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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

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Form 34
Rule 16.33

Reply to the BCC/TM Parties' Defences

No. NSD1039/2021

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations National Practice Area (Insurance List)

White Oak Commercial Finance Europe (Non-Levered) Limited

Applicant

Insurance Australia Limited ACN 000 016 722 and others named in the Schedule

Respondents

In reply to the second respondent's Defence to the Sixth Amended Statement of Claim, the sixth respondent's Defence to the Sixth Amended Statement of Claim and the seventh respondent's Defence to the Sixth Amended Statement of Claim, each filed on 29 July 2026 (collectively, the **Defences**), and adopting the capitalised terms contained in the Sixth Amended Statement of Claim filed by the applicant on 9 July 2026 (**WO 6ASOC**) and the applicant's separate replies to each of those respondents' Annexures A and B, except for any admissions contained in the Defences, the applicant joins issue with the Defences, and further:

1. In reply to subparagraphs 41(b)-(e) and 81(e1) of the Defences, White Oak:

   (a) repeats paragraphs 41 to 41B and 81 of WO 6ASOC;

Filed on behalf of (name & role of party) White Oak Commercial Finance Europe (Non-Levered) Limited, Applicant
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(b) relies on the Policy, including clauses 15.3 and the definition of "Endorsement", for its full force and effect;

(c) says that after entering into Endorsement 18 on 21 June 2019 (**Endorsement 18**) and the end of the original Policy Period of 22 February 2019 to 1 March 2020 (which was extended by Endorsement 18), the Insurer (through BCC) issued and entered into the endorsements pleaded in paragraphs 46(e), 46(g), 46(l), 52, 54 and 57 of the WO 6ASOC;

Promissory Estoppel

(d) further says:

(i) by reason of the matters pleaded in subparagraph (c) above, the Insurer (through BCC) represented to White Oak that the term of the Policy had been validly extended by reason of and pursuant to Endorsement 18 (**Policy Period Representation**);

(ii) induced by, and relying upon, the Policy Period Representation, White Oak to its detriment:

(A) entered into the MAA and acquired the Payment Obligations pleaded in paragraph 61 of the WO 6ASOC (**Subject Payment Obligations**); and

(B) entered into the Loss Payee Endorsement and relied on the Loss Payee Endorsement in deciding to acquire the Subject Payment Obligations;

(iii) at no time prior to the acquisition of the Subject Payment Obligations did the Insurer withdraw the Policy Period Representation with the effect that they were continuing representations;

(iv) the Insurer (through BCC) knew White Oak was acting, or intended White Oak to act, as pleaded in subparagraph (d)(ii) above;

(v) if the Insurer or BCC were permitted to depart from the Policy Period Representation, then White Oak would suffer detriment;

(vi) it would be unconscionable to permit the Insurer or BCC to depart from the Policy Period Representation; and

(vii) in the premises, the Insurer and BCC are estopped from departing from the Policy Period Representation;

Conventional Estoppel

(e) further, or in the alternative, says:

(i) each of White Oak and the Insurer (through BCC) adopted the assumption and the expectation that the term of the Policy had been validly extended by reason of, and pursuant to, Endorsement 18 (**Policy Period Assumption/Expectation**);

(ii) White Oak and the Insurer (through BCC) each knew or intended that the other act on the basis of the Policy Period Assumption/Expectation;

(iii) in furtherance and reliance of the Policy Period Assumption/Expectation, White Oak:

(A) entered into the MAA and acquired the Subject Payment Obligations; and

(B) entered into the Loss Payee Endorsement and relied on the Loss Payee Endorsement in deciding to acquire the Subject Payment Obligations;

(iv) White Oak would suffer detriment if the Insurer or BCC were permitted to depart from the Policy Period Assumption/Expectation; and

(v) in the premises, the Insurer and BCC are estopped from departing from the Policy Period Assumption/Expectation;

Waiver

(f) further, or in the alternative, says by reason of the matters pleaded in subparagraph (c) above, the Insurer (through BCC) has through its conduct irrevocably waived any right it had (which is not admitted) to insist on compliance by the Insured with its obligations (if any) under clause 15.3(a) of the Policy;

Election

(g) further, or in the alternative, says to the extent that the Insurer or BCC had any right to assert that Endorsement 18 was not a valid endorsement to the Policy, the Insurer (through BCC) knew or ought to have known:

(i) the terms of the Policy, and in particular, clause 15.3(a); and

(ii) the contents of Endorsement 18, and in particular, the absence of any signature by the Insured;

