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Registrar

Important Information

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Form 33

Rule 16.32

Further Amended Defence to the Sixth Amended Statement of Claim

No. NSD174 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Greensill Bank AG

First Applicant

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

Second Applicant

Insurance Australia Limited (ACN 000 016 722) and others according to the Schedule Respondents

To the Applicants' Sixth Amended Statement of Claim filed 11 June 2025 (**SOC**), the First Respondent (**IAL**) says as follows:

SUMMARY

A1 The Applicants allege that Greg Brereton (**Brereton**) and BCC Trade Credit Pty Ltd (**BCC**) acted on behalf of IAL in issuing a "trade credit" insurance policy (referred to as the **2019 Policy**) and related endorsements to Greensill Bank AG (**Greensill Bank**). Greensill Bank claims that it is entitled to indemnity from IAL under the 2019 Policy.

A2 A total of 113 endorsements are relied upon by the Applicants in the various **Greensill Proceedings**,[1] of which 20 are specifically relied on in this proceeding. The SOC refers

[1] NSD1039 of 2021 (White Oak Proceeding), NSD1216 of 2021 (EHG Proceeding), NSD106 of 2022 (Catfoss Renewables Proceeding), NSD110 of 2022 (NMC Health Proceeding), NSD169 of 2023 (Credit Suisse Global Proceedings), NSD173 of 2023 (Atlantic 57 Proceeding), NSD174 of 2023 (Bluestone Proceeding), NSD175 of 2023 (LCL Proceeding) and NSD177 of 2023 (Simec Proceeding).

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to them as "debt endorsements", "customer endorsements" and "loss payee endorsements". These endorsements were written by BCC and Brereton between 13 March 2019 and 2 July 2020. The Applicants allege that the claims made in the Greensill Proceedings fall within the scope of the 2019 Policy and endorsements pleaded.

A2A Notably, in light of the acquisition of BCC by Tokio Marine Management (Australasia) Pty Ltd (**TMMA**), which completed on 9 April 2019, there was a transitional period between 9 April and 30 June 2019 during which the authority given by IAL to BCC and Brereton was more limited than the period immediately preceding that. TMMA and Bond & Credit Company Pty Ltd (**Bond**) issued public statements about the acquisition in mid-April 2019. BCC provided a copy of these statements to the insurance broker of the **Greensill Group** (being, Greensill Bank, Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Pty Ltd (**GCUK**)), Marsh Pty Limited and/or Marsh Limited (collectively, **Marsh**), on 15 April 2019. Accordingly, the public, and specifically the Greensill Group, were on notice of the impending change in the licensee on whose behalf BCC and Brereton could act in issuing trade credit insurance.

A3 Across the various Greensill Proceedings, IAL denies liability on numerous bases. It was not a party to the policies and endorsements, and cannot be sued on them. Even if the policies and endorsements are binding, the Applicants' pleaded cases do not plead the facts necessary for there to be coverage, and in any event, even on the Applicants' pleaded case, their claims fail to meet multiple necessary conditions. On these, and other bases, liability is denied.

A3A The core bases upon which IAL denies liability in this proceeding are set out below.

No authority

A4 *First*, BCC and Brereton did not have any authority from IAL to write the risks the subject of claims in the Greensill Proceedings. BCC and Brereton's authority was, at all relevant times, limited by specific written authorities and underwriting manuals. The only policies they could enter into on behalf of IAL were true trade credit policies using prescribed wording of three kinds – "Trade Credit Insurance Whole of Turnover", "Trade Credit Insurance Multi Buyer" and "Trade Credit Insurance Single Risks" (**Approved Wording**). The endorsements that BCC and Brereton could issue on behalf of IAL were also prescribed and in set terms (**Approved Endorsements**). BCC and Brereton could not issue trade credit policies and endorsements that were not in accordance with the prescribed terms without approval from IAL and its reinsurers (in particular, lead reinsurer Scor Reinsurance Asia-Pacific Pte Ltd (**Scor Re**)). This was known to the entities in the Greensill Group purportedly insured under the policies entered into by BCC and Brereton (as explained in paragraph A7A below).

A5 The 2019 Policy (pursuant to which claims are made in this proceeding) was outside the scope of BCC and Brereton's written authority in numerous respects, including as follows, such that the policy is not binding on IAL:

(a) The 2019 Policy was not Approved Wording. IAL and Scor Re had not approved its terms, as was required under the relevant authorities;

(b) The risks were not trade credit risks.

(c) BCC and Brereton could only write policies for insureds domiciled in Australia, but Greensill Bank was not so domiciled.

(d) The premium for the 2019 Policy was specified as $1, less than the minimum authorised premium of $10,000. $1 was in any event entirely uncommercial and disproportionate to the risks sought to be purportedly insured.

(e) It permitted credit terms for insured debts which exceeded the maximum authorised credit term of 180 days.

(f) The 2019 Policy did not have a minimum excess, when the minimum required was 0.75%.

(g) Policies could not exceed a policy term of 12 months, but the 2019 Policy did so.

(h) The 2019 Policy was in breach of BCC's and Brereton's contractual obligation to act efficiently, honestly and fairly.

A6 Moreover, the purported insureds failed to pay any consideration/premium for the 2019 Policy, such that it is not valid or binding.

A7 The endorsements pleaded and purportedly issued by BCC/Brereton on behalf of IAL pursuant to the 2019 Policy were outside the scope of their authorities and are therefore invalid, of no effect and not binding or enforceable against IAL because, inter alia:

(a) They were not Approved Endorsements.

(b) As BCC and Brereton lacked authority to enter into the 2019 Policy, they also lacked authority to enter into the endorsements.

(c) The endorsements (including, in relation to this proceeding, Endorsements 9, 17, 18, 23, Debt Endorsement 2(iv), Customer Endorsement 5 and the "Supplier Customer Endorsements" referred to in paragraph 143(a)-(n) of the SOC) purported to operate in favour of an insured not domiciled in Australia, which their authorities did not permit, and/or purported to vastly increase the exposure of IAL beyond the limits as stipulated in the applicable Underwriting Manuals.

(d) Many of the endorsements (including, in relation to this proceeding, Endorsement 23, Debt Endorsement 2(iv) and the "Supplier Customer Endorsements" described in paragraphs 143(i) to (n) of the SOC) were entered into after 30 June 2019 after BCC and Brereton's appointment as authorised representatives of IAL ceased. Moreover, as was publicly available, the register maintained by ASIC under section 922A of the *Corporations Act 2001* (Cth) (***Corporations Act***) was updated to record that BCC's and Brereton's status as authorised representatives of IAG Agencies Pty Ltd (**IAGA**) had ceased with effect on 30 June 2019, and that BCC was the authorised representative of Tokio Marine & Nichido Fire Insurance Co Ltd (**TMNF**) from 1 July 2019 onwards. On and from 1 July 2019, TMNF was responsible for the conduct of BCC and Brereton for the purpose of section 917B of the *Corporations Act*.

A7A The Greensill Group knew or ought to have known that BCC/Brereton lacked authority to enter into the 2019 Policy on behalf of IAL. In particular, in late 2017, the Greensill Group (through its insurance broker Marsh) and Alexander 'Lex' Greensill (Lex Greensill) sought to negotiate (through BCC) the terms of a policy prepared by the Greensill Group or Marsh with IAL and reinsurer Scor Re. Those terms deviated from the Approved Wording. IAL and Scor Re informed BCC that they disagreed in numerous respects and BCC communicated this to the Greensill Group. In the result, agreement was not reached, and BCC informed IAL that it would proceed only using Approved Wording. Through this, the Greensill Group knew that policy wordings which deviated from Approved Wording required approval from IAL and Scor Re, and that no such approval had been given. At no point did the Greensill Group seek approval for the 2019 Policy, or any of its purported endorsements, from IAL or Scor Re as required, and at no point did IAL or Scor Re give approval for the 2019 Policy and or any endorsements.

A8 Even if BCC/Brereton had authority to write the endorsements (which IAL denies), those endorsements were inconsistent with numerous terms of the 2019 Policy, and were not of a kind contemplated by it, i.e., they were not permitted by the terms of the 2019 Policy, and are therefore invalid, of no effect and not binding or enforceable against IAL.

A8A For the reasons summarised at paragraph A4, A5 and A10 of this Defence, BCC/Brereton additionally lacked authority to enter into the series of master and parallel policies that Greensill Bank alleges (and IAL denies) were substantively similar in structure and wording as the 2019 Policy (the **Alleged Master/Parallel Policies**). Further, at all material times:

(a) the wording and structure of the Alleged Master/Parallel Policies were not communicated to IAL and IAL did not communicate to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed

Greensill Policy Wording (as defined at paragraphs 80B and 80C of the SOC) and the wording and structure of the Alleged Master/Parallel Policies;

(b) BCC indicated to IAL that it would not be proceeding with the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording and that it would instead use Approved Wording;

(c) BCC and Brereton could not issue trade credit policies and endorsements that were not in accordance with the prescribed terms without approval from IAL and its reinsurers (in particular, Scor Re). This was known to the entities in the Greensill Group purportedly insured under the Alleged Master/Parallel Policies entered into by BCC and Brereton;

(d) as detailed at paragraph A10(b) of this Defence, the bordereaux provided by BCC to IAL failed to disclose material information and contained substantial inaccuracies in relation to the Alleged Master/Parallel Policies, including that the bordereaux did not disclose the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording or the alleged master/parallel structure of each of the Alleged Master/Parallel Policies and/or any connection between each master policy and its alleged corresponding parallel policy; and

(e) it further follows that IAL did not engage in the misleading or deceptive conduct alleged by the Applicants at Part F1A of the SOC.

IAL is not responsible for the conduct of BCC/Brereton under the Corporations Act

A9 *Second*, Division 6 of Part 7.6 of the *Corporations Act* does not apply to make IAL responsible for the conduct of BCC/Brereton, including their conduct in entering into the 2019 Policy and endorsements. This is so because, *inter alia*:

(a) Greensill Bank was not a "client" with respect to the 2019 Policy for the purpose of section 917A(1)(b) of the *Corporations Act*.

(b) [Not used].

(c) If Greensill Bank was a "client" with respect to the 2019 Policy and endorsements for the purpose of section 917A(1)(b) of the *Corporations Act* (which IAL denies), then the purported entry into the 2019 Policy was not conduct on which Greensill Bank could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act* for the reasons given in paragraph A11 below.

(d) Moreover, the Applicants have not pleaded the facts, matters and circumstances said to constitute actual good faith reliance for the purpose of

section 917A(1)(c) of the *Corporations Act* and IAL denies that Greensill Bank in fact relied in good faith on the purported entry into the 2019 Policy and endorsements.

A10 IAL was not informed that BCC and Brereton were issuing policies and endorsements using non-approved wording and non-approved endorsements. In fact:

(a) BCC informed IAL on 2 November 2017 that "We are only going to use our approved wording in accordance with our approved Underwriting Guidelines." [IAL.500.011.0555].

(b) The bordereaux provided by BCC to IAL at all relevant times failed to disclose material information and contained substantial inaccuracies, including by failing to disclose the existence of the 2019 Policy and endorsements and multiple other policies purportedly written by BCC/Brereton on behalf of IAL in favour of Greensill entities, and by failing to disclose that BCC/Brereton had purported to write policies with entities domiciled outside Australia as insureds. In particular, Greensill Bank, which was domiciled in Germany, was not disclosed as an insured. The bordereaux did not disclose that non-approved wording and endorsements were being written. On the contrary, the denominations of the policies identified in the bordereaux were consistent with Approved Wording being used.

A11 The Greensill Group (including its agent, Marsh) knew or ought to have known that BCC and Brereton did not have authority to write the risks the subject of these proceedings.

No coverage under the 2019 Policy

A12 *Third*, even if the Applicants can establish that IAL is bound by (or otherwise responsible for) the 2019 Policy and the endorsements to it, they face a number of insurmountable obstacles in showing that the 2019 Policy covered the claims they now make.

A13 To the extent that this Defence sets out coverage defences that are based on the wording of the 2019 Policy and its endorsements, it should be understood that those defences arise only in the alternative to IAL's primary position that the 2019 Policy and its endorsements are not valid and binding. The 2019 Policy, at a high level, purports to insure "**Loss**" in respect of "**Assets**" caused by a failure to pay "**Eligible Debts**". There are numerous necessary conditions which must exist before each of those three key concepts – "Loss", "Asset" and "Eligible Debt" – can be said to exist.

A14 For example, before there can be an "Eligible Debt" there must be a debt which meets the six criteria in Sch 7 of the 2019 Policy at the time the relevant "Asset" derived from one or more "Eligible Debts" is acquired by the "Insured". One of those criteria is that the debt meets the criteria in a "Debt Endorsement". Various "Debt Endorsements" (and

parts of "Debt Endorsements") are relied on in the claims. Each "Debt Endorsement" brings with it a host of additional conditions which a debt must meet in order to qualify as an "Eligible Debt". IAL denies that the "Debt Endorsements" bind it, but the Applicants' case depends on the "Debt Endorsements".

A15 There are numerous intersections between IAL's defence of lack of authority and the case advanced by the Applicants on coverage. The Applicants' case on coverage depends on establishing that various "Customer Endorsements" and "Debt Endorsements" were valid, binding on and enforceable against IAL. For example, there is no "Eligible Debt" unless it is owed by a "Customer" which, in turn, is a person endorsed to the policy under a "Customer Endorsement". If there is no valid or effective "Customer Endorsement", there is no "Customer" and no "Eligible Debt".

A16 IAL anticipates that, if the 2019 Policy is (contrary to IAL's position), valid and/or binding on it, in order to resolve the case on coverage, it will be necessary: first, to identify which endorsements to the policy were valid, binding and enforceable; secondly, to construe the policy and endorsements to identify the conditions necessary for coverage; and, thirdly, to identify and understand the underlying transactions to establish whether the conditions are met. The alleged underlying transactions typically (but not invariably) involve the following parties and transactions:

(a) a supply or possible supply of goods or services from a supplier (A) to a purchaser (B);

(b) the provision of finance from C (typically another Greensill Group entity, GCUK) to either A (as purported trade credit finance, to obtain advance cash flow in respect of a future payment obligation of B) or B (as purported supply chain finance, to allow B to meet its payable to A);

(c) the assumption of payment obligations by A or B (as the case may be) to C in consideration for the supply of finance by C. "A" or "B" is, ordinarily, then the "Customer" relied on by the Applicants, and the payment obligations of "A" or "B" are ordinarily then the obligations which give rise to the asserted "Eligible Debts" (often described in the Statements of Claim as "Payment Obligations" or some variation thereof);

(d) an assignment by C (the financier) to D (typically, a foreign special purpose vehicle) of the payment obligations of A or B;

(e) the issuing of a financial instrument, a "Note", by D to E (typically, a person who asserts that it is a "Loss Payee" in respect of the policy eg Credit Suisse Virtuoso);

(f) default in payment of the payment obligations securitised under the "Note"; and

(g) thereafter, the transfer of the "Note" from E to the alleged Insured F (typically Greensill Bank), in order to found a claim under the 2019 Policy.

A17 There are other permutations – for example, sometimes the alleged payment obligations (and thus the "Eligible Debts") are said to be owed by a guarantor of either A or B; and sometimes there is no "Note", but there is instead an alleged direct ownership of the debt by the Insured.

A18 IAL contends that the Applicants' pleading falls well short of pleading material facts capable of establishing the multiple steps in the transactional chain which could ground indemnity under the 2019 Policy, even assuming that it, and relevant endorsements, are valid and binding on IAL.

A19 Further, the Applicants' pleaded case largely does not address, or address adequately, the conditions necessary for there to be coverage. IAL has done its best in the Defence to expose the propositions which are either implicit in the Applicants' case or, if not implicit, are missing and must be established. IAL anticipates that the resolution of the case on coverage will call for a measure of "box-ticking", a task in which IAL says the Applicants will fail at multiple levels on the case as pleaded.

A20 The complexity of the endorsements, and the related multiplicity of conditions necessary for there to be coverage, are not matters for which IAL is responsible: IAL did not draft the 2019 Policy or the endorsements; they bear no resemblance to the Approved Wording or the Approved Endorsements; and the policy and endorsements were in fact drafted by the purported "Insureds" themselves without approval by or even recourse to IAL.

A21 Once the propositions, implicit in or necessary to the Applicants' case, are exposed, it is apparent that there are significant gaps throughout the Applicants' case. These are identified throughout the Defence (and correspondingly in IAL's defences to related claims). By way of example only:

(a) In most cases, the "Assets" relied on by the Applicants were first acquired by Greensill Bank after the underlying debt was already in default. The policy, both in its terms and as a matter of commercial common-sense, does not extend coverage to Assets acquired in those circumstances. Nor is a debt an "Eligible Debt" if the related "Asset" was acquired when the debt was outstanding.

(b) In most cases, the "Assets" relied on were first acquired by Greensill Bank after the policy period. Again, that is sufficient to deny coverage.

(c) In most cases, the "Assets" relied on are said to be "Notes". The policy makes clear that a note is only a "Note" if it was issued under a "Master Trust Deed" as

defined. But the deed relied on by the Applicants does not meet the description of being a "Master Trust Deed".

(d) In many cases, there was in fact no underlying account receivable as between A and B. Rather, the finance from C was structured to allow A or B (as the case may be) to obtain finance *irrespective* of whether there was an actual (or even a possible) account receivable; rather, a *purported* and *possible future* account receivable was sufficient to unlock finance. There can be no "Eligible Debt" without an actual underlying account receivable.

(e) In many cases, C (the financier, GCUK) did not settle or agree to settle the underlying account payable. Rather, the finance was structured such that C supplied finance to B, with B then being entitled to use the finance as it saw fit and without any duty to use it to discharge the account receivable owed to A. The "Debt Endorsements" relied on do not permit this.

A22 Examples could be multiplied. Many of the problems in the Applicants' case arise because the "Asset" in respect of which they seek indemnity is many steps removed from an underlying, real-world transaction (between A and B) and, in fact, the transactions were financially engineered in such a way that there often need never be any real-world transaction at all. The 2019 Policy and related debt endorsements ultimately require there to be some real-world root to the "Assets" and "Eligible Debts" the subject of the claim.

A23 There are further coverage defences in this case and other cases. By way of example:

(a) The 2019 Policy requires "Insureds" to mitigate loss and to act in good faith. In many cases, the pleaded case shows that Greensill Bank acquired the insured Asset *for free* and *after the underlying debt was already in default* (and sometimes just days before lodging the claim), and in a manner calculated to create an alleged right to indemnity (because the insured "Asset" must be held by an "Insured") where none would otherwise exist. To take a step with no commercial justification other than to create a right to claim on insurance is not mitigation; nor is it in good faith.

(b) The 2019 Policy provides for an *indemnity*. It does not provide for windfall gains. In many cases, on the pleaded cases, Greensill Bank has suffered no loss at all because it did not pay for the "Asset" it now says is impaired by a default.

(c) The 2019 Policy provides that "Assets" acquired after the delivery of a "Stop Asset Acquisition Instruction" are not covered. There is a deemed delivery of such an instruction 10 Business Days after an underlying debt goes into default. In many cases, the underlying debts were well in default at the time that the

"Assets" were acquired by Greensill Bank and Stop Asset Acquisition Instructions had issued, with the result that "Assets" thereafter acquired are not covered.

Misrepresentations and Non-Disclosures

A24 Further, for the reasons as pleaded by BCC in paragraphs 143.g and 231 of BCC's Defence to the SOC and as pleaded by IAL in Annexure A to this Defence, there were misrepresentations and non-disclosures made by the purported Insureds relating to (inter alia) the true nature of the arrangements between GCUK and the purported Customers and the character of the risk being insured which call for the 2019 Policy and endorsements to be avoided. IAL says that if, contrary to its primary position, it is bound by the 2019 Policy and endorsements, it is entitled to, and does, avoid the 2019 Policy (including any endorsements) and there is no right of indemnity.

Greensill Bank and others have caused the damage or loss (if any) the subject of the claim, not IAL

A25 Finally, so far as the Applicants assert an indirect claim against IAL via a deemed responsibility under Division 6 of Part 7.6 of the *Corporations Act* for contraventions of the *Corporations Act*, the *Australian Consumer Law* (***ACL***) and the *Australian Securities and Investments Commission Act 2001* (Cth) (***ASIC Act***), or in the alternative, a direct claim against IAL under Division 2 of Part 7.10 of the *Corporations Act*, the ACL or the ASIC Act in respect of allegedly misleading or deceptive conduct, IAL also advances a concurrent wrongdoer/apportionment defence. The basis of this defence is the proposition that IAL's deemed responsibility is not, and cannot be, greater than that of BCC or Brereton, being the persons for whom IAL is said to be responsible – so, if a concurrent wrongdoer defence is available to BCC or Brereton, it is also available to IAL. A concurrent wrongdoer is a person whose acts or omissions (whether wrongful at law or not) caused the loss the subject of the claim. Here, there were multiple concurrent wrongdoers, including the numerous participants in the transactional chain relied upon as the factual foundation for the Applicants' pleaded case, and there is contributory negligence of Greensill Bank. IAL's responsibility, if any, is reduced to the extent appropriate in all the circumstances.

Applicants' case fails against IAL at every stage

A26 IAL says that the Applicants' case fails at multiple stages. IAL was not a party to the 2019 Policy or the endorsements, and it is not attributed with responsibility for the conduct of BCC and Brereton in relation to them. As pleaded by IAL, the conduct of the Greensill Group would in any event allow the 2019 Policy and endorsements to be avoided. And, even if the policies and endorsements (or some of them) are valid and binding, there is no coverage. The claim is denied, in whole and at each stage.

Reservation and other preliminary matters

A27 Given the nature of the matters in which issue is joined between the parties, discovery and compulsory disclosure will be sought by IAL. In addition, IAL continues to investigate the circumstances in which the 2019 Policy came to be issued by the Third Respondent, Brereton, and/or the Second Respondent, BCC. Additional issues 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.

A28 Save where expressly stated to the contrary, this pleading adopts the sub-headings and definitions used in the SOC where appropriate and for convenience only.

A28A Save where expressly stated to the contrary, IAL pleads only to the paragraphs pleaded in the SOC, not to the particulars of the paragraphs pleaded in the SOC.

Issues likely to arise

A29 The issues likely to arise are as follows:

(a) the existence and scope of the authority (if any) of BCC and Brereton to act on behalf of IAL in the various respects alleged by the First Applicant, Greensill Bank, including in relation to the issue of the 2019 Policy and the endorsements pleaded in the SOC;

(b) whether Division 6 of Part 7.6 of the *Corporations Act* applies;

(c) the validity of the 2019 Policy and the endorsements purportedly issued under or in relation to it;

(d) the scope of the coverage under the 2019 Policy (if valid and effective, which is denied), if any;

(e) the duty of Greensill Bank to mitigate under the 2019 Policy (if valid and effective, which is denied);

(f) whether the 2019 Policy (if valid and effective, which is denied) can be avoided; and

(g) whether there were misrepresentations or non-disclosures which entitle IAL to avoid the 2019 Policy or otherwise resist an obligation to indemnify.

A PARTIES

1 IAL admits paragraph 1 of the SOC.

2 IAL admits paragraph 2 of the SOC.

3 IAL admits paragraph 3 of the SOC.

4 IAL admits paragraph 4 of the SOC.

5 As to paragraph 5 of the SOC, IAL:

(a) admits paragraph 5.a of the SOC;

(b) as to paragraph 5.b of the SOC:

(i) states that IAGA was a shareholder of BCC between on or about 29 August 2017 and 9 April 2019;

(ii) states that since 9 April 2019 TMMA has been a shareholder in BCC;

(iii) admits that since 7 June 2018 BCC has been a subsidiary of Bond within the meaning of section 46 of the *Corporations Act*;

(iv) otherwise denies paragraph 5.b of the SOC;

(c) admits paragraph 5.c of the SOC and says further that, between 28 July 2016 and 1 August 2017, BCC's authority to act on behalf of CGU was limited in accordance with the terms of the CGU AAR Agreement (referred to in paragraph 8 of the SOC) and Underwriting Manual Version 1.0 (referred to in paragraph 6 of the SOC);

(d) admits paragraph 5.d of the SOC and says further that:

(i) BCC's authority to act on behalf of IAL and IAGA between 1 August 2017 and 30 June 2019 was limited in accordance with the terms of the:

(A) CGU AAR Agreement between 1 August 2017 and 9 April 2019;

(B) IAL AAR Agreement (referred to in paragraph 33 of the SOC) between 9 April 2019 and 30 June 2019;

(C) Underwriting Manual Version 1.0 between 1 August 2017 and 11 July 2018;

(D) Underwriting Manual Version 2.0 (referred to in paragraph 6 of the SOC) between 12 July 2018 and 8 April 2019;

(E) Underwriting Manual Version 3.0 (referred to in paragraph 6 of the SOC) between 9 April 2019 and 30 June 2019;

(ii) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that:

(A) BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019; and

(B) BCC was the authorised representative of only TMNF from 1 July 2019 onwards; and

Particulars

The register maintained under section 922A of the *Corporations Act* is a publicly-available record.

(iii) in respect of the second particularised document at paragraph 5(d) of the SOC:

(A) the Applicants have identified this as a document with document reference number PLE.3000.0001.0676;

(B) on its face, that document is not an agreement to which "IAG Agencies Pty Ltd" is a party;

(e) as to paragraph 5.e of the SOC:

(i) repeats paragraphs 8, 32(j), 33 and 55 of this Defence;

(ii) says that there is no identification of the paragraph or paragraphs of the definition of "representative" in section 910A of the *Corporations Act* in which BCC is said to fall; and

(iii) otherwise denies paragraph 5.e of the SOC; and

(f) admits paragraph 5.f of the SOC.

6 As to paragraph 6 of the SOC, IAL:

(a) does not know and cannot admit paragraph 6.a of the SOC;

(b) admits that Brereton held the title "Head of Trade Credit" but otherwise denies paragraph 6.b of the SOC;

(c) admits paragraph 6.c of the SOC and says further that between 8 July 2016 and 1 August 2017 Brereton's authority to act on behalf of CGU was limited in accordance with the terms of:

(i) the CGU/Brereton Authorisation Agreement (defined in paragraph 46 of the SOC, and referenced as the "Brereton-CGU Authorisation Agreement" in paragraph 6 of the SOC);

(ii) Underwriting Manual Version 1.0; and

(iii) the CGU AAR Agreement between 28 July 2016 and 1 August 2017;

(d) admits paragraph 6.d of the SOC and repeats paragraph 6(c) of this Defence;

(e) admits paragraph 6.e of the SOC and says further that between 1 August 2017 and 30 June 2019, Brereton's authority to act on behalf of IAL was limited in accordance with the terms of:

(i) the IAGA/IAL Brereton Authorisation (defined in paragraph 55 of the SOC, and referenced as the "Brereton-IAGA Authorisation Agreement" in paragraph 6 of the SOC);

(ii) the CGU AAR Agreement between 1 August 2017 and 9 April 2019;

(iii) the IAL AAR Agreement referred to in paragraph 33 of the SOC between 9 April 2019 and 30 June 2019;

(iv) the Underwriting Manual Version 1.0 between 1 August 2017 and 11 July 2018;

(v) the Underwriting Manual Version 2.0 between 12 July 2018 and 8 April 2019; and

(vi) the Underwriting Manual Version 3.0 between 9 April 2019 and 30 June 2019; and

(f) admits paragraph 6.f of the SOC and repeats paragraph 6(e) of this Defence;

(g) as to paragraph 6.g of the SOC:

(i) repeats paragraphs 32(j), 33(k), 46, 53, and 55 of this Defence;

(ii) says that there is no identification of the paragraph or paragraphs of the definition of "representative" in section 910A of the *Corporations Act* in which Brereton is said to fall; and

(iii) otherwise denies paragraph 6.g of the SOC; and

(h) as to paragraph 6.h of the SOC admits that, pursuant to section 917A(2)(a) of the *Corporations Act*, Brereton was a representative of TMNF and otherwise does not know and cannot admit paragraph 6.h of the SOC.

6A IAL admits paragraph 6A of the SOC.

6B As to paragraph 6B of the SOC, IAL:

(a) admits paragraph 6B(a) of the SOC;

(b) admits paragraph 6B(b) of the SOC;

(c) admits paragraph 6B(c) of the SOC;

(d) admits paragraph 6B(d) of the SOC and says further that:

(i) since 10 March 2004, Marsh Pty Ltd has been and is (as at the date of the Defence) the holder of an Australian Financial Services Licence (licence no. 000238983) (**Marsh AFSL**) issued under s 913B of the Corporations Act, and

(ii) refers to the terms of the Marsh AFSL (including as updated from time to time) for their full force and effect;

(e) says that:

(i) under the Marsh AFSL, Marsh Pty Ltd is permitted to (among other things) carry on a financial services business to provide financial product advice for general insurance products and life products; and

(ii) otherwise, does not know and therefore cannot admit paragraph 6B(e) of the SOC;

(f) says that:

(i) it repeats paragraphs 5(c), 5(d), 8, 66A, 80, and 81 of this Defence; and

(ii) otherwise, does not know and therefore cannot admit paragraph 6B(f) of the SOC;

(g) denies paragraph 6B(g) of the SOC;

(h) says, in respect of paragraph 6B(h), that:

(i) it repeats paragraph 295(u)(i)(A)b of this Defence; and

(ii) it does not know and therefore cannot admit the paragraph.

6C As to paragraph 6C of the SOC, IAL:

(a) admits paragraph 6C(a) of the SOC;

(b) says, in respect of paragraph 6C(b) of the SOC, that:

(i) since 6 April 2016, Marsh Limited has been a subsidiary of Marsh & McLennan Companies, Inc., a company publicly listed on the New York Stock Exchange; and

(ii) it otherwise, does not know and therefore cannot admit the paragraph;

(c) does not know and therefore cannot admit paragraph 6C(c) of the SOC;

(d) says, in respect of paragraph 6C(d) of the SOC, that:

(i) it repeats paragraphs 5(c), 5(d), 8, 66A, 80, and 81 of this Defence; and

(ii) it otherwise, does not know and therefore cannot admit the paragraph;

(e) does not know and therefore cannot admit paragraph 6C(e) of the SOC;

(f) does not know and therefore cannot admit paragraph 6C(f) of the SOC; and

(g) does not know and therefore cannot admit paragraph 6C(g) of the SOC.

