Angus Ward of Marsh, dated 6 April 2020 (BCC.0001.0001.5824) and its attachments:

(a) document titled 'FY 2018 – Annual Report' (BCC.0001.0001.5825);

(b) document titled 'Q3 2019 – Balance Sheet' (BCC.0001.0001.5826);

(c) document titled 'FY 2017 – Annual Report' (BCC.0001.0001.5827);

(d) presentation deck titled 'Bauer's Intelligent Transportation – Instalment Payment Facility April 2020' (BCC.0001.0001.5828); and

(e) document titled 'Q3 2019 – Income Statement' (BCC.0001.0001.5829).

671 In the premises of paragraphs 669 and 670 above, GCUK (including via Marsh) represented to Brereton, among other matters, that:

(a) Bauer:

(i) was required to make monthly repayments;

(ii) had made its monthly repayments on time to date,

(together with (i), the **Bauer Repayment Representations**); and

(b) the maximum tenor of the underlying notes did not exceed 1 year (**Bauer Notes Tenor Representation**).

672 The Bauer Repayment Representations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to the particulars in paragraphs 17, 18, 22, 23, 29 and 30 above.

673 The Bauer Notes Tenor Representation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to the particulars in paragraphs 17, 18, 22, 23, 29 and 30 above.

674 Marsh repeated the Bauer Repayment Representations and the Bauer Notes Tenor Representation on or around:

(a) 23 April 2020;

Particulars

Email from Ewan Berkemeier of Marsh to Brereton, copying Julian Macey-Dare of Marsh, Edward Smith of Marsh and Angus Ward of Marsh, dated 23 April 2020 and its attachments (BCC.0001.0001.6589, BCC.0001.0001.6536 and BCC.0001.0001.6558).

(b) 29 April 2020;

Particulars

Email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Julian Macey-Dare of Marsh and Angus Ward of Marsh, dated 29 April 2020 and its attachments (MAR.0004.0003.5246, MAR.0004.0003.5345 and MAR.0004.0003.5348).

(c) 1 May 2020;

Particulars

Email from Edward Smith of Marsh to Brereton, copying Ewan Berkemeier of Marsh and Angus Ward of Marsh, dated 1 May 2020 and its attachments (MAR.0004.0003.5647, MAR.0004.0003.5751 and MAR.0004.0003.5756).

(d) 4 May 2020;

Particulars

Email from Edward Smith of Marsh to Brereton, copying Ewan Berkemeier of Marsh and Angus Ward of Marsh, dated 4 May 2020 and its attachments (MAR.0013.0001.0674, MAR.0013.0001.0680 and MAR.0013.0001.0682).

(e) 12 May 2020;

Particulars

Email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Angus Ward of Marsh, dated 12 May 2020 and its attachments (AGB.0002.0002.6395, AGB.0002.0002.6396 and AGB.0002.0002.6401).

(f) 14 May 2020; and

Particulars

Email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Angus Ward of Marsh, dated 14 May 2020 and its attachments (AGB.0002.0002.6413, AGB.0002.0002.6414 and AGB.0002.0002.6419).

(g) 27 May 2020.

Particulars

Email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Angus Ward of Marsh, dated 27 May 2020 and its attachment (MAR.0004.0003.6971 and MAR.0004.0003.6974).

675 By no later than 28 May 2020, BCC had declined Marsh's request to extend insurance to cover the Bauer Risk.

Particulars

The event may be inferred from:

(a) the email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Angus Ward of Marsh, dated 14 May 2020 and its attachments (AGB.0002.0002.6413, AGB.0002.0002.6414 and AGB.0002.0002.6419), in which Marsh follows up with Brereton regarding its request from 6 April 2020 regarding insurance cover for the Bauer Risk on a standalone basis;

(b) the email from Adam Cherubini of GCUK to Mireia Just of GCUK, Michael Gilhuley of GCUK and Jen Ganzi of GCUK dated 20 May 2020 (GCU.0013.0008.3809), in which Cherubini states that the request for insurance cover for the Bauer Risk *'is pending with TBCC'*;

(c) the emails between Lex Greensill, Craig Pinnington (Senior Credit Analyst) of GCUK, Mark Kavanagh (Head of Product Risk) of GCUK, Adam Cherubini of GCUK and others between 21 May 2020 to 8 June 2020 (GCU.0013.0008.5163), in which:

(i) Kavanagh states, *'Bauers... Ed @ Marsh said we could potentially look at grouping this with other assets in HIF to make it more attractive, but otherwise it's a no to insurance on Bauers.'*; and

(ii) Cherubini states, *'I understand that TBCC declined the $37mm request we made for Bauer on a standalone basis, but they are open to a portfolio solution with the other names above the SOL'*; and

(d) the email from Craig Pinnington of GCUK to Brereton and Edward Smith of Marsh, copying Lex Greensill, Andrew Kuyk GCUK, Michael Gilhuley of

GCUK, Mark Kavanagh of GCUK, dated 28 May 2020 and attaching Excel sheet 'HIF shortfall obligors 28-05-2020' (CSA.0001.0006.8696 and CSA.0001.0006.8699), in which GCUK requests BCC to provide insurance cover on a portfolio basis, which included the Bauer Risk.

676 On or around 28 May 2020, GCUK requested that BCC extend insurance cover in respect of certain HIF names, which included the Bauer Risk with a proposed limit of USD9.5 million, and conveyed to Brereton, among other matters, that the Bauer facility:

(a) was a 'Buyer Centric Supply Chain Finance' product and the applicable 'sub-type' was an 'IPA' [Instalment Purchase Agreement]; and

(b) had a max tenor of 364 days.

Particulars

Email from Craig Pinnington of GCUK to Brereton and Edward Smith of Marsh, copying Lex Greensill, Andrew Kuyk of GCUK, Michael Gilhuley of GCUK, Mark Kavanagh of GCUK, dated 28 May 2020 and attaching Excel sheet 'HIF shortfall obligors 28-05-2020' (CSA.0001.0006.8696 and CSA.0001.0006.8699).

677 In the premises of paragraph 676 above, GCUK represented to Brereton, among other matters, that the Bauer Risk related to short-term supply chain finance (**Bauer SCF Representation**).

678 The Bauer SCF Representation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to the particulars in paragraphs 17, 18, 22, 23, 29 and 30 above.

679 On or around 18 June 2020, Marsh requested that BCC extend insurance cover in respect of certain 'names from the high income fund', which included the Bauer Risk with a proposed limit of USD11 million.

Particulars

Email from Edward Smith of Marsh to Brereton, copying Ewan Berkemeier of Marsh, Angus Ward of Marsh and Flavia Pritchard of Marsh, dated 18 June 2020, and its attachment (BCC.0001.0002.5497 and BCC.0001.0002.5498).

680 On or around 18 June 2020, BCC responded to Marsh and agreed to 'ok the limits on the basis of 15 mill first loss...'.

Particulars

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier of Marsh, Angus Ward of Marsh and Flavia Pritchard of Marsh, dated 18 June 2020 (BCC.0001.0002.5501).

681 On or around 25 June 2020, Brereton provided GCUK (via its broker Marsh) with a signed copy of Customer Endorsement 138 to the 2019 Policy, which purported, with effect from 12 June 2020, to endorse Bauer as a Customer under the 2019 Policy, with an Account Debtor Sublimit of USD11 million.

Particulars

Customer Endorsement 138 was executed by BCC on behalf of the Insurer on 25 June 2020 (CSA.0001.0006.8940).

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier of Marsh dated 25 June 2020, attaching Customer Endorsement 138 to the 2019 Policy signed by BCC (MAR.0003.0003.2950 and MAR.0003.0003.2951).

Representations were misleading

682 The Bauer Repayment Representations were false and/or misleading because amounts owing by Bauer to GCIL had been 'rolled', and accordingly Bauer did not make principal instalments on the payment instalment dates on which they were due.

Particulars

The effect of section 2.04 of the Program Side Agreement between Bauer and GCIL on 19 December 2019 (CSA.0001.0008.2545) (the **Bauer PSA**) was that GCIL was obliged to extend the maturity of a principal instalment prior to its principal instalment date following GCIL's receipt of a roll request from Bauer, meaning that Bauer was not required to make principal instalments on the payment instalment dates on which they were due.

GCIL did not require Bauer to meet its payment obligations to GCIL under the Instalment Payment Agreement executed by Bauer and GCIL dated 16 December 2019 (the **Bauer IPA**) (GCU.0010.0011.3807) and Bauer PSA on their maturity dates, but instead "rolled" such debts, which is evidenced by:

(a) the email from Adam Cherubini of GCUK to Michael Gilhuley of GCUK and Rachelle Bower of GCUK, copying Mireia Just of GCUK and Jen Ganzi of GCUK, dated 25 November 2019 (GCU.0005.0019.4222), in which Cherubini states: *'A [Bauer] note will be rolled prior to the maturity of another note, such that Bauer can use these funds + their own to make the maturity amount due in a note'*;

(b) the email from Adam Cherubini of GCUK to Marisa Lazatin of GCUK dated 17 March 2020 (GCU.0013.0007.8211), in which Cherubini states: *'The [Bauer] deal rolls once a month for ~$2.3mm'*;

(c) the email from Rachelle Bower of GCUK to Gary Schwartz of Bauer, copying Adam Cherubini of GCUK and Caroline Johnson of GCUK, dated 7 April 2020 (CSA.0001.0004.3247);

(d) the email from Rachelle Bower of GCUK to Gary Schwartz of Bauer, copying Adam Cherubini of GCUK and Caroline Johnson of GCUK, dated 16 April 2020 (CSA.0001.0004.3226);

(e) the email from Caroline Johnson of GCUK to Gary Schwartz of Bauer, copying Adam Cherubini of GCUK and Rachelle Bower of GCUK, dated 15 May 2020 (CSA.0001.0004.3236);

(f) the email from Mireia Just of GCUK to Ivan Jesensky of GCUK and Ludwig Sels of GCUK, copying Freddy Boom of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK, Jen Ganzi of GCUK and others, dated 20 May 2020 (GCU.0013.0008.3839), in which Just states: *'We would have to discuss the coming rolls of Bauer and Blackbox in June. These two facilities are committed, rolls are small…'*;

(g) emails between Adam Cherubini of GCUK and Divya Eapen of GCUK dated between 17 and 18 June 2020 (GCU.0010.0013.7656); and

(h) messages between Adam Cherubini of GCUK and Rachelle Bower of GCUK dated 18 June 2020 (GCU.0010.0013.7621).

GCUK's practice of rolling the debts the subject of the Bauer facility, without Bauer in fact repaying any amount to GCUK from its own resources, is evident from the documents identified immediately above in the particulars to this paragraph 682 and is further pleaded at Section F.2 of Annexure B to this defence.

Further particulars will be provided after completion of discovery by GCUK.

683 The Bauer Notes Tenor Representation was false and/or misleading because Bauer notes were 'rolled' or refinanced through the issuance of new Bauer notes, meaning the Bauer Risk was a loan facility in which there was no maximum duration, or in the alternative, a duration longer than 1 year.

Particulars

Email from Adam Cherubini of GCUK to Michael Gilhuley of GCUK and Rachelle Bower of GCUK, copying Mireia Just of GCUK and Jen Ganzi of GCUK, dated 25 November 2019 (GCU.0005.0019.4222), in which Cherubini states: 'A [Bauer]

note will be rolled prior to the maturity of another note, such that Bauer can use these funds + their own to make the maturity amount due in a note'.

Messages between Adam Cherubini of GCUK and Nichole Nguyen of GCUK dated 12 March 2020 (GCU.0013.0007.7881), in which Adam Cherubini states that rolling of Bauer notes occurred 'because the tenor of the actual AR is longer than the 1 year we can fund' and '[rolling] allow[s] us to do a longer tenor'.

IAL repeats the particulars to paragraph 682 above.

Further particulars may be provided after completion of discovery by GCUK.

684 The Bauer SCF Representation was false and/or misleading because:

(a) having regard to the SCF Representation at paragraph 31 above, the concept of 'Buyer Centric Supply Chain Finance' was used by Greensill, and understood by Brereton, to refer to a form of short-term financing referable to genuine underlying invoices that evidence trade;

(b) while GCUK represented that the Bauer Risk related to a SCF facility with maximum tenor of 364 and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact:

(i) the Bauer Risk related to a financing facility with no maximum duration or, in the alternative, a duration longer than 1 year;

Particulars

IAL repeats the particulars to paragraphs 676 and 683 above.

Further particulars may be provided after completion of discovery by GCUK.

(ii) Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facility be based on the underlying trade of services by Bauer; and

Particulars

The effect of sections 2.01 and 2.02 of the Bauer PSA was that the Bauer IPA could operate in fact as a term loan referrable to the value of Bauer's vehicle fleet and related equipment, and without reference or regard to amounts actually owed to Bauer by any account debtors.

Between 17 March 2020 and 21 January 2021, Bauer submitted, and GCIL accepted, PAUFs that identified the 'Supplier' for each advance as Bauer.

Further particulars may be provided after completion of discovery by GCUK.

(c) Bauer had agreed under the Bauer PSA to pay GCIL an 'Upfront Fee' in an amount of USD300,000 to GCIL from the proceeds of the Bauer facility.

Particulars

Section 2.02(b) of the Bauer PSA.

Knowledge of falsity of representations

685 Adam Cherubini (Director, Origination of GCUK) knew of the matters set out in paragraphs 682 and 683 above.

Particulars

The knowledge of Adam Cherubini is to be inferred from:

(a) Adam Cherubini's direct involvement in the presentation of the Bauer Risk to the Greensill Credit Committee for approval, as demonstrated by:

(i) the email from Craig Pinnington of GCUK to Brett Downes of GCUK, Roland Hartley-Urquhart of GCUK, Myrjam Tschoeke of GCUK, Sean Hanafin of GCUK, Andrew Kuyk of GCUK and Michael Gilhuley of GCUK, copying Adam Cherubini of GCUK and others, and blind copying Lex Greensill, dated 28 November 2019 (GCU.0005.0019.6304), attaching a document titled 'Credit Application Report' for the Bauer Risk dated 25 November 2019 (GCU.0005.0019.6305). The Credit Application Report identifies Adam Cherubini as a member of the 'Facility Team';

(ii) the email from Craig Pinnington of GCUK to Brett Downes of GCUK, Roland Hartley-Urquhart of GCUK, Myrjam Tschoeke of GCUK, Sean Hanafin of GCUK, Andrew Kuyk of GCUK and Michael Gilhuley of GCUK, copying Adam Cherubini of GCUK and others, dated 18 December 2019 (GCU.0009.0012.6369), enclosing the minutes of meeting in respect of the Greensill Credit Committee's meeting on 29 November 2019, at which Adam Cherubini was an attendee;

(iii) the email from Jen Gazi of GCUK to 'CreditCommitteeAmericas@greensill.com', copying Adam Cherubini and others, dated 6 January 2021 (GCU.0009.0020.6719), attaching a document titled 'Credit Application Report – Amendment' for the Bauer Risk dated 6 January 2021, which identifies Adam Cherubini as a member of the 'Facility Team' (GCU.0009.0020.6720);

(b) the particulars to paragraphs 668, 669, 675, 682 and 683 above, which evidence Adam Cherubini's involvement in the dealings of the Bauer facility, including the placement of insurance cover for the Bauer Risk, and his knowledge of the ultimate insurance arrangements for the Bauer Risk.

686 The knowledge of Adam Cherubini of GCUK of the matters identified in paragraphs 682 and 683 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

687 The knowledge of Adam Cherubini of GCUK of the matters identified in paragraphs 682 and 683 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

688 Craig Pinnington (Senior Credit Analyst of GCUK) knew of the matters set out in paragraph 684 above.

Particulars

The knowledge of Craig Pinnington is to be inferred from:

(a) his role as a Senior Credit Analyst of GCUK and Designated Senior Credit Analyst for Greensill, as demonstrated by:

(b) document titled 'Greensill Group Approval Committees Terms of Reference, Version: 1 June 2020' (AGB.0002.0002.4372), which on page 17 (Appendix 4) identifies Craig Pinnington as a 'Designated Senior Credit Analyst' as of 1 July 2019;

(c) document titled 'Credit Policy' (GBA.0004.0024.1326), which refers to the role of Credit Analysts;

(d) the particulars to paragraphs 675 and 676 above, which refer to Craig Pinnington's involvement in the dealings of the Bauer facility, including the placement of insurance cover for the Bauer Risk.

Further particulars may be provided after completion of discovery by GCUK.

689 The knowledge of Craig Pinnington of GCUK of the matters identified in paragraph 684 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

690 The knowledge of Craig Pinnington of GCUK of the matters identified in paragraph 684 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

Knowledge of materiality

691 Each of the matters referred to in paragraphs 682 and 683 above were matters:

(a) which Adam Cherubini knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

(b) alternatively to subparagraph (a), in respect of which Adam Cherubini was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Adam Cherubini's knowledge is to be inferred by virtue of his position and as the misrepresentations bore directly on the nature of the Bauer Risk.

692 Further, or in the alternative to paragraph 691, each of the matters referred to in paragraphs 682 and 683 above was a matter which a reasonable person in the position of Adam Cherubini could be expected to know were material to the decision whether to extend insurance cover in respect of the Bauer Risk.

693 The knowledge of Adam Cherubini of the matters set out in paragraphs 691 and 692 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

694 The knowledge of Adam Cherubini of the matters set out in paragraphs 691 and 692 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

695 Each of the matters referred to in paragraph 684 above were matters:

(a) which Craig Pinnington knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

(b) alternatively to subparagraph (a), in respect of which Craig Pinnington was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of his position as Senior Credit Analyst of GCUK and Designated Senior Credit Analyst of Greensill, and his experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the nature of the Bauer Risk.

696 Further, or in the alternative to paragraph 695, each of the matters referred to in paragraph 684 above was a matter which a reasonable person in the position of Craig Pinnington could be expected to know were material to the decision whether to extend insurance cover in respect of the Bauer Risk.

697 The knowledge of Craig Pinnington of the matters set out in paragraphs 695 and 696 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

698 The knowledge of Craig Pinnington of the matters set out in paragraphs 695 and 696 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

Misrepresentations were fraudulent

699 In the premises of paragraphs 691 to 698 above:

(a) Greensill misrepresented the Bauer Risk;

(b) the misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend or renew insurance cover in respect of the Bauer Risk.

700 If Greensill had not made the Bauer Repayment Representations, the Bauer Notes Tenor Representation and/or the Bauer SCF Representation, insurance cover would not have been extended or renewed in respect of the Bauer Risk, including in respect of the Bauer Endorsement at all or, in the alternative, on the same terms in which it purportedly was written.

701 By reason of the matters pleaded in paragraphs 682 to 698 above, IAL is entitled to avoid the Bauer Endorsement.

Innocent misrepresentation

702 In the alternative to the matters pleaded in 699 to 701, by reason of the matters pleaded in 682, 683, 684 and 700 above, IAL is entitled to reduce its liability under the Bauer Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the Bauer Repayment Representations, the Bauer Notes Tenor Representation and the Bauer SCF Representation had not occurred).

D10.3 Bauer Non-Disclosure

Knowledge of underlying matters

703 At the time of requesting insurance cover for the Bauer Risk, Lex Greensill knew that there were concerns about the financial position of Bauer and its ability to repay the Bauer facility, including that Bauer had breached EBITDA covenants to which the Bauer facility was subject (**EBITDA Covenants**) for Q4 2019 and Q1 2020, being the financial quarters immediately preceding the request for cover for the Bauer Risk.

Particulars

This may be inferred from:

(a) the email from Craig Pinnington of GCUK to Brett Downes of GCUK, Roland Hartley-Urquhart of GCUK, Myrjam Tschoeke of GCUK, Sean Hanafin of GCUK, Andrew Kuyk of GCUK and Michael Gilhuley of GCUK, copying Adam Cherubini of GCUK and others, and blind copying Lex Greensill, dated 28 November 2019 (GCU.0005.0019.6304), attaching a document titled 'Credit Application Report' for the Bauer Risk dated 25 November 2019 (GCU.0005.0019.6305). The Credit Application Report:

(i) identifies that one of the *'Key Risks'* of the Bauer facility is *'Bauer's inability to repay the Facility'*;

(ii) states that the Bauer facility 'structure also benefits from financial covenants such that if Bauer's financial performance weakens, Greensill would have the opportunity to early terminate or cause Bauer to cure such breach (by posting cash, amongst others)';

(iii) provides that Greensill may terminate the facility for breach of the covenants or cause Bauer to cure such breach;

(b) the email from Craig Pinnington of GCUK to Brett Downes of GCUK, Roland Hartley-Urquhart of GCUK, Myrjam Tschoeke of GCUK, Sean

Hanafin of GCUK, Andrew Kuyk of GCUK and Michael Gilhuley of GCUK, copying Adam Cherubini of GCUK and others, dated 18 December 2019 (GCU.0009.0012.6369), enclosing the minutes of meeting in respect of the Greensill Credit Committee's meeting on 29 November 2019, and at which Lex Greensill was an attendee;

(c) the email from Brett Downes to Freddy Boom of GCUK, Lex Greensill, Sean Hanafin of GCUK and Andrew Kuyk of GCUK, copying Ludwig Sels of GCUK, Ivan Jesensky of GCUK, Michael Gilhuley of GCUK, Jen Ganzi of GCUK and Craig Pinnington of GCUK, dated 22 May 2020 (GCU.0005.0027.2170), in which Downes states (emphasis added): *'Bauer has been with insurers for a couple of weeks but it isn't making any headway under our existing insurance, as their business model has completely fallen away in the current environment as people work from home and it isn't a commercially viable line to underwrite. On the positive side, if there is one, Bauer is in breach of its covenants and this should allow us to get out of the commitment if we desire. I would also note that it is not possible to now ask insurers for cover when you* ***have a name that is in distress****';*

(d) the email from Brett Downes to Andrew Kuyk and Craig Pinnington of GCUK dated 22 May 2020 (GCU.0010.0013.4502), in which Downes states: '*We cannot seek insurance for any name that is breaching covenants or is poorly structured credit… Greg is not the answer here'*;

(e) the email from Lex Greensill to Sean Hanafin and Freddy Boom of GCUK dated 22 May 2020 (GCU.0005.0027.2170), which forwards Brett Downe's early email of 22 May 2020 and states: 'Leave this with me please'.

704 The knowledge of Lex Greensill of the matters set out in paragraph 703 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 26, 29 and 30 above.

705 The knowledge of Lex Greensill of the matters set out in paragraph 703 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 20, 22 and 23 above.

706 Further or in the alternative to paragraph 703 above, Adam Cherubini knew each of the matters set out in paragraph 703 above.

Particulars

This may be inferred from:

(a) items (a) and (b) of the particulars to paragraph 703 above;

(b) the minutes of meeting in respect of the Greensill Credit Committee's meeting on 29 November 2019 (GCU.0009.0012.6369), and at which Adam Cherubini was an attendee;

(c) the messages between Adam Cherubini of GCUK and Jen Ganzi of GCUK dated 30 April 2020 (GCU.0009.0015.1679), in which the following exchange occurs:

Adam Cherubini 3:41 PM: FYI we need to waive the EBITDA for Bauer's

Jen Ganzi 3:41 PM: (headbang) (headbang) (headbang) (headbang)

Adam Cherubini 3:41 PM: as they tripped that in Q4 and Q1

…

Jen Ganzi 3:52 PM: rev was also like $3mm below

Jen Ganzi 3:52 PM: but still ebitda should not have been hit that hard

Jen Ganzi 3:53 PM: thats why its in hif i guess

Jen Ganzi 3:54 PM: gross profit is off by $2mm so i guess that is the delta b/c opex was pretty fixed at least for the quarter

Adam Cherubini 3:54 PM: yea, i also assume they can't do projections correctly

Adam Cherubini 3:54 PM: but lets def have a call on Monday or Tuesday

Jen Ganzi 3:54 PM: thats not the garys strength

(d) the email from Jen Ganzi of GCUK to the Greensill 'Watchlist Committee', copying Freddy Boom of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK, Mireia Just of GCUK, Rachelle Bower of GCUK, and Caroline Johnson of GCUK, dated 14 May 2020 (GCU.0010.0013.4703 at _0003), in which Ganzi:

(i) notes that 'Bauer breached the Facility's minimum EBITDA covenant in Q4 2019 and Q1 2020';

(ii) notes that GCUK had made a request to the Watchlist Committee to '[i]ssue a formal waiver for the EBITDA covenant breaches in Q4 2019 and Q1 2020';

(iii) states that '[i]t is likely that Bauer will also breach the Q2 2020 EBITDA covenant as well';

(iv) states that '[b]y waiving the Q4 2019 and Q1 2020 covenant breach, we are comfortable not having this termination trigger again until August 2020 when they report Q2 2020, at which time we will re-evaluate the facility'; and

(v) states that 'there is a reasonable probability that [Bauer will] also breach the EBITDA Covenant in future quarters, but we want to make them come back to us at that point if this is the case, perhaps to re-work the covenant scheme';

(e) the email from Divya Eapen of GCUK to Jen Ganzi of GCUK and the Greensill Watchlist Committee, copying Freddy Boom of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK, Mireia Just of GCUK, Rachelle Bower of GCUK and Caroline Johnson of GCUK, dated 14 May 2020 (GCU.0010.0013.4703 at _0003), in which Eapen states: *'If we're having discussions on waiving covenants (and these breaches are quite significant), it does seem appropriate for this to remain on one of the Watchlist categories'*;

(f) the email from Jen Ganzi of GCUK to Mireia Just of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK and Freddy Boom of GCUK, dated 28 May 2020 and attaching the document 'HIF SOL and required insurance' (GCU.0009.0015.6817), in which Ganzi states:

'…And we will almost certainly have another default in the June quarter on the EBITDA covenant, which we would know by mid-Aug (or whatever the end of the grace period is).

…

While they can easily explain away the Q1 2020 covenant breach on Covid-19, the same cannot be said for Q4 2019. Especially since this deal was done in Dec 2019, they should have had a better idea of what FY 2019 results were & have struck a covenant level accordingly. Thus a reasonable excuse around the Q4 miss is MUCH more difficult to manufacture, and highlighting the situation may not put them in the best light (i.e. inability to project a month out would not bode well for future financings), so I am not so certain that they are going to want to get too confrontational given the fact pattern.'

(g) the email from Adam Cherubini to the Watchlist Committee dated 2 June 2020 (GCU.0010.0016.4399).

Further particulars may be provided after completion of discovery by GCUK.

707 Further or in the alternative to paragraphs 703 and 706 above, Adam Cherubini knew the following matters:

(a) that Bauer was likely to breach the EBITDA Covenants for Q2 2020;

(b) that there was a significant possibility Bauer would breach the EBITDA Covenants for quarters subsequent to Q2 2020;

(c) that Bauer's breach of the EBITDA Covenants for at least Q4 2019, and likely Q1 2020, was the result of underlying problems with Bauer's business not primarily attributable to the COVID-19 pandemic;

(d) that GCUK had elected to issue a forbearance letter in respect of Bauer's breaches of the EBITDA Covenants for Q4 2019 and Q1 2020 rather than exercise its right under the facility to terminate the facility for those breaches, or cause Bauer to cure the breaches; and

(e) that there was uncertainty whether, and concerns were held about, Bauer's ability to meet its repayment obligations under the Bauer facility.

Particulars

This may be inferred from:

(a) the email from Jen Ganzi of GCUK to the Greensill 'Watchlist Committee', copying Freddy Boom of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK, Mireia Just of GCUK, Rachelle Bower of GCUK, and Caroline Johnson of GCUK, dated 14 May 2020 (GCU.0010.0013.4703 at _0003);

(b) the email from Adam Cherubini to the Watchlist Committee dated 2 June 2020 (GCU.0010.0016.4399); and

(c) emails between Adam Cherubini and members of the Watchlist Committee between 23 June 2020 and 25 June 2020 (GCU.0010.0013.8489).

708 The knowledge of Adam Cherubini of the matters set out in paragraphs 703, 706 and 707 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

709 The knowledge of Adam Cherubini of the matters set out in paragraphs 703, 706 and 707 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

710 Further or in the alternative to paragraph 703 above, Craig Pinnington (Senior Credit Analyst of GCUK) knew each of the matters set out in paragraph 703 above.

Particulars

This may be inferred from:

(a) the particulars to paragraph 703 above; and

(b) the email exchange between Craig Pinnington of GCUK, Brett Downes of GCUK and Andrew Kuyk of GCUK dated 20 to 22 May 2020 (GCU.0010.0013.4502), in which:

(i) Pinnington states: ‘Bauers has been with insurers for a couple of weeks but it isn’t making any headway under our existing insurance, as their business model has completely fallen away in the current environment as people work from home and it isn’t a commercially viable line to underwrite. I don't see that we will be able to get insurance on these unless we take a significant deductible, but agree that for committed deals this would still be preferable to funding from balance sheet.’; and

(ii) Downes responds: 'We cannot seek insurance for any name that is breaching covenants or is a poorly structured credit. CS has to continue to take these names. Let's circle back later today. Greg is not the answer here.'

Further particulars may be provided after completion of discovery by GCUK.

711 The knowledge of Craig Pinnington of the matters set out in paragraph 703 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

712 The knowledge of Craig Pinnington of the matters set out in paragraph 703 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

713 Further or in the alternative to paragraph 703 above, Brett Downes (Chief Risk Officer) knew each of the matters set out in paragraph 703 above.

Particulars

This may be inferred from the particulars to paragraphs 703 and 710 above.

Further particulars may be provided after completion of discovery by GCUK.

714 The knowledge of Brett Downes of the matters set out in paragraph 703 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

715 The knowledge of Brett Downes of the matters set out in paragraph 703 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

Knowledge of materiality

716 Each of the matters referred to in paragraph 703 above were matters:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

(b) alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex was deliberate and intentional in the matter in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bauer being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

717 Further or in the alternative to paragraph 716 above, each of the matters referred to in paragraph 703 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Bauer Risk.

Particulars

IAL refers to the particulars to paragraph 716 above.

718 The knowledge of Lex Greensill of each of the matters referred to in paragraphs 716 and 195 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 26, 29 and 30 above.

719 The knowledge of Lex Greensill of each of the matters referred to in paragraphs 716 and 195 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 20, 22 and 23 above.

720 Further and in the alternative to paragraph 716 above, each of the matters referred to in paragraph 703 above was a matter:

(a) which Adam Cherubini, Craig Pinnington and Brett Downes knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

(b) alternatively to paragraph (a), in respect of which Adam Cherubini, Craig Pinnington and Brett Downes were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Adam Cherubini is to be inferred by virtue of his position and as the non-disclosures bore directly on the risk of Bauer being unable to repay the amounts advanced to it and thus upon the nature of the Bauer Risk.

The knowledge of Craig Pinnington and Brett Downes is to be inferred by virtue of:

(a) their position and as the non-disclosures bore directly on the risk of Bauer being unable to repay the amounts advanced to it and thus upon the nature of the Bauer Risk; and

(b) the email from Brett Downes to Freddy Boom of GCUK, Lex Greensill, Sean Hanafin of GCUK and Andrew Kuyk of GCUK, copying Ludwig Sels of GCUK, Ivan Jesensky of GCUK, Michael Gilhuley of GCUK, Jen Ganzi of GCUK and Craig Pinnington of GCUK, dated 22 May 2020 (GCU.0005.0027.2170).

721 Further or in the alternative to paragraph 720 above, each of the matters referred to in paragraph 703 above was a matter which a reasonable person in the position of the abovementioned officers and employees of GCUK could be expected to know was relevant to the decision to extend insurance cover in respect of the Bauer Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 720 above.

722 The knowledge of Adam Cherubini, Craig Pinnington and Brett Downes of each of the matters referred to in paragraphs 720 and 721 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

723 The knowledge of Adam Cherubini, Craig Pinnington and Brett Downes of each of the matters referred to in paragraphs 198 and 199 above is to be attributed to GCPL.

Particulars

IAL refers to paragraph 22 and 23 above.

724 Further or in the alternative to paragraph 720 above, each of the matters referred to in paragraphs 706 to 707 above was a matter:

(a) which Adam Cherubini knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

(b) alternatively to subparagraph (a), in respect of which Adam Cherubini was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Adam Cherubini is to be inferred by virtue of his position and as the non-disclosures bore directly on the risk of Bauer being unable to repay the amounts advanced to it and thus upon the nature of the Bauer Risk.

725 Further or in the alternative to paragraph 724 above, each of the matters referred to in paragraphs 706 to 707 above was a matter which a reasonable person in the position of

Adam Cherubini could be expected to know was relevant to the decision to extend insurance cover in respect of the Bauer Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 724 above.

726 The knowledge of Adam Cherubini of each of the matters referred to in paragraphs 724 and 725 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

727 The knowledge of Adam Cherubini of each of the matters referred to in paragraphs 724 and 725 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Breach of duty of disclosure

728 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 703, 706 and 707 above before insurance cover was placed for the Bauer Risk.

729 Greensill's failure to disclose the matters referred to in paragraphs 703, 706 and 707 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 703 to 727 above.

Fraudulent non-disclosure

730 By reason of the matters pleaded in paragraphs 704 to 706, 708, 709, 711, 712, 714, 715, 718, 719, 722 to 724, 726 and 727 Greensill's failure to disclose any (or all) of the matters referred to in paragraph 703, 706 and 707 above before insurance cover in respect of the Bauer Risk was extended or renewed was fraudulent.

731 The cover for the Bauer Risk would not have been issued if the matters referred to in paragraphs 703, 706 and 707 above had been disclosed.

732 In the alternative to the allegation in paragraph 731 above, the cover for the Bauer Risk would not have been extended on the same terms if the matters referred to in paragraphs 703, 706 and 707 above had been disclosed.

733 By reason of the matters pleaded in paragraphs 703 to 732 above, IAL is entitled to avoid the Bauer Endorsement.

Innocent non-disclosure

734 In the alternative to the matters pleaded in paragraphs 730 to 733 above, and by reason of the matters pleaded in paragraphs 728, 729, 731 and 732 above, IAL is entitled to reduce its liability under the Bauer Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D11 Bluestone Multi Obligor

D11.1 Policy and Endorsements

735 In Federal Court of Australia proceedings no. NSD169/2023 and no. NSD174/2023, the applicants allege that Bluestone Resources was endorsed as a Customer under the 2019 Policy by means of Customer Endorsement 5 dated 13 March 2019 (**Bluestone MO Endorsement**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraphs 126(a) and 254.

Sixth Amended Statement of Claim in proceeding no. NSD174/2023 dated 11 June 2025 at paragraph 146.

736 The applicants in the Bluestone Proceeding allege that, on and from 13 March 2019, an additional 14 entities were endorsed as Customers under the 2019 Policy by means of the following:

(a) Customer Endorsement 9 for Arcelor Mittal SA (including its US subsidiary ArcelorMittal USA LLC) dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

(b) Customer Endorsement 7 for Hyundai Steel Company (including its US subsidiary, Hyundai Steel America, Inc.) dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

(c) Customer Endorsement 10 for SunCoke Energy Inc dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

(d) Customer Endorsement 8 for Nippon Steel & Sumitomo Metal Corporation (including US subsidiary, Nippon Steel & Sumitomo Metal U.S.A., Inc.) dated on 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

(e) Customer Endorsement 26(i) for Contura Energy Inc dated 21 May 2019, which purported to be effective from 20 May 2019 and had a Customer Limit of USD20 million;

(f) Customer Endorsement 80 for PPL Corporation dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

(g) Customer Endorsement 77 for The Southern Company dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

(h) Customer Endorsement 78 for Xcel Energy Inc dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

(i) Customer Endorsement 24(ii) for Duke Energy Corporation dated 4 September 2019, which purported to be effective from 21 August and had a Customer Limit of USD40 million;

(j) Customer Endorsement 28(ii) for Mitsui & Co. (U.S.A.) Inc dated 12 February 2020, which purported to be effective from 30 January 2020 and had a Customer Limit of USD40 million;

(k) Customer Endorsement 79(i) for NRG Energy Inc dated 12 February 2020, which purported to be effective from 30 January 2020 and had a Customer Limit of USD40 million;

(l) Customer Endorsement 27(ii) for Posco America Corporation dated 14 April 2020, which purported to be effective from 9 April 2020 and had a Customer Limit of USD40 million;

(m) Customer Endorsement 71(i) for Arch Coal Inc dated 14 April 2020, which purported to be effective from 9 April 2020 and had a Customer Limit of USD35 million;

(n) Customer Endorsement 29(iii) for DTE Energy Company dated 14 April 2020, which purported to be effective from 9 April 2020 and had a Customer Limit of USD40 million.

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD174/2023 dated 11 June 2025 at paragraph 143.

737 The applicants in the CS Global Proceeding allege that, on and from 13 March 2019, 20 entities additional to Bluestone Resources were endorsed as Customers under the 2019 Policy. Those include the entities purportedly the subject of the Customer Endorsements in paragraph 736 above, as well as the entities purportedly the subject of the following Customer Endorsements:

(a) Customer Endorsement 12 for AK Steel Corporation dated 13 March 2019,which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

(b) Customer Endorsement 21 for American Electric Power Company Inc dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

(c) Customer Endorsement 76 for First Energy Corp dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

(d) Customer Endorsement 75 for Tennessee Valley Authority dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

(e) Customer Endorsement 11 for United States Steel Corporation dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

(f) Customer Endorsement 23(ii) for Virginia Electric and Power Company dated 4 September 2019, which purported to be effective from 21 August 2019 and had a Customer Limit of USD40 million.

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 126(b).

738 The Customer Endorsements referred to in paragraphs 736 and 737 above are collectively referred to as the **Bluestone Account Debtor Endorsements**.

D11.2 Bluestone Multi-Obligor Misrepresentations

Representations

739 On or around 18 September 2018, Lex Greensill, on behalf of GCUK, requested that BCC provide insurance cover in respect of accounts receivable financing to be provided by GCUK to Bluestone Resources (Bluestone MO Risk).

Particulars

Email from Lex Greensill to Brereton, with the subject 'Bluestone AR Facility', dated 18 September 2018 (AGB.0002.0004.0080).

740 In making the request, Lex Greensill represented to Brereton that GCUK had been mandated by Bluestone Resources to provide an 'AR [accounts receivable] facility for their coal sales' (Bluestone AR Facility), where:

(a) the 'Seller' was Bluestone Coal Sales Corporation (**Bluestone Coal**), with Bluestone Resources and its subsidiaries acting as 'guarantors';

(b) funds would be advanced by GCUK against the account receivables of pre-approved customers (**Account Debtors**), up to the sublimits pleaded in subparagraph 740(d) below;

(c) the initial list of Account Debtors and their respective credit ratings were:

(i) Bank of Montreal (credit rating A+);

(ii) Hyundai Steel Company (credit rating BBB);

(iii) Nippon Steel & Sumitomo Metal Corporation (credit rating BBB);

(iv) ArcelorMittal SA (credit rating BBB-);

(v) Thyssenkrupp AG (credit rating BB);

(vi) SunCoke Energy Inc (credit rating BB-);

(vii) United States Steel Corporation (credit rating B);

(viii) AK Steel Holding Corporation (credit rating B);

(d) the facility limit was USD140 million, with a maximum sublimit of USD20 million for each initial Account Debtor;

(e) the maximum tenor (described as the 'Maximum Customer Payment Term') was 180 days;

(f) Bluestone Coal had not experienced any credit losses on any customers in the past 5 years; and

(g) in relation to the security position, Bluestone Coal would have no borrowings (secured or unsecured) with any party other than GCUK, and GCUK would hold the following security:

(i) a perfected first lien over all of Bluestone Resources' operating properties, providing GCUK with 'incremental security worth $366mm';

(ii) a security interest over the personal assets of Bluestone Coal, Bluestone Resources and its subsidiaries, perfected by a UCC-1 filing; and

(iii) personal guarantees from the owners.

741 On or around 18 September 2018, Brereton agreed to provide cover in respect of the Bluestone MO Risk. Brereton also stated that 'other buyer risks may be added to the policy from time to time… even though the policy limit may not increase.'

Particulars

Email 'Re: Bluestone AR Facility' from Brereton to Lex Greensill, copying Ewan Berkemeier, John Whelan, Brett Downes, Edward Smith, and Julian Macey-Dare, dated 18 September 2018 (BCC.0001.0002.1605).

742 On or around 18 September 2018, GCUK sent an email to Brereton attaching documents relating to the requested cover for the Bluestone MO Risk under the 2018 Policy. In the email, GCUK noted that the 'RPA [receivables purchase agreement]' pursuant to which the account receivables were being purchased did not include the covenants from the Bluestone SCF Facility (see paragraph 844 below) bearing in mind that GCUK was purchasing account receivables.

Particulars

Email from John Whelan (Deputy General Counsel of GCUK) to Lex Greensill, copying Ewan Berkemeier, Brett Downes, Edward Smith, and Julian Macey-Dare, dated 18 September 2018 (BCC.0001.0001.0866), attaching, among other things, unsigned copies of Customer Endorsements purportedly under the 2018 Policy.

743 On or around 19 September 2018, Brereton returned signed copies of various endorsements to the 2018 Policy in respect of the Bluestone MO Risk, including:

(a) Debt Endorsement 2(A);

(b) Customer Endorsement 30 for Bluestone Resources as the guarantor of the seller, Bluestone Coal, with an Aggregate Customer Limit of USD5 million 'to be reset indefinitely if breached'; and

(c) Customer Endorsements for the initial Account Debtors, as set out in paragraph 740(c) above, excluding Thyssenkrupp AG, each with an Aggregate Customer Limit of USD20 million.

Particulars

Email from Brereton to John Whelan and Lex Greensill dated 18 September 2018 (BCC.0001.0002.1618), and attaching, among other things, signed copies of Customer Endorsements (BCC.0001.0002.1619).

744 In the premises of paragraphs 740 and 742 above, GCUK represented to Brereton that:

(a) the Bluestone AR Facility was an accounts receivable facility, where:

(i) GCUK would advance funds to purchase accounts receivable generated from coal sales by the Seller to the Account Debtors, as amended from time to time;

(ii) any advances by GCUK would be based on the value of accounts receivable;

(iii) the nature of the financing was short-term trade credit finance, with a maximum payment term of 180 days,

(the **Bluestone AR Facility Misrepresentation**);

(b) each of the Account Debtors under the Bluestone AR Facility, as amended from time to time, was a customer of the Seller,

(the **Bluestone Genuine Customer Misrepresentation**).

745 By reason of the matters in paragraph 744, GCUK represented to Brereton that:

(a) GCUK's credit risk under the Bluestone AR Facility was the risk of non-payment of accounts receivable by the Account Debtors;

(b) the identity and creditworthiness of the Account Debtors were relevant to GCUK's lending decisions under the Bluestone AR Facility and, by extension, the credit assessment of the Bluestone MO Risk; and

(c) GCUK considered the Account Debtors to be of acceptable credit risk,

(the **Bluestone Non-Payment Risk Misrepresentation**).

746 The Bluestone AR Facility Misrepresentation, Bluestone Genuine Customer Misrepresentation and Bluestone Non-Payment Risk Misrepresentation were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 20, 22, 23, 26, 29 and 30 above.

747 Each (alternatively, one or more) of the Bluestone AR Facility Misrepresentation, Bluestone Genuine Customer Misrepresentation and Bluestone Non-Payment Risk Misrepresentation was a continuing representation which endured during the issuance of each of the 2019 Policy, the Bluestone MO Endorsement and/or the Customer Endorsements referred to in Section D11 of this Annexure, including the Bluestone Account Debtor Endorsements.

Increase from USD140 million to USD400 million in December 2018

748 On or around 30 November 2018, GCUK requested that BCC amend the cover for the Bluestone MO Risk to insure an increase in the size of the Bluestone AR Facility from USD140 million to USD400 million (December 2018 Upsize). Specifically, GCUK requested the following policy amendments:

(a) an increase in the aggregate policy limit across all Account Debtors from USD140 million to USD430 million, on the basis that utilisation across the group could not exceed the maximum facility limit of USD400 million;

(b) increases to the Customer Limits of each of the initial Account Debtors in paragraph 740(c) above from USD20 million to USD40 million;

(c) the addition of Blackstone Energy Ltd (**Blackstone**) as a 'Seller'; and

(d) the addition of 9 new Account Debtors as Customers, with varying Customer Limits, namely:

(i) American Electric Power Company Inc;

(ii) South Carolina Electric & Gas Company;

(iii) Virginia Electric and Power Company;

(iv) Duke Energy Corporation;

(v) Trafigura Trading LLC;

(vi) Contura Energy Inc;

(vii) Posco America Corporation;

(viii) Mitsui & Co. (U.S.A) Inc; and

(ix) DTE Energy Company.

Particulars

Email from Lex Greensill to Brereton dated 29 November 2018 (GCU.0005.0003.1076) attaching excel spreadsheet titled 'Bluestone Account Debtor List 11.27.2018 for BCC' (GCU.0005.0003.1077).

Email from Lex Greensill to Brereton, copying Brett Downes, John Whelan, Michael Gilhuley, Sophie Dyke, Julian Macey-Dare and Ewan Berkemeier, dated 30 November 2018 (MAR.0004.0001.6855) and attaching 'Bluestone Account Debtor List 11.27.2018 for BCC.XLSX' (MAR.0004.0001.6856).

749 On or around 29 and 30 November 2018, GCUK provided Brereton with an updated list of Account Debtors for the Bluestone AR facility, referring to the listed Account Debtors as 'solid names'. The Account Debtors list included:

(a) the initial Account Debtors in paragraph 740(c) above;

(b) the additional Account Debtors in paragraph 748(d) above, who were each identified as being a customer of either Bluestone Coal or Blackstone, with:

(i) a Standard & Poor's (**S&P**) credit rating of BBB- or above; and/or

(ii) a parent company with a S&P credit rating of BBB- or above.

Particulars

IAL refers to the particulars to paragraph 748 above.

750 On or around 2 December 2018, Marsh sent an email to Brereton attaching documents relating to the request for amended cover for the Bluestone MO Risk under the 2018 Policy. In the email, Marsh stated that 'Greensill have confirmed NKORL [no known or reported losses] and have given us the order to bind'.

Particulars

Email from Edward Smith of Marsh to Lex Greensill and Brereton, with subject 'RE: Bluestone AR – Additional Account Debtors', copying Brett Downes, John Whelan, Michael Gilhuley, Sophie Dyke, Julian Macey-Dare and Ewan Berkemeier (MAR.0004.0001.6905) and attaching, among other things, unsigned copies of Customer Endorsements purportedly issued under the 2018 Policy.

751 By reason of the matters in paragraphs 748, 749 and 750, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, which apply mutatis mutandis with respect to the additional Account Debtors referred to in subparagraph 748(d) above.

