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Registrar

Important Information

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

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Form 33
Rule 16.32

Filed pursuant to Order of Thawley J dated 24 April 2026

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

No. NSD 177 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Greensill Bank AG and another named in the Schedule

First Applicant

Insurance Australia Limited and others named in the Schedule

First Respondent

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

Preliminary matters

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

Filed on behalf of (name & role of party) Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), Fourth Respondent
Prepared by (name of person/lawyer) Matt Andrews
Law firm (if applicable) Kennedys (Australasia) Partnership
Tel 02 8215 5999 Fax 02 8215 5988
Email Matt.Andrews@kennedyslaw.com
Address for service (include state and postcode) Level 48, 25 Martin Place, Sydney NSW 2000

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

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

A. PARTIES

1. TMNF admits paragraph 1 of the ASOC.

2. TMNF admits paragraph 2 of the ASOC.

3. TMNF admits paragraph 3 of the ASOC.

4. TMNF admits paragraph 4 of the ASOC.

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

    a. admits subparagraph (a);

    b. admits subparagraph (b);

    c. admits subparagraph (c);

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

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

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

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

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

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

f. as to subparagraph (e):

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

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

g. admits subparagraph (f) of the ASOC.

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

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

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

c. admits subparagraph (c);

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

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

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

g. otherwise denies the paragraph.

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

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

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

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

d. otherwise admits the paragraph.

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

B. AGENCY AGREEMENTS BETWEEN BCC AND IAL

B1. Agency arrangements between CGU and BCC

7. TMNF admits paragraph 7 of the ASOC.

8. TMNF admits paragraph 8 of the ASOC.

9. TMNF admits paragraph 9 of the ASOC.

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

a. admits paragraph 10(a) of the ASOC;

b. admits paragraph 10(b) of the ASOC;

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

d. otherwise admits the paragraph.

11. TMNF admits paragraph 11 of the ASOC.

12. TMNF admits paragraph 12 of the ASOC.

13. TMNF admits paragraph 13 of the ASOC.

14. TMNF admits paragraph 14 of the ASOC.

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

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

    b. otherwise admits the paragraph.

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

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

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

    c. otherwise admits the paragraph.

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

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

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

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

    d. otherwise admits the paragraph.

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

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

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

    c. otherwise admits the paragraph.

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

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

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

c. otherwise admits the paragraph.

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

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

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

c. otherwise admits the paragraph.

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

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

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

c. otherwise admits the paragraph.

B2. Transfer of CGU's business to IAL

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

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

b. otherwise admits the paragraph.

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

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

b. otherwise admits the paragraph.

B3. Agency arrangements between BCC and IAL

24. TMNF admits paragraph 24 of the ASOC.

25. TMNF admits paragraph 25 of the ASOC.

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

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

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

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

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

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

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

    b. otherwise admits the paragraph.

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

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

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

    c. otherwise denies the paragraph.

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

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

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

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

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

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

c. otherwise admits the paragraph.

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

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

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

c. otherwise admits the paragraph.

33. TMNF admits paragraph 33 of the ASOC.

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

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

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

c. otherwise admits the paragraph.

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

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

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

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

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IAL AAR Agreement, cl 20.9(a).

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

e. otherwise admits the paragraph.

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

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

b. otherwise admits the paragraph.

B4. Agency arrangements between BCC, IAL and Tokio Marine

37. TMNF admits paragraph 37 of the ASOC.

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

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

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

c. otherwise admits the paragraph.

39. TMNF admits paragraph 39 of the ASOC.

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

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

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

b. otherwise denies the paragraph.

41. TMNF admits paragraph 41 of the ASOC.

42. TMNF admits paragraph 42 of the ASOC.

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

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

b. under cover of that objection:

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

ii. otherwise denies the paragraph.

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

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

b. under cover of that objection:

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

ii. otherwise denies the paragraph.

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

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

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

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

C. Agency arrangements between Greg Brereton, CGU and IAL

C1. Agency arrangements between Greg Brereton and CGU

46. TMNF admits paragraph 46 of the ASOC.

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

a. says that pursuant to the Brereton CGU Authorisation, CGU authorised Mr Brereton to provide and perform the Authorised Financial Services in relation to the Approved Products on behalf of CGU and for that purpose it appointed Mr Brereton as its

authorised representative for the purposes of Chapter 7 of the Corporations Act from the Effective Date (being 8 July 2016);

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

c. otherwise admits the paragraph.

48. TMNF admits paragraph 48 of the ASOC.

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

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

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

c. otherwise admits the paragraph.

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

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

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

c. otherwise admits the paragraph.

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

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

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

c. otherwise admits the paragraph.

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

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

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

c. otherwise admits the paragraph.

C2. Agency arrangements between Greg Brereton, IAL and IAGA

53. TMNF admits paragraph 53 of the ASOC.

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

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

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

c. otherwise admits the paragraph.

55. TMNF admits paragraph 55 of the ASOC.

56. TMNF admits paragraph 56 of the ASOC.

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

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

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

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

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

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

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

a. repeats paragraph 57 of this Defence;

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

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

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

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

a. repeats paragraph 57 of this Defence; and

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

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

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

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

c. otherwise admits the paragraph.

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

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

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

c. otherwise admits the paragraph.

63. TMNF admits paragraph 63 of the ASOC.

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

a. as to IAL:

i. admits that IAL authorised Mr Brereton to act on its behalf pursuant to the CGU AAR Agreement (as transferred to IAL) and the Brereton CGU Authorisation (as transferred to IAL) in the manner authorised by those instruments;

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

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

b. as to IAGA:

i. repeats paragraphs 57 of this Defence; and

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

DA. REGULATORY REQUIREMENTS

DA1. Membership of the German Deposit Protection Fund

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

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

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

D. The Policy

D1. Entry into the Policy

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

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

b. says that:

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

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

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

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

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

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

66. [Not used]

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

a. repeats paragraph 65 above;

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

c. otherwise does not admit the paragraph.

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

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

b. otherwise denies the paragraph.