B AGENCY ARRANGEMENTS BETWEEN BCC AND IAL

B.1 Agency arrangements between CGU and BCC

7 IAL admits paragraph 7 of the SOC on the assumption that "IAGL" is a reference to Insurance Australia Group Limited.

8 IAL admits paragraph 8 of the SOC and says further that:

(a) the CGU AAR Agreement described BCC as "Agent";

(b) the CGU AAR Agreement included (inter alia) the following defined terms (clause 23.1):

(i) **Applicable Laws**, meaning: (a) all laws (including acts, regulations and instruments); (b) all policies, guidelines, standards and requirements issued or imposed by a Regulator; (c) any conditions imposed on CGU's AFSL which are notified by CGU to BCC; and (d) all industry codes of practice including the general insurance code of practice, to the extent that they relate to the conduct of the relevant party;

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

(iii) **Authorisation Agreement**, meaning the agreement between BCC and an Authorised Individual appointing the Authorised Individual as CGU's authorised representative;

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

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

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

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

(viii) **Commencement Date**, meaning, relevantly, 1 July 2016;

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

(x) **Insurer**, meaning the insurer of an "Insurance Policy";

(xi) **Insurance Policy**, meaning a policy of general insurance, including an interim insurance policy arranged by BCC and issued by CGU or a related body corporate of CGU to a "Client" from time to time under the terms of the CGU AAR Agreement;

(xii) **Term**, meaning, relevantly, the period from the "Commencement Date" until terminated under clause 17;

(xiii) **Underwriting Manual**, meaning, the underwriting manual agreed between the Parties, as varied from time to time in accordance with the CGU AAR Agreement, which may include procedures in relation to: (a) the pricing of the “Approved Products”, subject to underwriting variants in relation to individual “Approved Products”; (b) the provision of

services by BCC in relation to the “Approved Products” including service level requirements; (c) BCC's performance of its other obligations under the CGU AAR Agreement; and (d) BCC's compliance with applicable laws;

(c) the CGU AAR Agreement also included the following express terms:

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

(ii) CGU authorised BCC, from the Commencement Date:

(A) as an authorised representative of CGU in accordance with the CGU AAR Agreement, by giving BCC an "Authorisation Notice”;

(B) to provide the "Authorised Services"; and

(C) to deal in, arrange and issue "Approved Products" in accordance with the "Underwriting Manual" (clause 2.1);

(iii) BCC must carry out the "Authorised Services" only through an "Authorised Individual" as set out in clause 5.4 (clause 2.2);

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

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

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

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

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

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

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

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

(A) the provision of the "Authorised Services" (clause 4.1(a)); and

(B) compliance with the Applicable Laws by BCC or CGU (clause 4.1(b));

(ix) the Guidelines (being Underwriting Manual Version 1.0, and Underwriting Manual Version 2.0 referred to in paragraphs 8(h) and 8(l) of this Defence respectively) were taken to be incorporated into and form part of the CGU AAR Agreement (clause 4.2);

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

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

(xii) BCC would perform its obligations under the CGU AAR Agreement in accordance with the Underwriting Manual (clause 7.1); and

(xiii) BCC would collect a premium for the risks underwritten within authority (clause 8.1);

(d) the CGU AAR Agreement included a schedule constituting the "Authorisation Notice Schedule", being the **BCC Authorisation Notice** referred to in paragraph 9 of the SOC, which:

(i) stated and had the effect that CGU authorised BCC to provide and perform the "Authorised Financial Services" in relation to the "Approved Products" only on behalf of CGU, and for that purpose appointed BCC as its authorised representative for the purposes of Chapter 7 of the *Corporations Act* from the "Effective Date", being 28 July 2016;

(ii) defined the "Authorised Financial Services" to mean that BCC was authorised, in accordance with the CGU AAR Agreement, to:

(A) provide general advice (but not personal advice);

(B) deal in, arrange, acquire, issue, vary and dispose of "Approved Products", with that term bearing its meaning set out in the CGU AAR Agreement;

(C) collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for “Approved Products”; and

(D) issue, negotiate and agree the terms of Insurance Policies for “Approved Products” as agent of CGU;

(iii) defined the “Approved Products” to have the meaning given to that term in the CGU AAR Agreement, such that the only "Approved Products" were "Trade Credit Products", and “Trade Credit Products” could only be written using Approved Wording 1.3 (referred to in paragraph 8(j) of this Defence) or Approved Wording 1.4 (referred to in paragraph 8(k) of this Defence);

(e) the BCC Authorisation Notice was a written notice for the purposes of section 916A of the *Corporations Act*, and, in accordance with section 916A(1) of the *Corporations Act*, did not and could not give authority to BCC to provide any service on behalf of CGU that was not specified in the notice;

(f) on 8 July 2016, CGU and Brereton entered into the **CGU/Brereton Authorisation Agreement** referred to in paragraphs 6 and 46 of the SOC, to which was attached a notice (the **CGU/Brereton Authorisation Notice**);

(g) the CGU/Brereton Authorisation Agreement (which included the CGU/Brereton Authorisation Notice on page 3 of 3) included the following express terms:

(i) CGU authorised Brereton to provide and perform the "Authorised Financial Services" in relation to the "Approved Products" only on behalf of CGU, and for that purpose appointed Brereton as its authorised representative for the purposes of Chapter 7 of the *Corporations Act* from the "Effective Date", being 8 July 2016 (pages 1 and 3);

(ii) Brereton was only authorised to perform the “Authorised Services” on behalf of CGU (page 1);

(iii) "Approved Products" was defined to have the same meaning given to that term in the CGU AAR Agreement (page 3), such that the only "Approved Products" were "Trade Credit Products" and “Trade Credit Products” could only be written using Approved Wording 1.3 (referred to in paragraph 8(j) of this Defence) or Approved Wording 1.4 (referred to in paragraph 8(k) of this Defence);

(iv) "Authorised Financial Services" was defined to mean that Brereton was authorised in accordance with the CGU AAR Agreement to:

(A) provide general advice (but not personal advice);

(B) deal in, arrange, acquire, issue, vary and dispose of “Approved Products”;

(C) collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for “Approved Products”; and

(D) issue, negotiate and agree the terms of Insurance Policies for “Approved Products” as agent of CGU (page 3);

(v) Brereton must comply with and provide the “Authorised Services” in accordance with the CGU AAR Agreement and subsequently the IAL AAR Agreement as if Brereton were BCC (page 1); and

(vi) Brereton must not cause BCC to breach any terms and conditions of the CGU AAR Agreement (page 1);

(h) in or around June 2016, a document entitled “BCC Trade Credit Pty Ltd Underwriting Manual … (Version 1.0)” (**Underwriting Manual Version 1.0**) was issued, being the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement, and which (inter alia) set out the following:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid as a result of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a “Buyer”, who receives goods/services from and trade credit (from a “Seller”) and who makes payments for goods and services (to a “Seller”);

(B) a “Seller”, who supplies goods/services and trade credit (to a “Buyer”) and who receives payments for goods and services (from a “Buyer”);

(C) a “Credit Insurer”, who provides insurance to the “Seller”, receives premiums from the “Seller” and who has a right of subrogation in respect of the “Buyer”;

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 13);

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

(vi) BCC must always act within the authority and terms of the applicable agency agreement in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 1.0 (page 8);

(vii) the "Maximum Limits" that may be underwritten and accepted by BCC are:

(A) Whole of Turnover Limit: AUD50 million, subject to the special acceptance stipulation in paragraph 8(h)(vi) of this Defence;

(B) Major Debtors / Multi Buyer Limit: AUD40 million, subject to the special acceptance stipulation in paragraph 8(h)(vi) of this Defence;

(C) Single Risks Limit: AUD35 million (page 9);

(viii) BCC’s authority is up to AUD35 million, with policies and buyers with limits up to AUD50 million for Whole of Turnover policies and up to AUD40 million for Major Debtors/Multi Buyer policies considered by Special Acceptance by CGU and its reinsurers (page 9);

(ix) BCC was authorised only to issue policies to Australian customers in Australia (page 9);

(x) the maximum credit limit / credit term BCC must set for each policy written within authority is 180 days (page 9);

(xi) the maximum indemnity limit BCC must set for each policy written within authority is 90% of Debt, being accounts receivable of the insured (page 9);

(xii) the standard policy term would be twelve months, and policy periods beyond fifteen months must be referred to CGU for approval, but in any case, would be no longer than twenty four months (page 11);

(xiii) there was authority only to use authorised endorsement clauses (pages 12, 14 and 16);

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

(xv) the minimum premium BCC must set for each policy written within authority is $10,000 (page 26);

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

(xvii) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 29); and

(xviii) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany sales" (page 31);

(i) on or around 24 July 2016, CGU approved a set of "Policy Endorsement Clauses" (**Approved Endorsements**) for use by BCC in accordance with the terms of the Underwriting Manual Version 1.0 and subsequent versions as referred to below, and says further that:

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

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

Particulars

The Approved Endorsements are in writing. A copy is available for inspection at the offices of IAL's solicitors.

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

(i) “Trade Credit Insurance Whole of Turnover” dated October 2016 (Version WOT 1.3);

Particulars

Trade Credit Insurance Whole of Turnover dated October 2016 (Version WOT 1.3) (IAL.500.011.1310).

(ii) “Trade Credit Insurance Multi Buyer” dated October 2016 (Version MB 1.3);

Particulars

Trade Credit Insurance Multi Buyer dated October 2016 (Version MB 1.3) (IAL.500.011.1309).

(iii) “Trade Credit Insurance Single Risk” dated October 2016 (Version SR 1.3);

Particulars

Trade Credit Insurance Single Risk dated October 2016 (Version SR 1.3) (IAL.500.011.1308).

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

(i) “Trade Credit Insurance Whole of Turnover” dated August 2017 (Version WOT 1.4);

Particulars

Trade Credit Insurance Whole of Turnover dated August 2017 (Version WOT 1.4) (IAL.500.011.0475).

(ii) "Trade Credit Insurance Multi Buyer" dated August 2017 (Version MB 1.4); and

Particulars

Trade Credit Insurance Multi Buyer dated August 2017 (Version MB 1.4) (IAL.500.011.0474).

(iii) "Trade Credit Insurance Single Risk" dated August 2017 (Version SR 1.4);

Particulars

Trade Credit Insurance Single Risk dated August 2017 (Version SR 1.4) (IAL.500.011.0473).

(l) in or around July 2018, a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines … (Version 2.0)" was issued (**Underwriting Manual Version 2.0**), being the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement and which (inter alia) set out the following express terms:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid as a result of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a "Buyer", who receives goods/services from and trade credit (from a "Seller") and who makes payments for goods and services (to a "Seller");

(B) a "Seller", who supplies goods/services and trade credit (to a "Buyer") and who receives payments for goods and services (from a "Buyer");

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

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 13);

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

(vi) BCC must at all times act within the authority and terms of the applicable agency agreement (being, relevantly, the CGU AAR Agreement) in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 2.0 (page 8);

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

"BCC Trade Credit will underwrite and is authorised by IAL to write three Trade Credit Insurance Products. These are:

Whole of Turnover approved wording Version WOT 1.4 August 2017

Multi Buyers approved wording Version MB 1.4 August 2017

Single Risks approved wording Version SR 1.4 August 2017"

(page 9);

(viii) the "Maximum Limits" that may be underwritten and accepted by BCC are:

(A) Whole of Turnover Limit: AUD50 million;

(B) Major Debtors / Multi Buyer Limit: AUD50 million; and

(C) Single Risks Limit: AUD50 million (page 9);

(ix) BCC's binding authority is up to AUD50 million, with policies and buyers with limits up to AUD75 million considered by Special Acceptance (page 9);

(x) BCC's authority in paragraph 8(l)(viii) and 8(l)(ix) of this Defence was a maximum sum which applied to each buyer or group of companies

owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons (page 9, page 56) (the **Buyer Group limit v 2.0**);

(xi) BCC was authorised only to issue policies for Australian customers domiciled in Australia (page 9);

(xii) the maximum credit limit / credit term BCC must set for each policy written within authority is 180 days (page 9);

(xiii) the maximum indemnity limit BCC must set for each policy written within authority is 95% of Debt, being accounts receivable of the insured (page 9);

(xiv) the standard policy term would be twelve months, and policy periods beyond fifteen months must be referred to IAL for approval, but in any case, would be no longer than twenty four months (page 11);

(xv) the minimum premium BCC must set for each policy written within authority is $10,000 (page 26);

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

(xvii) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 29); and

(xviii) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany transactions unless said transactions are on a commercial 'arm's length' basis" (page 31).

9 IAL admits paragraph 9 of the SOC.

10 IAL admits paragraph 10 of the SOC and repeats paragraph 8 of this Defence.

11 IAL admits paragraph 11 of the SOC and repeats paragraph 8(d) of this Defence.

12 IAL admits paragraph 12 of the SOC.

13 IAL admits paragraph 13 of the SOC and says further that:

(a) it refers to and repeats paragraph 8 of this Defence;

(b) between October 2016 and July 2017, the only "Approved Products" in relation to which BCC was authorised to provide "Authorised Financial Services" were contracts of insurance constituting trade credit insurance policies issued or to be issued by CGU written using Approved Wording 1.3; and

(c) there were no contracts of insurance which were "otherwise agreed between CGU and BCC in writing" as being "Approved Products" for the purpose of the CGU AAR Agreement.

14 IAL admits paragraph 14 of the SOC and says further that:

(a) between October 2016 and July 2017, the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement were trade credit insurance policies written using Approved Wording 1.3; and

(b) from August 2017 to 9 April 2019, the only "Approved Products" that BCC was authorised to issue as agent for IAL under the CGU AAR Agreement were trade credit insurance policies written using Approved Wording 1.4.

15 IAL admits paragraph 15 of the SOC and says further that the scope of BCC's authority to act as CGU's agent from 28 July 2016 was limited as pleaded in paragraphs 5(c), 8(a) to 8(i) and 13 to 14 of this Defence.

16 As to paragraph 16 of the SOC, IAL:

(a) says that it was a term of the CGU AAR Agreement that CGU will pay to BCC commission for providing the "Authorised Services" (as defined in paragraph 8(b)(vi) of this Defence) under the CGU AAR Agreement for the "Trade Credit Products" issued by BCC as agent for CGU (clause 3.1(a) and the Commission Schedule);

(b) says that the "Trade Credit Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, could only be written using Approved Wording 1.3; and

(c) otherwise denies paragraph 16 of the SOC.

17 As to paragraph 17 of the SOC, IAL:

(a) says that it was a term of the CGU AAR Agreement that BCC would collect and remit to CGU (net of commission) premiums received by BCC on account of contracts of "Approved Products" issued by BCC as agent for CGU, net of BCC's commission (clauses 3.1, 3.3, 8.1);

(b) says that the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and

July 2017, were trade credit insurance policies written using Approved Wording 1.3; and

(c) otherwise denies paragraph 17 of the SOC.

18 As to paragraph 18 of the SOC, IAL:

(a) admits that it was a term of the CGU AAR Agreement that BCC will maintain a bordereaux of all "Approved Products" issued by BCC on behalf of CGU (clause 4.5(a));

(b) says that the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, were trade credit insurance policies written using Approved Wording 1.3; and

(c) otherwise denies paragraph 18 of the SOC.

19 As to paragraph 19 of the SOC, IAL:

(a) admits that it was a term of the CGU AAR Agreement that BCC would provide a copy of the bordereaux referred to in paragraph 18(a) of this Defence to CGU within 7 business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to "Approved Products" issued by BCC as agent for CGU (clause 4.5(b));

(b) says that the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, were trade credit insurance policies written using Approved Wording 1.3;

(c) says that the bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) did not disclose the existence of the 2019 Policy or any endorsements purportedly issued pursuant to the 2019 Policy, including that the 2019 Policy or any endorsements had been purportedly issued by BCC;

(ii) only disclosed (relevantly) that "Approved Products", being trade credit insurance policies, had been issued by BCC to Greensill Capital Pty Ltd (**GCPL**);

Particulars

The bordereaux that BCC provided to IAL identified the policies issued by BCC as being "Trade Credit" Products with policy numbers that contained the prefix "TB",

"TW" or "TS" representing multi-buyer policies, whole of turnover policies, and single risks policies written using Approved Wording respectively.

(iii) did not disclose that such policies had not been written using Approved Wording 1.3 and Approved Wording 1.4;

(iv) disclosed only one Greensill entity to be an insured under policies written by BCC purportedly on behalf of IAL, being GCPL;

(v) did not disclose Greensill Bank to be an insured;

(vi) did not disclose GCUK to be an insured;

(vii) did not disclose non-Australian domiciled insureds;

(viii) did not disclose that insurance policies which did not constitute trade credit insurance policies, or which used non-approved wording, including the 2019 Policy, had been issued by BCC to any Greensill entity;

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

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

(xi) failed to disclose 10 policies (including the 2019 Policy) purportedly issued by BCC on behalf of IAL with GCPL and either Greensill Bank or GCUK as named insureds; and

Particulars

The 10 policies that BCC failed to disclose are:

(a) TW-03137 with an inception date of 15 December 2017;

(b) TW-03547 with an inception date of 25 May 2018;

(c) TB-04271 with an inception date of 8 October 2018;

(d) TB-04278 with an inception date of 8 October 2018;

(e) TB-04585 with an inception date of 28 December 2018;

(f) TB-03690 (being the 2019 Policy) with an inception date of 22 February 2019, or any earlier incepted policy of which the 2019 Policy was a purported renewal;

(g) TS-03088 with an inception date of 1 March 2019;

(h) the Parallel Policy to Master Policy TB-04917 with an inception date of 1 March 2019, the policy number of which is not currently known to IAL;

(i) TB-05369 with an inception date of 26 June 2019;

(j) TW-05412 with an inception date of 30 June 2019.

(xii) contained other inaccuracies or omissions;

Particulars

The inaccuracies or omissions included:

(a) inaccurate or omitted recording of written premium on Greensill risks;

(b) inaccurate or omitted recording of payment frequency of premium on Greensill risks;

(c) inaccurate or omitted recording of inception and expiry dates of policies concerning Greensill risks.

Further particulars will be provided after discovery, compulsory production and evidence.

(d) otherwise denies paragraph 19 of the SOC.

20 IAL admits paragraph 20 of the SOC.

21 IAL repeats paragraph 8(h) to 8(l) of this Defence and otherwise admits paragraph 21 of the SOC.

B.2 Transfer of CGU's business to IAL

22 IAL admits that the scheme at Annexure A to the orders made on 20 July 2017 (**Scheme Orders**) had the effect substantially alleged in paragraph 22 of the SOC and relies on the terms of the Scheme Orders for their full force and effect.

Particulars

Orders made by Gleeson J on 20 July 2017 in NSD1739/2016, and Annexure A to those orders.

23 IAL admits paragraph 23 of the SOC.

B.3 Agency arrangements between BCC and IAL

24 As to paragraph 24 of the SOC, IAL:

(a) admits that the Scheme Orders had the effect substantially alleged in paragraph 24 of the SOC and relies on the terms of the Scheme Orders for their full force and effect; and

(b) says further that:

(i) BCC's authority to act as IAL's agent under and pursuant to the terms of the CGU AAR Agreement was confirmed by letter issued by IAL dated 1 August 2017; and

Particulars

Letter issued by IAL dated 1 August 2017 (IAL.500.005.0103).

(ii) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that BCC's status as authorised representative of CGU had ceased as at 1 August 2017.

25 IAL admits paragraph 25 of the SOC and repeats paragraph 24(b) of this Defence.

26 As to paragraph 26 of the SOC, IAL:

(a) says that by reason of the Scheme Orders, on and from 1 August 2017, BCC was authorised by IAL to act as IAL's agent to undertake the activities pleaded in paragraphs 26.a, 26.b and 26.c of the SOC, subject to the limits of authority referred to in paragraph 5(d)(i) of this Defence; and

(b) otherwise denies paragraph 26 of the SOC.

27 IAL denies paragraph 27 of the SOC.

28 As to paragraph 28 of the SOC, IAL:

(a) admits that it provided BCC with a letter dated 1 August 2017 stating that BCC was acting on behalf of IAL in relation to the issue of "Trade Credit Insurance";

(b) says that the letter was provided to BCC for the purpose of providing confirmation of BCC's authority following the transfer of CGU's insurance business to IAL as pleaded in paragraph 22 of this Defence; and

(c) otherwise denies paragraph 28 of the SOC.

29 As to paragraph 29 of the SOC, IAL:

(a) says that the To Whom it May Concern Letter stated that BCC was arranging "Trade Credit Insurance" under an authority provided by IAL;

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

(c) otherwise denies paragraph 29 of the SOC.

30 IAL repeats paragraphs 28 and 29 of this Defence and otherwise denies paragraph 30 of the SOC.

31 IAL admits paragraph 31 of the SOC and says further that:

(a) Underwriting Manual Version 2.0 was the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement, between 12 July 2018 to 8 April 2019;

(b) Underwriting Manual Version 2.0 included, inter alia, the following express terms:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid because of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a “Buyer”, who receives goods/services from and trade credit (from a “Seller”) and who makes payments for goods and services (to a “Seller”);

(B) a “Seller”, who supplies goods/services and trade credit (to a “Buyer”) and who receives payments for goods and services (from a “Buyer”);

(C) a “Credit Insurer”, who provides insurance to the “Seller”, receives premiums from the “Seller” and who has a right of subrogation in respect of the “Buyer”;

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 13);

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

(vi) BCC must at all times act within the authority and terms of the applicable agency agreement (being, relevantly, the CGU AAR Agreement) in the conduct of its business and underwrite business

within the scope and limits in accordance with Underwriting Manual Version 2.0 (page 8);

(vii) BCC is authorised to write three Trade Credit Insurance Products, described on page 9 using approved wording (respectively, Versions “WOT 1.4 Aug 2017”; “MB 1.4 Aug 2017”; and “SR 1.4 Aug 2017”);

(viii) the "Maximum Limits" that may be underwritten and accepted by BCC are:

(A) Whole of Turnover Limit: AUD50 million;

(B) Major Debtors / Multi Buyer Limit: AUD50 million; and

(C) Single Risks Limit: AUD50 million (page 9);

(ix) BCC’s binding authority is up to AUD50 million, with policies and buyers with limits up to AUD75 million considered by Special Acceptance (page 9);

(x) BCC’s authority in paragraph 31(b)(viii) and 31(b)(ix) above was a maximum sum (i.e. the Buyer Group limit v 2.0);

(xi) BCC was authorised only to issue policies for Australian customers domiciled in Australia (page 9);

(xii) the maximum credit limit / credit term BCC must set for each policy written within authority is 180 days (page 9);

(xiii) the maximum indemnity limit BCC must set for each policy written within authority is 95% of Debt, being accounts receivable of the insured (page 9);

(xiv) the standard policy term would be twelve months, and policy periods beyond fifteen months must be referred to IAL for approval, but in any case, would be no longer than twenty four months (page 11);

(xv) the minimum premium BCC must set for each policy written within authority is $10,000 (page 26);

(xvi) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 29);

(xvii) a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured

must bear for each loss or series of losses, must be set for each policy written within authority (page 28); and

(xviii) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany transactions unless said transactions are on a commercial 'arm's length' basis" (page 31).

32 As to paragraph 32 of the SOC, IAL:

(a) says that on and from 9 April 2019, Underwriting Manual Version 3.0 came into effect and limited BCC's acceptance authority for IAL business effective from that date;

(b) denies that Underwriting Manual Version 3.0 came into effect from 18 March 2019;

(c) admits that Underwriting Manual Version 3.0 included the terms referred to in paragraphs 32.a, 32.b, 32.c, and 32.d of the SOC;

(d) says that Underwriting Manual Version 3.0 included a term that BCC will continue to manage claims on behalf of IAL under management of Tokio Marine Management (Australasia) Pty Ltd via the Policy & Claims Administration Outsourcing Deed dated 9 April 2019 (**PACAO**) (page 9);

(e) says that Underwriting Manual Version 3.0 was the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the IAL AAR Agreement;

(f) says that Underwriting Manual Version 3.0 also included, inter alia, the following express terms:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid because of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a “Buyer”, who receives goods/services from and trade credit (from a “Seller”) and who makes payments for goods and services (to a “Seller”);

(B) a “Seller”, who supplies goods/services and trade credit (to a “Buyer”) and who receives payments for goods and services (from a “Buyer”);

(C) a “Credit Insurer”, who provides insurance to the “Seller”, receives premiums from the “Seller” and who has a right of subrogation in respect of the “Buyer”;

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 14);

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

(vi) BCC must always act within the authority and terms of the applicable agency agreement (being, relevantly, the IAL AAR Agreement) in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 3.0 (page 8);

(vii) BCC is not permitted to quote or bind new business on behalf of IAL after the Effective Date, being 30 June 2019 (page 8);

(viii) any new insurance policies issued prior to 30 June 2019 must not exceed a policy term of 12 months (page 8);

(ix) any new business issued prior to 30 June 2019 must adhere to the Underwriting Manual Version 3.0 (page 8);

(x) BCC is not permitted to bind renewal business on behalf of IAL with renewal inception after the Effective Date, being 30 June 2019 (page 8);

(xi) any renewal business due prior to the inception date stated must not exceed 12 months (page 8);

(xii) BCC was authorised to bind mid-term policy alterations where IAL is the insurer provided such changes are permitted within Underwriting

Manual Version 3.0 after prudent underwriting judgment is applied, with no extensions of due date permitted (pages 8, 9);

(xiii) the "Maximum Limits" that may be underwritten and accepted by BCC are:

(A) Whole of Turnover Limit: AUD50 million;

(B) Major Debtors Limit: AUD50 million;

(C) Single Risks Limit: AUD50 million;

(page 10);

(xiv) Maximum Limits of AUD75 million per Buyer or Buyer Group, with Limits above AUD50 million and below AUD75 million referred to the lead Reinsurer, and with IAL having final acceptance authority on those risks (page 9);

(xv) BCC's authority in paragraph 32(f)(xiii) and 32(f)(xiv) above was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons (page 9, page 57) (the **Buyer Group limit v 3.0**);

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

"BCC Trade Credit will underwrite and is authorised by IAL to write three Trade Credit Insurance Products. These are:

Whole of Turnover approved wording Version WOT 1.4 August 2017

Multi Buyers approved wording Version MB 1.4 August 2017

Single Risks approved wording Version SR 1.4 August 2017"

(page 10);

(xvii) BCC was authorised only to issue policies for Australian customers domiciled in Australia (page 10);

(xviii) the maximum credit limit / credit term BCC must set for each policy written within authority was 180 days (page 10);

(xix) the maximum indemnity limit BCC must set for each policy written within authority was 95% of Debt, being accounts receivable of the insured (page 10);

(xx) the Maximum Policy Period for all policies was 24 months (page 10);

(xxi) there was authority only to use authorised endorsement clauses (page 13);

(xxii) the minimum premium BCC must set for each policy written within authority is $10,000 (page 27);

(xxiii) a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured must bear for each loss or series of losses, must be set for each policy written within authority (page 29);

(xxiv) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 30);

(xxv) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany transactions unless said transactions are on a commercial 'arm's length' basis" (page 32);

(xxvi) BCC will continue to manage claims on behalf of IAL under management of TMMA via the PACAO (as referred to in paragraph 66 of the SOC) (page 9);

(g) on its proper construction, the phrase “mid-term policy alterations” in Underwriting Manual Version 3.0 has the same meaning as “Mid-Term Policy Alterations” referred to in the IAL AAR Agreement referred to in paragraph 33(i) of this Defence;

(h) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that BCC’s status as an authorised representative had ceased with effect on 30 June 2019;

(i) at all material times, IAL did not authorise BCC or Brereton to represent:

(i) that BCC had its authority to enter into the 2019 Policy or policies akin to the 2019 Policy; and

(ii) that BCC was IAL’s corporate authorised representative in relation to the 2019 Policy or policies akin to the 2019 Policy;

(j) at all material times, including at all times prior to 23 July 2020, IAL did not know that BCC and Brereton had purported to enter into the 2019 Policy or policies akin to the 2019 Policy.

33 IAL admits paragraph 33 of the SOC and says further that:

(a) on 9 April 2019, IAL terminated the CGU AAR Agreement (and therefore also the BCC Authorisation Notice) by notice to BCC;

Particulars

Letter from IAL to the Directors of BCC sent by email on 9 April 2019 (IAL.500.011.0572).

IAL further relies on clause 6.2(a)(i) of the Share Sale Deed dated 3 April 2019 to which IAGA was a party (IAL.500.011.0014).

(b) further or alternatively, BCC and IAL conducted themselves in a manner consistent with:

(i) the termination of the CGU AAR Agreement as from 9 April 2019, which implicitly brought the CGU AAR Agreement to an end if not expressly terminated; and

(ii) their relationship being governed by the IAL AAR Agreement on and from 9 April 2019;

Particulars

BCC and IAL:

(a) entered into the IAL AAR Agreement which commenced on 9 April 2019; and

(b) treated the IAL AAR Agreement as governing their relationship as from 9 April 2019.

(c) further, or alternatively, by no later than 9 September 2019, IAL and BCC agreed to terminate the CGU AAR Agreement (and therefore also the BCC Authorisation Notice), with effect on and from "Completion", being relevantly 9 April 2019;

Particulars

Letter from IAL to the Directors of BCC Trade Credit Pty Ltd signed by a duly authorised signatory of BCC (IAL.500.005.0124).

(d) by necessary implication, legacy references to “CGU” in the IAL AAR Agreement were intended by the parties to be read and understood as references to IAL;

(e) the IAL AAR Agreement described BCC as “Agent”;

(f) the IAL AAR Agreement included (inter alia) the following defined terms (clause 21.1):

(i) **Approved Products,** meaning contracts of insurance issued or to be issued by IAL of the classes and types: (a) identified in the Commission Schedule to the agreement; and (b) otherwise agreed between the parties in writing;

(ii) **Authorisation Agreement,** meaning the agreement between BCC and an Authorised Individual appointing the Authorised Individual as IAL’s authorised representative;

(iii) **Authorisation Notice,** meaning, relevantly, an instrument in the form of the “Authorisation Notice Schedule which appoints [BCC] as IAL’s authorised representative”;

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

(v) **Authorised Services,** meaning the services which BCC is authorised by IAL to perform as specified in the “Authorisation Notice” and, if applicable, any claims handling services delegated to BCC in accordance with clause 9;

(vi) **Client,** meaning any person to whom BCC has provided any of the “Authorised Services” on behalf of IAL or any person whom BCC has dealt with in connection with the possible provision of any of the “Authorised Services” to the person by BCC on behalf of IAL;

(vii) **Commencement Date,** meaning the date that completion occurs under the Share Sale Deed between IAGA and others (as vendors) and TMMA (referred to in paragraph 32(e) of the SOC as "Tokio Marine") (as purchaser) in relation to BCC, or such other date as may be agreed in writing by IAL and BCC, being, relevantly 9 April 2019;

(viii) **Guidelines,** meaning the written authorisations, procedures, guidelines, directions and requirements notified or provided by IAL to BCC from time to time in relation to the provision of the “Authorised

Services" by BCC or BCC's obligations under the IAL AAR Agreement and including the compliance manual;

(ix) **Insurer,** meaning the insurer of an "Insurance Policy";

(x) **Insurance Policy,** meaning a policy of general insurance, including an interim insurance policy arranged by BCC and issued by IAL or a related body corporate of IAL to a "Client" from time to time under the terms of the IAL AAR Agreement;

(xi) **Term,** meaning the term of the IAL AAR Agreement which, in accordance with clause 1 of the IAL AAR Agreement, came to an end on 30 June 2019; and

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

(g) the Commission Schedule of the IAL AAR Agreement identified a single Approved Product, namely, "Trade credit insurance products";

(h) the IAL AAR Agreement included, inter alia, the following express terms:

(i) IAL authorised BCC, from the Commencement Date and for the Term of the agreement:

(A) as an authorised representative of IAL in accordance with the IAL AAR Agreement, by giving BCC an "Authorisation Notice";

(B) to provide the "Authorised Services"; and

(C) to deal in, arrange and issue "Approved Products" in accordance with the applicable "Underwriting Manual" and specifically as follows:

"**New Business:** [BCC] is not permitted to bind new Insurance Policies on behalf of IAL after 30 June 2019.

New Insurance Policies issued prior to that date must not exceed a policy term of 12 months.

Renewal Business: [BCC] is not permitted to bind renewal Insurance Policies on behalf of IAL with renewal inception dates after 30 June 2019. This also includes:

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

(b) any extensions of policy due date.

Renewal Insurance Policies due prior to the inception date stated must not exceed 12 months.

[BCC] may, unless IAL notifies [BCC] otherwise, provide cover under a cover note upon the expiry of an Insurance Policy for policies where a renewal offer has been made. The interim cover will be on the same terms and conditions as the renewal offer for a maximum period of 30 days starting on the expiry date of the Insurance Policy, but in any event must not extend beyond 30 June 2019.

Mid-Term Policy Alterations: [BCC] is authorised to bind mid-term Insurance Policy alterations where IAL is the insurer provided that such changes are permitted within the Underwriting Manual Version 3 after prudent underwriting judgment is applied.

No extensions of due date are permitted." (clause 2.1)

(ii) BCC was obliged to carry out the "Authorised Services" only through an "Authorised Individual" (clause 2.2);

(iii) BCC was not authorised to do anything on behalf of IAL that was not expressly authorised under the IAL AAR Agreement (clause 2.3);

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

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

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

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

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

(vi) the relationship between IAL and BCC created by the agreement was one of principal and agent for the purposes expressly permitted by the agreement only, and otherwise principal and independent contractor, and not one of employer and employee, joint venture or partnership (clause 2.5);

(vii) BCC must comply with all reasonable written Guidelines given to BCC by IAL at any time in relation to the provision of the Authorised Services (clause 4.1(a));

(viii) the Guidelines (being Underwriting Manual Version 3.0) were taken to be incorporated into and form part of the IAL AAR Agreement (clause 4.2);

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

(x) IAL could in its complete discretion appoint or refuse to appoint a person as an authorised representative (clause 5.2), and that BCC was prohibited from authorising any person to provide any Authorised Services on its behalf or on behalf of IAL (clause 5.1);

(xi) BCC would perform its obligations under the IAL AAR Agreement in accordance with the Underwriting Manual (clause 7.1);

(xii) BCC would collect a premium for risks written within authority (clause 8.1);

(i) on a proper construction of the IAL AAR Agreement, the Mid-Term Policy Alterations that BCC was authorised to bind under the IAL AAR Agreement comprised changes to existing policies written by BCC on behalf of IAL which:

(i) reduced or did not alter, alternatively did not materially alter, the scope of IAL's risk under existing policies issued by BCC on behalf of IAL; and

(ii) were of a kind contemplated by the existing terms of the existing policies issued by BCC on behalf of IAL;

(j) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that BCC's status as an authorised representative had ceased with effect on 30 June 2019;

(k) at all material times, IAL did not authorise BCC or Brereton to represent:

(i) that BCC had its authority to enter into the 2019 Policy or policies akin to the 2019 Policy;

(ii) that BCC was IAL's corporate authorised representative in relation to the 2019 Policy or policies akin to the 2019 Policy.

34 IAL admits paragraph 34 of the SOC.

35 As to paragraph 35 of the SOC, IAL:

(a) says that the CGU AAR Agreement and BCC Authorisation Notice remained in effect from 1 August 2017 (by reason of the Scheme Orders) to 9 April 2019;

(b) repeats paragraph 33 of this Defence;

(c) admits that between 9 April 2019 and 30 June 2019, pursuant to the IAL AAR Agreement:

(i) IAL appointed BCC as IAL's agent to perform "Authorised Financial Services" in relation to the "Approved Products" on behalf of IAL, including the services set out at paragraphs 26.a, 26.b and 26.c of the SOC, subject to the limitations imposed by the IAL AAR Agreement and Underwriting Manual Version 3.0;

(ii) the only "Approved Products" that BCC was authorised to issue as agent for IAL under the IAL AAR Agreement were trade credit insurance policies written using Approved Wording 1.4; and

(iii) IAL appointed BCC as an authorised representative of IAL for the purposes of Chapter 7 of the *Corporations Act* on the terms set out in the IAL AAR Agreement; and

(d) otherwise denies paragraph 35 of the SOC.