752 On or around 2 December 2018, Brereton returned to Marsh:

(a) a signed copy of Customer Endorsements 30(i) for Bluestone Resources, which included Blackstone as an additional 'Seller'; and

(b) signed copies of Customer Endorsements for the Account Debtors.

Particulars

Email 'RE: Bluestone AR – Additional Account Debtors' from Brereton to Edward Smith and Lex Greensill, dated 3 December 2018, copying Brett Downes, John Whelan, Michael Gilhuley, Sophie Dyke, Julian Macey-Dare, Ewan Berkemeier (GCU.0005.0003.1793), attaching among other things, signed copies of customer endorsements purportedly issued under the 2018 Policy (GCU.0005.0003.1794).

Renewal – 2019 Policy

753 On or around 28 February 2019 and 4 March 2019, Marsh emailed Brereton documents relating to a request for renewal of cover under the 2019 Policy in respect of numerous risks, including the Bluestone MO Risk. On each occasion, Marsh stated that GCUK had 'confirmed NKORL' and given them an order to bind.

Particulars

Email from Edward Smith to Brereton, copying Ewan Berkemeier and other Marsh representatives, dated 28 February 2019 (MAR.0004.0001.9510), attaching, among other things, an unsigned Bluestone MO Customer Endorsement (MAR.0004.0001.9523) and unsigned Customer Endorsements for current Account Debtors (MAR.0004.0001.9511; MAR.0004.0001.9516; MAR.0004.0001.9518; MAR.0004.0001.9519; MAR.0004.0001.9522; MAR.0004.0001.9527; MAR.0004.0001.9529; MAR.0004.0001.9534; MAR.0004.0001.9535; MAR.0004.0001.9536; MAR.0004.0001.9537; MAR.0004.0001.9540; MAR.0004.0001.9542; MAR.0004.0001.9547; MAR.0004.0001.9548; MAR.0004.0001.9549).

Email from Edward Smith to Brereton, copying Ewan Berkemeier and other Marsh representatives, dated 4 March 2019 (MAR.0004.0001.9739), attaching, among other things, an unsigned Bluestone MO Customer Endorsement (MAR.0004.0001.9763) and unsigned Customer Endorsements for current Account Debtors (MAR.0004.0001.9742; MAR.0004.0001.9743; MAR.0004.0001.9754; MAR.0004.0001.9756; MAR.0004.0001.9757; MAR.0004.0001.9759; MAR.0004.0001.9765; MAR.0004.0001.9766; MAR.0004.0001.9767; MAR.0004.0001.9768; MAR.0004.0001.9778; MAR.0004.0001.9782; MAR.0004.0001.9784; MAR.0004.0001.9785; MAR.0004.0001.9787; MAR.0004.0001.9788; MAR.0004.0001.9790).

754 On or around 13 March 2019, Brereton provided Marsh with signed copies of, among other things, the following in respect of the Bluestone MO Risk under the 2019 Policy:

(a) the Bluestone MO Endorsement, which purported, with effect from 1 March 2019, to endorse Bluestone Resources as a 'Customer' under the 2019 Policy, in its capacity as a guarantor relating to the Sellers, Bluestone Coal and Blackstone, with an 'Aggregate Customer Limit' of 'USD 5,000,000 (to be reset indefinitely if the Aggregate Customer Limit is breached)'; and

(b) Customer Endorsements for the Account Debtors, as at that time, including various of the Bluestone Account Debtor Endorsements, or initial versions of those Customer Endorsements.

Particulars

Email from Brereton to Edward Smith, copying Ewan Berkemeier, dated 13 March 2019 (BCC.0001.0002.2777), attaching, among other things, signed copies of various Customer Endorsements under the 2019 Policy (BCC.0001.0002.2778).

Increase in facility size from USD400 million to USD430 million

755 On or around 28 March 2019, Michael Gilhuley of GCUK emailed Lex Greensill, copying Roland Hartley-Urquhart, Adam Cherubini and Rachelle Bower, about a proposed increase to the Bluestone AR Facility limit from USD400 million to USD430 million (**April 2019 Upsize**). Mr Gilhuley advised that GCUK's request of BCC was to increase the maximum exposure size on the policy from USD400 million to USD430million.

Particulars

Email 'Bluestone request for BCC upsize' from Michael Gilhuley to Lex Greensill, copying Roland Hartley-Urquhart, Adam Cherubini and Rachelle Bower, dated 28 March 2019 (GCU.0005.0008.2574), attaching 'Bluestone Account Debtor List 03.29.2019 for BCC.XLSX' (GCU.0005.0008.2575).

756 In his response, Lex Greensill stated he was supportive of the increase and would be able to 'deliver the insurance in the next 72 hours'.

Particulars

Email 'Re: Bluestone request for BCC upsize' from Lex Greensill to Michael Gilhuley, copying Roland Hartley-Urquhart, Adam Cherubini and Rachelle Bower, dated 28 March 2019 (GCU.0005.0008.2582).

757 On or around 3 April 2019, GCUK asked Marsh to confirm whether any action was required to extend the insurance for the Bluestone MO Risk to include the proposed increase in the Bluestone AR Facility limit, in circumstances where the aggregate

customer limits against the Account Debtors were USD430 million, and there appeared to be no written restriction of the maximum limit of liability to USD400 million.

Particulars

Email 'RE: Bluestone AR facility' from Craig Pinnington to Edward Smith and other Marsh representatives, copying the mailing list 'Insurance (Greensill)', dated 3 April 2019 (GCU.0009.0008.4528).

758 In response, Marsh stated to GCUK that GCUK was 'good to proceed' with the increase to the Bluestone AR Facility, explaining that the 'seller limit can be reinstated indefinitely, so up the sum of the written limits if required.'

Particulars

Email 'RE: Bluestone AR facility' from Edward Smith to Craig Pinnington, copied to other Marsh representatives, copying the mailing list 'Insurance (Greensill)', dated 3 April 2019 (GCU.0009.0008.4528).

759 The increase was approved by the Greensill Credit Committee on or around 4 April 2019.

Particulars

Email 'Credit Approval request- Bluestone' from Craig Pinnington to Roland Hartley-Urquhart, Myrjam Tschoeke, Lex Greensill, Brett Downes, Danyon Lloyd and Michael Gilhuley, copying the Credit Risk Team and Ludwig Sels, dated 3 April 2019 (GCU.0005.0008.5250), attaching a GCUK Credit Application Report submitted on 3 April 2019 (GCU.0005.0008.5251).

Email 'RE: Credit Approval request – Bluestone' from Brett Downes to Craig Pinnington dated 4 April 2019 (GCU.0009.0008.4718).

Email 'Re Credit Approval Bluestone Resources Inc' from Craig Pinnington to Roland Hartley-Urquhart, Myrjam Tschoeke, Lex Greensill, Brett Downes, Danyon Lloyd and Michael Gilhuley and others dated 4 April 2019 (GCU.0005.0008.5836).

Increase from USD430 million to USD500 million in May 2019

760 On or around 13 May 2019, GCUK requested that BCC vary the cover in respect of the Bluestone MO Risk to insure an increase in the size of the Bluestone AR Facility from USD430 million to USD500 million (**May 2019 Upsize**). Specifically, GCUK requested the following amendments:

(a) the removal of two existing Account Debtors, Trafigura Trading LLC and South Carolina Power and Electric (which IAL understands is intended to refer to the South Carolina Electric & Gas Company);

(b) increases to the Customer Limits of six Account Debtors by USD10 million each (being Posco America Corporation, Mitsui & Co. (U.S.A) Inc, DTE Energy Company, Virginia Electric and Power Company, Duke Energy Corporation, Contura Energy Inc); and

(c) the addition of a new Account Debtor, Arch Coal Inc, as a Customer, with a Customer Limit of USD30 million.

Particulars

Email from Michael Gilhuley to Brereton, with the subject 'Urgent – Bluestone Insurance Increase Request – $430mm to $500mm', copying Adam Cherubini and the mailing list 'Insurance (Greensill)' and Marsh representatives, dated 13 May 2019 (GCU.0005.0010.4252), attaching a spreadsheet with the file name 'Account Debtor List – Bluestone – 05.12.2019 (TBCC)' (GCU.0005.0010.4253).

761 In making the request, GCUK:

(a) described the purpose of the upsize to the Bluestone AR Facility as being to provide Bluestone Resources with additional liquidity to begin ramping up production in light of a recent asset acquisition by the company;

(b) provided Brereton with an updated list of Account Debtors under the Bluestone AR Facility showing:

(i) the requested amendments to the Account Debtors in subparagraph 760(a) above; and

(ii) Arch Coal Inc as customer of Bluestone Coal with a S&P credit rating of BB-.

Particulars

IAL refers to the particulars to paragraph 760 above.

762 On or around 16 May 2019, following an exchange with Lex Greensill, Brereton agreed to vary the cover for the Bluestone MO Risk in accordance with GCUK's request of 13 May 2019, as referred to in in paragraph 761 above.

Particulars

Email from Brereton to Lex Greensill, 'Re: Urgent – Bluestone Insurance Increase Request - $430mm to $500mm', dated 16 May 2019 (GCU.0005.0010.5737), forwarded to Roland Hartley-Urquhart and Michael Gilhuley (GCU.0005.0010.5741).

763 On or around 17 May 2019, Marsh sent an email to Brereton attaching documents relating to GCUK's requested variations to the coverage of the Bluestone MO Risk under the 2019 Policy. In the email, Marsh stated that GCUK had 'confirmed KNORL [sic]' and given them an order to bind. Marsh also requested that Brereton confirm acceptance of a request from GCUK to increase the maximum tenor for the Bluestone MO Risk from 180 days to 183 days.

Particulars

Email from Angus Ward to Brereton, copying other Marsh representatives, dated 17 May 2010 (MAR.0003.0002.3383), attaching copies of unsigned customer endorsements.

Internal GCUK documents referring to the 183 days tenor include:

(a) Email from Chris Tinsley to Scott Newby and Brett Downes dated 27 April 2019, attaching, among other things, a presentation titled 'Long Term Facilities' (GCU.0009.0008.9856; GCU.0009.0008.9858).

(b) Credit Application Report for Bluestone Resources submitted on 29 November 2018 (GCU.0005.0003.4417 at 0005).

764 By reason of the matters in paragraphs 760, 761 and 763 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors in the Account Debtors list referred to in paragraph 761(b) above.

765 On or around 21 May 2019, Brereton returned to Marsh signed copies of the Customer Endorsements provided on 17 May 2019, which included Bluestone Account Debtor Endorsements, or earlier versions of those Customer Endorsements.

Particulars

Email from Brereton to Angus Ward, copying Marsh representatives, dated 21 May 2019 (BCC.0001.0014.0117), attaching copies of signed Customer Endorsements to the 2019 Policy, including Customer Endorsement 26(i) (BCC.0001.0014.0118).

Increase from USD500 million to USD730 million in June 2019

766 On or around 4 June 2019, GCUK requested that BCC vary the cover for the Bluestone MO Risk to insure an increase in the size of the Bluestone AR Facility from USD500 million to USD730 million (**June 2019 Upsize**). Specifically, GCUK requested that BCC

endorse six new Account Debtors as Customers under the 2019 Policy for various limits, which totalled USD230 million:

(a) Tennessee Valley Authority;

(b) FirstEnergy Corp;

(c) The Southern Company;

(d) Xcel Energy Inc;

(e) NRG Energy Inc; and

(f) PPL Corporation.

Particulars

Email from Lex Greensill to Brereton, copying Edward Smith, Julian Macey-Dare, Brett Downes, Adam Cherubini, Roland Hartley-Urquhart, John Whelan and Sophie Dyke, dated 4 June 2019 (GCU.0017.0001.6769).

767 On or around 4 June 2019, Brereton agreed in principle to GCUK's request in paragraph 766 above.

Particulars

IAL refers to and repeats the particulars to paragraph 766 above.

768 In making the request, Lex Greensill represented to Brereton that:

(a) the purpose of the increase in the Bluestone AR Facility was to provide Bluestone Resources with 'additional liquidity to begin ramping production and buy equipment for their newly acquired mines';

(b) each of the six new Account Debtors referred to in paragraph 766 above:

(i) were customers of Blackstone;

(ii) had S&P credit ratings of BBB and above; and

(c) the six new Account Debtors referred to in paragraph 766 above were in addition to the existing Account Debtors referred to in paragraph 761(b) above.

769 On or around 10 June 2019, Marsh sent an email to Brereton attaching documents relating to the requested variations to cover for the Bluestone MO Risk under the 2019 Policy. In the email, Marsh confirmed that Greensill had 'confirmed NKORL' and given them the order to bind.

Particulars

Email 'Re: Urgent - Bluestone Insurance Increase Request - $500mm to $730mm' from Angus Ward to Brereton and Alexandre Weiss Bueno of Marsh, copying Marsh representatives, dated 10 June 2019 (MAR.0012.0001.0928), attaching, inter alia, copies of unsigned Customer Endorsements to the 2019 Policy (MAR.0012.0001.0932; MAR.0012.0001.0933; MAR.0012.0001.0935; MAR.0012.0001.0937; MAR.0012.0001.0941; MAR.0012.0001.0943).

Email from Angus Ward to Sophie Dyke, Craig Pinnington and Brett Downes, copying Marsh representatives, dated 10 June 2019 (GCU.0009.0009.6619), attaching, inter alia, copies of unsigned Customer Endorsements to the 2019 Policy.

770 By reason of the matters in paragraphs 766, 768 and 769 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors referred to in paragraph 768(c) above.

771 On or around 10 June 2019, Brereton returned to Marsh signed copies of Customer Endorsements for the six new Account Debtors under the 2019 Policy, including several of Bluestone Account Debtor Endorsements, or earlier versions of those Customer Endorsements.

Particulars

Email from Brereton to Angus Ward and Alexandre Weiss Bueno, copying Marsh representatives, dated 10 June 2019 (MAR.0006.0001.2940), attaching, inter alia, copies of signed Customer Endorsements 75, 76, 77 and 80 to the 2019 Policy (MAR.0006.0001.2942).

Purported Amendments to Customer Limits in September 2019

772 On or around 19 August 2019, GCUK requested (through its broker, Marsh) that BCC amend the customer limits of certain Account Debtors under the 2019 Policy as follows:

(a) a reduction in customer limit for Bank of Montreal from USD40 million to USD0;

(b) an increase in customer limit for each of Virginia Electric and Power Company, and Duke Energy Corporation, from USD20 million to USD40 million.

Particulars

Email 'Greensill Urgent Request - Bluestone AR Program - Account Debtor Limit Adjustment' from Angus Ward to Brereton, copying Marsh representatives, dated 18 August 2019 (BCC.0001.0001.3647).

773 On or around 20 August 2019, Brereton agreed to GCUK's requested amendments to the customer limits, as set out in paragraph 772 above, following which Marsh sent Brereton an email attaching unsigned Customer Endorsements reflecting those amendments. In its email, Marsh stated that GCUK had 'confirmed NKORL' and given them the order to bind.

Particulars

Email from Angus Ward to Brereton, with subject 'RE: Greensill Urgent Request – Bluestone AR Program – Account Debtor Limit Adjustment', copying Marsh representatives, dated 20 August 2019 (BCC.0001.0001.3712), attaching copies of unsigned Customer Endorsements to the 2019 Policy.

Email from Angus Ward to Sophie Dyke, Craig Pinnington, and Marsh representatives, copying the mailing list 'Insurance (Greensill)' and Rachelle Bower, dated 20 August 2019 (GCU.0009.0010.9835), attaching copies of unsigned Customer Endorsements to the 2019 Policy.

774 By reason of the matters in paragraph 772 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors referred to in paragraph 772(b) above.

775 On 4 September 2019, Brereton returned to Marsh signed copies of the Customer Endorsements, which included the Bluestone Account Debtor Endorsements for Virgina Electric and Power Company and Duke Energy Corporation.

Particulars

Email from Brereton to Angus Ward and Edward Smith, copying Marsh representatives, dated 4 September 2019 (BCC.0001.0002.3891), attaching inter alia copies of signed Customer Endorsements 23(ii) and 24(ii) and (BCC.0001.0002.3892).

Increase of USD25 million from USD730 million to USD755 million

776 On or around 30 January 2020, following a discussion with Lex Greensill, Brereton agreed to vary the cover for the Bluestone MO Risk to include an increase in the Bluestone AR Facility from USD730 million to USD755 million (**January 2020 Upsize**). Specifically, BCC was requested to increase the Customer Limits of three Account Debtors, by a total of USD25 million.

Particulars

Email 'Bluestone – TBCC Insurance Increase', from Adam Cherubini to Marsh representatives, copying the mailing list 'Insurance (Greensill)', Roland Hartley-Urquhart and Rachelle Bower, dated 30 January 2020 (GCU.0009.0013.3960).

Email from Roland Hartley Urquhart to Adam Cherubini, copying GCUK representatives, dated 30 January 2020 (GCU.0009.0013.3961).

777 On or around 3 February 2020, Marsh sent an email to Brereton attaching amended Customer Endorsements to the 2019 Policy for the three Account Debtors. In the email, Marsh set out an updated Bluestone Account Debtor List, and stated that GCUK had 'confirmed NKORL' and given them the order to bind.

Particulars

Email from Angus Ward to Brereton, with the subject 'Greensill – Bluestone Increase', dated 3 February 2020, copying Ewan Berkemeier and Edward Smith (BCC.0001.0001.5267), and attaching, among other things, unsigned copies of Customer Endorsements 28(ii), 29(ii) and 79(i) (BCC.0001.0001.5278; BCC.0001.0001.5279; BCC.0001.0001.5282).

778 By reason of the matters in paragraph 776 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors referred to in paragraph 776 above.

779 On or around 12 February 2020, Brereton returned to Marsh signed copies of the amended Customer Endorsements for Account Debtors Mitsui & Co. (U.S.A) Inc, DTE Energy Company and NRG Energy Inc under the 2019 Policy.

Particulars

Email from Brereton to Angus Ward, with 'Re: Greensill – Bluestone Increase', copying Marsh representatives, dated 12 February 2020 (BCC.0001.0001.5349), attaching copies of signed Customer Endorsements No. 28(ii), 29(ii) and 79(i) (BCC.0001.0001.5350).

Increase of USD20 million from USD755 million to USD775 million

780 On or around 30 March 2020, GCUK (through its broker, Marsh) requested that BCC vary the cover the Bluestone MO Risk to include an increase of the Bluestone AR Facility limit from USD755 million to USD775 million (**April 2020 Upsize**). Specifically, GCUK requested that BCC approve increases to the customer limits of three Account Debtors (Posco America Corporation, DTE Energy Company and Arch Coal Inc), which increases totalled USD20 million.

Particulars

Email from Angus Ward to Brereton, copying Lex Greensill, Lindsey Sherill and Marsh representatives, dated 30 March 2020 (BCC.0001.0001.5728) attaching a document with the file name 'Bluestone - Transaction Overview (Insurance - TBCC) – FINAL' (BCC.0001.0001.5688).

781 In making that request, GCUK (through its broker Marsh):

(a) provided an updated Account Debtor List for the Bluestone AR Facility, reflecting the proposed limit increases for the relevant Account Debtors;

(b) represented that GCUK held the following as security:

(i) full recourse to Bluestone Resources, upon any failure by an Account Debtor to pay their full account receivables balance by the due date;

(ii) a first priority claim on the account receivables it purchased;

(iii) a mortgage over USD1,213mm over coal reserves and fixed assets;

(iv) a control agreement over the collections account of the Account Debtors;

(v) in the event of default, the right to enforce its security over account receivables, collection accounts and fixed assets, and to engage with Account Debtors directly; and

(c) represented that certain events would trigger an event of termination under the Bluestone AR Facility which would then become due over the following 180 days.

782 On or around 9 April 2020, Brereton emailed Marsh advising that he had indicated to Lex Greensill he would agree to the variations requested and to the facility line.

Particulars

Email from Brereton to Angus Ward and Edward Smith, copying Lex Greensill, Lindsey Sherrill and Ewan Berkemeier, dated 9 April 2020 (BCC.0001.0002.5118).

783 On or around 10 April 2020, Marsh sent an email to Brereton attaching unsigned copies of Customer Endorsements to the 2019 Policy relating to the proposed variations. In its email, Marsh stated that GCUK had 'confirmed NKORL and given [Marsh] the order to bind.'

Particulars

Email from Angus Ward to Brereton and Edward Smith, copying Ewan Berkemeier, dated 10 April 2020 (MAR.0004.0003.4168), attaching copies of unsigned Customer Endorsements.

784 By reason of the matters in paragraphs 780, 781 and 783 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors referred to in paragraphs 780 and 783 above.

785 On or around 14 April 2020, Brereton returned to Marsh signed copies of the Customer Endorsements No. 27(iii), 29(iii) and 71(i).

Particulars

Email from Brereton to Angus Ward and Edward Smith, copying Ewan Berkemeier, dated 13 April 2020 (MMC_GCUK08_00017301), attaching copies of signed Customer Endorsements No. 27(iii), 29(iii) and 71(i) to the 2019 Policy (MMC_GCUK08_00017306).

Representations were misleading

786 The Bluestone AR Facility Misrepresentation referred to in paragraph 744(a) above was false and/or misleading because:

(a) the Bluestone AR Facility was, in substance, a term loan and not an accounts receivable facility;

Particulars

The Bluestone AR Facility was, by design, a loan presented as an accounts receivable program which was not secured against actual receivables, but rather was primarily funded against fictitious accounts receivables that may never come into existence.

IAL relies on the particulars to paragraph 792 below.

Series Supplement No. 2 Compartment IU dated 10 December 2018 (AGB.0003.0002.0584 at 0011).

Email ‘Re: Bluestone’ from Brett Downes to Michael Gilhuley dated 3 August 2018 (GCU.0009.0004.2596).

Email 'Update on Bluestone' from Lex Greensill to Roland Hartley-Urquhart, copying Bill Crothers, dated 6 August 2018 (GCU.0004.0016.0371).

Minutes of meeting on 13 August 2018 between Adam Cherubini, Michael Gilhuley, Brett Downes, Deighton Sear, and Roland Hartley-Urquhart (GCU.0009.0004.3908).

Email 'Fwd: Bluestone IPA' from Ludwig Sels to Brett Downes dated 22 August 2018 (GCU.0009.0004.5295).

Email from Maxwell Gerard to David Keeling, Michael Gilhuley, Credit Risk Team, Brett Downes and Adam Cherubini, copying Ivan Jesensky and Roland Hartley-Urquhart, dated 23 August 2018 (GCU.0009.0004.5481), attaching 'Bluestone AR – RCAP 08.23.2018' (GCU.0009.0004.5482).

Notes of Credit Committee meeting on 24 August 2018 between Lex Greensill, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Brett Downes (GCU.0017.0001.3251).

Email 'Re: Bluestone – RCAP update' from Brett Downes to Wasif Rasif, copying Ludwig Sels, dated 18 September 2018 (GCU.0013.0003.3708).

Email from Ludwig Sels to David Solo dated 5 October 2018 (GCU.0009.0005.3282).

Email from Brett Downes to David Solo dated 5 December 2018 (GCU.0009.0006.3371).

Email 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Tuesday 14th May 2019' from Myrjam Tschoeke to Brett Downes, Roland Hartley-Urquhart, Lex Greensill, Michael Gilhuley, and Danyon Lloyd, copying others dated 14 May 2019 (GCU.0005.0010.4737)

Email 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING - MINUTES Tuesday 14th May 2019' from David Keeling to Brett Downes, Roland Hartley-Urquhart, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, and Danyon Lloyd, copying others, dated 21 May 2019 (GCU.0005.0010.7196).

Document with the file name 'Final Responses to CC – May 24' dated 25 May 2019 (GCU.0007.0002.7066).

Amended Complaint filed in Bluestone Resources., Inc & Ors v Greensill Capital (UK) Limited, United States District Court for the Southern District of New York, Civil Action No. 1:21-cv-02253 (BCC.0001.0019.0294) (**Bluestone Complaint**).

(b) the Bluestone AR Facility did not provide short-term trade credit financing, with a maximum tenor of 180 or 183 days, but long-term corporate finance with a minimum tenor of 3 years, and then, 4 years;

Particulars

While the maximum tenor for credit advanced under the Bluestone AR Facility was represented as 180 days, and later 183 days, the rolling of debts upon their maturity meant that the true tenor exceeded those durations.

(a) Email from Maxwell Gerard to the email address bluestone@greensill.com, with subject 'Bluestone Documents and Credit', dated 10 September 2018 (GCU.0007.0002.1443), attaching, among other things, a PowerPoint with the file name 'DRAFT Bluestone set up v0.4 9.10.pptx' (GCU.0007.0002.1444).

(b) PowerPoint 'Rasmussen (Bluestone) rolls process' dated 16 October 2018 (GCU.0009.0005.6925).

(c) Document with the file name 'Bluestone operations Process Overview' dated 29 October 2018 (GCU.0005.0002.5379)

(d) Bluestone Complaint (BCC.0001.0019.0294 at 0006 to 0007, 0023 to 0028).

From the inception of the Bluestone AR Facility, GCUK did not expect or require the repayment of each amount advanced against purchased receivables within 180 days of them being advanced as required by the Bluestone RPA, or refuse to provide further finance in that event as it was entitled to do under the Bluestone RPA, but instead “rolled” such advances by:

(a) in the period prior to about 30 July 2020, wiring to Bluestone Coal an amount equal to the value of the Expected Receivables that had reached their due date less a discount corresponding to the interest to be paid from that date until the next roll date and then receiving from Bluestone Coal the same amount of funds plus the amount of the discount; and then

(b) in the period from about 30 July 2020 onwards, extending the date for repayment of the Expected Receivables and collecting an amount corresponding to the interest to be paid up to the extended date, such that, in effect, from the inception of the Bluestone RPA until at the earliest about November 2020, Bluestone Coal was only ever required, in effect, to pay interest on the funds advanced to it by GCUK and not repay any principal.

In or around December 2018, the Bluestone AR Facility was increased from a 3 year commitment to a 4-year commitment, which would not begin to amortise until July 2021. See:

(a) Email 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING-MINUTES FRIDAY 30th NOVEMBER 2018' from David Keeling to Lex Greensill, Brett Downes, Myrjam Tschoeke, Roland Hartley-Urquhart,

Michael Gilhuley, Danyon Lloyd, copying others, dated 7 December 2018 (GCU.0005.0003.4934) attaching, among other things, the agenda for Credit Committee meeting (GCU.0005.0003.4935).

(b) GCUK 'Long Term Assets Report' dated March 2019 (GCU.0009.0008.3427) records, in respect of the 'Bluestone Multi-Obligor Program', a 'Credit Roll Tenor' of 183 days, and a 'Committed Tenor' of 1460 days.

The Bluestone AR Facility provided that repayments of the principal amounts advanced under the various facility limit upsizes would occur according to an amortisation schedule for the period from July 2021 to 2023, when the Bluestone AR Facility would expire. The rolling process and the amortisation of the principal enabled the Bluestone AR Facility to operate in substance as a four year loan. See:

(a) Email 'FINAL APPROVALS' from Craig Pinnington to Brett Downes, Danyon Lloyd, Lex Greensill, Myrjam Tschoeke, Roland Hartley-Urquhart, Adam Cherubini and others, dated 12 December 2018 (GCU.0007.0002.5864), attaching 'Bluestone Increase US$400m 27 Nov 2018 update post CC' (GCU.0007.0002.5865).

(b) Email 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING-MINUTES Friday 31st May 2019' from David Keeling to Brett Downes, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Danyon Lloyd, copying Adam Cherubini and others, dated 25 June 2019 (GCU.0007.0002.7064) , attaching, among other things, 'Final Responses to CC – May 24' (GCU.0007.0002.7066 at 0002, 0005).

GCUK's practice of rolling the debts the subject of the Bluestone AR facility, without Bluestone in fact repaying amounts to GCUK from its own resources, is evident from the documents identified immediately above in the particulars to this paragraph and is further pleaded at Section D.1 of Annexure B to this defence.

(c) the amount of funding advanced by GCUK under the Bluestone AR Facility from time to time bore no relationship to the value of coal sold by the 'Sellers' to the Account Debtors, or the value of any supply contracts, purchase orders, or firm commitments between the 'Sellers' and the Account Debtors;

Particulars

Email 'Re: Bluestone Credit paper' from Rachelle Bower to Roland Hartley-Urquhart, David Keeling, Craig Pinnington, Adam Cherubini, copying Brett Downes and Michael Gilhuley, dated 2 April 2019 (GCU.0009.0008.4081),

attaching 'CreditApplicationReport_BLUESTONE RESOURCES INC_4.2.2019.pdf' (GCU.0009.0008.4082).

Email 'Re: Bluestone' from Brett Downes to Michael Gilhuley dated 2 August 2018 (GCU.0009.0004.2598), forwarded to, among other people, Roland Hartley-Urquhart (GCU.0009.0004.2599).

Email 'Re: Bluestone' from Michael Gilhuley to Brett Downes dated 10 August 2018 (GCU.0009.0004.3821).

Email from Adam Cherubini to Ivan Jesensky and Marisa Lazatin, copying Ludwig Sels, Roland Hartley-Urquhart, Michael Gilhuley and Maxwell Gerard, dated 13 August 2018 (GCU.0013.0003.1398).

Email 'RE: Bluestone 2' from Jason Austin to Roland Hartley-Urquhart dated 21 August 2018 (GCU.0009.0004.4973).

Email 'GREENSILL CAPITAL – CREDIT COMMITTEE MEETING - MINUTES - FRIDAY 24TH AUGUST 2018' from Vicky Birch to Brett Downes, Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart, copying others, dated 31 August 2018 (GCU.0004.0017.2349).

Bluestone Complaint (BCC.0001.0019.0294 at 0005 to 0006 and 0023 to 0024).

(d) GCUK determined in its absolute discretion, without input from Bluestone Coal or Blackstone:

(i) the amounts and maturity dates of the receivables purportedly purchased under the Bluestone RPA; and

(ii) the maximum sublimit for each purported Account Debtor.

Particulars

PowerPoint 'Rasmussen (Bluestone) rolls process' dated 16 October 2018 (GCU.0009.0005.6925).

Email 'Account limits' from Roland Hartley-Urquhart to Jay Justice dated 31 January 2019 (GCU.0009.0007.2118).

Email from Adam Cherubini to Jay Justice, copying Roland Hartley-Urquhart and Michael Gilhuley, dated 20 March 2019 (GCU.0010.0007.9276).

Bluestone Complaint (BCC.0001.0019.0294 at 0005 to 0006 and 0023 to 0024).

787 The Bluestone Non-Payment Risk Misrepresentation referred to in paragraph 745 above was false and/or misleading because the risk insured in respect of the Bluestone AR Facility was:

(a) not the risk of non-payment by the Account Debtors of account receivables payable in respect of coal supplied by Bluestone Coal or Blackstone, where the relevant credit risk was that of the Account Debtors; and

(b) the risk of non-payment by Bluestone Resources, Bluestone Coal and/or Blackstone of the long term enterprise finance advanced by GCUK, where the relevant credit risk was that of Bluestone Resources, Bluestone Coal and/or Blackstone.

Particulars

From its inception, so that the Bluestone AR Facility could be funded through its warehouse financing facilities with Credit Suisse, GCUK structured the Bluestone AR Facility so that the relevant credit risk was ostensibly that of the Account Debtors, when it was in fact that of Bluestone Resources (as the borrower of what was in substance, corporate finance).

Credit Suisse Nova (Lux) Supply Chain Finance High Income Fund & (i) Lagoon Park Capital & (ii) Wickham, & (iii) Hoffman, Global Notes Programmes – Warehousing Facility Letter dated 28 March 2018 (GCU.0010.0006.8285).

Credit Suisse (Lux) Supply Chain Finance Fund & (i) Lagoon Park Capital & (ii) Wickham, & (iii) Hoffman, Global Notes Programmes — Warehousing Facility dated 14 December 2017 (CSA.5000.0001.0070).

Email 'Re: Bluestone' from Michael Gilhuely to Brett Downes dated 10 August 2018, forwarded to, among other people, Roland Hartley-Urquhart (GCU.0009.0004.3821).

Minutes of meeting on 13 August 2018 between Adam Cherubini, Michael Gilhuley, Brett Downes, Deighton Sels, and Roland Hartley-Urquhart (GCU.0009.0004.3908).

Email from Maxwell Gerard to David Keeling, Michael Gilhuley, Credit Risk Team, Brett Downes and Adam Cherubini, copying Ivan Jesensky and Roland Hartley-Urquhart, dated 23 August 2018 (GCU.0009.0004.5481), attaching 'Bluestone AR – RCAP 08.23.2018' (GCU.0009.0004.5482).

Notes of Credit Committee meeting on 24 August 2018 between Lex Greensill, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Brett Downes (GCU.0017.0001.3251).

Email 'Re: Bluestone – RCAP update' from Brett Downes to Wasif Rasif, copying Ludwig Sels, dated 18 September 2018 (GCU.0013.0003.3708).

Email 'FW:IG/NIG extra info' from Al Eadie to Lex Greensill, copying David Solo and James Hadley, dated 21 January 2019 (GCU.0005.0005.2144), attaching 'Bluestone Account Debtor List 11.29.2018 (Current Version) (1).xlsx' (GCU.0005.0005.2145) and 'Bluestone RCAP 11.29.2018.docx' (GCU.0005.0005.2146).

Email 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Tuesday 14th May 2019' from Brett Downs to David Keeling, Myrjam Tschoeke, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying others, dated 14 May 2019 (GCU.0005.0010.4676)

Email 'Bluestone – OK from Credit Perspective' from Rachelle Bower to Adam Cherubini dated 19 August 2019 (GCU.0010.0010.0282).

Bluestone Complaint (BCC.0001.0019.0294 at 0001 and 0004).

788 The Bluestone Genuine Customer Misrepresentation referred to in paragraph 744(b) above was false and/or misleading because:

(a) Account Debtors included entities that were not customers of Bluestone Coal or Blackstone (and there was no reasonable basis for believing that they would become customers of Bluestone Coal or Blackstone);

Particulars

Email 'Re: Customer Financial Requests' from Steve Ball to Adam Cherubini, copying Roland Hartley-Urquhart, Maxwell Gerard and Michael Gilhuley, dated 6 August 2018 (GCU.0009.0004.2938).

Email from Maxwell Gerard to Michael Gilhuley dated 29 August 2018 (GCU.0009.0004.6305), attaching documents received from Bluestone Resources, including, among other things, accounts receivable and projected accounts receivable reports (GCU.0009.0004.6306; GCU.0009.0004.6307; GCU.0009.0004.6308; GCU.0009.0004.6309; GCU.0009.0004.6310; GCU.0009.0004.6311).

Email 'RE: AR" from Maxwell Gerard to Steve Ball, copying Adam Cherubini and Michael Gilhuely, dated 4 September 2019 (GCU.0004.0017.3709) attaching a spreadsheet with the file name 'Updated Buyer Obligor List 9.4.2018_External' (GCU.0004.0017.3710).

Email chain 'RE: Conditional Approval for Bluestone Resources Inc - US$120m Receivables Monetisation Facility' from Maxwell Gerard to David Keeling and Brett Downs, copying Michael Gilhuley and others, dated 6 September 2018 (GCU.0005.0001.8120), attaching 'Updated Buyer Obligor List 9.6.2018' (GCU.0005.0001.8121).

Email 'RE: AR" from Steve Ball to Maxwell Gerard, copying Adam Cherubini and Michael Gilhuley, dated 7 September 2018 (GCU.0010.0004.8468).

Email from Maxwell Gerard to Roland Hartley-Urquhart dated 7 September 2018 (GCU.0009.0004.7668), attaching 'Rated Steel Companies' spreadsheet (GCU.0009.0004.7669).

Email 'Fwd: Rated Steel Companies' from Roland Hartley-Urquhart to Jay Justice dated 9 September 2018, attaching spreadsheet with the file name 'Rated Steel Companies'. (GCU.0009.0004.7703; GCU.0009.0004.7704)

Email 'Bluestone Offtakers' from Roland Hartley-Urquhart to Lex Greensill and Ludwig Sels dated 10 September 2018 (GCU.0004.0017.5633). Email forwarded to Brett Downes by Roland Hartley-Urquhart on 11 September 2018.

Email 'RE: Conditional Approval for Bluestone Resources Inc - US$120m Receivables Monetisation Facility' from Maxwell Gerard to David Keeling, copying Adam Cherubini, MG and the Credit Risk Team, dated 10 September 2018, attaching a spreadsheet entitled 'Updated Buyer Obligor List 9.10.2018', and email 'Bluestone Offtakers' from Roland Hartley-Urquhart to Lex Greensill and Ludwig Sels dated 10 September 2018 (GCU.0009.0004.8043).

Email 'FW: Conditional Approval for Bluestone Resources Inc - US$120m Receivables Monetisation Facility' from Roland Hartley-Urquhart to Brett Downes dated 12 September 2018 (GCU.0009.0004.8365).

Email 'Re: Counterparties' from Jay Justice to Roland Hartley-Urquhart dated 17 September 2018 (GCU.0013.0003.3636)

Email 'RE: Bluestone Credit - Counterparty Substitution' from Brett Downes to Lex Greensill and Roland Hartley-Urquhart, copying David Keeling, dated 18 September 2018 (GCU.0004.0017.9098).

Email 'Wilcox Targets' from Jay Justice to Roland Hartley-Urquhart, copying Steve Ball, dated 7 November 2018 (GCU.0009.0005.8536).

Email from Jay Justice to Adam Cherubini and Roland Hartley-Urquhart dated 1 November 2018, attaching '2020 Contract Status' (GCU.0005.0018.3863; GCU.0005.0018.3863).

Email from Jay Justice to Roland Hartley-Urquhart dated 19 November 2018 (GCU.0009.0006.0091), attaching 'Blackstone Energy – Anticipated Coal Contracts for 2019' dated 19 November 2018 (GCU.0009.0006.0092) .

Email from Jay Justice to Roland Hartley-Urquhart dated 18 February 2019 attaching 'Bluestone Shipments by Customer – December' (GCU.0009.0007.4557; GCU.0009.0007.4558).

Email from Jay Justice to Roland Hartley-Urquhart dated 31 January 2019 (GCU.0009.0007.2113) listing Bluestone Coal and Blackstone's actual customers at the time.

Email from Adam Cherubini to Jay Justice, copying Roland Hartley-Urquhart and Michael Gilhuley, dated 20 March 2019 (GCU.0010.0007.9276).

Email 'Fwd: BLK Sales March 2019' from Jay Justice to Adam Cherubini and Roland Hartley-Urquhart, attaching Blackstone Sales for March 2019 (GCU.0009.0008.9478; GCU.0009.0008.9479)

Email correspondence between Roland Hartley-Urquhart and Jay Justice between 16 and 17 July 2019 (GCU.0013.0003.0366).

Email 'Re Production' from Summer Harrison to Michael Gilhuley (GCU.0009.0011.0903), attaching July 2019 Sales for Bluestone Coal and Blackstone (GCU.0009.0011.0904; GCU.0009.0011.0905).

Letter dated 1 November 2019 from Jay Justice of Bluestone Resources to Roland Hartley-Urquhart enclosing an international customers update (GCU.0017.0001.8322).

Email from Sherry Tolley to Adam Cherubini and Roland Hartley-Urquhart dated 9 December 2019, attaching 'Master Sales 2018-2019' (GCU.0009.0012.5055; GCU.0009.0012.5056).

Update on Sale Discussions by Customer dated 16 December 2019 (GCU.0009.0012.6110).

Email 'Coal Buyer Summary' from Roland Hartley-Urquhart to Adam Cherubini and Jen Ganzi dated 16 December 2019 (GCU.0009.0012.6142).

Email 'FW: Sales by Customer' from Adam Cherubini to Roland Hartley-Urquhart, Jen Ganzi and Rachelle Bower, dated 21 January 2020 (GCU.0010.0011.7143), attaching '2019 Sales by Customer' (GCU.0010.0011.7144).

Email 'Coal Sales Summary- April 2020-March 2021' from Sherry Tolley to Adam Cherubini, copying Jay Justice, dated 11 March 2020 (GCU.0009.0014.0374), attaching 'Coal Sales Summary- April 2020-March 2021' (GCU.0009.0014.0375).

Email 'Re: Export Sales' from Matthew Gerber to Adam Cherubini, copying Jay Justice, Steve Ball, Roland Hartley-Urquhart and Rachelle Bower, dated 16 April 2020 (GCU.0009.0014.8364).

Bluestone Complaint (BCC.0001.0019.0294 at 0005 to 0006 and 0023 to 0024).

(b) most of the Account Debtors were not customers of Bluestone Coal or Blackstone and had never been customers of either 'Seller';

Particulars

IAL refers to the particulars to paragraph 788(a) above.

(c) most of the Account Debtors were proposed by GCUK based on their:

(i) ability to meet the credit rating requirements under the warehousing facilities between GCUK and Credit Suisse; and

(ii) by inference, perceived attractiveness to an insurer,

rather than by reference to the existence of a genuine trading relationship between them and the 'Sellers', or the likelihood that they would purchase coal from Bluestone Coal or Blackstone and generate actual receivables;

Particulars

GCUK deliberately constructed the Bluestone AR Facility to ensure that funding could be provided under GCUK's arrangements with Credit Suisse's investment funds, and meet Credit Suisse's requirements. In doing so, GCUK structured the facility in a manner that obscured the true nature and credit risk of the Bluestone AR Facility.

GCUK provided Bluestone Coal with lists of rated steel companies and consumers of Met coal and requested that Bluestone Coal identify those which might become buyers of its coal in the future.

Minutes of meeting on 13 August 2018 between Adam Cherubini, Michael Gilhuley, Brett Downes, Deighton Sels, and Roland Hartley-Urquhart (GCU.0009.0004.3908).

Notes of Credit Committee meeting on 24 August 2018 between Lex Greensill, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Brett Downes (GCU.0017.0001.3251).

Email from Maxwell Gerard to Michael Gilhuley dated 29 August 2018, attaching documents received from Bluestone Resources, including, among other things, accounts receivable and projected accounts receivable reports (GCU.0009.0004.6305; GCU.0009.0004.6306; GCU.0009.0004.6307; GCU.0009.0004.6308; GCU.0009.0004.6309; GCU.0009.0004.6310; GCU.0009.0004.6311)

Email 'Re: Bluestone – RCAP update' from Brett Downes to Wasif Rasif, copying Ludwig Sels, dated 18 September 2018 (GCU.0013.0003.3708).

Email from Roland Hartley-Urquhart to Jay Justice, with subject 'Fwd: Rated Steel Companies', dated 9 September 2018 (GCU.0009.0004.7703), attaching a spreadsheet with the file name 'Rated Steel Companies' (GCU.0009.0004.7704).

Email correspondence between David Keeling and Maxwell Gerard, copying Adam Cherubini, Michael Gilhuley, Credit Risk Team (credit.risk.team@greensill.com) dated 10 September 2018 (GCU.0007.0002.1447), attaching, among other things:

(a) email from Roland Hartley-Urquhart to Lex Greensill and Ludwig Sels, with subject 'Bluestone Offtakers', copying the Bluestone mailing list (bluestone@greensill.com), dated 10 September 2018 (GCU.0007.0002.1448); and

(b) 'Updated Buyer Obligor List 9.10.2018' (GCU.0007.0002.1449).

Email correspondence between Roland Hartley-Urquhart and Jay Justice, with subject 'Counterparties', dated 14 and 17 September 2018 (GCU.0013.0003.3634).

Email from Lex Greensill to Roland Hartley-Urquhart, with subject 'Re: Bluestone Credit – Counterparty Substitution', copying Brett Downes and David Keeling, dated 18 September 2018 (GCU.0004.0017.9097).

Email from Brett Downes to Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke and Roland Hartley-Urquhart, with subject 'Bluestone – RCAP update', copying Credit Risk Team, Maxwell Gerard, Ludwig Sels, Steven Hollands and Wasif Raza, dated 18 September 2018 (GCU.0004.0017.9327), attaching 'Bluestone AR - RCAP 18 Sept 2018 FCC.pdf' (GCU.0004.0017.9328).

Email 'Bluestone update' from Roland Hartley-Urquhart to Lex Greensill dated 22 October 2018 (GCU.0005.0002.3473).

Email from Jay Justice to Adam Cherubini, copying Roland Hartley-Urquhart, dated 23 April 2019 (GCU.0009.0008.8845).

Email 'Call follow up' from Matthew Gerber to Roland Hartley-Urquhart dated 4 November 2019 (GCU.0009.0012.0674), attaching a spreadsheet 'Steel Producers List 01' (GCU.0009.0012.0675).

Email 'Re: Bluestone – Account Debtors' from Brett Downes to Jen Ganzi, Ludwig Sels and the Credit Analysts team, copying Adam Cherubini, Rachelle Bower and Roland Hartley-Urquhart, dated 25 November 2019 (GCU.0009.0012.3235).

Bluestone Complaint (BCC.0001.0019.0294 at 0005 to 0006).

Knowledge of falsity of representations

789 Lex Greensill knew the matters set out in paragraph 786 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

(a) his roles as Chief Executive Officer, a Board member, and a member of the Credit Committee;

(b) his involvement in dealings with Bluestone Resources in those roles, including the placement of the Bluestone MO Risk, as demonstrated by:

(c) the particulars to paragraphs 739, 740, 742, 748, 756, 762, 766 and 780 above which refer to Lex Greensill's direct involvement in the placement of insurance for the Bluestone MO Risk;

(d) the particulars to paragraphs 786 to 788 above which refer to Lex Greensill's involvement on the Credit Committee, which assessed and approved the financial accommodation provided to Bluestone Resources.

790 Lex Greensill knew of the matters set out in paragraph 787 above.

Particulars

IAL refers to the particulars to paragraph 789 above.

791 Lex Greensill knew of the matters set out in paragraph 788 above.

Particulars

IAL refers to the particulars to paragraph 789 above.

792 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 786, 787 and 788 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

793 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 786, 787 and 788 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

794 Further and in the alternative to paragraphs 789, 790 and 791 above, the following individuals knew each (alternatively, one or more) of the matters set out in paragraphs 786, 787 and 788 above:

(a) Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure);

(b) Brett Downes (Chief Risk Officer of GCUK);

(c) Michael Gilhuley (Managing Director, Origination (USA) of GCUK); and

(d) Adam Cherubini (Director, Origination of GCUK).

Particulars

The knowledge of Roland Hartley-Urquhart can be inferred from:

(a) his positions within the Greensill Group as described in paragraph 10(c);

(b) his roles as 'Sponsor' and 'GC Relationship Owner' for Bluestone Resources, a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0004.0013.1084) and Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Credit Committee; and

(c) his direct dealings with Bluestone Resources and his involvement in dealing with the Bluestone SO and MO Risk in those roles, as demonstrated by the particulars to paragraphs 766, 776, 786, 787 and 788 above which refer to Roland Hartley-Urquhart.