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

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

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

c. says further that if it is found that:

i. Mr Brereton;

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

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

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

69. TMNF admits paragraph 69 of the ASOC.

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

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

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

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

d. otherwise denies the paragraph.

71. TMNF admits paragraph 71 of the ASOC.

72. TMNF admits paragraph 72 of the ASOC.

D2. Key terms of the Policy

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

a. admits subparagraph (a);

b. admits subparagraph (b);

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

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

e. admits subparagraph (e);

f. admits subparagraph (f);

g. admits subparagraph (g);

h. in relation to subparagraph (h):

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

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

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

   iv. otherwise denies the paragraph;

i. in relation to subparagraph (i);

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

   ii. otherwise denies the paragraph;

j. admits subparagraph (j);

k. in relation to subparagraph (k):

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

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

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

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

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

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

iv. otherwise denies the paragraph.

l. admits subparagraph (l);

m. admits subparagraph (m);

n. admits subparagraph (n);

o. in relation to subparagraph (o);

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

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

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

iv. otherwise denies the paragraph;

p. admits subparagraph (p);

q. admits subparagraph (q);

r. admits subparagraph (r);

s. admits subparagraph (s); and

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

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

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

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

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

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

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

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

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

e. otherwise denies the paragraph.

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

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

b. admits that cl 4.1 of the Policy provided that IAL's liability to indemnify the Insured for a Loss shall, subject to the terms, conditions and limitations of the Policy, apply

only in respect of Assets owned by the Insured (or a Loss Payee) during the Policy Period;

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

d. otherwise denies the paragraph.

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

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

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

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

d. otherwise denies the paragraph.

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

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

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

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

d. otherwise denies the paragraph.

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

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

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

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

d. otherwise denies the paragraph.

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

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

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

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

d. otherwise denies the paragraph.

D3. BCC had authority to enter into the Policy

(A) Actual authority

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

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

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

(B) Ostensible authority

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

81. In response to paragraph 81 of the ASOC:

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

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

(C) Statutory responsibility

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

a. admits that:

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

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

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

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

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

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

D4. Greg Brereton had authority to enter into the Policy

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

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

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

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

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

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

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

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

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

D5. Endorsements 9, 17 and 18 to the Policy

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

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

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

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

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

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

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

e. otherwise denies the paragraph.

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

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

b. otherwise denies the paragraph.

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

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

b. otherwise denies the paragraph.

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

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

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

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

d. otherwise denies the paragraph.

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

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

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

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

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

d. otherwise denies the paragraph.

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

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

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

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

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

b. otherwise denies the paragraph.

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

a. denies the paragraph;

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

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

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

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

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

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

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

e. otherwise denies the paragraph.

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

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

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

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

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

b. otherwise denies the paragraph.

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

a. denies the paragraph;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D8. Endorsement 23 to the Policy

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

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

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

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

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

e. otherwise denies the paragraph.

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

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

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

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

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

b. otherwise denies the paragraph.

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

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

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

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

d. otherwise denies the paragraph.

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

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

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

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

d. otherwise denies the paragraph.

D9. BCC had authority to execute Endorsement 23

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

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

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

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

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

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

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

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

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

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

d. [Not used]

e. otherwise denies the paragraph.

D10. Greg Brereton had authority to execute Endorsement 23

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

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

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

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

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

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

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

a. refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 110A of the ASOC; and

b. otherwise denies the paragraph.

E. The Simec Transaction

E1. Parties to the transaction

111. TMNF admits paragraph 111 of the ASOC.

112. TMNF admits paragraph 112 of the ASOC.

113. TMNF admits paragraph 113 of the ASOC.

E2. Reinvoicing Facility

113A. In respect of paragraphs 114 to 144 of the ASOC, TMNF says generally that:

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

b. Greensill Bank does not allege (and TMNF would not be in a position to admit, in any event) that paragraphs 114 to 144 of the ASOC exhaustively identify the documents that govern the relationship that exists between the parties to those documents; and

c. TMNF will seek disclosure in relation to the matters the subject of paragraphs 114 to 144 of the ASOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced.

Customer Agreement

114. TMNF admits paragraph 114 of the ASOC.

115. In response to paragraph 115 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the Simec Customer Agreement to which it refers;

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

c. says that the Simec Customer Agreement provided that:

i. Simec and its Affiliates may enter into commercial trade transactions with 'Suppliers' for the sale of goods and/or the supply of services (Introduction, para A);

ii. a 'Supplier' means any person with whom a 'Supplier Agreement' is in force (cl 1.1);

iii. a 'Supplier Agreement' means an agreement between an FI Group Member and a 'Supplier' that regulates 'Transfers' to an FI Group Member (cl 1.1);

iv. a 'Transfer' means the sale, assignment or transfer of an 'Account Receivable' (cl 1.1);

v. an ‘Account Receivable’ means the right to receive payments of money due and payable as a result of an ‘Underlying Relationship’ (cl 1.1);

vi. an ‘Underlying Relationship’ means a business relationship between Simec and a Supplier (cl 1.1);

vii. Simec shall only submit PAUFs in respect of genuine and lawful trade transactions arising in the ordinary course of business for the sale, supply and purchase of goods and/or services (cl 3.1); and

viii. Simec shall, and shall procure that each Affiliated Company will, maintain sufficient records of all transactions with respect to the Underlying Relationship (or associated disputes) to which the relevant Customer is a party (cl 3.2);

d. does not know and therefore cannot admit that the Simec Customer Agreement accurately recorded the terms, or all of the terms, which governed the relationship between GCUK and Simec; and

Particulars

i. the letter from Simec to GCUK dated 27 September 2021 in which Simec states “*GCUK is well aware of its arrangements with SGL and the manner in which the parties operated the Customer Agreement*”;

ii. the letter from Simec to GCUK dated 13 April 2022 in which Simec states: ““*GCUK is well aware of its arrangements with SGL and the manner in which the parties operated the Customer Agreement*” and that “*SGL has reason to believe that GCUK is not the Supplier’s Transferee within the written terms of the Customer Agreement*”.

e. otherwise admits the paragraph.