36 As to paragraph 36 of the SOC, IAL:

(a) says that between 1 August 2017 and 30 June 2019:

(i) BCC was the agent of IAL and BCC's authority was limited by the authorities set out in the CGU AAR Agreement, IAL AAR Agreement, Underwriting Manual Version 1.0, Underwriting Manual Version 2.0 and Underwriting Manual Version 3.0;

(ii) BCC was an authorised representative of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act*;

(iii) the IAL AAR Agreement was written notice given by IAL to BCC for the purpose of section 916A of the *Corporations Act*;

(iv) in accordance with section 916A(1) of the *Corporations Act*, IAL did not and could not give authority to BCC to provide any service on behalf of IAL that was not specified in the notice;

(b) says that if IAL had known that BCC and/or Brereton had acted outside the scope of their authority as pleaded in paragraphs 66A(d) and 66A(e) of this Defence, it would have terminated their authority to act on its behalf at the relevant times; and

(c) otherwise denies paragraph 36 of the SOC.

B.4 Agency arrangements between BCC, IAL and Tokio Marine

37 IAL admits paragraph 37 of the SOC and says further that:

(a) for the purposes of the PACAO, "Services" was defined to mean (clause 1.1):

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

(ii) Claims processing (including Claims processing, error management, document retention, Claim lodgement and Claim authorisation and Claims payment);

(iii) Policy administration (including modifications of Policies, extensions of Bonds and premium collection and remittance); and

(iv) preparing management reports;

(b) the PACAO also included the following defined terms (clause 1.1):

(i) **Agency Agreements** means: (a) the Bond Agency Agreement between BCC Surety and IAL dated 5 June 2013; (b) the Agency and Authorised Representative Agreement between BCC and CGU dated 28 July 2016 (namely, the CGU AAR Agreement); (c) the Agency & Authorised Representative Extension Agreement between IAL and BCC (namely, the IAL AAR Agreement); and (d) the Bond Agency Extension Agreement;

(ii) **Claim** means a claim under a Policy, and each of the following is, without limitation, deemed to be a separate Claim: (a) a claim that is lodged but subsequently withdrawn after the end of the month in which it is lodged; (b) a claim that is lodged by a person even though details are incomplete; (c) a claim under statutory cover arising from section 58 of the *Insurance Contracts Act 1984* (Cth) (***ICA***) relating to a Policy; (d) a claim that is purportedly lodged under a Policy even though it is subsequently found that no Policy exists or there was no entitlement to lodge a claim;

(iii) **Contentious Claim** means "any Claim where a customer raises concerns that have the potential to impact IAL's reputation, such as: high value claims; high profile claimants; claims about a significant business matter; threats to go to the media; any complaint has been made by a third party in relation to the Claims Management Services" (Sch 4, clause 3.1);

(iv) **Policy** means: (a) a commercial surety bond arranged or extended by BCC Surety and issued by IAL; or (b) a trade credit insurance product arranged by BCC and issued by IAL, pursuant to an Agency Agreement;

(c) the PACAO described each of TMMA and Bond as the "Administrator";

(d) it was a term of the PACAO that, during the term of the PACAO, the Administrator must provide the Services, and do so in accordance with clause 5.1(a)(i)-(v) (clause 5.1(a));

(e) the PACAO did not confer a general authority on Bond or BCC as Bond's delegate to act as IAL's agent to administer trade credit insurance policies issued by IAL on or before 30 June 2019;

(f) it was a term of the PACAO that Bond, or BCC as Bond's delegate, was not permitted to write new business or renewals on IAL paper (Sch 5, clause 2).

38 As to paragraph 38 of the SOC, IAL:

(a) repeats paragraph 37(c) of this Defence;

(b) says that by the PACAO, IAL appointed "the Administrator", being TMMA and Bond, to process mid-term alterations within the rules set out in Underwriting Manual Version 3.0 for "Trade Credit policies" written on IAL paper on or before 30 June 2019 (clauses 2, 5.1, and Schedule 5 of the PACAO);

(c) says that, on its proper construction, the phrase "mid-term alterations" in the PACAO has the same meaning as "Mid-Term Policy Alterations" referred to in the IAL AAR Agreement, which also came into effect on 9 April 2019, as to which IAL repeats paragraph 33(i) of this Defence;

(d) says that the PACAO included the following express terms in Schedule 5 in relation to the Administrator's authority to process mid-term alterations referred to in paragraph 38(b) of this Defence:

(i) the Administrator is not permitted to extend policy due dates or enforce year 2 auto renewals on to IAL paper;

(ii) the Administrator is not permitted to write new business or renewals on IAL paper;

(iii) the Administrator is to handle all claims for the life of the run off policies (written on IAL paper) as prescribed in Schedule 3 of the PACAO;

(iv) the finance/administration activities that the Administrator was permitted to undertake for mid-term alterations were limited to:

(A) issuing premium invoices;

(B) follow up and collection of outstanding Debtor invoices;

(C) allocation of cash receipts in the financial systems;

(D) reconciling Trust bank accounts daily;

(E) prepare and disseminate monthly Written Bordereaux;

(F) prepare and disseminate monthly Payment Bordereaux and make appropriate distributions;

(G) investigate and respond to ad hoc queries from the IAL finance team;

(H) reconcile reporting systems to bank and Bordereau reports;

(e) says that on 3 September 2020, IAL issued a notice under clause 21.1(a) of the PACAO which restricted the Administrator's authority under the PACAO;

Particulars

The notice revoked the authority of the Administrator in relation to Claims arising under Trade Credit Policies to:

(a) accept indemnity on behalf of IAL in connection with Claims;

(b) authorise any payments in connection with Claims;

(c) defend, negotiate or settle any Claims on behalf of IAL;

(d) implement strategies for defending Claims;

(e) engage appropriate Third-Party Service Providers to establish entitlement and quantification of the Claim; and

(f) make or pursue on behalf of IAL recovery action against third parties who have contributed to the Claim.

(f) says that while there was power under the PACAO for Bond to delegate to BCC, IAL is unaware of the terms of any delegation made by Bond to BCC in this regard; and

(g) otherwise denies paragraph 38 of the SOC.

39 As to paragraph 39 of the SOC, IAL:

(a) repeats paragraph 38(b) of this Defence;

(b) says that on 3 September 2020, IAL issued a notice under clause 21.1(a) of the PACAO which restricted the Administrator's authority under the PACAO;

Particulars

IAL repeats the particulars at paragraph 38(e) of this Defence.

(c) says that the Term of the PACAO was 5 years unless terminated earlier (clause 3(b) of the PACAO); and

(d) otherwise denies paragraph 39 of the SOC.

B.5 BCC administered trade credit insurance policies as agent for IAL

40 As to paragraph 40 of the SOC, IAL:

(a) says that the allegation does not identify the "iterations of the Bordereaux" pleaded, and refers (in particulars) only to 'Written Bordereaux', 'Payment

Bordereaux' and 'Claims Bordereaux' prepared from 'time to time' without identifying which bordereaux are relied upon;

(b) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(c) refers to and repeats paragraph 19(c) of this Defence; and

(d) otherwise denies paragraph 40 of the SOC.

41 As to paragraph 41 of the SOC, IAL:

(a) says the iterations of the bordereaux that BCC provided to IAL:

(i) referred only to Approved Products, being trade credit insurance policies, having been issued by BCC as agent for IAL;

Particulars

The bordereaux that BCC provided to IAL identified the policies issued by BCC as being “Trade Credit” Products with policy numbers that contained the prefix “TB”, “TW” or TS” representing multi-buyer policies, whole of turnover policies, and single risks policies written using Approved Wording respectively.

(ii) did not refer to non-trade credit insurance policies, or insurance policies using non-approved wording, having been issued by BCC as agent for IAL; and

(iii) did not refer to the 2019 Policy or any endorsements purportedly issued pursuant to the 2019 Policy;

(b) repeats paragraphs 19(c) and 40(a) of this Defence; and

(c) otherwise denies paragraph 41 of the SOC.

42 As to paragraph 42 of the SOC, IAL:

(a) admits that from 1 August 2017, BCC collected premiums for policies which BCC represented in iterations of the bordereaux as conforming with Approved Products;

Particulars

See particulars under paragraph 41 of this Defence.

(b) repeats paragraph 19(c) of this Defence and says that the premiums that BCC collected for all policies that it purportedly issued on behalf of IAL to GCPL, GCUK and Greensill Bank were omitted or not accurately recorded, and did not

reflect policies purportedly issued at specific points in time, in the iterations of the bordereaux it submitted to IAL;

(c) refers to and repeats paragraphs 5(c), 5(d) and 8 of this Defence;

(d) in relation to the CGU AAR Agreement and the IAL AAR Agreement:

(i) refers to those agreements for their full force and effect;

(ii) says that cl 8.1 of the agreements referred to "Premiums";

(iii) says that cl 8.1(a) of the CGU AAR Agreement and IAL AAR Agreement referred to the collection of "Premiums" payable to CGU or IAL (as the case may be) in respect of contracts of "Approved Products";

(iv) says that "Premium" was defined in each of the agreements to mean (inter alia) an amount payable "in respect of" an "Insurance Policy" (CGU AAR Agreement cl 23.1; IAL AAR Agreement cl 21.1);

(v) says that "Approved Products" was defined in each of the agreements to mean (inter alia) "contracts of insurance issued or to be issued by CGU or IAL (as the case may be) of a certain class or type (CGU AAR Agreement cl 23.1; IAL AAR Agreement cl 21.1);

(vi) says that "Insurance Policy" was defined in each of the agreements to mean (inter alia) a "policy of general insurance … issued by" CGU or IAL (as the case may be) (CGU AAR Agreement cl 23.1; IAL AAR Agreement cl 21.1);

(vii) says that cl 8.1 of the agreements was not engaged in accordance with its terms unless there were "Premiums" payable in respect of "Approved Products";

(e) in relation to the PACAO:

(i) refers to and repeats paragraph 37 of this Defence;

(ii) says that:

(A) it was an express term of the PACAO that the relationship between IAL and "the Administrator" was that of contractor and not that of principal and agent, except to the extent otherwise expressly provided in the PACAO (clause 29.2);

(B) there were no terms of the PACAO expressly providing for "the Administrator" to act as agent of IAL;

(C) the PACAO did not create a principal-agent relationship between IAL (as principal) and "the Administrator" (as agent);

(iii) otherwise, relies on the terms of the PACAO for their full force and effect; and

(f) otherwise denies paragraph 42 of the SOC.

43 As to paragraph 43 of the SOC, IAL:

(a) repeats paragraph 42(a) and 42(b) of this Defence;

(b) denies that BCC remitted premiums to IAL in respect of the 2019 Policy or any of the endorsements purportedly issued pursuant to the 2019 Policy;

(c) says that BCC remitted some premiums to IAL in respect of policies which BCC represented in iterations of the bordereaux as conforming with Approved Products; and

Particulars

See particulars under paragraph 41(a)(i) of this Defence.

(d) otherwise denies paragraph 43 of the SOC.

44 As to paragraph 44 of the SOC, IAL:

(a) repeats paragraph 42(a) of this Defence;

(b) denies that IAL paid commission to BCC in relation to the 2019 Policy or any of the endorsements purportedly issued pursuant to the 2019 Policy;

(c) says that IAL paid commission to BCC in respect of policies which BCC represented in iterations of the bordereaux as conforming with Approved Products; and

Particulars

See particulars under paragraph 41(a)(i) of this Defence.

(d) otherwise denies paragraph 44 of the SOC.

45 As to paragraph 45 of the SOC, IAL:

(a) repeats paragraphs 8, 10 and 33 of this Defence;

(b) says that BCC's authority to act on behalf of IAL between 1 August 2017 and 30 June 2019 was limited in accordance with the terms of the:

(i) CGU AAR Agreement between 1 August 2017 and 9 April 2019;

(ii) IAL AAR Agreement between 9 April 2019 and 30 June 2019;

(iii) Underwriting Manual Version 1.0 between 1 August 2017 and 11 July 2018;

(iv) Underwriting Manual Version 2.0 between 12 July 2018 and 8 April 2019;

(v) Underwriting Manual Version 3.0 from 9 April 2019;

(c) says that, from 1 July 2019, BCC was authorised to act as the agent and authorised representative of TMNF and provide financial services on behalf of TMNF;

(d) says that the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that:

(i) BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019; and

(ii) BCC was the authorised representative of only TMNF from 1 July 2019 onwards; and

(e) otherwise denies paragraph 45 of the SOC.

C AGENCY ARRANGEMENTS BETWEEN GREG BRERETON, CGU AND IAL

C.1 Agency arrangements between Greg Brereton and CGU

46 IAL admits paragraph 46 of the SOC.

47 IAL repeats paragraph 8(g) of this Defence and otherwise admits paragraph 47 of the SOC.

48 IAL admits paragraph 48 of the SOC.

49 IAL repeats paragraph 8(g) of this Defence and otherwise admits paragraph 49 of the SOC.

50 IAL admits paragraph 50 of the SOC and says further that:

(a) between October 2016 and July 2017, the only Approved Products in relation to which Brereton was authorised to provide "Authorised Financial Services" were contracts of trade credit insurance issued or to be issued by CGU using Approved Wording 1.3; and

(b) between October 2016 and July 2017, there were no contracts of insurance which were "otherwise agreed between CGU and BCC in writing" as being

Approved Products for the purpose of the CGU AAR Agreement or CGU/Brereton Authorisation Agreement.

51 As to paragraph 51 of the SOC, IAL:

(a) says that by reason of the CGU/Brereton Authorisation Agreement, Brereton was authorised by CGU to act as CGU's agent on and from 8 July 2016 to undertake the activities pleaded in paragraphs 26.a, 26.b and 26.c of the SOC, subject to the limits of authority in the CGU/Brereton Authorisation Agreement, CGU AAR Agreement and Underwriting Manual Version 1.0; and

(b) otherwise denies paragraph 51 of the SOC.

52 IAL repeats paragraph 8(h) of this Defence and otherwise admits paragraph 52 of the SOC.

C.2 Agency arrangements between Greg Brereton, IAL and IAGA

53 IAL admits that the Scheme Orders had the effect substantially alleged in paragraph 53 of the SOC and relies on the terms of the Scheme Orders for their full force and effect.

54 IAL admits paragraph 54 of the SOC on the assumption that "IAGL" is a reference to Insurance Australia Group Limited.

55 IAL admits paragraph 55 of the SOC and says further that:

(a) by necessary implication, upon the coming into effect of the IAGA/IAL Brereton Authorisation on 1 August 2017, the CGU/Brereton Authorisation Agreement came to an end, and IAL says further that the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that Brereton's status as authorised representative of CGU had ceased with effect on 1 August 2017;

(b) the IAGA/IAL Brereton Authorisation was an authorisation notice for the purposes of the CGU AAR Agreement and subsequently the IAL AAR Agreement;

(c) the IAGA/IAL Brereton Authorisation included, inter alia, the following express terms:

(i) Brereton was authorised personally to provide the financial and other services specified in the form of the "Authorisation Notice" attached to the letter as "Authorised Representative" (page 1);

(ii) Brereton was obliged to comply with the terms of the IAGA/IAL Brereton Authorisation (page 1);

(iii) Brereton was only authorised to perform the Authorised Services (page 1);

(iv) "Approved Products" was defined to have the same meaning given to that term in the CGU AAR Agreement and subsequently the IAL AAR Agreement, such that the only "Approved Products" were "Trade Credit Products" (page 3);

(v) "Authorised Financial Services" was defined to mean that Brereton was authorised in accordance with the CGU AAR Agreement and subsequently the IAL AAR Agreement to:

(A) provide general advice (but not personal advice);

(B) deal in, arrange, acquire, issue, vary and dispose of Approved Products;

(C) collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for Approved Products; and

(D) issue, negotiate and agree the terms of Insurance Policies for Approved Products (page 3);

(vi) Brereton must comply with and provide the Authorised Services in accordance with the CGU AAR Agreement and subsequently the IAL AAR Agreement as if Brereton were the Intermediary (page 1);

(vii) Brereton must not cause BCC to breach any terms and conditions of the CGU AAR Agreement and subsequently the IAL AAR Agreement (page 1);

(viii) Brereton must comply with the CGU AAR Agreement and subsequently the IAL AAR Agreement and all policies, procedures and compliance guidelines as provided by IAGA and IAL and any reasonable directions of IAGA and IAL (page 1); and

(ix) Brereton must act efficiently, honestly and fairly (page 2);

(d) IAGA and IAL terminated the IAGA/IAL Brereton Authorisation with effect from 30 June 2019 and the register maintained by ASIC under section 922A of the

Corporations Act was updated to record that Brereton's status as authorised representative had ceased with effect from 30 June 2019; and

Particulars

Letter from Brad Robson to Greg Brereton dated 1 July 2019 and entitled "Termination of Individual Authorisation Agreement and Authorisation Notice" (IAL.500.009.0270).

The register maintained under section 922A of the *Corporations Act* is a publicly-available record.

(e) Brereton did not have any authority to act on behalf of IAL pursuant to the IAGA/IAL Brereton Authorisation on and from 30 June 2019.

56 IAL admits paragraph 56 of the SOC.

57 IAL admits paragraph 57 of the SOC.

58 IAL admits paragraph 58 of the SOC.

59 IAL admits paragraph 59 of the SOC.

60 IAL admits paragraph 60 of the SOC and says further that:

(a) after 1 August 2017, the only Approved Products in relation to which Brereton was authorised to provide "Authorised Financial Services" under the IAGA/IAL Brereton Authorisation were contracts of trade credit insurance issued or to be issued by IAL using Approved Wording 1.4; and

(b) after 1 August 2017, there were no contracts of insurance which were "otherwise agreed between IAL and BCC in writing" as being Approved Products for the purpose of the CGU AAR Agreement, the IAL AAR Agreement or the IAGA/IAL Brereton Authorisation.

61 As to paragraph 61 of the SOC, IAL:

(a) admits that on 1 July 2018, BCC issued a document to Brereton styled "Delegated Authority for Head of Trade Credit effective: 1st July 2018", which was signed by Brereton on or around 3 July 2018 (**BCC Delegation**);

(b) says that the BCC Delegation included the following express terms:

(i) Brereton's delegated authority from BCC was limited to that set out in the document (clause 1.1);

(ii) Brereton's delegated authority was subject always to Brereton acting at all times in accordance with: (a) the approved business plans relevant to Brereton's business unit; (b) procedures, policies,

strategies, standards and guidelines, and (c) Brereton's fiduciary duties towards BCC (clause 1.2);

(iii) Brereton's "Underwriting Authority" was set out in Schedule A and included the following constraints:

(A) any underwriting decision was to be made properly having regard to the financial, legal or reputational consequences for the relevant products or class of products;

(B) in respect of "Trade Credit":

a. maximum Premium: $10 million;

b. maximum buyer / group limit: $50 million; and

c. all underwriting to be exercised in accordance with underwriting guidelines and reinsurance arrangements;

(C) there was no authority to issue retrospective liability extensions in respect of known or reported claims and in respect of incurred but not reported claims;

(iv) Brereton's "Underwriting Authority" was, for currency other than Australian dollars, subject to limits to be converted at actual rates of exchange applicable at the date of attachment of the risk, or at agreed risks if included in Group or specific insurance or reinsurance arrangements (clause 3.1);

(v) Brereton's "Underwriting Authority" was subject to Brereton: (a) employing the highest ethical standards expected in the markets in which Brereton was operating and Brereton not doing anything which he would not be confident would be endorsed by respected colleagues in the market; (b) adhering to any Policies and Procedures, underwriting guidelines and legal and regulatory requirements; (c) ensuring that risks were placed in accordance with approved underwriting guidelines and business plans; and (d) ensuring that material and documentation forwarded to external parties (e.g. intermediaries and insureds) was in the approved form (clause 3.2); and

(c) otherwise denies paragraph 61 of the SOC.

62 IAL repeats paragraph 31 of this Defence and otherwise admits paragraph 62 of the SOC.

63 IAL admits paragraph 63 of the SOC.

64 As to paragraph 64 of the SOC, IAL:

(a) says that by reason of the IAGA/IAL Brereton Authorisation, Brereton was authorised to act as IAL and IAGA's agent between 1 August 2017 and 30 June 2019 to undertake the activities pleaded in paragraphs 64.a, 64.b and 64.c of the SOC, subject to the limits of authority in the IAGA/IAL Brereton Authorisation, CGU AAR Agreement, IAL AAR Agreement, Underwriting Manual Version 1.0, Underwriting Manual Version 2.0 and Underwriting Manual Version 3.0;

(b) says that if IAL had known that BCC and/or Brereton had acted outside the scope of their authority as pleaded in paragraphs 66A(d) and 66A(e) of this Defence, it would have terminated their authority to act on its behalf at the relevant times; and

(c) otherwise denies paragraph 64 of the SOC.

DA. REGULATORY REQUIREMENTS

DA.1 Membership of the German Deposit Protection Fund

64A IAL does not know and therefore cannot admit paragraph 64A of the SOC.

64B IAL does not know and therefore cannot admit paragraph 64B of the SOC.

64C IAL does not know and therefore cannot admit paragraph 64C of the SOC.

64D IAL does not know and therefore cannot admit paragraph 64D of the SOC.

64E IAL does not know and therefore cannot admit paragraph 64E of the SOC.

64F IAL does not know and therefore cannot admit paragraph 64F of the SOC.

64G In response to paragraph 64G of the SOC, IAL says that:

(a) it is aware of a document in German described as a letter from the 'Prüfungsverband deutscher Banken e.V' (**PdB**) addressed to Dr Mathias Hanten of DLA Piper UK LLP dated 18 December 2013 ("*18 Dezember 2013*");

Particulars

Letter from PdB to Dr Mathias Hanten dated 18 December 2013 (in German).

(b) the Applicants provided IAL with an English language translation of the letter on 9 May 2025;

Particulars

Letter from PdB to Dr Mathias Hanten dated 18 December 2013 (English translation).

(c) based on this English translation of the letter:

(i) the subject of the letter is described as "Owner control proceedings NordFinanz Bank Aktiengesellschaft, Bremen / Greensill Capital (UK) Ltd. et al." (page 1);

(ii) the purpose of the letter is described as being to "inform [Dr Hanten] of the result of the ongoing ownership control proceedings regarding Greensill Capital (UK) Ltd. and its direct and indirect shareholders (together the "Investors") as well as the examination of the intended business model" (page 1);

(iii) the letter refers to a "new business model" comprising “the purchase of receivables from the supply of goods and the provision of services” (page 1) and the "purchase of receivables from the supply chain finance business (SCF business)" (page 1) and a "business plan of 10.12.2013" (page 2);

(iv) the letter refers to the PdB having "carried out an assessment of the intended business model to assess the risk of the Deposit Protection Fund", which is "[b]ased on the information received from Greensill Capital and NordFinanz Bank (NF Bank) (page 1)";

(v) the letter refers to this "risk assessment" having been based on "key statements on the intended legal and economic structure of NF Bank's SCF business" (page 1), including inter alia that:

(A) "Greensill Capital (UK) Ltd. has contractual agreements with various clients for the purchase of receivables from the supply of goods and services. The company offers NF Bank the receivables for purchase. The purchase of any receivables is solely within the decision-making area of NordFinanz Bank. For those associated with the purchase of the receivable, NF Bank receives a market-based interest rate from Greensill Capital in the form of a discount on the amount of the receivable" (pages 1 to 2);

(B) "Only receivables with a maximum maturity of 180 and a volume-weighted average maturity of no more than 90 days are purchased, for which there is sufficient insurance cover against loan defaults without NF Bank's deductible by AIG Europe Limited or at least equivalent protection" (page 2);

(C) "The cost of the insurance premium is paid and borne economically by Greensill Capital (UK) Ltd" (page 2);

(D) "The maximum purchase volume per debtor is limited by the applicable large exposure provisions, but in no case more than EUR 7.5 million" (page 2);

(E) "The operation of SCF's business requires proper business organisation of NF Bank, in particular appropriate credit analysis and decision-making and adequate staffing. The creation of the proper business organisation is the task of the Board of Directors of NF Bank" (page 2);

(F) GCUK "as the majority shareholder, will work towards the timely realisation of the necessary banking organisation as far as possible and legally permissible" (page 2);

(vi) under the "above-mentioned framework conditions for the SCF business" referred to at sub-paragraph 64G(c)(iv) (amongst others), the letter states that the PdB "accept the change in NF Bank's business model and the business plan of 10.12.2013 submitted for this purpose" (page 2); and

Particulars

Letter from PdB to Dr Mathias Hanten dated 18 December 2013 (English translation).

(d) otherwise, IAL does not know and therefore cannot admit paragraph 64G of the SOC.

64H In response to paragraph 64H of the SOC, IAL:

(a) says it is aware of a document in German described as a letter from the PdB addressed to Frau Baalmann and Herr Lloyd and dated 14 March 2014, but is not aware of a document dated 14 December 2014;

Particulars

Letter from PdB to Baalmann and Lloyd dated 14 March 2014 (in German).

(b) the Applicants provided IAL with an English language translation of the letter on 9 May 2025;

(c) says that the 14 March 2014 letter:

(i) set out “conditions” imposed by the PdB on the “business activities” of "NordFinanz Bank Aktiengesellschaft";

(ii) referred to a “business model” involving “the purchase of receivables from the delivery of goods and the provision of services … which are acquired by Greensill Capital” (page 1);

(iii) referred to a “main basis” for the “decision” in the “owner control proceeding” as being “the business plan submitted … on 5 December 2013 and the information provided by Greensill Capital and the management of NF Bank on the structure of the SCF business” (page 2);

(iv) stated that “[a]ny change to the risk-determining features of the organisation of the SCF business at NF Bank and any material change to the business plan require prior review and approval” by the PdB (page 3);

(d) otherwise, does not know and therefore cannot admit 64H of the SOC.

64I In response to paragraph 64I of the SOC, IAL says that:

(a) it is aware of a document in German described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 1 December 2015 ("*1 Dezember 2015*");

Particulars

Letter from PdB to Board of Greensill Bank dated 1 December 2015 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from PdB to Board of Greensill Bank dated 1 December 2015 (English translation), but with a date stamp marking of “02.09.15”.

(c) based on this English translation of the letter:

(i) the letter refers to an "audit carried out in the period from 16.03 to 26.06.2015 in accordance with § 4 para. 1 sentence 1 no. 1 and § 5 of

the Articles of Association of the Auditing Association of German Banks as of 28.02.2015 (deposit guarantee audit)" (page 1);

(ii) the letter states that, based on the results on this audit, PdB "issue[s] the following conditions to Greensill Bank AG in accordance with accordance with § 11 para. 1 no. 3 of [the PdB's] articles of association" (page 1);

(iii) the "conditions" referred to at paragraph 64I(c)(ii) included (amongst other "conditions"):

(A) in respect of paragraphs 64I(a) and 64I(b) of the SOC, that the "SCF receivables to be purchased by Greensill Bank AG are fully insured against credit. The bank does not bear a deductible" (page 1);

(B) in respect of paragraph 64I(c) of the SOC, that "[t]he total capital ratio of Greensill Bank AG pursuant to Art. 92 CRR is at least 14%" (page 1);

(iv) the letter states that “in the case of purchases of SCF receivables up to mid-2014, the creditworthiness of the debtors was not sufficiently analysed and used as a basis for decision-making for the granting of loans” (page 2);

(v) the letter stated that PdB “expect[ed] the bank to carry out appropriate creditworthiness analyses of SCF receivables and to make credit decisions based on them” (page 2);

(d) otherwise, IAL does not know and therefore cannot admit paragraph 64I of the SOC.

64J In response to paragraph 64J of the SOC, IAL says that:

(a) it is aware of a document in German bearing the letterhead of "Greensill Bank" addressed to the PdB dated 1 December 2015 and signed by Jutta Daalmann and Markus Nünnerich;

Particulars

Letter from Greensill Bank to the PdB dated 1 December 2015 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from Greensill Bank to the PdB dated 1 December 2015 (English translation).

(c) the English translation of the letter refers to a letter from the PdB dated 1 December 2015 and states "we hereby confirm that the conditions will be complied with"; and

(d) otherwise, IAL does not know and therefore cannot admit paragraph 64J of the SOC.

64K In response to paragraph 64K of the SOC, IAL says that:

(a) It is aware of a document in German described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 3 March 2020;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 3 March 2020 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 3 March 2020 (English translation).

(c) based on this English translation of the letter:

(i) the letter states that, "[i]n accordance with § 11 paragraph 1 sentence 1 no. 6 of [the PdB's] articles of association, we grant you the following condition" (page 1);

(ii) the "condition" referred to at paragraph 64K(c)(i) included (amongst other "conditions"):

(A) in respect of paragraphs 64K(a) and 64K(b) of the SOC, that the "Supply Chain Finance (SCF) and Accounts Receivables Purchase (ARP) receivables to be purchased by Greensill Bank must be fully insured by credit. The bank does not bear a deductible" (page 1);

(B) in respect of paragraph 64K(c) of the SOC, that the "total capital ratio of Greensill Bank AG in accordance with Art. 92 CRR is at least 14%" (page 1);

(C) that the "total amount of covered (EdB) and insured (ESF) deposits is limited to 3.5 billion" and that the "volume vis-à-vis

the "Gupta Group" – including direct financing" will be managed below a level of EUR 2,100 million by 31 March 2020 and will then be further reduced as follows" (page 1):

a. "until 30 April 2020", "[r]epatriation to a maximum of EUR 1,600 million" (page 1);

b. "until 31 July 2020", "[r]epatriation to a maximum of EUR 1,100 million" (page 1);

c. "until 31 October 2020", "[r]epatriation to a maximum of EUR 600 million" (page 1);

(D) that, "[b]y the end of March 2020, the Bank will implement a system to limit concentration risks, in particular "seller risks" from its SCF and ARP business as well as concentration risks from the collateralisation of the business (credit insurance), and inform the auditing association about the structure" (page 2);

(iii) under the heading "Justification", the English translation of the letter:

(A) refers to a "deposit insurance audit" by the PdB and states that:

a. "[the PdB] have the impression that you [Greensill Bank] have not acted in a sufficiently risk-conscious manner with regard to the takeover of the ARP claims of the Sanjeev Gupta Group to the bank by Greensill Capital (UK) Limited, London" (page 3);

b. "[a]s of 30.09.2019, there was a nominal verity risk of EUR 2.3 billion due to the purchase of the portfolio of ARP receivables from the Sanjeev Gupta Group, London" (page 3);

c. "[d]espite the corresponding insurance policies, which focus on a few credit insurers, this represents a significant concentration of verity risks" (page 3);

(B) says further that:

a. "you [Greensill Bank] have not been able to provide us [the PdB] with any external proof (confirmation from the insurance company) to date that, as agreed

between us, all SCF and ARP receivables of the bank were fully insured as of 31.10.2019" (page 3);

b. in the premises at paragraph 64K(c)(iii)(B)a above, the PdB states that, "from [its] point of view, it is not only the compliance with [its] corresponding requirements that is in question, but also the correctness of the regulatory capital ratios communicated by [Greensill Bank]" (page 3);

(C) states that the "Sanjeev Gupta Group's nominal verity risk of EUR 2.3 billion represents an unjustifiable concentration of risk compared to the risk cover pool of EUR 404.9 million, despite credit insurance" (page 3);

(D) references a letter from the PdB dated 27 November 2019 and states that:

a. "[t]here was agreement between us that the unacceptably high verity risk Sanjeev Gupta Group must be reduced" (page 3);

b. "[t]hey had provided us with a plan for gradual reduction, which [the PdB] included in the condition issued with [its] letter of 27 November 2019" (page 3); and

(d) otherwise, IAL does not know and therefore cannot admit paragraph 64K of the SOC.

64L In response to paragraph 64L of the SOC, IAL says that:

(a) it is aware of a document in German bearing the letterhead of "Greensill Bank" addressed to the PdB dated 5 March 2020 and signed by Jutta Daalmann and Markus Nünnerich;

Particulars

Letter from Greensill Bank to the PdB dated 5 March 2020 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from Greensill Bank to the PdB dated 5 March 2020 (English translation).

(c) the English translation of the letter refers to a letter from the PdB dated 3 March 2020 and states "we hereby confirm the conditions listed in your letter […] in accordance with § 11 paragraph 1 no. 6 of [the PdB's] articles of association"; and

(d) otherwise, IAL does not know and therefore cannot admit 64L of the SOC.