The knowledge of Brett Downes can be inferred from:

(a) his roles as the Chief Risk Officer of GCUK, a member of the 'Deal Team' for the Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Credit Committee; and

(b) his direct dealings with Bluestone Resources (GCU.0007.0002.7068 at 0028) and his involvement in dealing with the Bluestone SO and MO Risk in those roles, as demonstrated by the particulars to paragraphs 741, 742, 748, 766 786, 787 and 788 above which refer to Brett Downes.

The knowledge of Michael Gilhuley can be inferred from:

(a) his roles as the Managing Director of Origination (USA) of GCUK, a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0009.0003.5485) and Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Credit Committee; and

(b) his direct dealings with Bluestone Resources and his involvement in dealing with the Bluestone SO and MO Risk in those roles, as demonstrated by the particulars to paragraphs 748,760 786, 787 and 788 above which refer to Michael Gilhuley.

The knowledge of Adam Cherubini can be inferred from:

(a) his roles as a Director of Origination of GCUK, a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0009.0003.5485) and the Bluestone AR Facility (GCU.0005.0002.2713 at 0004); and

(b) his direct dealings with Bluestone Resources and his involvement in dealing with the Bluestone SO and MO Risks in those roles, as demonstrated by:

(i) the particulars to paragraphs 760, 766, 776, 786, 787 and 788 above which refer to Adam Cherubini;

(ii) his role in managing the roll process for maturities under the Bluestone AR and SCF Facilities (GCU.0009.0006.9933; GCU.0005.0003.8741; GCU.0009.0007.2607; GCU.0010.0007.7079; GCU.0009.0006.6392; GCU.0013.0006.4272);

(iii) his role in preparing credit application reports for Bluestone Resources presented to the Greensill Credit Committee (GCU.0004.0025.8297; GCU.0009.0016.0487; GCU.0009.0014.1823; GCU.0005.0010.5124; GCU.0005.0002.2705).

795 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters identified in paragraph 793 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

796 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters identified in paragraph 793 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

Knowledge of the materiality of representations

797 Each (alternatively, one or more) of the matters referred to in paragraph 786 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Bluestone being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

798 Each (alternatively, one or more) of the matters referred to in paragraph 787 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Bluestone being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

799 Each (alternatively, one or more) of the matters referred to in paragraph 788 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Bluestone being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

800 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 797 to 799 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

801 Further or in the alternative to paragraphs 797, 798 and 799 above, each of the matters referred to in paragraphs 786, 787 and 788 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk.

802 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 797, 798 and 799 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

803 Further and in the alternative to paragraphs 797, 798 and 799 above, each (alternatively, one or more) of the matters referred to in paragraphs 786, 787 and 788 was a matter:

(a) which other individuals – comprising Roland Hartley-Urquhart (see paragraph 10(c) in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK), Michael Gilhuley (Managing Director, Origination (USA) of GCUK), and/or Adam Cherubini (Director, Origination of GCUK) – knew was material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk;

(b) alternatively to paragraph (a), in respect of which those individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The individuals' knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

804 Further or in the alternative to paragraph 802 above, each of the matters referred to in paragraph 786, 787 and 788 above was a matter which a reasonable person in the position of Roland Hartley-Urquhart, Brett Downes, Michael Gilhuly or Adam Cherubini could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk.

805 The knowledge of the abovementioned individuals of the matters set out in paragraphs 786, 787 and 788 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

806 The knowledge of the abovementioned individuals of the matters set out in paragraphs 786, 787 and 788 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

Misrepresentations were fraudulent

807 In the premises of paragraphs 789, 792, 793, 794, 795, 796, 797, 800, 801, 803, 804 and 806 above:

(a) Greensill misrepresented the nature and operation of the Bluestone AR Facility;

(b) the Bluestone AR Facility Misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk.

808 In the premises of paragraphs 790, 792, 793, 794, 795, 796, 798, 800, 801, 803, 804 and 806 above:

(a) Greensill misrepresented the nature and operation of the Bluestone AR Facility;

(b) the Bluestone Non-Payment Risk Misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk.

809 In the premises of paragraphs 791, 792, 793, 794, 795, 796, 799, 800, 801, 803, 804 and 806 above:

(a) Greensill misrepresented the nature and operation of the Bluestone AR Facility;

(b) the Bluestone Genuine Customer Misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk.

810 If Greensill had not made the Bluestone AR Facility Misrepresentation, insurance cover would not have been issued in respect of the Bluestone MO Risk at all or, in the alternative, on the same terms in which it purportedly was written.

811 If Greensill had not made the Bluestone Non-Payment Risk Misrepresentation, insurance cover would not have been issued in respect of the Bluestone MO Risk at all or, in the alternative, on the same terms in which it purportedly was written.

812 If Greensill had not made the Bluestone Genuine Customer Misrepresentation, insurance cover would not have been issued in respect of the Bluestone MO Risk at all or, in the alternative, on the same terms in which it purportedly was written.

813 By reason of the matters pleaded in paragraphs 807 to 812 above, IAL is entitled to avoid the Bluestone MO Endorsement and the Customer Endorsements referred to in Section D11 of this Annexure, including the Bluestone Account Debtor Endorsements, to the 2019 Policy.

Innocent misrepresentation

814 In the alternative to the matters pleaded in paragraphs 807 to 813 above, by reason of the matters pleaded in paragraphs 786, 787, 788, 810, 811 and 812 above, IAL is entitled to reduce its liability under the Bluestone MO Risk and Customer Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the Bluestone AR Facility Misrepresentation, and the Bluestone Non-Payment Risk Misrepresentation had not occurred).

D11.3 Bluestone Multi-Obligor Non-Disclosures

Knowledge of underlying matters

815 At the time insurance cover for the Bluestone MO Risk was purportedly renewed under the 2019 Policy, and/or at the times the Bluestone Account Debtor Endorsements were entered into (as applicable), Lex Greensill knew:

(a) each (alternatively, one or more) of the matters set out in paragraphs 786, 787, and 788 above;

Particulars

IAL refers to the particulars to paragraph 789 above.

(b) the Bluestone AR Facility would be used to meet Bluestone Resources' liability under the Bluestone SCF Facility;

Particulars

Email from David Keeling to Lex Greensill, Danyon Lloyd, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart, Distribution (distribution@greensill.com) and Brett Downes, with the subject 'Conditional Approval for Bluestone Resources Inc – US$120m Receivables Monetisation Facility', copying Credit Risk Team, Charles Brough, Maxwell Gerard and Adam Cherubini (GCU.0004.0016.9237), attaching 'Bluestone AR – FCC RCAP 08.23.2018' (GCU.0004.0016.9239) and 'Bluestone AR FCC CAP 08.23.2018' (GCU.0004.0016.9238).

Notes of Credit Committee meeting on 24 August 2018 between Lex Greensill, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Brett Downes (GCU.0017.0001.3251).

Email from Vicky Birch to Brett Downes, Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart, with subject 'Greensill Capital – Credit Committee Meeting – Minutes – Friday 24 August 2018', copying Maxwell Gerard, Ludwig Sels, Adam Cherubini, Hugh McKee, Credit Risk Team and others, dated 31 August 2018 (GCU.0004.0017.2346).

(c) a substantial portion of the funds advanced under the Bluestone AR Facility as part of the initial advance in September 2018 (**Initial Advance**) and December 2018 Upsize would be used by Bluestone Resources or its subsidiaries to repay outstanding loans from Carter Bank & Trust (**Carter Bank**). Specifically:

(i) the initial advance would be used to repay an approximately USD68 million loan owed to Carter Bank by Bluestone Resources;

Particulars

Email 'Bluestone Group URGENT AMENDMENT AR RCAP' from David Keeling to Brett Downes, Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart, copying the Credit Risk Team, Maxwell Gerard, Ludwig Sels, Steven Hollands, Wasif Raza and Adam Cherubini, dated 28 September 2018 (GCU.0005.0002.2703), attaching 'Bluestone AR - FCC RCAP 27 Sept 2018 - Amendments.pdf (GCU.0005.0002.2705).

(ii) USD179 million of the December 2018 Upsize would be used to repay debts owed to Carter Bank by affiliates Bluestone Resources: Virginia Fuel Corporation, Kentucky Fuel Corporation, A&G Coal Corporation and Justice Coal of Alabama;

Particulars

Email, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING-MINUTES FRIDAY 30th NOVEMBER 2018' from David Keeling to Lex Greensill, Brett Downes, Myrjam Tschoeke, Roland Hartley-Urquhart, Michael Gilhuley, Danyon Lloyd, copying the Credit Risk Team, Ludwig Sels and Steven Hollands, dated 7 December 2018 (GCU.0007.0002.5867) and attachments (GCU.0007.0002.5868; GCU.0007.0002.5869).

Email, with subject 'FINAL APPROVALS – BLUESTONE', from Craig Pinnington to Brett Downes, Lex Greensill, Roland Hartley-Urquhart, Myrjam Tschoeke, Michael Gilhuley and other GCUK representatives dated 12 December 2018 (GCU.0007.0002.5864), attaching 'Bluestone Increase US$400m 27 Nov 2018 update post CC.pdf' (GCU.0007.0002.5865).

(d) in return for each of the advances made to Bluestone Resources under the Bluestone AR Facility, GCUK received:

(i) exorbitant fees which were largely deducted from (and therefore funded by) the sums advanced to Bluestone Resources;

Particulars

Funding	**Approx. Fee (USD)** (excl. quarterly admin fee of USD50,000)
Initial Advance	**USD14.95 million** Structuring & Arrangement Fee – USD14.5 million Upfront Fee – USD450,000
December 2018 Upsize	**USD$26 million** Structuring & Arrangement Fee – USD25.55 million Upfront Fee – USD450,000
April 2019 Upsize	**USD$2.755 million** Structuring & Arrangement Fee – USD2.35 million

	Upfront Fee – USD405,000
May 2019 Upsize	**USD$5.5 million** Structuring & Arrangement Fee – USD5.5 million
June 2019 Upsizes	**USD$45.75 million** Structuring & Arrangement Fee – USD20.3 million Upfront Fee – USD450,000 Warrant Cancellation Fee - USD25 million
February 2020 Upsize	**USD$2.8 million** Structuring & Arrangement Fee – USD2.75 million Upfront Fee – USD50,000
April 2020 Upsize	**USD$2.75 million** Structuring & Arrangement Fee – USD2.7 million Upfront Fee – USD50,000

Spreadsheet 'BRI Sources and Uses - 2018-2021 - 02.19.2021' dated 19 February 2021 (GCU.0006.0005.9875).

Fees paid by Bluestone Resources to GCUK are also documented in credit application reports provided to the Greensill Credit Committee (GCU.0005.0002.2712; GCU.0007.0002.5865; GCU.0007.0002.7068; GCU.0009.0013.3958; GCU.0017.0001.8434).

The fee of USD15 million incurred with the Initial Advance is also recorded in the following documents:

(a) Email from Maxwell Gerard to Bluestone@Greensill.com with subject “RE: Flow of Funds” dated 26 September 2018 (GCU.0007.0002.1760) attaching document titled “Bluestone Roll Schedule and First Two Exhibits to Request 9.26.2018_135.5” (GCU.0007.0002.1761).

(b) Email from Maxwell Gerard to Steve Ball and others with subject “RE: Fee Letter” dated 27 September 2018 (GCU.0010.0005.2015).

(c) Letter from GCUK to Bluestone Resources with subject “Receivables Purchase Agreement – Transaction Fee Letter)” dated 26 September 2018 (GCU.0013.0003.4979).

The fee of USD26 million incurred with the December 2018 Upsize is also recorded in the following documents:

(a) Email from Adam Cherubini to Ian Bryan and others with subject “RE: Bluestone – Bank Accounts for Funding” dated 12 December 2018 (GCU.0005.0003.6295)

(b) Letter from GCUK to Bluestone Resources with subject “First Amendment and Joinder to Receivables Purchase Agreement – Amended and Restated Transaction Fee Letter” dated 7 December 2018 (GCU.0009.0006.3810)

The fee of USD2.35 million incurred with the April 2019 Upsize is also recorded in the following documents:

(a) Letter from GCUK to Bluestone Resources with subject “Increase Amendment to Receivables Purchase Agreement – Supplement to Transaction Fee Letter” dated 29 March 2018 (IAL.500.002.0258).

(b) Email from Rachelle Bower to Laura Da Silveira and others with subject “RE: Bluestone Upsize – Funding Friday” dated 4 April 2019 (GCU.0004.0025.4742).

The fee of USD5.5 million for the May 2019 Upsize is recorded in the following documents:

(a) Email from Adam Cherubini to Ivan Jesensky, Ludwig Sels and others with subject “RE: Bluestone – Friday’s Funding” dated 17 May 2019 (GCU.0009.0009.3722).

(b) Email from Adam Cherubini to Roland Hartley-Urquhart with subject “FW: Bluestone – late trade” dated 20 May 2019 (GCU.0013.0005.7189).

(c) Letter from GCUK to Bluestone Resources with subject “Increase Amendment to Receivables Purchase Agreement – Supplement to Transaction Fee Letter” dated 20 May 2019 (IAL.500.002.0259).

The fees of USD45.75 million for the June 2019 Upsize, including the warrant cancellation fee of USD25 million, is recorded in the following documents:

(a) Email from Adam Cherubini to Roland Hartley-Urquhart with subject “Funding Breakdown” dated 6 June 2019 (GCU.0010.0009.0220)

(b) Email from Adam Cherubini to Jim Justice III and Steve Ball with subject “Bluestone - Funding Breakdown” dated 6 June 2019 (GCU.0009.0009.6180).

(c) Letter from GCUK to Bluestone Resources with subject “Increase to Receivables Purchase Agreement – Supplement to Transaction Fee Letter” dated 10 June 2019 (GCU.0009.0009.6755)

(d) Email from Adam Cherubini to Emma Johnson, Roland Hartley-Urquhart and others with subject “RE: Bluestone Funding – Tuesday June 11 - $220mm” dated 10 June 2019 (GCU.0009.0009.6772).

(e) Email from Adam Cherubini to James Hadley with subject “RE: Bluestone additional facility” dated 19 June 2019 (GCU.0009.0009.8171).

The fee of USD2.8 million incurred with the February 2020 Upsize is also recorded in the following documents:

(a) Email from Rachelle Bower to Support Ops UK and others with subject “Rasmussen - $15mm Upsize – February 6” dated 6 February 2020 (GCU.0005.0022.6012).

(b) Letter from GCUK to Bluestone Resources with subject “Fee Letter to Increase Amendment to Receivables Purchase Agreement – Supplement to Transaction Fee Letter” dated 6 February 2020 (IAL.500.002.0263).

(c) The fee of USD2.8 million incurred with the April 2020 Upsize is also recorded in the following documents:

(d) Email from Rachelle Bower to Support Ops UK and Payment Ops UK with subject “Bluestone Payment – Wednesday March 15” dated 14 April 2020 (GCU.0010.0012.8813).

(e) Letter from GCUK to Bluestone Resources with subject “Fee Letter to Increase Amendment to Receivables Purchase Agreement – Supplement to Transaction Fee Letter” dated 10 April 2020 (GCU.0009.0014.7796).

(ii) for the December 2018 Upsize, a warrant for 2.5% equity (**First Warrant**), which would become callable in an amount between USD20-50 million in the event of an asset sale by Bluestone Resources;

Particulars

Bluestone Resources warrant dated 12 December 2018 (GCU.0005.0009.1067).

Bluestone equity warrant summary dated 28 March 2019 (GCU.0005.0009.1066).

Email 'FINAL APPROVALS' from Craig Pinnington to Brett Downes, Danyon Lloyd, Lex Greensill, Myrjam Tschoeke, Roland Hartley-Urquhart, Adam Cherubini and others, dated 12 December 2018 (GCU.0007.0002.5864),

attaching 'Bluestone Increase US$400m 27 Nov 2018 update post CC' (GCU.0007.0002.5865).

Bluestone Complaint (BCC.0001.0019.0294).

(iii) for the June 2019 Upsize, a USD25 million as fee for the cancellation of the First Warrant and a new warrant for 10% equity (**Second Warrant**), which was exercisable at any time within 10 years of its execution date.

Particulars

Bluestone equity warrant summary - Update June 2020 dated 29 June 2020 (GCU.0006.0004.4254).

Bluestone Resources Warrant Number dated 10 June 2019 (GCU.0009.0009.6749).

Credit Application for Bluestone Resources submitted 19 March 2020 – (GCU.0009.0014.1823)

Bluestone Complaint (BCC.0001.0019.0294 at 0008 to 0009).

(e) the December 2018 Upsize and April 2019 Upsize were intended to serve as bridge loans that would be repaid from the proceeds of an asset sale by Bluestone Resources anticipated to occur in 2019, upon which GCUK planned to monetise its First Warrant and restructure its facilities with Bluestone Resources in such a way as to permit orderly servicing and amortisation;

Particulars

Credit Application Report for Bluestone Resources submitted on 29 November 2018 by Adam Cherubini and Rachelle Bower (GCU.0007.0002.5869 at 0006).

Email 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 30th NOVEMBER 2018' from David Keeling to Lex Greensill, Brett Downes, Myrjam Tschoeke, Roland Hartley-Urquhart, Michael Gihuley, Danyon Lloyd, copying others, dated 7 December 2018 (GCU.0005.0003.4934) attaching, among other things, the agenda for Credit Committee meeting (GCU.0005.0003.4935).

Email with subject 'Update on Bluestone Sale Process' from Roland Hartley-Urquhart to Lex Greensill and Al Eadie, copying Adam Cherubini, Michael Gilhuley, Brett Downes and Neil Davies, dated 1 April 2019 (GCU.0005.0008.3842).

Email with subject 'RE: Assurances Regarding the Financing" from Roland Hartley-Urquhart to Jim Justice, copying Stephen Ball, Lex Greensill and Jay Justice (GCU.0005.0011.4961).

(f) the June 2019 Upsize and subsequent upsizes to the Bluestone AR Facility limit were part of long-term debt financing intended to help position Bluestone Resources for sale or an initial public offering, that would enable the AR Facility to be repaid and GCUK to monetise its Second Warrant;

Particulars

Email 'Re: Bluestone' from Rachelle Bower to Pia Schale, Adam Cherubini, David Keeling, Craig Pinnington and Ian Sales, copying Brett Downes, Roland Hartley-Urquhart and Michael Gilhuley, dated 8 May 2019 (GCU.0009.0009.1945).

Email 'GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Friday 31st May 2019' from David Keeling to Myram Tschoeke, Brett Downes, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying Adam Cherubini, Rachelle Bower, and others, dated 30 May 2019 (GCU.0007.0002.7065), attaching, among other things, 'Credit Application_Bluestone_30052019' (GCU.0007.0002.7068).

(g) by reason of the matters in subparagraphs 816(d) to 816(f) above, GCUK had a vested interest in increasing the enterprise value of Bluestone Resources and effecting the relevant transactions, such that its relationship with Bluestone Resources was not at arms-length;

Particulars

GCUK's relationship with Bluestone Resources was more akin to that of an investor and investee. GCUK adopted a '[m]erchant banking approach' with Bluestone Resources, whereby it provided assistance with respect to the company's sales and market development, marketing and financing, in an effort to ready the company for an eventual sale or IPO and maximise the value of its Second Warrant.

(a) Email 'Bluestone Update Deck' from Roland Hartley-Urquhart to Brett Downes, Al Eadie and Lex Greensill, copying Daniel Shuttleworth, dated 29 April 2019, attaching a presentation with the file name 'Bluestone Transactions 04.29.2019' (GCU.0005.0009.8482; GCU.0005.0009.8483).

(b) Email 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Tuesday 14th May 2019' from Rachelle Bower to Myrjam Tschoeke, Brett Downes, David Keeling, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying Adam Cherubini and others, dated 15 May 2019 (GCU.0005.0010.4772).

(c) Email 'GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Friday 31st May 2019' from David Keeling to Myram Tschoeke, Brett Downes, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying Adam Cherubini, Rachelle Bower, and others, dated 30 May 2019 (GCU.0007.0002.7065), attaching, among other things, 'Credit Application_Bluestone_30052019' (GCU.0007.0002.7068)

(d) Email from Sean Hanafin to Lex Greensill, copying Rebecca Rogers and Lindsey Sherill, dated 9 October 2019 (GCU.0005.0017.2459).

(e) Email 'RE: Bluestone Approval' from Sean Hanafin to Lex Greensill, Jen Ganz, Andrew Kuyk and Jade Langford, copying Michael Gilhuley, Roland Hartley-Urquhart, Adam Cherubini, Brett Downes, Myrjam Tschoeke, David Solo and others, dated 4 February 2020 (GCU.0006.0001.4322), attaching draft minutes of the Credit Committee meeting on 24 January 2020 (GCU.0006.0001.4323).

(f) GCUK Credit Application Report – Amendment for Bluestone Resources submitted on 23 Jan 2020 (GCU.0007.0002.9795).

(g) Email from Lex Greensill to Sanjeev Gupta dated 5 June 2019 (GCU.0005.0011.4157).

(h) Email 'deck for Mercuria meeting' from Roland Hartley-Urquhart to Adam Cherubini dated 3 September 2019, attaching 'Project Titan CIP (Jan 2019)' presentation (GCU.0009.0011.1643; GCU.0009.0011.1644).

(i) Email 'Re: deck for Mercuria meeting' from Adam Cherubini to Roland Hartley-Urquhart dated 4 September 2019 (GCU.0009.0011.1884), attaching 'Bluestone Transaction' presentation dated 2 May 2019 (GCU.0009.0011.1885), and 'Bluestone Overview – MET Coal Sales Project' presentation dated September 2019 (GCU.0009.0011.1886).

(j) 'Bluestone Export Marketing Discussions' note dated 29 July 2019 prepared by Roland Hartley-Urquhart (GCU.0009.0010.6632).

(k) Email 'Various Updates' from Roland Hartley-Urquhart to Lex Greensill dated 9 August 2019 (GCU.0012.0004.6327).

(l) Email from Roland Hartley-Urquhart to Jen Ganzi, copying Michael Gilhuley, Adam Cherubini and Rachelle Bower, dated 1 November 2019 (GCU.0010.0010.8438), forwarding letter from Jay Justice of the same date regarding Bluestone Resources' coal marketing efforts (GCU.0010.0010.8439).

(m) Email from Roland Hartley-Urquhart to Sean Hanafin and James Doran dated 17 September 2019, attaching a presentation on Bluestone

Resources prepared by GCUK for Mercuria (GCU.0010.0010.4038; GCU.0010.0010.4039).

(n) GCUK asked GFG for assistance with respect to Bluestone Resources, and to facilitate the sale of coal between GFG and Bluestone Resources; see:

(i) Email 'RE: Note from Jay' from Roland Hartley-Urquhart to Cindy White of Bluestone Coal dated 6 February 2020 (GCU.0009.0013.4511).

(ii) Email 'Fwd: Bluestone Visit and Options' from Sanjeev Gupta to Lex Greensill dated 6 March 2020 (GCU.0005.0023.7876).

(iii) Email 'GFG / Bluestone - URGENT and IMPORTANT' from Roland Hartley-Urquhart to Lex Greensill, copying Lindsey Sherrill and Henry Middleditch, dated 15 March 2020 (GCU.0005.0024.1177).

(iv) Email 'EMEA & Americas Credit Committee Minutes - 20th March 2020' from Molly Bellis to Brett Downes, Roland Hartley-Urquhart, Myrjam Tschoeke, Sean Hanafin, Michael Gilhuley and others, copying Adam Cherubini, Rachelle Bower and others, dated 7 April 2020 (GCU.0009.0014.5915).

(v) Email 'Re: Bluestone Met Coal Update' from Roland Hartley-Urquhart to Jay Justice dated 21 October 2019 (GCU.0009.0011.9330).

(vi) Email 'RE: Bluestone Met Coal and Coke' from Roland Hartley-Urquhart to Lex Greensill dated 16 January 2020 (GCU.0005.0021.6030).

(h) GCUK forgave breaches of the Bluestone AR Facility and did not pursue enforcement, due to the size of its exposure to Bluestone Resources and the financial position of the company, which relied on GCUK for liquidity;

Particulars

This can be inferred from:

(a) Standstill and Forbearance Agreement was entered into on 6 February 2020 for the period until 31 May 2020 following the occurrence of “Events of Termination” under the Bluestone RPA, which otherwise entitled GCUK to declare that no further drawdowns could be obtained by Bluestone Coal (BCC.0001.0006.2102).

(b) a waiver agreement was entered into on or about 8 June 2020 for the period ending 30 June 2020 in respect of the same types of breaches as the Standstill and Forbearance agreement dated 6 February 2020 (referred to above) as well as a decline in coal prices gave rise to further “Events of Termination” under the Bluestone RPA (BCC.0001.0006.2101).

(c) GCUK's lack of response to non-compliance by Bluestone Resources with performance covenants, giving rise to 'Events of Terminations' under the RPA, in the period prior to the Standstill and Forbearance Agreement above. See:

(i) Email from Adam Cherubini to Steve Ball and Summer Harrison, copying Michael Gilhuley and Roland Hartley-Urquhart, dated 27 November 2018 (GCU.0004.0021.4392), attaching 'Compliance Certificate – Final.xlsx' (GCU.0004.0021.4393).

(ii) Email 'RE: Bluestone – December Compliance Certificate' from Adam Cherubini to Summer Harrison dated 1 February 2019 (GCU.0005.0005.7339), attaching 'Compliance Certificate & Production Numbers - December 2018.xlsx' (GCU.0005.0005.7340). Email was forwarded to Roland Hartley Urquhart (GCU.0005.0005.7343).

(iii) Email 'Re: Bluestone - December Compliance Certificate' from Adam Cherubini to Steve Ball and Summer Harrison, copying Michael Gilhuley and Rachelle Bower, dated 21 February 2019 (GCU.0009.0007.5374).

(iv) Email 'Compliance Certificate Production Numbers - December 2018 v2.xlsx' from Michael Gilhuley to Roland Hartley-Urquhart, Adam Cherubini and Hugh McKee, dated 1 March 2019, attaching 'Compliance Certificate Production Numbers - December 2018 v2.xlsx' (GCU.0005.0006.9726; GCU.0005.0006.9727).

(v) Email 'Bluestone Compliance Certificate' from Adam Cherubini to Summer Harris, copying Rachelle Bower, dated 28 March 2019, attaching 'Compliance Certificate Production Numbers - February 2019.xlsx' (GCU.0005.0008.2533; GCU.0005.0008.2534).

(vi) Email 'Bluestone Production & Sales Numbers' from Adam Cherubini to Roland Hartley-Urquhart, Rachelle Bower, Michael Gilhuley and Mireia Just, dated 14 June 2019 (GCU.0004.0027.2425), attaching, among other things, 'Compliance Certificate Production Numbers - May 2019.xlsx' (GCU.0004.0027.2426).

(vii) Email 'Bluestone Meeting Follow Up Items – Part 2' from Adam Cherubini to Jay Justice, copying Roland Hartley-Urquhart and Rachelle Bower, dated 10 September 2027 (GCU.0005.0015.7168), attaching 'Compliance Certificate Production Numbers - August 2019.xlsx' (GCU.0005.0015.7169).

(viii) Email 'Bluestone Deliverables' from Adam Cherubini to Roland Hartley-Urquhart, Jen Ganzi, Michael Gilhuley, Rachelle Bower, Jack Furr, Hugh McKee and Charles Bronowski dated 16 December 2019, attaching, among other things, 'Compliance Certificate Production Numbers – October 2019' (GCU.0009.0012.6107; GCU.0009.0012.6110)

(ix) Credit Application Report for Bluestone Resources submitted on 30 January 2020 (GCU.0009.0013.3959 at 0007 and 0009).

(x) Credit Application Report – Amendment for Bluestone Resources submitted on 19 March 2020 (GCU.0009.0014.2093 at 0008 and 0010)

816 The knowledge of Lex Greensill of the matters in paragraph 815 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

817 The knowledge of Lex Greensill of the matters in paragraph 815 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

818 Further and in the alternative to paragraph 815 above, at the time insurance cover for the Bluestone MO Risk was purportedly renewed under the 2019 Policy, and/or at the times the Bluestone Account Debtor Endorsements were entered into (as applicable):

(a) Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure);

(b) Brett Downes (Chief Risk Officer of GCUK);

(c) Michael Gilhuley (Managing Director, Origination (USA) of GCUK);

(d) Adam Cherubini (Director, Origination of GCUK); and/or

(e) Rachelle Bower (Analyst, Origination of GCUK),

knew each (alternatively, one or more) of the matters set out in paragraph 815 above.

Particulars

The knowledge of the abovementioned individuals can be inferred from the matters in the particulars to paragraphs 794 and 815 above.

The knowledge of Rachelle Bower can also be inferred from her role as a member of the 'Facility Team' for the Bluestone AR Facility (GCU.0009.0013.3959), and her direct dealings and involvement in dealing with the Bluestone MO Risk in that role, as demonstrated by:

(a) the particulars to paragraphs 787 and 788 above;

(b) her role in preparing the credit application reports for Bluestone Resources presented to the Greensill Credit Committee (GCU.0010.0006.9074; GCU.0005.0008.5251; GCU.0009.0016.0487; GCU.0007.0002.6534; GCU.0005.0010.5124; GCU.0009.0014.1823); and

(c) her role in managing the roll process for maturities under the Bluestone AR and SCF Facilities (GCU.0009.0006.9933; GCU.0005.0003.8741; GCU.0009.0007.2607; GCU.0010.0007.7079; GCU.0009.0006.6392; GCU.0013.0006.4272).

819 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 815 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

820 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 815 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

821 Further or in the alternative to paragraphs 816 and 819, at the time insurance cover for the Bluestone MO Risk was purportedly renewed under the 2019 Policy, and/or at the times the Bluestone Account Debtor Endorsements were entered into (as applicable), Danyon Lloyd knew each (alternatively, one or more) of the matters set out in paragraphs 786, 787, 815(b), 815(c), 815(d) and 815(e) above.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

(a) Danyon Lloyds' position as a member of the Credit Committee, as demonstrated by the particulars to paragraphs 786, 787, 815(b), 815(c), 815(d) and 815(e) above;

(b) the involvement and knowledge of Danyon Lloyd in the company's dealings with Bluestone Resources, including the following items: GCU.0004.0017.9327 GCU.0004.0017.9328 GCU.0005.0002.2703 GCU.0007.0002.5868 GCU.0005.0003.2594 GCU.0005.0003.4934 GCU.0005.0010.4219 GCU.0005.0010.4222 GCU.0005.0010.4734 GCU.0005.0010.5132 GCU.0004.0026.6058 GCU.0005.0010.7196 GCU.0007.0002.7064 GCU.0007.0002.7066 GCU.0005.0011.1218.

822 The knowledge of Danyon Lloyd of the matters in paragraphs 786, 787, 815(b), 815(c), 815(d) and 815(e) above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

Knowledge of materiality

823 Each (alternatively, one or more) of the matters referred to in paragraph 815 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Bluestone being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

824 Further or in the alternative to paragraph 823 above, each (alternatively, one or more) of the matters referred to in paragraph above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk.

Particulars

IAL refers to paragraph 823 above.

825 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 823 and 824 is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

826 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 823 and 824 is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

827 Further and in the alternative to paragraph 823 above, each (alternatively one or more) of the matters referred to in paragraph 815 was a matter:

(a) which other individuals – comprising Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK) and Michael Gilhuley (Managing Director, Origination (USA) of GCUK), Adam Cherubini (Director, Origination of GCUK), and/or Rachelle Bower (Analyst, Origination of GCUK) - knew was material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk;

(b) alternatively to paragraph (a), in respect of which those abovementioned individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Roland Hartley-Urquhart, Brett Downes, Michael Gilhuley, Adam Cherubini and Rachelle Bower is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill and as the non-disclosures bore directly on the risk of Bluestone Resources, Bluestone Coal and Blackstone being unable to repay the amounts advanced under the Bluestone AR Facility and thus upon the nature of the Bluestone MO Risk.

828 Further or in the alternative to paragraph 827 above, each (alternatively, one or more) of the matters referred to in paragraph 815 above was a matter which a reasonable person in the position of the abovementioned individuals could be expected to know was relevant to the decision to extend insurance cover in respect of the Bluestone MO Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 827 above.

829 The knowledge of the abovementioned individuals of the matters in paragraphs 827 and 828 and above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

830 The knowledge of the abovementioned individuals of the matters in paragraphs 827 and 828 above can be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraph 21, 22 and 23 above.

831 Further or in the alternative to paragraphs 823 and 827 above, the matters referred to in paragraphs 786, 787, 815(b), 815(c), 815(d) and 815(e) above were matters:

(a) which Danyon Lloyd knew were relevant to the decision to accept the Bluestone MO Risk and, if so, on what terms; or

(b) alternatively to paragraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) was a Designated Credit Officer of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747;

GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Bluestone MO Risk.

832 Further or in the alternative to paragraph 831 above, each (alternatively, one or more) of the matters referred to in paragraphs 786, 787, 815(b), 815(c), 815(d) and 815(e) above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were relevant to the decision to extend insurance cover in respect of the Bluestone MO Risk and, if so, on what terms.

Particulars

IAL refers to the particulars to paragraph 831 above.

833 The knowledge of Danyon Lloyd of the matters in paragraphs 831 and 832 above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above.

Breach of duty of disclosure

834 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 815 above before the cover was placed or renewed for the Bluestone MO Risk.

835 Greensill's failure to disclose the matters referred to in paragraph 815 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, in the premises of matters pleaded in paragraphs 816 to 833 above.

Fraudulent non-disclosure

836 By reason of the matters pleaded in paragraphs 816, 817, 818, 819, 820, 821, 822, 823, 825, 826, 827, 829, 830, 831, and 833 Greensill's failure to disclose the matters referred to in paragraph 815 above was fraudulent.

837 The cover for the Bluestone MO Risk would not have been issued or renewed if one or more of the matters referred to in paragraph 815 above had been disclosed.

838 In the alternative to the allegation in paragraph 837 above, the cover for the Bluestone MO Risk would not have been issued or renewed on the same terms if one or more of the matters referred to in paragraph 815 above had been disclosed.

839 By reason of the matters pleaded in paragraphs 836 and 838 above, IAL is entitled to avoid the Bluestone MO Endorsement and each of the Bluestone Account Debtor Endorsements.

Innocent non-disclosure

840 In the alternative to the allegation in paragraphs 836 to 839 above, and by reason of the matters pleaded in paragraphs 834, 835, 837 and 838, IAL is entitled to reduce its liability under the Bluestone MO Endorsement and each of the Bluestone Account Debtor Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D12 Bluestone Single Obligor

D12.1 Policy and Endorsements

841 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Bluestone Resources Inc (**Bluestone Resources**), a company incorporated under the laws of Delaware, United States of America, was endorsed as a customer under the 2019 Policy by means of Customer Endorsement 44 dated 13 March 2019 (**Customer Endorsement 44**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraphs 126(c) and 289.

D12.2 Bluestone Single-Obligor Misrepresentations

842 On or around 30 May 2018, Lex Greensill, on behalf of GCUK, requested that BCC extend insurance cover in respect of a proposed 'SCF [supply chain finance] facility' to be provided by GCUK to Bluestone Resources (**Bluestone SO Risk**).

Particulars

Email from Lex Greensill to Brereton dated 30 May 2018 (BCC.0001.0001.0440), attaching a PowerPoint presentation titled 'SCF Facility for Bluestone - Request for Credit Insurance Cover' dated May 2018 (BCC.0001.0001.0441).

Email from Lex Greensill to Brereton dated 31 May 2018, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare and Edward Smith (GCU.0004.0013.1009), and attaching the Bluestone SCF Facility Presentation (GCU.0004.0013.1010).

843 In the premises of paragraphs 31 and 32 above, the concept of an 'SCF' facility was used by GCUK, and understood by Brereton, to refer to a form of short-term financing based on genuine underlying invoices that evidence trade.

Particulars

IAL refers to the particulars to paragraphs 31 and 32 above.

Bluestone SCF Facility Misrepresentations / Invoices Misrepresentations

844 On 31 May 2018, Lex Greensill requested a policy limit of USD40 million and a commitment for 3 years for the cover in respect of the Bluestone SO Risk, on the basis that GCUK and BCC would have a right to cancel the commitment if any of the following events occurred:

(a) metallurgical (**MET**) coal production fell below 150,000 tonnes for the three most recent months (measured monthly);

(b) MET coal prices (East Coast Low Vol FOB Norfolk) fell below $80/tonne;

(c) a change of control of Bluestone Resources;

(d) a failure to pay by Bluestone Resources of any amount due to GCUK;

(e) an event of default, including a cross-default or material adverse change;

(f) a failure by Bluestone Resources to provide quarterly management reports within 45 days of each quarter.

Particulars

Email from Lex Greensill to Brereton dated 31 May 2018, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare and Edward Smith (GCU.0004.0013.1009), and attaching the Bluestone SCF Facility Presentation (GCU.0004.0013.1010).

845 In the premises of paragraphs 842 to 844 above, Lex Greensill represented to Brereton that:

(a) the proposed facility (**Bluestone SCF Facility**) was for the purpose of financing payment of Bluestone Resources' trade invoices (**Bluestone SCF Misrepresentation**);

(b) an invoice would only be financed under the Bluestone SCF Facility if the invoice was, or the underlying invoices were:

(i) due and payable, but not overdue; and

(ii) issued by a supplier for goods or services delivered to Bluestone Resources for the operation of its mining business;

(the **Bluestone Invoices Misrepresentations**).

Particulars

The Bluestone Invoices Misrepresentations can be inferred from the Bluestone SCF Representation and the 'Greensill Capital – SCF Underwriting Guidelines: Version 4.0 – March 2018' (BCC.0001.0001.0412) referred to in the particulars to paragraph 32 above.

846 The Bluestone SCF Facility Misrepresentation and Bluestone Invoices Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 20, 22, 23, 26, 29 and 30 above.

847 On 4 June 2018, Brereton purported to agree to provide cover in respect of the Bluestone SO Risk up to a policy limit of USD40 million, subject to having the right of cancellation as set out in paragraph 844 above, and GCUK confirmed agreement between the parties.

Particulars

Email from Greg Brereton to Lex Greensill dated 4 June 2018, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare and Edward Smith (BCC.0001.0002.0968).

Email from Lex Greensill to Greg Brereton, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare, Edward Smith, John Whelan and Brett Downes, dated 4 June 2018 (GCU.0013.0002.6716).

848 On 14 June 2018, Marsh sent Brereton an email attaching various documents, including unsigned copies of Customer Endorsement 6 for Bluestone Resources under the 2018 Policy and Customer Endorsement 6 for Bluestone Resources under the 2018 Master Policy. In the email, Marsh confirmed that GCUK had confirmed 'NKORL' and given them the order to bind.

Particulars

Email from Edward G Smith to Brereton, copying Ewan Berkemeier, Paul William Nash and Alexandre Weiss Bueno, dated 14 June 2018 (BCC.0001.0001.0483), attaching, among other things, unsigned Customer Endorsement 6 purportedly under the 2018 Policy and Customer Endorsement 6 purportedly under the 2018 Master Policy (BCC.0001.0001.0485; BCC.0001.0001.0486).

849 On 15 June 2018, Brereton provided GCUK with signed copies of Customer Endorsement 6 to the 2018 Policy and Customer Endorsement 6 to the 2018 Master Policy where:

(a) each purported, with effect from 15 June 2018, to endorse Bluestone Resources as a Customer, with a Maximum Tenor of 364 days, and an Aggregate Customer Limit of USD40 million, which was non-cancellable or reduceable for the duration of the policy period other than in accordance with its terms;

(b) the terms of Customer Endorsement 6 to the 2018 Master Policy provided that if any of the following events, as defined in the Customer Agreement between Bluestone Resources and GCUK, occurred:

(i) a Material Adverse Change;

(ii) a Default Event;

(iii) a Change of Control;

(iv) a Coal Production;

(v) a Reporting Event,

each party would have the right, on prior written notice to the other party of at least 3 business days, to cancel the Customer Limit from the date of expiry of the notice, on and from which no Debt acquired by the Insured would attach to the policy.

Particulars

Email from Greg Brereton to Julian Macey-Dare and Ewan Berkemeier dated 15 June 2018, copying John Whelan and Edward Smith (GCU.0013.0002.7842) and attaching Customer Endorsement No.6 (GCU.0013.0002.7843).

Customer Agreement between GCUK and Bluestone Resources Inc. dated 14 June 2018 (IAL.500.002.0494), clause 1A.3.

850 On or around 5 March 2019, Brereton provided Marsh with a signed copy of Customer Endorsement 44 to the 2019 Master Policy, which purported, with effect from 1 March 2019, to endorse Bluestone Resources as a Customer under the 2019 Master Policy on the terms set out in paragraph 849(a) and 849(b) above.

Particulars

Email from Brereton to Edward G Smith, copying Ewan Berkemeier, Angus Ward, Paul William Nash, and Alexandre Weiss Bueno, dated 5 March 2019 (BCC.0001.0002.2730), attaching, among other things, a signed copy of Customer Endorsement 44 to the Master 2019 Policy (BCC.0001.0002.2731 at 0040).

851 On or around 13 March 2019, Brereton provided GCUK with a signed copy of Customer Endorsement 44 under the 2019 Policy, which purported, with effect from 1 March 2019, to endorse Bluestone Resources as a Customer under the 2019 Policy, on the terms set out in in paragraph 849(b) above.

Particulars

Email from Greg Brereton to Edward Smith , copying Ewan Berkemeier, dated 13 March 2019 (BCC.0001.0002.2781), attaching among other things, Customer Endorsements No.44 (BCC.0001.0002.2782 at 0028).

Representations were misleading

852 The Bluestone SCF Facility Misrepresentation referred to in paragraph 845(a) above was false and/or misleading because:

(a) the financing under the Bluestone SCF Facility was not provided for the purpose of Bluestone Resources paying its supplier invoices, but for the purposes of Bluestone Resources refinancing its c.USD35 million loan from Carter Bank & Trust (**Carter Bank**) and purchasing equipment, and was in fact used for those purposes;

Particulars

Email from Pamela Nnoko to Roland Hartley-Urquhart, Danyon Lloyd, Lex Greensill, Brett Downes, Michael Gilhuley, Myrjam Tschoeke and others, copying the Credit Risk Team, dated 1 June 2018 (GCU.0004.0013.1082), attaching a GCUK Credit Analysis Pack (GCU.0004.0013.1083) (**Bluestone CAP June 2018**) and GCUK Relationship Credit Analysis Pack for Bluestone Resources (GCU.0004.0013.1084) (**Bluestone RCAP June 2018**).

Email 'GREENSILL CAPITAL - CREDIT COMMITTEE MEETING - MINUTES FRIDAY 1st JUNE 2018', from Craig Pinnington to Roland Hartley-Urquhart, Lex Greensill, Brett Downes, Myram Tschoeke, Michael Gilhuley and Danyon Lloyd, copying the Credit Risk Team and others, dated 20 June 2018 (GCU.0014.0001.5268).

Email from Brett Downes to Ian Bryan and Griffith Williams, with subject 'RE: BRI - Invoice Summary.xlsx', copying Bluestone mailing list, dated 22 June 2018 (GCU.0009.0003.8057), attaching 'Reinvoicing Underlying Invoices Process 2018 v.1.docx' (GCU.0009.0003.8058).

Email from Roland Hartley-Urquhart to Lex Greensill, with subject 'FW: Bluestone Summary for BCC May 2018.pptx', copying Michael Gilhuley, dated 23 May 2018 (GCU.0004.0012.7322), attaching, among other things, the original version of the presentation 'Bluestone Summary for BCC 2018' provided to BCC on 30 May 2018 (GCU.0004.0012.7325).

Letter from Carter Bank to GCUK regarding the partial release of corrected deed of trust dated 26 June 2018 (IAL.500.002.0506).

Email 'Re: Bluestone Ops Update' from Ian Bryan to Griffith Williams and Bluestone mailing list, copying Robert Hough, dated 26 June 2018 (GCU.0009.0003.8769).

Manual Payment Request for USD19,358,001 to Bluestone Resources dated 27 June 2018 (GCU.0009.0003.8769).

Email 'RE: Bluestone Resources' from Adam Cherubini to Summer Harrison and Steve Ball, copying Bluestone mailing list, dated 27 June 2018 (GCU.0013.0002.9207).

Manual Payment Request for USD34,852,916.47 to Carter Bank (GCU.0009.0003.9032).

Email 'Re: Documents Executed by Bluestone' from Adam Cherubini to Jonathan Hauser, copying Bluestone mailing list, dated 27 June 2018 (GCU.0009.0003.9043).

(b) the amounts advanced under the Bluestone SCF Facility were not, in fact, referable to invoices for commercial trade transactions payable by Bluestone Resources to its suppliers;

Particulars

That amounts advanced under the Bluestone SCF Facility were only notionally connected to the supply of goods and services or underpinned by commercial trade transactions can be inferred from:

(a) the matters in paragraph 852(a) above and paragraph 853 below;

(b) how the Bluestone SCF Facility operated in practice, including the systematic practice of 'rolling' maturities (refer to the particulars to paragraph 852(c) below);

(c) the invoices issued by Bramid Outsource Limited (**Bramid**) to Bluestone Resources which were purportedly the subject of the financing that GCUK provided to Bluestone Resources were generated by Bramid using information that GCUK provided it, rather than using invoices from Bluestone Resources' suppliers. IAL refers to:

(i) Emails between representatives of GCUK and Bluestone with various subject lines, dated between 27 June 2018 and 25 February 2021 (GCU.0024.0001.0411; GCU.0024.0001.0413; GCU.0024.0001.0429; GCU.0024.0001.0460; GCU.0024.0001.0463; GCU.0024.0001.0466; GCU.0024.0001.0477; GCU.0024.0001.0494; GCU.0024.0001.0497; GCU.0024.0001.0499; GCU.0024.0001.0501; GCU.0024.0001.0509; GCU.0024.0001.0514; GCU.0024.0001.0548; GCU.0009.0014.5140; GCU.0009.0014.6264; GCU.0009.0014.8223; GCU.0009.0016.1872; GCU.0009.0016.8056; GCU.0009.0017.6021; GCU.0009.0018.5934; GCU.0017.0002.2676);

(d) concerns raised within GCUK regarding Bluestone Resources' inability to provide sufficient 'eligible' invoices to underpin the level of funding provided under the Bluestone SCF Facility. IAL refers to:

(i) the matters in paragraph 853 below.