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

a. says that paragraph 116 is a paraphrase of the Designated Account Letter to which it refers;

b. refers to the relevant terms of the Designated Account Letter for their full force and effect; and

c. otherwise admits the paragraph.

Re-Invoicing Agreement

117. TMNF admits paragraph 117 of the ASOC.

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

a. says that the paragraph is otherwise a paraphrase of the clauses of the Re-invoicing Agreement to which it refers;

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

c. says that the Re-Invoicing Agreement provided that:

i. Simec could submit to Bramid a request for settlement of a 'Supplier Invoice' (cl 2.1(a));

ii. a 'Supplier Invoice' means an invoice raised by a Supplier in respect of an 'Account Receivable' (cl 1.1);

iii. an 'Account Receivable' means a right to receive payments of money due and payable as a result of a 'Supply Agreement' (cl 1.1);

iv. a 'Supply Agreement' means an agreement between Simec and a Supplier for the sale, supply and purchase of goods and/or services pursuant to which an Account Receivable arises (cl 1.1); and

v. Simec shall only submit Suppler Invoices in respect of genuine and lawful trade transactions arising in the ordinary course of business for the sale, supply and purchase of goods and/or services between Simec and the Supplier (cl 3.1); and

d. otherwise admits the paragraph.

Supplier Agreement

119. TMNF admits paragraph 119 of the ASOC.

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

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

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

c. says further (with defined terms having the meaning assigned in the Supplier Agreement), that:

i. clause 2.4 provided that in the event that GCUK does not pay the relevant Net FI Amount prior to the date falling three Business Days after the Advance Date, the applicable Account Receivable shall be automatically Transferred back to Bramid and the Liability of GCUK to pay the relevant Net FI Amount shall be extinguished; and

ii. cl 1.1 defined "FI Fee" to mean the finance fee payable by Bramid to GCUK in respect of each Account Receivable Transferred by Supplier to Financial Institution calculated as: Certified Amount x Discount Rate x Tenor / (360 or 365, as the case may be for the applicable currency of the Certified Amount); and

d. denies that any transactions concluded between Bramid and Simec constituted "commercial trade transactions with Bramid for the sale of goods and/or the supply of services" (Recital A), so as to fall within the scope of the Supplier Agreement;

e. repeats paragraph 115 of this Defence and says that the Supplier Agreement was not a "Supplier Agreement" within the meaning of the Simec Customer Agreement, as:

i. there was no business relationship between Bramid and Simec pursuant to which Simec entered into commercial trade transactions with Bramid; and

ii. Simec did not enter into any genuine and lawful trade transactions with Bramid arising in the ordinary course of business for the sale, supply and purchase of goods and/or services; and

f. otherwise admits the paragraph.

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

a. repeats paragraph 120 of this Defence; and

b. otherwise admits the paragraph.

E3. GCUK purchase of Accounts Receivables related to Claim

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

a. does not know and cannot admit the paragraph;

b. says that the Relevant Supplier Invoices included invoices issued in the name of purported suppliers that were related to or had a relationship with Sanjeev Gupta or entities owned or controlled by him.

Particulars

i. The invoices purportedly issued by Secant Trading DMCC, one of the purported suppliers, lists its address as Unit No: 3O-01-3207, Jewellery & Gemplex 3, Dubai, UAE. Secant Trading DMCC is described as the UAE branch of Metallics Trading Pte Ltd, a company established by A.K. Tandon. Mr Tandon previously worked a director of Berkely Commodities Limited, a company previously owned by Sanjeev Gupta.

ii. Taurus Metallurgicals Limited, one of the purported suppliers, is a company that is understood to be owned by Mr. Ravi Trehan, a former shareholder in Liberty Trading Group Pte Ltd and/or Liberty Commodities Limited, companies owned by Sanjeev Gupta (https://www.ft.com/content/aca5f4d3-6ae1-46ce-8729-ce2f2d4ab9f7).

123. In response to paragraph 123 of the ASOC, TMNF:

a. denies the paragraph; and

b. says that rather than providing invoices for settlement by Bramid:

i. GCUK would notify Simec of upcoming maturities and ask for “new trades” to replace the maturing debt;

ii. Simec would procure and provide purported invoices (including the Relevant Supplier Invoices) in the same amount as the maturing debt; and

iii. GCUK would “roll over” the maturing debt to the new invoices, without requiring any repayment from Simec.

Particulars

TMNF relies on the contents of the emails particularised at paragraph 123 of the ASOC.

124. In response to paragraph 124 of the ASOC, TMNF:

a. admits that Bramid issued the Relevant Service Invoices particularised to GCUK; and

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

125. TMNF does not know and cannot admit paragraph 125 of the ASOC.

125A. TMNF does not know and cannot admit paragraph 125 of the ASOC.

126. TMNF does not know and cannot admit paragraph 126 of the ASOC.

127. In response to paragraph 127 of the ASOC, TMNF:

a. does not know and cannot admit that the Relevant Service Invoices were transferred to GCUK;

b. denies that Simec assumed an Independent Payment Undertaking under the Simec Customer Agreement to pay GCUK the Certified Amount related to any Relevant Service Invoices, as:

i. it denies that there was a business relationship between Bramid and Simec pursuant to which Simec entered into commercial trade transactions with Bramid; and

ii. it denies that there was a genuine and lawful trade transactions between Simec and Bramid arising in the ordinary course of business for the sale, supply and purchase of goods and/or services;

c. in the alternative, does not know and therefore cannot admit that Simec assumed an Independent Payment Undertaking under the Simec Customer Agreement to pay GCUK the Certified Amount related to any Relevant Service Invoices, as:

i. it does not know and therefore cannot admit that Simec submitted any PAUFs meeting the criteria in the Customer Agreement, or at all; and

ii. it does not know and therefore cannot admit whether the Simec Customer Agreement accurately recorded the terms, or all of the terms, which governed the relationship between GCUK and Simec, as pleaded at paragraph 115.d of this Defence; and

d. otherwise denies the paragraph.