64M In response to paragraph 64M of the SOC, IAL says that:

(a) it is aware of a document in German described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 1 April 2020;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 1 April 2020 (in German)

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 1 April 2020 (English translation)

(c) based on this English translation of the letter:

(i) the letter states that, "[i]n accordance with § 11 paragraph 1 sentence 1 no. 6 of [the PdB's] articles of association, we grant you the following condition" (page 1);

(ii) the "condition" referred to at paragraph 64M(c)(i) included (amongst other "conditions"):

(A) in respect of paragraphs 64M(a) and 64M(b) of the SOC, that "[t]he Supply Chain Finance (SCF) and Accounts Receivables Purchase (ARP) receivables purchased by Greensill Bank are fully insured against credit. The bank is not allowed to bear a deductible" (page 2);

(B) in respect of paragraph 64M(c) of the SOC, that "[t]he - adjusted - total capital ratio pursuant to Art. 92 CRR of Greensill Bank AG is at least 14%. When calculating this adjusted total capital ratio, the Bank must refrain from taking into account RWA-reducing effects due to the conclusion of credit insurance for the purposes of this condition, for a limited period until the end of June 2021, in deviation from the requirements of banking supervision" (page 1);

(iii) that the "volume vis-à-vis the "Gupta Group" (predominantly consisting of the seller obligation) does not exceed the current level of EUR 2.6 billion," and that "[t]he Bank must continue to make all reasonable efforts to reduce this volume significantly and steadily. The final volume of EUR 600 million must be reached by 31 December 2020" (page 1);

(iv) that "[t]he bank must implement a system in the short term to limit concentration risks, in particular "seller risks" from its SCF and ARP business as well as concentration risks from the collateralisation of the business (credit insurance), and inform the auditing association about the structure" (page 2);

(d) under the heading "Justification", the English translation of the letter refers to the "reasoning in the [PdB's] last letter of 3 March 2020", "[i]n particular with regard to the need to reduce the Bank's existing concentration risks vis-à-vis the Gupta Group" (page 3); and

(e) otherwise, IAL does not know and therefore cannot admit 64M of the SOC.

64N In response to paragraph 64N of the SOC, IAL says that:

(a) it is aware of a document in German bearing the letterhead of "Greensill Bank" addressed to the PdB dated 3 April 2020 and signed by Jutta Daalmann, Markus Nünnerich and Danyon Lloyd;

Particulars

Letter from Greensill Bank to the PdB dated 3 April 2020 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from Greensill Bank to the PdB dated 3 April 2020 (English translation).

(c) the English translation of the letter refers to a letter from the PdB dated 1 April 2020 and states "we hereby confirm the conditions in accordance with § 11 paragraph 6 sentence 1 of [the PdB's] articles of association"; and

(d) otherwise, IAL does not know and therefore cannot admit 64N of the SOC.

64O In response to paragraph 64O of the SOC, IAL says that:

(a) it is aware of the following documents in German:

(i) the document described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 4 November 2020;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 4 November 2020 (in German).

(ii) the document bearing the letterhead of "Greensill Bank" addressed to the PdB dated 5 November 2020 and signed by Markus Nünnerich, Ingo Schwartz and Ann-Christin Rathjen;

Particulars

Letter from Greensill Bank to the PdB dated 5 November 2020 (in German).

(iii) the document described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 2 February 2021 ("*2. Februar 2021*");

Particulars

Letter from the PdB to the Board of Greensill Bank dated 2 February 2021 (in German).

(iv) the document bearing the letterhead of "Greensill Bank" addressed to the PdB dated 11 February 2021 and signed by Markus Nünnerich, Ingo Schwartz and Ann-Christin Rathjen;

Particulars

Letter from Greensill Bank to the PdB dated 11 February 2021 (in German).

(b) the Applicants provided IAL with English translations of the letters on 9 May 2025;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 4 November 2020 (English translation).

Letter from Greensill Bank to the PdB dated 5 November 2020 (English translation).

Letter from the PdB to the Board of Greensill Bank dated 2 February 2021 (English translation).

Letter from Greensill Bank to the PdB dated 11 February 2021 (English translation).

(c) based on the English translation of the letter referred to at paragraph 64O(a)(i):

(i) the letter states that "[i]n accordance with § 11 paragraph 1 sentence 1 no. 6 of [the PdB's] Articles of Association, we are adapting the requirement of 1 April 2020 issued to you as follows" (page 1);

(ii) the adapted "requirement of 1 April 2020" referred to at paragraph 64O(c)(i) included (amongst other adjustments) that the "volume vis-à-vis the "Gupta Group" (predominantly consisting of the seller obligation and state-guaranteed loans) is capped at the current level (EUR 2.1 billion risk exposure after netting with the corresponding cash collaterals held in the bank)" and that "the Bank must continue to make all reasonable efforts to reduce this volume further as early as possible" (page 1);

(iii) besides the adapted requirements referred to at paragraph 64O(c)(ii), the letter states that "[a]ll other points of [the PdB's] letter of conditions of 1 April 2020 remain unchanged" (page 2);

(iv) under the heading "Justification", the letter references the "statements made in [the PdB's] letters of 3 March and 1 April 2020" (page 2);

(d) the English translation of the letter referred to at paragraph 64O(a)(ii) refers to a letter from the PdB dated 4 November 2020 and states "we hereby confirm the conditions according to § 11 paragraph 6 sentence 1 of your articles of association";

(e) based on the English translation of the letter referred to at paragraph 64O(a)(iii):

(i) the letter states that the PdB "hereby amend [its] condition, which was last issued to you in a letter dated 01.04.2020 and modified in a letter dated 04.11.2020, as follows" (page 1);

(ii) the amended "condition" referred to at paragraph 64O(e)(i) included (amongst other conditions):

(A) that the "total amount of covered (EdB) and insured (ESF) deposits is limited to EUR 3.3 billion with immediate effect" (page 1);

(B) that the "deposits currently received by the Bank and assigned to it from the GFG portfolio to secure its commitments may not be repaid to the respective creditors without [the PdB's] prior consent" (page 1);

(iii) besides the amended "condition" referred to at paragraph 64O(e)(i), the letter states that "[a]ll other points of [the PdB's] letter of requirements of 01.04.2020, modified by letter of 04.11.2020, remain unchanged" (page 2);

(iv) under the heading "Justification", the letter:

(A) states that "[t]he basis of [the PdB's] circulation at that time was, among other things, [its] understanding that all of the bank's receivables, in particular those relating to the bank's GFG portfolio, are fully insured against credit" (page 2);

(B) that "[i]n doing so, they concealed from [the PdB] that the receivables purchased by the bank from the GFG portfolio are also […] "future receivables" in their entirety" (page 2);

(C) refers to a video conference on 1 February 2021 between the PdB and "participants of the Greensill Group", during which the PdB "learned" of the matters referred to at paragraph 64O(e)(iv)(B);

(D) refers to a letter from the PdB dated 18 January 2021 "on the violations of Greensill Bank AG's statutory obligations under its statutory obligations arising from its membership in the Auditing Association of German Banks e.V." (page 2);

(E) refers to the PdB's receipt of "a copy of the notification pursuant to Section 29 (3) sentence 1 of the German Banking Act (KWG) from your special auditor KPMG", which it says is "accompanied by a letter from "TBCC" to the bank dated 04.08.2020, after the bank questions the existence of the main credit insurance policies it had issued in favour of the bank" (page 2)

(F) in respect of the "letter from "TBCC"" referred to at 64O(e)(iv)(E), states that "we would like to point out that you are also not aware of this fact, which is essential for the assessment of the Bank's risk situation" (page 2);

(G) states that, "[o]verall, the bank's risk situation is therefore significantly higher than previously recognizable to {the PdB}, and a tightening of our condition regime towards you is therefore necessary" (page 2);

(v) based on the English translation of the letter referred to at paragraph 64O(a)(iv), the letter:

(A) refers to the PdB's letters dated 2 February 2021 and 8 February 2021 "regarding the partial revision of the conditions

as well as our telephone conversations in this regard" (page 1);

(B) states "[w]e […] hereby confirm to you in accordance with § 11 (6) sentence 1 of the Articles of Association of the Auditing Association German Banks that we will limit the total amount of covered and secured deposits to EUR 3.2 billion in the future in accordance with your last updated condition in your letter dated 08.02.2021" (page 1);

(C) refers to a discussion by telephone between the PdB and Greensill Bank, and states "we are restricting our confirmation to the extent that, from today's perspective, we do not expect to fall below the mandated total amount of covered and secured deposits of EUR 3.2 billion before the beginning of March" (page 1);

(D) states that "we confirm that we will take into account the new condition issued in the letter dated 2 February 2021 that the deposits currently received and assigned to secure the exposure from the GFG portfolio […] may not be repaid to the respective creditors specified in the letter dated 2 February 2021 […] without [the PdB's] prior consent (page 1); and

(f) based on the English translation of the letter referred to at 64O(e)(iv)(D), the letter:

(i) states that, "Since mid-2019, Greensill Bank AG has repeatedly breached its duties as a member of the Auditing Association of German Banks (Prüfungsverband deutscher Banken e.V)";

(ii) states that, in relation to an audit of Greensill Bank:

(A) "The Bank's management, contrary to its business strategy which had been submitted to [PdB] as the subject matter of [PdB's] deposit insurance audit, assumed a significant, unacceptable concentration risk after [PdB] increased the limit on protected customer deposits" (page 3);

(B) "The bank's management did not inform [PdB] in advance about the occurrence of this circumstance, which is significant for [Greensill Bank's] risk situation" (page 3);

(C) "The Bank's management provided [PdB] with incomplete or incorrect information during [PdB's] audit" (page 3);

(iii) states that, by its conduct particularised in paragraph 64O(f)(ii)(A) to 64O(f)(ii)(C), Greensill Bank violated §10 paragraph 1 number 8 and §10 paragraph 1 number 4 of PdB's Articles of Association (page 3);

(iv) states, "In summary, we note that Greensill Bank AG has repeatedly since mid-2019 [breached] material obligations towards [PdB] pursuant to §12, Paragraph 5 of [PdB's] Articles of Association. The breaches of duty are to be considered [by] their nature…in such a way that deliberate violations can be assumed" (page 5).

Particulars

Letter dated 18 January 2021 from the Auditing Association of German Banks to the Board of Directors of Greensill Bank (English translation) produced during discovery [GCU.0013.0010.4342].

(g) otherwise, IAL does not know and therefore cannot admit 64O of the SOC.

64P IAL does not know and therefore cannot admit 64P of the SOC.

64Q As to paragraph 64Q of the SOC, IAL:

(a) says:

(i) the purchase of a Note (including a Bluestone Note) is not a purchase of a receivable;

(ii) an assumption of the Applicants' pleaded case is that the purchase of a Note (including from GCUK or Hoffman) is a "credit relationship" within the meaning of "The Company Manual – Credit Business (07.06)", but that assumption is not supported by any pleaded material facts;

(iii) an assumption of the Applicants' pleaded case is that the purchase of a Note (including from GCUK or Hoffman) is covered by "The Company Manual – Credit Control (08.06)", but that assumption is not supported by any pleaded material facts;

(b) otherwise, does not know and therefore cannot admit 64Q of the SOC.

DA.2 Capital Requirements Regulation (EU) No. 575/2013

DA.0.1 Capital Regulation Requirements

64R IAL does not know and therefore cannot admit paragraph 64R of the SOC.

64S IAL does not know and therefore cannot admit paragraph 64S of the SOC.

64T IAL does not know and therefore cannot admit paragraph 64T of the SOC.

DA.0.2 Credit Risk Mitigation

64U IAL does not know and therefore cannot admit paragraph 64U of the SOC.

64V IAL does not know and therefore cannot admit paragraph 64V of the SOC.

64W In response to paragraph 64W of the SOC, IAL says that:

(a) it is aware of a document in German bearing the letterhead of "Bafin" addressed to Greensill Bank and dated 13 June 2019;

Particulars

Letter from BaFin to Greensill Bank dated 13 June 2019 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from BaFin to Greensill Bank dated 13 June 2019 (English translation).

(c) based on this English translation of the letter:

(i) the letter refers to a letter of 15 January 2018 in which BaFin informed Greensill Bank that “the previously submitted insurance contracts and conditions did not meet the requirements for the eligibility of the credit insurance as a guarantee in accordance Art. 213, 215 CRR” (page 1);

(ii) the letter refers to letters from Greensill Bank to BaFin dated 17 January 2019 and 30 April 2019 (page 1);

(iii) the letter does not refer to “CRM” or “Credit Risk Mitigation Technique/s”’; and

(d) otherwise, does not know and therefore cannot admit 64W of the SOC.

64X IAL does not know and therefore cannot admit paragraph 64X of the SOC.

64Y IAL does not know and therefore cannot admit paragraph 64Y of the SOC.

64Z As to paragraph 64Z of the SOC, IAL:

(a) says that by reason of the matters in paragraph 66A of this Defence, the 2019 Policy is not valid and binding;

(b) says further that even if the 2019 Policy is valid and binding (which is denied), IAL relies on the terms of the 2019 Policy for their full effect;

(c) says further:

(i) clause 4.5 of the 2019 Policy empowered cancellation by the Insurer in certain circumstances, but did not limit the circumstances in which cancellation, termination or avoidance by the Insurer was otherwise available;

(ii) clause 7.4 of the 2019 Policy did not state that the Insured gave no warranty or had no responsibility regarding information provided in "Information Packs";

(iii) clause 7.3 of the 2019 Policy had the effect that the Insured gave the warranties set out in the "Proposal"; and

(d) otherwise, denies the allegations in paragraph 64Z of the SOC.

D POLICY 3690

D.1 Entry into Policy 3690

65 [Not used].

66 As to paragraph 66 of the SOC, IAL:

(a) says that the 2019 Policy, entitled "Comprehensive Trade Credit Insurance Policy, Policy Number TB-03690" with unique market reference B0509FINCW1900009, was signed by Brereton on or about 13 March 2019; and

(b) otherwise denies paragraph 66 of the SOC.

66A IAL denies paragraph 66A of the SOC and says further that:

(a) in March 2019, Brereton signed the 2019 Policy and backdated it to 22 February 2019;

(b) the terms of the 2019 Policy were authored by or for the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2019 Policy;

(c) in March 2019 and on 22 February 2019 and at all material times, including between 28 July 2016 and 8 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4 from August 2017;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around March 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less under Underwriting Manual Version 1.0;

(B) from 12 July 2018, AUD50 million or less under Underwriting Manual Version 2.0;

(viii) relevantly extended only to arranging and issuing policies with a maximum credit limit / credit term of 180 days; and

(ix) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit;

(d) the authority given by IAL to BCC did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy, because:

(i) the 2019 Policy was not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of the 2019 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Policy was not written on Approved Wording 1.4;

(B) the wording of the 2019 Policy had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(D) the "Insured" under the policy need not be a "Seller" for the purposes of each applicable Underwriting Manual and could, for example, be the owner of a "Note";

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2019 Policy was $1 (Schedule 5 of the 2019 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the Policy limit of the 2019 Policy was in excess of that limitation;

(E) issue policies with limits or terms in excess of AUD50 million and the 2019 Policy did not have a limit of AUD50 million or less;

(F) insure credit terms in excess of 180 days and the 2019 Policy credit terms exceeded that limitation;

(G) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Policy did not have any minimum excess;

(H) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Policy exceeded 12 months;

(iii) entering into the 2019 Policy was in breach of BCC's obligation under the CGU AAR Agreement to perform the "Authorised Services" in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The 2019 Policy was not a "Trade Credit Product". The 2019 Policy was not written on Approved Wording. Greensill Bank, the insured, was not domiciled in Australia.

The premium payable was $1. The indemnity limit of the 2019 Policy exceeded 95% of Debt. The Policy Limit of the 2019 Policy was not AUD50 million or less. The Policy Period exceeded 12 months. The credit terms were in excess of 180 days. There was no minimum excess.

Further, the obligation referred to in paragraph 66A(d)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason where the 2019 Policy was to take effect by almost a month prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(e) the authority given by IAL to Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy, because:

(i) pursuant to the IAGA/IAL Brereton Authorisation, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into the 2019 Policy in the circumstances referred to in paragraph 66A(d) of this Defence;

(ii) the 2019 Policy was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation because:

(A) the wording of the 2019 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Policy was not written on Approved Wording 1.4;

(B) the wording of the 2019 Policy had not otherwise been approved by IAL and its reinsurers;

(C) the risks insured purportedly were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2019 Policy was $1 (Schedule 5 of the 2019 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the Policy limit of the 2019 Policy was USD100 million, in excess of that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Policy did not have any minimum excess;

(F) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Policy exceeded 12 months;

(G) insure credit limits in excess of 180 days and the 2019 Policy credit limits exceeded that limitation;

(iv) entering into the 2019 Policy was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 66A(d)(iii) of this Defence. Further, the obligation referred to in paragraph 66A(e)(iv) did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason where the 2019 Policy was to take effect by almost a month prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) by reason of the matters in paragraphs 66A(g), 66A(h) and 66A(i) of this Defence, as at 22 February 2019 and March 2019 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2019 Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2019 Policy; and

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy; and

Particulars

Particulars under paragraph 66A(j) of this Defence.

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Policy;

(g) at all material times from at least September 2017 onwards, Lex Greensill was:

(i) the co-founder and CEO of the group of companies that included Greensill Bank, GCPL and GCUK (collectively, the Greensill Group);

(ii) a director of GCPL (of which GCUK and Greensill Bank were wholly owned subsidiaries);

(iii) a director of GCUK;

(iv) the ultimate controlling party of GCUK; and

(v) the beneficial owner of Greensill Bank;

Particulars

IAL relies on GCUK's financial statements for 12 months to 31 December 2019, signed by Lex Greensill on or about 22 May 2020, and Greensill Bank's filings from the German Transparency Register for the period 5 April 2017 to 15 March 2021.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) between 5 September 2017 and 13 December 2017, there was a series of communications involving (inter alia) the Greensill Group, Lex Greensill, Marsh (being Greensill Group's insurance broker), BCC, IAL and Scor Re, in the context of negotiating a proposed insurance policy in 2017, in the course of which GCUK (directly or indirectly), Marsh (as agent for Greensill Group), and Lex Greensill were informed that:

(i) before BCC and Brereton could agree to an insurance policy which departed from approved wording, it was necessary for the departure to be approved by IAL and Scor Re (as a reinsurer of IAL);

(ii) the insurance policy wording proposed by GCUK (or a Greensill entity or entities) was not approved by IAL and Scor Re, and in fact IAL and

Scor Re disagreed in numerous respects with the wording proposed by or on behalf of the Greensill Group;

Particulars

Emails with the following document IDs, copies of which are available from the offices of IAL's solicitors:

IAL.500.011.0521,	IAL.500.011.0486,	IAL.500.001.0504,
IAL.500.011.0514,	IAL.500.011.0483,	IAL.500.011.0505,
IAL.500.011.0506,	IAL.500.011.0536,	IAL.500.011.0488,
IAL.500.011.0523,	IAL.500.011.0519,	IAL.500.011.0498,
IAL.500.011.0489,	IAL.500.011.0490,	IAL.500.011.0016,
IAL.500.011.0556,	IAL.500.011.0501,	IAL.500.011.0553,
IAL.500.011.0540,	IAL.500.011.0502,	IAL.500.011.0517,
IAL.500.011.0526,	IAL.500.011.0513,	IAL.500.011.0497,
IAL.500.011.0500,	IAL.500.011.0551,	IAL.500.011.0552,
IAL.500.011.0557,	IAL.500.011.0555,	IAL.500.011.0567,
IAL.500.011.0562,	IAL.500.011.0263,	IAL.500.011.0274,
IAL.500.011.0431,	IAL.500.011.0527,	IAL.500.011.0275,
IAL.500.011.0277,	IAL.500.011.0266,	IAL.500.011.0021,
IAL.500.011.0491,	IAL.500.011.0495	

.

(i) since September 2017, IAL and Scor Re have not communicated to the Greensill Group, Lex Greensill or Marsh that the matters referred to in paragraphs 66A(f)(i) and 66A(f)(ii) of this Defence had changed;

(j) in the premises, as at 15 December 2017 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known that:

(i) before BCC and Brereton could agree to the 2019 Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2019 Policy;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Policy;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 66A(f), 66A(g), 66A(h) and 66A(j) of this Defence. Insofar as the emails referred to in the particulars under paragraph 66A(h) were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further particulars may be provided after compulsory production.

(k) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2019 Policy:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of the 2019 Policy;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for the 2019 Policy;

(iii) by reason of the matters in paragraph 66A of this Defence, the 2019 Policy is not valid and binding;

(l) if, which is denied, GCPL and Greensill Bank entered into the 2019 Policy on 22 February 2019, the 2019 Policy expired on 1 March 2020 and was not validly renewed or extended after that date by BCC and Brereton on behalf of IAL;

(m) at all material times, BCC had not informed IAL and IAL did not know that:

(i) the 2019 Policy had been issued; and

(ii) the 2019 Policy had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the Underwriting Manual Version 2.0; and

(n) it otherwise denies paragraph 66A of the SOC.

67 IAL denies paragraph 67 of the SOC and repeats paragraph 66A of this Defence.

68 IAL denies paragraph 68 of the SOC and repeats paragraph 66A of this Defence.

69 As to paragraph 69 of the SOC, IAL:

(a) repeats paragraph 66A(d)(i) of this Defence; and

(b) otherwise denies paragraph 69 of the SOC.

70 As to paragraph 70 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that the "Risk Details" of the 2019 Policy states that the Policy Period is from "22nd February 2019" to "1st March 2020" both days inclusive at the "Principal Address of the Insured";

(c) says that the 2019 Policy includes in Schedule 1 the following definitions:

(i) "Policy Period" means "the twelve consecutive months commencing from and including the Commencement Date"; and

(ii) "Commencement Date" means "the date on which this Policy comes into force, being 22nd February 2019"; and

(d) otherwise denies paragraph 70 of the SOC.

71 As to paragraph 71 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that the 2019 Policy states that the governing law of the 2019 Policy is the law of New South Wales; and

(c) otherwise denies paragraph 71 of the SOC.

72 As to paragraph 72 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that if the 2019 Policy is valid (which is denied), it would be a contract of insurance to which the *ICA* applies; and

(c) otherwise denies paragraph 72 of the SOC.

D.2 Key terms of Policy 3690

73 As to paragraph 73 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that the 2019 Policy (if valid and effective, which is denied):

(i) states the definitions set out in paragraphs 73.a, 73.b, 73.e, 73.f, 73.g, 73.i, 73.j, 73.m, 73.n, 73.p, 73. q, 73.r and 73.s of the SOC;

(ii) states the definition, set out in paragraph 73.c of the SOC, of "Claim Form" save for the words "pro forma version" which should read "a specimen"; and

(iii) states the definition, set out in paragraph 73.d of the SOC, of "Claim Offer Letter" save for the words "pro forma version" which should read "a specimen";

(c) as to paragraph 73.h of the SOC, says that the 2019 Policy (if valid and effective, which is denied) states the definition of "Debt" is, "as the context requires, a debt of the type described in the relevant Debt Endorsement";

(d) as to paragraph 73.k of the SOC, says that:

(i) the term "**Eligible Debt**" was defined to have the meaning set out in Schedule 7 of the 2019 Policy;

(ii) the effect of Schedule 7 was that to be an "Eligible Debt", a "Debt" had to satisfy the following eligibility criteria at the time of acquisition of the relevant "Asset" by the "Insured":

(A) the obligor (being the Customer) of which (a) is not an Affiliate of the parties to the Transaction Documents (other than any Origination Documentation); (b) is not a government or a governmental subdivision or agency, other than a legal entity that does not benefit from immunity from being sued for non-payment of debt or breach of contract; (c) is a corporate entity and not an individual or sole trader or partnership; (d) is not Insolvent and (e) has a Customer Limit established in accordance with the terms of the 2019 Policy;

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

(C) which is not outstanding after its "Due Date";

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

(E) which satisfies any further criteria set out in the relevant "Debt Endorsement" relating to that "Debt";

(iii) for there to be an "Eligible Debt" it is necessary that there be an "Asset" owned by the "Insured" and, at the time of acquisition of that "Asset", the "Debt" meets the criteria identified in paragraph 73(d)(ii) of this Defence;

(iv) the form of "Debt Endorsement" appended to the 2019 Policy (and incorporated in debt endorsements including Debt Endorsement 1)

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

(v) denies that the definition of “Eligible Debt” was amended by Endorsement 23 (if valid and effective, which is denied) (pleaded in paragraph 105 of the SOC);

(e) as to paragraph 73.l of the SOC, says that:

(i) the definition of “Expected Allocation” set out at paragraph 73.l of the SOC accurately reflects the text of the 2019 Policy; and

(ii) there was only an "Expected Allocation" if there was in existence an "Asset";

(f) as to paragraph 73.o of the SOC, says that:

(i) the term “Loss” is defined in the 2019 Policy (pages 24 to 25), and IAL relies on the text of that definition for its full force and effect (if any);

(ii) "Direct Asset" was defined to mean a direct ownership in an Eligible Debt;

(iii) "Face Amount" means the amount of a Debt as shown in the File relating thereto inclusive of VAT;

(iv) "File" means the file and/or records held by the “Servicer” in the form from time to time specified in the “Transaction Documents” relating to each “Debt” (which may include the Platform);

(v) "Servicer" was defined to mean “GCUK“;

(vi) "Transaction Documents" was defined to mean (1) the 2019 Policy; (2) each deed creating a “Participant Trust” relating to a “Customer”; (3) all relevant Origination Documentation; (4) the Master Funded Participation Agreement; (5) each Information Pack submitted by the “Servicer” to the Insurer; (6) the “Master Trust Deed” and the “Issue Documents” (as defined in the “Master Trust Deed”); and (7) any assignment agreement entered into between the “Insured” and the “Servicer” in relation to the assignment or transfer of “Eligible Debts”; and

(vii) denies that the definition of "Eligible Debt" was amended by Endorsement 23 (if valid and effective, which is denied) (pleaded in paragraph 105 of the SOC).

74 As to paragraph 74 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) refers to clause 1.1 of the 2019 Policy for its full force and effect (if any);

(c) says that on the proper construction of the 2019 Policy (if valid and effective, which is denied), the "Insured" may only make a claim in respect of a "Loss" suffered by the "Insured" in respect of an "Asset" (which is a "Note"):

(i) owned by the "Insured" (or a "Loss Payee") during the "Policy Period" and owned by the "Insured" immediately prior to the payment of the claim;

(ii) derived from an "Eligible Debt", comprising receivables generated by a "Supplier" referred to in a valid "Debt Endorsement", owed by an "Eligible Customer";

(iii) arising under the "Transaction Documents" defined in the 2019 Policy (if valid and effective, which is denied); and

(iv) where by reason of an "Insured Cause", the "Insured" has failed to receive its "Expected Allocation";

(d) says that the terms, conditions and limitations of the 2019 Policy (if valid and effective, which is denied) 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 (clause 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" (clause 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 Claims shall be forfeited (clause 15.4); and

(e) otherwise denies paragraph 74 of the SOC.

75 As to paragraph 75 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 82 and 85 of this Defence;

(b) refers to clause 4.1 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise denies paragraph 75 of the SOC.

76 As to paragraph 76 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 82 and 85 of this Defence;

(b) refers to clauses 4.1, 4.4 and 4.5 of the 2019 Policy for their full force and effect (if any); and

(c) otherwise denies paragraph 76 of the SOC.

77 As to paragraph 77 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 82 and 85 of this Defence;

(b) refers to clause 10 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise admits paragraph 77 of the SOC.

78 As to paragraph 78 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 82 and 85 of this Defence;

(b) refers to clause 14 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise admits paragraph 78 of the SOC.

79 As to paragraph 79 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 80, 81, 82, 83 and 85 of this Defence;

(b) refers to clause 5.5 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise denies paragraph 79 of the SOC.

D.3 BCC had authority to enter into Policy 3690

D.3.1 Actual authority

80 IAL repeats paragraphs 5(d), 8 and 66A of this Defence and otherwise denies paragraph 80 of the SOC:

D.3.2 Ostensible authority

The Proposed Greensill Policy Structure and Proposed Greensill Policy Wording

80A IAL admits paragraph 80A of the SOC and says further that it relies on the terms of the Greensill Policy Proposal (as defined and particularised in paragraph 80A of the SOC) for their full force and effect.

80B As to paragraph 80B of the SOC, IAL:

(a) as to sub-paragraph (a),

(i) says that the "special acceptance request" stated that the request "is to cover credit for USD $100M on Liberty Group's Australian assets (the former Arrium) and a credit paper is attached";

(ii) refers to the text of the "special acceptance request"; and

(iii) otherwise, denies the paragraphs;

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249]

(b) says that:

(i) the document titled 'Master Risk Participation (MRPA) Facility — Structure Wording Variation' dated 12 September 2017 (**MRPA Wording Variation**), which was attached to the email dated 15 September 2017 referred to in paragraph 80A of the SOC:

(A) referred to 'Greensill', 'Greensill Capital' and 'Greensill Bank AG' but did not refer in terms to Greensill Capital (UK) Limited or GCUK;

(B) stated that 'Greensill Capital' was 'Bundaberg, Queensland based (ultimate holding company) but is largely a UK domiciled finance house';

(C) stated that BCC sought to present detail on Greensill Capital, and 'their proven trade credit policy status, to reflect that the policy structure is encompassed within our reinsurance arrangements' and to highlight the variations between the proposed Greensill Capital Trade Credit Policy Structure and BCC's MRPA structure;

(D) stated that BCC sought access to the full wording of IAG's trade credit reinsurance wording to ensure that the Greensill wording was compliant as a trade credit policy on a stand alone basis and that the policy wording complied with all conditions of IAG's reinsurance agreement; and

(E) in relation to the choice of jurisdiction, noted that the example policy states United Kingdom but that 'Greensill' had agreed that any policy written would be Australian based and answerable under Australian law;

(ii) refers to the MRPA Wording Variation for its full terms and effect; and

(iii) otherwise denies paragraph 80B(b);

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249]

Master Risk Participation (MPRA) Facility – Structure Wording Variation prepared by Greg Brereton and dated 12 September 2017 [IAL.500.008.0250]

(c) as to paragraph 80B(c) of the SOC, IAL:

(i) refers to and repeats paragraphs 80B(b)(i)(A) and 80B(b)(ii) of this Defence;

(ii) says further that the MRPA Wording Variation stated that BCC's proposed outcome was that IAG and its reinsurers agree with BCC that the proposed structure is acceptable for BCC's use in order to facilitate trade credit transactions with 'Greensill Capital' in the future, whether for Liberty based transactions or other Australian domiciled transactions; and

(iii) otherwise denies paragraph 80B(c);

(d) as to paragraph 80B(d) of the SOC, IAL;

(i) refers to and repeats paragraphs 80B(b)(i)(A) and 80B(b)(ii) of this Defence; and

(ii) otherwise denies paragraph 80B(d);

(e) says further that the alleged Proposed Greensill Policy Structure involved GCUK acquiring invoice liabilities from suppliers, and did not involve GCUK purportedly acquiring possible future liabilities.

80C IAL admits paragraph 80C of the SOC and says further that:

(a) the documents particularised at paragraph 80C of the SOC were embedded in a document attached to the email pleaded at 80A of the SOC; and

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249]

Master Risk Participation (MPRA) Facility – Structure Wording Variation prepared by Greg Brereton and dated 12 September 2017 [IAL.500.008.0250]

(b) that this document attached to the email pleaded at 80A of the SOC also embedded two other documents which are not particularised at 80C.

Particulars

'Aus – master [] Customer End 2017'

'Trade Credit QS – 2017 Final Wording'

80D IAL admits paragraph 80D of the SOC.

80E As to paragraph 80E of the SOC, IAL:

(a) denies paragraph 80E of the SOC;

(b) repeats paragraph 66A(h) above;

(c) says further that in around late October 2017 and November 2017, BCC indicated to IAL that it would not be proceeding with proposals from Greensill and would instead use the Approved Wording 1.4; and

Particulars

Email from Scott Newland of BCC to Benjamin Gan of Scor Re, and copied to Greg Brereton, Twain Abbott of IAL, Ian Dearmun of Willis Towers Watson and Aldridge Tan, dated 31 October 2017, stating that BCC "will not be proceeding with the SCF transaction … and will apply our approved policy wording" [BCC.0001.0007.1422]

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Brad Robson of IAL, Toby Guy of BCC and Greg Brereton, dated 1 November 2017, stating "To avoid any confusion or any misunderstanding we are not going to use anything from the SCF. We are only going to use our approved wording in accordance with our approved Underwriting Guidelines." [BCC.0001.0004.0646]

Email from Scott Newland of BCC to Twain Abbott of IAL, dated 2 November 2017, stating "Either way, we are using our approved wordings and not the Greensill MRPA." [BCC.0001.0004.0659]

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Toby Guy of BCC and Brad Robson and Phuong Ly of IAL, dated 6 November 2017, stating that BCC had decided that Scor Re did not have a reasonable grasp of the proposed MRPA wording and that "Accordingly, we reverted to our approved wording …" [BCC.0001.0004.0673]

(d) says further that, IAL did not approve the request for an increased limit because LibertyOne group did not have a sound trading history in support of increasing the limit.

Particulars

Email from Twain Abbott of IAL to Benjamin Gan of Scor Re and Brad Robson of IAL dated 10 November 2017 [IAL.500.007.1259].

80F IAL denies paragraph 80F of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A, 80B, 80C and 80E(c) of this defence;

(b) at no stage after 6 November 2017 did BCC communicate to IAL that it would be proceeding with the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording;

(c) at no stage did IAL agree to, or hold out that it adopted, the Proposed Greensill Policy Structure or the Proposed Greensill Policy Wording; and

(d) the documents particularised at paragraph 80D of the SOC do not establish the matters pleaded at paragraph 80F.