(h) further, or in the alternative, says by the Insurer's conduct (through BCC) as pleaded in subparagraph (c) above the Insurer (through BCC) made an unequivocal choice to affirm the validity of Endorsement 18 and the Policy during the period 2 March 2020 to 1 March 2021;

Section 54 of the Insurance Contracts Act

(i) further, or in the alternative, says that any omission by the Insured (which is not admitted) to sign an endorsement was an act or omission to which section 54(1) of the *Insurance Contracts Act 1984* (Cth) (**ICA**) applies;

Clause 15.3 is not a legal bar to variation

(j) further, or in the alternative, says clause 15.3(a) of the Policy does not operate as a legal bar to the validity or enforceability of Endorsement 18; and

(k) otherwise denies the subparagraphs.

2. In reply to paragraph 46 of the Defences, White Oak:

(a) repeats paragraphs 46, 57 to 59C and 61 to 64 of the WO 6ASOC, and refers to paragraphs 6 and 7 below;

(b) admits the existence of the documents particularised in paragraph 46(a) of the Defences and relies on those documents for their full force and effect;

(c) relies on the Policy, including clauses 7.1, 7.3, 7.4, 7.5 and 9.7 and the definition of "Customer Endorsement", for its full force and effect;

(d) otherwise does not know and therefore cannot admit subparagraphs 46(a) to (f) of the Defences; and

(e) otherwise denies the paragraph.

3. In reply to subparagraphs 52(b4), 53(b), 54(b) to 54(e), 56(a), 56(b) and 57(a) of the Defences, White Oak:

   (a) repeats paragraphs 41 to 41B and 52 to 58 of the WO 6ASOC, and paragraphs 1(i) and 1(j) above;

   (b) relies on:

      (i) the Policy, including clauses 5.4 and 15.3 and the definitions of "Customer Endorsement", "Customer Group Limit", "Customer Limit", "Debt", "Debt Endorsement", "Eligible Debt" and "Endorsement", for its full force and effect; and

      (ii) the Customer Endorsements, the LCL Endorsement, the Liberty Endorsement and the Loss Payee Endorsement for their full force and effect;

   (c) says further that the agreement by each party for the variation of the mutual rights and obligations of the parties was consideration for the other party's promise; and

   (d) otherwise denies the subparagraphs.

4. In reply to subparagraphs 58(f)-(g) of the Defences, White Oak:

   (a) repeats paragraphs 57 to 60B of the WO 6ASOC;

   (b) further says that:

      (i) GCPL and/or GBAG entered into the Policy for the benefit of White Oak as it related to any "Loss" suffered or that may be suffered by and/or to be paid to White Oak, and/or any "Assets" acquired or to be acquired by White Oak (**White Oak Interests**);

      (ii) by reason of the matter pleaded in (b)(i), GCPL and/or GBAG held on trust for White Oak the Insurer's promise of indemnity under clause 1.1 of the Policy and/or the benefit of the Policy as it related to the White Oak Interests;

      (iii) as the beneficiary of the trust property pleaded in (b)(ii) above, White Oak is entitled to enforce the Insurer's promise of indemnity under clause 1.1 of the Policy as it relates to the White Oak Interests; and

(iv) by reason of the matters pleaded in (b)(i) to (b)(iii) above, White Oak has standing to sue under the Policy in respect of the White Oak Interests, and

(c) otherwise denies the subparagraphs.

5. In reply to subparagraph 81(c)-(e) and (h)-(i) of the Defences, White Oak:

(a) repeats:

(i) paragraphs 47 to 81 of the WO 6ASOC;

(ii) its Reply to the BCC/TM Parties Annexure B; and

(iii) paragraphs 1 and 3 above;

(b) relies on the terms of the Policy, the RPA Debt Endorsement, the Liberty Endorsement, the LCL Endorsement, the Loss Payee Endorsement and the RPA for their full force and effect;

(c) says:

(i) on the dates pleaded in paragraphs 76 to 78 of the WO 6ASOC, White Oak made claims under the Policy in respect of LCL as a 'Customer' for the purposes of the Liberty Endorsement and in respect of 'Debts' described in Part (B) of the RPA Debt Endorsement (**WO Claims**);

(ii) because the WO Claims exceeded USD 5 million:

(A) pursuant to the Liberty Endorsement, the Maximum Limit of Liability and/or Customer Limit of USD 5 million "*automatically, unconditionally and repeatedly reset at the same level up to an amount in aggregate which is at least the amount of such Claim*"; and