128. In response to paragraph 128 of the ASOC, TMNF:

a. denies the paragraph; and

b. repeats paragraph 120 of this Defence.

E4. The Simec Notes

129. TMNF does not know and therefore cannot admit paragraph 129 of the ASOC.

130. TMNF does not know and therefore cannot admit paragraph 130 of the ASOC.

131. In response to paragraph 131 of the ASOC, TMNF:

a. says that it has been provided with a document titled "(Receivables Purchase Programmes)" that purports to be a deed between GCUK, Lagoon Park and Citibank, NA (London Branch) (the **Supply Chain Finance Trust Deed**);

b. says that the Supply Chain Finance Trust Deed:

i. is dated 26 October 2015;

ii. appears from the text in the footer to be based on a version of a pro forma trust deed dated 7 October 2015; and

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

132. TMNF does not know and therefore cannot admit paragraph 132 of the ASOC.

133. In response to paragraph 133 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the Supply Chain Finance Trust Deed to which it refers;

b. refers to the relevant terms of the Supply Chain Finance Trust Deed for their full force and effect;

c. says that "Eligible Accounts Receivable" meant the benefit of an unconditional undertaking given by Simec under the Simec Customer Agreement to or for the benefit of GCUK "as Supplier's Transferee";

d. says that "Supplier" meant a party who has entered into an agreement for the Transfer of receivables in respect of which the Obligor has undertaken in the Simec Customer Agreement to pay an amount equal to the amount of such receivable; and

e. otherwise admits the paragraph.

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

    a. repeats paragraph 120 of this Defence and denies that any of the Simec IPUs were in respect of goods and/or services provided by Bramid to Simec, and therefore denies that any undertakings given by Simec under the Simec Customer Agreement to GCUK as Bramid's transferee were "Eligible Accounts Receivable" within the meaning of the Simec Trust Deed; and

    b. otherwise denies the paragraph.

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

    a. admits that representatives of Lagoon Park, Citibank and TMF Luxembourg SA signed a document titled "Master Trust Deed" dated 19 October 2015;

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

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

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

136. TMNF does not know and therefore cannot admit paragraph 136 of the ASOC.

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

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

    a. admits that Lagoon Park issued notes in compartment CW on the dates alleged; and

    b. otherwise denies the paragraph.

139. TMNF denies paragraph 139 of the ASOC.

140. TMNF admits paragraph 140 of the ASOC.

141. TMNF denies paragraph 141 of the ASOC.

142. TMNF does not know and therefore cannot admit paragraph 142 of the ASOC.

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

a. refers to and repeats paragraph 134 and says that the Simec Notes did not constitute Notes for the purposes of the Policy; and

b. otherwise denies the paragraph.

144. TMNF denies paragraph 144 of the ASOC.

E5. Insuring the Simec IPUs

145. In response to paragraph 145 of the ASOC, TMNF:

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

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

c. further or alternatively, says that Debt Endorsement 1 was not a valid 'Debt Endorsement' under the Policy because, on the proper construction of that Policy:

i. the Policy did not authorise the issue of a 'Debt Endorsement' which had the effect of varying the meaning of 'Eligible Debt' to incorporate debts arising from supply chain finance; and

ii. the Policy did not authorise the issue of a 'Debt Endorsement' that purported to operate retrospectively;

d. says further that if it is found that:

i. Mr Brereton;

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

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

entered into Debt Endorsement 1 (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or Debt Endorsement 1, Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures with the consequences pleaded in paragraph 219 of this Defence; and

e. otherwise denies the paragraph.

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

a. refers to and repeats paragraphs 65, 68, and 145 of this Defence; and

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

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

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraphs 145 and 146 of the ASOC; and

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

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

a. admits that on 13 March 2019, Brereton signed a document which was styled as a "Customer Endorsement" bearing the number 2 and which purported to endorse Simec as a Customer to the Policy effective from 1 March 2019 with a Maximum Limit of Liability and Aggregate Customer Limit of USD 25 million (**Customer Endorsement 2**);

b. says that Customer Endorsement 2 was not a valid "Customer Endorsement" under the Policy because:

i. Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate; and

ii. Customer Endorsement 2 did not express a percentage premium rate (but rather a fixed dollar amount of $1);

c. further or alternatively, says that says that Customer Endorsement 2 was not a valid "Customer Endorsement" under the Policy because:

i. "Customer" was defined to mean any "Customer" endorsed to the Policy under a Customer Endorsement, being a debtor in respect of a Debt and including any successor in title or at law to such debtor;

ii. "Debt" was defined to mean, as the context requires, a debt of the type described in the relevant Debt Endorsement; and

iii. Simec's obligations under the Re-Invoicing Agreement and/or the Customer Agreement were not Debts of the type described in Part B of Debt Endorsement 1, or any other relevant part of any Debt Endorsement, for the reasons pleaded at paragraph 156 of this Defence;

d. further or alternatively, says that if (which is denied) Customer Endorsement 2 was valid, it did not have any effectiveness or operation prior to 13 March 2019 and repeats paragraph 145(c) of this Defence;

e. further or alternatively, says that, if (which is denied) Customer Endorsement 2 was valid, it was valid only to the extent that it identified a Customer, and not to the extent that it purported to vary the terms of the Policy or prescribe new terms inconsistent with those in the Policy;

f. says further that if it is found that:

i. Mr Brereton;

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

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

entered into Customer Endorsement 2 (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or Customer Endorsement 2, Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures with the consequences pleaded in paragraph 219 of this Defence; and

g. otherwise denies the paragraph.

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

a. refers to and repeats paragraphs 65, 68 147 of this Defence; and

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

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

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraphs 147 and 148 of the ASOC; and

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

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

a. refers to and repeats paragraph 147 of this Defence;

b. says that the paragraph is a paraphrase of the terms of Customer Endorsement 2 to which it refers;

c. refers to the relevant terms of Customer Endorsement 2 for their full force and effect (if any); and

d. otherwise admits the paragraph.