(ii) Email from Roland Hartley-Urquhart to Lex Greensill, with subject 'BCC Insurance for Bluestone / Facility Update', dated 6 June 2018 (GCU.0004.0013.3160).

(iii) Draft minutes of Credit Committee meeting on 14 May 2019, attended by Brett Downes, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Lex Greensill (see email from Pia Schale to David Keeling, with subject 'RE: Bluestone Minutes', dated 16 May 2019 (GCU.0009.0009.3275).

(iv) Email 'RE: BRI Invoice Summary 12-31-18 through 2-28-19.xlsx' from Ian Bryan to Adam Cherubini, Roland Hartley-Urquhart, Brett Downes, Michael Gilhuley and David Keeling, copying Rachelle Bower and Support Ops UK, dated 19 March 2019 (GCU.0009.0008.0687).

(v) Email 'RE: Bluestone invoices' from Adam Cherubini to Brett Downes, David Keeling, Craig Pinnington, Credit Risk Team, Rachelle Bower, copying Roland Hartley-Urquhart and Michael Gilhuley, dated 24 April 2019 (GCU.0009.0008.9176).

(vi) Email 'RE: Bluestone' from Lex Greensill to Roland Hartley-Urquhart and Michael Gilhuley, copying Brett Downes and Adam Cherubini, dated 27 April 2019 (GCU.0005.0009.7650).

(vii) Email 'Re: Bluestone invoices' from Adam Cherubini to Brett Downes, David Keeling, Craig Pinnington, Credit Risk Team and Rachelle Bower, copying Roland Hartley-Urquhart and Michael Gilhuley, dated 24 April 2019 (GCU.0009.0008.9175). See also, Accession Schedule to the Customer Agreement made on 25 April 2019 (IAL.500.002.0499).

(viii) Email 'RE: Bluestone Invoices' from Craig Pinnington to David Keeling and the Credit Risk Team dated 24 April 2019 (GCU.0009.0008.9156), forwarded to Brett Downes by David Keeling (GCU.0009.0008.9158).

(ix) Email 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Tuesday 14th May 2019' from Brett Downes to David Keeling, Myrjam Tschoeke, Danyon Lloyd, Roland Hartley-

Urquhart, Lex Greensill and Michael Gilhuley, copying others, dated 14 May 2019 (GCU.0005.0010.4676).

(x) Email 'RE: Invoice Summary - May 28th' from Brett Downes to David Keeling, Laura Da Silveira, Adam Cherubini, Craig Pinnington and Michael Gilhuley, dated 31 May 2019 (GCU.0009.0009.5390).

(c) the Bluestone SCF Facility was not, in substance, a short-term financing facility with a maximum tenor of 364 days, but rather an interest only term loan of initially 3 years, subsequently extended to 4 years;

Particulars

Customer Agreement between GCUK and Bluestone Resources Inc. dated 14 June 2018 (IAL.500.002.0494).

First Amendment to the Customer Agreement between GCUK and Bluestone Resources Inc., dated 7 December 2018 (IAL.500.002.0484).

The Bluestone SCF Facility operated in a manner that was consistent with an interest only term loan. Relevantly:

(a) GCUK advanced the gross available funds under the Bluestone SCF Facility, being the facility limit after deductions for fees and other amounts, in two lump sum payments to Carter Bank and Bluestone Resources on or around 27 June 2018. See:

(i) Bluestone RCAP June 2018 (GCU.0004.0013.1084);

(ii) Email from Ian Bryan to Robert Hough, with subject 'RE: Bluestone Ops Update', dated 26 June 2018 (GCU.0009.0003.8770); and

(iii) Email from Jonathan Hauser to Hugh McKee, Edelbrock Jack, and Steve Ball, with subject 'Payoff/Release letter', dated 26 June 2018 (GCU.0010.0003.8022), attaching letter dated 26 June 2018 from Litz Van Dyke (Chief Executive Officer of Carter Bank) to Hugh McKee (GCUK) (GCU.0010.0003.8023).

(b) the principal was not payable until July 2021, which was then extended until July 2022. See:

(i) Email from Adam Cherubini to Roland Hartley-Urquhart and Michael Gilhuley dated 13 November 2018 (GCU.0004.0020.6361), attaching
'Bluestone Amortization Schedule Excel 11.12.2018' (GCU.0004.0020.6363);

(ii) 'Bluestone Amortization Schedule Excel 11.25.2018.xlsx' (GCU.0005.0004.5579); and/or

(iii) Email from Adam Cherubini to Roland Hartley-Urquhart, with subject 'Bluestone Items', copying Rachelle Bower, dated 19 February 2021 (GCU.0006.0005.9651), attaching, among other things, 'Bluestone Amortization Schedule Excel 02.18.2021.xlsx' (GCU.0006.0005.9652).

(c) subsequent advances were made as part of the process used to roll maturities of the principal amount and to make interest payments to GCUK (see further below).

While the maximum tenor for credit advanced under the Bluestone AR Facility was represented as 364 days, the rolling of debts upon each maturity falling due meant that their true tenor exceeded the maximum tenor. See:

(d) Email 'Re: Bluestone' from Brett Downes to Roland Hartley-Urquhart, copying Michael Gilhuley, dated 8 May 2018 (GCU.0009.0003.3140).

(e) Email from Steve Ball to Hugh Kee, copying Bluestone mailing list and Mayer Brown representatives (acting for GCUK), dated 7 June 2018 (GCU.0013.0002.6962), attaching 'Bluestone Resources Inc Term Sheet June-5-2018 Final REDLINE' (GCU.0013.0002.6963).

(f) Email from Adam Cherubini to Ian Little, Ian Bryan, and Rachelle Bower, with subject 'Bluestone Roll Discussion', dated 31 October 2018 (GCU.0005.0002.5378) and attaching 'Bluestone Operations Process Overview' (GCU.0005.0002.5379).

(g) Email from Lex Greensill to Roland Hartley-Urquhart, with subject 'Bluestone Facility Amendments', dated 13 November 2018 (GCU.0005.0002.9491)

(h) Email 'FINAL APPROVALS' from Craig Pinnington to Brett Downes, Danyon Lloyd, Lex Greensill, Myrjam Tschoeke, Roland Hartley-Urquhart, Adam Cherubini and others, dated 12 December 2018 (GCU.0007.0002.5864), attaching 'Bluestone Increase US$400m 27 Nov 2018 update post CC' (GCU.0007.0002.5865 at 0009).

(i) Email from Roland Hartley-Urquhart to Lex Greensill, with subject 'Fwd: Bluestone Roll Restructure' dated 17 January 2019 (GCU.0005.0004.9987).

(j) Email from Adam Cherubini to Steve Ball and Summer Harrison, with subject '$60mm Bluestone Facility Roll Process', dated 2 January 2019 (GCU.0009.0007.2251) and attaching 'CFC guide for clients, approving

trades v1' (GCU.0009.0007.2252) and '1. CFC Form' (GCU.0009.0007.2253).

(k) References to rolling of the Bluestone SCF Facility are also repeatedly made in correspondence between GCUK and Bluestone Resources, including on 26 February 2019 (GCU.0005.0006.7618), 11 April 2019 (GCU.0005.0009.0454), 17 April 2019 (GCU.0005.0009.3314), 24 September 2019 (GCU.0013.0006.6855) and 16 December 2019 (GCU.0010.0011.3493).

(l) Bluestone Complaint (BCC.0001.0019.0294).

Further, on GCUK's own 'SCF Underwriting Guidelines' dated March 2018 (BCC.0001.0001.0412 at 0009), the Bluestone SCF Facility was categorised as a 'Medium Risk' to 'Higher Risk' loan, rather than a self-liquidating trade finance facility, on account of the matters in paragraph 853 below.

GCUK's practice of rolling the debts the subject of the Bluestone SCF facility, without Bluestone in fact repaying amounts to GCUK from its own resources, is evident from the documents identified immediately above in the particulars to this paragraph 852(c) and is further pleaded at Section D.2 of Annexure B to this defence.

853 The Bluestone Invoices Misrepresentations referred to in paragraph 845(b) above were false and/or misleading because Bluestone Resources submitted for financing under the facility:

(a) invoices that were past their due date;

Particulars

Prior to each advance under the Bluestone SCF Facility, Bluestone Resources submitted a spreadsheet listing the details of the invoices for which it was requesting funding (**Invoice Summary**). Relevantly:

(a) For the initial advance in June 2018 (**Initial Advance**), Bluestone Resources submitted an Invoice Summary containing 2,034 invoice entries, of which 1,992 were past their due date. See:

(i) Email from Steve Ball to Griffith Williams and Adam Cherubini, with subject 'Fwd: BRI - Invoice Summary.xlsx', copying Jay Justice, Roland Hartley-Urquhart and Summer Harrison, dated 21 June 2018 (GCU.0004.0013.9357), attaching 'BRI – Invoice Summary.xlxs' (GCU.0004.0013.9358). Email and attachment forwarded to Bluestone mailing list (GCU.0004.0013.9661; GCU.0004.0013.9662).

(b) For the advance ('roll') on 14 March 2019, Bluestone Resources submitted an Invoice Summary on 12 March 2019 containing 1780 invoice entries, all of which were past their due date. See:

(i) Email from Summer Harrison to Adam Cherubini, with subject 'RE: BRI Invoice Summary 12-31-18 through 2-28-19.xlsx', copying Rachelle Bower and Ian Bryan, dated 11 March 2019 (GCU.0005.0007.3781), attaching spreadsheet 'BRI Invoice Summary 12-31-18 through 2-28-19.xlsx' (GCU.0005.0007.3782).

(ii) Email from Brett Downes to Griffith Williams and Bluestone, with subject 'RE: Bluestone – invoice spot checking', copying the Credit Risk Team, dated 20 June 2018 (GCU.0004.0013.9156), attaching excel spreadsheet titled 'bluestone payments December 15 2017 to June 15 2018' (GCU.0004.0013.9157).

(iii) Email from Ian Bryan to Brett Downes and Griffith Williams, with subject 'FW: BRI - Invoice Summary.xlsx', copying Bluestone mailing list, dated 22 June 2018 (GCU.0010.0003.7377), attaching 'SKMBT_28318062114480.pdf' (GCU.0010.0003.7378).

(iv) Email from Brett Downes to Ian Bryan and Griffith Williams, with subject 'RE: BRI - Invoice Summary.xlsx', copying Bluestone mailing list, dated 22 June 2018 (GCU.0009.0003.8057), attaching 'Reinvoicing Underlying Invoices Process 2018 v.1.docx' (GCU.0009.0003.8058).

(b) ‘stale’ invoices that had already been paid by Bluestone Resources;

Particulars

GCUK's criteria for 'valid invoices', being invoices GCUK accepted as eligible for funding under the Bluestone SCF Facility, included invoices that had already been paid. See:

(a) Email from Brett Downes to Ian Bryan and Griffith Williams, with subject 'RE: BRI - Invoice Summary.xlsx', copying Bluestone mailing list, dated 22 June 2018 (GCU.0009.0003.8057), attaching 'Reinvoicing Underlying Invoices Process 2018 v.1.docx' (GCU.0009.0003.8058).

(b) Email from Brett Downes to Roland Hartley-Urquhart, Michael Gilhuley, with subject 'Re-Invoicing Rules – Bluestone', copying Credit Risk Team, dated 7 June 2018 (GCU.0009.0003.5665).

(c) Email from Brett Downes to Adam Cherubini, with subject 'Re: Bluestone - Re-Invoicing - Invoice Eligibility', copying Michael Gilhuley, dated 21 February 2019 (GCU.0009.0007.5371).

(d) Email from Adam Cherubini to Summer Harrison and Rachelle Bower, copying Steve Ball and Ian Byran, dated 7 March 2019 (GCU.0005.0007.2096).

(e) The same eligibility criteria was repeated by GCUK to Bluestone Resources on a number of occasions including on 20 March 2019 (GCU.0009.0008.1090), 11 April 2019 (GCU.0005.0009.0454), 17 April 2019 (GCU.0005.0009.3314), 24 September 2019 (GCU.0013.0006.6855), 18 October 2019 (GCU.0010.0010.7156) and 16 December 2019 (GCU.0010.0011.3493).

(c) invoices relating to intra-company costs that were incapable of forming the basis of invoices and accounts receivable against which funding could be advanced under the Bluestone SCF Facility;

Particulars

Email from Jay Justice to Roland Hartley-Urquhart, with subject 'Invoice Snag', copying Steve Ball, dated 20 June 2018 (GCU.0010.0003.6922).

Email from Steve Ball to Griffith Williams and Adam Cherubini, with subject 'Fwd: BRI - Invoice Summary.xlsx', copying Jay Justice, Roland Hartley-Urquhart and Summer Harrison, dated 21 June 2018 (GCU.0004.0013.9357), attaching 'BRI – Invoice Summary.xlxs' (GCU.0004.0013.9358). Email and attachment forwarded to the Bluestone mailing list (GCU.0004.0013.9661; GCU.0004.0013.9662).

Email from Ian Bryan to David Keeling and Brett Downes, with subject 'RE: BRI Invoice Summary 12 31 18 through 2 28 19.xlxs', copying Adam Cherubini, Rachelle Bower and Support Ops UK, dated 13 March 2019 (GCU.0005.0007.5267).

Email from Brett Downes to Adam Cherubini, Ian Bryan and David Keeling, copying Rachelle Bower, Support Ops UK, Michael Gilhulley and Roland Hartley-Urquhart, with subject 'RE: BRI Invoice Summary 12-31-18 through 2-28-19.xlsx', dated 12 March 2019 (GCU.0009.0007.9217).

Email from Brett Downes to Roland Hartley-Urquhart, Michael Gilhuley, Ian Bryan, Adam Cherubini and David Keeling, with subject 'RE: BRI Invoice Summary 12 31 18 through 2 28 19.xlxs', copying Rachelle Bower and Support Ops UK, dated 13 March 2019 (GCU.0005.0007.5267).

Knowledge of falsity of representations

854 Lex Greensill knew the matters set out in paragraph 852 above.

Particulars

The knowledge of Lex Greensill in respect of the Bluestone SCF Facility Misrepresentation can be inferred from his membership of the Credit Committee and Board, which assessed and approved the financial accommodation provided to Bluestone Resources.

IAL refers to the particulars to paragraph 852 above which refer to Lex Greensill

855 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraph 854 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

856 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraph 854 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

857 Further and in the alternative to paragraph 854 above, the following individuals knew the matters set out in paragraph 852 above:

(a) Roland Hartley-Urquhart (see paragraph 10(c) in Section B of this Annexure);

(b) Brett Downes (Chief Risk Officer of GCUK); and/or

(c) Michael Gilhuley (Managing Director, Origination, USA, of GCUK).

Particulars

The knowledge of Roland Hartley-Urquhart as to the Bluestone SCF Misrepresentation is to be inferred from:

(a) his roles as:

(i) 'Sponsor' and 'GC Relationship Owner' for Bluestone Resources and a member of the 'Deal Team' for the Bluestone SCF Facility (GCU.0004.0013.1084); and

(ii) a member of the Credit Committee, which assessed and approved the financial accommodation provided to Bluestone Resources;

(b) his involvement in dealings with Bluestone Resources in those roles, including the placement of the Bluestone SO Risk, as demonstrated by:

(i) Roland Hartley-Urquhart's role in preparing and/or reviewing the Bluestone SCF Facility Presentation referred to in the particulars to paragraph 844 above.

(A) Roland Hartley-Urquhart sent an initial draft of the presentation to Lex Greensill on 23 May 2018 (GCU.0004.0012.7318; GCU.0004.0012.7321).

(B) The final version was sent to Lex Greensill on 27 May 2018 and incorporated changes made at his request (GCU.0009.0003.4197 attaching GCU.0009.0003.4198; GCU.0009.0003.4248 attaching GCU.0009.0003.4249; GCU.0005.0001.4258 attaching GCU.0005.0001.4259; GCU.0009.0003.4490).

(ii) email from Pamela Nnoko to Roland Hartley-Urquhart, Danyon Lloyd, Lex Greensill, Brett Downes, Michael Gilhuley, Myrjam Tschoeke and others, copying the Credit Risk Team, dated 1 June 2018 (GCU.0004.0013.1082), attaching Bluestone CAP June 2018 (GCU.0004.0013.1083) and Bluestone RCAP June 2018 (GCU.0004.0013.1084);

(iii) the minutes for the Credit Committee meeting on 1 June 2018 (GCU.0014.0001.5268); and

(iv) the particulars to paragraphs 852 and 853 above which refer to Roland Hartley-Urquhart.

The knowledge of Brett Downes as to the Bluestone SCF Misrepresentation can be inferred from:

(a) his roles as the Chief Risk Officer of GCUK, a member of the 'Deal Team' for the Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Greensill Credit Committee;

(b) his involvement in dealings with Bluestone Resources in those roles, including insurance cover for the Bluestone SO Risk, as demonstrated by:

(i) email from Brett Downes to Roland Hartley-Urquhart, copying Michael Gilhuley, dated 8 May 2018 (GCU.0009.0003.3140);

(ii) email from Pamela Nnoko to Roland Hartley-Urquhart, Danyon Lloyd, Lex Greensill, Brett Downes, Michael Gilhuley, Myrjam Tschoeke and others, copying the Credit Risk Team, dated 1 June 2018 (GCU.0004.0013.1082), attaching Bluestone CAP June 2018 (GCU.0004.0013.1083) and Bluestone RCAP June 2018 (GCU.0004.0013.1084);

(iii) the minutes for the Credit Committee meeting on 1 June 2018 (GCU.0014.0001.5268);

(iv) email from Lex Greensill to Brereton, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare, Edward Smith, John Whelan and Brett Downes, dated 4 June 2018 (GCU.0013.0002.6716);

(v) the particulars to paragraphs 844, 852 and 853 above which refer to Brett Downes.

(c) the Greensill Capital – SCF Underwriting Guidelines, which identify the Chief Risk Officer as the 'Document Owner': see the particulars to paragraphs 31 and 32 above; and

(d) email 'GC Credit Policies & Procedures' from Brett Downes to Julian Macey-Dare, copying the Credit Risk Team and Edward Smith, dated 27 March 2018, attaching, among other things, 'SCF Underwriting Guidelines (Public) V4.0' (MAR.0003.0001.2692; MAR.0003.0001.2696)

The knowledge of Michael Gilhuley of the Bluestone SCF Misrepresentation can be inferred from:

(a) his roles as the Managing Director of Origination (USA) of GCUK, a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0009.0003.5485) and Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Credit Committee (MAR.0003.0001.2815); and

(b) his involvement in dealing with Bluestone Resources in those roles, including the placement of insurance for the Bluestone SO Risk, as demonstrated by:

(i) his role in preparing the Bluestone SCF Facility Presentation referred to in the particulars to paragraph 844 above: (GCU.0009.0003.3774 attaching GCU.0009.0003.3775; GCU.0004.0012.7318 attaching GCU.0004.0012.7321; GCU.0009.0003.4160 attaching GCU.0009.0003.4161; GCU.0005.0001.4258 attaching GCU.0005.0001.4259; GCU.0009.0003.4490);

(ii) his role in preparing the Bluestone RCAP June 2018 (GCU.0004.0013.1084);

(iii) the minutes for the Credit Committee meeting on 1 June 2018 (GCU.0014.0001.5268); and

(iv) the particulars to paragraphs 844, 852, 853 and 857 above which refer to Michael Gihuley.

858 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters identified in paragraph 852 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

859 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters identified in paragraph 852 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

860 Brett Downes and Roland Hartley-Urquhart knew the matters set out in paragraph 853 above.

Particulars

The knowledge of Brett Downes as to the Bluestone Invoices Misrepresentations is to be inferred from the particulars to paragraph 857 above in relation to Brett Downes.

The knowledge of Roland Hartley-Urquhart as to the Bluestone Invoices Misrepresentations is to be inferred from the particulars to paragraph 857 above in relation to Roland Hartley-Urquhart.

Email from Roland Hartley-Urquhart to Brett Downes and others, with the subject "Re: BRI – Invoice Summary.xlsx dated 22 June 2018 (GCU.0009.0003.8168).

861 The knowledge of Brett Downes and Roland Hartley-Urquhart of each (alternatively, one or more) of the matters identified in paragraph 853 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

862 The knowledge of Brett Downes and Roland Hartley-Urquhart of each (alternatively, one or more) of the matters identified in paragraph 853 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 21, 22 and 23 above.

Knowledge of the materiality of the representations

863 Each (alternatively, one or more) of the matters referred to in paragraph 852 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bluestone Resources being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

Email from Lex Greensill to Brett Downes, Roland Hartley-Urquhart and others, with subject “RE: Liberty Trading – credit Submission”. dated 14 July 2015 (GCU.0009.0001.0013)

'Greensill Capital – SCF Underwriting Guidelines: Version 4.0 – March 2018' (BCC.0001.0001.0412) acknowledged that “*[i]t is extremely important that the type of Trade Advance being considered in the underwriting decision is clearly highlighted as many of our insurance partners have policy issues with less trade like structures, especially in regards to their re-insurance treaties*”.

864 Further or in the alternative to paragraph 893 above, each of the matters referred to in paragraph 852 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

865 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraph 863 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

866 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraph 863 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

867 Further and in the alternative to paragraph 863 above, each (alternatively, one or more) of the matters referred to in paragraphs 852 above was a matter:

(a) which other individuals – comprising Roland Hartley-Urquhart (see paragraph 10(c) in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK), and/or Michael Gilhuley (Managing Director, Origination USA, of GCUK) – knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk;

(b) alternatively to paragraph (a), in respect of which those abovementioned individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The individuals' knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

'Greensill Capital – SCF Underwriting Guidelines: Version 4.0 – March 2018' (BCC.0001.0001.0412) acknowledged that "*[i]t is extremely important that the type of Trade Advance being considered in the underwriting decision is clearly highlighted as many of our insurance partners have policy issues with less trade like structures, especially in regards to their re-insurance treaties*".

Email from Lex Greensill to Brett Downes, Roland Hartley-Urquhart and others, with subject "RE: Liberty Trading – credit Submission" dated 14 July 2015 (GCU.0009.0001.0013).

868 Further or in the alternative to paragraph 867 above, each of the matters referred to in paragraph 852 above was a matter which a reasonable person in the position of Roland Hartley-Urquhart, Brett Downes or Michael Gilhuley could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

869 The knowledge of the abovementioned individuals of the matters set out in paragraph 867 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

870 The knowledge of the abovementioned individuals of the matters set out in paragraph 867 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

871 Each (alternatively, one or more) of the matters referred to in paragraph 857 above was a matter:

(a) which Brett Downes and Roland Hartley-Urquhart knew were material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

(b) alternatively to paragraph (a), in respect of which Brett Downes and Roland Hartley-Urquhart were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

872 Further or in the alternative to paragraph 871 above, each of the matters referred to in paragraph 857 above was a matter which a reasonable person in the position of Brett Downes or Roland Hartley-Urquhart could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

873 The knowledge of Brett Downes and Roland Hartley-Urquhart of each (alternatively, one or more) of the matters set out in paragraph 857 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

874 The knowledge of Brett Downes and Roland Hartley-Urquhart of each (alternatively, one or more) of the matters set out in paragraph 857 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars at paragraphs 21, 22 and 23 above

Misrepresentations were fraudulent

875 In the premises of paragraphs 854 to 859 and 863 to 870 above:

(a) Greensill misrepresented the risk presented by the Bluestone SO Risk;

(b) the Bluestone SCF Facility Misrepresentation was knowingly false and fraudulent; and

(c) b. the misrepresentation was known to be material to the decision whether to provide, and whether subsequently to renew, insurance cover in respect of the Bluestone SO Risk.

876 In the premises of paragraphs 860, 861, 862, 871, 872 and 874 above:

(a) Greensill misrepresented the risk presented by the Bluestone SO Risk;

(b) the Bluestone Invoices Misrepresentations was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to provide, and whether subsequently to renew, insurance cover in respect of the Bluestone SO Risk.

877 If Greensill had not made the Bluestone SCF Facility Misrepresentation, insurance cover would not have been issued in respect of the Bluestone SO Risk at all, or, in the alternative, on the same terms in which it was purportedly written.

878 If Greensill had not made the Bluestone Invoices Misrepresentation, insurance cover would not have been issued in respect of the Bluestone SO Risk at all, or, in the alternative, on the same terms in which it was purportedly written.

879 By reason of the matters pleaded in paragraphs 877 to 878 above, IAL is entitled to avoid Customer Endorsement 44 to the 2019 Policy.

Innocent misrepresentation

880 In the alternative to the matters pleaded in paragraphs 875 to 879 above, by reason of the matters pleaded in paragraphs 852, 853, 877, and 878 above, IAL is entitled to reduce its liability under Customer Endorsement 44 to the 2019 Policy.

D12.3 Bluestone Single Obligor Non-Disclosures

Knowledge of underlying matters

881 At the time of requesting the renewal of the insurance cover for the Bluestone SO Risk, Lex Greensill knew:

(a) the matters set out in paragraph 852 above;

Particulars

IAL refers to the particulars in paragraph 854 above.

(b) that the true credit risk under the Bluestone AR Facility subsequently entered into between Bluestone Coal and GCUK, was also that of Bluestone Resources;

882 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters in paragraph 881 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

883 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters in paragraph 881 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

884 Further and in the alternative to paragraph 881 above, at the time of requesting the renewal of insurance cover in respect of the Bluestone SO Risk, Roland Hartley-Urquhart (see paragraph 10(c) in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK), Michael Gilhuley (Managing Director, Origination USA of GCUK) and/or Adam Cherubini (Director, Origination of GCUK) knew each (alternatively, one or more) of the matters set out in paragraphs 881(a) and 881(b) above.

Particulars

In respect of the knowledge of Roland Hartley-Urquhart, Brett Downes and Michael Gilhuley as to the matters in paragraph 881(a) above, IAL refers to the particulars to paragraph 857 above.

The knowledge of Adam Cherubini as to the matters in paragraph 881(a)is to be inferred from:

(a) his roles as a Director of Origination at GCUK and a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0009.0003.5486) and Bluestone AR Facility (GCU.0005.0002.2713);

(b) his dealings with Bluestone Resources in those roles, as demonstrated by:

(i) GCUK Relationship Credit Analysis Pack submitted 26 September 2018 (GCU.0005.0002.2713), which was prepared by Adam Cherubini and Michael Gilhuley; and

(ii) the particulars to paragraphs 852 and 853 which refer to Adam Cherubini.

The knowledge of the individuals of the matters in paragraph 881(b) above is to be inferred from the particulars to paragraph.

885 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 884 is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

886 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 884 is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 21, 22 and 23 above.

887 Further or in the alternative to paragraph 881 and 884, at the time of requesting the renewal of insurance cover for the Bluestone SO Risk, Danyon Lloyd knew the matters set out in in paragraphs 881(a) above.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

(a) Danyon Lloyds' membership of GCUK's Credit Committee;

(b) his involvement in GCUK's dealings with Bluestone Resources by virtue of that role, as demonstrated by:

(i) email from Pamela Nnoko to Roland Hartley-Urquhart, Danyon Lloyd, Lex Greensill, Brett Downes, Michael Gilhuley, Myrjam Tschoeke and others, copying the Credit Risk Team, dated 1 June 2018 (GCU.0004.0013.1082), attaching Bluestone CAP June 2018 (GCU.0004.0013.1083) and Bluestone RCAP June 2018 (GCU.0004.0013.1084);

(ii) the minutes for the Credit Committee meeting on 1 June 2018 (GCU.0014.0001.5268); and

(iii) the following items: GCU.0004.0017.9327 GCU.0004.0017.9328 GCU.0005.0002.2703 GCU.0007.0002.5868 GCU.0005.0003.2594 GCU.0005.0003.4934 GCU.0005.0010.4219 GCU.0005.0010.4222 GCU.0005.0010.4734 GCU.0005.0010.5132 GCU.0004.0026.6058 GCU.0005.0010.7196 GCU.0007.0002.7064 GCU.0007.0002.7066 GCU.0005.0011.1218.

888 The knowledge of Danyon Lloyd of the matters in paragraph 887 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above.

889 At the time of requesting the renewal of the insurance cover for the Bluestone SO Risk, Roland Hartley-Urquhart (see paragraph 10(c) in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK), Michael Gilhuley (Managing Director, Origination USA, GCUK), Adam Cherubini (Director, Origination, GCUK) and/or Rachelle Bower (Analyst, Origination, GCUK) knew of each (alternatively, one or more) of the matters in paragraph 853 above.

Particulars

In respect of the knowledge of Roland Hartley-Urquhart, Brett Downes and Michael Gilhuley, IAL refers to the particulars to paragraph 857 above.

The knowledge of Adam Cherubini and Rachelle Bowers is to be inferred from their involvements in dealings with Bluestone Resources, as demonstrated by the particulars to paragraph 853 above.

890 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 889 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

891 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 890 is to be attributed to GCPL.

Particulars

IAL refers paragraphs 21, 22 and 23 above.

892 At the time of requesting the renewal of the insurance cover for the Bluestone SO Risk, Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure), Michael Gilhuley (Managing Director, Origination USA, GCUK) and/or Adam Cherubini (Director, Origination, GCUK) knew:

(a) a standstill and forbearance agreement was entered into on 26 September 2018 between Bluestone Resources and GCUK, pursuant to which GCUK agreed to forbear from exercising its right to reduce the total Bluestone SCF Facility limit to zero following the failure by Bluestone Resources to deliver its 2017 audited financial statements by 15 September 2018, which constitutes a 'Reporting Event' under the Customer Agreement; and

(b) Bluestone Resources failed to deliver its 2017 audited financial statements before the end of the forbearance period on 31 October 2018.

Particulars

Email 'Bluestone / Greensill - Draft Forbearance Letter Agreement' from Hugh McKee to Jay Justice and Steve Ball, copying Roland Hartley-Urquhart, Michael Gilhuley and Adam Cherubini, dated 24 September 2018, attaching a draft standstill and forbearance deed (GCU.0009.0005.0937; GCU.0009.0005.0938)

Email from Hugh McKee to Steve Ball, with subject 'Bluestone I – Forbearance re: 2017 Financials', copying Jay Justice, the Bluestone mailing list and Roland Hartley-Urquhart, dated 28 September 2018 (GCU.0009.0005.2018), attaching a Standstill and Forbearance Agreement dated 26 September 2018 (GCU.0009.0005.2018).

As of 11 November 2018, Bluestone Resources' 2017 audited financials remained outstanding. See email from Adam Cherubini to Steve Ball, with subject 'RE: Bluestone Credit Items', copying Michael Gilhuley and Roland Hartley-Urquhart (GCU.0004.0021.4392; GCU.0004.0021.4393).

Knowledge of materiality

893 Each of the matters referred to in paragraph 881 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bluestone Resources being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

894 Further or in the alternative to paragraph 893 above, each of the matters referred to in paragraph 881 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

895 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 893 and 894 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

896 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 893 and 894 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

897 Further and in the alternative to paragraph 893 above, each (alternatively, one or more) of the matters referred to in paragraphs 881 above was a matter:

(a) which other individuals – comprising Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure), Brett Downes (Chief Risk Officer, GCUK), Michael Gilhuley (Managing Director, USA, GCUK) and/or Adam Cherubini of GCUK – knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk;

(b) alternatively to paragraph (a), in respect of which those individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Roland Hartley-Urquhart, Brett Downes, Michael Gilhuley and Adam Cherubini is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill and as the non-disclosures bore directly on the risk of Bluestone Resources being unable to repay the amounts advanced under the Bluestone SCF Facility and thus upon the nature of the Bluestone SO Risk.

898 Further or in the alternative to paragraph 897 above, each of the matters referred to in paragraph 881 above was a matter which a reasonable person in the position of the abovementioned individuals could be expected to know was relevant to the decision to extend insurance cover in respect of the Bluestone SO Risk, and, if so, on what terms.

Particulars

IAL refers to paragraph 897 above.

899 The knowledge of the abovementioned individuals of the matters in paragraph 881 above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

900 The knowledge of the abovementioned individuals of the matters in paragraph 881 above can be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraph 21, 22 and 23 above.

901 Further or in the alternative to paragraphs 893 and 897 above, each of the matters referred to in paragraph 881 above was a matter:

(a) which Danyon Lloyd knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

(b) alternatively to paragraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Bluestone SO Risk.

902 Further or in the alternative to paragraph 901 above, each (alternatively, one or more) of the matters referred to in paragraphs 881 above were matters which a reasonable person

in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

Particulars

IAL refers to the particulars to paragraph 901 above.

903 The knowledge of Danyon Lloyd of the matters in paragraphs 881 above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above.

Invoices misrepresentation

904 Each of the matters referred to in paragraph 889 above was a matter:

(a) which other individuals – comprising Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure), Brett Downes (Chief Risk Officer), Michael Gilhuley (Managing Director, Origination USA, of GCUK), Adam Cherubini (Director, Origination, of GCUK) and/or Rachelle Bower (Analyst, Origination, of GCUK) – knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

(b) alternatively to paragraph (a), in respect of which those individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Roland Hartley-Urquhart, Brett Downes, Michael Gilhuley, Adam Cherubini and/or Rachelle Bower is to be inferred as he was a person of substantial commercial experience in the insurance industry and the non-disclosures bore directly on the risk of Bluestone Resources being unable to repay the amounts advanced to it and thus upon the nature of the Bluestone SO Risk.

905 Further or in the alternative to paragraph 904 above, each of the matters referred to in paragraph 889 above was a matter which a reasonable person in the position of the abovementioned individuals could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

Particulars

IAL refers to paragraph 904 above.

906 The knowledge of the abovementioned individuals of the matters in paragraph 889 above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraph 29 and 30 above.

907 The knowledge of the abovementioned individuals of the matters in paragraph 889 above can be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraph 21, 22 and 23 above.

Breach of duty of disclosure

908 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 881, 889 and 892 above before the cover was placed for the Bluestone SO Risk.

909 Greensill's failure to disclose the matters referred to in paragraphs 881, 889 and 892 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, in the premises of the pleaded in paragraphs 893 to 909 above.

Fraudulent non-disclosure

910 By reason of the matters pleaded in paragraphs 893, 895, 896, 897, 899, 900, 901, 903, 904, 906 and 907 above, Greensill's failure to disclose the matters referred to in paragraphs 881, 889 and 892 above was fraudulent.

911 The cover for the Bluestone SO Risk would not have been issued if the matters referred to in paragraphs 881, 889 and 892 above had been disclosed.

912 In the alternative to the allegation in paragraph 911 above, the cover for the Bluestone SO Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 881, 889 and 892 above had been disclosed.

913 By reason of the matters pleaded in paragraphs 910 and 912 above, IAL is entitled to avoid its liability under Customer Endorsement 44.

Innocent non-disclosure

914 In the alternative to the matters pleaded in paragraphs 910 to 913 above, and by reason of the matters pleaded in paragraphs 908, 909, 911 and 912 above, IAL is entitled to reduce its liability in respect of the Bluestone SO Risk under Customer Endorsement 44

to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D13 Catfoss Group

D13.1 Policy and Endorsements

915 In Federal Court of Australia proceeding no. NSD106/2022, the applicants allege that Catfoss Renewables Ltd (a company incorporated in England & Wales (company number 09175861)) (**Catfoss Renewables**) was endorsed as a customer under the 2018 Policy (TB-03690) by means of Customer Endorsement No 27 dated 17 September 2018 and under the 2019 Policy (TB-03690) by means of Customer Endorsement No 3 dated 13 March 2019 (**Catfoss Renewables Endorsements**).

Particulars

Fourth Amended Statement of Claim in proceeding no. NSD106/2022 dated 21 August 2024 at paragraphs 30, 36, 38 and 41.

916 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Catfoss DBT Limited (a company incorporated in England & Wales (company number 11728528)) (**Catfoss DBT**) was endorsed as a customer under the 2019 Policy (TB-03690) by means of Customer Endorsement No 34 dated 13 March 2019 (**Catfoss DBT Endorsement**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 325.

917 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Noviniti Poole Limited (a company incorporated in England & Wales) (**Noviniti Poole**) was endorsed as a customer under the 2019 Policy (TB-03690) by means of:

(a) Customer Endorsement No 16 dated 13 March 2019 and effective 1 March 2019; and

(b) Customer Endorsement 16(i) dated 1 October 2019 and effective 27 September 2019,

(**Noviniti Poole Endorsements**).

918 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Noviniti Colchester Limited (a company incorporated in England & Wales (company number 11248796)) (**Noviniti Colchester**) was endorsed as a customer under the 2019 Policy (TB-03690) by means of:

(a) Customer Endorsement No 48 dated 28 March 2019 and effective 22 March 2019; and

(b) Customer Endorsement No 48(i) dated 1 October 2019 and effective 27 September 2019,

(**Noviniti Colchester Endorsements**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraphs 555, 556 and 557.

D13.2 Catfoss Group

919 At all material times, the following entities were owned and controlled by Andrew Patrick Foreman.

(a) Catfoss Renewables;

(b) Catfoss DBT;

(c) Noviniti Poole;

(d) Noviniti Colchester;

(e) Catfoss Investments Ltd (a company incorporated in England & Wales (company number 11600474)), formerly known as Schosween 44 Limited (**S44/Catfoss Investments**); and

(f) Catfoss Investment Holdings Limited (a company incorporated in England & Wales (company number 13294626)),

(referred to collectively, together with other entities owned by Mr Foreman either directly or through S44/Catfoss Investments as the **Catfoss Group**)

Particulars

From at least 2016 to February 2017, Mr Foreman owned all of the issued shares in Catfoss Renewables. In February 2017, Mr Foreman transferred 50% of the issued shares to Paul Bentham. In July 2018, 40% of the shares were transferred back to Mr Foreman (increasing his shareholding to 90% from this time).

From around 2 October 2018 to around 26 March 2021, Mr Foreman owned at least 75% of the shares in S44/Catfoss Investments. Mr Foreman was also the Chairman of the Catfoss Group and a director of S44/Catfoss Investments and other entities in the group.

In October 2021, Mr Foreman transferred his shareholding in S44/Catfoss Investments to Catfoss Investment Holdings Limited, a company in which he held 1 of 2 issued shares.

920 In around May 2018, GCUK was approached by Neil Hobday with a proposal to re-finance a waste project located in Newcastle, England, being developed by Catfoss Renewables (**Catfoss Proposal**).

Particulars

Email from Neil Hobday to Lex Greensill dated 26 May 2018 (GCU.0004.0012.8841).

921 At all material times, Mr Neil Hobday had a material conflict of interest with respect to the facilities provided to members of the Catfoss Group because he was:

(a) retained by GCUK to introduce new business and paid a fee for his services; and

(b) retained by the Catfoss Group to advise them on the Catfoss Proposal and other potential business opportunities,

(the **Hobday Conflict**).

Particulars

Email from Scott Newby (Head of Operational Risk, GCUK) to Brett Downes, copying David Keeling, dated 4 October 2018 (GCU.0013.0003.5939).

Email from Neil Hobday to Lex Greensill dated 7 December 2018 (GCU.0005.0003.4332).

922 At the time of the Catfoss Proposal, and at all times thereafter, the Catfoss Group of companies was in severe financial difficulty and was unable to pay its debts without further finance (the **Catfoss Liquidity Issues**).

Particulars

The financial difficulties facing the Catfoss Group were that multiple entities within that group had large outstanding debts to financiers and other creditors, including recurring interest payments for asset financing transactions, as recorded in GCUK's internal correspondence including:

(a) Emails between Neil Hobday, Lex Greensill and Brett Downes dated 26 and 17 May 2018 (GCU.0004.0012.8841), in which Brett Downes states: "In the end it seems apparent now that Foreman has cash moving all over the place to keep afloat. If he is that close to bankruptcy, then we should leave all of this alone, unless we can lock away Newcastle and we are comfortable it can actually work. It cannot bleed one penny to Foreman."

(b) Email from Andrew Foreman to Lex Greensill, copying Neil Hobday and Ian Roundell, dated 5 July 2018 (GCU.0004.0014.7541), in which Andrew Foreman states: 'There are a series of critical payments that are due as early as tomorrow and through to the end of next week, where I had been managing the cash flow up until the end of June with the understanding that the refinance would make funds available to draw down from the beginning of July. I am faced with a number of urgent liability payments that are due or past due with no obvious way that I can make payment. Failure to pay is going to likely to destabilise myself, Newcastle and some of my other group companies'.

(c) Emails between Brett Downes and Lex Greensill dated 5 July 2025 (GCU.0004.0014.7541), in which:

(i) Lex Greensill asks: 'I would be content to give [Andrew Foreman] a £500k draw now. Will you support me?... '; and

(ii) Brett Downes responds: 'He is this skint at present and flying really close to the wind'.

(d) Email from Myrjam Tschoeke to Brett Downes and Michael Gilhuley dated 13 July 2018 and titled '*RE: Credit Approval request for Instalment Payment Facility for CATFOSS RENEWABLES LTD, £23m'* (GCU.0010.0004.0313), in which Myrjam Tschoeke states:

> *'I have gone over this deal and structure as well and have some severe problems with it:*
>
> *• There is no business plan for this company, it does not even have a going concern and is loaded with debt.*
>
> *• The management is unexperienced.*
>
> *• A personal guarantee from Neil Hobday is worth nothing and his involvement, if anything, gives rise to concern and not comfort.*
>
> *• We are financing a deal where the fees are disproportionately large compared to the financing and the overall size of the company.*
>
> *• There is a mismatch in funding again*
>
> *• We are asking an exception to CS HIF to put a higher than normal SOL on a bad risk into the HIF. This is a massive franchise risk considering that we take refinancing risk on a company without any business plan.*

• The cashflows work such that we are financing the initial interest by funding the reserve account and paying for our own interest in year one. Now, in project finance style structures this may be ok, BUT here we have no future cashflows to look at that will ever repay the debt.

• The assets are not covering the debt either.

• This is a bridge to nowhere, a loan for a restructuring, this should be equity funded and not by debt. But PEs will stay clear of this as there is no business plan.

• I can see why this deal is pushed given the fee levels but it is not properly structured and should not be put into the HIF putting the Greensill franchise at risk.'

(e) Email from Miroslav Kněžický of GCUK to David Keeling of GCUK dated 24 July 2018 (GCU.0010.0004.1450), in which Miroslav Kněžický states: 'This looks like cash burning and leakage all over wider catfoss group. With production not even starting till September/October we will have a problem… They will require £500k a month + 130k interest + probably more capex. This exceeds the calculations they provided us by miles. This is because it includes cash injections for wider Foreman's group.'

(f) Email from Brett Downes of GCUK to which Miroslav Kněžický and David Keeling of GCUK dated 26 July 2018 (GCU.0010.0004.1450), in which Brett Downes states in relation to the Catfoss Renewables Risk: 'I share your concerns and this is not good. We have been sold a complete bullshit deal now. I will have words with Lex this weekend. Have a think about this over the weekend. I cannot allow money to leak to Foreman when it is needed here.'

(g) Emails between Brett Downes and Mike Gilhuley (GCUK) dated 2 August 2018 (GCU.0009.0004.2601), in which Brett Downes states in relation to the Catfoss Renewables Risk: 'Btw Catfoss turning into a nightmare. They think they have a facility to allow Foreman to keep funding his business empire while we will refinance it in September and thereby fix up Newcastle and I they now think will run out of money in September. They have lied the whole way through. This is going to get messy. I will think over the weekend how to solve and I am with Lex next week in Sydney.'

(h) Email from David Keeling to Brett Downes and Miroslav Kněžický dated 3 August 2018 (GCU.0010.0004.2070), in which David Keeling states: *'I think we need to establish the viability of the entire Foreman group so that his outside Catfoss enterprises do not bring down the entire group and*

Greensill and cause issues for the HIF. My concern is that they have been ponzi styled juggling debt to meet these huge commitments for some time and have run out of avenues. Even on an annual salary of £6m after tax this would be difficult to meet for a footballer, asset finance of £300k+ per month is an insane commitment. Concern is this was there last ditched juggle, an all or nothing bet on the recycling at our expense…

Questions:

1. Are we in effect trading insolvent now? No income, no ability to meet commitments.

2. Insolvency – cannot meet monthly commitments. There is now no way to establish a way out of this shortfall?

3. Legal implications?

4. How did they expect this to work, cashflow provided by them does not get past October? Where is the exit past 2 months? Are there other cashflows?

5. What assets are actually solely secured by one debt (ie. not cross collaterised)? We need a list and a plan for asset sales from Andrew to at least match our commitment. We put in £2m, he puts in £2m.'

(i) Email from David Keeling to Chris Tinsley, copying Miroslav Kněžický, dated 3 August 2018 (GCU.0010.0004.2070), in which David Keeling states: 'NAB would lock down now and go to straight exist [sic] and asset sale, pressure them to get the cash together and get business moving or refinance, as this has not even technically had a single repayment, hard to push that anyway. As recovery takes so long this process would start, until the client could stop it. In this case it I very hard because there is no trading operation.'

(j) Emails between David Keeling, Brett Downes and Miroslav Kněžický, dated 17 August 2018 (GCU.0013.0003.1557), in which David Keeling states: 'I did raise all required issues, outlined the position we are in, what cash is left, no EABITDA across group, need for modelling, 2 months left across the group. I raised HIF SOL's also with Lex privately, and also questioned Andrew about his personal assets and is there a reason he has not looked at disposing for all these non- performing assets and using the equity if these other opportunities are so sound. Lex at one point did suggest he would overrule committee when I raised the conditions of the approval, poisition, and issues they had with the deal we needed to look over still…. Think his words were "as I own the phucking company this is how I see it".. I don't think I was out of line though'.

(k) Email from David Keeling of GCUK to Scott Newby of GCUK dated 22 August 2018 (GCU.0013.0003.1786), in which David Keeling states: 'This is really starting to annoy me, Neil ringing me privately to ask to keep Brett and everyone out and us two sort this out!! They are phucking broke.. he just bought a £100k Range Rover and a helicopter.'

(l) Email from Brett Downes to Lex Greensill dated 18 September 2018 (GCU.0004.0017.9096), in which Brett Downes states in respect of the Catfoss Renewables Risk:

'However I failed on the Project Finance 101 rules and sadly the deal has gone south from day one, and from what I have seen in the report, I feel it is getting worse.

There are now major problems with the plant and they risk losing their EP licence. I have serious doubts anyone knows how to run the site. Instead of presenting a plan to fix this, we have been shown a summary plan which involves getting more money to change the plant. I remember the engineer from SIMEC saying don't touch this and now I wish I had listened more.

In the end here are the real issues: This is going to be a money sink for some time; I doubt the leadership team has any idea how to really idea or experience to fix it. Andrew is an entrepreneur, not a waste management specialist, and I see no evidence he has anyone on his team who is. Just handing over more money here on the basis of some plan is not smart. You should read some of the emails he sent as proof of the offtake contracts.'