(B) pursuant to the Loss Payee Endorsement, the Insurer was and is irrevocably obliged to "*automatically, unconditionally and repeatedly reset and increase the Customer Limit and/or a Maximum Limit of Liability so that each limit is in aggregate in an amount which will cover such Claim (and all pre-existing Claims)*";

(d) further says on a proper construction of clause 8.3 of the Policy:

(i) a 'Stop Asset Acquisition Instruction':

(A) was concerned only with 'Debts' as described in Part (A) of the RPA Debt Endorsement, and not 'Debts' as described in Part (B) of the RPA Debt Endorsement; and

(B) further or in the alternative, was only deemed to be delivered where the failure to pay a 'Debt' was an event which the party acquiring a relevant 'Asset' knew or reasonably could have known had occurred;

(ii) further, or in the alternative, in the premise of paragraphs 58A, 59B and 59D of the WO 6ASOC, the 'Insurer' under the Policy cannot rely on a deemed issue of a 'Stop Asset Acquisition Instruction':

(A) where the party acquiring a relevant 'Asset' did not know, and could not have reasonably known, of the relied on failure to pay a 'Debt'; and/or

(B) in the circumstances of the issue and entry into of the Customer Endorsement, the RPA Debt Endorsement, the Liberty Endorsement, the LCL Endorsement and the Loss Payee Endorsement where:

(I) the party acquiring a relevant 'Asset' did not know, and could not have reasonably known, of the relied on failure to pay a 'Debt'; and/or

(II) any asserted issue of a 'Stop Asset Acquisition Instruction' had not been notified to White Oak;

(e) further, or in the alternative, says:

(i) if, which is denied, any 'Stop Asset Acquisition Instruction' pursuant to clause 8.3 of the Policy (**SAAI**) arose as pleaded in paragraphs 81(d)-(d4) and 81(h)-(i) or Annexure B of the Defences (**Purported Issued SAAIs**), then by issuing and entering into the RPA Debt Endorsement, the Liberty Endorsement, the LCL Endorsement and/or the Loss Payee Endorsement (**SAAI Conduct**), the Insurer

(through BCC) represented to White Oak that the Insurer was not and would not be relying on:

(A) any purported SAAI that had been deemed to be delivered or may in the future be deemed to be delivered in relation to conduct of the kind the subject of the Purported Issued SAAIs unless White Oak knew or ought reasonably to have known about that conduct; and

(B) further or in the alternative, any Purported Issued SAAIs that arose prior to each engagement in the SAAI Conduct;

(ii) induced by, and relying upon, the representation in subparagraph (e)(i) above (**SAAI Representations**), White Oak to its detriment:

(A) entered into the MAA and acquired the Subject Payment Obligations; and

(B) entered into the Loss Payee Endorsement and relied on the Loss Payee Endorsement in deciding to acquire the Subject Payment Obligations;

(iii) at no time prior to the acquisition of the Subject Payment Obligations did the Insurer withdraw the SAAI Representations with the effect that they were continuing representations;

(iv) the Insurer (through BCC) knew White Oak was acting, or intended White Oak to act, as pleaded in subparagraph (e)(ii) above;

(v) if the Insurer or BCC were permitted to depart from the SAAI Representations then White Oak would suffer detriment;

(vi) it would be unconscionable to permit the Insurer or BCC to depart from the SAAI Representations; and

(vii) in the premises, the Insurer and BCC are estopped from departing from the SAAI Representations;

(f) further, or in the alternative, says:

(i) if, which is denied, any Purported Issued SAAIs arose, each of White Oak and the Insurer (through BCC) adopted the assumption

and expectation that the Insurer was not and would not be relying on:

(A) any purported SAAI that had been deemed to be delivered or may in the future be deemed to be delivered in relation to conduct of the kind the subject of the Purported Issued SAAIs unless White Oak knew or ought reasonably to have known about that conduct; and

(B) further, or in the alternative, any Purported Issued SAAIs that arose prior to each engagement in the SAAI Conduct;

(ii) White Oak and the Insurer (through BCC) each knew or intended that the other act on the basis of the assumption and expectation in subparagraph (f)(i) above (**SAAI Assumption/Expectation**);

(iii) in furtherance and reliance of the SAAI Assumption/Expectation, White Oak:

(A) entered into the MAA and acquired the Subject Payment Obligations; and

(B) entered into the Loss Payee Endorsement and relied on the Loss Payee Endorsement in deciding to acquire the Subject Payment Obligations;

(iv) White Oak would suffer detriment if the Insurer or BCC were permitted to depart from the SAAI Assumption/Expectation; and

(v) in the premises, the Insurer and BCC are estopped from departing from the SAAI Assumption/Expectation;