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

a. admits that on 24 April 2019, Brereton signed a document which was styled as a "Customer Endorsement" bearing the number 2(i) and which purported to endorse Simec as a Customer to the Policy effective from 9 April 2019 with an increased Maximum Limit of Liability and Aggregate Customer Limit of USD 45 million (**Customer Endorsement 2(i)**);

b. says that Customer Endorsement 2(i) was not a valid "Customer Endorsement" under the Policy because:

i. Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate; and

ii. Customer Endorsement 2(i) did not express a percentage premium rate (but rather a fixed dollar amount of $1);

c. further or alternatively, says that says that Customer Endorsement 2(i) was not a valid "Customer Endorsement" under the Policy and repeats paragraph 147.c of this Defence;

d. further or alternatively, says that if (which is denied) Customer Endorsement 2(i) was valid, it did not have any effectiveness or operation prior to 24 April 2019 and repeats paragraph 145.c of this Defence;

e. further or alternatively, says that, if (which is denied) Customer Endorsement 2(i) was valid, it was valid only to the extent that it identified a Customer, and not to the extent that it purported to vary the terms of the Policy or prescribe new terms inconsistent with those in the Policy;

f. says further that if it is found that:

i. Mr Brereton;

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

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

entered into Customer Endorsement 2(i) (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or Customer Endorsement 2(i), Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures with the consequences pleaded in paragraph 219 of this Defence; and

g. otherwise denies the paragraph.

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

a. refers to and repeats paragraphs 65, 68 and 150 of this Defence; and

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

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

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraphs 150 and 151 of the ASOC; and

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

152. In response to paragraph 152 of the ASOC, TMNF:

a. refers to and repeats paragraph 150 of this Defence; and

b. otherwise admits the paragraph.

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

a. admits that on 31 January 2020, Brereton signed a document which was styled as a Customer Endorsement" bearing the number 2(ii) and which purported to endorse Simec as a Customer to the Policy effective from 30 January 2020 with an increased Maximum Limit of Liability and Aggregate Customer Limit of USD 95 million (**Customer Endorsement 2(ii)**);

b. says that Customer Endorsement 2(ii) was not a valid "Customer Endorsement" under the Policy because:

i. Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate; and

ii. Customer Endorsement 2(ii) did not express a percentage premium rate (but rather a fixed dollar amount of $1);

c. further or alternatively, says that says that Customer Endorsement 2(ii) was not a valid "Customer Endorsement" under the Policy and repeats paragraph 147.c of this Defence;

d. further or alternatively, says that if (which is denied) Customer Endorsement 2(ii) was valid, it did not have any effectiveness or operation prior to 31 January 2020 and repeats paragraph 145.c of this Defence;

e. further or alternatively, says that, if (which is denied) Customer Endorsement 2(ii) was valid, it was valid only to the extent that it identified a Customer, and not to the extent that it purported to vary the terms of the Policy or prescribe new terms inconsistent with those in the Policy;

f. says further that if it is found that:

i. Mr Brereton;

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

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

entered into Customer Endorsement 2(ii) (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or Customer Endorsement 2(ii), Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures with the consequences pleaded in paragraph 219 of this Defence; and

g. otherwise denies the paragraph.

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

a. refers to and repeats paragraphs 65, 68 and 153 of this Defence; and

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

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

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraphs 153 and 154 of the ASOC; and

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

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

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

b. otherwise denies the paragraph.

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

a. refers to and repeats paragraph 153 of this Defence; and

b. otherwise admits the paragraph.

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

a. denies the paragraph;

b. says that the definition of "Debt" in Part B of Debt Endorsement 1 means a debt owing under a Customer Agreement;

c. says that the Simec Customer Agreement is not a "Customer Agreement" within the meaning of Part B of Debt Endorsement 1 because the payment obligations created under the agreement were not as a consequence of the acquisition by GCUK of one or more accounts receivable relating to the supply of goods and/or services provided by:

i. Bramid to Simec or its Affiliate; or

ii. further or alternatively, any other "Supplier" to Simec or its Affiliate;

d. says further that the definition of "Debt" in Part B of Debt Endorsement 1 expressly provided that the only kind of receivables capable of giving rise to a Debt owing by Simec to Bramid, and in turn to GCUK, were "Original Supplier receivables payable by [Simec] … to such Original Supplier in respect of goods and/or services provided by the Original Supplier to [Simec]";

e. says that the Policy defined "Original Supplier" to mean the person to whom (or for the benefit of) a Supplier will make payment on behalf of the relevant Customer (which in the present example means Simec);

f. says that, in the premises, the only payment obligations created under the Simec Customer Agreement which could qualify as a "Debt" within the meaning of Part B of

Debt Endorsement 1 were payment obligations arising from the re-invoicing of accounts receivable payable by Simec to an Original Supplier in respect of goods and/or services in fact provided by that Original Supplier to Simec;

g. says further that, in the premises, and by reason of the terms of the Re-Invoicing Agreement, a "Debt" could only arise under Part B of Debt Endorsement 1 if there had been compliance with the following requirements of the Re-Invoicing Agreement that:

i. there existed a Supply Agreement, meaning an agreement between Simec and one of its Suppliers for the sale, supply and purchase of goods/and or services, and pursuant to which Accounts Receivable arise (cl 1.1, definition of "Supply Agreement");

ii. there existed a Supplier Invoice, meaning an invoice raised by such a Supplier in respect of an Account Receivable (cl 1.1, definition of "Supplier Invoice");

iii. the Supplier Invoice was in respect of genuine and lawful trade transactions arising in the ordinary course of business for the sale, supply and purchase of goods and/or services between Simec and its Supplier (cl 3.1);

iv. Simec had submitted a request for the settlement of such a Supplier Invoice to Bramid together with the following information: (i) the name of the Supplier; (ii) the Supplier Invoice number; (iii) the amount of the Settlement Advance; and (iv) the proposed Advance Date (cl 2.1(a));