D13.3 Catfoss/Noviniti Side Deals

923 Between June 2018 and 27 March 2019, GCUK provided four debt facilities to entities in the Catfoss Group, being:

(a) an Instalment Payment Agreement between Catfoss Renewables and GCUK with a limit of GBP 23,000,000 (**Catfoss Renewables Facility**);

(b) a Customer Agreement between Noviniti Poole and GCUK dated 31 October 2018 and a Re-invoicing Service Agreement between Noviniti Poole and Bramid dated 31 October 2018 (the **Noviniti Poole Facility**);

(c) an Instalment Payment Agreement between Catfoss DBT and GCUK dated 19 December 2018 with an initial limit of GBP 15,300,000 (the **Catfoss DBT Facility**); and

(d) an Instalment Payment Agreement between Noviniti Colchester and GCUK dated 19 December 2018 with an initial limit of GBP 8,700,000 (the **Noviniti Colchester Facility**),

(together, the **Catfoss/Noviniti Facilities**).

924 The Catfoss/Noviniti Facilities were intended to be used in whole or in part:

(a) to assist Mr Foreman to seek to address the Catfoss Liquidity Issues and pay down debt across the Catfoss Group;

(b) to allow GCUK to acquire an option to take an equity interest in Catfoss Renewables; and

(c) to fund the Catfoss Group to pay significant fees to GCUK, equivalent to fees paid to investment banks for private equity deals,

(**Catfoss Facility Purposes**).

Particulars

The particulars to paragraphs 922 and 925 are repeated.

Email from Myrjam Tschoeke to Brett Downes and Michael Gilhuley dated 13 July 2018 (GCU.0010.0004.0313), in which Myrjam Tschoeke states: '*This is a bridge to nowhere, a loan for restructuring, this should be equity funded and not by debt … I can see why this deal is pushed given the fee levels but it is not properly structured and should not be put into the HIF putting the Greensill franchise at risk*'.

Email from Andrew Foreman to David Keeling, copying Brett Downes, Tom Kennedy, Neil Hobday and others, dated 25 September 2018 (GCU.0005.0002.1448), in which Andrew Foreman: "*I have tried to highlight, at the last two meetings with Lex and on various emails, that the deal, I believe, we agreed and I subsequently signed to with Greensill, was always on the understanding that a minimum of £1.250m for Foreman Group overheads as requested (on the email below) to be circulated by Neil on behalf of Lex. I have only found out since the deal and confirmed at the last meeting at Lex's House, that there was a separate internal arrangement to keep the £1.250m for additional debt servicing cover. So, I find it hard to believe, that you cannot understand why and how we have used a portion of these monies to service the Foreman / Catfoss Group debt – as per email below addressed to all parties*".

925 The Catfoss/Noviniti Facilities were approved by GCUK's Credit Committee on the basis of the Catfoss Facility Purposes.

Particulars

(a) Email from Vicky Birch to Lex Greensill, Brett Downes, Danyon Lloyd, Michael Gilhuley, Myrjam Tschoeke and Roland Hartley-Urquhart, copying others, dated 17 July 2018 (GCU.0004.0015.2838), which contains the Credit Committee's minutes of meeting for 13 July 2018. In respect of the Catfoss Renewables Risk, the meeting minutes record: "*Lex provided an overview to the deal and acknowledged this is a high-risk transaction… Myrjam commented that this is a Private Equity investment rather than a debt financing and that Lex agreed by stating this is why the fees were also PE like. Greensill also has an option to purchase 25% of the company for £12.5m within 5 years of closing, or £25.0m from years 6 to 10*".

(b) Email from David Keeling to Lex Greensill, Brett Downes, Myrjam Tschoeke, Roland Hartley-Urquhart, Michael Gilhuley and Danyon Lloyd, copying others, dated 9 January 2019 (GCU.0007.0002.3850), which contains the Credit Committee's minutes of meeting for 19 December 2018. In respect of the Noviniti Colchester Risk and the Catfoss DBT Risk, the meeting minutes record that:

(i) Lex Greensill presented the Noviniti Colchester Facility and Catfoss DBT Facility;

(ii) Lex Greensill explained that the Catfoss DBT Facility was to be used to pay the profit portion of the deal upfront and that as part of the deal the Catfoss Group had agreed to pay GCUK a GBP 10,000,000, four year exclusive fee to fund these projects;

(iii) Lex Greensill described the Catfoss DBT facility as "an equity like risk" and stated "we are being paid on an equity basis from revenue share, fee and interest basis"; and

(iv) Myrjam Tschoeke (another Credit Committee member) raised a concern that it was unclear what GCUK was funding, and asked whether the insurer and investors were aware of what GCUK was funding;

(v) Lex Greensill stated "we are looking at taking the fee and using future transactions to fund" and "confirms his belief, this was something he believed was acceptable funding"; and

(vi) both facilities were approved subject to conditions precedent, including obtaining insurance, and with Ms Tschoeke requiring that the discussion be recorded in the minutes.

926 To effect the purpose set out in paragraphs 924(b) and 924(c) above, GCUK and certain entities in the Catfoss Group executed the following side agreements:

(a) on or around 29 June 2018, GCUK and Catfoss Renewables executed a side letter to the Catfoss Renewables IPA (**Catfoss Renewables Side Letter**), which contained the following terms:

(i) Catfoss agreed to borrow the entire facility limit in 26 equal drawdown amounts under the Catfoss Renewables Facility on a date to be agreed between the parties, with each drawdown being rolled over on the maturity date for three (3) years from the date of the first drawdown;

(ii) notwithstanding any provisions of the Catfoss Renewables IPA, GCUK was required to accept the agreed drawdowns; and

(iii) it was a condition precedent of GCUK's entry into the Catfoss IPA that GCUK was granted an option to purchase 25% of the issued share capital of Catfoss for GBP 12,500,000 if such purchase occurred within five (5) years of the date of the Catfoss Renewables IPA, or GBP 25,000,000 if the purchase occurred between the start of the sixth year of the term of the IPA and the tenth anniversary of the IPA.

Particulars

Side Letter to Instalment Payment Agreement between GCUK and Catfoss Renewables dated 29 June 2018 (BCC.0001.0006.1746).

(b) on or around 20 December 2018, GCUK and S44/Catfoss Investments executed a side agreement (the **Exclusivity and Fee Letter**), under which S44/Catfoss Investments agreed to pay GCUK a structuring fee of GBP 10,400,000 in respect of certain GCUK facilities (the **Structuring Fee**);

Particulars

(a) Lex Greensill was emailed drafts of the Exclusivity and Fee Letter by Henry Middleditch on 23 November 2018 (GCU.0004.0021.2894; GCU.0004.0021.2896) and on 5 December 2018 (GCU.0004.0021.6560, GCU.0004.0021.6563). On 5 December 2018, Lex Greensill sent a draft of the Exclusivity and Fee Letter to Benjamin Foreman (GCU.0005.0003.3912).

(b) S44 Exclusivity and Fee Letter dated 20 December 2018 (CSA.0001.0006.1148).

(c) on or around 20 December 2018, GCUK, Catfoss DBT and S44/Catfoss Investments entered into a side letter to the Catfoss DBT IPA (the **Catfoss DBT Side Letter**), pursuant to which Catfoss DBT provided an undertaking and covenanted that it would pay the Structuring Fee to GCUK by using amounts drawn down under the Catfoss DBT Facility.

Particulars

(a) Lex Greensill was emailed drafts of the Catfoss DBT Side Letter by Tom Kennedy (Legal Counsel) of GCUK on 18 December 2018 (GCU.0005.0003.9121; GCU.0005.0003.9129) and on 19 December 2018 (GCU.0005.0003.9634; GCU.0005.0003.9639).

(b) Catfoss DBT Side Letter dated 20 December 2018 (CSA.0001.0006.1153).

927 The Catfoss Renewables Side Letter, Exclusivity and Fee Letter and Catfoss DBT Side Letter (the **Side Deals**) were not disclosed to Brereton, BCC or IAL.

D13.4 Catfoss Group Non-Disclosures

928 Each of the:

(a) Hobday Conflict;

(b) Catfoss Liquidity Issues;

(c) Catfoss Facility Purposes; and

(d) Side Deals,

(together, the **Catfoss Group Matters**)

were matters:

(i) which Lex Greensill knew were material to the decision to accept or renew insurance cover in respect of the risk of insuring debts owed to entities in the Catfoss Group, including the Catfoss Renewables Risk, the Catfoss DBT Risk, the Noviniti Poole Risk and the Noviniti Colchester Risk; and

(ii) in the alternative, in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 923 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Catfoss Group being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

929 Further or in the alternative, each of the Catfoss Group Matters were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by the entities within the Catfoss Group, including the Catfoss Renewables Risk, the Catfoss DBT Risk, the Noviniti Poole Risk and the Noviniti Colchester Risk.

Particulars

IAL refers to the particulars to paragraph 928 above.

930 None of the Catfoss Group Matters were disclosed to BCC, Greg Brereton or IAL before entry into or renewal any of the Relevant Policies and Endorsements executed after 20 December 2018 (the **Catfoss Group Non-Disclosures**).

D14 Catfoss Renewables

D14.1 Catfoss Renewables Misrepresentations

Inception representations

931 On or around 11 September 2018, GCUK requested that BCC extend insurance cover in respect of financing to be provided by Greensill to Catfoss Renewables (**Catfoss Renewables Risk**).

Particulars

Email from Miroslav Kněžický (Senior Credit Analyst) of GCUK to Greg Brereton, copying David Keeling (Senior Risk Officer) of GCUK, dated 11 September 2018 (BCC.0001.0014.0018) and its attachments (BCC.0001.0014.0019; BCC.0001.0014.0020; BCC.0001.0014.0021; BCC.0001.0014.0022; BCC.0001.0014.0023; BCC.0001.0014.0024).

932 The email containing the request was sent to Lex Greensill and Brett Downes (Chief Risk Officer) of GCUK.

Particulars

Emails between Lex Greensill and Brereton dated between 12 and 13 September 2018 (BCC.0001.0002.1560; BCC.0001.0002.1563; CSA.0001.0001.5841).

Email from Lex Greensill to Brett Downes dated 13 September 2018 (CSA.0001.0001.5841).

933 In making that request, GCUK represented to Brereton, among other matters, that:

(a) the Catfoss Renewables Risk was 'a project finance deal' relating to a waste treatment facility in Newcastle, United Kingdom;

(b) the proposed facility limit was GBP23 million;

(c) of that sum:

(i) GBP21.25 million would 'be used to refinance all company's debt: banking facilities, working capital facilities and trade creditors'; and

(ii) GBP1.75 million would 'be transferred to GC[UK] controlled Debt Service Reserve account' and would 'be used to cover cash needs in the first coming months after the production commences';

(d) Catfoss Renewables had in place all necessary permits to operate the autoclave facility at its Newcastle plant and to produce compost-like output, and had secured permits that could possibly be used in the future for expansion of operations including generation of electricity using waste; and

(e) in order to achieve a sufficient level of control and security, the deal would be treated as a project financing deal, and as such, the obligor (and its subsidiaries) would be ring-fenced from the other enterprises of Andrew Foreman, a director of Catfoss Renewables.

Particulars

Email from Miroslav Kněžický (Senior Credit Analyst) of GCUK to Greg Brereton, copying David Keeling (Senior Risk Officer) of GCUK, dated 11 September 2018 (BCC.0001.0014.0018), attaching a document titled 'Credit Analysis Pack: Non-Investment Grade Obligor Risk Assessment', pages 3, 5 and 7 (BCC.0001.0014.0018).

934 In the premises of paragraph 933 above, GCUK represented to Brereton that:

(a) the financing to be provided by Greensill to Catfoss Renewables was only for the purposes pleaded in paragraphs 933(a) and 933(b) above; and

(b) the financing would not be used to pay debts owed by other entities within the Catfoss Group,

(**Catfoss Renewables Inception Misrepresentations**).

935 The Catfoss Renewables Inception Misrepresentations were a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to paragraphs 17, 18, 22, 23, 29 and 30 above.

936 On or around 15 September 2018, Brereton indicated that he would agree to provide cover in respect of the Catfoss Renewables Risk up to a facility limit of GBP23 million and with a base premium of 1.5%.

Particulars

Emails between Lex Greensill and Greg Brereton dated between 13 and 15 September 2018 (BCC.0001.0002.1560; AGB.0002.0001.0291).

937 Between 17 September 2018 and 21 September 2018, Brereton provided Greensill with signed copies of Customer Endorsement No. 27 purportedly issued under the Master Policy TB-03691 (B0509FINCW1800044) (the **2018 Master Policy**) and the 2018 Policy, in respect of the Catfoss Renewables Risk.

Particulars

Email from Greg Brereton to John Wheelan (Deputy General Counsel) of GCPL and Ewen Berkemeier of Marsh, copying Lex Greensill, Brett Downes of GUCK and others, dated 17 September 2018 (AGB.0003.0001.0002), attaching signed copies of Customer Endorsement No 27 under the 2018 Policy in respect of the Catfoss Renewables Risk in favour of GCUK, Greensill Bank and GCPL (AGB.0003.0001.0003).

Email from Greg Brereton to Edward Smith of Marsh, copying Ewen Berkemeier of Marsh and others, dated 21 September 2018 (BCC.0001.0002.1650), attaching a signed copy of Customer Endorsement No 27 under the 2018 Master 2018 Policy in respect of the Catfoss Renewables Risk in favour of GCUK and GCPL (BCC.0001.0002.1651).

Renewal

938 On or around 27 February 2019, Marsh sent an email to GCUK, attaching documents relating to a requested renewal of cover under the 2019 Policy for the Catfoss Renewables Risk. Marsh asked GCUK to confirm 'NKORL' [no known or reported losses] and an order to bind.

Particulars

Email from Edward Smith, Vice President of Marsh to Sophie Dyke (Insurance Analyst) of GCUK, copying Craig Pinnington (Senior Credit Analyst) of GCUK, and the email address, insurance@greensill.com (MAR.0004.0001.9181), attaching a draft Customer Endorsement No. 3 under the 2019 Policy for Catfoss Renewables in favour of Greensill Bank and GCPL (MAR.0004.0001.9236).

939 On or around 28 February 2019, GCUK provided confirmation that there were no known or reported losses and instructed Marsh to renew cover under the 2019 Policy in respect of a number of risks, including the Catfoss Renewables Risk.

Particulars

Email from Sophie Dyke (Insurance Analyst) of GCUK to Edward Smith, Vice President of Marsh, copying Craig Pinnington (Senior Credit Analyst) of GCUK, and the email address, insurance@greensill.com, dated 28 February 2019 (MAR.0004.0001.9422).

940 On or around 28 February 2019 and 4 March 2019, Marsh emailed Brereton documents relating to the requested renewal of the 2019 Policy and renewal of cover under the 2019 Policy for the Catfoss Renewables Risk. Mr Smith stated that Greensill had 'confirmed NKORL' and had given Marsh the order to bind.

Particulars

Email from Edward Smith, Vice President of Marsh to Greg Brereton dated 4 March 2019 (MAR.0004.0001.9739), attaching a draft Customer Endorsement No. 3 in respect of Catfoss Renewables (MAR.0004.0001.9750).

941 On or around 13 March 2019, Brereton provided GCUK (via Marsh) with a signed copy of Customer Endorsements No 3, which purported, with effect from 1 March 2019, to endorse Catfoss Renewables as a Customer under the 2019 Policy with an 'Aggregate Customer Limit' of GBP23 million.

Particulars

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier of Marsh, dated 13 March 2019 (MAR.0006.0001.2343), attaching a signed copy of Customer Endorsement No 3 in favour of Greensill Bank and GCPL (MAR.0006.0001.2344).

Representations were misleading

942 The Catfoss Renewables Inception Misrepresentations were false and/or misleading because:

(a) by 13 July 2018, Catfoss Renewables had drawn down the entire facility limit of the Catfoss Renewables Facility;

Particulars

(a) Email from Andrew Foreman of Catfoss Renewables to Lex Greensill, Brett Downes of GCUK, Miroslav Kněžický of GCUK, Ian Little of GCUK, David Keeling of GCUK, copying Tom Kennedy of GCUK, Jessica Fielden of Schofield Sweeney (Catfoss Renewable's solicitors), Steven Millward of Schofield Sweeney, Ian Roundell of Catfoss Renewables, Neil Hobday of Greensill, Shaheeda Akhtar of Schofield Sweeney, dated 12 July 2018 (CSA.0001.0001.5741), attaching:

(i) a letter from Catfoss Renewables dated 12 July 2018 (GCU.0004.0015.1117);

(ii) a Payment Upload Assurance File (PAUF) with the file name 'CRL_PAUF_File' for a requested drawdown of approximately GBP23 million (GCU.0004.0015.1118); and

(iii) an unsigned option agreement between GCUK and Catfoss Renewables for the grant to GCUK of an option to acquire share capital issued in Catfoss Renewables (GCU.0004.0015.1119).

(b) Email from Jessica Fielden of Schofield Sweeney to Lex Greensill, Tom Kennedy of GCUK, Andrew Foreman of Catfoss Renewables, Ian Roundell of Catfoss Renewables, Neil Hobday of Greensill and Steven Millward of Schofield Sweeney, copying Brett Downes of GCUK, Miroslav Kněžický of GCUK, Ian Little of GCUK and David Keeling of GCUK, dated between 13 July 2018 (GCU.0004.0015.2232), in which Jessica Fielden states: *'I can confirm receipt of [the Catfoss Renewables facility] funds.'*

(b) the funds advanced under the Catfoss Renewables Facility:

(i) had not been used solely for the purposes of financing Catfoss Renewables' waste treatment facility project; and

(ii) were not ringfenced from other entities in the Catfoss Group;

(c) the funds advanced under the Catfoss Renewables Facility had in fact been used to:

(i) pay debts owed by Andrew Foreman and/or other companies in the Catfoss Group, to seek to address the Catfoss Liquidity Issues; and

(ii) refinance approximately GBP12 million in debt owed to Paul Bentham (a director of Catfoss Renewables);

Particulars to i and ii

(a) Email from Neil Hobday of Greensill to Lex Greensill, Andrew Foreman of Catfoss Renewables, Brett Downes of GCUK and Tom Kennedy of GCUK, Steven Millward of Schofield Sweeny, David Keeling of GCUK, Miroslav Kněžický of GCUK and Ian Roundell of Catfoss Renewables, dated 27 June 2018 (CSA.5000.0004.6294), in which Neil Hobday states:

> *'Greensill are providing a £23m gross £18m net refinance facility to Catfoss Renewables Ltd Waste to Energy Facility in Newcastle deployed as follows:*
>
> *- [Paul Bentham] Bridge Refinance - £12m*
>
> *…*
>
> *- Andrew Foreman - £250k*
>
> *…*
>
> *- Foreman Group - £1.25m to be draw down as required via a monthly request form prepared and submitted by IR for Foreman Group overheads until Phase 2 refinance completes hopefully in QS*
>
> *…*
>
> *- GC Balance - £5m - closing costs & structure fee £4.5m + a further £500k to support the business cashflow.'*

(b) Email from Ian Roundell of Catfoss Renewables to Ian Little of GCUK, Steven Millward of Schofield Sweeney, Andrew Foreman of Catfoss Renewables, copying David Keeling of GCUK, Scott Gibson of Catfoss Renewables and Joanne Johnson of Catfoss Renewables, dated 11 July 2018 (CSA.0001.0006.0564), in which Ian Roundell states: *'Please find attached a list of the day 1 capex requirement and detailed analysis of the 30/6/18 creditor position as requested… Paul Bentham will be paid £12m.'*

(c) Email chain between Lex Greensill, Tom Kennedy of GCUK, Andrew Foreman of Catfoss Renewables, Ian Roundell of Catfoss Renewables, Neil Hobday of Greensill, Brett Downes of GCUK, Miroslav Kněžický of GCUK, Ian Little of GCUK, David Keeling of GCUK, Steven Millward of Schofield Sweeney and Jessica Fielden of Schofield Sweeney, dated between 13 and 17 July 2018 (GCU.0004.0015.2232), which requires GBP 12,000,000 payment to Paul Bentham.

(d) Email from Ian Roundell of Catfoss Renewables to David Keeling of GCUK, copying Andrew Foreman of Catfoss Renewables, Miroslav Kněžický of GCUK, Brett Downes of GCUK, Scott Gibson of Catfoss Renewables and Neil Hobday of Greensill, dated 20 July 2018 (GCU.0010.0004.1450), in which Ian Roundell states: *'Therefore of the £691,373 of creditors outstanding, we have been sent £450,000 – So we require a further £242,373 to be advanced to pay 30.6.18 creditors, in addition we require the £250,000 payable to Andrew Foreman to be released – so £492,373 in total.'*

(e) Email from Steven Millward of Schofield Sweeney to Ian Roundell of Catfoss Renewables and David Keeling of GCUK, copying Andrew Foreman of Catfoss Renewables, Miroslav Knežický, Brett Downes, Scott Gibson of Catfoss Renewables, Neil Hobday of Greensill, dated 23 July 2018 (GCU.0004.0015.9595), which records payments made using funds advanced under Catfoss Facility.

(f) Email from Miroslav Kněžický of GCUK to David Keeling of GCUK dated 24 July 2018 (GCU.0010.0004.1450), in which Miroslav Kněžický states: *'This looks like cash burning and leakage all over wider catfoss group. With production not even starting till September/October we will have a problem… They will require £500k a month + 130k interest + probably more capex. This exceeds the calculations they provided us by miles. This is because it includes cash injections for wider Foreman's group.'*

(g) Miroslav Kněžický of GCUK to and David Keeling of GCUK dated 2 August 2018 (GCU.0010.0004.2070), in which Miroslav Kněžický states: *'What [Ian Roundell of Catfoss Renewables] suggests is minimum payments going to Renewables and most of the funds going outside to fund Mr Foreman's other business and personal endeavours (fucking joke).'*

(h) Email exchange between Andrew Foreman and David Keeling, Brett Downes (and others) of GCUK dated 25 September 2018 (GCU.0005.0002.1448), where Andrew Foreman states: *'I have tried to highlight, at the last two meetings with Lex and on various emails, that the deal, I believe, we agreed and I subsequently signed to with Greensill, was always on the understanding that a minimum of £1.250m for Foreman Group overheads as requested (on the email below) to be circulated by Neil on behalf of Lex. I have only found out since the deal and confirmed at the last meeting at Lex's House, that there was a separate internal arrangement to keep the £1.250m for additional debt servicing cover. So, I find it hard to believe, that you cannot understand why and how we have used a portion of these monies to service the Foreman / Catfoss Group debt – as per email below addressed to all parties*'.

Knowledge of falsity of representations

943 Lex Greensill knew each of the matters set out in paragraph 942 above.

Particulars

The knowledge of Lex Greensill is to be inferred from his direct involvement in correspondence associated with the Catfoss Renewables Risk as set out in the particulars to paragraph 942 above, and from his senior position within the Greensill Group.

Lex Greensill was also the sponsor of the Catfoss Facility, as recorded in the Credit Analysis Pack for Catfoss Renewables dated 10 July 2018 (CSA.0001.0006.0546, page 3).

Further particulars may be provided after completion of discovery by GCUK.

944 The knowledge of Lex Greensill of each of the matters set out in paragraph 943 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 26, 29 and 30 above.

945 The knowledge of Lex Greensill of each of the matters set out in paragraph 943 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars to paragraphs 20, 22 and23 above.

946 Further and in the alternative to paragraph 943 above, other officers and employees of GCUK – namely Miroslav Kněžický (Senior Credit Analyst), David Keeling (Senior Risk Officer) and Brett Downes (Chief Risk Officer) – knew each of the matters set out in paragraph 942 above.

Particulars

The knowledge of these officers is to be inferred from their involvement in dealings with Catfoss Renewables pleaded above, and in the placement of the Catfoss Renewables Risk.

IAL otherwise refers to the particulars to paragraph 942 above

Further particulars may be provided after completion of discovery by GCUK.

947 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraph 946 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 29 and 30 above.

948 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraph 946 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars to paragraphs 22 and 23 above.

Knowledge of materiality of representations

949 Each of the matters referred to in paragraph 942 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex's Greensill knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 923 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Catfoss Renewables being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

950 Further or in the alternative to paragraph 949 above, each of the matters referred to in paragraph 942 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

IAL refers to the particulars in paragraph 949 above.

951 The knowledge of Lex Greensill of each of the matters set out in paragraphs 949 to 950 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

952 The knowledge of Lex Greensill of the matters set out in paragraphs 949 to 950 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

953 Further and in the alternative to paragraph 949 above, each of the matters referred to in paragraph 942 above was a matter:

(a) which other officers or employees of GCUK – namely Miroslav Kněžický (Senior Credit Analyst), David Keeling (Senior Risk Officer) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk; or

(b) alternatively to paragraph (a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of these officers and employees of GCUK is to be inferred by virtue of their position and experience in placing insurance on behalf of entities within the Greensill Group.

954 Further or in the alternative to paragraph 953 above, each of the matters referred to in paragraph 942 above was a matter which a reasonable person in the position of the abovementioned officers and employees of GCUK could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

IAL refers to the particulars in paragraph 953 above.

955 The knowledge of the abovementioned officers and employees of GCUK of each of the matters set out in in paragraphs 953 to 954 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

956 The knowledge of the abovementioned officers and employees of GCUK of each of the matters set out in paragraphs 953 to 954 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Misrepresentations were fraudulent

957 In the premises of paragraphs 943 to 949, 951, 952, 953, 955 and 956 above:

(a) Greensill misrepresented the inception risk presented by the Catfoss Renewables Risk;

(b) the misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Catfoss Renewables Risk

958 If Greensill had not made the Catfoss Renewables Inception Misrepresentations, insurance cover would not have been issued in respect of the Catfoss Renewables Risk at all or, in the alternative, on the same terms in which it purportedly was written.

959 By reason of the matters pleaded in paragraphs 942 to 958 above, IAL is entitled to avoid the Catfoss Renewable Endorsements.

Innocent misrepresentation

960 In the alternative to the matters pleaded in paragraphs 957 to 959 above, by reason of the matters pleaded in paragraphs 942 and 958 above, IAL is entitled to reduce its liability under the Catfoss Renewable Endorsements to zero (or such other amount as the court may determine would place IAL in the same position as if the Catfoss Renewables Inception Misrepresentation had not occurred).

D14.2 Catfoss Renewables Non-Disclosures

Knowledge of underlying matters

961 At the time of requesting insurance cover for the Catfoss Renewables Risk, Lex Greensill knew;

(a) the Catfoss Group Matters;

Particulars

The particulars to paragraphs 920 to 926 are repeated.

(b) the existence and terms of the Catfoss Renewables Side Letter:

(i) which governed the terms on which the facility was provided;

(ii) which had the effect of converting the Catfoss Renewables Facility into a long term debt facility where debts owing from Catfoss Renewables to GCUK were to be 'rolled', and accordingly Catfoss Renewables would not make payments of principal on the payment instalment dates on which they were due; and

Particulars

GCUK's practice of rolling the debts the subject of the Catfoss Facilities, without the Catfoss Group in fact repaying amounts to GCUK from its own resources, is evident from the Side Deals and is further pleaded at Section E.1 of Annexure B to this defence.

(iii) under which the facility had already been drawn down in full;

(c) that GCUK had acquired an option to purchase a 25% equity interest in Catfoss Renewables;

(d) that the Catfoss Renewables Facility was in the nature of a high-risk equity investment and had been approved by GCUK's Credit Committee on this basis;

Particulars to (c) and (d)

Greensill Credit Committee Minutes dated 17 July 2018 (GCU.0004.0015.2838), which record: *'Lex provided an overview to the deal and acknowledged this is a high-risk transaction but despite the risks Lex takes comfort from the recent £21m acquisition deal presented by Macquarie. He expressed his commitment to the deal and asked committee for their support. Myrjam commented that this is a Private Equity investment rather than a debt financing and that Lex agreed by stating that this is why the fees were also PE like…Greensill also has an option to purchase 25% of the company for £12.5m within 5 years of closing, or £25.0m from years 6 to 10.'*

(e) that GCUK had received a presentation from Catfoss Renewables (the **Catfoss Presentation**) that disclosed that Catfoss Renewables:

(i) had breached its Environment Agency licence on three separate occasions;

(ii) was experiencing difficulties with the Environmental Agency, creating a clear and preset risk to processing waste of any scale at the Newcastle site;

(iii) had not generated any income in July and August 2018; and

(iv) would require an additional GBP 40,000,000 to fund its updated strategy for the waste facility (GBP 20,000,000 of which it proposed to obtain from GCUK).

Particulars

The Catfoss Presentation was emailed by Andrew Foreman's personal assistant to Lex Greensill on 15 September 2018, and forwarded by Lex Greensill to Brett Downes, David Keeling, and other GCUK employees, on the same day. (GCU.0004.0017.8065)

The email records that the documents were also couriered to Lex Greensill's house on the same day.

962 At the time the insurance cover was purportedly renewed under the 2019 Policy, Lex Greensill knew:

(a) the matters set out in paragraph 961 above;

(b) that he had made the Catfoss Renewables Inception Misrepresentations when initially requesting cover;

(c) that Catfoss Renewables had breached the terms of the Catfoss Renewables Side Letter, including by withdrawing, without GCUK's consent, all funds in an interest account that the IPA and Catfoss Renewables Side Letter required Catfoss Renewables to maintain, and by applying funds across the Catfoss Group;

(d) that Catfoss Renewables had defaulted under the terms of the Catfoss Renewables IPA by failing to pay the sum of GBP405,633.93 in interest when it fell due on 28 September 2018;

(e) that Catfoss Liquidity Issues had not been resolved, and Catfoss Renewables had no funds with which to pay wages; and

(f) independent engineers from SOL (Environmental Agency) and Cobalt (an external engineering company) considered the Catfoss Renewables project not to be viable.

Particulars

(a) IAL refers to the particulars to paragraphs 925, 942 and 961 above.

(b) Email exchange between David Keeling (Senior Risk Officer) of GCUK, Brett Downes (Chief Risk Officer) of GCUK, Andrew Foreman (Catfoss) and Ian Roundell (Catfoss), copied to Neil Hobday (Greensill), Miroslav

Kněžický (Senior Credit Analyst) of GCUK and others, on 24 September 2018 and 25 September 2018, with the subject line *'Contact details'* (BCC.0001.0006.1729). In particular on 25 September 2018:

(i) Andrew Foreman states: 'We are fully out of funds now…could you please advise when the other funds will be released as it is the end of the month and we must pay wages this week!'; and

(ii) David Keeling states: '…there is a significant component of payments for the wider Catfoss group, outside the Newcastle Project … this is not how the deal was approved or agreed by committee, there are a number of large expenses we still have not received any detail on, or either invoices for any expenses OR bank statements…'.

(c) Email exchange between Andrew Foreman and Lex Greensill dated 25 September 2018 (GCU.0005.0002.1448): 'We are going to be in a position if this is not resolved in the next 24 hours, were we are going to have to take emergency measures to try and find a way of raising additional funds quickly (which would be expensive, if even possible in the short timescale) for the Group to pay the month end wages and urgent creditors'.

(d) Email exchange between David Keeling and Brett Downes dated 25 September 2018 (GCU.0012.0003.0342): 'I think there will be close to sufficient cash for 2 quarters interest (q2 and Q3), after approx.. £350K being deducted for the first quarters interest. This was supposed to be invoiced for the funding to 30 September interest…I think we are around completely exhausted of cash, but have sufficient for the next 2 quarters interest payments (pending solicitor and case confirmation)'.

(e) Email exchange between Brett Downes and Lex Greensill dated 25 September 2018 (GCU.0005.0002.0958), attaching an excel spreadsheet received from Catfoss Renewables which recorded that GBP1,279,591.64 had been recorded as 'Other Group Costs', referring to the Foreman Group companies (GCU.0005.0002.0959). Brett Downes states: 'Lex, this is not acceptable. He does not need any more money now. He has taken more than £1.2m5 for his personal use according to this sheet and without our consent. David is confirming but there is very little money left, and not enough to pay interest and fund the accounts. We are in serious trouble here.'

(f) Email from Brett Downes (Chief Risk Officer) of GCUK to Lex Greensill, copying David Keeling (Senior Risk Officer), Miroslav Kněžický (Senior Credit Analyst) of GCUK and Tom Kennedy, dated 29 September 2018 (IAL.500.002.0813), attaching a draft letter from GCUK to Catfoss

Renewables dated 1 October 2018, described as a 'Letter of Non-Waiver' (IAL.500.002.0814) (**Catfoss Non-Waiver Letter**).

(g) The Catfoss Non-Waiver Letter stated that: *'Since provision of the facility by Greensill documented by the IPA enabled you to purchase a larger stake in the Project, there have been a number of issues apparent with the Project that were not communicated to Greensill prior to transmission of the Drawdown Amount by Greensill. The way forward is to work together to present a coherent and costed business model that enables the Project to grow and reach its full potential.'*

(h) Email from Dan Parkes (Cobalt Energy) to Brett Downes, copying Miroslav Knezicky, Neil Hobday, David Keeling, and Lex Greensill, dated 1 March 2019 (GCU.0005.0006.9735), attaching the Cobalt Energy Due Diligence Report (GCU.0005.0006.9736). The report includes the following findings in section 1.4:

> *'The proposals received to date cannot deliver the intended outcome for the plant. Proposals for repair of the MRF and Autoclaves will not be able to deliver strong guarantees to the project. The reliance of the EfW plant on fuels arising from the front end mean that the reliability and performance of the EfW are interwoven with the reliability and performance of the front end.*
>
> *As a result of this interdependence, it is the opinion of CEL that any investment in an EfW facility reliant on fuel produced by the front end must be accompanied by a full replacement of that front end equipment….*
>
> *In considering the options available it is clear that the replacement and operational costs of the MRF and Autoclaves may be prohibitive. It is therefore the opinion of CEL that the removal of the front end processing equipment and development of an alternative energy from waste facility is likely to offer the most cost effective route forward.'*

(i) Skype conversation between Henry Middleditch and David Keeling on 29 November 2018 (GCU.0010.0006.0907) in relation to the preparation of the Credit Application Pack for Noviniti in which David Keeling remarked: '…Who is presenting? Lex, will be very interesting removing controls on a group that have already failed in the first project we gave them money for, and now done the same. You are currently the meat b/w Brett and Lex on this one'.

(j) Skype conversation between Miroslav Knezicky and David Keeling on 19 December 2018 (GCU.0013.0004.3142). In response to a question from Miroslav Knezicky as to whether Catfoss Renewables could repay earlier under the agreement, David Keeling remarked: 'ask Stephen how they will look to repay…they are insolvent. Or close to.'

(k) Email exchange between Miroslav Knezicky and David Keeling dated 30 January 2019 (GCU.0012.0003.5434): 'I wonder what happened with all the money cause it seems that the site remained in the same condition…'

(l) Skype conversation between David Keeling and Miroslav Knezicky on 13 March 2019 in relation to Catfoss Renewables (GCU.0013.0005.0789), in which:

> Miroslav Knezicky asks [sic]: 'Can you give me an advise what to most focus on and what Brett is expecting? Initially I thought it was clear but now when I am in the process of putting it together, I am not exactly sure. On top of the timeline I would like put a very short summary of what went wrong as well.'
>
> David Keeling responds [sic]: 'He is going to seell the concept of stepping in and removing Andrew, so facyually stating the problems Andrew and Neil caused. Misrepresentatins (if it is fact), equitpment, the odour not being admitted as an inssue, the EA issues, the equity release, the stealing interest money, lack of a cashflow on new doirection, changing of dorection continually'.

(m) Text message from Lex Greensill to Neil Hobday on 13 March 2019 (GCU.0010.0017.2491 at _0070): 'Neil, I am looking down the barrels of a £25mm+ loss on Catfoss Newcastle – and that knowledge is widely held in my credit team – I would tread very carefully with you[sic] claims of what has been achieved in the past year.'

(n) Lex Greensill's knowledge is further to be inferred as he was a person of substantial commercial experience in the insurance industry and as the non-disclosures bore directly on the nature of the Catfoss Renewables Risk, including the risk of Catfoss Renewables being unable to repay the amounts advanced to it.

963 The knowledge of Lex Greensill of each of the matters in paragraphs 961 and 962 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

964 The knowledge of Lex Greensill of each of the matters in paragraphs 961 and 962 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

965 Further or in the alternative to paragraph 961 above, at the time of requesting insurance cover for the Catfoss Renewables Risk Danyon Lloyd knew each of the matters set out in paragraphs 961(a), 961(b), 961(c) and 961(d) above.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Catfoss Renewables Risk.

Email from Miroslav Kněžický to the Credit Committee dated 12 July 2018, including Danyon Lloyd, Brett Downes, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart and Ludwig Sels (GCU.0004.0015.0785) attaching a Catfoss Renewables Limited Credit Analysis Pack dated 10 July 2018 (GCU.0004.0015.0786) and a Catfoss Group Relationship Credit Analysis Pack dated 10 July 2018 (GCU.0004.0015.0787).

Email from Miroslav Kněžický to the Credit Committee dated 12 July 2018, including Danyon Lloyd, Brett Downes, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart and Ludwig Sels (GCU.0004.0015.0850) attaching Assessment of Credit Risk report by Scope, relating to Catfoss Renewables, dated 13 July 2018 (GCU.0004.0015.0851).

Email from Vicky Birch of GCUK to the Credit Committee and others dated 17 July 2018, including Danyon Lloyd, Brett Downes, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke and Roland Hartley-Urquhart, enclosing Minutes of the 13 July 2018 Credit Committee meeting (GCU.0004.0015.2837).

Email from Vicky Birch of GCUK to members of the Credit Committee and others dated 18 July 2018, including Danyon Lloyd, Lex Greensill, Michael Gilhuley and Myrjam Tschoeke (GCU.0004.0015.3478), in which Vicky Birch states: *'I can confirm that FINAL APPROAVALS have been obtained from Credit Committee and Board and the new deal for Catfoss Renewables Ltd is approved*'.

Email from Ed Smith of Marsh to the recipients of the scf@greensill-bank.com distribution list, which includes Danyon Lloyd, dated 21 September 2018 (GCU.0009.0005.0511). The email is titled "*RE: BCC Customer Endorsements*" and states: '*Danyon, Please see attached LPE from BCC'*. Attached to the email is the signed Limit Endorsement 5(iii) dated 21 September 2018 (GCU.0009.0005.0512), which lists '*Catfoss Renewables Ltd'* as a '*Customer'* with a '*Customer Limit written to the Insured*' of '*GBP 23,000,000'*.

Email from Scott Newby to Risk Committee dated 12 October 2018, including Danyon Lloyd and others (GCU.0009.0005.4764), attaching 'Risk Committee pack' for Risk Committee meeting on 16 October 2018 (GCU.0009.0005.4765). Included in the 'Risk Committee pack' is the Greensill 'Chief Risk Officer Report, Month End – September 2018' which states: '*Catfoss Renewables: The difference between the EAD Max and EAD Actual relates to the First Loss associated with the insurance policy that only covers assets within CS Virtuoso with all assets residing in the HIF at month end…Insurance Portfolio - Catfoss Renewables 75/25 TBCC'*

Email from Scott Newby to Risk Committee dated 21 January 2019, including Danyon Lloyd and others (GCU.0012.0003.5037), attaching 'Risk Committee pack' for Risk Committee meeting on 23 January 2019 (GCU.0012.0003.5038).

Email correspondence between Danyon Lloyd and the Credit Committee dated 29 March 2019, including David Keeling, Michael Gilhuley, Roland Hartley-Urquhart, Myrjam Tschoeke and Brett Downes, in relation to the Credit Committee Meeting Agenda for 29 March 2019 (GCU.0009.0008.3381).

Email from Danyon Lloyd to David Keeling and Brett Downes dated 26 April 2019 (GCU.0009.0008.9659) in which Danyon Lloyd states: '*Sorry, can't make the call today. Let me know if Brett requires my proxy for CC to be quorate*.'

Further particulars may be provided after completion of discovery by GCUK.

966 Further or in the alternative to paragraph 965 above, the matters referred to in paragraphs 48 above was a matter which a reasonable person in the position of Danyon Lloyd could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

IAL refers to the particulars in paragraph 965 above.

967 Further or in the alternative to paragraphs 961 and 965 above, at the time the insurance cover was purportedly renewed under the 2019 Policy Danyon Lloyd knew each of the matters set out in paragraphs 961(a), 961(b), 961(c) and 961(d) above.

Particulars

IAL refers to the particulars in paragraph 965 above.

968 The knowledge of Danyon Lloyd of the matters set out in paragraphs 965 to 967 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 above.

969 Further or in the alternative to paragraph 961 above, at the time of requesting insurance cover for the Catfoss Renewables Risk, Brett Downes (Chief Risk Officer of GCUK) knew each of the matters set out in paragraphs 961 above.

Particulars

The knowledge of Brett Downes is to be inferred from:

(a) the involvement of Brett Downes in GCUK's dealings with Catfoss Renewables; and

(b) Brett Downes' senior position within GCUK as Chief Risk Officer.

Further particulars may be provided after completion of discovery by GCUK.

970 The knowledge of Brett Downes of the matters in paragraph 961 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

971 The knowledge of Brett Downes of the matters in paragraph 961 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

972 Further or in the alternative to paragraph 962 above, at the time the insurance cover was purportedly renewed under the 2019 Policy, Brett Downes (Chief Risk Officer of GCUK) knew each of the matters set out in paragraph 962 above.

Particulars

IAL refers to the particulars in paragraphs 946 and 962 above.

Emails from Sophie Dyke (Insurance Analyst) to Brett Downes (Chief Risk Officer) and Craig Pinnington (Senior Credit Analyst) of GCUK and others on 28 February 2019 and 28 February 2019, attaching an excel spreadsheet titled *'GB Loss Payee Limit Tracker 01-Mar-2019*' (MAR.0004.0001.9418; MAR.0004.0001.9419), from which it can be inferred that Brett Downes knew the circumstances in which the Catfoss Renewables Risk was renewed on behalf of Greensill.

The knowledge of Brett Downes is otherwise to be inferred from his involvement in correspondence associated with the Catfoss Renewables Risk, and from his senior position within the Greensill Group.

973 The knowledge of Brett Downes of each of the matters in paragraph 972 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

974 The knowledge of Brett Downes of each of the matters in paragraph 972 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Knowledge of materiality

975 Each of the matters referred to in paragraphs 961 and 962 above was a matter:

(a) which Lex Greensill knew was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 923 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Catfoss Renewables being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

976 Further or in the alternative to paragraph 975 above, each of the matters referred to in paragraphs 961 and 962 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

IAL refers to the particulars in paragraphs 961 and 962 above.

977 The knowledge of Lex Greensill of each of the matters set out in paragraphs 961 and 962 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

978 The knowledge of Lex Greensill of each of the matters set out in paragraphs 961 and 962 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

979 Further and in the alternative to paragraph 975 above, each of the matters referred to in paragraph 961 above was a matter:

(a) which Danyon Lloyd knew was material to the decision whether to extend insurance cover in respect of the Catfoss Renewables Risk; or

(b) alternatively to paragraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Catfoss Renewables Risk.

IAL refers to the particulars in paragraphs 961 and 965 above.

Further particulars may be provided after completion of discovery by GCUK

980 Further or in the alternative to paragraph 979 above, the matters referred to in paragraph 961 above was a matter which a reasonable person in the position of Danyon Lloyd could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

IAL refers to paragraphs 27 above.

981 The knowledge of Danyon Lloyd of the matters set out in paragraph 979 and 980 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above.

982 Further and in the alternative to paragraph 975 above, each of the matters referred to in paragraphs 961 and 962 above was a matter:

(a) which Brett Downes (Chief Risk Officer) of GCUK knew was relevant to the decision of whether to accept or renew the Catfoss Renewables Risk and, if so, on what terms; or

(b) alternatively to paragraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Brett Downes' knowledge is to be inferred by virtue of his position and experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the risk of Catfoss Renewables being unable to repay the amounts advanced to it and thus upon the Catfoss Renewables Risk.

983 Further or in the alternative to paragraph 979 above, each of the matters referred to in paragraphs 961 and 962 above was a matter which a reasonable person in the position of Brett Downes could be expected to know was relevant to the decision to accept or renew the Catfoss Renewables Risk and, if so, on what terms.

Particulars

IAL refers to the particulars in paragraph 29 and 30 above.

984 The knowledge of Brett Downes of each of the matters in paragraphs 979 and 983 above can be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 29 and 30 above.

985 The knowledge of Brett Downes of each of the matters in paragraphs 979 and 983 above can be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

Breach of duty of disclosure

986 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 961 and 962 above before the cover was placed or renewed for the Catfoss Renewables Risk.

987 Greensill's failure to disclose the matters referred to in paragraphs 961 and 962 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of the matters pleaded in paragraphs 963 to 971 and 975 to 985 above.

Fraudulent non-disclosure

988 By reason of the matters pleaded in paragraphs 975, 977 and 978 above, Greensill's failure to disclose the matters referred to in paragraphs 961 and 962 above was fraudulent.

989 The cover for the Catfoss Renewables Risk would not have been issued if the matters referred to in paragraphs 961 and 962 above had been disclosed.

990 In the alternative to the allegation in paragraph 989 above, the cover for the Catfoss Renewables Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 961 and 962 had been disclosed.

991 By reason of the matters pleaded in paragraphs 988 to 990 above, IAL is entitled to avoid the Catfoss Renewables Endorsements.

Innocent non-disclosure

992 In the alternative to the matters pleaded in paragraphs 988 to 991 above, and by reason of the matters pleaded in paragraphs 989 and 990 above, IAL is entitled to reduce its liability under the Catfoss Renewables Endorsements to zero (or such other amount as the court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D15 Catfoss: Noviniti Poole, Catfoss DBT and Noviniti Colchester

D15.1 Catfoss/Noviniti NHS Project Misrepresentations

Representations

993 On or around 3 December 2018, Lex Greensill, on behalf of GCUK, requested that BCC extend insurance cover in respect of financing to be provided by GCUK to Noviniti Poole (**Noviniti Poole Risk**) under the 2018 Master Policy and the 2018 Policy.

Particulars

Email from Lex Greensill to Brereton dated 3 December 2018 (BCC.0001.0002.2139).

994 On or around 18 December 2018, GCUK requested that BCC extend insurance cover in respect of financing provided by GCUK to Catfoss DBT (**Catfoss DBT Risk**).

Particulars

Email from Lex Greensill to Brereton dated 18 December 2018 (BCC.0001.0003.2224).