(g) further, or in the alternative, says if, which is denied, any Purported Issued SAAIs arose, the Insurer (through BCC) has through the SAAI Conduct irrevocably waived any right it had (which is denied) to rely on the Purported Issued SAAIs;

(h) further, or in the alternative, says:

(i) in respect of any debts the subject of a policy other than the Policy, to the extent that any SAAIs arose (which is denied), they could not impact coverage under the Policy;

(ii) it does not admit any alleged debts relied on in respect of the Purported Issued SAAIs were "Eligible Debts" that attached to the Policy such that any alleged failure to pay those debts gave rise to the Purported Issued SAAIs under the Policy; and

(iii) insofar as any Purported Issued SAAIs were issued in respect of debts maturing before 1 March 2019 and/or 29 April 2020, any alleged failure to pay in respect of those debts (which is denied) could not give rise to a SAAI under the Policy and/or in respect of the Subject Payment Obligations, and

(i) otherwise denies the subparagraphs.

6. In reply to subparagraphs 41A(b), 81(f)(i) and 81(g) and paragraph 232 of the Defences, White Oak:

(a) repeats:

(i) paragraphs 41A, 57 to 59D and 81 of the WO 6ASOC; and

(ii) its Reply to the BCC/TM Parties and IAL Annexure A;

(b) relies on the Policy (including clauses 7.1, 7.3 to 7.5, 9.7 and 15.4) and the Loss Payee Endorsement for their full force and effect;

(c) says:

(i) as between IAL, GCPL and Greensill Bank, the Policy comprises two contracts of insurance, being:

(A) a contract between GCPL in its own capacity as Insured and IAL, by its agent and corporate representative BCC, as Insurer, insuring Losses related to Assets acquired by GCPL during the period of insurance; and

(B) a contract between Greensill Bank in its own capacity as Insured, and IAL, by its agent and corporate representative BCC, as Insurer, and White Oak as Loss Payee, insuring Losses related to Assets acquired by Greensill Bank or the Loss Payee during the period of insurance (**GBAG Contract**);

(ii) says that, in relation to the GBAG Contract:

(A) only Greensill Bank was subject to a duty under section 21 of the ICA; and

(B) the knowledge of GCUK (and its officers, employees and agents) was not attributable to Greensill Bank for the purposes of section 21 of the ICA and/or clause 15.4 of the Policy;

Particulars

1. BCC and IAL agreed in clause 7.5(a) of the Policy that GCUK (the Servicer under the Policy) was not the agent of Greensill Bank in respect of the Policy. Further, BCC and IAL expressly agreed (in relation to the Information Packs that were prepared by GCUK as Servicer) that Greensill Bank did not have responsibility for any Information Pack and made no warranty in relation to any Information Pack in clause 7.4 of the Policy. This is consistent with the objects of the transaction recorded in the recitals, whereby the Servicer provides information about Assets, Customers and the Participant Trust(s) to the Insured (as potential investor) and to the Insurer (as potential insurer).

(iii) the knowledge of GCPL (and its officers, employees and agents) was not attributable to Greensill Bank for the purposes of section 21 of the ICA and/or clause 15.4 of the Policy; and

Particulars

1. GCPL did not make any Proposal or enter into the Policy as agent of Greensill Bank or in any other relational capacity, but solely in its own capacity (as is recorded in the description of the parties for the Policy).

(iv) further or in the alternative, if, which is denied, the Policy comprises one contract of insurance and GCPL is a co-insured under that contract, then the knowledge of GCUK (and its officers, employees

and agents) was not attributable to GCPL for the purposes of section 21 of the ICA and/or clause 15.4 of the Policy;

Particulars

1. IAL agreed (through its agent and corporate representative, BCC) in clause 7.5(a) that GCUK (the Servicer under the Policy) was not the agent of GCPL in respect of the Policy. Further IAL expressly agreed (through its agent and corporate representative, BCC) in relation to the Information Packs that were prepared by GCUK as Servicer that GCPL did not have responsibility for any Information Pack and made no warranty in relation to any Information Pack in clause 7.4 of the Policy. This is consistent with the objects of the transaction recorded in the recitals, whereby the Servicer provides information about Assets, Customers and the Participant Trust(s) to the Insured (as potential investor) and to the Insurer (as potential Insurer).