The 2017 LOS Policies

80G IAL denies paragraph 80G of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2017 LOS Master Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0002.5354, which IAL understands is alleged to be the "2017 LOS Master Policy";

(ii) if the document is said to be the "2017 LOS Master Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on 15 December 2017" (page 2);

(B) was signed by Greg Brereton on or about 15 December 2017 (page 47);

(C) does not have a "Contract Number"; and

(D) contains a signature box on each page reading “Contract Leader”, none of which are signed;

(c) in respect of the 2017 LOS Parallel Policy:

(i) the Applicants rely on a document with document reference GBA.0004.0029.7294, which IAL understands is alleged to be the "2017 LOS Parallel Policy";

(ii) if the document is said to be the "2017 LOS Parallel Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on 15 December 2017" (page 2);

(B) was not signed by Greg Brereton (and further nor by either of GCPL or Greensill Bank);

(C) does not have a "Contract Number"; and

(D) contains a signature box on each page reading “Contract Leader”, none of which are signed;

(d) the terms of the 2017 LOS Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2017 LOS Policies;

(e) in December 2017, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing “Approved Products”, being relevantly “Trade Credit Products”, using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in

or around December 2017, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2017 LOS Policies because:

(i) the 2017 LOS Policies were not a “Trade Credit Product” within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of the 2017 LOS Policies was not “approved wording” for the purposes of the applicable Underwriting Manual, in that the 2017 LOS Policies were not written on Approved Wording 1.4;

(B) the wording of the 2017 LOS Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC’s authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 LOS Parallel Policy was $1 (Schedule 5 of the 2017 LOS Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the 2017 LOS Parallel Policy did not specify any indemnity limit as a proportion of Debt;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 LOS Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 LOS Parallel Policy did not have any minimum excess;

(iii) entering into the 2017 LOS Policies was in breach of BCC's obligations under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The 2017 LOS Policies were not a "Trade Credit Product". The 2017 LOS Policies were not written on Approved Wording 1.4.

In respect of the 2017 LOS Master Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the 2017 LOS Parallel Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The 2017 LOS Parallel Policy did not specify any indemnity limit as a proportion of Debt. The policy limit of the 2017 LOS Parallel Policy was not AUD35 million or less. The 2017 LOS Parallel Policy did not have any minimum excess.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2017 LOS Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable

Underwriting Manual Version 1.0, but failed to do so when he caused BCC to purportedly enter into the 2017 LOS Policies in the circumstances referred to in paragraph 80G(b) to 80G(f) of this Defence;

(ii) the 2017 LOS Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2017 LOS Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2017 LOS Policies were not written on Approved Wording 1.4;

(B) the wording of the 2017 LOS Policies had not otherwise been approved by IAL and its reinsurers; and

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 LOS Parallel Policy was $1 (Schedule 5 of the 2017 LOS Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the 2017 LOS Parallel Policy did not specify any indemnity limit as a proportion of Debt;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 LOS Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 LOS Parallel Policy did not have any minimum excess;

(iv) entering into the 2017 LOS Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 80G(f)(iii) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) in respect of Lex Greensill, it refers to and repeats paragraphs 66A(g) of this Defence;

(i) Greensill Bank:

(i) was previously known as NordFinanz Bank and was founded in 1927;

(ii) NordFinanz Bank was acquired by the Greensill Group in 2014, with Lex Greensill changing its name to Greensill Bank AG to include prominently his own name;

(iii) had GCUK as its majority shareholder (85% or greater) at all material times from no later than 30 October 2014 until approximately 31 December 2018;

(iv) was wholly owned by GCUK at all material times no later than 31 December 2017 until approximately 31 December 2018;

(v) was wholly owned by GCPL on and from approximately 31 December 2018;

(vi) was at all material times part of the Greensill Group set up by Lex Greensill;

(vii) was at all material times a bank regulated by BaFin;

(viii) entered “Insolvenzverfahren” on 16 March 2021 which in Germany is a form of court appointed external administration on insolvency and is equivalent to having administrators appointed under Australian law;

(j) GCUK:

(i) was another company within the Greensill Group;

(ii) was incorporated in England and Wales on 2 July 2012 under the name Greensill Capital Management Company (UK) Limited before changing to its current name on 18 July 2012;

(iii) was upon incorporation and at all material times thereafter, 100% owned by GCPL;

(iv) had, as one of its directors, Lex Greensill, who was appointed from 2 July 2012;

(v) is recorded at UK Companies House as having one active person with significant control: Lex Greensill, who is said to have "significant influence or control over the trustees of a trust";

(vi) was in the business of originating supply chain finance programmes and other financing programmes for companies, and obtaining sources of funding for those programmes (one of those sources being Greensill Bank); and

(vii) entered administration in England and Wales on 8 March 2021.

(k) GCPL:

(i) was at all material times ultimately controlled by Lex Greensill;

(ii) was at all material times in the period 5 April 2017 to 15 March 2021 beneficially owned by Lex Greensill;

(iii) had as shareholders of its ordinary shares:

(A) the Greensill Corporation Pty Ltd (360,000 shares); and

(B) Peter Greensill Family Co Pty Ltd (168,046 shares),

who were at all material times the trustees of the AD Greensill Family Trust (which was named after Lex Greensill, and had as a beneficiary, Lex Greensill) and the Peter Greensill Family Trust respectively. Therefore, at all material times, Lex Greensill had significant influence or control over one or both of the family trusts, and through that had significant influence or control over GCPL (and GCUK);

(iv) had, as one of its directors, Lex Greensill, who was appointed from 4 November 2011;

(l) at all material times Lex Greensill (through his control of GCPL) exercised controlling influence over the management of Greensill Bank:

(i) at all material times from approximately 30 October 2014, GCPL was the ultimate owner of Greensill Bank (initially, through GCPL's shareholding of GCUK and then, from approximately 31 December 2018, directly);

(ii) from no later than 31 December 2018, GCPL was the sole shareholder of Greensill Bank;

(iii) according to Greensill Bank's own financial statements, GCPL and Greensill Bank (as well as GCUK) formed part of a Konzern as a matter of German law (which refers to related or combined enterprises where one or more dependent enterprises are grouped under a controlling enterprise, with control being directly or indirectly exercised by way of greater than 50% of the shares or votes, or any other form of control such as uniform management);

(m) further GCUK and Greensill Bank's senior management overlapped with each other:

(i) Lex Greensill:

(A) was the CEO of GCUK and a director from the date of incorporation;

(B) exercised and was capable of exercising effective control over both GCUK and Greensill Bank at least because each of those entities was, at all material times, directly or indirectly owned by GCPL, and Lex Greensill beneficially owned and/or controlled GCPL;

(ii) Maurice Thompson:

(A) was both chairman of Greensill Bank's Supervisory Board (from June 2014 to March 2021) and director/chairman of GCUK (from September 2014 to January 2018);

(B) was described by GCUK as part of GCUK's senior management team (according to a GCUK presentation from 2016);

Particulars

Email dated 15 April 2016 from Ewan Berkemeier to Greg Brereton (IAL.500.011.0589) with attached presentation (IAL.500.011.0591).

(iii) Jason Austin:

(A) was a co-founder of Greensill Group;

(B) was both a member of Greensill Bank's Supervisory Board (from March 2014 to June 2019) and a director of GCUK (from July 2012 to June 2019);

(n) Greensill Bank's core function was or included to provide funds for GCUK's financing programmes;

(o) between 5 September 2017 and 13 December 2017, there was a series of communications involving (inter alia) the Greensill Group, Lex Greensill, Marsh (being Greensill Group's insurance broker), and BCC, and between BCC, IAL and Scor Re, in the context of negotiating a proposed insurance policy in 2017, in the course of which GCUK, Marsh (as agent for Greensill Group), and Lex Greensill were informed that:

(i) before BCC and Brereton could agree to an insurance policy which departed from approved wording, it was necessary for the departure to be approved by IAL and Scor Re (as a reinsurer of IAL);

(ii) the insurance policy wording proposed by GCUK was not approved by IAL and Scor Re, and in fact IAL and Scor Re disagreed in numerous respects with the wording proposed by or on behalf of the Greensill Group;

Particulars

Emails with the following document IDs, copies of which are available from the offices of IAL's solicitors:

IAL.500.011.0521,	IAL.500.011.0486,	IAL.500.001.0504,
IAL.500.011.0514,	IAL.500.011.0483,	IAL.500.011.0505,
IAL.500.011.0506,	IAL.500.011.0536,	IAL.500.011.0488,
IAL.500.011.0523,	IAL.500.011.0519,	IAL.500.011.0498,
IAL.500.011.0489,	IAL.500.011.0490,	IAL.500.011.0016,
IAL.500.011.0556,	IAL.500.011.0501,	IAL.500.011.0553,
IAL.500.011.0540,	IAL.500.011.0502,	IAL.500.011.0517,
IAL.500.011.0526,	IAL.500.011.0513,	IAL.500.011.0497,
IAL.500.011.0500,	IAL.500.011.0551,	IAL.500.011.0552,
IAL.500.011.0557,	IAL.500.011.0555,	IAL.500.011.0567,
IAL.500.011.0562,	IAL.500.011.0263,	IAL.500.011.0274,
IAL.500.011.0431,	IAL.500.011.0527,	IAL.500.011.0275,
IAL.500.011.0277,	IAL.500.011.0266,	IAL.500.011.0021,
IAL.500.011.0491,	IAL.500.011.0495	

(p) in respect of the series of communications exchanged in the context of negotiating the proposed insurance policy in 2017 particularised at paragraph 80G(o) above:

(i) IAL's and Scor Re's participation in the negotiations commenced with the "special acceptance request" sent by BCC to IAL on or about 15 September 2017 (as alleged at paragraph 80A of the SOC);

Particulars

In respect of the particulars to paragraph 80G(o) above, IAL refers to the email from Scott Newland of BCC to Twain Abbott of IAL (and copied to Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL, among others) dated 15 September 2017 [IAL.500.011.0536].

(ii) IAL refers to and repeats paragraphs 80E and 80F of this Defence and says further that IAL's and Scor Re's participation in the negotiations concluded in around November 2017;

Particulars

In respect of the list of emails particularised at paragraph 80G(o) above, neither IAL nor Scor Re personnel were parties to the emails dated after the email from Scott Newland of BCC to Brad Robson and Twain Abbott of IAL on or about 2 November 2017 [IAL.500.011.0562].

IAL repeats the particulars at paragraphs 80E(c) and 80E(d) of this Defence.

(q) since September 2017, IAL and Scor Re has not communicated to the Greensill Group, Lex Greensill or Marsh Group that the matters referred to in paragraph 80G(o) of this Defence had changed;

(r) in the premises, as at 15 December 2017 and at all material times, GCUK, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2017 LOS Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2017 LOS Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2017 LOS Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2017 LOS Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 80G(l) to 80G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents

for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Emails between Lex Greensill, Greg Brereton, John Whelan and others, with the subject 'Liberty OneSteel AR' dated 7 December 2017 [BCC.0001.0003.0360].

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(s) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2017 LOS Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2017 LOS Parallel Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2017 LOS Parallel Policy; and

(iii) by reason of the matters in paragraphs 80G(s)(i) and 80G(s)(ii) of this Defence, the 2017 LOS Policies are not valid and binding; and

(t) if, which is denied, BCC and/or Brereton entered into the 2017 LOS Policies:

(i) Greensill Bank and GCPL were not a "client" with respect to the 2017 LOS Policies for the purpose of section 917A(1)(b) of the *Corporations Act*;

(ii) if Greensill Bank or GCPL was a "client" with respect to the 2017 LOS Policies for the purpose of section 917A(1)(b) of the *Corporations Act* (which IAL denies), then by reason of the matters in paragraphs 66A(g) and 80G(q) of this Defence, the purported entry by BCC and Brereton into the 2017 LOS Policies was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the Corporations Act;

(iii) Greensill Bank and GCPL did not in fact rely in good faith on the conduct of BCC or Brereton in the purported entry into 2017 LOS Policies; and

(iv) further, IAL reserves the right to rely on section 917D of the Corporations Act that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied);

Particulars

Particulars under paragraph 80G(r) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(u) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2017 LOS Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

80H IAL denies paragraph 80H of the SOC and repeats paragraphs 66A and 80G above.

80I IAL denies paragraph 80I of the SOC and says further that:

(a) it repeats paragraph 80G above;

(b) the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording were based on a Master Risk Participation Agreement facility for a supply chain finance transaction;

(c) the 2017 LOS Policies did not reflect a Master Risk Participation Agreement facility for a supply chain finance transaction; and

(d) the 2017 LOS Policies were written in respect of an accounts receivables transaction.

Particulars

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others), dated 15 September 2017 with subject 'Master Risk Participation Agreement (MRPA) and Special Acceptance: Liberty Group/Greensill Capital' [IAL.500.008.0249].

Email from Greg Brereton to Ewan Berkemeier of Marsh, dated 19 December 2017 with subject 'RE: Liberty OneSteel AR' [BCC.0001.0003.0360].

80J IAL denies paragraph 80J of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2017 LOS Master Policy, there were terms to the following effect:

(i) the “Insured” will pay the “Additional Fees” in accordance with Schedule 5 (cl 6.2);

(ii) “Premium” shall accrue day by day during the “Policy Period” and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2); and

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer"; and

(c) in respect of the 2017 LOS Policies, the SOC pleads no material facts capable of establishing that the amount of AUD 1,819,890.88 was the amount, or an amount, due under the 2017 LOS Master Policy and in respect of the 2017 LOS Parallel Policy at any time.

80K IAL denies paragraph 80K of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80J of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2017 LOS Master Policy at any time; and

(ii) there were "Assets" insured under the 2017 LOS Parallel Policy (as alleged in paragraph 80K of the SOC) at any relevant time.

80L As to paragraph 80L of the SOC, IAL:

(a) repeats paragraphs 80J and 80K above, particularly paragraph 80K(b); and

(b) does not know and therefore cannot admit 80L of the SOC.

80M As to paragraph 80M of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80G of this Defence;

(b) says further that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) did not disclose any policies with the policy number "TW-03137" referred to in paragraph 80G of the SOC;

(ii) from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 80G of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(c) otherwise denies paragraph 80M of the SOC.

80N IAL denies paragraph 80N of the SOC and says further that:

(a) in respect of sub-paragraph (a), there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraph (b), IAL repeats paragraph 80M of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 80G to 80M of this Defence.

80O IAL denies paragraph 80O and repeats paragraphs 80G to 80N of this Defence.

2018 Excess Policies

80P IAL denies paragraph 80P of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2018 Master Excess Policy:

(i) the Applicants rely on a document with document reference MAR.0002.0001.0246, which IAL understands is alleged to be the "2018 Master Excess Policy";

(ii) if the document is said to be the "2018 Master Excess Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 9th day of February 2018" (page 2);

(B) was signed by Greg Brereton on or about 20 April 2018 (page 48);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800020;

(E) contains a signature box on each page reading “Contract Leader”, none of which are signed, although some pages have been signed but outside of the box;

(c) in respect of the 2018 Parallel Excess Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0002.0292, which IAL understands is alleged to be the "2018 Parallel Excess Policy";

(ii) if the document is said to be the "2018 Parallel Excess Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 9th day of February 2018" (page 2);

(B) was signed by Greg Brereton on or about 20 April 2018 (page 44);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800019;

(E) contains a signature box on each page reading “Contract Leader”, none of which are signed, although some pages have been signed but outside of the box;

(d) the terms of the 2018 Excess Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2018 Excess Policies;

(e) in April 2018, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing “Approved Products”, being relevantly “Trade Credit Products”, using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around April 2018, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2018 Excess Policies because:

(i) the 2018 Excess Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of 2018 Excess Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2018 Excess Policies were not written on Approved Wording 1.4;

(B) the wording of the 2018 Excess Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 Parallel Excess Policy was $1 (Schedule 5 of the 2018 Parallel Excess Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2018 Parallel Excess Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2018 Parallel Excess Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 Parallel Excess Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2018 Parallel Excess Policy exceeded that limitation;

(iii) entering into the 2018 Excess Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2018 Excess Policies were not a "Trade Credit Product". The 2018 Excess Policies were not written on Approved Wording 1.4.

In respect of the 2018 Master Excess Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the 2018 Parallel Excess Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2018 Parallel Excess Policy exceeded 90% of Debt. The policy limit of the 2018 Parallel Excess Policy was not AUD35 million or less. The 2018 Parallel Excess Policy did not have any minimum excess.

Further, the obligation referred to in paragraph 80P(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2018 Excess Policies were to take effect approximately 73 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2018 Excess Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into the 2018 Excess Policies in the circumstances referred to in paragraph 80P(f) of this Defence;

(ii) the 2018 Excess Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2018 Excess Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the 2018 Excess Policies were not written on Approved Wording 1.4;

(B) the wording of the 2018 Excess Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 Parallel Excess Policy was $1 (Schedule 5 of the 2018 Parallel Excess Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2018 Parallel Excess Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2018 Parallel Excess Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 Parallel Excess Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2018 Parallel Excess Policy exceeded that limit;

(iv) entering into the 2018 Excess Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 80P(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80P(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2018 Excess Policies were to take effect approximately 73 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraph 80G(h) to 80G(q) of this Defence;

(i) in the premises, in April 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2018 Excess Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2018 Excess Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2018 Excess Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2018 Excess Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 80G(l) to 80G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2018 Excess Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2018 Parallel Excess Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2018 Parallel Excess Policy; and

(iii) by reason of the matters in paragraphs 80P(j)(i) and 80P(j)(ii) of this Defence, the 2018 Excess Policies are not valid and binding;

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2018 Excess Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

80Q IAL denies paragraph 80Q of the SOC and repeats paragraphs 66A and 80P of this Defence.

80R IAL denies paragraph 80R of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80P of this Defence;

(b) it assumes that the reference to “Proposed Greensill Policy Structure” is a reference to the six pleaded terms set out at SOC paragraph 80B(d); and

(c) otherwise, denies the paragraph.

80S IAL denies paragraph 80S of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2018 Master Excess Policy, there were terms to the following effect:

(i) the “Insured” will pay the “Additional Fees” in accordance with Schedule 5 (cl 6.2);

(ii) “Premium” shall accrue day by day during the “Policy Period” and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the “Insured” shall pay the “Insurer” the adjusted “Premium” relating to each calendar quarter by not later than the last “Business Day” of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the “Insured” when due (cl 6.2);

(v) the “Insurer” shall not be obliged to indemnify the “Insured” for a “Loss” in accordance with, and subject to the terms, conditions and limitations of the “Policy” until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the “Premium” arising each day under the “Policy” with respect to “Assets” owned by the “Insured” and/or the “Insured Participant” that derive from “Debts” owned by a “Customer”;

(c) in respect of the 2018 Excess Policies, the SOC pleads no material facts capable of establishing that the amount of USD 93,090.36 was the amount, or an amount, due under the 2018 Master Excess Policy and in respect of the 2018 Parallel Excess Policy at any time.

80T IAL denies paragraph 80T of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80S of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2018 Master Excess Policy at any time; and

(ii) there were "Assets" insured under the 2018 Parallel Excess Policy (as alleged in paragraph 80T) at any relevant time.

80U As to paragraph 80U, IAL:

(a) repeats paragraphs 80S and 80T above, particularly paragraph 80T(b); and

(b) does not know and therefore cannot admit paragraph 80U of the SOC.

80V As to paragraph 80V of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80P of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TS-03087" and which recorded only "Greensill Capital Pty Limited" as the "Insured";

(ii) did not disclose any policies with the policy number "TS-03088" referred to in paragraph 80P of the SOC; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80V of the SOC.

80W As to paragraph 80W of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 80P of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80V of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 80P to 80V of this Defence; and

(B) otherwise denies that paragraph of the SOC.

80X IAL denies paragraph 80X and repeats paragraphs 80P to 80W above.

Sub-Direct Policies

80Y IAL denies paragraph 80Y of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the Sub-Direct Master Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0009.1186, which IAL understands is alleged to be the "Sub-Direct Master Policy";

(ii) if the document is said to be the "Sub-Direct Master Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 18th day of May 2018" (page 2);

(B) was signed by Greg Brereton, GCPL and GCUK on or about 18 May 2018 (page 45);

(C) has a "Contract Number", being FINCW1800032;

(D) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the Sub-Direct Parallel Policy:

(i) the Applicants rely on a document with document reference GBA.0004.0006.0582, which IAL understands is alleged to be the "Sub-Direct Parallel Policy";

(ii) if the document is said to be the "Sub-Direct Parallel Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 18th day of May 2018" (page 2);

(B) was signed by:

a. Greg Brereton and GCPL and GCUK on or about 18 May 2018 (page 42); and

b. Greensill Bank on or about 22 May 2018 (page 42);

(C) has a "Contract Number", being FINCW1800033;

(D) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the Sub-Direct Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the Sub-Direct Policies;

(e) in May 2018, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing “Approved Products”, being relevantly “Trade Credit Products”, using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in or around May 2018, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) prior to 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the Sub-Direct Policies because:

(i) the Sub-Direct Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of Sub-Direct Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the Sub-Direct Policies were not written on Approved Wording 1.4;

(B) the wording of the Sub-Direct Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the Sub-Direct Parallel Policy was $1 (Schedule 5 of the Sub-Direct Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the Sub-Direct Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the Sub-Direct Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the Sub-Direct Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the Sub-Direct Parallel Policy exceeded that limitation;

(iii) entering into the Sub-Direct Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The Sub-Direct Policies were not a "Trade Credit Product". The Sub-Direct Policies were not written on Approved Wording 1.4.

In respect of the Sub-Direct Master Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the Sub-Direct Parallel Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the Sub-Direct Parallel Policy exceeded 90% of Debt. The policy limit of the Sub-Direct Parallel Policy was not AUD35 million or less. The Sub-Direct Parallel Policy did not have any minimum excess.

Further, the obligation referred to in paragraph 80Y(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the Sub-Direct Policies were to take effect approximately 4 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the Sub-Direct Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into the Sub-Direct Policies in the circumstances referred to in paragraph 80Y(f) of this Defence;

(ii) the Sub-Direct Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the Sub-Direct Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the Sub-Direct Policies were not written on Approved Wording 1.4;

(B) the wording of the Sub-Direct Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the Sub-Direct Parallel Policy was $1 (Schedule 5 of the Sub-Direct Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the Sub-Direct Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the Sub-Direct Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the Sub-Direct Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the Sub-Direct Parallel Policy exceeded that limit;

(iv) entering into the Sub-Direct Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 80Y(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80Y(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the Sub-Direct Policies were to take effect approximately 4 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 80G(h) to 80G(q) above;

(i) in the premises, in May 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the Sub-Direct Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the Sub-Direct Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the Sub-Direct Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the Sub-Direct Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 80G(l) to 80G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the Sub-Direct Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the Sub-Direct Parallel Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the Sub-Direct Parallel Policy; and

(iii) by reason of the matters in paragraphs 80Y(j)(i) and 80Y(j)(ii) of this Defence, the Sub-Direct Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the Sub-Direct Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

80Z IAL denies paragraph 80Z of the SOC and repeats paragraphs 66A and 80Y above.

80AA IAL denies paragraph 80AA of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80Y above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 80B(d); and

(c) otherwise, denies the paragraph.

80AB IAL denies paragraph 80AB of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the Sub-Direct Master Policy, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by

the “Insured” and/or the “Insured Participant” that derive from “Debts” owned by a “Customer”; and

(c) in respect of the Sub-Direct Policies, the SOC pleads no material facts capable of establishing that the amount of USD 78,000 was the amount, or an amount, due under the Sub-Direct Master Policy and in respect of the Sub-Direct Parallel Policy at any time.

80AC IAL denies paragraph 80AC of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80AB of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the Sub-Direct Master Policy at any time; and

(ii) there were "Assets" insured under the Sub-Direct Parallel Policy (as alleged in paragraph 80AC) at any relevant time.

80AD As to paragraph 80AD, IAL:

(a) repeats paragraphs 80AB and 80AC above, particularly paragraph 80AC(b); and

(b) does not know and therefore cannot admit paragraph 80AD of the SOC.

80AE As to paragraph 80AE of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80Y of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TW-03546" (as referred to in paragraph 80Y of the SOC) and which recorded only "Greensill Capital Pty Limited" as 'Insured";

(ii) did not disclose any policies with the policy number "TW-03547" referred to in paragraph 80Y of the SOC; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80AE of the SOC.

80AF As to paragraph 80AF of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 80Y of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80AE of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 80Y to 80AE of this Defence; and

(B) otherwise denies that paragraph of the SOC.

80AG IAL denies paragraph 80AG and repeats paragraphs 80Y to 80AF above.

2017 Standalone Policies

80AH IAL denies paragraph 80AH of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2017 Master Policy 3691:

(i) the Applicants rely on a document with document reference AGB.0002.0002.0872, which IAL understands is alleged to be the "2017 Master Policy 3691";

(ii) if the document is said to be the "2017 Master Policy 3691", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 27th day of December 2017" (page 2);

(B) was signed by Greg Brereton on or about 15 June 2018 (page 51);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800044;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the 2017 Parallel Policy 3690:

(i) the Applicants rely on a document with document reference GBA.0004.0009.4397, which IAL understands is alleged to be the "2017 Parallel Policy 3690";

(ii) if the document is said to be the "2017 Parallel Policy 3690", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 27h day of December 2017" (page 2);

(B) was signed by Greg Brereton on or about 15 June 2018 (page 44);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800045;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the 2017 Standalone Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2017 Master Policy 3691 and 2017 Parallel Policy 3690;

(e) in June 2018, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in or around June 2018, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2017 Standalone Policies because:

(i) the 2017 Standalone Policies were not a “Trade Credit Product” within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of 2017 Master Policy 3691 and 2017 Parallel Policy 3690 was not “approved wording” for the purposes of the applicable Underwriting Manual, in that the 2017 Master

Policy 3691 and 2017 Parallel Policy 3690 were not written on Approved Wording 1.4;

(B) the wording of the 2017 Standalone Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 Parallel Policy 3690 was $1 (Schedule 5 of the 2017 Parallel Policy 3690), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2017 Parallel Policy 3690 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 Parallel Policy 3690 is not yet known as it is "specified in the Customer Endorsement" (page 1 of 5 of the 2017 Parallel Policy 3690) and that for "any particular Customer will be set out in the relevant Customer Endorsement, or is otherwise the same as the Discretionary Credit Limit written for that Customer" (page 49 of 51 of the 2017 Master Policy 3691), each of which have not been identified;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 Parallel Policy 3690 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any customer endorsements were issued pursuant to the 2017 Standalone Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iii) entering into the 2017 Standalone Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were not a "Trade Credit Product". The 2018 Excess Policies were not written on Approved Wording 1.4.

In respect of the 2017 Master Policy 3691, GCUK, the insured, was not domiciled in Australia.

In respect of the 2017 Parallel Policy 3690, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2017 Parallel Policy 3690 exceeded 90% of Debt. The policy limit of the 2017 Parallel Policy 3690 is not identified. The 2017 Parallel Policy 3690 did not have any minimum excess.

Further, the obligation referred to in paragraph 80AH(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were to take effect approximately 175 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2017 Standalone Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into the 2017 Standalone Policies in the circumstances referred to in paragraph 80AH(f) of this Defence;

(ii) the 2017 Standalone Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2017 Standalone Policies was not "approved wording" for the purposes of the applicable

Underwriting Manual Version 1.0, in that the 2017 Standalone Policies were not written on Approved Wording 1.4;

(B) the wording of the 2017 Standalone Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 Parallel Policy 3690 was $1 (Schedule 5 of the 2017 Parallel Policy 3690), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2017 Parallel Policy 3690 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 Parallel Policy 3690 is not yet known as it is "specified in the Customer Endorsement" (page 1 of 5 of the 2017 Parallel Policy 3690) and that for "any particular Customer will be set out in the relevant Customer Endorsement, or is otherwise the same as the Discretionary Credit Limit written for that Customer" (page 49 of 51 of the 2017 Master Policy 3691), each of which have not been identified;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 Parallel Policy 3690 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any customer endorsements were issued pursuant to the 2017 Standalone Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iv) entering into the 2017 Standalone Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 80AH(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80AH(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were to take effect approximately 175 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 80G(h) to 80G(q) of this Defence;

(i) in the premises, in June 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2017 Standalone Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2017 Standalone Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2017 Standalone Policies ; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2017 Standalone Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 80G(l) to 80G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2017 Standalone Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2017 Parallel Policy 3690;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2017 Parallel Policy 3690; and

(iii) by reason of the matters in paragraphs 80AH(j)(i) and 80AH(j)(ii) of this Defence, the 2017 Standalone Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2017 Standalone Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

80AI IAL denies paragraph 80AI of the SOC and repeats paragraphs 66A and 80AH above.

80AJ IAL denies paragraph 80AJ of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80AH above;

(b) it assumes that the reference to “Proposed Greensill Policy Structure” is a reference to the six pleaded terms set out at SOC paragraph 80B(d); and

(c) otherwise, denies the paragraph.

80AK IAL denies paragraph 80AK of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2017 Master Policy 3691, there were terms to the following effect:

(i) the “Insured” will pay the “Additional Fees” in accordance with Schedule 5 (cl 6.2);

(ii) “Premium” shall accrue day by day during the “Policy Period” and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the “Insured” shall pay the “Insurer” the adjusted “Premium” relating to each calendar quarter by not later than the last “Business Day” of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the “Insured” when due (cl 6.2);

(v) the “Insurer” shall not be obliged to indemnify the “Insured” for a “Loss” in accordance with, and subject to the terms, conditions and limitations of the “Policy” until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the “Premium” arising each day under the “Policy” with respect to “Assets” owned by the “Insured” and/or the “Insured Participant” that derive from “Debts” owned by a “Customer”;

(c) in respect of the 2017 Standalone Policies, the SOC pleads no material facts capable of establishing that the amount of AUD 149,819.52 and USD 215,200 was the amount, or an amount, due under the 2017 Master Policy 3691 and in respect of the 2017 Parallel Policy 3690 at any time.

80AL IAL denies paragraph 80AL of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80AK of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2017 Master Policy 3691 at any time; and

(ii) there were "Assets" insured under the 2017 Parallel Policy 3690 (as alleged in paragraph 80AL) at any relevant time.

80AM As to paragraph 80AM, IAL:

(a) repeats paragraphs 80AK and 80AL above, particularly paragraph 80AL(b); and

(b) does not know and therefore cannot admit paragraph 80AM of the SOC.

80AN As to paragraph 80AN of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80AH of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TB-03691" (as referred to in paragraph 80AH of the SOC) and which recorded only "Greensill Capital Pty Limited" as "Insured"; and

(ii) did not disclose any policies with the policy number "TB-03690" referred to in paragraph 80AH of the SOC;

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80AN of the SOC.

80AO As to paragraph 80AO of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 80AH of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80AN of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 80AH to 80AN of this Defence; and

(B) otherwise denies that paragraph of the SOC.

80AP IAL denies paragraph 80AP of the SOC and repeats paragraphs 80AH to 80AO above.

2018 LOS Policies

80AQ IAL denies paragraph 80AQ of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2018 LOS Master Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0003.5867, which IAL understands is alleged to be the "2018 LOS Master Policy";

(ii) if the document is said to be the "2018 LOS Master Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 15 December 2018" (page 2);

(B) was signed by Greg Brereton on or about 13 December 2018 (page 47);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800109;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the 2018 LOS Parallel Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0002.1549, which IAL understands is alleged to be the "2018 LOS Parallel Policy";

(ii) if the document is said to be the "2018 LOS Parallel Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 15 December 2018" (page 2);

(B) was signed by Greg Brereton on or about 13 December 2018 (page 40);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800108;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the 2018 LOS Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2018 LOS Policies;

(e) in December 2018, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around December 2018, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) prior to 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2018 LOS Policies because:

(i) the 2018 LOS Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of 2018 LOS Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2018 LOS Policies were not written on Approved Wording 1.4;

(B) the wording of the 2018 LOS Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 LOS Parallel Policy was $1 (Schedule 5 of the 2018 LOS Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2018 LOS Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2018 LOS Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 LOS Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any endorsements were issued pursuant to the 2018 LOS Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iii) entering into the 2018 LOS Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2018 LOS Policies were not a "Trade Credit Product". The 2018 LOS Policies were not written on Approved Wording 1.4.

In respect of the 2018 LOS Master Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the 2018 LOS Parallel Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2018 LOS Parallel Policy exceeded 95% of Debt. The policy limit of the 2018 LOS Parallel Policy was not AUD50 million or less. The 2018 LOS Parallel Policy did not have any minimum excess.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2018 LOS Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into the 2018 LOS Policies in the circumstances referred to in paragraph 80AQ(f) of this Defence;

(ii) the 2018 LOS Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2018 LOS Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2018 LOS Policies were not written on Approved Wording 1.4;

(B) the wording of the 2018 LOS Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 LOS Parallel Policy was $1 (Schedule 5 of the 2018 LOS Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2018 LOS Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2018 LOS Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 LOS Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any endorsements were issued pursuant to the 2018 LOS Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iv) entering into the 2018 LOS Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 80AQ(f)(iii) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 80G(h) to 80G(q) of this Defence;

(i) in the premises, in December 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2018 LOS Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2018 LOS Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2018 LOS Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2018 LOS Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 80G(l) to 80G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2018 LOS Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2018 LOS Parallel Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2018 LOS Parallel Policy; and

(iii) by reason of the matters in paragraphs 80AQ(j)(i) and 80AQ(j)(ii) of this Defence, the 2018 LOS Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2018 LOS Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

80AR IAL denies paragraph 80AR of the SOC and repeats paragraphs 66A and 80AQ above.