995 On or around 19 March 2019, GCUK and Marsh (as Greensill's agent) requested that BCC extend insurance cover in respect of financing provided by GCUK to Noviniti Colchester (**Noviniti Colchester Risk**).

Particulars

Email from Edward Smith (Marsh) to Brereton, copying Ewan Berkemeier (Marsh), Angus Ward (Marsh), Alexandre Weiss Bueno (Marsh) and Paul Nash (Marsh), dated 19 March 2019 (BCC.0001.0001.2446).

Email from Angus Ward (Marsh) to Brereton and Edward Smith (Marsh), copying Ewan Berkemeier (Marsh), Alexandre Weiss Bueno (Marsh) and Paul Nash (Marsh), dated 19 March 2019 (BCC.0001.0001.2458).

Email from Lex Greensill to Brereton dated 19 March 2019 (BCC.0001.0002.2814).

996 As part of these requests, GCUK (including via Marsh), represented to Brereton, among other matters, that:

(a) the financing arrangement in place between GCUK and each of Noviniti Poole, Catfoss DBT and Noviniti Colchester were 'SCF facilities', and which, with respect to Noviniti Poole, involved 'reinvoicing' (**the Catfoss/Noviniti SCF Misrepresentations**);

(b) the financing arrangement in place between GCUK and each of Noviniti Poole, Catfoss DBT and Noviniti Colchester had a maximum tenor of either 360 or 365 days (the **Catfoss/Noviniti Duration Misrepresentation**)

(c) the facilities were being advanced for the purpose of funding construction costs for building projects associated with hospitals run by the National Health Service (**NHS**) (**NHS Hospital Purpose Misrepresentation**);

(d) the relevant NHS Foundation Trusts for the hospitals had provided irrevocable payment undertakings (**IPUs**) that could be relied on by the borrowers to repay the facilities (**NHS IPU Misrepresentation**),

(together, the **Catfoss/Noviniti NHS Project Misrepresentations**).

Particulars

The particulars to paragraphs 993 to 995 are repeated.

997 The representations were express in the case of each of the Noviniti Poole Risk and the Catfoss DBT Risk. The representations were implied in the case of the Noviniti Colchester Risk from the email from Edward Smith to Brereton (copying Ewan Berkemeier, Angus Ward, Alexandre Bueno and Paul Nash) dated 18 March 2019 (BCC.0001.0001.2446), in which Edward Smith states that the Noviniti Colchester Risk was '*essentially the same as the Noviniti Poole deal*'.

998 The Catfoss/Noviniti NHS Project Misrepresentations were continuing misrepresentations.

999 The Catfoss/Noviniti NHS Project Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to the particulars in paragraphs 17, 18, 22, 23, 29 and 30 above.

1000 On or around 5 December 2018, Brereton provided GCUK signed copies of Customer Endorsement No 44 which purported, with effect from 5 December 2018, to endorse Noviniti Poole as a Customer under the 2018 Master Policy and the 2018 Policy with:

(a) an 'Aggregate Customer Limit' of GBP 5,000,000; and

(b) a 'Maximum Tenor' of 360 days.

Particulars

Email from Brereton to John Whelan (Deputy General Counsel) of GCUK and Lex Greensill, copying Sophie Dyke (Insurance Analyst) of GCUK, Brett Downes (Chief Risk Officer) of GCUK and Edward Smith, Ewan Berkemeier, and Julian Macey-Dare of Marsh, dated 5 December 2018 (GCU.0005.0003.3046), attaching signed copies of Customer Endorsement No 44 in relation to the Noviniti Poole Risk in favour of Greensill Bank and GCPL (GCU.0005.0003.3047).

1001 On or around 20 December 2018, Brereton provided GCUK with a signed copy of Customer Endorsement No 63, which purported, with effect from 20 December 2018, to endorse Catfoss DBT as a Customer under the 2018 Master Policy and the 2018 Policy with:

(a) an 'Aggregate Customer Limit' of GBP12 million; and

(b) a 'Maximum Tenor' of 360 days.

Particulars

Email from Brereton to Edward Smith of Marsh, Lex Greensill and Sophie Dyke of GCUK, copying Julian Macey-Dare and Ewan Berkemeier of Marsh, and John Whelan, Brett Downes and Craig Pinnington of GCUK, dated 20 December 2018 (BCC.0001.0002.2340), attaching a signed copies of Customer Endorsement No 63 in relation to the Catfoss DBT Risk (BCC.0001.0002.2341).

1002 On or around 9 January 2019, Marsh requested that BCC amend the 'Maximum Tenor' of the Customer Endorsement No 63 in respect of the Catfoss DBT Risk from '360' days to '365' days.

Particulars

Email from Angus Ward of Marsh to Brereton, copying Ewan Berkemeier, Edward Smith, Paul Nash and Alexandre Bueno, of Marsh, dated 9 January 2019 (BCC.0001.0002.2408).

1003 On or around 14 January 2019, Brereton provided GCUK (via Marsh) with signed copies of Customer Endorsements No 63(i), which purported, with effect from 20 December

2018, to endorse Catfoss DBT as a Customer under the 2018 Master Policy and the 2018 Policy with:

(a) an 'Aggregate Customer Limit' of GBP12 million; and

(b) a 'Maximum Tenor' of 365 days.

Particulars

Email from Brereton to Angus Ward of Marsh, copying Ewan Berkemeier, Edward Smith, Paul Nash and Alexandre Bueno, of Marsh, dated 14 January 2019 (BCC.0001.0002.2408), attaching signed copies of Customer Endorsements No 63(i) in relation to the Catfoss DBT Risk (BCC.0001.0002.2409).

1004 On or around 28 February 2019, Edward Smith of Marsh sent an email to GCUK, attaching documents relating to a requested renewal of cover for the Noviniti Poole Risk under the 2019 Policy. Also around this time, GCUK confirmed that there were no known or reported losses and instructed Marsh to renew cover under the 2019 Policy in respect of a number of risks, including the Noviniti Poole Risk.

Particulars

Email from Edward Smith of Marsh to Sophie Dyke (Insurance Analyst) of GCUK, copying Craig Pinnington (Senior Credit Analyst) of GCUK, and the email address, insurance@greensill.com (GCU.0010.0007.4625), attaching an unsigned Customer Endorsement No 16, in respect of the Noviniti Poole Risk, under the 2019 Policy in favour of GCPL and Greensill Bank (GCU.0010.0007.4650).

Email from Sophie Dyke of GCUK to Edward Smith of Marsh, copying Craig Pinnington of GCUK, and the email address, insurance@greensill.com (MAR.0004.0001.9422).

1005 On or around 4 March 2019, Edward Smith of Marsh provided Brereton documents relating to the requested renewal of the 2019 Policy and renewal of cover for various risks under that policy, including the Noviniti Poole Risk and the Catfoss DBT Risk. The emails stated *'Greensill have confirmed NKORL*' [no known or reported losses] and had given Marsh the order to bind.

Particulars

Email from Edward Smith of Marsh to Brereton dated 4 March 2019 (MAR.0006.0001.1950), attaching:

(a) an unsigned copy of Customer Endorsement No 16, in respect of the Noviniti Poole Risk, under the 2019 Policy in favour of GCPL and Greensill Bank (MAR.0006.0001.1986); and

(b) an unsigned copy of Customer Endorsement No 34 in respect of the Catfoss DBT Risk (MAR.0006.0001.1957).

1006 On or around 13 March 2019, Brereton provided Marsh with a signed copy of Customer Endorsement No 16 which purported, with effect from 1 March 2019, to endorse Noviniti Poole as a Customer under the 2019 Policy, with:

(a) an 'Aggregate Customer Limit' of GBP 5,000,000; and

(b) a 'Maximum Tenor' of 360 days.

Particulars

Email from Greg Brereton to Edward Smith of Marsh dated 13 March 2019 (MAR.0003.0002.0775), attaching a signed copy of Customer Endorsement No 16, in respect of the Noviniti Poole Risk, under the 2019 Policy in favour of GCPL and Greensill Bank (MAR.0003.0002.0776).

1007 On or around 13 March 2019, Brereton provided GCUK (via Marsh) with a signed copy of Customer Endorsement No 34, which purported, with effect from 1 March 2019, to endorse Catfoss DBT as a Customer under the 2019 Policy with:

(a) an 'Aggregate Customer Limit' of GBP15 million; and

(b) a 'Maximum Tenor' of 365 days.

Particulars

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier of Marsh, dated 13 March 2019 (MAR.0002.0001.1472), attaching a signed copy of Customer Endorsement No 34 in respect of the Catfoss DBT Risk in favour of Greensill Bank (MAR.0002.0001.1473 at _0013).

1008 On or around 28 March 2019, Brereton provided GCUK with a signed copy of Customer Endorsement No 48, which purported, with effect from 22 March 2019, to endorse Noviniti Colchester as a Customer under the 2019 Policy with:

(a) an 'Aggregate Customer Limit' of GBP 8,700,000;

(b) an insured percentage of 90% and a maximum limit of liability of GBP 7,830,000 applied under the 2019 Master Policy (but not the 2019 Policy);

(c) the definition of ‘Deductible’ in the 2019 Master Policy was amended so that, if any claim was made under the 2019 Policy, GCPL and GCUK would be responsible for the payment of the 10% deductible under cl 3.5 of that policy; and

(d) a 'Maximum Tenor' of 365 days.

Particulars

Email from Brereton to Ewan Berkemeier, Angus Ward and Edward Smith of Marsh, copying Alexandre Bueno and Pual Nash of Marsh, dated 28 March 2019 (BCC.0001.0002.2883), attaching a signed copy of Customer Endorsement No 48 in respect of the Noviniti Colchester Risk in favour of Greensill Bank and GCPL (BCC.0001.0002.2884).

1009 On or around 26 September 2019, Sophie Dyke of GCUK sent an email to Marsh stating that '*Greg* [Brereton] *has agreed to increase the limits by GBP 1.5m on each of Noviniti Poole and Noviniti Colchester after a discussion with Lex*' and requested that Marsh *'confirm these increases with Greg and arrange the updated customer endorsements'*. Later that day, GCUK confirmed that there were no known or reported losses with respect to the Noviniti Poole Risk and requested that Marsh *'please bind'*.

Particulars

Emails between Sophie Dyke of GCUK and Angus Ward and Edward Smith of Marsh dated 26 September 2019 to 1 October 2019 (MAR.0002.0001.2203).

1010 On or around 1 October 2019, Brereton provided Marsh with:

(a) a signed copy of Customer Endorsement 16(i) to the 2019 Policy in respect of the Noviniti Poole Risk which purported, with effect from 27 September 2019, to increase the 'Aggregate Customer Limit' to GBP 6,500,000; and

(b) a signed copy of Customer Endorsement 48(i) to the 2019 Policy in respect of the Noviniti Colchester Risk which purported, with effect from 27 September 2019, to increase the 'Aggregate Customer Limit' by GBP 1,500,000 to GBP 10,200,000.

Particulars

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier and Angus Ward, dated 1 October 2019 (BCC.0001.0002.4009), attaching signed copies of Customer Endorsement No 48(i) in respect of the Noviniti Colchester Risk and Customer Endorsement No 16(i) in respect of the Noviniti Poole Risk (BCC.0001.0002.4010).

Representations were misleading

1011 The Catfoss/Noviniti SCF Misrepresentations were false and/or misleading because:

(a) having regard to the SCF Representation at paragraph 996(a) above, the concepts of a 'SCF facility' and 're-invoicing' were used by Greensill, and

understood by Brereton, as a form of short-term financing referable to genuine underlying invoices that evidence trade;

(b) while GCUK represented that the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risks related to an SCF Facility (which, with respect to Noviniti Poole, involved 'reinvoicing') and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact those risks related to financing that was not based on underlying trade of goods or services by the obligors referable to genuine underlying invoices.

Particulars

The fact that the Noviniti Poole Facility was not based on the underlying trade of goods or services by Noviniti Poole referable to genuine underlying invoices is evidenced by:

(a) the email from David Keeling of GCUK to Lex Greensill, Roland Hartley-Urquhart of GCUK, Danyon Lloyd of Greensill Bank, Myrjam Tschoeke of GCUK, Michael Gilhuley of GCUK and Brett Downes of GCUK, copying others, dated 30 November 2018 (GCU.0005.0003.1246), attaching a document titled ‘Relationship Credit Analysis Pack’ for the Noviniti Poole Risk dated 29 November 2018 (GCU.0005.0003.1249). The Relationship Credit Analysis Pack states:

'Facility is currently run on Bramid rails. However, there are no underlying invoices. Instead, funds will be drawn as indicated in drawdown schedule below'; and

'Previously, the obligor had to provide an itemised list of payees with amounts for GC to consider and approve. Weekly reconciliation of bank payments were then completed … ***However, following difficulties in facilitating this between both Greensill and Noviniti, the proposal is to remove these requirements to streamline the process'*** *(emphasis added);*

(b) emails between Brett Downes (Chief Risk Officer) of GCUK and David Keeling (Senior Risk Officer) of GCUK, copying Miroslav Kněžický (Senior Credit Analyst) of GCUK and Tom Kennedy (Assistant General Counsel) of GCUK dated 3 to 10 October 2018 (GCU.0013.0003.6486). Amongst other things, on 3 October 2018, Brett Downes states: *'Remember here we are trying to make this look like a future AR deal'*; and

(c) email from Myrjam Tschoeke (Managing Director) of GCUK to Brett Downes of GCUK dated 26 October 2018 (GCU.0010.0005.6766). Amongst other things, Myrjam Tschoeke states: *'There is reference to*

there not being any invoices, but for the upfront reimbursement of development cost, there should be invoices showing that the payments are for the works and cost specified'.

The fact that the Noviniti Colchester Facility was not based on the underlying trade of goods or services by Noviniti Colchester referable to genuine underlying invoices is evidenced by the fact that the Noviniti Colchester Project was completed in November 2019, but GCUK intended to continue advancing funds to Noviniti Colchester for other purposes, even after completion.

(a) 'Case Studies: Colchester Hospital', available: https://noviniti.co.uk/casestudies/colchester-hospital/ [accessed 12 June2023]

(b) Emails between David Keeling (Senior Risk Officer), Henry Middleditch (Vice President), Julian Kirk and Miroslav Kněžický (Senior Credit Analyst) of GCUK, dated 20 March 2019 (GCU.0010.0007.9274**)**. Amongst other things, on 20 March 2019 David Keeling states in relation to the proposed Noviniti Colchester Facility: '*Sources and Uses of Funds – need to control this, the group are haemorrhaging money across all entities, money must be filtering to keep Andrew afloat. This is a huge risk ongoing is Andrews survival if you are looking at long term management of these properties.*' and also '*Proposing no payments to the builder… like getting a home loan for building a home but giving the money to you not the builder for work*.'

The fact that the Catfoss DBT Facility was not based on the underlying trade of goods or services by Catfoss DBT referable to genuine underlying invoices is evidenced by:

(a) Minutes of Credit Committee meeting held on 19 December 2018 (GCU.0007.0002.3850). The minutes record that:

  (i) Myrjam Tschoeke (another Credit Committee member) raised a concern that it was unclear what GCUK was funding in relation to the Catfoss DBT Facility, stating: '*Myrjam: Unsure of what we are actually funding? What is net construction cost we are actually funding? With fees being £10m, this is high, is insurer aware of what we are funding?... we are paying £2m to Andrew, and £10m to Greensill. How are we then funding construction?';*

  (ii) Lex Greensill explained that the Catfoss DBT Facility was to be used to pay the profit portion of the deal upfront and that as part of the deal the Catfoss Group had agreed to pay GCUK a GBP 10,000,000, four year exclusive fee to fund these projects; and

(iii) Lex Greensill stated ‘we are looking at taking the fee and using future transactions to fund' and 'confirms his belief, this was something he believed was acceptable funding’.

(b) The terms of the Exclusivity and Fee Letter and the Catfoss DBT Side Letter.

1012 The Catfoss/Noviniti Duration Misrepresentation was false and/or misleading because the Catfoss DBT Risk, Noviniti Poole Risk and Noviniti Colchester Risk had no maximum duration or, in the alternative, a duration longer than 360 or 365 days.

Particulars

The fact that the funds advanced under Catfoss DBT Facility had no maximum duration or, in the alternative, a duration longer than 360 days is evidenced by:

(a) The effect of clause 1 of the Exclusivity and Fee Letter (CSA.0001.0006.1148) was that GCUK agreed to provide:

(i) a short-term working capital facility of up to two years; and

(ii) a long-dated lease financing facility of up to thirty years,

(iii) in respect of the NHS D&B Project (amongst other projects), in return for the Structuring Fee which would be paid out of the Catfoss DBT Facility.

(b) Henry Middleditch (Vice President) of GCUK sent Lex Greensill drafts of the Exclusivity and Fee Letter on 23 November 2018 (GCU.0004.0021.2894, GCU.0004.0021.2896) and on 5 December 2018 (GCU.0004.0021.6560, GCU.0004.0021.6563). On 5 December 2018, Lex Greensill sent a draft of the Exclusivity and Fee Letter to Benjamin Foreman (GCU.0005.0003.3912).

(c) Tom Kennedy (Legal Counsel) of GCUK sent Lex Greensill (and others) drafts of the Catfoss DBT Side Letter on 18 December 2018 (GCU.0005.0003.9121, GCU.0005.0003.9129) and on 19 December 2018 (GCU.0005.0003.9634, GCU.0005.0003.9639).

(d) The effect of clauses 1 and 2 of the Catfoss DBT Side Letter (CSA.0001.0006.1153) was that the Catfoss DBT Facility was for purposes that went substantially beyond those of a typical working capital facility, including to enable Catfoss DBT to pay the Structuring Fee.

The fact that the funds advanced under Noviniti Poole Facility had no maximum duration or, in the alternative, a duration longer than 360 days is evidenced by:

(a) Email from David Keeling of GCUK to Benjamin Foreman, copying Lex Greensill, Andrew Foreman and Brett Downes, Miroslav Kněžický and Tom Kennedy of GCUK, dated 5 October 2018 (GCU.0004.0018.7417), attaching an 'Indicative Terms Sheet' signed by Lex Greensill (GCU.0004.0018.7419) which states: *'Proposed repayment will be via a restructured loan over 20 years repaid by principal and interest repayments of £180k per annum (plus CPI adjustments)'*;

(b) The Credit Analysis Pack for Noviniti Poole dated 26 October 2018 (GCU.0004.0019.9144) which, under the sub-heading 'Deal Summary', states: *'Both roll and facility tenor are 12 months. At the end of the 12 month period, facility will be renegotiated/restricted on a long dated future receivable amortising on a principle and interest basis over proposed 20 year period with repayments of £180k per annum (plus CPI adjustments)'* and, '*If during the initial 12-month period the facility is not restructured or repaid, facility will amortise over a period of one year by way of the instalments referred to above*'.

(c) The Relationship Credit Analysis Pack for Noviniti Poole dated 29 November 2018 (GCU.0005.0003.1249) which under the subheading 'Existing Facility Recap' states, 'Before the end of the period, the facility is intended to be renegotiated/restructured as a long dated future receivable amortising facility, on a principle and interest basis, over a 30-year period with repayments of 180k per annum (plus RPI adjustments).'

(d) Microsoft Teams message from Miroslav Kněžický of GCUK to Andrew Kuyk (Chief Credit Officer) of GCUK dated 27 August 2019 (GCU.0012.0004.7034). Amongst other things, Miroslav Kněžický states: 'I have checked if insurance will still cover potential internal rolls but Sophie is not sure and recommended that we discuss this with Brett as well'.

The fact that the funds advanced under Noviniti Colchester Facility had no maximum duration or, in the alternative, a duration longer than 365 days is evidenced by:

(a) Draft Credit Analysis Pack for Noviniti Colchester dated 4 December 2018 (GCU.0009.0006.2998) which, under the sub-heading ‘Proposed Facility’, states: ‘Tenor: 12 months. At the end of the period, facility will be renegotiated/restructured on a long dated future receivable amortising on a principle and interest basis over proposed 30-year period with repayments of £320k per annum (plus CPI adjustments).’ and ‘Restructuring of the deal to a long-dated monetisation of future receivables will be subject to a separate submission’.

(b) Email from David Keeling of GCUK to Brett Downes (Chief Risk Officer) of GCUK dated 20 March 2019 (GCU.0010.0007.9261): 'They think it will fly through with Lex eventually, but we are taking 30 year performance risk on Andrew and Ben Foreman… say no more'.

(c) The terms of the Exclusivity and Fee Letter.

GCUK's practice of rolling the debts the subject of the Catfoss DBT Risk, the Noviniti Poole Risk and the Noviniti Colchester Risk, without Noviniti Poole, Noviniti Colchester of Catfoss DBT paying principal instalments of those debts from their own resources, is evident from the documents identified immediately above in the particulars to this paragraph 1012 and is further pleaded at Sections E.2, E.3 and E.4 of Annexure B to this defence.

1013 The NHS Hospital Purpose Misrepresentation was false and/or misleading because the funding advanced to Noviniti Poole, Catfoss DBT and Noviniti Colchester was to be used for purposes unrelated to the NHS hospital projects, including:

(a) to pay profit advances to the Catfoss Group;

Particulars

(a) Credit Application Report – Catfoss DBT Limited dated 19 December 2018 (GCU.0005.0004.8291), which states:

(i) 'Derby Trust has paid for the project directly but would like to be re-financed at the project's completion by selling the space to Catfoss for a set year term for a consideration equal to the Total Development Cost (£13.3mm)' (at _0004); and

(ii) 'The funds raised under the IPA facility will be used as a profit advance to Catfoss and Greensill, relating to the fees anticipated under the re-financing (proceeds raised from 30 years of Derby Trust lease payments, net of the sale amount of the space to the Obligor by the Derby Trust for an amount equal to the costs of construction incurred by the Derby Trust, as well as to cover Catfoss's fees of GBP 10 million to Greensill' (at _0009).

(b) Email from David Keeling to Brett Downes on 20 December 2018 (GCU.0010.0006.4730), recording an 'OFF RECORD' summary of a call with the 'Catfoss set up team'. Mr Keeling says they are going to fund GBP 12,000,000 the following day '*without any CP's met*' with GBP 2,000,000 as a profit advance and GBP 10,000,000 for GCUK's fees. Mr Downes responds '*I know mate this is not cool. Let's debrief but Lex is going to cop it from CC*'.

(c) Email from David Keeling of GCUK to Lex Greensill, Brett Downes of GCUK, Myrjam Tschoeke of GCUK, Roland Hartley-Urquhart of GCUK, Michael Gilhuley of GCUK and Danyon Lloyd of Greensill Bank dated 9 January 2019 (GCU.0007.0002.3850), which contains the Credit Committee's minutes of meeting for 19 December 2018. The meeting minutes record: *'Lex explained [the Catfoss DBT] deal to CC, difference to the Colchester deal is construction is already progressed and being funded by the NHS trust, the trust is paying the build, so we take no build risk outside releasing the profit portion of the deal up front, being £2m'*. This email was subsequently forwarded to Henry Middleditch of GCUK on 10 January 2019 (GCU.0009.0006.8690).

(b) to pay the Structuring Fee to GCUK, which was to be wholly funded from the Catfoss DBT Facility;

Particulars

(a) Email from Benjamin Foreman of Catfoss DBT to Lex Greensill dated 13 November 2018 (GCU.0004.0020.5963), in relation to Catfoss Group funding requirements referring to the intention to draw funds, including a '*GBP 1 million advance profit on Derby NHS Deal [and] GBP 1 million advance profit on Burton NHS Deal*'. Benjamin Foreman states that Catfoss DBT and GCUK would *'work on putting the Derby NHS facility in place of £1.0m and the Burton NHS facility of £1.0m in place (£2.0m total) over the coming weeks, to be used as follows:*

£750k to go back into the Poole build cost Pot

£750k modular cash flow

£500k to group cash flow

Total passed to group within the above will be £1.0m and will leave £750k cash flow in the Modular business.'

(b) Credit Application Report – Catfoss DBT Limited dated 19 December 2018 (GCU.0005.0004.8291), which states:

(i) *'Proposed is a £15.3mm uncommitted Instalment Payment Agreement (IPA) bridge facility for ("Obligor") that will be used as a profit advance (£2mm) to and cover the company's fees to Greensill, and will hold it for the benefit of Greensill until such a time as they are remitted as per the terms of the fee letter'* (at _0004);

(ii) *'£15.3mm uncommitted Instalment Payment Agreement facility for Catfoss DBT Limited, £2mm of which as a profit advance and the*

remainder to re-finance the construction costs of Derby Trust at completion of construction as well as to pay Catfoss' fees to Greensill' (at _0004); and

(iii) *'The funds raised under the IPA facility will be used both as a profit advance to Catfoss and Greensill, relating to the fees anticipated under the re-financing… as well as to cover Catfoss' fees of £10mm to Greensill*.' (at _0004).

(c) Email from David Keeling of GCUK to Lex Greensill, Brett Downes of GCUK, Myrjam Tschoeke of GCUK, Roland Hartley-Urquhart of GCUK, Michael Gilhuley of GCUK and Danyon Lloyd of Greensill Bank dated 9 January 2019 (GCU.0007.0002.3850), which contains the Credit Committee's minutes of meeting for 19 December 2018. The meeting minutes record:

(d) the following exchange between Lex Greensill and Myrjam Tschoeke in respect of the Catfoss DBT Risk:

'Myrjam: Unsure of what we are actually funding? What is net construction cost we are actually funding? With fees being £10m, this is high, is insurer aware of what we are funding? Also could insurers insure completion to cover delay etc?

Lex: Construction cost is £13m, we have sought approval for £15m. The £13m will be used to repay NHS trust who is paying construction and requires refinancing. Fee is not considered disproportionate based on the entire pipeline of transactions modelled over 4 years being £250m (north). Based on this level of potential finance £10m is considered reasonable.

Myrjam: Not disputing fee, however we are paying £2m to Andrew, and £10m to Greensill. How are we then funding construction?

Lex: We are doing a number of these transactions, from the first one we are looking at taking the fee and using future transactions to fund. Also, risk is that we do not fund any future transaction.

Myrjam: I still do not understand from a sources and uses of funds, how do we fund the construction? Myrjam repeated this question twice, and questioned the insurers understanding and the investors.

Lex: The £10m in fees needs to be spread over time across transactions. Lex confirmed his belief, this was something he believed was acceptable funding. Lex confirmed we did not seek

completion insurance, this was accepted by Lex, however to be considered, and not as a condition.

Myrjam: Still unsure on the £10m fee, on basis also that if we bundle £50m, then recommends that we look at a market read on if this is able to be placed.

Lex: Lex confirmed/reiterated, transactions conducted previously we understand where they are priced for long dated transactions. Spoken to Lloyds also, who own Scottish Widows who have provided guidance *on expected pricing'*; and the following note: 'Myrjam — approved, however wanted discussion outlined on the minutes.'

(e) Email from David Keeling of GCUK to Brett Downes of GCUK dated 20 December 2018 (GCU.0010.0006.4730), in which David Keeling states: 'I am on a call right now with “Catfoss set up team”… they are going to fund £12m tomorrow for Derby without any CP’s met, this is processing right now with ops/legal/Henry. £2m, profit advance and £10m for our fees, to solicitor (Steve M from Catfoss).'

(f) Clause 3 of the Exclusivity and Fee Letter (CSA.0001.0006.1148).

(c) to make payments to Andrew Foreman and other entities in the Catfoss Group, including to address the Catfoss Liquidity Issues.

Particulars

(a) Document entitled 'Business overview on behalf of Greensill Credit Committee' for the Catfoss Group of companies dated 15 June 2016, prepared in response to *'a request for Due Diligence information'* by Brett Downes (Chief Risk Officer) of GCUK (GCU.0014.0001.4952) that states:

(i) 'The Catfoss Group of Companies seeks Greensill Capital's assistance in the Re-financing of the Trading Businesses known as Catfoss Modular and Portable Buildings, Catfoss Cabin Hire and Catfoss Cabin Hire Contracts and the buyback of Marcol's 50% shareholding at the fixed price of £750,000'; and

(ii) 'Catfoss Modular and Portable Buildings (CMPB), Catfoss Cabin Hire (CCH) and Catfoss Cabin Hire Contracts (CCHC) is owned 50% with Marcol Industrial (Catfoss) LLP'.

(b) Email from David Keeling of GCUK to Brett Downes (Chief Risk Officer) of GCUK, Miroslav Kněžický (Senior Credit Analyst) of GCUK, and Tom Kennedy (Assistant General Counsel) of GCUK dated 10 October 2018 in

respect of the Noviniti Poole risk (GCU.0013.0003.6486). Amongst other things, David Keeling states *'The first payment includes £330k straight to Catfoss Manufacturing. How do we know this is just this transaction when they are cash strapped working on other transactions and sales'*.

(c) Email from Benjamin Foreman (Catfoss) to Brett Downes (Chief Risk Officer) of GCUK and David Keeling (Senior Risk Officer) of GCUK, copying Lex Greensill, Miroslav Kněžický (Senior Credit Analyst) of GCUK, Ian Roundell (Catfoss) and Neil Hobday (Greensill) dated 15 October 2018 (GCU.0004.0019.2860) which attached, amongst other things, a schedule of *'Assets, Liabilities and Income for Andrew Patrick Foreman'* (GCU.0004.0019.2861). In that schedule, *'Marcol Loan*' is listed as a liability under the sub-heading *'Catfoss Group*' for £750,000.

(d) Emails between Lex Greensill and Benjamin Foreman dated 20 November 2018, copying Brett Downes, Miroslav Kněžický and Barnaby Lynch (CFO) of GCUK (GCU.0004.0021.3884). Amongst other things, Lex Greensill states that *'the components of the draw will be: • Marcol Share Option repurchase ~£760k • Marcol 10% deposit to repurchase site £70k • Poole project next instalment ~£750k • Catfoss Modular working capital ~£250k • Catfoss Group working capital ~£250k*'. On 21 November 2018, Brett Downes sends a further email to Benjamin Foreman stating, *'see below the potential funding we can make available this week … 1. Marcol £760,000 (provided they provide us with evidence of the payout so that we can confirm use of funds); and 2. Marcol 10% purchase of site £70,000 (provide the use is confirmed)*'. On 26 November 2018, Bejamin Foreman responds to Lex Greensill and states *'Thank you for the funds that came over to enable us to satisfy the Marcol commitment*'.

(e) Email from Brett Downes of GCUK to Lex Greensill dated 20 November 2018 (GCU.0004.0021.0252). Amongst other things, Brett Downes states: *'I have to say that we can't agree to the drawings below for a number of reasons, least of all this was not approved under the current Poole facility. The Poole facility was approved very specifically for funding of the NHS building and not lifestyle for the Foreman's. Having said that we did specifically mention in the approval wording below that this Marcol purchase could be made*'.

(f) Email from Miroslav Kněžický of GCUK to Brett Downes and David Keeling of GCUK (GCU.0009.0006.0259) dated 20 November 2018. Miroslav Kněžický states: '*I understand that we will be buying out Marcol*'. Miroslav Kněžický then emails David Keeling alone and states: *'Remember when I told you that my work is just a joke when it comes to Catfoss and that they*

will always get what they want regardless the risk?'. David Keeling responds: *'It is... and you AR head clown! Sir Ronald McDonald'.*

(g) Email from Chris Tinsley (Senior Credit Analyst) of GCUK to David Keeling (Senior Risk Officer) of GCUK (GCU.0013.0004.1064) in relation to Noviniti Poole on 29 November 2018 stating: *'We've put all this money out the door already and we don't even know if they've broken ground yet(!) because we don't have a Quant Surveyor or even a condition for a staff inspection'.*

(h) Emails between David Keeling, Henry Middleditch, Miroslav Kněžický and Brett Downes of GCUK dated 20 March 2019 (GCU.0010.0007.9274) in which David Keeling states:

(i) in an email to Henry Middleditch: 'Sources and Uses of Funds – need to control this, the group are haemorrhaging money across all entities, money must be filtering to keep Andrew afloat. This is a huge risk ongoing is Andrews survival if you are looking at long term management of these properties.'

(ii) in an email to Brett Downes: 'Brett, summary follows, I mentioned I would need to get you involved if this was urgent because of other matters with the group which I did not go into.'

(iii) in an email to Miroslav Kněžický: 'henry is off the planet. Proposing no payments to the builder... like getting a home loan for building a home but giving the money to you not the builder for work.'

(i) Email from Miroslav Kněžický of GCUK to David Keeling of GCUK dated 2 April 2019 and titled: 'Final Credit Approval: Noviniti Colchester Limited £8.7m' (GCU.0013.0005.2606). Miroslav Kněžický states: 'So you think they are going to use that money settle Renewables outstandings? That money would naturally be then missing somewhere again and the spinning of plates would continue'.

(j) Emails between Henry Middleditch and David Keeling of GCUK, copying Miroslav Kněžický and Stephen Fleming of GCUK, dated 26 September 2019 and titled 'CRL' (GCU.0010.0010.5218). On 26 September 2019 Henry Middleditch states: 'This will be taken out of other deals (Colchester) or others in the pipeline. Agree this is far from ideal but is part of the larger plan as I understand it'. David Keeling responds to this email and states: 'Just to confirm I am talking about the Newcastle Waste Catfoss business'.

(k) Credit Application Report - Noviniti Colchester dated 22 October 2019 (GCU.0009.0011.9441), under 'Uses of Profit Advance (Wider Context)' states: 'The following breakdown was provided at the request of the credit

committee to give oversight on how the two profit advances provided under the Poole and Colchester facilities were being used to cover expenses incurred at the Renewables site.'

(l) Internal GCUK Memorandum titled 'Catfoss – Risk exposure and ECL provisioning' dated 5 February 2020 (GCU.0009.0013.3863) relating to Noviniti Colchester, Noviniti Poole, Catfoss DBT and Catfoss Renewables, which states: '£844k of the £1.5m increase in facility was paid to Catfoss Investments to cover expenses and GC interest for Catfoss Renewables' and p.12 'Payment to Catfoss as a profit advance to be taken out of their share of the uplift [i]on refinancing (currently estimated at £1.348mm). Profit advance required to support the stability of Catfoss and other group projects (including upcoming and already paid interest payments for the Renewables project)'.

(m) A version of the above Memorandum was circulated internally within GCUK (GCU.0009.0013.4619) including between Henry Middleditch and Miroslav Kněžický of GCUK under an email dated 7 February 2020 (GCU.0009.0013.4618), in which Henry Middleditch states that the Memorandum has been: 'Seen and approved by Lex'.

1014 The NHS IPU Misrepresentation was false and/or misleading because, at the time the Catfoss DBT Risk was placed, the University Hospitals of Derby and Burton NHS Foundation Trust (**NHS D&B Trust**) had not, in fact, provided IPUs to the borrowers or GCUK, or agreed to provide IPUs to the borrowers or GCUK.

Particulars

(a) Catfoss DBT and the NHS D&B Trust were to enter into a sale and leaseback arrangement at completion of the NHS D&B Project, whereby Catfoss DBT would purchase from the NHS D&B Trust the completed development and then lease it back to the NHS D&B Trust over a 30-year period. This arrangement was required to be in place to facilitate the repayment of the Catfoss DBT IPA. That this arrangement had not yet been entered into at the time of requesting insurance cover is evidenced by the following:

(i) Email from Henry Middleditch to Lex Greensill, copying Barnaby Lynch of GCUK dated 4 December 2018 (GCU.0004.0021.6527), in which Henry Middleditch identifies that any IPU or other arrangement was yet to be implemented: *'I would add that it sounded like Derby might benefit from a different type of facility than the IPA being proposed, where the Trust gives an IPU (given the*

construction is done and it won't be being bought out by a lease facility)?'

(ii) It can be inferred from this email that GCUK knew that the arrangement had not been entered into at the time of requesting insurance cover in respect of the Catfoss DBT Risk.

(iii) Credit Application Report – Catfoss DBT Limited dated 19 December 2018 (GCU.0005.0004.8291 at _0006), which states that the proposed 'Deal Structure' was as follows: *'Derby Trust has paid for the project directly but would like to be re-financed at the project's completion by selling the space to Catfoss for a set year term for a consideration equal to the Total Development Cost (£13.3mm). Derby Trust will then lease back the space at £510-600k p.a. for 30 years. These cashflow will be monetised by Greensill for expected proceeds of a minimum of £15.9mm which will be used to repay the IPA facility amount.'*

(b) That the arrangements were not entered into prior to requesting insurance cover is evidenced by the following documents after this time:

(i) Greensill presentation titled 'Lease Financing Structuring Proposal' dated February 2019 (GCU.0014.0001.7945), which states: 'They are also looking to refinance a project at Derby & Bruton, the structure for which is still under discussion, but will resemble this as closely as possible.'

(ii) Email from Henry Middleditch of GCUK to Brett Downes of GCUK, copying Barnaby Lynch of GCUK and Julian Kirk of GCUK, dated 11 March 2019 (GCU.0009.0007.8994), in which Henry Middleditch states, with respect to the Catfoss DBT Risk: '*Unlike the other sites, Catfoss has not yet entered into a sale and lease back with the Trust… Under the [proposed] lease arrangement, the Trust enters into a 30 year lease back arrangement. The Trust is happy to provide an IPU (to Catfoss in the first instance as Greensill will not be financing the lease directly?).'*

Knowledge of falsity of representations

1015 Lex Greensill knew the matters set out in paragraph 1011 to 1014 above.

Particulars

The knowledge of Lex Greensill as to the Catfoss/Noviniti NHS Project Misrepresentations is to be inferred from his involvement in GCUK's dealings with Noviniti Poole, Catfoss DBT and Noviniti Colchester and from his direct

involvement in correspondence with BCC associated with the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk as demonstrated by:

(a) his knowledge of and involvement in preparing the Exclusivity and Fee Letter and Catfoss DBT Side Letter (see GCU.0005.0003.3912, GCU.0004.0021.6560, GCU.0004.0021.6563, GCU.0004.0021.2894, GCU.0004.0021.2896);

(b) his involvement in the request for cover in respect of the Noviniti Poole Risk (BCC.0001.0002.2139);

(c) the Credit Analysis Pack for Noviniti Poole dated 26 October 2018 (GCU.0004.0019.9144 at .0004), which identifies Lex Greensill as the 'Sponsor';

(d) the Relationship Credit Analysis Pack for Noviniti Poole dated 29 November 2018 (GCU.0005.0003.1249), which identifies Lex Greensill as the 'GC Relationship Owner' as well as both a member of the 'Deal Team' and the 'Sponsor' of the application;

(e) the document titled 'Credit Application Report – Catfoss DBT Limited' dated 19 December 2018, which identifies Lex Greensill as the 'GC Relationship Owner' (GCU.0005.0004.8291);

(f) the minutes of meeting in respect of the Credit Committee's meeting on 19 December 2018 (GCU.0007.0002.3850);

(g) the Credit Application Report for Noviniti Colchester dated 25 March 2019 (GCU.0009.0008.3977), which identifies Lex Greensill as the '*GC Relationship Owner'*;

(h) the Credit Application Report for Noviniti Colchester dated 26 September 2019 (GCU.0010.0010.5210) and several subsequent versions of the report, including (GCU.0009.0011.9441), (GCU.0009.0020.9584), (GCU.0009.0020.9584) and (GCU.0009.0021.7485), which identify Lex Greensill as part of the '*Facility Team'*.

(i) otherwise, the particulars to paragraphs 1011 to 1014 above.

1016 The knowledge of Lex Greensill of the matters set out in paragraphs 1011 to 1014 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 26, 29 and 30 above

1017 The knowledge of Lex Greensill of the matters set out in paragraphs 1011 to 1014 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 20, 22 and 23 above

1018 Further and in the alternative to paragraphs 1015 to 1017 above, Brett Downes (Chief Risk Officer) of GCUK knew of the matters set out in 1011 to 1014 above.

Particulars

IAL refers to the particulars to paragraphs 1011 to 1014 above.

The knowledge of Brett Downes is to be inferred from:

(a) his direct involvement in dealings with Noviniti Poole and the Noviniti Poole Facility, including: GCU.0013.0003.6486, GCU.0010.0005.6766, GCU.0009.0005.3302, GCU.0004.0018.7417, GCU.0004.0019.2860, GCU.0004.0021.3884, GCU.0004.0021.0252, GCU.0009.0006.0259, GCU.0013.0003.6486;

(b) the Credit Analysis Pack for Noviniti Poole dated 26 October 2018 (GCU.0004.0019.9144) and Relationship Credit Analysis Pack for Noviniti Poole dated 29 November 2018 (GCU.0005.0003.1249), each of which identify Brett Downes as responsible for approving 'Structure / Security / Tenors';

(c) his direct involvement in the dealings of the Catfoss DBT Facility, including the following items: GCU.0007.0002.3850, GCU.0009.0007.8994, GCU.0010.0006.4730 and GCU.0009.0007.8994; and

(d) his senior position within GCUK as Chief Risk Officer.

Brett Downes' knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Noviniti Poole, Catfoss DBT and Noviniti Colchester being unable to repay the amounts advanced to them and thus upon the nature of the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk.

1019 The knowledge of Brett Downes of GCUK of each of the matters identified in paragraphs 1011 to 1014 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

1020 The knowledge of Brett Downes of GCUK of the matters identified in paragraphs 1011 to 1014 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

Knowledge of materiality of representations

1021 Each of the matters referred to in paragraphs 1011 to 1014 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk, Noviniti Colchester Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex's Greensill knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Noviniti Poole being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

1022 Further, or in the alternative to paragraph 1021 above, each of the matters referred to in paragraph 1011 to 1014 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole, Catfoss DBT or Noviniti Colchester.

1023 The knowledge of Lex Greensill of the matters set out in paragraphs 1021 and 1022 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 26, 29 and 30 above.

1024 The knowledge of Lex Greensill of the matters set out in paragraphs 1021 and 1022 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 20, 22 and 23 above.

1025 Further and in the alternative to paragraph 1021 above, each of the matters referred to in paragraphs 1011 to 1014 above were matters:

(a) which Brett Downes of GCUK knew was material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk, Noviniti Colchester Risk; or

(b) alternatively to paragraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes was copied into the relevant correspondence with Brereton and BCC associated with the placement of insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk, and Noviniti Colchester Risk including BCC.0001.0001.1379. Brett Downes' knowledge is otherwise to be inferred as they were persons of substantial commercial experience in the insurance industry and the misrepresentations bore directly upon the nature of the Noviniti Poole Risk, Catfoss DBT Risk, and Noviniti Colchester Risk.

1026 Further, or in the alternative to paragraph 1021 above, each of the matters referred to in paragraph 1011 to 1014 above was a matter which a reasonable person in the position of Brett Downes could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole, Catfoss DBT or Noviniti Colchester.

1027 The knowledge of Brett Downes of the matters set out in in paragraphs 1025 and 1026 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

1028 The knowledge of Brett Downes of the matters set out in paragraphs 1025 and 1026 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

Misrepresentations were fraudulent

1029 In the premises of paragraphs 993 to 1028 above:

(a) Greensill misrepresented the Noviniti Poole Risk, the Catfoss DBT Risk and the Noviniti Colchester Risk;

(b) the misrepresentation was knowingly false and fraudulent; and

(c) the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk.

1030 If Greensill had not made the Catfoss/Noviniti NHS Project Misrepresentations, insurance cover would not have been issued in respect of the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk at all or, in the alternative, on the same terms in which it purportedly was written.

1031 By reason of the matters pleaded in paragraphs 1011 to 1014 above, IAL is entitled to avoid the Noviniti Poole, Catfoss DBT and Noviniti Colchester Endorsements.

Innocent misrepresentation

1032 In the alternative to the matters pleaded in paragraphs 1029 to 1031 above, by reason of the matters pleaded in paragraphs 1011 to 1014, 1021 and 1025 above, IAL is entitled to reduce its liability under the Noviniti Poole, Catfoss DBT and Noviniti Colchester Endorsements to zero (or such other amount as the court may determine would place IAL in the same position as if the Catfoss/Noviniti NHS Project Misrepresentations had not occurred).

D15.2 Catfoss/Noviniti NHS Project Non-Disclosures

Knowledge of underlying matters

1033 At the time of requesting insurance cover for the Noviniti Poole Risk and Catfoss DBT Risk under the 2018 Master Policy and the 2018 Policy, Lex Greensill knew:

(a) GCUK had made the Catfoss Renewables Inception Misrepresentations and had not disclosed the matters referred to in paragraph 961 when requesting cover for the Catfoss Renewables Risk.

Particulars

IAL repeats the particulars to paragraphs 931 to 934 and 961 above.

(b) the Catfoss Group Matters, including that:

(i) GCUK had entered into the Side Deals; and

(ii) the Catfoss Liquidity Issues had not been resolved;

Particulars

IAL repeats the particulars to paragraphs 921 to 930 above.

(c) that the Noviniti Poole Facility and Catfoss DBT Facility would be used to:

(i) pay profit advances to the Catfoss Group;

(ii) pay the Structuring Fee to GCUK; and

(iii) to make payments to Andrew Foreman and other entities in the Catfoss Group, including to address the Catfoss Liquidity Issues.

Particulars

The particulars to paragraph 1013 above are repeated.

Email from David Keeling of GCUK to Brett Downes, Miroslav Kněžický and Tom Kennedy (Assistant General Counsel) of GCUK dated 10 October 2018 (GCU.0013.0003.6486). Amongst other things, David Keeling states: *'Brett, I think we need to see the building contract also if there is one even. The first payment includes £330k straight to Catfoss Manufacturing. How do we know this is just this transaction when they are cash strapped working on other transactions and sales.'*

1034 At the time the insurance cover for the Noviniti Poole Risks and Catfoss DBT Risks was purportedly renewed under the 2019 Policy, Lex Greensill knew:

(a) that he had made the Catfoss/Noviniti NHS Project Misrepresentations when initially requesting cover for the Noviniti Poole Risks and Catfoss DBT Risks;

(b) the matters referred to in paragraphs 1033, 961 and 962 above;

(c) on 21 December 2018, GPB 11,400,000 of the Catfoss DBT Facility had been drawn down with:

(i) approximately GPB 2,000,000 being paid to Catfoss DBT as a profit advance; and

(ii) approximately GBP 10,400,000 being paid to GCUK as pre-payment of the Structuring Fee under the Exclusivity and Fee Letter;

Particulars

(a) Email from David Keeling to Lex Greensill, Roland Hartley-Urquhart, Danyon Lloyd of Greensill Bank, Myrjam Tschoeke, Brett Downes and Michael Gilhuley, copying others, dated 19 December 2019 (GCU.0005.0004.0106). Under the ‘Deal Review’ section for the Catfoss

DBT Facility, David Keeling states: ‘Proposal is for a £15.3m uncommitted IPA bridge facility, £2m of this amount is a profit advance with the remainder being used to refinance the construction costs of the NHS Derby Trust (hospital). The advance will also enable the payment of the group fees to Greensill. Legal, construction and funding schedules are not yet available and will be CP’s under the proposed approval.’