v. Bramid had issued and delivered to Simec, in return: (i) a related Service Invoice; (ii) the form of the PAUF (as defined in the Simec Customer Agreement, where it was relevantly defined to mean a payment assurance upload file, in the agreed format, which is created in respect of each Account Receivable, setting out details of Supplier, invoice number, Certified Amount and Maturity Date and any other details agreed); and (iii) an accompanying Customer authorisation letter (cl 2.1(b));

vi. Simec had executed the PAUF and the authorising letter and had submitted them to GCUK (cl 2.1(c)); and

vii. Simec had used the Settlement Advance to pay the relevant Supplier Invoice (cl 2.1(e));

h. says that the ASOC does not plead facts which would establish the requirements referred to at paragraph 156.g.ii to vii. of this Defence , and the claims made in the are liable to be struck out accordingly; and

i. denies that all of the requirements at paragraphs 156.d to g. were complied with by Simec, Bramid and/or GCUK in creating the alleged Simec IPUs, and accordingly denies that any alleged payment obligations constituted “Debts” within the meaning of Part B of Debt Endorsement 1 or “Eligible Debts” within the meaning of the Policy.

157. In response to paragraph 157 of the ASOC, TMNF:

a. refers to and repeats paragraph 123, 127, 134, 147, 150, 153, and 156.c of this Defence;

b. says that the alleged Simec IPUs were not Eligible Debts for the purposes of the Policy because:

i. Simec was not endorsed as a Customer under the Policy for the reasons pleaded at paragraphs 147, 150 and 153 of this Defence;

ii. the alleged Simec IPUs did not arise under the Simec Customer Agreement for the reasons pleaded at paragraph 127 of this Defence; and

iii. the alleged Simec IPUs did not meet the definition of “Debts” in Part B of Debt Endorsement 1 Eligible Debts” within the meaning of the Policy for the reasons pleaded at paragraph 156.c of this Defence; and

j. otherwise denies the paragraph.

E6. Default by Simec

158. TMNF admits paragraph 158 of the ASOC.

159. TMNF admits paragraph 159 of the ASOC.

160. TMNF does not know and therefore cannot admit paragraph 160 of the ASOC.

161. TMNF does not know and therefore cannot admit paragraph 161 of the ASOC.

162. TMNF does not know and therefore cannot admit paragraph 162 of the ASOC.

163. TMNF does not know and therefore cannot admit paragraph 163 of the ASOC.

164. TMNF admits paragraph 164 of the ASOC.

165. TMNF admits paragraph 165 of the ASOC.

166. TMNF admits paragraph 166 of the ASOC.

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

    a. does not know and therefore cannot admit the paragraph; and

    b. further, says it does not know whether Greensill Bank and/or CSV took any steps to have Simec wound up for non-compliance with the Statutory Demand.

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

    a. refers to and repeats paragraph of this Defence;

    b. denies that the alleged Simec IPUs arose under the Simec Customer Agreement; and

    c. otherwise denies the paragraph.

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

    a. refers to and repeats paragraph 127 of this Defence;

    b. denies that the alleged Simec IPUs arose under the Simec Customer Agreement; and

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

170. In response to paragraph 170 of the ASOC, TMNF:

    a. denies the paragraph;

    b. says that if the Simec defaults alleged at paragraph 169 of the ASOC occurred (which is denied) then those defaults are not “Insured Causes” under the Policy, because:

        i. “Insured Cause” was defined to mean the failure of the Customer to make payment of an Eligible Debt before the Backstop Date for any reason;

        ii. Simec was not a “Customer” as defined in the Policy, for the reasons pleaded in paragraphs 147, 150, 153, and 156.c of this Defence;

iii. the alleged Simec IPUs were not "Eligible Debts" as defined in the Policy for the reasons pleaded in paragraph 157 of this Defence; and

iv. TMNF does not know and cannot admit whether the alleged failures (if they occurred at all) occurred because of a failure to make payment before the Backstop Date;

c. says further and in the alternative that a Stop Asset Acquisition Instruction (the **Liberty Seaview Stop Asset Acquisition Instruction**) prevented any of the debts the subject of claims pleaded in the ASOC from attaching to the Policy, because:

i. for a period of four months commencing by no later than December 2019, Liberty OneSteel (Primary) UK Ltd, defaulted in repaying amounts owing by it to GCUK (the **Liberty Seaview Defaults**);

ii. clause 8.3(a) of the Policy operated to require Liberty OneSteel (Primary) UK Ltd to remedy its failure to repay the Debts the subject of the Liberty Seaview Defaults within 10 Business Days, failing which, a Stop Asset Acquisition instruction would automatically be deemed to have been issued in respect of Liberty OneSteel (Primary) UK Ltd and to all other members of the same Customer Group, which was the **Liberty Customer Group** and included Simec, Speciality Steel UK Limited (**SSUK**), Liberty Commodities Limited (**LCL**), Liberty MDR Treasury Company UK Ltd (**Liberty TCUK**), Liberty France Aluminium Holdco and Liberty House Group Pte Ltd (**Liberty House**);

iii. the Debts the subject of the Liberty Seaview Defaults were not repaid by Liberty OneSteel (Primary) UK Ltd within 10 Business Days (that is, by 14 January 2020 at the latest);

iv. the Liberty Seaview Stop Asset Acquisition Instruction was issued by no later than 14 January 2020 to Liberty OneSteel (Primary) UK Ltd and to the Liberty Customer Group, with the result that thereafter, no further debts from any member of the Liberty Customer Group, including Simec, attached to the Policy;

v. as a result, no debts arising after the date of the deemed Liberty Seaview Stop Asset Acquisition Instruction in respect of a customer in the Liberty Customer Group were capable of attaching to the Policy, with the result that

any such alleged debts arising after 14 January 2020 at the latest did not attach to the Policy;

vi. in the premises, none of the alleged debts the subject of the ASOC attached to the Policy, as each of them post-dated the Liberty Seaview Stop Asset Acquisition Instruction.

d. says further and in the alternative that a Stop Asset Acquisition Instruction (the **Simec Stop Asset Acquisition Instruction**) prevented any of the debts the subject of the claims pleaded in the ASOC from attaching to the 2019 Policy, because:

i. by no later than 29 January 2021, Simec failed to repay amounts owing under the Simec Customer Agreement on the relevant Due Date, but instead "rolled over" those debts by issuing new PAUFs (the **Simec Defaults**);