80AS IAL denies paragraph 80AS of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80AQ above;

(b) it assumes that the reference to “Proposed Greensill Policy Structure” is a reference to the six pleaded terms set out at SOC paragraph 80B(d); and

(c) otherwise, denies the paragraph.

80AT IAL denies paragraph 80AT of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2018 LOS Master Policy, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer";

(c) in respect of the 2018 LOS Policies, the SOC pleads no material facts capable of establishing that the amount of AUD 3,757,467.79 was the amount, or an amount, due under the 2018 LOS Master Policy and in respect of the 2018 LOS Parallel Policy at any time.

80AU IAL denies paragraph 80AU of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80AT of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2018 LOS Master Policy at any time; and

(ii) there were "Assets" insured under the 2018 LOS Parallel Policy (as alleged in paragraph 80AU) at any relevant time.

80AV As to paragraph 80AV, IAL:

(a) repeats paragraphs 80AT and 80AU above, particularly paragraph 80AU(b); and

(b) does not know and therefore cannot admit paragraph 80AV of the SOC.

80AW As to paragraph 80AW of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80AQ of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) did not disclose any policies with the policy number "TS-03137" referred to in paragraph 80AQ of the SOC;

(ii) from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 80AQ of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80AW of the SOC.

80AX IAL denies paragraph 80AX of the SOC and says further that:

(a) in respect of sub-paragraph (a), there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraph (b), IAL repeats paragraph 80AW of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 80AQ to 80AW of this Defence.

80AY IAL denies paragraph 80AY and repeats paragraphs 80AQ to 80AX above.

Nokia Policies

80AZ IAL denies paragraph 80AZ of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the Nokia Master Policy,

(i) the Applicants rely on a document with document reference AGB.0002.0009.1866, which IAL understands is alleged to be the "Nokia Master Policy";

(ii) if the document is said to be the "Nokia Master Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 28th day of December 2018" (page 2);

(B) was signed by Greg Brereton on or about 9 January 2019 (page 49);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800119;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the Nokia Parallel Policy:

(i) the Applicants rely on a document with document reference GBA.0004.0020.6119, which IAL understands is alleged to be the "Nokia Parallel Policy";

(ii) if the document is said to be the "Nokia Parallel Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 28th day of December 2018" (page 2);

(B) was signed by Greg Brereton on or about 9 January 2019 (page 49);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800120;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the Nokia Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the Nokia Policies;

(e) in January 2019, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around January 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) prior to 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the Nokia Policies because:

(i) the Nokia Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of Nokia Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the Nokia Policies were not written on Approved Wording 1.4;

(B) the wording of the Nokia Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the Nokia Parallel Policy was $1 (Schedule 5 of the Nokia Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the Nokia Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the Nokia Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the Nokia Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the Nokia Parallel Policy exceeded that limitation;

(iii) entering into the Nokia Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The Nokia Policies were not a "Trade Credit Product". The 2018 Excess Policies were not written on Approved Wording 1.4.

In respect of the Nokia Master Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the Nokia Parallel Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the Nokia Parallel Policy exceeded 95% of Debt. The policy limit of the Nokia Parallel Policy was not AUD50 million or less. The Nokia Parallel Policy did not have any minimum excess.

Further, the obligation referred to in paragraph 80AZ(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the Nokia Policies were to take effect approximately 20 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the Nokia Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into the Nokia Policies in the circumstances referred to in paragraph 80AZ(f) of this Defence;

(ii) the Nokia Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the Nokia Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the Nokia Policies were not written on Approved Wording 1.4;

(B) the wording of the Nokia Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the Nokia Parallel Policy was $1 (Schedule 5 of the Nokia Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the Nokia Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the Nokia Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the Nokia Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the Nokia Parallel Policy exceeded that limit;

(iv) entering into the Nokia Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 80AZ(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80AZ(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the Nokia Policies were to take effect approximately 20 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 80G(h) to 80G(q) of this Defence;

(i) in the premises, as at or about 9 January 2019 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the Nokia Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the Nokia Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the Nokia Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the Nokia Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 80G(l) to 80G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the Nokia Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the Nokia Parallel Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the Nokia Parallel Policy; and

(iii) by reason of the matters in paragraphs 80AZ(j)(i) and 80AZ(j)(ii) of this Defence, the Nokia Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the Nokia Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

80BA IAL denies paragraph 80BA of the SOC and repeats paragraphs 66A and 80AZ above.

80BB IAL denies paragraph 80BB of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80AZ above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 80B(d); and

(c) otherwise, denies the paragraph.

80BC IAL denies paragraph 80BC of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the Nokia Master Policy, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer";

(c) in respect of the Nokia Policies, the SOC pleads no material facts capable of establishing that the amount of USD 599,112.50 was the amount, or an amount, due under the Nokia Master Policy and in respect of the Nokia Parallel Policy at any time.

80BD IAL denies paragraph 80BD of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80BC of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the Nokia Master Policy at any time; and

(ii) there were "Assets" insured under the "Nokia Parallel Policies" (as alleged in paragraph 80BD) at any relevant time.

80BE As to paragraph 80BE, IAL:

(a) repeats paragraphs 80BC and 80BD above, particularly paragraph 80BD(b); and

(b) does not know and therefore cannot admit paragraph 80BE of the SOC.

80BF As to paragraph 80BF of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80AZ of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TB-04584" (as referred to in paragraph 80AZ) and which recorded only "Greensill Capital Pty Limited" as 'Insured";

(ii) did not disclose any policies with the policy number "TB-04585" referred to in paragraph 80AZ of the SOC; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80BF of the SOC.

80BG As to paragraph 80BG of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was

appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 80AZ of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80BF of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(c) in respect of sub-paragraph (c):

(i) repeats paragraphs 80AZ to 80BF of this Defence; and

(ii) otherwise denies that paragraph of the SOC.

80BH IAL denies paragraph 80BH and repeats paragraphs 80AZ to 80BG above.

2019 Excess Policies

80BI IAL denies paragraph 80BI of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of Policy 3087:

(i) the Applicants rely on a document with document reference GBA.0004.0031.1983, which IAL understands is alleged to be the "Policy 3087";

(ii) if the document is said to be the "Policy 3087", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 1st day of March 2019" (page 2);

(B) was signed by Greg Brereton on or about 6 March 2019 (page 48);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1900010;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of Policy 3088:

(i) the Applicants rely on a document with document reference AGB.0002.0002.1923, which IAL understands is alleged to be the "Policy 3088";

(ii) if the document is said to be the "Policy 3088", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 1st day of March 2019" (page 2);

(B) was signed by Greg Brereton on or about 6 March 2019 (page 48);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1900008;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed, save for one page on which the page has been signed but outside of the box;

(d) the terms of the 2019 Excess Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2019 Excess Policies;

(e) in March 2019, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing “Approved Products”, being relevantly “Trade Credit Products”, using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in or around March 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) prior to 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2019 Excess Policies because:

(i) the 2019 Excess Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of the 2019 Excess Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2019 Excess Policies were not written on Approved Wording 1.4;

(B) the wording of the 2019 Excess Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for Policy 3088 was $1 (Schedule 5 of Policy 3088), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in Policy 3088 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of Policy 3088 exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and Policy 3088 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and Policy 3088 exceeded that limitation;

(iii) entering into the 2019 Excess Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2019 Excess Policies were not a "Trade Credit Product". the 2019 Excess Policies were not written on Approved Wording 1.4.

In respect of Policy 3087, GCUK, the insured, was not domiciled in Australia.

In respect of Policy 3088, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of Policy 3088 exceeded 95% of Debt. The policy limit of Policy 3088 was not AUD50 million or less. Policy 3088 did not have any minimum excess.

Further, the obligation referred to in paragraph 80BI(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2019 Excess Policies were to take effect approximately 19 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2019 Excess Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused

BCC to enter into the 2019 Excess Policies in the circumstances referred to in paragraph 80BI(f) of this Defence;

(ii) the 2019 Excess Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2019 Excess Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Excess Policies were not written on Approved Wording 1.4;

(B) the wording of the 2019 Excess Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for Policy 3088 was $1 (Schedule 5 of Policy 3088), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in Policy 3088 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the Policy 3088 exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and Policy 3088 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and Policy 3088 exceeded that limit;

(iv) entering into the 2019 Excess Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 80BI(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80BI(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2018 Excess Policies were to take effect approximately 19 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 80G(h) to 80G(q) of this Defence;

(i) in the premises, in March 2019 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2019 Excess Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2019 Excess Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Excess Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Excess Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 80G(l) to 80G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2019 Excess Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of Policy 3088;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for Policy 3088; and

(iii) by reason of the matters in paragraphs 80BI(j)(i) and 80BI(j)(ii) of this Defence, the 2019 Excess Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2019 Excess Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

80BJ IAL denies paragraph 80BJ of the SOC and repeats paragraphs 66A and 80BI above.

80BK IAL denies paragraph 80BK of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80BI above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 80B(d); and

(c) otherwise, denies the paragraph.

80BL IAL denies paragraph 80BL of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of Policy 3087, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer"; and

(c) in respect of the 2019 Excess Policies, the SOC pleads no material facts capable of establishing that the amount of USD 275,141.78 was the amount, or an amount, due under Policy 3087 and in respect of Policy 3088 at any time.

80BM IAL denies paragraph 80BM of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80BL of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged; and

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under Policy 3087 at any time; and

(ii) there were "Assets" insured under Policy 3088 (alleged in paragraph 80BM) at any relevant time.

80BN As to paragraph 80BN, IAL:

(a) repeats paragraphs 80BL and 80BM above, particularly paragraph 80BM(b); and

(b) does not know and therefore cannot admit paragraph 80BN of the SOC.

80BO As to paragraph 80BO of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80BI of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TS-03087" (referred to in paragraph 80BI of the SOC) and which recorded only "Greensill Capital Pty Limited" as 'Insured";

(ii) did not disclose any policies with the policy number "TS-03088" referred to in the particulars at paragraph 80 of the SOC; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80BO of the SOC.

80BP As to paragraph 80BP of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 80BI of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80BO of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(c) in respect of sub-paragraph (c):

(i) repeats paragraphs 80BI to 80BO of this Defence; and

(ii) otherwise denies that paragraph of the SOC.

80BQ IAL denies paragraph 80BQ of the SOC and repeats paragraphs 80BI to 80BP above.

2019 Standalone Policies

80BR IAL denies paragraph 80BR of the SOC and says further that:

(a) it repeats paragraphs 66A, 80B, 80C and 80F above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 80B(d); and

(c) otherwise, denies the paragraph.

80BS IAL denies paragraph 80BS of the SOC.

81 As to paragraph 81 of the SOC, IAL:

(a) repeats paragraphs 5, 8,19(c), 66A, 80O, 80X, 80AG, 80AP, 80AY, 80BH, 80BQ and 80BS of this Defence; and

(b) otherwise denies paragraph 81 of the SOC.

D.3.3 Statutory responsibility

82 As to paragraph 82 of the SOC, IAL:

(a) says, as to the whole paragraph, that "entry" into a contract is a legal conclusion and not "conduct" to which sections 917A, 917B and 917C of the *Corporations Act* apply;

(aa) repeats paragraphs 102(a) to 102(e) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019 and denies that BCC and/or Brereton entered into the 2019 Policy or any of the endorsements (including Endorsements 9, 17, 18, 23, Debt Endorsement 2(iv), Customer Endorsement 5 and the "Supplier Customer Endorsements" referred to in paragraph 143(a)-(n) of the SOC) referred to in the SOC on behalf of IAL;

(b) says further, as to the whole paragraph:

(i) Division 6 of Part 7.6 of the *Corporations Act* generally, and sections 917B and 917C in particular, deem a licensee to be responsible for conduct of a representative only if:

(A) the conduct is itself a wrong of the representative actionable by the client; and

(B) the conduct by itself gives the “client” a remedy against the representative;

(ii) denies that Greensill Bank was the "client", for the purpose of section 917A(1)(b) of the *Corporations Act*;

(iii) mere execution of, or entry into, the 2019 Policy was not a wrong of BCC actionable by Greensill Bank and did not by itself give Greensill Bank a remedy against BCC;

(iv) the conduct relied on in the paragraph is therefore not conduct to which sections 917B and 917C apply;

(v) in the circumstances, the whole of the paragraph is denied, and the balance of this paragraph is further and in the alternative;

(c) admits, in relation to paragraph 82.a of the SOC, that, at the time BCC executed and/or entered into the 2019 Policy, it was an authorised representative of IAL, which was a financial services licensee;

(d) admits, in relation to paragraph 82.b of the SOC, that execution of a policy of general insurance is, subject to subparagraphs 82(a), 82(aa) and 82(b) of this Defence, conduct that relates to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(e) denies paragraph 82.c of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) of the *Corporations Act* turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraph 82 of the SOC was conduct on which Greensill Bank could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) of the *Corporations Act* is the "rel[iance]" referred to in section 917A(1)(c) of the *Corporations Act*, with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 82.d of the SOC with the reasonable expectation as to reliance alleged in paragraph 82.c of the SOC;

(v) the conduct of BCC in entering into and/or executing the 2019 Policy was not conduct on which Greensill Bank could reasonably be expected to rely.

Particulars

Paragraphs 66A(b) to 66A(k) of this Defence. Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) denies paragraph 82.d of the SOC and says further that:

(i) there is no pleading as to the manner in which Greensill Bank in fact relied on the conduct referred to in paragraph 82 of the SOC or as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 82.d of the SOC with the reasonable expectation as to reliance alleged in paragraph 82.c of the SOC; and

(iii) Greensill Bank did not in fact rely in good faith on the "conduct of BCC in entering into [the 2019 Policy]";

Particulars

(a) Paragraphs 66A(b) to 66A(k) of this Defence.

(b) The premium amount listed in the 2019 Policy was $1, substantially less than the risks (totalling hundreds of millions of dollars) purportedly written by BCC on behalf of IAL under this policy.

(c) Greensill Bank did not pay any premium for the 2019 Policy.

(d) Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

Further particulars will be provided after discovery, compulsory production and evidence.

(g) says further that, IAL reserves the right to rely on section 917D of the *Corporations Act* and contends that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client", which is denied;

Particulars

Particulars under paragraphs 66A(h) and 66A(j) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) says further that the SOC is deficient in failing to identify, with precision or at all, the content of the "responsib[ility]" alleged in paragraph 82 and, in particular, failing to identify:

(i) whether it is alleged that Greensill Bank has suffered loss and damage, for the purposes of section 917E of the *Corporations Act*, as a result of BCC's conduct referred to in paragraph 82 of the SOC;

(ii) for the purposes of section 917E of the *Corporations Act*, the causal chain between that conduct and any asserted loss and damage, including the counterfactual alleged;

(iii) for the purposes of section 917E of the *Corporations Act*, what "loss and damage" is relied on;

(iv) whether it is alleged that, by reason of section 917F(1) of the *Corporations Act*, Greensill Bank has the same remedies against IAL that it has against BCC and, if so, what those remedies are;

(v) for the purposes of section 917F(1) of the *Corporations Act*, the connection between the "remedies" asserted and the "conduct" relied on;

(i) says, in respect of any contention that IAL is responsible for any conduct of BCC (including any contention that Greensill Bank has remedies against IAL by reason of section 917F(1)) of the *Corporations Act*) that:

(i) the responsibility deemed by sections 917B and 917C of the *Corporations Act* does not extend to responsibility for conduct and/or causes of action for which BCC has a defence as between BCC and Greensill Bank; and

(ii) IAL's responsibility and/or liability to Greensill Bank is no greater than BCC's responsibility and/or liability to Greensill Bank;

(j) says that, on their proper construction, the responsibility deemed by sections 917B and 917C of the *Corporations Act* to exist is responsibility for contraventions of Part 7 of the *Corporations Act* or, alternatively, contraventions of the *Corporations Act*, and is not responsibility for general law wrongs, including breaches of contract;

(k) says that IAL was not party to any relevant communications or relations between BCC and/or Brereton, on the one hand, and Greensill Bank/Marsh on the other and IAL intends to seek discovery bearing on the content of those relations and communications and, ultimately, on the potential application of sections 917A-917E of the *Corporations Act*; and

(l) otherwise denies paragraph 82 of the SOC.

D.4 Greg Brereton had authority to enter into Policy 3690

83 IAL repeats paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60 and 66A of this Defence and otherwise denies paragraph 83 of the SOC.

84 IAL repeats paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60 and 66A of this Defence and otherwise denies paragraph 84 of the SOC.

85 As to paragraph 85 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 85, the matters in paragraph 82 of this Defence which apply mutatis mutandis to Mr Brereton and his conduct referred to in paragraph 85; and

(b) denies paragraph 85 of the SOC.

D.5 Endorsements 9, 17 and 18 to Policy 3690

86 IAL denies paragraph 86 of the SOC and says further:

(a) it relies on the terms of Endorsement 9 (if valid and effective, which is denied) for their full force and effect;

(b) on 13 March 2019, Brereton signed Endorsement 9 and backdated it to 22 February 2019;

(c) the terms of Endorsement 9 were authored by or on behalf of the purported "Insured" and at no stage did IAL agree to, or hold out that it adopted, those words;

(d) that as at 13 March 2019 and at all material times between 28 July 2016 and 9 April 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60 and 66A of this Defence;

(e) the amendments purportedly made by Endorsement 9 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL;

(iii) deprived IAL of the benefit of the claims procedure set out in the 2019 Policy, for no corresponding gain; and

(iv) had no commercial or other legitimate justification;

(f) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 9 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 8(i) of this Defence, and Endorsement 9 was not an Approved Endorsement;

(iv) says further that the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 9 was not an endorsement of those kinds; and

(v) Endorsement 9 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(g) that:

(i) Endorsement 9 purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party; and

(iii) Endorsement 9 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(h) that by reason of the matters in paragraphs 86(a) to 86(g) of this Defence and each of them individually, Endorsement 9 was invalid, of no effect and not binding on or enforceable as against IAL;

(i) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute Endorsement 9:

(i) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 9 was not an endorsement of those kinds;

(ii) Endorsement 9 purported to vary the 2019 Policy;

(iii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iv) Endorsement 9 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(v) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 9;

(vi) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 9;

(vii) any power to issue endorsements under the 2019 Policy did not authorise the issuing of endorsements purporting to operate retrospectively;

(viii) Endorsement 9 purported to operate retrospectively;

(ix) by reason of the matters in paragraphs 86(i)(i) to 86(i)(viii) of this Defence Endorsement 9 is invalid, of no effect and not binding on or enforceable as against IAL;

(j) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 9 had been issued; and

(ii) Endorsement 9 had been purportedly issued in breach of the CGU AAR Agreement and Underwriting Manual Version 2.0 and was inconsistent with the Approved Endorsements;

(k) executing Endorsement 9 was in breach of BCC's obligation under the CGU AAR Agreement to perform the “Authorised Services” in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly; and

Particulars

The matters in paragraphs 86(a) to 86(h) of this Defence.

(l) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 9 because entering into Endorsement 9 was in breach of Brereton’s obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 86(a) to 86(i) of this Defence.

(m) Greensill Bank and GCPL knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 9 on behalf of IAL.

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 66A(f), 66A(g), and 66A(h) to 66A(j) of this Defence. Insofar as the emails referred to in the particulars under paragraph 66A(h) were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further particulars may be provided after compulsory production.

87 As to paragraph 87 of the SOC, IAL:

(a) says Brereton signed Endorsement 9;

(b) repeats paragraph 86 of this Defence; and

(c) otherwise denies paragraph 87 of the SOC.

88 In answer to paragraph 88 of the SOC, IAL:

(a) repeats paragraph 86 of this Defence;

(b) says that Endorsement 9 was, in terms, said to be “effective from the Commencement Date”, but it did not define “Commencement Date”; and

(c) otherwise denies paragraph 88 of the SOC.

89 In answer to paragraph 89 of the SOC, IAL:

(a) repeats paragraph 86 of this Defence;

(b) says that paragraphs 89.a and 89.b of the SOC otherwise set out the general effect of Endorsement 9 (if valid and effective, which is denied) and that, if the endorsement had that general effect, its effect was (inter alia) to vary clause 10 of the 2019 Policy; and

(c) otherwise denies paragraph 89 of the SOC.

90 IAL denies paragraph 90 of the SOC and says further:

(a) the terms of Endorsement 17 were authored by or on behalf of the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(b) that on 21 June 2019 and at all material times on and after 9 April 2019 until 30 June 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 5(d)(i)(B) and (E), 6(e)(i), 6(e)(iii), 6(e)(vi), 8(i), 8(k), 32, 33, 55, 60 and 66A of this Defence:

(c) the amendments purportedly made by Endorsement 17 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(d) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 17 because:

(i) the authority given by IAL to BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) BCC and Brereton were not authorised to bind mid-term insurance policy alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 17:

(A) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied) by committing it to an additional year of coverage almost 9 months before the expiry of the policy, and did so in a manner not contemplated by the terms of the 2019 Policy;

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

(C) if it was otherwise capable of constituting a mid-term insurance policy alteration, such alteration was not consistent with prudent underwriting judgment, and was therefore beyond authority;

(iv) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 8(i) of this Defence, and Endorsement 17 was not an Approved Endorsement;

(v) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 17 was not an endorsement of those kinds;

(vi) Endorsement 17 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(vii) BCC and Brereton were not authorised to issue an endorsement resulting in a policy having a total term exceeding 24 months, and Endorsement 17 (if valid and effective, which is denied) had the purported effect of extending the policy term beyond 24 months;

(viii) BCC and Brereton were not authorised to bind renewal insurance policies on behalf of IAL with renewal inception dates after 30 June 2019, including "any extension of policy due date", and Endorsement 17 breached this limit because, prior to Endorsement 17, the Policy had a term expiring after 30 June 2019, and Endorsement 17 had the purported effect of extending and/or renewing the term of the 2019 Policy;

(ix) that further or alternatively, pursuant to the Underwriting Manual Version 3.0, and therefore the IAL AAR Agreement and IAGA/IAL Brereton Authorisation, BCC and Brereton were not authorised:

(A) to extend the policy due date for the 2019 Policy in excess of 12 months; or

(B) to issue a 2-year contract for the 2019 Policy with the second year renewal written with IAL as the insurer;

(e) says that:

(i) Endorsement 17 purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party; and

(iii) Endorsement 17 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(f) that by reason of the matters in paragraphs 90(a) to 90(e) of this Defence, and each of them individually, Endorsement 17 was invalid, of no effect and not binding on or enforceable as against IAL;

(g) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to extend the policy end date of the 2019 Policy:

(i) Endorsement 17 purported to vary the 2019 Policy;

(ii) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 17;

(iii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 17;

(iv) by reason of the matters in paragraphs 90(g)(i) to 90(g)(iii) of this Defence Endorsement 17 is invalid, of no effect and not binding on or enforceable as against IAL;

(h) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 17 had been issued; and

(ii) Endorsement 17 had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(i) executing Endorsement 17 was in breach of BCC's obligation under the CGU AAR Agreement to perform the “Authorised Services” in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 90(a) to 90(h) of this Defence.

(j) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 17 because entering into Endorsement 17 was in breach of Brereton’s obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly;

Particulars

The matters in paragraphs 90(a) to 90(i) of this Defence.

(k) Greensill Bank knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 17 on behalf of IAL.

Particulars

Paragraphs 66A(a) to 66A(k), 86(k) and 90(c) of this Defence. Further it should have been obvious to Greensill Bank that committing IAL to an extra year under a policy which still had 9 months to run was not consistent with due care and skill and, therefore, that Greensill Bank at least ought to have known that Brereton lacked authority to make that commitment.

(l) that at the time Brereton signed Endorsement 17, Greensill Bank and GCPL were aware that:

(i) his authority and that of BCC on behalf of IAL would terminate on 30 June 2019;

(ii) existing IAL policies would end at their natural expiry date, which for the 2019 Policy was 1 March 2020; and

(iii) BCC and Brereton did not have authority to extend the 2019 Policy beyond 1 March 2020.

Particulars

Email dated 15 April 2019 from Toby Guy on behalf of BCC to Ewan Berkemeier of Marsh with two market announcements (IAL.500.011.0568, IAL.500.011.0569, IAL.500.011.0570

Email dated 16 April 2019 from Ewan Berkemeier of Marsh to BCC (IAL.500.011.0581).

91 As to paragraph 91 of the SOC, IAL:

(a) says that Brereton signed Endorsement 17;

(b) repeats paragraph 90 of this Defence; and

(c) otherwise denies paragraph 91 of the SOC.

92 As to paragraph 92 of the SOC, IAL:

(a) says that Endorsement 17 specified an "Effective Date" of 10th June 2019;

(b) repeats paragraph 90 of this Defence; and

(c) otherwise denies paragraph 92 of the SOC.

93 IAL repeats paragraph 90 of this Defence and otherwise denies paragraph 93 of the SOC.

94 IAL denies paragraph 94 of the SOC and says further:

(a) the terms of Endorsement 18 were authored by or on behalf of the purported "Insured" and at no stage did IAL agree to, or hold out that it adopted, those words;

(b) on 21 June 2019 and at all material times on and after 9 April 2019 until 30 June 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 5(d)(i)(B) and (E), 6(e)(i), 6(e)(iii), 6(e)(vi), 8(i), 8(k), 32, 33, 55, 60 and 66A of this Defence;

(c) the amendments purportedly made by Endorsement 18 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(d) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 18 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) the authority given by IAL under the IAL AAR to each of BCC and Brereton did not include an authority to enter into Endorsement 18 because BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 18:

(A) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied) by committing it to further renewal of the policy at least 6 months before its expiry, thereby depriving it of the opportunity of determining whether to renew by reference to matters arising

and events occurring in the last 6 or more months of the policy, and did so in a manner not contemplated by the terms of the 2019 Policy;

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

Particulars

Endorsement 18 extended the Policy Period beyond the natural expiry date of the 2019 Policy.

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(iv) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 8(i) of this Defence, and Endorsement 18 was not an Approved Endorsement;

(v) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 18 was not an endorsement of those kinds;

(vi) Endorsement 18 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(vii) BCC and Brereton were not authorised to issue an endorsement resulting in a policy having a total term exceeding 24 months, and Endorsement 18 (if valid and effective, which is denied) had the purported effect of extending the policy term beyond 24 months;

(viii) BCC and Brereton were not authorised to bind renewal insurance policies on behalf of IAL with renewal inception dates after 30 June 2019, including “any extension of policy due date”, and Endorsement 18 breached this limit because, prior to Endorsement 18, the Policy had a term expiring after 30 June 2019, and Endorsement 18 had the purported effect of extending and/or renewing the term of the 2019 Policy;

(e) that:

(i) Endorsement 18 purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iii) Endorsement 18 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(f) that by reason of the matters in paragraphs 94(a) to 94(e) of this Defence, and each of them individually, Endorsement 18 was invalid, of no effect and not binding on or enforceable as against IAL;

(g) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Endorsement 18:

(i) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 18 was not an endorsement of those kinds;

(ii) Endorsement 18 purported to vary the 2019 Policy;

(iii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iv) Endorsement 18 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(v) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 18;

(vi) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 18;

(vii) any power to issue endorsements under the 2019 Policy did not authorise the issuing of endorsements purporting to operate retrospectively;

(viii) Endorsement 18 purported to operate retrospectively;

(ix) by reason of the matters in paragraphs 94(g)(i) to 94(g)(viii) of this Defence Endorsement 18 is invalid, of no effect and not binding on or enforceable as against IAL;

(h) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 18 had been issued;

(ii) Endorsement 18 had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(i) executing Endorsement 18 was in breach of BCC's obligation under the IAL AAR Agreement to perform the "Authorised Services" in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly; and

Particulars

The matters in paragraphs 94(a) to 94(h) of this Defence.

(j) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 18 because entering into Endorsement 18 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 94(a) to 94(i) of this Defence.

(k) Greensill Bank and/or GCPL knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 18 on behalf of IAL.

Particulars

The matters in paragraphs 66A(a) to 66A(k), 86(k) and 94(c) of this Defence.

95 As to paragraph 95 of the SOC, IAL:

(a) says that Brereton signed Endorsement 18;

(b) repeats paragraph 94 of this Defence; and

(c) otherwise denies paragraph 95 of the SOC.

96 As to paragraph 96 of the SOC, IAL:

(a) says that Endorsement 18 specified an "Effective Date" of 10th June 2019;

(b) repeats paragraph 94 of this Defence; and

(c) otherwise denies paragraph 96 of the SOC.

97 IAL repeats paragraph 94 of this Defence and otherwise denies paragraph 97 of the SOC.

D.6 BCC had authority to execute Endorsements 9, 17 and 18

98 IAL denies paragraph 98 of the SOC and repeats paragraphs 86, 90 and 94 of this Defence.

99 As to paragraph 99 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 99 of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of BCC with respect to Endorsement 9, Endorsement 17 and Endorsement 18 and its conduct referred to in paragraph 99 of the SOC; and

(b) denies paragraph 99 of the SOC.

D.7 Greg Brereton had authority to execute Endorsements 9, 17 and 18

100 IAL denies paragraph 100 of the SOC and repeats paragraphs 86, 90 and 94 of this Defence.

101 As to paragraph 101 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 101 of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of Brereton with respect to Endorsement 9, Endorsement 17 and Endorsement 18 and his conduct referred to in paragraph 101 of the SOC; and

(b) denies paragraph 101 of the SOC.

D.8 Endorsement 23 to Policy 3690

102 IAL denies paragraph 102 of the SOC and says further:

(a) on and from 1 July 2019:

(i) BCC did not have any authority to write new policies or risks, or extend the term or scope of existing policies;

(ii) BCC was authorised to act as the agent and authorised representative of TMNF and provide financial services on behalf of TMNF;

(iii) BCC was a representative of TMNF, and not IAL or IAGA, for the purposes of Division 6 of Part 7.6 of the *Corporations Act*;

(iv) TMNF was responsible for the conduct of BCC for the purposes of section 917B of the *Corporations Act*;

(v) Brereton was a representative of TMNF, and not IAL or IAGA, for the purposes of Division 6 of Part 7.6 of the *Corporations Act*; and

(vi) TMNF was responsible for the conduct of Brereton for the purposes of section 917B of the *Corporations Act*;

(b) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that:

(i) BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019;

(ii) BCC was the authorised representative of only TMNF from 1 July 2019 onwards;

(iii) Brereton's status as authorised representative of IAGA had ceased with effect on 30 June 2019; and

(iv) Brereton was an authorised representative of only TMNF (and not IAGA or IAL) from 1 July 2019 onwards;

(c) on or about 10 April 2019, TMMA issued a media release by which it announced that it had acquired BCC;

(d) on or about 15 April 2019, Bond issued a market announcement by which it announced that TMMA, a wholly owned subsidiary of TMNF, had acquired the "BCC Trade Credit & Surety businesses" and, in respect of trade credit, from 1 July 2019, all new and renewal business will be undertaken by TMNF under its underwriting guidelines;

(e) on 15 April 2019, BCC provided to Marsh, on behalf of the Greensill Group, the media release and market announcement referred to in paragraphs 102(c) and 102(d) of this Defence;

Particulars

Email dated 15 April 2019 from Toby Guy on behalf of BCC to Ewan Berkemeier of Marsh on behalf of the Greensill Group with attachments.

(f) the terms of Endorsement 23 (if valid and effective, which is denied) were authored by or on behalf of the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(g) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 23 because:

(i) Endorsement 23 was signed by Brereton on behalf of BCC on 5 February 2020, after BCC ceased to have authority to act for IAL as referred to in paragraphs 102(a) to 102(e) of this Defence;

(ii) the authority given by IAL to BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(iii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iv) BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 23:

(A) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(h) Endorsement 23 was not in any event consistent with the application of prudent underwriting judgment, and was invalid, because:

(i) the amendments purportedly made by Endorsement 23 (if valid and effective, which is denied):

(A) benefited Greensill Bank;

(B) gave no benefit, commercial or otherwise, to IAL; and

(C) had no commercial or other legitimate justification;

(ii) it materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

Particulars

The 2019 Policy purportedly required the insurer to pay claims in respect of losses suffered on Assets that were not owned by the insured at the time of the Insured

Cause or the making of a Claim (and was therefore inconsistent with the existing provisions of the 2019 Policy).

(iii) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL prior to 30 June 2019, that authority was limited to the Approved Endorsements referred to in paragraph 8(i) of this Defence, and Endorsement 23 (if valid and effective, which is denied) was not an Approved Endorsement;

(iv) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 23 was not an endorsement of those kinds;

(v) Endorsement 23 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(vi) of the following matters:

(A) Endorsement 23 purported to vary the 2019 Policy;

(B) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party; and

(C) Endorsement 23 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(i) that by reason of the matters in paragraphs 102(f) to 102(h)(vi) of this Defence, and each of them individually, Endorsement 23 was invalid, of no effect and not binding on or enforceable as against IAL;

(j) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Endorsement 23:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 23;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 23; and

(iii) by reason of the matters in paragraphs 102(j)(i) and 102(j)(ii) of this Defence Endorsement 23 is invalid, of no effect and not binding on or enforceable as against IAL;

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 23 had been issued;

(ii) Endorsement 23 had been purportedly issued:

(A) in circumstances where the IAL AAR Agreement had come to an end; and

(B) further, or alternatively, in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements.