(d) says further that, in relation to the GBAG Contract:

(i) the only statements of fact made by Greensill Bank in relation to the GBAG Contract are those expressly recorded in the Proposal as made by Greensill Bank;

(ii) by operation of section 24 of the ICA, any statement made by Greensill Bank in the Proposal does not have the effect of a warranty but only a representation;

(iii) Greensill Bank made no warranty or representation in relation to any subject dealt with in the Information Packs; and

Particulars

1. Clause 7.4 of the Policy.

(iv) no statement made by any of GCUK or GCPL (or any of their officers, employees or agents) is relevant for the purposes of section 28(1) of the ICA and/or clause 15.4 of the Policy, as none of those entities or persons became the Insured under the GBAG Contract;

(e) further, or in the alternative, if, which is denied, the Policy comprises one contract of insurance and the statements of fact made by GCPL in relation to the Policy are relevant to the operation of section 28 of the ICA in respect of claims made by Greensill Bank, then:

(i) the only statements of fact made by GCPL in relation to the Policy are those expressly recorded in the Proposal as made by GCPL;

(ii) by operation of section 24 of the ICA, any statement made by GCPL in the Proposal does not have the effect of a warranty but only a representation;

(iii) GCPL made no warranty or representation in relation to any subject dealt with in the Information Packs; and

Particulars

1. Clause 7.4 of the Policy.

(iv) says further that no statement made by GCUK (or its officers, employees or agents) is relevant for the purposes of section 28(1) of the ICA and/or clause 15.4 of the Policy as none of those entities or persons became the Insured under the Policy;

(f) further says that insofar as BCC seeks to rely upon clause 15.4 of the Policy:

(i) on its proper construction, clause 15.4 purports only to give IAL a right to “declare void” the Policy insofar as it impacts the contract of the Insured purporting to make the statement, report or Claim that is sought to be impugned, and, accordingly, does not impact the GBAG Contract unless the party whose conduct is sought to be impugned is Greensill Bank; and

(ii) if, which is denied, clause 15.4 of the Policy purports to give IAL a right to “declare void” the GBAG Contract or the Policy due to the conduct of GCUK (or its officers, agents or employees) that is sought to be impugned, then, to that extent the clause is void by operation of sections 28 and 33 of ICA;

(g) further says that insofar as any alleged misrepresentations were made after the inception of the Policy, then they do not attract the application of section 28(3) of the ICA as they were made after the inception of the Policy; and

(h) otherwise denies subparagraphs 41A(b), 81(f)(i) and 81(g) and paragraph 232 of the Defences.

7. Further, or in the alternative to paragraph 6 of this Reply, and in reply to subparagraphs 41A(b), 81(f)(i) and 81(g) and paragraph 232 of the Defences, White Oak:

(a) repeats:

(i) paragraphs 41A, 57 to 59D and 81 of the WO 6ASOC; and

(ii) its Reply to the BCC/TM Parties and IAL Annexure A;

(b) relies on the Policy (including clauses 7.1, 7.3 to 7.5, 9.7 and 15.4) and the Loss Payee Endorsement for their full force and effect;

(c) says if, which is denied, the Policy comprises one contract of insurance and the Insurer is entitled to avoid indemnity on the grounds set out in paragraphs 81(g) and/or 232 of the Defences and/or their Annexure A, the Court should disregard the avoidance and allow White Oak to recover the whole, or such part as the court thinks just and equitable in the circumstances, of the Claims that would have been payable if the contract had not been avoided under section 28 of the ICA, on the basis that it would be harsh and unfair not to do so; and

Particulars

1. Section 31 of the ICA.

(d) otherwise denies subparagraphs 41A(b), 81(f)(i) and 81(g) and paragraph 232 of the Defences.

Date: 7 September 2026



Signed by Rehana Box

Lawyer for the Applicant

This pleading was prepared by Rehana Box and Rani John, lawyers, and by Julian Sexton, Tom O'Brien, Jocelyn Jaffray, Harry Rogers, Matthew Youssef and Katrina Woodforde of counsel.

Certificate of lawyer

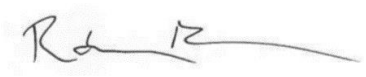
I, Rehana Box, certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading;

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 7 September 2026



Signed by Rehana Box

Lawyer for the Applicant

Schedule

Respondents

Second Respondent:	BCC Trade Credit Pty Ltd ACN 608 296 233
Third Respondent:	Greg Brereton
Fourth Respondent:	Greensill Bank AG
Fifth Respondent:	Dr Michael Frege
Sixth Respondent:	Tokio Marine & Nichido Fire Insurance Co Ltd. ACN 000 438 291
Seventh Respondent:	Tokio Marine Management (Australasia) Pty Ltd ACN 001 488 455, of Level 17, 60 Margaret Street, Sydney NSW 2000