(b) Email from Tom Kennedy (GCUK) to Steven Millward (Schofield Sweeney), Andrew Foreman and Benjamin Foreman (Catfoss Group) Lex Greensill and Henry Middleditch (GCUK), dated 19 December 2018 (GCU.0005.0003.9784 at 0003). Tom Kennedy writes ‘Steven please find attached the PAUF file and illustrative drawdown calculation as requested. I understand it’s been agreed that Catfoss will be drawing down £2m this week, so the numbers in the attached reflect that.’

(c) Email from David Keeling to Brett Downes dated 20 December 2018 (GCU.0010.0006.4730), recording an 'OFF RECORD' summary of a call with the 'Catfoss set up team'. David Keeling states they are going to fund GBP 12,000,000 the following day 'without any CP’s met' with GBP 2,000,000 as a profit advance and GBP 10,000,000 for GCUK’s fees. Mr Downes responds 'I know mate this is not cool. Let’s debrief but Lex is going to cop it from CC'.

(d) Email from Benjamin Foreman (Catfoss Group) to Lex Greensill, Henry Middleditch (GCUK) and others at GCUK dated 21 December 2018 (GCU.0004.0022.2473) under which a ‘PAUF request’ is submitted in relation to drawdown under the Catfoss DBT Facility effective 21 December 2018. Attached to the email are the signed ‘PAUF authorisation letter’ (GCU.0004.0022.2474) and ‘PAUF file’ (GCU.0004.0022.2476).

(e) The terms of the Exclusivity and Fee Letter and the Catfoss DBT Side Letter.

(d) between 29 January 2019 and 3 February 2019, a further GPB 1,000,000 had been drawdown under the Catfoss DBT Facility.

Particulars

(a) Email from Benjamin Foreman (Catfoss Group) to Lex Greensill, Henry Middleditch, David Keeling and others on 28 January 2019 (GCU.0004.0023.2489) in which Benjamin Foreman states ‘can you please process the agreed next milestone drawdown from Catfoss DBT Ltd, for £1,000,000 in total. If you can send the prepared PAUF & PAUF Authorisation letter, I will action and return’.

(b) Email from Henry Middleditch to Lex Greensill dated 28 January 2019 (GCU.0005.0005.4675), under which Henry Middleditch asks Lex Greensill: 'Are you happy to proceed with these drawdowns.

Poole: £995,430.22

Derby: £1,000,000'

(c) Email from Deborah Medforth (Catfoss) to Henry Middleditch and Benjamin Foreman dated 31 January 2019 (GCU.0005.0005.6947), copying Lex Greensill and others, attaching a signed PAUF Authorisation Letter and PAUF File for Catfoss DBT (GCU.0005.0005.6949).

(d) Email from Benjamin Foreman to Henry Middleditch dated 2 February 2019 (GCU.0005.0005.7533), copying Lex Greensill, Brett Downes and others, attaching a signed PAUF Authorisation Letter and PAUF file for Catfoss DBT (GCU.0005.0005.7535; GCU.0005.0005.7534).

1035 At the time of requesting insurance cover in respect of the Noviniti Colchester Risk under the 2019 Policy, Lex Greensill knew:

(a) the matters referred to in paragraphs 1033, 1034, 961 and 962 above;

(b) that he had not disclosed the matters referred to in paragraphs 1033, 1034, 961 and 962 when initially requesting cover or renewing the Catfoss Renewables Risk, Noviniti Pool Risk and Catfoss DBT Risk;

(c) that, contrary to the NHS IPU Representation, the Catfoss Liquidity Issues had still not been resolved, and had in fact worsened;

Particulars

(a) IAL repeats the particulars to paragraphs 1033 and 1034 above.

(b) Email from David Keeling of GCUK to Brett Downes (Chief Risk Officer) of GCUK dated 20 March 2019 (GCU.0010.0007.9261): '*They think it will fly through with Lex eventually, but we are taking 30 year performance risk on Andrew and Ben Foreman… say no more'*.

(c) Emails between David Keeling, Henry Middleditch, Miroslav Kněžický and Brett Downes of GCUK dated 20 March 2019 (GCU.0010.0007.9274) in which David Keeling states:

(i) in an email to Henry Middleditch: 'Sources and Uses of Funds – need to control this, the group are haemorrhaging money across all entities, money must be filtering to keep Andrew afloat. This is a

huge risk ongoing is Andrews survival if you are looking at long term management of these properties.'

(ii) in an email to Brett Downes: 'Brett, summary follows, I mentioned I would need to get you involved if this was urgent because of other matters with the group which I did not go into.'

(iii) in an email to Miroslav Kněžický: 'henry is off the planet. Proposing no payments to the builder... like getting a home loan for building a home but giving the money to you not the builder for work.'

(d) that GCUK had executed S44 Exclusivity and Fee Letter, by which GCUK agreed to provide a short-term working capital facility of up to two years and a long-dated lease financing facility of up to thirty years in respect of the Noviniti Colchester Construction Project (amongst other projects).

Particulars

S44 Exclusivity and Fee Letter (CSA.0001.0006.1148).

1036 At the time of requesting an increase in the customer limit for the Noviniti Poole Risk and Noviniti Colchester Risks under the 2019 Policy, Lex Greensill knew:

(a) the matters referred to in paragraph 1033, 1034, 1035 and 962 above;

(b) that he had not disclosed the matters referred to in paragraphs 1033, 1034, 1035 and 962 above, when initially requesting cover or renewing the Catfoss Renewables Risk, Noviniti Poole Risk, Catfoss DBT Risk or Noviniti Colchester Risk;

(c) that, contrary to the NHS IPU Representation, the Poole Hospital NHS Foundation Trust and the East Suffolk and North Essex NHS Foundation Trust had not, in fact, provided IPUs to the borrowers or GCUK, or were unlikely to agree to provide IPUs to the borrowers or GCUK, in respect of the Noviniti Poole and Noviniti Colchester Risks;

Particulars

(a) Email from Henry Middleditch (GCUK) to Benjamin Foreman (Catfoss Group) copying Neil Hobday, Vesna Vladusic, Julian Kirk and James Hosking (GCUK) dated 17 May 2019 (GCU.0010.0008.8015). Henry Middleditch states: 'Getting the NHS to agree to the IPU will be key as this is the cleanest structure easily. Anything else would require the NHS guaranteeing Catfoss which puts complexity and Catfoss risk into the structure'.

(b) Email from Vesna Vladusic of GCUK to Henry Middleditch of GUCK, Lex Greensill dated 24 May 2019 (GCU.0005.0011.2722). Under the heading 'Catfoss – Poole', Vesna Vladusic states: 'Ben anticipates that they may push back on providing an IPU on top of the Lease Agreement so we may need to consider alternatives … We are still pushing for the IPU approach';

(c) Email from Vesna Vladusic of GCUK to Henry Middleditch of GCUK and Lex Greensill dated 31 May 2019 (GCU.0005.0011.2722). Under the heading 'Poole', Vesna Vladusic states: 'NHS will be unable to enter into the IPU in time. Therefore we will need to rely on the lease document and ensure that cash received under the lease are assigned to the Buyer and paid through a segregated account';

(d) Microsoft Teams message from Miroslav Kněžický (Senior Credit Analyst) of GCUK to Andrew Kuyk (Chief Credit Officer) of GCUK dated 27 August 2019 (GCU.0012.0004.7034). Miroslav Kněžický states: 'I think it would be sensible to give Brett a heads up regarding Noviniti and Colchester as well - especially now when maturity is approaching and NHS IPU still seems far away'; and

(e) Credit Application Report – Noviniti Colchester dated 26 September 2019 (GCU.0010.0010.5205, relevantly attaching GCU.0010.0010.5210) p. 5: ‘£150K agreed by Lex as the inducement to get the IPU over the line and onto GC rails’, ‘IPU documentation reviewed by Trust Board for approval whose outstanding comments are focused on aligning IPU document and lease agreement’, and p. 12 ‘The Trust have been presented with the IPU documentation (was not included at the outset of the facility). We are nearing final agreement on these, albeit we do not have direct access to the Trust (being handled via Ben Foreman)’. Subsequent iterations of the Credit Application Report for Noviniti Colchester dated 22 October 2019 (GCU.0009.0011.9441), 19 January 2021 (GCU.0009.0020.9584), 2 February 2021 (GCU.0009.0021.3927) and 12 February 2021 (GCU.0009.0021.7485) also each include the above wording.

(f) Email from Ricardo Oliveira to the Credit Committee, including Lex Greensill and Brett Downes, containing the Credit Committee Meeting Minutes from 27 September 2019 (GCU.0005.0017.1903). The meeting minutes record that Henry Middleditch ‘pointed out that, we have not agreed IPU from the trusts yet and that this is still being clarified’. The meeting minutes also record: Roland: Where are we with IPU, as the profit we are advancing is partially based on the fact that we will receive IPU, is there enough profit in the deal based on a down side case of not getting IPU? Lex Confirmed that we are certain there will be IPU from NHS trusts’.

(d) that the increased limits of GBP 1,500,000 for the Noviniti Poole Facility and Noviniti Colchester Facility (total of GBP 3,000,000) were to be used to:

(i) pay incentives or inducements to relevant NHS Trusts, Noviniti Poole and Noviniti Colchester to attempt to cause those NHS Trusts to enter into IPUs;

(ii) pay "profit advances" of GBP 1,851,154, to support the stability of the Catfoss Group and assist Catfoss Renewables to meet its interest obligations under the Catfoss Renewables Facility.

Particulars

(a) Email from Miroslav Kněžický of GCUK to David Keeling of GCUK dated 2 April 2019 with the subject line: 'RE: Final Credit Approval: Noviniti Colchester Limited £8.7m' (GCU.0013.0005.2606). Miroslav Kněžický states: 'So you think they are going to use that money settle Renewables outstandings? That money would naturally be then missing somewhere again and the spinning of plates would continue'

(b) Emails between Henry Middleditch and David Keeling of GCUK, copying Miroslav Kněžický and Stephen Fleming of GCUK, dated 26 September 2019 and titled 'CRL'. On 26 September 2019 Henry Middleditch states: 'Agreed Poole will dip into our profit by c.300k. This will be taken out of other deals (Colchester) or others in the pipeline. Agree this is far from ideal but is part of the larger plan as I understand it'. David Keeling responds to this email and states: 'Just to confirm I am talking about the Newcastle Waste Catfoss business'.

(c) Email from Henry Middleditch to Lex Greensill dated 25 September 2019 (GCU.0005.0016.4700) in which Henry Middleditch states (amongst other things) that in respect of Noviniti Colchester and Noviniti Poole: 'The profit advances would be taken out of Catfoss's share of the re-fi and are required to support the business today'. In response to this email, Lex Greensill emails Henry Middleditch on 25 September 2019 (GCU.0005.0016.4840) and states: 'Looks good, Henry. You have my full support.'

(d) The Agenda of the Credit Committee Meeting dated 27 September 2019 which was circulated by Craig Pinnington via email on 26 September 2019 to Lex Greensill and the other Credit Committee members, including Brett Downes (GCU.0005.0016.5598).

(e) Greensill Credit Application Report – Amendment – Noviniti Colchester Limited dated 26 September 2019 (GCU.0005.0016.5602), which was

considered by the Credit Committee for approval of the increase in limit (GCU.0005.0017.1903). The first page records the 'Facility Team' as including Lex Greensill, Henry Middleditch and Miroslav Kněžický, Tom Kennedy and Will Brown.

(f) Greensill Credit Application Report – Amendment – Noviniti Poole Limited dated 26 September 2019 (GCU.0005.0016.5601), which was considered by the Credit Committee for approval of the increase in limit (GCU.0005.0017.1903). The first page records the 'Facility Team' as including Lex Greensill, Henry Middleditch and Miroslav Kněžický, Tom Kennedy and Will Brown.

(g) Email from Ricardo Oliveira to the Credit Committee, including Lex Greensill and Brett Downes, containing the Credit Committee Meeting Minutes from 27 September 2019 (GCU.0005.0017.1903) that records discussion of 'inducement funds' being paid to 'Noviniti and NHS' to obtain IPUs and the payment of a 'profit advance payment… to support the wider group' and to support 'the interest payment by Catfoss Renewables'.

(h) Internal GCUK Memorandum titled 'Catfoss – Risk exposure and ECL provisioning' dated 5 February 2020 (GCU.0009.0013.3863), which states: p.1 '£844k of the £1.5m increase in facility was paid to Catfoss Investments to cover expenses and GC interest for Catfoss Renewables', p.1 'this revenue of £246k will not be recognised in 2019, given continued uncertainty over other group companies, particularly Catfoss Renewables', and p.3 'Conclusion Approx. £600k of revenue for origination discount and £400k for interest due on Catfoss Renewables has not been recognised as at June 2019 due to uncertainty over the timing of their recoverability given the shorter term cash flow issues across the group, as well as the timing of the invoicing being subsequent to the year end.' A version of this Memorandum was circulated internally within GCUK (GCU.0009.0013.4619) including between Henry Middleditch and Miroslav Kněžický of GCUK under an email dated 7 February 2020 (GCU.0009.0013.4618), in which Henry Middleditch states that the Memorandum has been: 'Seen and approved by Lex'.

1037 The knowledge of Lex Greensill of the matters in paragraphs 1033 to 1036 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

1038 The knowledge of Lex Greensill of the matters in paragraphs 1033 to 1036 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

1039 Further and in the alternative to paragraph 1033 above, at the time the insurance cover was requested for the Catfoss DBT Facility, Danyon Lloyd (Chief Executive Officer of Greensill Bank) knew that the funds advanced under the Catfoss DBT Facility would be used for purposes other than the NHS hospital project, including to:

(a) pay profit advances to the Catfoss Group;

(b) pay the Structuring Fee to GCUK; and

(c) make payments to Andrew Foreman and other entities in the Catfoss Group.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

(a) His senior position as Chief Executive Officer of Greensill Bank, meaning he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly upon the risk of Catfoss DBT being unable to repay the amounts advanced to them and thus upon the nature of the Catfoss DBT Risk;

(b) His awareness and involvement in matters relating to the Catfoss DBT Facility, including:

(i) The Credit Application Report for Catfoss DBT dated 19 December 2018 (GCU.0005.0004.8291).

(ii) The Minutes of the Credit Committee Meeting dated 19 December 2018 which were circulated following the meeting by David Keeling by email on 9 January 2019 to Danyon Lloyd and the other Credit Committee members (GCU.0007.0002.3850). The Minutes record that Catfoss DBT was ‘Approved on a unanimous basis’.

(iii) Email from David Keeling to Danyon Lloyd and others dated 11 January 2019 (GCU.0005.0004.8290) in which David Keeling states: ‘I can confirm FINAL APPROVALS have been obtained from Credit Committee for Catfoss DBT Limited, for £15.3m’ and in respect of insurance confirmation, states: 'Insurance to be arranged as a CP, with likelihood it will be provided by TBCC under a 90-10 policy'.

(iv) Email from Scott Newby to the Risk Committee, including Danyon Lloyd, dated 21 January 2019 (GCU.0012.0003.5037), attaching the ‘Risk Committee pack’ for the 23 January 2019 Risk Committee

Meeting (GCU.0012.0003.5038). The 'Risk Committee pack' includes the 'Chief Risk Officer Report - December 2018' which states: *'TBCC Exposure: The largest insurer exposure continues to be TBCC. This grew again in December as we have added new cover Nokia America AR, Liberty Commodities AR, Catfoss DBT Limited and increased the Bluestone AR facility'*.

Further particulars may be provided after completion of discovery by GCUK.

1040 The knowledge of Danyon Lloyd of the matters set out in paragraph 1039 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 27 and 28 above.

1041 Further and in the alternative to paragraph 1034 above, at the time the insurance cover for Catfoss DBT was purportedly renewed under the 2019 Policy Danyon Lloyd (Chief Executive Officer of Greensill Bank) knew that, on 21 December 2018, GBP 11,400,000 of the Catfoss DBT Facility had been drawn down, including with approximately: (i) GBP 10,400,000 being paid to GCUK as pre-payment of the Structuring Fee.

Particulars

IAL refers to the particulars in paragraphs 1039 above.

1042 The knowledge of Danyon Lloyd of the matters set out in paragraphs 1041 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 27 and 28 above

1043 Further or in the alternative to paragraphs 1033 to 1036 above, Brett Downes (Chief Risk Officer) of GCUK knew each of the matters set out in paragraphs 1033 to 1036 above.

Particulars

IAL refers to the particulars in paragraphs 1033 to 1036.

1044 The knowledge of Brett Downes of the matters in paragraphs 1033 to 1036 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

1045 The knowledge of Brett Downes of the matters in paragraphs 1033 to 1036 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above.

Knowledge of materiality

1046 Each of the matters referred to in paragraphs 1033 to 1036 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk or Noviniti Colchester Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) the matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) the matters misrepresented or not disclosed bore directly on the risk of Noviniti Poole, Catfoss DBT or Noviniti Colchester being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

1047 Further, or in the alternative to paragraph 1046 above, each of the matters referred to in paragraph 1033 to 1036 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole, Catfoss DBT or Noviniti Colchester.

Particulars

IAL refers to the particulars to paragraph 1046 above.

1048 The knowledge of Lex Greensill of the matters set out in paragraphs 1046 and 1047 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

1049 The knowledge of Lex Greensill of the matters set out in paragraphs 1046 and 1047 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 22 and 23 above.

1050 Each of the matters referred to in paragraphs 1039 and 1041 above were matters:

(a) which Danyon Lloyd knew were material to the decision whether to extend or renew insurance cover in respect of the Catfoss DBT Risk; or

(b) alternatively to paragraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Catfoss DBT Risk.

1051 Further, or in the alternative to paragraph 1050 above, each of the matters referred to in paragraphs 1039 and 1041 above was a matter which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Catfoss DBT Risk.

Particulars

IAL refers to the particulars to paragraph 1050 above.

1052 The knowledge of Danyon Lloyd of the matters set out in paragraphs 1050 and 1051 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above and Danyon Lloyd's position as CEO of Greensill Bank.

1053 Further and in the alternative to paragraph 1046 above, each of the matters referred to in paragraphs 1033 to 1036 above were matters:

(a) which Brett Downes (Chief Risk Officer of GCUK) knew was material to the decision of whether to accept or renew the Noviniti Poole Risk, Catfoss DBT Risk or Noviniti Colchester Risk; or

(b) alternatively to paragraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes' knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and the non-disclosures bore directly on the risk of Noviniti Poole, Catfoss DBT or Noviniti Colchester being unable to repay the amounts advanced to it and thus upon the Noviniti Poole Risk, the Catfoss DBT Risk and the Noviniti Colchester Risk.

1054 Further, or in the alternative to paragraph 1053 above, each of the matters referred to in paragraphs 1033 to 1036 above was a matter which a reasonable person in the position of Brett Downes could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole, Catfoss DBT or Noviniti Colchester.

Particulars

IAL refers to the particulars to paragraph 1053 above.

1055 The knowledge of Brett Downes of the matters in paragraphs 1053 and 1054 above can be attributed to Greensill Bank.

Particulars

IAL refers to the particulars in paragraphs 29 and 30 above.

1056 The knowledge of Brett Downes of the matters in paragraphs 1053 and 1054 above can be attributed to GCPL.

Particulars

IAL refers to the particulars in paragraphs 22 and 23 above

Breach of duty of disclosure

1057 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 1033 to 1036 above before the cover was placed or renewed for, or limits extended for, the Noviniti Poole Risk, the Catfoss DBT Risk or the Noviniti Colchester Risk.

1058 Greensill's failure to disclose the matters referred to in paragraphs 1033 to 1036 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of the matters pleaded in paragraphs 1033 to 1056 above.

Fraudulent non-disclosure

1059 By reason of the matters pleaded in paragraphs 1033 to 1056 above, Greensill's failure to disclose the matters referred to in paragraphs 1033 to 1036 above was fraudulent.

1060 The cover for the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk would not have been issued if the matters referred to in paragraphs 1033 to 1036 above had been disclosed.

1061 In the alternative to the allegation in paragraph 1059 above, the cover for the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 1033 to 1036 had been disclosed.

1062 By reason of the matters pleaded in paragraphs 1059 to 1061 above, IAL is entitled to avoid the Noviniti Poole, Catfoss DBT and Noviniti Colchester Endorsements.

Innocent non-disclosure

1063 In the alternative to the matters pleaded in paragraphs 1059 to 1062 above, and by reason of the matters referred to in paragraphs 1033 to 1036 above as pleaded in paragraphs 1057, 1058, 1060 and 1061 above, IAL is entitled to reduce its liability under the Noviniti Poole, Catfoss DBT and Noviniti Colchester Endorsements to zero (or such other amount as the court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D16 Liberty France

D16.1 Policy and Endorsements

1064 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Liberty France was endorsed as a customer under the 2019 Policy by means of Customer Endorsement No 35 dated 13 March 2019, alleged to be effective 1 March 2019 (the **Liberty France Endorsement**).

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 130.

Customer Endorsement 35 (CSA.0001.0008.3181).

2019 Policy (CSA.0001.0001.3171).

1065 At all material times, Liberty France was a company incorporated under the laws of the United Kingdom.

1066 At all material times, Liberty France:

(a) was a non-operational holding company; and

(b) was part of GFG, being a group of companies associated with Mr Sanjeev Gupta.

1067 At all material times, Aluminium Dunkerque SAS (**Aluminium Dunkerque**) was a company incorporated under the laws of France.

1068 At a time presently unknown to IAL but in or around December 2018, the Liberty Group acquired Aluminium Dunkerque from Rio Tinto, and became a wholly owned subsidiary of Liberty France.

Particulars

Media release by Liberty Steel Group titled 'Liberty completes acquisition of Aluminium Dunkerque' and dated 14 December 2018: Liberty completes acquisition of Aluminium Dunkerque - LIBERTY Steel Group (accessed 4 February 2026).

News release by Rio Tinto titled 'Rio Tinto completes sale of Dunkerque aluminium smelter' and dated 14 December 2018: Rio Tinto completes sale of Dunkerque aluminium smelter | Global (accessed 4 February 2026).

1069 At all material times, Westford was a company incorporated under the laws of Hong Kong.

D16.2 Liberty France Misrepresentations and No Default Misrepresentation

The Representations

1070 Between about 11 to 15 September 2018, Greensill inquired with BCC about the provision of insurance cover with respect to financing provided by GCUK to Aluminium Dunkerque and/or its then holding company, Aluminium France Industries (UK) Limited (**AFI UK**) (**AD Facility**) (which was soon to be sold by Rio Tinto to the Liberty Group later that year).

Particulars

Email from Lex Greensill to Brereton dated 11 September 2018 with the subject line 'Aluminium Dunkerque' (GCU.0005.0001.8862) and attachments, including a document titled 'Aluminium Dunkerque CAP 11 September 2018' (GCU.0005.0001.8863), which referred to the AD Facility as a 'SCF facility' with 'tenors up to 180 days' for Aluminium Dunkerque 'to support the financing of their working capital' and stated further 'The facility currently being proposed is an SCF programme with Rio Tinto Marketing PTE as the supplier, discounting [Aluminium Dunkerque's] payables'.

Email from Lex Greensill to Brereton dated 14 September 2018 with the subject line 'Aluminium Dunkerque, Atlantic 57 and Catfoss' (BCC.0001.0002.1575), in which Lex Greensill stated that whilst the customer under the AD Facility would be AFI UK (the former holding company of Aluminium Dunkerque), it would be 'a condition subsequent to closing that Aluminium Dunkerque guarantees the facility or accedes [sic] on a joint and several liability basis within 7 days of closing with Rio Tinto'. The stated reason for this proposed structure was so that the facility did not run afoul of French government laws regarding financial assistance for acquisitions.

Statements made by Lex Greensill to Brereton in discussions that took place on or around 12 and 15 September 2018.

Emails from Lex Greensill and John Whelan (GCUK) to Brereton dated 15 September 2018 with subject line 'Re: Aluminium Dunkerque, Atlantic 57 and Catfoss' (BCC.0001.0002.1577).

1071 As part of this request, Greensill represented to Brereton, among other matters, that:

(a) the AD Facility was a 'SCF facility' with maximum 'tenors of up to 180 days' (the **AD SCF Misrepresentation**); and

(b) Rio Tinto was, post-sale, going to operate as a supplier to Aluminium Dunkerque with the financing provided under the AD Facility to involve

discounting Aluminium Dunkerque's payables (the **Supplier Misrepresentation**),

(together, the **AD Facility Misrepresentations**).

Particulars

The particulars to paragraphs 1070 are repeated.

1072 The AD Facility Misrepresentations were continuing misrepresentations.

1073 The AD Facility Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to the particulars in paragraphs 20, 21, 22, 23, 26, 27, 29 and 30 above.

1074 On or around 17 September 2018, Brereton provided Greensill with a signed copy of Customer Endorsement No 29, which purported, with effect from 17 September 2018, to endorse AFI UK and Aluminium Dunkerque as Customers under the 2017 Standalone Policies, with:

(a) an Aggregate Customer Limit of USD60,000,000; and

(b) a Maximum Tenor of '180 days from the date the Insured acquires the Debt'.

Particulars

Email from Brereton to John Whelan (GCUK) and Ewan Berkemeier (Marsh), copied to Lex Greensill and Brett Downes (GCUK) (among others), dated 17 September 2018 (AGB.0003.0001.0002) and attaching signed copies of Customer Endorsement 29 in relation to the AD Facility (AGB.0003.0001.0003, pages 1 and 2).

1075 Between about 6 to 8 October 2018, Greensill and Marsh requested that Brereton increase the insurance limit with respect to the AD Facility from USD60 million to USD75 million.

Particulars

Email from Edward Smith (Marsh) to Brereton dated 6 October 2018 with the subject line 'Greensill – Aluminium Dunkerque' (GCU.0004.0018.7650), in which Mr Smith states 'Greensill have confirmed NKORL [no known or reported losses] and have given us the order to bind'.

Email from Lex Greensill to Brereton dated 6 October 2018 with the subject line 'FW: Greensill – Aluminium Dunkerque' (GCU.0004.0018.7728).

Email exchange between Brett Downes and Brereton dated 8 October 2028, with the subject lines 'Are you free for a quick chat on Aluminiun Dunkirk [sic]' and 'Aluminiun Dunkirk [sic] - temporary insurance' (GCU.0004.0018.8361).

1076 Between about 8 to 10 October 2018, Brereton confirmed to Greensill that an increase in the insurance limit to USD75million could only be on the basis of a reduced 66% indemnity percentage.

Particulars

Email from Brereton to Brett Downes dated 8 October 2018 with the subject line 'Re: Are you free for a quick chat on Aluminiun Dunkirk [sic]' (BCC.0001.0002.1774), stating 'could we indemnify at 66% until I can endeavour to get the ok to ride to higher level?'.

Email from Brereton to Brett Downes (GCUK) and Ewan Berkemeier (Marsh) dated 8 October 2018 with the subject line 'Re: Greensill Priority items for today', (BCC.0001.0002.1782) stating: 'In respect of Aluminium Dunkerique [sic] I shared some correspondence with Brett last evening indicating I could agree $75 million at 66% indemnity, until such time as I could arrange the approvals to spike the commitment further….'.

Email exchange between Brereton and Ewan Berkemeier (Marsh) (among others) dated 10 October 2018 (AGB.0002.0001.0387).

1077 On or around 12 October 2018, Brereton provided Greensill (via Marsh) with signed copies of Customer Endorsements No 29(i), which purported, with effect from 17 September 2018, to endorse AFI UK and Aluminium Dunkerque as Customers under the 2017 Standalone Policies with:

(a) an Aggregate Customer Limit of USD75,000,000;

(b) an insured percentage of 66.66% and a Maximum Limit of Liability of USD50,000,000 applied under the 2017 Master Policy 3691 (but not the 2017 Parallel Policy 3690);

(c) the condition that if any claim was made under the 2017 Parallel Policy 3690, GCPL and GCUK would be responsible for the payment of the relevant deductible (as detailed therein) under cl 3.5 of the 2017 Master Policy 3691; and

(d) a Maximum Tenor of '180 days from the date the Insured acquires the Debt'.

Particulars

Email from Brereton to Ewan Berkemeier and Edward Smith (both of Marsh) with subject line 'Re: Greensill Priority items for today' dated 12 October 2018

(BCC.0001.0002.1816), attaching signed copies of Customer Endorsements No 29(i) in relation to the AD Facility (BCC.0001.0002.1817).

1078 In or around late December 2019 to January 2019, following the sale from Rio Tinto, the final organisation structure for Aluminium Dunkerque had been decided and the ultimate holding company was to be Liberty France rather than AFI UK (as originally intended). In light of this, GCUK proposed to replace the existing AD Facility with a new facility between GCUK and Liberty France (**Liberty France Facility**). It was intended that Aluminium Dunkerque would accede to the new Liberty France Facility shortly after its commencement. The original AD Facility would be terminated and repaid in full contemporaneously with the establishment of the new facility.

Particulars

Email from Simon Nasta (Group General Counsel at Wyelands Capital) to Lex Greensill (among others) dated 24 December 2018 and with the subject line 'Aluminium Dunkirk - Novation Agreement' (GCU.0005.0004.4214), stating 'In India we briefly discussed potentially moving the existing Greensill facility up a level in the Dunkerque corporate structure in order not to cause any danger of a breach under the BR Mezz facility. On that basis and ahead of the drawdown date under the BR Mezz facility please find attached a draft novation agreement in relation to the Greensill facility'.

Email response from Lex Greensill to Mr Nasta dated 2 January 2019 (GCU.0005.0004.4029), proposing instead to 'Sign a new Customer Agreement with the entity you propose (and create new payment obligations for us to purchase under that agreement). This would include Aluminium Dunkirk as a co-obligor or guarantor (as originally envisaged)' and 'We use the proceeds of this transaction to repay the outstanding payment obligations due under the existing Customer Agreement (and then we terminate the old facility).'

Email from Lex Greensill to Brereton dated 10 January 2019 with the subject line 'Aluminium Dunkirk' (BCC.0001.0001.1560).

1079 On or around 10 January 2019, Greensill informed Brereton of the matters pleaded in paragraph 1078 above, and requested that new customer endorsements be signed in order to give effect to the final structure. As part of that update, Greensill also stated:

(a) Liberty House would be providing a performance guarantee; and

(b) it was intended that Aluminium Dunkerque would accede to the Liberty France Facility 'shortly after its commencement'.

Particulars

Email from Lex Greensill to Brereton dated 10 January 2019 copying John Whelan, Brett Downes, Julian Macey-Dare, Ewan Berkemeier, Edward Smith and Sophie Dyke (BCC.0001.0001.1560; BCC.0001.0001.1561; BCC.0001.0001.1562).

1080 On or around 10 January 2019, Marsh provided Brereton with drafts of 'NIL' Customer Endorsements 29(ii) and Customer Endorsements 64 and requested that he return signed copies of those endorsements.

Particulars

Email from Edward Smith (Marsh) to Lex Greensill and Brereton copying John Whelan, Brett Downes, Julian Macey-Dare, Ewan Berkemeier, and Sophie Dyke, dated 10 January 2019 with the subject line "Re: Aluminium Dunkirk" and attaching drafts of 'NIL' Customer Endorsement 29(ii) and Customer Endorsement 64 (GCU.0005.0004.7259; GCU.0005.0004.7260; GCU.0005.0004.7261; GCU.0005.0004.7262; GCU.0005.0004.7263), stating 'I have also attached nil endorsements for 29(ii) for GCUK and GB as well. For the GCUK End 64, I have noted that that premium will be offset with what has already been paid for End 29 which is going to be cancelled so we won't invoice for any additional here as the period of cover and limits are the same'.

1081 On or around 11 January 2019, Brereton provided Greensill (and Marsh) with signed copies of:

(a) the 'NIL' Customer Endorsements No 29(ii) under the 2017 Standalone Policies to account for the termination of the AD Facility; and

(b) new Customer Endorsements No 64 under the 2017 Standalone Policies in respect of Liberty France and Aluminium Dunkerque (being the replacement Liberty France Facility).

Particulars

Email from Brereton to Edward Smith (Marsh) and Lex Greensill dated 11 January 2019 with the subject line 'Re: Aluminium Dunkirk' attaching document titled 'endorsement varied 11012019' (BCC.0001.0002.2397; BCC.0001.0002.2398).

1082 On or around 1 March 2019, Greensill (through its broker, Marsh) requested that BCC extend insurance cover under the Master Policy (TB-03691) and 2019 Policy in respect of debt owed by Liberty France and/or Aluminium Dunkerque (**Liberty France Risk**) (**Renewal Request**). As part of that Renewal Request, Marsh stated that 'Greensill have confirmed NKORL [no known or reported losses] and have given us the order to bind'.

Particulars

Email from Edward Smith (Marsh) to Brereton dated 1 March 2019 the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0633), attaching a copy of the document styled 'Customer Endorsement 35' in respect of the Master Policy (TB-03691) (AGB.0002.0001.0670).

Email from Edward Smith (Marsh) to Brereton dated 1 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0682), attaching a copy of the document styled 'Customer Endorsement 35' in respect of the 2019 Policy (AGB.0002.0001.0727).

1083 On 13 March 2019, Brereton provided Greensill (via Marsh) with signed copies of Customer Endorsements No 35, which purported, with effect from 1 March 2019, to endorse Liberty France as a Customer under the Master Policy (TB-03691) and 2019 Policy, with:

(a) an Aggregate Customer Limit of USD75,000,000;

(b) an Insured Percentage of 66.67% and a Maximum Limit of Liability of USD50,000,000 under the Master Policy (TB-03691) (but not the 2019 Policy);

(c) the condition that if any claim was made under the 2019 Policy, GCPL and GCUK would be responsible for the payment of the 33.33% deductible under cl 3.5 of the Master Policy (TB-03691); and

(d) a Maximum Tenor of '180 days from the date the Insured acquires the Debt'.

Particulars

Email of Edward Smith (Marsh) to Brereton dated 1 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0633), attaching Customer Endorsement No 35 in respect of the Master Policy (TB-03691) (AGB.0002.0001.0670).

Email of Edward Smith (Marsh) to Brereton dated 1 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0682), attaching Customer Endorsement No 35 in respect of the 2019 Parallel Policy (AGB.0002.0001.0727).

Email from Edward Smith (Marsh) to Brereton dated 4 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0740), attaching Customer Endorsement No 35 in respect of the 2019 Parallel Policy (AGB.0002.0001.0767).

Email from Edward Smith (Marsh) to Brereton dated 4 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0854) and

Customer Endorsement No 35 in respect of the Master Policy (TB-03691) (AGB.0002.0001.0906).

Email from Brereton to Edward Smith (Marsh) dated 13 March 2019, including Ewan Berkemeier (Marsh), with the subject line 'Re: Greensill Standalone Renewal' (BCC.0001.0002.2781) and attaching a document with various executed customer endorsements under the 2019 Policy, including Customer Endorsement No 35 in respect of 'Liberty France Aluminium Holdco Ltd / Aluminium Dunkerque SAS' (BCC.0001.0002.2782, page 15).

1084 By reason of the matters pleaded in paragraphs 1070 to 1079 above, including the AD Facility Misrepresentations, at all material times prior to Brereton signing and returning to Greensill the Liberty France Endorsement on 13 March 2019, Greensill represented to Brereton that:

(a) the Liberty France Facility was to be on the same terms and of the same nature as the AD Facility (but with Liberty France as the Customer rather than AFI UK and/or Aluminium Dunkerque), such that the new facility was:

(i) a 'supply chain facility'; and

(ii) for short-term lending with maximum tenors of up to 180 days,

(the **Liberty France SCF Misrepresentation**);

(b) Rio Tinto was still intended to operate as a supplier to Aluminium Dunkerque with the financing provided under the supply chain facility to involve discounting Aluminium Dunkerque's payables (the **Rio Tinto Supplier Misrepresentation**),

(collectively, the **Liberty France Misrepresentations**).

1085 Further, or in the alternative, by reason of the matters pleaded in paragraphs 1079 and 1082 to 1083 above, prior to Brereton signing and returning the Liberty France Endorsement on 13 March 2019, Greensill represented to Brereton that there had been no defaults or non-payments under the AD Facility and/or the Liberty France Facility (**No Default Misrepresentation**).

Particulars

This representation was partly express and party implied.

In so far as it was express, the particulars to paragraph 1082 and the particulars to sub-paragraphs (a) to (d) of paragraph 1083 are repeated. In each of the correspondence referred to at those paragraphs, Greensill (through its broker Marsh) represented to Brereton that it had confirmed there were 'NKORL' , meaning 'no known or reported losses'.

In so far as it was implied, it was implied by the fact that at no time prior to the Renewal Request, or signing of the documents referred to in paragraph 1083 above, was Brereton told of any defaults or non-payments under the AD Facility and/or the Liberty France Facility.

1086 The Liberty France Misrepresentations and the No Default Misrepresentation were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

IAL refers to the particulars in paragraphs 20, 21, 22, 23, 26, 27, 29 and 30 above.

Representations were misleading

1087 The Liberty France SCF Misrepresentation was false and/or misleading because:

(a) having regard to the SCF Representation at paragraph 31 above, the concept of an 'SCF facility' was used by Greensill, and understood by Brereton, as a form of short-term financing referable to genuine underlying invoices that evidence trade;

(b) while Greensill represented that the AD Facility and/or the Liberty France Facility related to an SCF facility with 'tenors of up to 180 days' and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact:

(i) the facilities related to financing facilities with no maximum duration or, in the alternative, a duration longer than 180 days;

(ii) Greensill considered that the Liberty France Facility was more akin to a 're-invoicing deal due to the single supplier (Westford) providing consumables'; and

(iii) Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facilities be based on the underlying trade of goods or services by Liberty France and/or Aluminium Dunkerque;

Particulars

The fact that the facilities had no maximum duration or, alternatively, a duration longer than 180 days is evidenced by, or can otherwise be inferred from:

(a) the matters pleaded at paragraphs 1087(d), 1087(e) and 1089(b) below, and the particulars thereto;

(b) defence of Sanjeev Gupta in proceedings CL-2023-000136 in the High Court of Justice (UK), dated 2 August 2024 (IAL.500.016.0001), para 27.

(c) Sanjeev Gupta's third witness statement dated 22 August 2022 in Case No. CR-2021-000622 in the LCL Winding-Up Proceedings, para 16-17, 27, 30, 32, 34, 36-41.

(d) Sanjeev Gupta's fourth witness statement dated 31 October 2022 in the LCL Winding-Up Proceedings (IAL.500.016.0003), para 13-24.

The fact that Greensill considered the Liberty France Facility was not an SCF facility is evidenced by, or can otherwise be inferred from, at least the following:

(a) the minutes of the Greensill Credit Committee meeting held on 21 September 2018 (GCU.0004.0018.2948), attended by Lex Greensill, Brett Downes, Roland Hartley-Urquhart, Myrjam Tschoeke, Mike Gilhuley and Danyon Lloyd, which describe the Liberty France Facility as a 're-invoicing deal due to the single supplier (Westford) providing consumables', which evidence the Liberty France Facility to be a 're-invoicing facility' rather than supply chain finance; and

(b) the email from Craig Pinnington to Vesna Vladusic and Lewis Protheroe copying Henry Middleditch dated 5 March 2019 (GCU.0013.0004.9766), which states: "*If we get the SCF they* [Liberty] *already have running with* AD [Aluminium Dunkerque] *acceding to it then we could start actually running it as an SCF facility once some of the existing maturities clear*".

The fact that the facilities were not based on underlying invoices evidencing trade of goods or services, or alternatively that it was not intended by GCUK that the invoices would relate to the trade of goods or services, may be inferred from:

(a) the particulars to paragraph 1087(c) below; and

(b) the matters alleged in paragraph 1088 below, and the particulars thereto.

(c) funds borrowed from GCUK under the AD Facility and/or the Liberty France Facility were used for purposes other than supply chain finance, including to discharge maturities owed by Simec and Westford to GCUK and to buy back other notes;

Particulars

Email from Lex Greensill to Sanjeev Gupta (GFG) dated 20 September 2018 with the subject line 'RE: AD and SIMEC' (GCU.0005.0002.0321), in which Lex states: 'Monday 24 October – We are going to do an initial draw down under the Aluminium Dunkirk SCF facility such that the net proceeds are $30mm. These proceeds will not be paid to Westford or Liberty House Group, but will be retained

by Greensill and discharge the $30mm maturity due by SIMEC on Monday 24 October'.

Email from Craig Pinnington to Barnaby Lynch, Liz Boyes and Patrick Davis (GCUK) dated 20 September 2018 with the subject line 'RE: RCAP Aluminium France Industries UK- aluminium Dunkerque - 18 September 2018 LB Comments.docx' (GCU.0010.0005.0595), in which Mr Pinnington states: 'As I understand it, the first $30m is being used to repay the SIMEC amounts currently in HIF, then the next $30m will be to fund this acquisition, so we should expect $60m to be in use pretty much continuously, as they will presumably draw down again once these mature'.

Email from Brett Downes to Barnaby Lynch and Craig Pinnington (all Greensill) dated 20 September 2018 with the subject line 'RE: Aluminium Dunkirk' (GCU.0009.0005.0121), in which Brett states: 'Yep. Westford is the supplier on both trades and the beneficiary is Liberty House Group, however the cash in the first trade will be retained by us and used to payoff SIMEC. I don't think we can put this last piece in the RCAP. I am not sure how to deal with it'.

Emails between Lex Greensill and Sanjeev Gupta dated on or around 2 October 2018 (GCU.0004.0018.4823) with the subject line 'Re: Westford', in which Lex states 'Please ensure that my team are not told that you are using the AD cash to fund the Westford maturity', and to which Sanjeev replies 'Won't sir, in fact won't tell mine either'.

The additional USD15 million funding (when the AD Facility limit was increased from USD60,000,000 to USD75,000,000) was used to 'buy back [GCUK's] uninsured GFG related positions from the CS HIF', as indicated in an email from Lex Greensill to Barnaby Lynch, Valerie Kirkaldy, Liz Boyes and John Luu, including Brett Downes and Robert Hough dated 8 October 2018 with the subject line 'FW: HIF GFG' (GCU.0013.0003.6173).

(d) from at least around 2018, Greensill and Sanjeev Gupta entered into an arrangement whereby GCUK agreed to provide long term financing to group of companies known as the "Gupta Family Group Alliance" or "GFG Alliance" associated with Mr Gupta in respect of all financing provided, or to be provided in the future, by GCUK to those companies (the **GFG Long Term Financing Arrangements**); and

Particulars

Defence of Sanjeev Gupta in proceedings CL-2023-000136 in the High Court of Justice (UK), dated 2 August 2024 (IAL.500.016.0001), para 27.

Sanjeev Gupta's third witness statement dated 22 August 2022 in Case No. CR-2021-000622 in the UK Insolvency and Companies Court (**LCL Winding-Up Proceedings**), para 16-17, 27, 30, 32, 34, 36-41.

Sanjeev Gupta's fourth witness statement dated 31 October 2022 in the LCL Winding-Up Proceedings (IAL.500.016.0003), para 13-24.

(e) pursuant to the GFG Long Term Financing Arrangements, in around the first quarter of 2020, Greensill and Sanjeev Gupta agreed that if GCUK no longer wished to advance further funds to any of the GFG companies in respect of existing facilities in place with any of the GFG companies, it would not seek repayment of funds already lent except on three-years' notice.

Particulars

The particulars to paragraph 1087(d) above are repeated.

1088 The Rio Tinto Supplier Misrepresentation was false and/or misleading because:

(a) the sole 'supplier' under the AD Facility and/or the Liberty France Facility was, or was at all times intended to be, Westford;

Particulars

The fact that Rio Tinto was not a supplier and Westford was (or was intended to be) the sole supplier is evidenced by:

(a) the supplier agreement dated 21 September 2018 between GCUK and Westford, provided in support of the Liberty France claim under the 2019 Policy (**Supplier Agreement**);

(b) the fact that no supplier agreement with Rio Tinto has been provided;

(c) the PAUFs submitted in respect of the facilities only identified Westford as supplier (GCU.0009.0016.9803; GCU.0009.0021.0032);

(d) email from Vicky Burch to the Greensill Credit Risk Team (among others) dated 27 September 2018 (GCU.0005.0002.1961), confirming approval of the 'new SCF facility' for AFI UK and Aluminium Dunkerque by the Greensill Credit Committee and attaching a document titled 'CAP Aluminium Dunkerque – vCC 19 September 2018' (GCU.0005.0002.1962), which refers to Westford being 'set up as the supplier under the program' (see page 2);

(e) email from Craig Pinnington to Roland Hartley-Urquhart, Lex Greensill, Danyon Lloyd, Brett Downes and the Greensill Credit Risk Team (among others) dated 20 September 2018 (GCU.0005.0002.0246), attaching a

'Credit Analysis Pack' and 'Relationship Credit Analysis Pack' in support of a request for a 'US$60m SCF facility […] initially to Aluminium France Industries UK Ltd, with Aluminium Dunkerque SAS to accede within 14 days. Max roll tenors 180 days, and sole supplier Westford Trade Services under the programme', (GCU.0005.0002.0247; GCU.0005.0002.0248); and

(f) the Credit Application Report submitted to the Greensill Credit Committee on 16 January 2019 in respect of the new Liberty France Facility, which states 'Westford Trade Services […] will be set up as the supplier under the program' (GCU.0009.0006.9826; GCU.0009.0006.9827).

(b) Westford was an entity that:

(i) purported to be a commodities trading house that provided trade finance lending;

(ii) had a close business relationship with GFG and/or Sanjeev Gupta;

Particulars

The relationship between Westford and GFG is demonstrated by at least the following facts:

(a) In November 2016, Hande Elmener (Westford) sent an email to Lex Greensill (among others) dated 22 November 2016 (GCU.0001.0006.6554) in which Westford, at Mr Gupta's request, sent to Lex Greensill a draft Heads of Agreement (GCU.0001.0006.6555) to facilitate Greensill's investment in Westford;

(b) the personal guarantee provided by Sanjeev Gupta and dated 17 April 2020 (BCC.0001.0006.4376); and

(c) the arrangements between GCUK, Westford and Liberty House (another GFG entity) entered into in around August 2020, which arrangements involved Westford drawing down in its facility with GCUK to notionally make a USD40,000,000 loan to Liberty House, which money was then held by GCUK as collateral for debts owed by the 'GFG Alliance' to GCUK.

(c) Westford did not have a genuine commercial business relationship with Aluminium Dunkerque, AFI UK or Liberty France.