(l) executing Endorsement 23 was in breach of BCC's obligation under the CGU AAR Agreement to perform the "Authorised Services" in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 102(a) to 102(k) of this Defence.

(m) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 23 because entering into Endorsement 23 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 102(a) to 102(l) of this Defence.

(n) Greensill Bank knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 23 on behalf of IAL.

Particulars

Paragraphs 66A(a) to 66A(k), 86(k) and 102(g)(i) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 102(e) of this Defence) that TMMA had acquired BCC on 9 April 2019.

103 As to paragraph 103 of the SOC, IAL:

(a) says that Brereton signed Endorsement 23;

(b) repeats paragraph 102 of this Defence; and

(c) otherwise denies paragraph 103 of the SOC.

104 As to paragraph 104 of the SOC:

(a) says that Endorsement 23 stated that it was "effective on the Commencement Date 2020" but the "Commencement Date" is not defined;

(b) repeats paragraph 102 of this Defence; and

(c) otherwise denies paragraph 104 of the SOC.

105 IAL denies paragraph 105 of the SOC and repeats paragraph 102 of this Defence.

106 IAL denies paragraph 106 of the SOC and repeats paragraph 102 of this Defence.

D.9 BCC had authority to execute Endorsement 23

107 IAL denies paragraph 107 of the SOC and repeats paragraph 102 of this Defence.

108 As to paragraph 108 of the SOC, IAL:

(a) repeats paragraph 102 of this Defence;

(b) repeats, in answer to the whole of paragraph 108 of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of BCC with respect to Endorsement 23 and its conduct referred to in paragraph 108 of the SOC; and

(c) denies paragraph 108 of the SOC.

108A As to paragraph 108A of the SOC, IAL:

(a) repeats paragraphs 82 and 102 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 108A of the SOC.

D.10 Greg Brereton had authority to execute Endorsement 23

109 IAL denies paragraph 109 of the SOC and repeats paragraph 102 of this Defence.

110 As to paragraph 110 of the SOC, IAL:

(a) repeats paragraph 102 of this Defence;

(b) repeats, in answer to the whole of paragraph 110 of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of Brereton with respect to Endorsement 23 and his conduct referred to in paragraph 110 of the SOC; and

(c) denies paragraph 110 of the SOC.

110A As to paragraph 110A of the SOC, IAL:

(d) repeats paragraphs 82 and 102 of this Defence; and

(e) otherwise, does not know and cannot admit paragraph 110A of the SOC.

E THE BLUESTONE TRANSACTION

E.0 INTRODUCTION TO COVERAGE ISSUES

110a Paragraphs 111 to 190 of the SOC are directed to issues of "coverage" that is, whether the 2019 Policy (and endorsements), if valid and effective, which IAL denies, respond to the claim.

110AA In response to the whole of paragraphs 111 to 190 of the SOC, IAL says:

(a) the Applicants' case on coverage depends on propositions as to the proper construction of the 2019 Policy, endorsements (or purported endorsements) thereto and underlying instruments and agreements as between (inter alia) GCUK, Bluestone Resources Inc (**Bluestone Resources**) and others;

(b) the SOC largely does not articulate with precision, or at all, the constructional propositions which underpin the Applicants' case and, to a large extent, the Applicants' case pleads ultimate conclusions, rather than the material facts warranting such conclusions;

(c) in pleading this Defence, IAL has, where possible, sought to expose the underlying and implicit constructional propositions which underpin the Applicants' case;

(d) further, in pleading this Defence, IAL has, where possible, sought to identify possible constructions of the 2019 Policy, the endorsements relied on and the underlying instruments, with a view to alleging in each case that, on the hypothesised construction, there is no coverage;

(e) IAL was not a party to the 2019 Policy, the endorsements or any of the underlying instruments pleaded by the Applicants, does not know the circumstances in which they were entered into (if at all), does not know all of the facts comprising the factual matrix in which they are to be construed and does not know whether the instruments relied on by the Applicants identify, or identify exhaustively, the legal relations of the parties to them;

(f) in the circumstances, where IAL asserts below a construction of the 2019 Policy, an endorsement or an underlying instrument, it does so on the basis that it does not admit that construction or that the relevant document is what it is alleged to be by the Applicants, but is instead identified for the purposes of advancing an argument to the effect that if the instrument was valid and effective and bore the alleged construction (which is not admitted), then the pleaded consequences follow;

(g) for the avoidance of doubt, where it advances a construction below, that construction is not admitted, but is instead advanced for the purposes of identifying why, on the hypothesised construction, there is no coverage;

(h) IAL will seek disclosure in relation to the matters the subject of paragraphs 111 to 190 of the SOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced; and

(i) admissions by IAL as to the existence and terms of agreements and other documents alleged in paragraphs 111 to 190 of the SOC are made subject to the reservation referred to in the preceding subparagraphs.

110B Except where identified otherwise, the allegations in paragraphs 111 and onwards of this Defence proceed on the assumption, which is denied, that the 2019 Policy (and alleged endorsements thereto) are valid, effective and binding and enforceable against IAL.

110C In response to the whole of paragraphs 111 to 190 of the SOC, IAL says that the following are necessary conditions of the Applicants' entitlement (if any) to indemnity:

(a) there must be an "Asset" or "Assets" (2019 Policy clause 1.1, clause 3.1; definition of "Loss"; Endorsement 23 (if valid and effective, which is denied));

(b) there must be an "Eligible Debt" (2019 Policy clause 1.1, clause 3.1; definition of "Insured Cause");

(c) there must be a failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date" (2019 Policy clause 1.1, clause 3.1; definition of "Insured Cause");

(d) there must be a "Loss" or "Losses" suffered by the "Insured", which are caused by or result from the occurrence of the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date" (2019 Policy clause 1.1); and

(e) the "Loss" or "Losses" must be quantified in accordance with the 2019 Policy and Endorsement 23 (if valid and effective, which is denied) (as to which IAL refers to and repeats paragraph 102 of this Defence).

E.0.1 "Asset"

110D In respect of the condition that there be an "Asset" or "Assets", IAL says the following:

(a) the SOC does not articulate with precision the "Asset" (or "Assets") relied on by the Applicants;

(b) if and to the extent that the Applicants allege that:

(i) the "Assets" were the Bluestone and Blackstone Notes (SOC, paragraph 163);

(ii) the Bluestone and Blackstone Notes were "Notes" for the purpose of the 2019 Policy (SOC, paragraph 162),

then IAL pleads as set out in paragraphs 110D(c) to 110D(v) of this Defence;

(c) the 2019 Policy provides for three, and only three, kinds of "Assets" (2019 Policy Sch 1, definition of "Asset");

(d) if an asset does not meet the description of one or more of the kinds of "Assets" identified in Sch 1, then it is not an "Asset";

(e) one of the kinds of "Asset" provided in Sch 1 is a "Note";

(f) the Applicants allege that:

(i) the Bluestone and Blackstone Notes were "Notes" (see SOC, paragraph 162), and the Applicants do not contend that the Bluestone and Blackstone Notes were "Assets" for any other reason;

(ii) the Bluestone and Blackstone Notes were "Assets" by reason of the allegations at paragraphs 156-157 and 165 of the SOC (SOC, paragraph 163);

(g) paragraphs 156, 157 and 165 of the SOC (as referred to in paragraph 163 of the SOC) do not identify any basis for the allegation that the Bluestone and Blackstone Notes were "Assets";

(h) an Asset is a "Note" only if (inter alia):

(i) it is a "Note" relating to "Eligible Debt(s)" (2019 Policy Sch 1, definition of "Asset");

(ii) it is a "Note" issued by the "SPV" in order to raise funds (the 2019 Policy Sch 1, definition of "Asset");

(iii) it is a "Note" issued by the "SPV" to allow the "SPV" to purchase either a participation in the relevant "Participant Trust" or, alternatively, "Eligible Debts" (2019 Policy Sch 1 definition of "Asset");

(iv) it is a note (2019 Policy Sch 1, definition of "Note");

(v) it is a note, which is constituted by the "Master Trust Deed", being a master trust deed:

(A) which is entered into by an "SPV" (as defined, and which includes Hoffman S.à.r.l (**Hoffman**)), TMF Luxembourg SA and Citibank N.A., London Branch; and

(B) which sets out the form and terms and conditions of the Notes issued by the SPV and by which the Notes issued by the SPV are constituted,

(2019 Policy Sch 1, definitions of "Note" and "Master Trust Deed");

(vi) the note is for the time being outstanding (2019 Policy Sch 1, definition of "Note"); and

(vii) the note was issued pursuant to the "Issue Documents" as defined in the "Master Trust Deed" (2019 Policy Sch 1, definition of "Note");

(i) a "Participant Trust" is a trust created by the "Servicer" (being, GCUK) as grantor by virtue of a trust deed in favour of the "Trustee" (being, Citibank N.A., London Branch in its capacity as the trustee of a "Participant Trust") in respect of "Trust Property" (2019 Policy Sch 1, definition of "Participant Trust");

(j) the Applicants do not make any allegation as to the existence of a "Participant Trust";

(k) the Applicants allege that the applicable "SPV" is Hoffman because they allege that Hoffman issued the Bluestone and Blackstone Notes (SOC, paragraph 159);

(l) an asset is an "Asset" only if it is derived from an "Eligible Debt" (Endorsement 23 (if valid and effective, which is denied); 2019 Policy clause 3.1; Sch 7);

(m) the Applicants do not plead any material facts capable of establishing that the Bluestone and Blackstone Notes were:

(i) issued by Hoffman, as the applicable "SPV", in order to raise funds;

(ii) issued by Hoffman to allow it to purchase a participation in a relevant "Participant Trust" or "Eligible Debts";

(iii) notes constituted by a "Master Trust Deed" (as defined);

(iv) notes issued pursuant to the "Issue Documents" as defined in the "Master Trust Deed"; and

(v) at material times outstanding;

(n) for reasons set out in paragraph 110E of this Defence, the Applicants do not plead any material facts capable of establishing that the Bluestone and Blackstone Notes:

(i) related to an "Eligible Debt";

(ii) derived from an "Eligible Debt"; and

(iii) derived from a debt owed by an "Eligible Customer";

(o) to the extent that the Applicants allege that the relevant "Master Trust Deed" is the Lagoon Farm: Master Trust Deed dated 13 October 2017 (**Hoffman Master Trust Deed**), that Deed is not a "Master Trust Deed" at least because TMF Luxembourg SA is not (and is not pleaded by the Applicants to be) a named party to the Hoffman Master Trust Deed (SOC, paragraph 159);

(p) there can be an entitlement to an indemnity in respect of a "Loss" suffered in relation to an "Asset" only if the "Asset" was:

(i) owned by the "Insured" at the time "Loss" was suffered (2019 Policy clause 3.1; definition of "Claim", Sch 1; Sch 7);

(ii) owned by the "Insured" at the time of the "Insured Cause" (2019 Policy clause 3.1; Sch 7)

(iii) owned by the "Insured" during the "Policy Period" (2019 Policy clause 4.1); and

(iv) owned by the "Insured":

(A) immediately prior to the making of a "Claim" (2019 Policy clause 3.1; definition of "Claim", Sch 1; definition of "Loss"); or

(B) alternatively, prior to the payment of a "Claim" (2019 Policy, definition of "Loss"; Endorsement 23 (if valid and effective, which is denied));

(q) the alleged "Policy Period" started no earlier than 22 February 2019 (2019 Policy, Schedule 1, definition of "Commencement Date") and ended on 22 February 2020 or, alternatively, 1 March 2020 or, alternatively, no later than 1 March 2021 (Endorsement 17 and Endorsement 18, if valid and effective, which is denied) and, thus, there can be an entitlement to an indemnity in respect of an "Asset" only if the "Asset" was owned by an "Insured" (or alternatively by an "Insured" or a "Loss Payee") during the relevant "Policy Period";

(r) IAL denies that Endorsements 17 and/or 18 were valid and effective to bind IAL or extend the end of the "Policy Period" of the 2019 Policy (if valid and effective, which is denied) from 1 March 2020 to 1 March 2021 (as to which, IAL refers to and repeats paragraphs 90 to 97 of this Defence);

(s) the Applicants allege (which is not admitted) that Greensill Bank (which is an alleged "Insured") acquired the Bluestone and Blackstone Notes between 11 September 2020 and 26 February 2021 (SOC, paragraph 161);

(t) in the event that the Bluestone and Blackstone Notes were (as alleged) acquired by Greensill Bank between 11 September 2020 and 26 February 2021 (SOC, paragraph 161) then:

(i) there is no coverage in respect of the Bluestone and Blackstone Notes acquired after the expiry of the "Policy Period" on 22 February 2020 or, alternatively, 1 March 2020 or, alternatively, 1 March 2021 and which were not owned by Greensill Bank before then;

(ii) there is no coverage in respect of any of the Bluestone and Blackstone Notes because the "Policy Period" expired on 22 February 2020 or, alternatively, 1 March 2020, which was prior to between 11 September 2020 and 26 February 2021 when the "Assets" were alleged to have been acquired by Greensill Bank;

(u) the Bluestone and Blackstone Notes are not "Assets" and there is no pleaded basis for a conclusion that they are "Assets";

(v) it puts the Applicants to proof on each element necessary to establish that the Bluestone and Blackstone Notes to be "Assets"; and

(w) it denies that the Bluestone and Blackstone Notes are "Assets".

E.0.2 Eligible Debt

110E In respect of the condition that there be an "Eligible Debt", IAL says the following:

(a) the Applicants allege, or implicitly allege, that the obligations of Bluestone Resources referred to at paragraphs 167 and 168 of the SOC (being, as best IAL understands the Applicants' case the Bluestone Guarantor Obligations defined at paragraph 173 of the SOC) were:

(i) "Debts" within the meaning of limb (ii) of the definition of "Debt" in Part B of Debt Endorsement 2(iv) (SOC, paragraph 167); and

(ii) "Eligible Debts" within the meaning of Sch 7 of the 2019 Policy (SOC, paragraph 169; the reference to SOC, paragraphs 166 to 167 appears to be an error); and

(b) the Bluestone Guarantor Obligations (referred to at paragraphs 167 to 168 and 173 of the SOC) comprise a guarantee which was:

(i) given by (inter alia) Bluestone Resources (SOC, paragraphs 136, 139, 167);

(ii) given to GCUK (SOC, paragraph 136);

(iii) a guarantee of the obligations of Bluestone Coal and Blackstone under the RPA (SOC, paragraphs 136, 139, 140 and 167);

(iv) given under the Group Guarantee (as defined in paragraph 136 of the SOC);

(c) the Applicants rely (and rely only) on Part B of Debt Endorsement 2(iv) (SOC, paragraph 167);

(d) in order for a debt to be an "Eligible Debt", the following conditions under Sch 7 of the 2019 Policy must be satisfied at the time the "Asset" is acquired by the "Insured" (which, here, is alleged to be between 11 September 2020 and 26 February 2021 (SOC, paragraph 161)):

(i) the obligor must be a "Customer", being a "Customer" endorsed to the 2019 Policy under a "Customer Endorsement", who is a debtor in respect of a "Debt" (2019 Policy Sch 7; definition of "Customer");

(ia) the obligor must be an "Eligible Customer" (2019 Policy, clause 3.1);

(ii) the obligor must be not an "Affiliate" of any of the parties to the "Transaction Documents" (other than any "Origination Documentation") (2019 Policy Sch 7);

(iii) the obligor must be a "corporate entity" (2019 Policy Sch 7);

(iv) the obligor must be not "Insolvent" (2019 Policy Sch 7, clause 10.2), which includes circumstances in which any corporate action, legal proceedings or other procedure or step is taken for (inter alia) winding up, administration or reorganisation;

(v) the obligor must have a "Customer Limit" (2019 Policy Sch 7);

(vi) the "Customer Limit" must be established in accordance with the terms of the 2019 Policy (2019 Policy Sch 7);

(vii) the debt must have a "Due Date", being:

(A) in the event that Debt Endorsement 2(iv) is valid and effective (which is denied), the date the "debt" becomes due and payable pursuant to the relevant "Origination Documentation" (as defined in Part B of Debt Endorsement 2(iv)) (Debt Endorsement 2(iv), Part B, Additional Conditions 1(e));

(B) otherwise, a date stated in the "Platform" (being an electronic platform used by GCUK from time to time into which details of "Suppliers" and/or "Customers", "Debts", "Due Dates" and other related information is recorded) as the date by which payment of the "Debt" by the "Customer" is required to be made (2019 Policy Sch 7; definition of "Due Date" and definition of "Platform");

(viii) the "Due Date" must not exceed the "Maximum Tenor", being a period set out in a relevant "Debt Endorsement" or "Customer Endorsement" (2019 Policy Sch 7; definition of "Maximum Tenor");

(ix) the debt must not be outstanding after its "Due Date" (2019 Policy Sch 7);

(x) there must (on the proper construction of the 2019 Policy and, in particular, Sch 7) be in place a "Debt Endorsement" or "Customer Endorsement" which stipulates, in respect of the debt a "Maximum Tenor";

(xi) the debt must be denominated and payable only in an "Approved Currency" (2019 Policy Sch 7); and

(xii) the debt must satisfy any further criteria set out in the relevant Debt Endorsement relating to the "Debt" (2019 Policy Sch 7), with the relevant Debt Endorsement here being Part B of Debt Endorsement 2(iv);

(e) it denies that Debt Endorsement 2(iv) is valid and effective to bind IAL (as to which it refers to and repeats paragraph 149 of this Defence);

(f) if Debt Endorsement 2(iv) is valid and effective (which is denied), the following are necessary conditions for a debt to satisfy the criteria within the meaning of limb (ii) of the definition of "Debt" in Part B of Debt Endorsement 2(iv):

(i) there must be a "debt", being an obligation to pay a sum of money;

(ii) the "debt" must be "originated in an accounts receivable purchase program";

(iii) the program must be one in which "Debts" are due from a "Customer" (which is a "Seller") or a guarantor of a "Seller's" obligations;

(iv) the program must be one in which "Debts" are due from a person who is either a "Seller", or an "Underlying Seller" (or, as the case may be, "servicer") in relation to its obligations relating to certain accounts receivable or, alternatively, a guarantor of one or more "Sellers'", or an "Underlying Seller's" (or, as the case may be, "servicer's") obligations in relation to certain accounts receivable;

(v) there must be an amount payable;

(vi) there must be a "Customer", being a person who:

(A) is a "Customer" within the meaning of the 2019 Policy;

(B) is endorsed to the 2019 Policy under a "Customer Endorsement";

(C) is a debtor in respect of a "Debt";

(D) receives goods or services from the "Supplier"; and

(E) has undertaken to make payment to the "Supplier" in consideration for the supply of the goods or services;

(vii) there must be a "Supplier", being a person that has provided goods and/or services to a "Customer" and in relation to which an accounts receivable is created;

(viii) there must be a "Receivables Purchase Agreement", being either:

(A) an agreement:

a. meeting the description of being a receivables purchase agreement;

b. entered into between the "Servicer" (i.e. GCUK) (and/or an "Affiliate" of GCUK or a third party) (described as a "Buyer") and a "Supplier" (and/or an "Affiliate" of a "Supplier") or "Suppliers" (described as a "Seller"); and

c. pursuant to which a “Buyer” acquires accounts receivable with recourse from one or more “Sellers”; or

(B) an agreement:

a. meeting the description of being a receivables purchase agreement;

b. entered into between a “Seller” and one or more “Affiliates” of such “Seller”; and

c. pursuant to which a “Seller” acquires accounts receivable with recourse from one or more “Underlying Sellers”;

(ix) the amount must be payable in the circumstances described in limb (ii) of the definition of “Debt”:

(A) there must be obligations owed by a “Customer” of the kind described in limb (i) of the definition of “Debt”, being:

a. the amount must be payable by a “Customer” under its obligation as “Seller”, “Underlying Seller” or as the case may be, “servicer” under a “Receivables Purchase Agreement”;

b. the obligation of the “Customer” must be an obligation to repurchase or provide an indemnity payment or make a payment of collections with respect to accounts receivable sold by the “Seller” pursuant to the “Receivables Purchase Agreement”;

c. so far as the obligation of the “Customer” is an obligation to repurchase or provide an indemnity, the obligation must be one which is triggered by one or more “Repurchase Events”;

(B) the amount must be payable by a “Customer”;

(C) the amount must be payable under a guarantee given by the “Customer”;

(D) the guarantee must be given to or for the benefit of “Servicer” (i.e. GCUK);

(E) the guarantee must guarantee the obligations referred to in limb (i) of the definition of "Debt";

(g) on the Applicants' case, Bluestone Resources' obligation as guarantor to meet the obligations of Bluestone Coal and Blackstone (i.e. as best IAL understand the Applicants' case to be the Bluestone Guarantor Obligations) is a "Debt" within the meaning of limb (ii) of the definition of "Debt" in Part B of Debt Endorsement 2(iv) because:

(i) Bluestone Resources was a "Customer" (SOC, paragraph 167(a));

(ii) each amount was payable by Bluestone Resources under a guarantee (being, the Group Guarantee as defined in paragraph 136 of the SOC), which was given to or for the benefit of the "Servicer" (SOC, paragraph 167(b)); and

(iii) the Group Guarantee guaranteed Bluestone Coal and Blackstone's obligations referred to in limb (i) of the definition "Debt" in Part B of Debt Endorsement 2(iv), being Bluestone Coal and Blackstone's repurchase obligations under the RPA (SOC, paragraph 167(c));

(h) the Applicants have not identified the basis on which it is said that the Bluestone Guarantor Obligations met the description in Part B of Debt Endorsement 2(iv), including whether and, if so, why each (or any) of the conditions identified in paragraph 110E(f) of this Defence is met;

(i) the Applicants do not plead any material facts capable of establishing:

(i) the "accounts receivable purchase program" for the purpose of the chapeau to Part B of Debt Endorsement 2(iv);

(ii) the circumstances establishing that the "Debts" were originated in the course of any such program;

(iii) the "Customer", the "Seller", and/or the "Underlying Seller";

(iv) the basis on which it is said that any "Receivables Purchase Agreement" meets the description in Part B of Debt Endorsement 2(iv);

(v) the limb of the definition of "Debt" in Part B of Debt Endorsement 2(iv) relied on;

(vi) the circumstances which establish that the Bluestone Guarantor Obligations meet the description in the relevant limb of the definition of "Debt";

(vii) the relevant accounts receivable;

(ia) it says that:

(i) on the proper construction of Part B of Debt Endorsement 2(iv), there was not a "Debt" unless there was in existence, at all material times, as between a "Customer" and a third party:

(A) an existing account receivable;

(B) alternatively, an existing account receivable or a certain or, alternatively, probable future account receivable;

(C) alternatively, an existing account receivable or a future account receivable in respect of which there was a reasonable expectation (on the part of the "Customer" and the person acquiring the account receivable or, alternatively, the "Customer" or, alternatively, the person acquiring the account receivable) or, alternatively, expectation (on the part of the "Customer" and the person acquiring the account receivable or, alternatively, the "Customer" or, alternatively, the person acquiring the account receivable) that it is likely to come into existence;

(ii) at all material times, in respect of each or, alternatively, most or, alternatively, some of the Bluestone Guarantor Obligations relied on by the Applicants, the “Receivables” referred to in paragraph 155 of the SOC the subject of the alleged sales:

(iii) were in amounts bearing no relationship to any existing, likely or reasonably expected future rights as between Bluestone Coal or Blackstone and a third party;

(iv) were in amounts and/or in respect of third parties which were inserted in documents by GCUK and not by Bluestone Coal and/or Blackstone;

(v) at all material times, in respect of each or, alternatively, most or, alternatively, some of the Bluestone Guarantor Obligations relied on by the Applicants:

(A) there was no existing account receivable;

(B) there was no certain future account receivable;

(C) there was no probable future account receivable;

(D) there was no reasonable expectation (on the part of Bluestone Coal, Blackstone and/or GCUK) that a future account receivable would come into existence;

(E) there was no expectation (on the part of Bluestone Coal, Blackstone and/or GCUK) that a future account receivable would come into existence;

(ib) it says that the Bluestone Guarantor Obligations did not satisfy the conditions in Schedule 7 of the 2019 Policy because:

(i) in order to be an "Eligible Debt", the debt must meet the description in Schedule 7 of the 2019 Policy at the time the relevant "Asset" is acquired by the "Insured";

(ii) one of the conditions in Schedule 7 is that the debt must not be outstanding after its "Due Date";

(iii) the "Due Date", in respect of a "Debt", is the date stated in the "Platform" as the date by which payment of the "Debt" by the "Customer" is required to be made;

(iv) on the Applicants' pleaded case, Bluestone Resources guaranteed the obligations of Bluestone Coal and Blackstone under the RPA (SOC, paragraph 136; see also sections 1 and 2 of the Group Guarantee);

(v) on the Applicants pleaded case, and having regard to the terms of the RPA, Bluestone Coal and/or Blackstone represented and warranted (see SOC, paragraph 123; RPA clause 2; Exhibit C-1(b), (c)) on each "Purchase Date", being the date on which GCUK purchases "Receivables", the applicable "Seller" was the legal and beneficial owner of each "Applicable Receivable" (SOC, paragraph 123(c));

(vi) on the Applicants' pleaded case, it was a term of the RPA that an "Event of Repurchase" occurs when (inter alia) any representation or warranty by a "Seller" under the RPA with respect to any "Purchased Receivables" was incorrect when made or deemed made (SOC, paragraph 126(a));

(vii) on the Applicants' pleaded case, it was a term of the RPA that if an "Event of Repurchase" occurred, then a "Seller" would repurchase all the "Purchased Receivables" then outstanding affected by the "Event of Repurchase" at GCUK's option and demand (SOC, paragraph 126(b));

(viii) an “Event of Repurchase” occurred upon the sale, or purported sale, of the “Receivables” referred to in paragraph 155 of the SOC because:

(A) at the time each or, alternatively, most or, alternatively, some of those “Receivables” were sold or purportedly sold:

a. there was not in existence an existing account receivable owed to Bluestone Coal or Blackstone the subject of the purported sale;

b. there was not in existence a certain or, alternatively, probable future account receivable owed to Bluestone Coal or Blackstone the subject of the purported sale;

c. there was not in existence a reasonable expectation (on the part of Bluestone Coal, Blackstone and/or GCUK) or, alternatively, an expectation (on the part of Bluestone Coal, Blackstone and/or GCUK) as to the existence of a future account receivable owed to Bluestone Coal or Blackstone the subject of the purported sale;

(B) at the time, Bluestone Coal and/or Blackstone were not the legal and beneficial owner of each “Applicable Receivable” or any relevant receivable;

(ix) upon the sale, or purported sale, of each of the “Receivables” referred to in paragraph 155 of the SOC:

(A) Bluestone Coal and/or Blackstone became immediately liable to repurchase all the “Purchased Receivables”, subject to the condition subsequent of the existence of an option or demand from GCUK;

(B) Bluestone Resources became immediately liable, under the Guarantee, to discharge Bluestone Coal and/or Blackstone’s obligation/s to repurchase all the “Purchased Receivables”;

(x) on the Applicants' pleaded case, at all material times:

(A) Bluestone Coal and/or Blackstone did not discharge any obligation to repurchase the “Purchased Receivables” (SOC, paragraph 172);

(B) Bluestone Resources has not discharged its obligation to guarantee Bluestone Coal and/or Blackstone obligation/s to repurchase the “Purchased Receivables”;

(xi) at all material times:

(A) the debt of Bluestone Resources, constituted by the amount owing pursuant to the obligation referred to in sub-paragraph (x)(B), was outstanding after its due date;

(B) it is to be inferred that that debt was also outstanding after its “Due Date” within the meaning of the 2019 Policy;

(xii) at the time that Greensill Bank acquired the Bluestone and Blackstone Notes (as pleaded in SOC, paragraph 161), the alleged Bluestone Guarantor Obligations were outstanding after their “Due Date”;

(xiii) further or alternatively as at the “Purchase Request Date” referred to in paragraph 155 of the SOC, each “Seller” had an obligation to indemnify GCUK, which was allegedly the subject of a guarantee by Bluestone Resources Inc, and each such guarantee obligation was immediately outstanding and thus outstanding after its “Due Date” and that remained the case at the date of any purported acquisition of an “Asset” said to be derived from each such debt;

(ic) further, or alternatively, that the Bluestone Guarantor Obligations were not "Debts" for the purposes of Part B of Debt Endorsement 2(iv) because it is a necessary condition of a debt being a "Debt" that there in fact be an extant obligation to pay an amount and, as best IAL understands the Applicants' case, the "debts" relied on by the Applicants, in whole or in part, were possible future obligations, rather than extant obligations and/or otherwise did not meet the criterion;

(j) it says that the Bluestone Guarantor Obligations were not “Eligible Debts” because:

(i) it is a necessary condition of the existence of an “Eligible Debt” that there is a “Debt”, and for the reasons set out in paragraphs 110E(h) to 110E(i) of this Defence, there is not a “Debt”;

(ii) it is a necessary condition of the existence of an “Eligible Debt” that the obligor is a “Customer” and for reasons set out in paragraph 146 of this Defence, Bluestone Resources was not a “Customer”;

(iii) it is a necessary condition of the existence of an "Eligible Debt" that the obligor has a "Customer Limit" established in accordance with the terms of the 2019 Policy, and for the reasons set out in paragraph 146 of this Defence, Bluestone Resources did not have a "Customer Limit";

(iv) it is a necessary condition of the existence of an "Eligible Debt" that there is a maximum tenor, and the Applicants concede that there was no maximum tenor under Customer Endorsement 5 (see SOC, paragraph 169(e));

(v) it is a necessary condition of a debt meeting the description in limb (ii) of the definition of "Debt" in Part B of Debt Endorsement 2(iv) that there be a guarantee of obligations referred to in limb (i) of that definition and that, in turn, requires that there be an amount payable by a "Customer" under a "Receivables Purchase Agreement", but neither Bluestone Coal nor Blackstone (the potential "Sellers" under the RPA (as amended)) were "Customers";

(k) it says further that the Bluestone Guarantor Obligations did not satisfy the conditions in Sch 7 of the 2019 Policy because:

(i) in order to be an "Eligible Debt", the debt must meet the description in Sch 7 of the 2019 Policy at the time the relevant "Asset" is acquired by the "Insured";

(ii) one of the conditions in Sch 7 is that the debt must not be outstanding after its "Due Date";

(iii) on the Applicants' pleaded case (the truth of which is not admitted), the Bluestone Guarantor Obligations in whole or in part arose in the circumstances alleged in paragraph 168 of the SOC;

(iv) in the circumstances alleged in paragraph 168 of the SOC, the Bluestone Guarantor Obligations arose immediately upon, and were outstanding on and from, the "Purchase Date" (RPA clause 2) or, alternatively, immediately upon the suffering of loss (RPA clause 5(b));

(v) on the Applicants' pleaded case (the truth of which is not admitted), the Bluestone and Blackstone Notes (i.e. as best IAL understand the Applicants' case to be, the "Assets") were acquired by the "Insured", Greensill Bank, between 11 September 2020 and 26 February 2021 (SOC, paragraph 161);

(vi) the time at which the "Debts" were outstanding preceded the acquisition of the Bluestone and Blackstone Notes by Greensill Bank;

(vii) in the premises, the Bluestone Guarantor Obligations were outstanding after their "Due Date";

(viii) in the premises, the Bluestone Guarantor Obligations did not meet the description of an "Eligible Debt" at the critical time;

(ka) it says that:

(i) the "warranties" referred to in the definition of "Eligible" included the warranties given by the "Insured" in the "Proposal" (the 2019 Policy, clause 7.3);

(ii) the "Proposal" is the document in the form contained in Schedule 2 and submitted by the "Insured" to the "Insurer" in order to obtain the insurance (the 2019 Policy, definition of "Proposal", Schedule 1);

(iii) the "Proposal" form in Schedule 2 contains two warranties which are an integral part of the "Proposal" and, on the proper construction of the 2019 Policy, must be given by the "Insured" to the "Insurer"; and

(iv) on the proper construction of the 2019 Policy and/or in order to give business efficacy to the 2019 Policy, if there was no "Proposal" submitted by the "Insured" to the "Insurer", then (relevantly) there was and could be no "Eligible Customer" in respect of the policy;

(kb) it denies that the Bluestone Guarantor Obligations were capable of being "Eligible Debts" and/or otherwise the subject of coverage under the 2019 Policy because:

(i) it is a condition of a debt being an "Eligible Debt" or, further or alternatively, there being coverage in respect of the debt, that it is owed by an "Eligible Customer";

(ii) the "Eligible Customers" relied on by the Applicants are Bluestone Resources and/or the Account Debtor Customers (as defined in paragraph 143 of the SOC); and

(iii) Bluestone Resources and/or the Account Debtor Customers were not "Eligible Customers" because, at all material times, no "Proposal" at all, or no "Proposal" containing the required warranties, was submitted to the "Insurer";

(l) it puts the Applicants to proof on each condition necessary for the Bluestone Guarantor Obligations to be "Eligible Debts"; and

(m) it denies that the Bluestone Guarantor Obligations were "Debts" and "Eligible Debts".