Particulars

TMNF refers to and repeats the pleadings and particulars at paragraph 123 of this Defence.

ii. clause 8.3(a) of the Policy operated to require Simec to remedy its failure to repay the Debts the subject of the Simec Defaults within 10 Business Days, failing which, a Stop Asset Acquisition instruction would automatically be deemed to have been issued in respect of Simec and to all other members of the Liberty Customer Group;

iii. the Debts the subject of the Simec Defaults were not repaid by Simec within 10 Business Days (that is, by 12 February 2021 at the latest);

iv. the Simec Stop Asset Acquisition Instruction was issued by no later than 12 February 2021 to Simec and to the Liberty Customer Group, with the result that thereafter, no further debts from any member of the Liberty Customer Group, including LCL, Liberty France, Liberty House, Liberty TCUK and SSUK, attached to the Policy;

v. as a result, no debts arising after the date of the deemed Simec Stop Asset Acquisition Instruction in respect of a customer in the Liberty Customer Group were capable of attaching to the Policy, with the result that any such alleged debts arising after 12 February 2021 at the latest did not attach to the Policy;

vi. in the premises, none of the alleged debts the subject of the ASOC attached to the Policy, as each of them post-dated the Simec Stop Asset Acquisition Instruction; and

e. says further and in the alternative that further Stop Asset Acquisition Instructions prevented any of the debts the subject of the claims pleaded in the ASOC from attaching to the 2019 Policy, with the effect that they did not attach to the Policy, as follows:

i. a Stop Asset Acquisition Instruction in relation to defaults by SSUK, which was issued by no later than 22 June 2020 to SSUK and to the Liberty Customer Group, as pleaded at paragraph 714(e) of BCC's Defence in proceeding NSD 175 of 2023 (**BCC's CS Global Defence**);

ii. a Stop Asset Acquisition Instruction in relation to defaults by LCL, which was issued by no later than 15 December 2020 to LCL and to the Liberty Customer Group, as pleaded at paragraph 404(g) of BCC's CS Global Defence;

iii. a Stop Asset Acquisition Instruction in relation to defaults by Liberty TCUK, which was issued by no later than 24 December 2020 to TCUK and to the Liberty Customer Group, as pleaded at paragraph 525(f) of BCC's CS Global Defence; and

iv. a Stop Asset Acquisition Instruction in relation to defaults by Liberty House, which was issued by no later than 10 March 2020 to Liberty House and to the Liberty Customer Group, as pleaded at paragraph 447(d) of BCC's CS Global Defence.

E7. Notification and claim by Greensill Bank under Policy 3690

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

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

173. TMNF admits paragraph 173 of the ASOC.

174. TMNF admits paragraph 174 of the ASOC.

175. In response to paragraph 175 of the ASOC, TMNF:

a. admits that the claim was submitted within 12 months of 13 July 2021, being the earliest date of alleged default set out at paragraphs 158 to 163 of the ASOC; and

b. otherwise denies the paragraph.

176. TMNF does not know and therefore cannot admit paragraph 176.

177. In response to paragraph 177 of the ASOC, TMNF:

a. denies the paragraph;

b. says that if the Policy and relevant endorsements were validly issued (which is not admitted), then Greensill Bank has not suffered a "Loss" as defined, because:

i. Simec was not a "Customer" as defined in the Policy, for the reasons pleaded in paragraphs 147, 150, 153, and 156.c of this Defence;

ii. the Simec Notes were not derived from an "Eligible Debts" as defined in the Policy for the reasons pleaded in paragraph 157 of this Defence; and

iii. any "Loss" has not arisen from an "Insured Cause", for the reasons pleaded in paragraph 170 of this Defence;

c. further or alternatively, says that if the Policy and the relevant endorsements were validly issued (which is not admitted) and there was a "Loss" as defined in the Policy (which is denied), then TMNF does not know what steps GCUK, Greensill Bank and/or GBAG have taken to mitigate that "Loss" (if any) and reserves its right to allege that any indemnity payment should be reduced pursuant to cl 10.7 of the Policy following discovery and disclosure in this proceeding;

d. further, or alternatively, that if the Policy and the relevant endorsements were validly issued and there was a "Loss" as defined in the Policy, then that loss is not recoverable because:

i. following the Liberty Seaview Defaults (as defined at paragraph 170.c.i of this Defence), at the time that each subsequent risk relating to an entity in the same corporate group as Liberty OneSteel (Primary) UK Pty Ltd (a **Liberty Risk**) was presented to Brereton and/or BCC, the Greensill Group failed to disclose that the Liberty Defaults had occurred (the **Liberty Defaults Non-Disclosure**);

ii. in the premises, pursuant to s 28(3) of the *Insurance Contracts Act 1984* (Cth), any right Greensill Bank and/or GCPL has to indemnity that depends upon an endorsement purportedly executed after December 2019 in relation to a Liberty Risk (including Customer Endorsement 2(ii)) is reduced to the amount that would place IAL in the position it would have been had the Liberty Seaview Defaults Non-Disclosure not been made, that amount being nil; and

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

e. further or alternatively, repeats paragraph 153.f of this Defence; and

f. further or alternatively, repeats paragraphs 170.c, d and e of this Defence.

178. TMNF denies paragraph 178 of the ASOC.

F. CLAIMS

F1. Breach of the Policy by Insurer

179. In response to paragraph 179 of the ASOC, TMNF:

a. admits that IAL has not paid to Greensill Bank the amount pleaded in paragraph 177 of the ASOC; and

b. otherwise denies the paragraph.

180. TMNF denies paragraph 180 of the ASOC.

F1A. Misleading or deceptive conduct by IAL

180A-180AM. TMNF does not plead to paragraphs 180A to 180AM of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

F2. Claims against BCC

Breach of Warranty of Authority

181. In response to paragraph 181 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 145, 147, 150 and 153 of this Defence; and

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

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

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

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

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

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

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

a. refers to and repeats paragraph 181 of this Defence; and

b. otherwise denies the paragraph.