Particulars

The absence of a genuine commercial business relationship is evident, or to be inferred, from at least the following facts:

(a) The 'invoices' identified in the PAUFs were originated within Greensill (who determined the amount and maturity date for the invoices), and were not genuine invoices for goods or services supplied by Westford to Aluminium Dunkerque, AFI UK or Liberty France. For example:

(i) On 19 September 2018, Patrick Davis (GCUK) sent an email to Ian Bryan and Chris Lockhart (both GCUK), copied to others at Greensill (GCU.0004.0018.1632), which stated: 'Can you please draw up a mock PO file (backwards calculate the gross) for 10 PO's staggered up to the max 180 day tenor (they are looking for maturities in the 155-180 bracket so split these every couple of days)…If you can get the file back to me in the next hour or so, so that I can circulate for approval and confirm maturity staggering that would be great' and sent a further email on the same date in response to a draft PO file, stating 'Those figures look too round for me, we need to have a net settlement of 30mm – which means the gross PO lines will need to be slightly larger than agg. 30mm'. The "invoices" referred to in the PAUF included future dated invoices;

(ii) On 19 September 2018, Barnaby Lynch sent an email to Lex Greensill, among others, with the subject line 'RE: Aluminium Dunkirk', attaching what was described as a "mock PO" for the Aluminium Dunkerque transaction based on an assumption of 10 invoices and notes 'we intend to then send this to WTS [Westford Trade Services] (or to Liberty?) on Friday for confirmation/submission' (GCU.0005.0001.9846).

(iii) On 21 September 2018, Patrick Davis sent an email to Chris Lockhart and Ian Bryan to create the PO file and the PAUF to be used for the trade on the following Monday (GCU.0004.0018.1632).

(b) Further to the above, the PAUF submissions with respect to the Liberty France Facility, including those dated 30 July 2020 and 15 January 2021, refer to invoices with future dates and identifies Westford as the sole supplier (GCU.0009.0016.9803, GCU.0009.0021.0032).

(c) In an email exchange between various representatives of Greensill and GFG Alliance entities over the course of 19 and 20 September 2018 with the subject line 'Re: Aluminium Dunkirk [sic]', Brett Downes (CRO of Greensill) states 'I am a little sketchy as to how or who we pay the first US$30m to in the sense of a supplier. I know it is not going to be Westford, or is it?'. In a subsequent email in the chain (on 20 September 2018 at 13:27), Barnaby Lynch sent an email (including Craig Pinnington) in which he stated 'One thing that is not clear to me is what receivables Westford

are actually selling to LHG? Do either of you have any clarity on this? I will ask Lex if not". Mr Downes responded "Yep. Westford is the supplier on both trades and the beneficiary is Liberty House Group, however the cash in the first trade will be retained by us and used to payoff SIMEC. I don't think we can put this last piece in the RCAP. I am not sure how to deal with it.' (GCU.0009.0005.0121).

(d) When first provided with a draft of the Supplier Agreement on 20 September 2018, Hande Elmener (Westford) wrote to Barnaby Lynch to seek clarification, stating 'I just want to understand the structure for my own sake. For example what are these receivables that I'm to be selling to you'. The response from Mr Lynch was 'Copying Jay in as the underlying trade is a matter between yourselves and Liberty House Group' (GCU.0005.0002.0322).

(e) On 5 March 2019, Craig Pinnington sent an email to Vesna Vladusic and Lewis Protheroe, copying Henry Middleditch, with the subject line 'Re: Aluminium Dunkirk – New Facility' in which he stated 'Me and Henry were on a call with Liberty House group today, and there was someone on from Aluminium Dunkerque basically enquiring if they could get an SCF facility in place. Seems to be a lot of left hand not knowing what the right is doing there. If we get the SCF they already have running with AD [Aluminium Dunkerque] acceding to it then we could start actually running it as an SCF facility once some of the existing maturities clear' (GCU.0013.0004.9766).

1089 The No Default Misrepresentation was false and/or misleading because:

(a) by March 2019, there was a trend of late payments by Liberty under their financing programmes with GCUK (including, specifically, the Liberty France Risk), and that this was a continuation of a broader trend of late payments for a number of months;

Particulars

Email from Henry Middleditch to Lex Greensill dated 7 March 2019 with subject title 'Liberty Late Payments' (GCU.0004.0024.4664), in which he states:

There has been a trend in the last few months of Liberty paying late under their programmes. I think it may be worth making Sanjeev aware of this before it becomes the norm. At this point, I believe it to be predominately an operational issue and a lagging factor of the year end liquidity pressures.

We currently have the following outstanding all due to be paid today, but some 2 days late now.

Liberty Aluminium Holdco Ltd – USD 3,132,918.54 – Due to CS

[…]

I have explained to them that the nature of the notes distribution means that timely payment is essential.

(b) by at least early March 2019, GCUK was funding maturities or "topping up" the Liberty France Facility and/or rolling maturities that fell due; and

(c) further, the GFG Liquidity Issues, GFG Defaults and GFG Top Up Practice.

Particulars

The particulars to paragraph 44 are repeated.

GCUK had a practice of permitting Liberty France to draw on the Liberty France Facility in order to cover payment obligations without Liberty France in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to Liberty France. This practice is further pleaded at Section C.7 of Annexure B to this defence.

Knowledge of falsity of representations

1090 Lex Greensill knew each of the matters pleaded in paragraphs 1087 to 1089 above.

Particulars

Lex Greensill was a key proponent of the facility and was involved from early proposals for a SCF programme for Rio Tinto (when Aluminium Dunkerque was owned by Rio). See, for example, the email from Myrjam Tschoeke to Vesna Vladusic, Craig Pinnington, David Keeling, the Greensill Credit Risk Team and Brett Downes (all Greensill) dated 30 August 2018 with the subject 'RE: Scope Request – Aluminium Dunkerques Societe Actions Simplifiee' (GCU.0013.0003.2393).

In the Credit Analysis Pack and Relationship Credit Analysis Pack submitted to Greensill Credit Committee on or around 13 September 2018 for a 'US$30M SCF facility to Aluminium Dunkerque with maximum roll tenor of 180 days and sole supplier Rio Tinto Marketing PTE', Lex Greensill is identified as the 'Relationship Owner' (GCU.0005.0001.9246), (GCU.0005.0001.9247), (GCU.0005.0001.9248).

The knowledge of Lex Greensill can otherwise be inferred from:

(a) His membership of the Credit Committee, which assessed and approved the facility; and

(b) the fact that he was a recipient or sender of emails particularised in paragraphs 1087 to 1089 above.

Further particulars may be provided after completion of discovery by GCUK.

1091 The knowledge of Lex Greensill of the matters set out in paragraph 1090 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 25 and 26 above.

1092 The knowledge of Lex Greensill of the matters set out in paragraph 1090 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20 and 22 above

1093 Further and in the alternative to paragraph 1090 above, another officer and employee of GCUK, Craig Pinnington (Senior Credit Analyst), knew the matters set out in paragraphs 1087 to 1089 above (or some of them).

Particulars

The knowledge of Craig Pinnington is to be inferred from the fact that he was a recipient or sender of emails particularised in paragraphs 1087 to 1089 above.

The knowledge of Craig Pinnington is otherwise to be inferred from his involvement of in dealings with risks involving GFG, and specifically the AD Facility.

Further particulars may be provided after completion of discovery by GCUK.

1094 The knowledge of Craig Pinnington of the matters identified in paragraph 1093 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 29 and 30 above

1095 The knowledge of Craig Pinnington of the matters identified in paragraph 1093 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars to paragraphs 22 and 23 above.

1096 Further and in the alternative to paragraphs 1090 and 1093 above, Danyon Lloyd knew the matters set out in paragraphs 1087 to 1089 above.

Particulars

The knowledge of Danyon Lloyd is to be inferred from his involvement within GCUK's Credit Committee, in addition to the following documents:

(a) Email from Vicky Birch to (among others) the Greensill Credit Risk Team, including Danyon Lloyd, on 27 September 2018 with the subject line 'GFG ALLIANCE - ALUMINIUM FRANCE INDUSTRIES UK LTD - APPROVED - FRIDAY 21ST SEPTEMBER 2018', confirming approval of the 'new SCF facility' for Aluminium France Industries UK Limited and Aluminium Dunkerque SAS by the Greensill Credit Committee and attaching a copy of the 'CAP Aluminium Dunkerque – vCC 19 September 2018', (GCU.0005.0002.1961), (GCU.0005.0002.1962).

(b) Minutes of the Greensill Credit Committee held on 21 September 2018 (GCU.0004.0018.2948), attended by Lex Greensill, Brett Downes, Roland Hartley-Urquhart, Myrjam Tschoeke, Mike Gilhuley and Danyon Lloyd.

(c) Email from Craig Pinnington to (among others) Roland Hartley-Urquhart, Lex Greensill, Danyon Lloyd, Brett Downes and the Greensill Credit Risk Team (all Greensill) dated 20 September 2018 with the subject line 'Credit Approval- Aluminium Dunkerque/Aluminium France Industries UK, A GFG Alliance' attaching a Credit Analysis Pack and Relationship Credit Analysis Pack for Aluminium Dunkerque SAS (GCU.0005.0002.0246, GCU.0005.0002.0247 and GCU.0005.0002.0248).

(d) Email from David Keeling to Lex Greensill, Brett Downes, Danyon Lloyd and other members of the Greensill Credit Committee and Greensill personnel dated 28 March 2019 (GCU.0005.0008.2406).

(e) Email from Brett Downes to David Keeling, Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke and Roland Hartley-Urquhart dated 29 March 2019 with the subject 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Friday 29th of March 2019' (GCU.0005.0008.2824).

The knowledge of Danyon Lloyd is otherwise to be inferred from his involvement of in dealings with risks involving GFG, including the following items:

(a) Email from Alan Parks to Lex Greensill copying Danyon Lloyd and others (all Greensill) dated 24 October 2016 and title 'EOD Balances' (GCU.0001.0005.8527) which states '$1m due in from GB tomorrow to cover SIMEC'.

(b) Email from Al Eadie to Brett Downes and others copying Danyon Lloyd and others (all Greensill) dated 27 February 2019 with the subject 'Re: Liquidity'

(GCU.0004.0024.1878) which states 'Given GCUK balance sheet is being spanked by GFG currently we should be careful committing to any GCUK funding of assets this week.'

(c) Danyon Lloyd's receipt of GCUK's EOD balance reports from at least October 2016 (GCU.0001.0005.6408) which from around November 2018 included a 'Key Movements' summary (GCU.0004.0022.4265, GCU.0005.0007.5625). This summary detailed amongst other things, top ups or payments made by GCUK. From on or around 18 March 2019, the EOD balance reports included a dedicated 'Top Up's' [sic] section which recorded the amount of money paid by GCUK to cover a maturity (GCU.0005.0007.7015). These reports regularly detailed the position in relation to the AD Facility (see, eg, GCU.0004.0024.5463, GCU.0005.0007.2819).

(d) Email from Alan Parks to Lex Greensill, copying Danyon Lloyd (amongst others) dated 8 March 2019 with the subject line 'EOD Balances', which stated '$6.2M Aluminium France Paid to Redemption, due back to GCUK T+2' (GCU.0005.0007.2819).

Further particulars may be provided after completion of discovery by GCUK.

1097 The knowledge of Danyon Lloyd of the matters identified in paragraph 1096 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 27 and 28 above.

Knowledge of materiality of representations

1098 Each of the matters referred to in paragraphs 1087 to 1089 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty France Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty France being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

1099 Further or in the alternative to 1098 above, each of the matters referred to in paragraphs 1087 to 1089 above were matters which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Liberty France Risk.

Particulars

IAL refers to the particulars in 1098 above.

1100 The knowledge of Lex Greensill of the matters set out in paragraph 1098 is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 25 and 26 above.

1101 The knowledge of Lex Greensill of the matters set out in paragraphs 1098 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20 and 22 above.

1102 Further and in the alternative to paragraph 1087 to 1089 above, each of the matters in paragraphs 1087 to 1089 above were matters:

(a) which Craig Pinnington (Senior Credit Analyst of GCUK) knew were material to the decision whether to extend or renew insurance cover in respect of the Liberty France Risk; or

(b) alternatively to paragraph (a), in respect of Craig Pinnington was wilfully blind or recklessly indifferent to the possibility that his were material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of his position and experience in placing insurance on behalf of Greensill.

1103 The knowledge of Craig Pinnington of the matters set out in in paragraph 1102 above is to be attributed to Greensill Bank.

Particulars

IAL refers to the particulars to paragraphs 29 and 30 above.

1104 The knowledge of Craig Pinnington of the matters set out in paragraph 1102 above is to be attributed to GCPL.

Particulars

IAL refers to the particulars to paragraphs 22 and 23 above.

1105 Further and in the alternative to paragraphs 1098 and 1102 above, each of the matters in paragraphs 1087 to 1089 above (or some of them) were matters:

(a) which Danyon Lloyd knew were material to the decision whether to extend or renew insurance cover in respect of the Liberty France Risk; or

(b) alternatively to paragraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that this were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer/Chairman and then Chief Operating Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 10 and 12(a)(ii) above).

1106 Further or in the alternative to paragraph 1105 above, each of the matters referred to in paragraphs 1087 to 1089 above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know was material to the decision whether to extend insurance cover in respect of the Liberty France Risk.

Particulars

BCC refers to the particulars in 1105 above.

1107 The knowledge of Danyon Lloyd of the matters set out in in paragraph 1102 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 above.

Misrepresentations were fraudulent

1108 In the premises of paragraphs 1070 to 1086, 1087 to 1089, 1090 to 1106 above:

(a) Greensill misrepresented the risk presented by the Liberty France Risk;

(b) the Liberty France Misrepresentations and No Default Misrepresentation were knowingly false and fraudulent; and

(c) the misrepresentations were known to be material to the decision whether to extend insurance cover with respect to the Liberty France Risk.

1109 If Greensill had not made the misrepresentations in paragraphs 1084 and 1085 above, insurance cover would not have been issued in respect of the Liberty France Risk at all or, in the alternative, on the same terms in which it purportedly was written.

1110 By reason of the matters pleaded in paragraphs 1087 to 1109 above, IAL is entitled to avoid the Liberty France Endorsement.

Innocent misrepresentation

1111 In the alternative to the matters pleaded in paragraphs 1108 to 1110 above, by reason of the matters pleaded in paragraphs 1087 to 1089 and 1109 above, IAL is entitled to reduce its liability under the Liberty France Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D16.3 Liberty France Non-Disclosures

Knowledge of underlying matters

1112 At the time insurance cover was requested and purportedly provided for the Liberty France Risk, Lex Greensill knew:

(a) the matters referred to in paragraphs 1087 to 1089 above;

Particulars

IAL repeats the particulars to paragraphs 1087 to 1089 above.

(b) that there had been a history of non-payment under the AD Facility and Liberty France Facility;

Particulars

IAL repeats the particulars to paragraph 1089 above.

(c) that there were concerns about future default and/or repayment under the Liberty France Facility;

Particulars

Email from Brett Downes to Lex Greensill, Liz Boyes and Craig Pinnington dated 4 January 2019 (GCU.0007.0002.3765), in which Brett Downes had expressed a concern to Lex Greensill, among others, about the risk of non-payment of the Aluminium Dunkerque facility, stating: 'This is the one I really worry about repaying in a couple of months' time as I see this sitting on our balance sheet forever which is not good. This will be permadebt.'

Email from Craig Pinnington and Vesna Vladusic dated on 26 March 2019 with the subject line 'RE: Liberty Aluminium Dunkerque' (GCU.0013.0005.1753), stating 'Are you free this morning for a call on Aluminium Dunkerque? We are looking to place it on the Watchlist at credit committee this Friday as there looks to be material doubt as to getting repaid, as the actual cash-generating unit isn't acceding (or certainly not in any meaningful form) and the holdco doesn't have the cash to repay'.

Email from Craig Pinnington to Vesna Vladusic and Liz Boyes dated 26 March 2019, with the subject line 'Liberty Aluminium Dunkerque', (GCU.0005.0008.0452) stating 'Given the issues on this account and that we probably can't get repaid from the expected primary source of repayment, this is going to be added to the GC Watchlist at the credit committee this Friday' and 'I know for now we are doing rolls by putting ourselves in as customer but this is only a temporary solution. Waiting 5 years for the senior lending facility to expire is also not a realistic option'.

(d) the Liberty Group Fraud Non-Disclosure, which implicated Liberty France and Sanjeev Gupta (who was personal Guarantor of the Liberty France facility risk) in prior dishonest and fraudulent conduct; and

Particulars

Email from Michel Degen (Credit Suisse) to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM) dated 11 December 2018, with subject 're: Important', (CSA.5000.0002.1866), attaching Diligence Report titled 'Involvement In Carousel Fraud And Use of Proxies' (CSA.5000.0002.1867).

Personal Guarantee of Sanjeev Gupta (GFG), dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

(e) the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure.

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph at 44.

Knowledge of materiality

1113 Each of the matters referred to in paragraph 1112 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty France Risk; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty France being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

1114 Further or in the alternative to paragraph 1089 above, each of the matters referred to in paragraph 1112 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend insurance cover in respect of the Liberty France Risk.

Particulars

IAL refers to the particulars of paragraph 1113 above

1115 The knowledge of Lex Greensill of the matters set out in paragraphs 1113 and 1114 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 25 and 26 above.

1116 The knowledge of Lex Greensill of the matters set out in paragraphs 1113 and 1114 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20 and 22 above

Lex Greensill was the 'Relationship Owner' for the transaction and is identified as such in the Credit Analysis Pack and Relationship Credit Analysis Pack submitted to Greensill Credit Committee on 13 September 2018 (GCU.0005.0001.9246, GCU.0005.0001.9247, GCU.0005.0001.9248).

Breach of duty of disclosure

1117 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 1112 above before the cover was placed or renewed for the Liberty France Risk.

1118 Greensill's failure to disclose the matters referred to in paragraph 1117 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 1112 to 1116 above.

Fraudulent non-disclosure

1119 By reason of the matters pleaded in paragraphs 1113, 1115 and 1116 above, Greensill's failure to disclose the matters referred to in paragraph 1112 above was fraudulent.

1120 The cover for the Liberty France Risk would not have been issued if the matters referred to in in paragraph 1112 above had been disclosed.

1121 In the alternative to the allegation in paragraph 1120 above, the cover for the Liberty France Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 1112 above had been disclosed.

1122 By reason of the matters pleaded in paragraphs 1119 to 1121 above, IAL is entitled to avoid the Liberty France Endorsement.

Innocent non-disclosure

1123 In the alternative to the matters pleaded in paragraphs 1119 to 1122 above, and by reason of the matters pleaded in paragraphs 1117, 1118, 1120 and 1121 above, IAL is entitled to reduce its liability under the Liberty France Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

E NON-DISCLOSURE OF EARLIER FRAUDULENT MISREPRESENTATIONS AND NON-DISCLOSURES

1124 Section G of this Annexure lists each policy document that is relied upon by the Greensill Applicants in the Greensill Proceedings.

1125 Section H of this Annexure lists, in chronological order, each occasion on which Greensill made a fraudulent misrepresentation or fraudulently breached the duty of disclosure.

1126 Greensill knew, or alternatively ought reasonably to have known, at the time of entering into each policy document listed in Section G, that each earlier matter listed in Section H was material to the decision of BCC and Brereton whether to accept each risk listed in Section G and, if so, the terms on which to do so.

1127 Greensill did not disclose any of the earlier matters in Section H before any of the policy documents listed in Section G was issued.

1128 Greensill's failures to disclose the earlier matters referred to in Section H, by reason of the matters pleaded in paragraph 1126 above, breached the duty of disclosure under section 21 of the Insurance Contracts Act.

1129 Greensill's breaches of the duty of disclosure, other than those in relation to Kerry Ireland, were fraudulent.

Particulars

Lex Greensill, on behalf of Greensill, knew that the matters would be material and acted deliberately on behalf of Greensill not to disclose them.

Deliberate non-disclosure is to be inferred from the significance of the matters that were not disclosed, the nature of Lex Greensill's communications with Brereton (pleaded above) and Lex Greensill's experience in commercial financing and dealings with underwriters.

1130 Each Policy and Endorsement listed in Section G:

(a) would not have been issued; or

(b) in the alternative, would not have been issued on the same terms,

if the earlier matters referred to in Section H had been disclosed.

1131 By reason of the matters pleaded in paragraphs 1124 to 1130 above, IAL is entitled:

(a) to avoid each policy document listed in Section G; or, in the alternative,

(b) is entitled to reduce its liability under each such policy document to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

E1 Non-Disclosure of Moral Hazard

1132 Lex Greensill had a propensity to be dishonest in his dealings with insurers.

Particulars

Lex Greensill's propensity to dishonesty in his dealings with insurers is evidenced by, and to be inferred from, the fraudulent non-disclosures and misrepresentations pleaded in Section H, to the extent they arise from the conduct or knowledge of Lex Greensill.

1133 Greensill had a propensity to be dishonest in their dealings with insurers.

Particulars

Greensill's propensity to be dishonest in their dealings insurers is to be inferred from the fraudulent non-disclosures and misrepresentations pleaded in Section H.

IAL further relies on the knowingly false statements made by the Management Board of Greensill Bank (including Danyon Lloyd) to Greensill Bank's D&O insurers, as found in ruling of the Cologne Higher Regional Court (OLG) on 11 February 2026 (IAL.500.016.0002) (**Cologne Judgment**).

1134 Prior to the entry of each policy document listed in Section G, each of the matters referred to in paragraphs 1132 and 1133 above were matters:

(a) Lex Greensill knew were material to the decision of Brereton and BCC whether to accept the relevant risk and, if so, the terms on which to do so; or

(b) alternatively to paragraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred as he was a person of substantial commercial experience in the insurance industry.

1135 Further or in the alternative to paragraph 1134 above, each of the matters referred to in paragraphs 1132 and 1133 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision of Brereton and BCC whether to accept the relevant risk.

Particulars

IAL refers to the particulars to paragraph 1134 above.

1136 The knowledge of Lex Greensill of the matters set out in paragraphs 1132 and 1133 above is to be attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 26, 29 and 30 above.

1137 The knowledge of Lex Greensill of the matters set out in paragraphs 1132 and 1133 above is to be attributed to GCPL.

Particulars

IAL refers to paragraphs 20, 22 and 23 above.

1138 Prior to the entry of each policy document listed in Section G, the matters referred to in paragraph 1133 above were matters:

(a) Danyon Lloyd knew were material to the decision of Brereton and BCC whether to accept the relevant risk and, if so, the terms on which to do so; or

(b) alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 11 and 12(a)(ii) above);

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the risk to be insured.

1139 Further or in the alternative to paragraph 1138 above, the matters referred to in paragraph 1133 above were matters which a reasonable person in the position of

Danyon Lloyd could be expected to know were material to the decision of Brereton and BCC whether to accept the relevant risk.

Particulars

IAL refers to the particulars in paragraph 1138 above.

1140 The knowledge of Danyon Lloyd of the matters set out in paragraph 1133 above is to attributed to Greensill Bank.

Particulars

IAL refers to paragraphs 27 and 28 above.

Breach of duty of disclosure

1141 Greensill did not disclose to Brereton or any representative of BCC or IAL the matters referred to in paragraphs 1132 and 1133 above before each of the policy documents listed in Section G was entered into.

1142 Greensill's failure to disclose the matters referred to in paragraphs 1132 and 1133 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, in the premises of the matters pleaded in paragraphs 1134 to 1141 above.

Fraudulent non-disclosure

1143 By reason of the matters pleaded in paragraphs 1134 to 1142 above Greensill's failure to disclose the matters referred to in paragraphs 1132 and 1133 above was fraudulent.

1144 Each policy document listed in Section G:

(a) would not have been issued; or

(b) in the alternative to (a), would not have been issued on the same terms,

if either of the matters referred to paragraphs 1132 and 1133 above had been disclosed.

1145 By reason of the matters pleaded in paragraphs 1143 and 1144 above, IAL is entitled to avoid each policy document listed in Section G.

Innocent non-disclosure

1146 In the alternative to paragraph 1145 above, and by reason of the matters pleaded in paragraph 1144 above, IAL is entitled to reduce its liability under each policy document listed in Section G to nil (or such other amount as the court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

F AVOIDANCE

1147 In the Greensill Proceedings IAL denies that the policy documents referred to in Section G are valid and binding on IAL.

1148 The allegations of misrepresentation and non-disclosure in this Annexure are premised on the basis that, contrary to IAL's denial, one or more of the policy documents would be binding on IAL but for any right to avoid.

1149 To the extent that the Court finds:

(a) the policy documents in Section G are binding on IAL; and

(b) IAL has a right to avoid those policy documents,

IAL hereby avoids those policy documents.

1150 For the avoidance of doubt, it is IAL's contention that, if and in so far as the Court finds that GCUK and/or GCPL, but not Greensill Bank, made a misrepresentation or breached the duty of disclosure, IAL is entitled:

(a) to avoid the policy as against GCUK, GCPL and Greensill Bank; or

(b) in the alternative, to reduce its liability to Greensill Bank to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with or the misrepresentation had not been made).

G SCHEDULE OF POLICIES AND ENDORSEMENTS

1151 The policies and endorsements purportedly issued by BCC to Greensill, as pleaded by the Greensill Applicants as a basis for coverage in each of the Greensill Proceedings, are as follows:

Item	**Policy TB-03690 (B0509FINCW1900009)**		
1.	Customer Endorsement No 27	17 September 2018	Catfoss Proceeding
2.	Customer Endorsement No 63(ii)	5 February 2019	CS Global Proceeding
3.	Customer Endorsement No 7(i)	5 March 2019	Bluestone Proceeding
4.	2019 Parallel 90.10 Policy	13 March 2019	Catfoss Proceeding, EHG Proceeding, CS Global Proceeding, A57 Proceeding, Bluestone Proceeding, LCL Proceeding, Simec Proceeding, White Oak Proceeding
5.	Endorsement 9	13 March 2019	CS Global Proceeding, A57 Proceeding, Bluestone Proceeding, LCL Proceeding, Simec Proceeding, Catfoss Proceeding, White Oak Proceeding
6.	Debt Endorsement 1	13 March 2019	Catfoss Proceeding, EHG Proceeding, CS Global Proceeding, A57 Proceeding, Simec Proceeding
7.	Loss Payee (Virtuoso) Endorsement 3	13 March 2019	EHG Proceeding, Catfoss Proceeding, CS Global Proceeding

Item	Policy TB-03690 (B0509FINCW1900009)		
8.	Customer Endorsement No 19	13 March 2019	CS Global Proceeding, LCL Proceeding, White Oak Proceeding
9.	Customer Endorsement No 10	13 March 2019	CS Global Proceeding, Bluestone Proceeding
10.	Customer Endorsement No 5	13 March 2019	CS Global Proceeding, Bluestone Proceeding
11.	Customer Endorsement No 8	13 March 2019	CS Global Proceeding, Bluestone Proceeding
12.	Debt Endorsement 2	13 March 2019	CS Global Proceeding, Bluestone Proceeding
13.	Loss Payee (Nova) Endorsement 6	13 March 2019	CS Global Proceeding
14.	Customer Endorsement No 34	13 March 2019	CS Global Proceeding
15.	Customer Endorsement No 35	13 March 2019	CS Global Proceeding
16.	Customer Endorsement No 12	13 March 2019	CS Global Proceeding
17.	Customer Endorsement No 21	13 March 2019	CS Global Proceeding
18.	Customer Endorsement No 9	13 March 2019	CS Global Proceeding
19.	Customer Endorsement No 7	13 March 2019	CS Global Proceeding
20.	Customer Endorsement No 11	13 March 2019	CS Global Proceeding
21.	Customer Endorsement No 44	13 March 2019	CS Global Proceeding
22.	Customer Endorsement No 16	13 March 2019	CS Global Proceeding

Item	Policy TB-03690 (B0509FINCW1900009)		
23.	Customer Endorsement No 20	13 March 2019	LCL Proceeding
24.	Customer Endorsement No 3	13 March 2019	Catfoss Proceeding
25.	Customer Endorsement No 5	13 March 2019	Bluestone Proceeding
26.	Customer Endorsement No 9	13 March 2019	Bluestone Proceeding
27.	Customer Endorsement No 37	13 March 2019	EHG Proceeding
28.	Customer Endorsement No 4	13 March 2019	A57 Proceeding
29.	Customer Endorsement No 2	13 March 2019	Simec Proceeding
30.	Customer Endorsement No 48	27 March 2019	CS Global Proceeding
31.	Customer Endorsement No 54	4 April 2019	CS Global Proceeding
32.	Customer Endorsement No 2(i)	24 April 2019	CS Global Proceeding, Simec Proceeding
33.	Customer Endorsement No 26(i)	21 May 2019	CS Global Proceeding, Bluestone Proceeding
34.	Customer Endorsement No 68	24 May 2019	CS Global Proceeding, LCL Proceeding, White Oak Proceeding
35.	Customer Endorsement No 36(i)	24 May 2019	LCL Proceeding, White Oak Proceeding
36.	Customer Endorsement No: _Guarantor/Seller Repurchase Obligation	10 June 2019	CS Global Proceeding
37.	Endorsement Speciality Steel UK Limited/(SSUK)	10 June 2019	CS Global Proceeding

Item	Policy TB-03690 (B0509FINCW1900009)		
38.	Customer Endorsement No 80	11 June 2019	CS Global Proceeding, Bluestone Proceeding
39.	Customer Endorsement No 77	11 June 2019	CS Global Proceeding, Bluestone Proceeding
40.	Customer Endorsement No 78	11 June 2019	CS Global Proceeding, Bluestone Proceeding
41.	Customer Endorsement No 76	11 June 2019	CS Global Proceeding
42.	Customer Endorsement No 75	11 June 2019	CS Global Proceeding
43.	Contract Changes – Extension Endorsement 18	21 June 2019	Catfoss Proceeding, EHG Proceeding, CS Global Proceeding, A57 Proceeding, Bluestone Proceeding, LCL Proceeding, Simec Proceeding, White Oak Proceeding
44.	Contract Changes – Extension Endorsement 17	21 June 2019	EHG Proceeding, CS Global Proceeding, A57 Proceeding, Bluestone Proceeding, LCL Proceeding, Simec Proceeding, White Oak Proceeding
45.	Customer Endorsement No 69(i)	28 June 2019	CS Global Proceeding, LCL Proceeding
46.	Customer Endorsement No 81(i)	28 June 2019	CS Global Proceeding
47.	Customer Endorsement No 89	28 June 2019	CS Global Proceeding
48.	Customer Endorsement No 99	14 August 2019	CS Global Proceeding, LCL Proceeding

Item	Policy TB-03690 (B0509FINCW1900009)		
49.	Customer Endorsement No 24(ii)	4 September 2019	CS Global Proceeding, Bluestone Proceeding
50.	Customer Endorsement No 23(ii)	4 September 2019	CS Global Proceeding
51.	Customer Endorsement No 37(i)	4 September 2019	EHG Proceeding
52.	Customer Endorsement No 37(ii)	17 September 2019	EHG Proceeding
53.	Customer Endorsement No 74(i)	23 September 2019	CS Global Proceeding, LCL Proceeding
54.	Customer Endorsement No 60(ii)	1 October 2019	CS Global Proceeding, LCL Proceeding
55.	Customer Endorsement No 66(ii)	1 October 2019	CS Global Proceeding, LCL Proceeding
56.	Customer Endorsement No 61(ii)	1 October 2019	CS Global Proceeding, LCL Proceeding
57.	Customer Endorsement No 83(i)	1 October 2019	CS Global Proceeding, LCL Proceeding
58.	Customer Endorsement No 48(i)	1 October 2019	CS Global Proceeding
59.	Customer Endorsement No 103	1 October 2019	CS Global Proceeding
60.	Customer Endorsement No 94(ii)	1 October 2019	CS Global Proceeding
61.	Customer Endorsement No 16(i)	1 October 2019	CS Global Proceeding
62.	Customer Endorsement No 73(i)	1 October 2019	White Oak Proceeding

Item	Policy TB-03690 (B0509FINCW1900009)		
63.	Customer Endorsement No 63(ii)	1 October 2019	LCL Proceeding
64.	Customer Endorsement No 105	1 October 2019	LCL Proceeding
65.	Customer Endorsement No 112	25 October 2019	CS Global Proceeding
66.	Customer Endorsement No 114	25 October 2019	CS Global Proceeding
67.	Customer Endorsement No 92(i)	25 October 2019	CS Global Proceeding
68.	Debt Endorsement 2(iii)	29 January 2020	CS Global Proceeding, White Oak Proceeding, Bluestone Proceeding
69.	Customer Endorsement No 19(i)	29 January 2020	CS Global Proceeding, LCL Proceeding
70.	Customer Endorsement No 100(i)	29 January 2020	LCL Proceeding, White Oak Proceeding
71.	Customer Endorsement No 2(ii)	31 January 2020	CS Global Proceeding, Simec Proceeding
72.	Amendment to the definition of Loss – Endorsement 23	5 February 2020	Catfoss Proceeding, CS Global Proceeding, A57 Proceeding, Bluestone Proceeding, LCL Proceeding, Simec Proceeding
73.	Customer Endorsement No 28(ii)	12 February 2020	CS Global Proceeding, Bluestone Proceeding
74.	Customer Endorsement No 79(i)	12 February 2020	CS Global Proceeding, Bluestone Proceeding
75.	Customer Endorsement No 46(iii)	24 February 2020	CS Global Proceeding, LCL Proceeding

Item	Policy TB-03690 (B0509FINCW1900009)		
76.	Customer Endorsement No 45(iii)	24 February 2020	CS Global Proceeding, White Oak Proceeding
77.	Customer Endorsement No 90(ii)	24 February 2020	CS Global Proceeding, White Oak Proceeding
78.	Customer Endorsement No 47(v)	24 February 2020	CS Global Proceeding, White Oak Proceeding
79.	Customer Endorsement No 95(ii)	24 February 2020	CS Global Proceeding
80.	Customer Endorsement No 91(iii)	24 February 2020	White Oak Proceeding
81.	Customer Endorsement No 101(i)	24 February 2020	White Oak Proceeding
82.	Customer Endorsement No 45(iii)	24 February 2020	LCL Proceeding
83.	Customer Endorsement No 119	26 February 2020	White Oak Proceeding
84.	Customer Endorsement No 122	16 March 2020	CS Global Proceeding
85.	Customer Endorsement No 27(ii)	14 April 2020	CS Global Proceeding, Bluestone Proceeding
86.	Customer Endorsement No 71(i)	14 April 2020	CS Global Proceeding, Bluestone Proceeding
87.	Customer Endorsement No 29(iii)	14 April 2020	CS Global Proceeding, Bluestone Proceeding
88.	Debt Endorsement 2(iv)	16 April 2020	CS Global Proceeding, Bluestone Proceeding, LCL Proceeding
89.	Customer Endorsement No 54(i)	16 April 2020	CS Global Proceeding

Item	Policy TB-03690 (B0509FINCW1900009)		
90.	Endorsement (Liberty MDR) Version 2 – Liberty MDR Treasury Company UK Ltd	16 April 2020	CS Global Proceeding
91.	Endorsement (Liberty Commodities)	29 April 2020	CS Global Proceeding, LCL Proceeding, White Oak Proceeding
92.	Customer Endorsement No 19(ii)	29 April 2020	CS Global Proceeding, LCL Proceeding, White Oak Proceeding
93.	Loss Payee Endorsement 24	29 April 2020	White Oak Proceeding
94.	Customer Endorsement No 127	13 May 2020	CS Global Proceeding
95.	Customer Endorsement No 64(iv)	25 June 2020	CS Global Proceeding, White Oak Proceeding
96.	Customer Endorsement No 72(ii)	25 June 2020	LCL Proceeding, White Oak Proceeding
97.	Customer Endorsement No 138	25 June 2020	CS Global Proceeding
98.	Customer Endorsement No 139	2 July 2020	CS Global Proceeding
99.	Customer Endorsement No 136	2 July 2020	CS Global Proceeding
100.	Customer Endorsement No 135	2 July 2020	CS Global Proceeding
101.	Customer Endorsement No 111(i)	2 July 2020	White Oak Proceeding
102.	Contract Changes – Extension Endorsement 1	-	Catfoss Proceeding

Item	Policy TB-05369 (B0509FINCW1900040)		
103.	Debt Endorsement 1	25 June 2019	Liberty Delta Proceeding
104.	Endorsement 2	25 June 2019	Liberty Delta Proceeding
105.	Customer Endorsement No 1	25 June 2019	Liberty Delta Proceeding
106.	Customer Endorsement No 2	25 June 2019	Liberty Delta Proceeding
107.	Customer Endorsement No 3	25 June 2019	Liberty Delta Proceeding
108.	Customer Endorsement No 4	25 June 2019	Liberty Delta Proceeding
109.	Liberty Delta Parallel Policy	26 June 2019	Liberty Delta Proceeding
110.	Customer Endorsement No 1(i)	17 July 2019	Liberty Delta Proceeding
111.	Customer Endorsement No 3(i)	17 July 2019	Liberty Delta Proceeding
112.	Customer Endorsement No 4(i)	17 July 2019	Liberty Delta Proceeding
113.	Collective Endorsement	17 July 2019	Liberty Delta Proceeding
114.	Customer Endorsement No 2(i)	31 July 2019	Liberty Delta Proceeding
115.	Collective Endorsement	18 August 2019	Liberty Delta Proceeding
116.	Collective Endorsement	5 September 2019	Liberty Delta Proceeding
117.	Collective Endorsement	2 October 2019	Liberty Delta Proceeding
118.	Customer Endorsement No 1(ii)	20 November 2019	Liberty Delta Proceeding
119.	Customer Endorsement No 2(ii)	20 November 2019	Liberty Delta Proceeding
120.	Customer Endorsement No 3(ii)	20 November 2019	Liberty Delta Proceeding
121.	Customer Endorsement No 4(ii)	20 November 2019	Liberty Delta Proceeding

Item	Policy TB-05369 (B0509FINCW1900040)		
122.	Collective Endorsement	20 November 2019	Liberty Delta Proceeding
123.	Customer Endorsement No 1(iii)	19 December 2019	Liberty Delta Proceeding
124.	Customer Endorsement No 2(iii)	19 December 2019	Liberty Delta Proceeding
125.	Customer Endorsement No 3(iii)	19 December 2019	Liberty Delta Proceeding
126.	Customer Endorsement No 4(iii)	19 December 2019	Liberty Delta Proceeding
127.	Collective Endorsement	19 December 2019	Liberty Delta Proceeding
128.	Claims Endorsement 3	10 January 2020	Liberty Delta Proceeding
129.	Collective Endorsement	24 February 2020	Liberty Delta Proceeding
130.	Limit Endorsement 3	-	Liberty Delta Proceeding

Item	Policy TS-03088 (B0509FINCW1900008)		
131.	2019 NMC Parallel Policy	1 March 2019	NMC Proceeding
132.	Loss Payee Endorsement 3	1 March 2019	NMC Proceeding
133.	Debt Endorsement 1	6 March 2019	NMC Proceeding
134.	Limit Endorsement 8	6 March 2019	NMC Proceeding
135.	Customer Endorsement No 4	6 March 2019	NMC Proceeding
136.	Contract Changes – Extension Endorsement 9	26 February 2020	NMC Proceeding
137.	Contract Changes – Extension Endorsement 10	15 April 2020	NMC Proceeding

Item	Policy TS-03088 (B0509FINCW1900008)		
138.	Contract Changes – Extension Endorsement 11	15 May 2020	NMC Proceeding
139.	Contract Changes – Extension Endorsement 12	16 June 2020	NMC Proceeding

H SCHEDULE OF MISREPRESENTATIONS AND NON-DISCLOSURES

Item	Date	Misrepresentation/Non-disclosure	Paragraphs
1.	30 May 2018	Bluestone SCF Facility Misrepresentation in respect of the Bluestone Single Obligor insured risk	[845(a)]
2.	30 May 2018	Bluestone Invoices Misrepresentation in respect of the Bluestone Single Obligor insured risk	[845(b)]
3.	30 May 2018 to 13 March 2019	Non-disclosures in respect of the Bluestone Single Obligor insured risk	[881], [884], [887], [889], [892], [908]
4.	28 August 2018 to 30 January 2020	Simec Financing Misrepresentations in respect of the Simec Risk	[564]
5.	3 September 2018 to 30 January 2020	The Simec No Default Misrepresentation in respect of the Simec Risk	[566]
6.	4 September 2018 to 30 January 2020	Non-Disclosures in respect of the Simec Risk	[590] to [592]
7.	29 August 2018 to 2 July 2020	Non-disclosures in respect of the LCL Risk	[391], [417]
8.	11 to 21 September 2018	Misrepresentations in respect of the Catfoss Renewables insured risk (Catfoss Renewables Inception Misrepresentations)	[934]
9.	11 September 2018 to 20 December 2018	Non-disclosures in respect of the Catfoss Renewables insured risk	[930], [961], [986]

Item	Date	Misrepresentation/Non-disclosure	Paragraphs
10.	11 September 2018 to 13 March 2019	Non-disclosures and misrepresentations in respect of the Liberty France insured risk, including the AD Facility Misrepresentations (which includes the AD SCF Misrepresentation and the Supplier Misrepresentation), Liberty France Misrepresentations (which includes the Liberty France SCF Misrepresentation and the Rio Tinto Supplier Misrepresentation) and the No Default Misrepresentation.	[1070], [1071], [1084] and [1085]
11.	12 September 2018	A57 Purpose Misrepresentation and Guarantor Representation in respect of the Atlantic 57 Risk	[428], [432], and [433]
12.	18 September 2018 to 10 April 2020	Bluestone AR Facility Misrepresentation in respect of the Bluestone Multi-Obligor insured risk	[744(a)]
13.	18 September 2018 to 10 April 2020	Bluestone Genuine Customer Misrepresentation in respect of the Bluestone Multi-Obligor insured risk	[744(b)]
14.	18 September 2018 to 3 December 2019	Bluestone Non-Payment Risk Misrepresentation in respect of the Bluestone Multi-Obligor insured risk	[745]
15.	1 October 2018 to 2 July 2020	The Westford Financing Misrepresentations in respect of the Westford Risk	[215]
16.	13 March 2019 to 14 April 2020	Non-disclosures in respect of the Bluestone Multi-Obligor insured risk	[815], [818], [821] and [834]

Item	Date	Misrepresentation/Non-disclosure	Paragraphs
17.	3 December 2018 to 19 March 2019	Misrepresentations in respect of the Noviniti Poole, Catfoss DBT and Noviniti Colchester insured risks	[996] to [997], [1011] to [1014]
18.	3 December 2018 to 18 December 2018	Non-Disclosures in respect of the Noviniti Poole, and Catfoss DBT insured risks	[1033] and [1057]
19.	11 December 2018	Liberty Group Fraud Non-Disclosure	[68]
20.	28 February 2019 to 17 September 2019	Non-disclosures in respect of the Atlantic 57 Risk	[470], [473] and [474], [482]
21.	28 February 2019 to 4 March 2019	A57 Repayment Representation in respect of the Atlantic 57 Risk	[437]
22.	28 February 2019	Non-Disclosure in respect of the Noviniti Poole, and Catfoss DBT insured risks	[1032] and [1055]
23.	13 March 2019	Non-disclosures in respect of the Catfoss Renewables insured risk	[962] and [986]
24.	13 March 2019	LCL Genuine Customer Misrepresentations in respect of the LCL Risk	[329]
25.	13 March 2019 to 2 July 2020	GFG Liquidity Issues Non-Disclosure, GFG Defaults Non-Disclosure and GFG Top Up Practice Non-Disclosure	[52], [53] and [54]
26.	19 March 2019	Non-disclosures in respect of the Noviniti Colchester insured risk	[1035] and [1057]
27.	2 – 8 April 2019	SSUK Future AR Facility Misrepresentation in respect of SSUK Risk	[145], [146] and [155]

Item	Date	Misrepresentation/Non-disclosure	Paragraphs
28.	2 to 8 April 2019	The SSUK Purpose Misrepresentation in respect of SSUK Risk	[147], [148] and [156]
29.	9 April 2019	SSUK Account Debtor Representations in respect of SSUK Risk	[149] to [152] and [157]
30.	16 May 2019 to 25 February 2020	LCL Genuine Trades Misrepresentations in respect of the LCL Risk	[333]
31.	21 May 2019 to 11 June 2019	Non-disclosures in respect of the Bluestone insured risk	[815] and [834]
32.	10 June 2019	Non-disclosures in respect of the SSUK Risk	[186]
33.	20 June 2019	Liberty Delta Misrepresentations in respect of the Liberty Delta Risk	[497], [498], [503] and [504] to [507]
34.	20 to 25 June 2019	Non-disclosures in respect of the Liberty Delta Risk	[521]
35.	26 September 2019	LCL Customer Creditworthiness Misrepresentations in respect of the LCL Risk	[336]
36.	26 September 2019 – 1 October 2019	Non-Disclosure in respect of the Noviniti Poole and Noviniti Colchester insured risk	[1036], [1057]
37.	30 January 2020	Simec Customer Endorsement 2(ii) Misrepresentations in respect of the Simec Risk	[561]
38.	11 to 15 March 2020	Misrepresentations in respect of the Liberty House Risk, including the Liberty House Aggregate Customer Limit Misrepresentation, the Liberty House Facility Misrepresentation and the Liberty House No Default Misrepresentation	[267], [268], [270], [273], [274] and [275]

Item	Date	Misrepresentation/Non-disclosure	Paragraphs
39.	11 to 15 March 2020	Non-disclosures in respect of the Liberty House Risk	[300]
40.	6 April 2020 to 27 May 2020	Bauer Repayment Misrepresentation	[671(a)(ii)] and [674(a)] to [674(g)]
41.	6 April 2020	Bauer Notes Tenor Misrepresentation	[671(b)] and [674(a)] to [674(g)]
42.	6 April 2020	Bauer Financial Position Non-Disclosure	[703]
43.	15 April 2020	The Liberty TCUK Future AR Misrepresentation in respect of the Liberty TCUK Risk	[91]
44.	16 April 2020	Non-Disclosures in respect of the Liberty TCUK Risk	[112], [113]
45.	28 April 2020	LCL Short-term Financing Misrepresentation in respect of the LCL Risk	[340]
46.	5 to 28 May 2020	Kerry Ireland Misrepresentations in respect of Kerry Ireland Risk	[619]
47.	12 May 2020 to 25 June 2020	Non-disclosures in respect of the Kerry Ireland Risk	[647] to [660]
48.	28 May 2020	Bauer SCF Misrepresentation	[677]
49.	2 July 2020	Non-disclosures in respect of the Westford Risk	[226], [241]