183. TMNF denies paragraph 183 of the ASOC.

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

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

Particulars

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

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

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

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

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

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

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

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

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

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

Particulars

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

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

i. the investigation was continuing;

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

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

Particulars

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

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

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

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

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

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

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

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

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

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

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

i. the investigation was continuing; and

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

Particulars

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

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

i. the investigation was continuing; and

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

Particulars

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

g. says that each of the Simec Notes referred to in paragraph 184 of the ASOC were allegedly acquired by Greensill Bank after receipt of:

i. the July Marsh Notifications;

ii. the 4 August 2020 Letter;

iii. the 11 and 21 August 2020 Letters;

iv. the 28 August 2020 Letter; and

v. the 1 September 2020 Letter

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

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

g. otherwise denies the paragraph.

185. In response to paragraph 185 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 177, 181 and 184 of this Defence;

b. otherwise denies the paragraph; and

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

i. it was not entitled to be indemnified by IAL for the reasons pleaded in paragraphs 170 and 177 of this Defence; and

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

185A. In response to paragraph 185A of the ASOC, TMNF:

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

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 181 of the ASOC;

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

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

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

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 181 of the ASOC to the extent it occurred on or after 1 July 2019.

Misleading or Deceptive Conduct

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

a. refers to and repeats paragraphs 65 , 177 and 181 of this Defence;

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

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

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

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

a. refers to and repeats paragraphs 184 and 186 of this Defence;

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

c. otherwise denies the paragraph.

188. In response to paragraph 188 of the ASOC, TMNF:

a. refers to and repeats paragraphs 186 and 187 of the Defence;

b. otherwise denies the paragraph; and

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

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

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

189. TMNF denies paragraph 189 of the ASOC.

190. TMNF denies paragraph 190 of the ASOC.

191. TMNF denies paragraph 191 of the ASOC.

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

a. repeats paragraph 184 above; and

b. otherwise denies the paragraph.

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

a. denies the paragraph; and

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

194. In response to paragraph 194 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 184 and 186 to 193 of this Defence; and

b. otherwise denies the paragraph.

194AA. In further response to paragraph 194 of the ASOC, to the extent that Greensill Bank has suffered loss by reason of any alleged contravening conduct by TMNF (which is denied), TMNF says that:

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

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

Particulars

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

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

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

d. GCUK is a concurrent wrongdoer as its acts or omissions in not recovering the alleged debts from Simec caused the damage or loss the subject of the claim;

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

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

Particulars

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

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

e1. if the matters pleaded by GBAG at paragraphs [6B], [6C] and [219] to [278] of its Statement of Claim are established, then:

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

ii. Marsh Ltd is a concurrent wrongdoer because it:

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

B. engaged in the same conduct constituting the Marsh Authority Representations (as pleaded at paragraphs [242] to [243]);

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

D. in the premises, is liable to GBAG for the same contraventions and/or tortious conduct as pleaded against Marsh Pty Ltd at [253] to [272]; and

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

194A. In response to paragraph 194A of the ASOC, TMNF:

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

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 186 to 188 of the ASOC;

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

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

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

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 186 to 188 of the ASOC to the extent it occurred on or after 1 July 2019.

Section 1041E Claim

195. TMNF denies paragraph 195 of the ASOC.

196. TMNF denies paragraph 196 of the ASOC.

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

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

b. otherwise denies the paragraph.

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

a. refers to and repeats paragraphs 184 and 193 of this Defence; and

b. denies the paragraph.

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

a. refers to and repeats paragraphs 65, 184 and 185 to 193 of this Defence; and

b. otherwise denies the paragraph.

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

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

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 195 to 197 of the ASOC;

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

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

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

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 195 to 197 of the ASOC to the extent it occurred on or after 1 July 2019.

F3. Claims against Greg Brereton

200-218A.In response to paragraphs 200 to 218A (save for paragraphs 204A, 213A and 218A, which are pleaded to below) of the ASOC, TMNF:

a. refers to and repeats paragraphs 181 to 199 of this Defence;

b. says that, for the reasons pleaded in paragraph 181 of this Defence, if Mr Brereton gave the Brereton Warranties of Authority, he is entitled to avoid or rescind any collateral contract between him and Greensill Bank containing those warranties on the basis he entered into the contract by reason of the Prior Misrepresentations and Non-Disclosures; and

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

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

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

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 200 of the ASOC;

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

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

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

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 200 of the ASOC to the extent it occurred on or after 1 July 2019.

213A.In response to paragraph 213A of the ASOC, TMNF:

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

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 205 to 207 of the ASOC;

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

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

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

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 205 to 207 of the ASOC to the extent it occurred on or after 1 July 2019.

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

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

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 214 to 216 of the ASOC;

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

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

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

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 214 to 216 of the ASOC to the extent it occurred on or after 1 July 2019.

F4. Claims against Marsh and Marsh Pty Ltd

218B–278. TMNF does not plead to paragraphs 218B to 278 of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

G. Prior Misrepresentations and Non-Disclosures

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

a. pursuant to cl 15(4) of the Policy or s 28(2) of the ICA, the 2019 90/10 Policies (as defined in paragraph 4 of Annexure A to this Defence) and any endorsements under the policies are liable to be avoided;

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

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

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



……

Signed by Matt James Andrews

Lawyer for the Fourth Respondent by his partner, Raylee Joy Hartwell

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

Certificate of lawyer

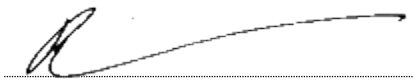
I, Raylee Joy Hartwell, certify to the Court that, in relation to the defence filed on behalf of the Fourth Respondent, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

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



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

Schedule

No: NSD 175 of 2023

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

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

BCC CROSS-CLAIM

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

BCC/TMNF FIRST CROSS-CLAIM

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

BCC/TMNF SECOND CROSS-CLAIM

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

IAL CROSS-CLAIM

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