E.0.3 Failure by a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date"

110F In respect of the condition that there be a failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date", IAL says the following:

(a) the Applicants allege, or implicitly allege, that this condition is satisfied because as at the date of filing the SOC, Bluestone Resources failed to meet its obligations under Bluestone Guarantor Obligations (SOC, paragraphs 174 and 175);

(b) it puts the Applicants to proof on the failure to pay, including the existence of the obligation to pay, the alleged "Backstop Date", and the asserted failure to pay by the "Backstop Date"; and

(c) it denies that there was a relevant failure to pay an "Eligible Debt", including because:

(i) Bluestone Resources was not a "Customer"; and

(ii) the Bluestone Guarantor Obligations were not "Eligible Debts".

E.0.4 "Loss" caused by the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date"

110G In respect of the condition that there must be a "Loss" or "Losses" suffered by the Insured, which is or are caused by or result from the occurrence of the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date", IAL says the following:

(a) IAL denies that Endorsement 23 is valid or effective to bind IAL (as to which it refers to and repeats paragraph 102 of this Defence);

(b) the Applicants allege, or implicitly allege, that:

(i) each of the "Assets" (i.e. the Bluestone and Blackstone Notes) was a "Note" (SOC, paragraphs 162 and 163);

(ii) "Loss" (if any) is assessed under paragraph (iii) of the definition of "Loss" in the 2019 Policy as varied by Endorsement 23 (if valid and effective, which is denied) (SOC, paragraph 189);

(iii) "Loss" is therefore the amount equal to the difference between: (a) the "Expected Allocation" of the Insured in respect of each of the Bluestone and Blackstone Notes; and (b) Greensill Bank's entitlement under the "Master Trust Deed" in respect of any amounts actually paid by the "Customer" or on its behalf in respect of the "Eligible Debt" from which the Note was derived (Endorsement 23 (if valid and effective, which is denied)) (SOC, paragraphs 188 to 189);

(iv) the "Expected Allocation" of the Bluestone and Blackstone Notes was USD 160,000,000, less any amounts received by Greensill Bank under the terms of the Standstill and Forbearance Agreement (referred to in paragraph 186 of the SOC) (SOC, paragraph 188(a));

(v) the value of Greensill Bank's entitlements under the Master Trust Deed as holder of the Bluestone and Blackstone Notes was nil (SOC, paragraph 188(b)); and

(vi) therefore, the "Loss" is USD 160,000,000, less any amounts paid to Greensill Bank under the Standstill and Forbearance Agreement (SOC, paragraph 190).

(c) where the "Asset" is a "Note", each of the following is a necessary condition of there being a "Loss" suffered by the Insured which is caused by or results from the failure of a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date":

(i) each of the conditions identified in paragraph 110D(p) of this Defence;

(ii) the "Asset" must be owned by the "Insured" at the time:

(A) of the "Insured Cause"; and

(B) the "Loss" was suffered (2019 Policy clause 2.1; Sch 7);

(iii) the "Asset" must be owned by the "Insured":

(A) immediately prior to the making of a "Claim" (2019 Policy, clause 3.1; definition of "Claim", Sch 1; definition of "Loss"); or

(B) alternatively, immediately prior to the payment of a "Claim" (Endorsement 23 (if valid and effective, which is denied); 2019 Policy definition of "Loss");

(iv) the "Asset" must be owned by the "Insured", alternatively by the "Insured" or a "Loss Payee", during the "Policy Period" (2019 Policy clause 4.1);

(v) the "Insured" must have an "Expected Allocation" in respect of the "Note" (Endorsement 23 (if valid and effective, which is denied); 2019 Policy definition of "Loss");

(vi) the "Note" must have a "Final Redemption Amount" or "Instalment Amounts", as set out in a "Pricing Supplement" as defined in the "Master Trust Deed" (2019 Policy definition of "Expected Allocation");

(vii) the "Insured" must have a potential entitlement under the "Master Trust Deed" in respect of the "Note" (Endorsement 23 (if valid and effective, which is denied); the 2019 Policy definition of "Loss");

(viii) the cause of the "Insured's" potential entitlement under the "Master Trust Deed" being less than the "Expected Allocation" of the "Insured" in respect of such "Asset" is the failure of the "Customer" to pay the "Eligible Debt" on or before the "Backstop Date" (rather than some other cause) (2019 Policy clause 1.1);

(d) the Applicants do not plead any material facts which establish or are capable of establishing that:

(i) the matters in paragraph 110D(p) of this Defence;

(ii) the asserted "Loss" (being, the difference between the "Expected Allocation" and the value of Greensill Bank's entitlements under the "Master Trust Deed") was caused by or resulted from the occurrence of the alleged Bluestone Resources Default (as defined in paragraph 174 of the SOC), any alleged failure on the part of Bluestone Resources to discharge its alleged payment obligations by the "Backstop Date" and/or the "Insured Cause" alleged at paragraph 175 of the SOC;

(iii) in the counterfactual where the Bluestone Resources Default (or any alleged "Insured Cause") did not occur, the "Loss" would not have been suffered (and no "Loss" would have been caused by the "Insured Cause" if, for example, there was a sufficient alternative reason why the "Insured's entitlements under the Master Trust Deed" were nil, such as the failure to assign a relevant payment obligation to Hoffman);

(iv) [Not used];

(v) [Not used];

(vi) there was a "Master Trust Deed";

(vii) Greensill Bank's entitlements under the "Master Trust Deed", whether in respect of the Bluestone and Blackstone Notes or otherwise, were zero;

(viii) the cause of Greensill Bank's entitlements under the "Master Trust Deed" in respect of Bluestone and Blackstone Notes (or otherwise) being less than the "Expected Allocation" was the alleged Bluestone Resources Default, any alleged failure on the part of Bluestone Resources to discharge its alleged payment obligations by the Backstop Date and/or the "Insured Cause" alleged at paragraph 175 of the SOC;

(e) it says:

(i) it is a necessary condition of an indemnity that the indemnified party in fact have suffered a loss;

(ii) under the 2019 Policy, there is an obligation to indemnify only if there is a loss in fact suffered by the "Insured" arising from the occurrence of an "Insured Cause" (2019 Policy clause 1.1, "Indemnity");

(iii) on the pleaded case, any loss on the part of Greensill Bank does not exceed the amount (if any) actually paid by Greensill Bank to acquire the Bluestone and Blackstone Notes;

(iv) in the premises, there is no coverage or, alternatively, if there is coverage (which is denied), it is confined to the actual loss (if any) suffered by Greensill Bank;

(f) it puts the Applicants to proof on all material facts necessary for the existence of a "Loss" and for the arising on an indemnity under clause 1.1 of the 2019 Policy (if valid and effective, which is denied) or otherwise; and

(g) it denies that there was a "Loss" or "Losses" because of the matters pleaded in paragraphs 110C to 110G of this Defence.

E.0.5 "Loss" quantified in accordance with the 2019 Policy

110H In respect of the condition that the "Loss" or "Losses" must be quantified in accordance with the 2019 Policy (if valid and effective, which is denied), IAL repeats paragraph 110G of this Defence.

E.1 Parties to the transaction

111 IAL admits paragraph 111 of the SOC.

112 IAL admits paragraph 112 of the SOC.

113 IAL admits paragraph 113 of the SOC.

114 IAL admits paragraph 114 of the SOC.

114A In respect of paragraphs 115 to 142, 155, 158 to 161, 164 to 166, 170, 176 to 177 and 181 of the SOC, IAL says generally that:

(a) IAL was not, and is not alleged to be, a party to the documents identified in those paragraphs of the SOC;

(b) Greensill Bank was not, and is not alleged to be, a party to the documents identified in paragraphs 115 to 142, 155, 158 to 160, 165 to 166, 170 and 176 of the SOC;

(c) the Applicants do not allege (and IAL would not be in a position to admit, in any event) that those paragraphs of the SOC exhaustively identify the documents or terms that govern the relationship that exists between the parties to those documents; and

(d) admissions by IAL as to the existence and terms of agreements and other documents alleged in those paragraphs of the SOC are made subject to the reservations referred to in the preceding subparagraphs and in paragraph 110AA of this Defence.

E.1A Notes program

114AB IAL admits paragraph 114A of the SOC.

114B In respect of paragraph 114B of the SOC, IAL:

(a) says that “special purpose vehicle” is not a defined term in “Policy 3690”

(b) says that “Policy 3690” contains a defined term, “SPV”, which encompasses “Hoffman S.a r.l” provided it is a “securitisation company within the meaning of and governed by the Luxembourg Securitisation Act 2004”;

(c) says that it does not know whether Hoffman met that description; and

(d) does not know and cannot admit the paragraph.

114C As to paragraph 114C of the SOC, IAL:

(a) repeats paragraph 110D of this Defence;

(b) says that it is aware of a document said to be dated 13 October 2017, styled "Lagoon Farm: Master Trust Deed" and said to be between Hoffman and Citibank N.A. London Branch (**Hoffman Master Trust Deed**);

Particulars

"Lagoon Farm: Master Trust Deed" dated 13 October 2017 between Hoffman and Citibank N.A., London Branch [CMS.006.001.4240]

(c) says that it is aware of a document described as a "Base Memorandum" under the name of "Hoffman S.a.r.l" as "issuer under its Up To USD 20,000,000,000 Secured Note Lagoon Farm Programme Backed by Relevant Claims", which document is unsigned (**Base Memorandum**);

Particulars

"Base Memorandum" dated 13 October 2017 [CMS.006.001.1028]

(d) says that:

(i) the Hoffman Master Trust Deed was not a "Master Trust Deed" within the meaning of the 2019 Policy at least because TMF Luxembourg SA was not a party to it; and

(ii) the Bluestone and Blackstone Notes were not "issued pursuant to the 'Issue Documents' as defined in the Master Trust Deed";

(iii) any notes issued under the Hoffman Master Trust Deed were not "Notes" within the meaning of the 2019 Policy;

(e) refers to all of the terms of the Hoffman Master Trust Deed (as supplemented) and the Base Memorandum for their full force and effect (if any); and

(f) otherwise does not know and cannot admit paragraph 114C of the SOC.

114D As to paragraph 114D of the SOC, IAL:

(a) says that it is aware of a document said to be dated 21 December 2017, styled a "First Supplement … to the Base Memorandum dated 13 October 2017", which document has been signed by Martijn Sinninghe Damste and Fabrice Rota (**First Supplement**);

Particulars

First Supplement to the Base Memorandum, signed by Martin Sinninghe Damste and Fabrice Rota.

(b) says that it is aware of a document said to be dated 21 December 2017, styled a "Supplemental Master Trust Deed"" (**Supplemental Master Trust Deed**);

Particulars

The Supplemental Master Trust Deed dated 21 December 2017.

(c) says further that TMF Luxembourg SA was not a named party to the First Supplement or the Supplemental Master Trust Deed;

(d) refers to and repeats paragraph 114C of this Defence;

(e) says that:

(i) the Applicants have not pleaded any material facts establishing or capable of establishing that any "Notes" were "issued by Hoffman pursuant to the Hoffman Master Trust Deed";

(ii) under the Hoffman Master Trust Deed (including as supplemented):

(A) a "Note" was issued under the Deed only if it was part of a "Tranche" (cl 11.1);

(B) there was a "Tranche" only if (inter alia) there were Notes "in relation to one or more Relevant Claims from one or more Relevant Obligors and of a particular Relevant Claim Type, each as specified in the applicable Pricing Supplement" (cl 10.1);

(C) no facts are pleaded establishing that any of those conditions were met;

(D) paragraph 114E below is referred to;

(E) there were, in fact, no "Relevant Claims" or "Relevant Obligors" because there were no underlying payment obligations or persons owing payment obligations;

(f) the Bluestone and Blackstone Notes were not issued pursuant to the Hoffman Master Trust Deed;

(g) relies on the terms of the Supplemental Master Trust Deed and the First Supplement to the Base Memorandum for their full force and effect (if any); and

(h) otherwise does not know and cannot admit paragraph 114D of the SOC.

114E As to paragraph 114E of the SOC, IAL:

(a) admits that cl 10.1 of the Supplemental Master Trust Deed includes a definition of "Relevant Claim" corresponding with the quoted text in paragraph 114E of the SOC;

(b) says that in order for a payment obligation to be a “Relevant Claim”, it was necessary (inter alia) for the obligation to be:

(i) a payment obligation;

(ii) a payment obligation “of a Relevant Claim Type”;

(iii) owed by a “Relevant Obligor”;

(iv) acquired by an “Issuer”;

(v) acquired pursuant to arrangements entered into between the “Issuer” and a “Relevant Claims Seller”;

(vi) acquired pursuant to a “Master Assignment Agreement”;

(vii) linked to the relevant “Tranche of Notes”, as specified in the relevant "Pricing Supplement";

(c) says that, in order for a payment obligation to be “of a Relevant Claim Type”, it was necessary that it meet each of the three conditions set out in the definition of “Relevant Claim Type” in cl 10.1;

(d) says that, in order for there to be a “Relevant Obligor”, it was necessary for the conditions set out in the definition of “Relevant Obligor” in cl 10.1 to be met, including that:

(i) the person be a body corporate;

(ii) the person be liable under a “Relevant Claim”;

(iii) the person be liable as a principal obligor or as a guarantor or as other provider of credit support;

(iv) the person be specified in the “Pricing Supplement” relating to the “Tranche of Notes” backed by the “Relevant Claim”;

(e) says that in order for there to be a “Relevant Claims Seller”, it was necessary (inter alia) that:

(i) there be an entity which has entered into a “Master Assignment Agreement” with an “Issuer”;

(ii) that the entity entered into the “Master Assignment Agreement” for the purpose of assigning “Relevant Claims” to the “Issuer”;

(f) says that, in order for there to be a “Relevant Claims Seller”, it was necessary (inter alia) that there be:

(i) a master assignment agreement;

(ii) a master assignment agreement entered into by, at least, an “Issuer”, a “Relevant Claims Seller” and the “Note Trustee”;

(iii) an agreement pursuant to which the “Relevant Claims Seller” will agree to sell, and the “Issuer” will agree to purchase, “Relevant Claims”;

Particulars

Definition of "Master Assignment Agreement", cl 10.1 of the Supplemental Master Trust Deed.

(g) says that “Payment Obligation” was not a defined term in the "Definitions" section at cl 10 of the Supplemental Master Trust Deed;

(h) says that:

(i) having regard to the various definitions in the Supplemental Master Trust Deed, it was not the case that “Payment Obligations acquired by Hoffman from a Relevant Claims Seller pursuant to a "Master Assignment Agreement” were necessarily “Relevant Claims”;

(ii) the SOC does not plead material facts necessary to establish, or capable of establishing, that Payment Obligations acquired by Hoffman from a Relevant Claims Seller pursuant to a Master Assignment Agreement” were “Relevant Claims”, including having regard to the conditions necessary for there to be such “Relevant Claims” pleaded in this paragraph;

(i) otherwise, does not know and cannot admit the paragraph.

114F As to paragraph 114F of the SOC, IAL:

(a) repeats paragraph 114E above;

(b) says that:

(i) in order for the Hoffman MAA to be a “Master Assignment Agreement” within the meaning of the Hoffman Master Trust Deed (as supplemented), it is necessary (inter alia) that it be an agreement under which the “Relevant Claims Seller will agree to sell, and [the] Issuer will agree to purchase, Relevant Claims”;

(ii) the Hoffman MAA provided for the sale by GCUK to a "Purchaser" of "Payment Obligations" and "Additional Rights" (cll 2.1, 3);

(iii) the term "Payment Obligations" in the Hoffman MAA did not correspond with the term "Relevant Claims" in the Hoffman Master Trust Deed (as supplemented);

(iv) there are no pleaded facts which establish, or are capable of establishing, that the Hoffman Master Agreement was an agreement under which the "Relevant Claims Seller will agree to sell, and [the] Issuer will agree to purchase, Relevant Claims";

(c) says further, in respect of the particularised documents:

(i) there are no pleaded facts establishing or capable of establishing that the Supplemental Master Trust Deed and Series Supplement 2 are a "Series Supplement" within the meaning of the Hoffman Master Trust Deed (as supplemented);

(ii) there are no pleaded facts establishing that GCUK is specified as the "Relevant Claims Seller" in the "Product Annex" incorporated into such a "Series Supplement"; and

(d) otherwise, does not know and cannot admit the paragraph.

114G As to paragraph 114G of the SOC, IAL:

(a) admits that on or around 21 December 2017, GCUK, Hoffman and Citibank N.A., London Branch entered into the Master Assignment Agreement (**MAA**);

Particulars

"Master Assignment Agreement" between GCUK, Hoffman and Citibank N.A., London Branch dated 21 December 2017

(b) relies on the terms of the MAA for their full force and effect;

(c) says that:

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

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

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

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

(d) otherwise denies paragraph 114G of the SOC.

114H As to paragraph 114H of the SOC, IAL:

(a) refers to and repeats paragraph 114G(c) of this Defence;

(b) says that the term "Additional Rights" was defined to mean, in respect of any "Payment Obligation" all of GCUK's rights in respect of, or relating to, such "Payment Obligation" including, but not limited to, all rights of GCUK under the "Finance Documentation" (insofar as such rights relate to such "Payment Obligation"), all rights of GCUK in respect of any "Related Security" relating to such "Payment Obligation" and all rights of GCUK in respect of any "Security Filing" and any other security interest held by GCUK in respect of such "Payment Obligation", any relevant "Collection Account" or any "Finance Document", to the extent that such rights are assignable by GCUK;

(c) relies on the terms of the MAA for their full force and effect; and

(d) otherwise denies paragraph 114H of the SOC.

114I As to paragraph 114I of the SOC, IAL:

(a) refers to and repeats paragraphs 114C, 114D and 114G of this Defence;

(b) says that:

(i) there was a term of the Supplemental Master Trust Deed to the effect that the "Notes" of each "Tranche" shall be constituted and secured by these presents on and as of the "Issue Date" specified in the "Pricing Supplement" (of which the relevant "Supplemental Trust Deed" forms part) relating to such "Tranche" (cl 11.1);

(ii) there was a term of the Supplemental Master Trust Deed that each "Issuer" shall, by executing and delivering the "Supplemental Master Trust Deed" in respect of any "Tranche", with full title, guarantee and as continuing security for the payment or discharge of all amounts due and payable by, the delivery of all assets deliverable by, the "Issuer" and any other obligations or liabilities of the "Issuer", in each case, under these presents, to the "Secured Parties", in relation to all "Notes" comprising the "Series" of which such "Tranche" forms a part, effect an assignment, by way of a first ranking assignment in favour of the "Note Trustee", all of its right, title and interest present and future in, to and under, the "Relevant Claims" relating to such "Tranche" and the "Additional Rights" relating thereto whether or not against third parties and all sums and/or assets received or receivable (if any) by such "Issuer" under any such "Relevant Claims" and "Additional Rights", together with the debts represented thereby and all proceeds of such "Relevant Claims" and "Additional Rights" (except to the extent (if any) otherwise provided in such "Supplemental Trust Deed") (cl 18.1(A)(1));

(c) says that, in order for a "Note" (as alleged at SOC paragraph 114I) to be secured, because of the clauses pleaded in paragraph (b) above, by alleged "Payment Obligations" allegedly assigned pursuant to the Hoffman MAA to Hoffman by GCUK, it is necessary (inter alia):

(i) for there to be a "Tranche" of "Notes", meaning (inter alia) that there must:

(A) be a tranche of "Notes" (definition of "Tranche")

(B) be a tranche of Notes issued by an "Issuer" under its "Programme" (definition of "Tranche")

(C) be a tranche of "Notes" issued on a particular date in relation to one or more "Relevant Claims" from one or more "Relevant Obligors" and of a particular "Relevant Claim Type" (definition of "Tranche")

(D) be informed specified in the applicable “Pricing Supplement” (definition of “Tranche”);

(ii) for the relevant “Issuer” to execute and deliver the “Supplemental Trust Deed” in respect of that “Tranche” of “Notes”;

(iii) for there to be “Relevant Claims” within the meaning of the "Supplemental Master Trust Deed”;

(d) says that the SOC does not plead material facts establishing, or capable of establishing, that any of the conditions necessary for the terms in cll 11.1 and 18.1(A)(1) to be engaged, at all or in respect of “Payment Obligations” allegedly assigned pursuant to the Hoffman MAA to Hoffman by GCUK;

(e) says further that there are no pleaded facts establishing or capable of establishing that:

(i) there ever were “Payment Obligations”;

(ii) “Payment Obligations” were assigned by GCUK to Hoffman;

(iii) “Payment Obligations” were assigned by GCUK to Hoffman pursuant to the Hoffman MAA;

(iv) any Notes issued by Hoffman were secured by “Payment Obligations”;

(f) otherwise does not know and therefore cannot admit paragraph 114I of the SOC.

E.2 The Receivables Purchase Agreement

115 As to paragraph 115 of the SOC, IAL:

(a) repeats paragraph 114A of this Defence;

(b) says that IAL was not, and is not alleged to be, a party to the document identified in paragraph 115 of the SOC;

(c) admits that representatives of Bluestone Coal and GCUK appear to have signed an undated document styled as a “Receivables Purchase Agreement”; and

(d) otherwise does not know and cannot admit paragraph 115 of the SOC.

116 As to paragraph 116 of the SOC, IAL:

(a) repeats paragraph 114A of this Defence;

(b) says that IAL was not, and is not alleged to be, a party to the documents identified in paragraph 116 of the SOC;

(c) refers to all of the terms of the particularised letters for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 116 of the SOC.

117 As to paragraph 117 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that, under the RPA (as amended) (defined in paragraph 115 of the SOC), a "Fee Letter" was a fee letter dated as of the date of the RPA (as amended), between Bluestone Resources ("Parent") and GCUK ("Buyer") providing for certain fees to be paid to GCUK by Bluestone Resources from time to time in connection with the transactions contemplated by the RPA, as amended, supplemented or otherwise modified from time to time;

(c) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 117 of the SOC.

118 As to paragraph 118 of the SOC, IAL:

(a) repeats paragraphs 114A and 116 of this Defence:

(b) says that:

(i) the 7 December 2018 Transaction Fee Letter (as defined in the Particulars to paragraph 116 of the SOC) expressly states that it "amends and restates" the 26 September 2018 Transaction Fee Letter (as defined in paragraph 116 of the SOC);

(ii) each of the Transaction Fee Letters (as defined in the Particulars to paragraph 116 of the SOC) dated 29 March 2019, 20 May 2019, 10 June 2019, 6 February 2020, 10 April 2020 and 31 July 2020 expressly states that it "supplements" the 7 December 2018 Transaction Fee Letter;

(iii) each of the Transaction Fee Letters dated 24 September 2020 and 13 October 2020 expressly states that "the parties hereby agree to amend" the 31 July 2020 Transaction Fee Letter (defined in the Particulars to paragraph 116 of the SOC);

(c) refers to all of the terms of each of the Transaction Fee Letters for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 118 of the SOC.

119 As to paragraph 119 of the SOC, IAL:

(a) repeats paragraph 114A and 115 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 119 of the SOC.

120 As to paragraph 120 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that paragraph 120 of the SOC sets out the general effect of the definition of "Receivables" in the RPA (as amended);

(c) says that the defined term "Receivables" included "expected future amounts" which were "intended on any applicable Purchase Date" to become payable", being amounts in respect of which there was no existing obligation to pay;

(d) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(e) otherwise does not know and cannot admit paragraph 120 of the SOC.

121 As to paragraph 121 of the SOC, IAL:

(a) repeats paragraphs 114A, 115 and 119 of this Defence;

(b) says that paragraph 121 of the SOC describes at a general level some of the effects of sections 1(a), 1(b)(1)(i), 1(c) and the definitions of "Proposed Receivables" and "Purchased Receivables" in the RPA (as amended);

(c) says, as to paragraph 121(a) of the SOC, that:

(i) the subject matter of the "Request" was "Proposed Receivables", not "receivables";

(ii) "Proposed Receivables" were, with respect to a "Purchase Date", the "Receivables" proposed by "Seller" to "Buyer" for purchase hereunder and described in a "Request" to be purchased on such "Purchase Date";

(d) says, as to paragraph 121(b) of the SOC, that:

(i) there was a sale (or purported sale) only if the conditions in sections 1(b) and 2 of the RPA (as amended) were met;

(ii) on the proper construction of section 1(a) of the RPA (as amended) and as a matter of general law, where the underlying "Receivable" was not an existing payment obligation, but only a possible future payment

obligation, there was no sale and/or assignment unless and until an obligation came into existence;

(e) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(f) otherwise does not know and cannot admit paragraph 121 of the SOC.

122 As to paragraph 122 of the SOC, IAL:

(a) repeats paragraphs 114A, 115 and 119 of this Defence;

(b) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(c) otherwise does not know and cannot admit paragraph 122 of the SOC.

123 As to paragraph 123 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that paragraph 124 of the SOC describes at a general level some of the effects of section 2 and clauses 1(a), 1(b), 1(c) and 1(m) of Exhibit C-1 and the definition of "Eligible Receivable" in Exhibit A to the RPA (as amended);

(c) says, as to paragraph 123(b) of the SOC, that the relevant representation was that each "Applicable Receivable" was an "Eligible Receivable";

(d) says that the representations and warranties were given on the date on which the party entered into or acceded to the RPA (as amended) and on each "Purchase Date";

(e) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(f) otherwise does not know and cannot admit paragraph 123 of the SOC.

124 As to paragraph 124 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that section 1(b)(1)(ii) of the RPA (as amended) did not contain a promise not to submit a "Request", but instead stipulated a condition precedent to the existence of an obligation on the part of "Buyer" to purchase "Proposed Receivables";

(c) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 124 of the SOC.

125 As to paragraph 125 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that paragraph 125 of the SOC describes at a general level some of the effects of sections 4(a) and 4(c) of the RPA (as amended);

(c) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 125 of the SOC.

126 As to paragraph 126 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that paragraph 126 of the SOC describes some of the effects of section 5(a) of the RPA (as amended);

(c) says that there was an “Event of Repurchase” only if one of the identified events had occurred and was continuing;

(d) says that the words “including with respect to the purported existence of a Receivable” do not appear in section 5(a);

(e) says that the obligation to repurchase only applied to the “applicable Seller” and the “Servicer”;

(f) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(g) otherwise does not know and cannot admit paragraph 126 of the SOC.

127 As to paragraph 127 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that paragraph 127 of the SOC describes at a general level the definition of “Repurchase Price" in Exhibit A to the RPA (as amended);

(c) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 127 of the SOC.

128 As to paragraph 128 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that paragraph 128 of the SOC describes at a general level some of the effects of section 10(e) of the RPA (as amended);

(c) says that section 10(e) did not calculate interest on a per annum basis, but instead on the basis of a year of 360 days;

(d) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(e) otherwise does not know and cannot admit paragraph 128 of the SOC.

129 As to paragraph 129 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that section 1(b)(v) of the RPA (as amended) set out a condition precedent to the existence of a commitment or an obligation on the part of "Buyer" to purchase "Proposed Receivables";

(c) says that the "Maximum Outstanding Purchase Price" was defined in the RPA (as amended) as "$140,000,000" (RPA, Exhibit A ("Certain Defined Terms"));

(d) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(e) otherwise does not know and cannot admit paragraph 129 of the SOC.

130 As to paragraph 130 of the SOC, IAL:

(a) repeats paragraphs 114A, 115 and 129 of this Defence;

(b) says that paragraphs 130(ii) to 130(iv) of the SOC describe at a general level the definition of "Maximum Outstanding Purchase Price" for the purposes of the RPA (as amended) as set out in:

(i) "Increase Amendment to Receivables Purchase Agreement - Supplement to Transaction Fee Letter" dated 29 March 2019;

(ii) "Increase Amendment to Receivables Purchase Agreement - Supplement to Transaction Fee Letter" dated 20 May 2019;

(iii) "Increase to Receivables Purchase Agreement - Supplement to Transaction Fee Letter" dated 10 June 2019;

(iv) "Fee Letter to Increase Amendment to Receivables Purchase Agreement - Supplement to Transaction Fee Letter" dated 6 February 2020;

(v) "Fee Letter to Increase Amendment to Receivables Purchase Agreement - Supplement to Transaction Fee Letter" dated 10 April 2020;

(vi) "Fee Letter to Increase Amendment to Receivables Purchase Agreement - Supplement to Transaction Fee Letter" dated 31 July 2020;

(vii) "Amended and Restated Side Letter to Receivables Purchase Agreement dated as of September 26, 2018" dated 8 January 2021; and

(viii) "Amended and Restated Side Letter to Receivables Purchase Agreement dated as of September 26, 2018" dated 29 January 2021;

(c) refers to all of the terms of the Side Letters to the RPA (as amended), as referred to in the Particulars to paragraph 130 of the SOC, for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 130 of the SOC.

131 As to paragraph 131 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) says that section 1(b)(viii) of the RPA (as amended) stipulated a condition precedent to the arising of an obligation on the part of the "Buyer" to purchase "Proposed Receivables";

(c) says that paragraph 131 of the SOC broadly describes the effect of part of the condition precedent;

(d) says that the "Buyer" was at liberty to waive the condition precedent;

(e) says, in respect of the definitions in Exhibit A of the RPA (as amended), "Affiliate Guarantee" means that certain "Guarantee Agreement" dated as of the date of the RPA (as amended) and provided by the "Parent" and certain other subsidiaries and affiliates of the "Parent" in favour of the "Buyer", as the same may be amended, supplemented or otherwise modified from time to time, and guaranteeing the obligations of the Sellers hereunder;

(f) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(g) otherwise does not know and cannot admit paragraph 131 of the SOC.

132 As to paragraph 132 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence;

(b) refers to all of the terms of the RPA (as amended) for their full force and effect; and

(c) otherwise does not plead to paragraph 132 of the SOC, which makes no allegation against it.

E.3 Guarantees

133 As to paragraph 133 of the SOC, IAL:

(a) repeats paragraph 114A of this Defence;

(b) says that IAL was not, and is not alleged to be, a party to the document identified in paragraph 133 of the SOC;

(c) says that at a time unknown to IAL, James C. Justice II, Cathy L. Justice, James C. Justice III and a representative of GCUK appear to have signed a document styled an "Individual Guarantee";

(d) refers to all of the terms of the Individual Guarantee (as amended) (defined in paragraph 133 of the SOC) for their full force and effect; and

(e) otherwise does not know and cannot admit paragraph 133 of the SOC.

134 As to paragraph 134 of the SOC, IAL:

(a) repeats paragraphs 114A and 133 of this Defence;

(b) says, in respect of sections 2.1(a) to 2.1(b) of the Individual Guarantee (as amended), each "Guarantor" jointly and severally, absolutely, unconditionally and irrevocably, as primary obligor and not merely as surety:

(i) "(a) guarantees the full and punctual payment when due, whether by declaration, demand or otherwise, of all Payment Obligations now or hereafter existing, fees, reimbursement obligations, expenses, indemnities, or otherwise";

(ii) "(b) indemnifies and holds harmless Greensill for any and all costs and expenses (including attorneys' fees and expenses) incurred by Greensill in enforcing any rights under this Guarantee";

(c) says that:

(i) the term "Payment Obligations" is not defined in the Individual Guarantee (as amended);

(ii) the Individual Guarantee (as amended) states that terms used in it have the meanings provide in the "Customer Agreement" (section 1.2);

(iii) the Individual Guarantee (as amended) defines the "Customer Agreement" as "the Customer Agreement dated as of June 14, 2018";

(iv) the SOC does not identify the "Customer Agreement" for the purposes of the Individual Guarantee (as amended);

(v) the SOC does not otherwise define "Payment Obligations";

(d) refers to all of the terms of the Individual Guarantee (as amended) for their full force and effect; and

(e) otherwise does not know and cannot admit paragraph 134 of the SOC.

135 As to paragraph 135 of the SOC, IAL:

(a) repeats paragraphs 114A and 133 of this Defence;

(b) says that IAL was not, and is not alleged to be, a party to the documents identified in paragraph 135 of the SOC;

(c) says that at a time or times known to IAL, James C. Justice II, Cathy L. Justice, James C. Justice III and a representative of GCUK appear to have signed the following:

(i) a document styled as an "Amended and Restated Individual Guarantee";

(ii) a document styled as a "Reconfirmation and Acknowledgement of Amended and Restated Individual Guarantee";

(iii) a document styled as a "Second Amended and Restated Individual Guarantee";

(iv) says that at a time known to IAL, James C. Justice III and a representative of GCUK signed a document appear to have styled as an "Individual Guarantee"

(d) as to paragraph 135(a) of the SOC, says that the Recitals to the Amended and Restated Individual Guarantee dated 26 September 2018 refer to "the Receivables Purchase Agreement, dated as of September _, 2018";

(e) as to paragraph 135(b) of the SOC, says that the paragraph describes at a general level some of the effects of section 1.1 of the Reconfirmation and Acknowledgement of Amended and Restated Individual Guarantee dated 7 December 2018;

(f) as to paragraph 135(c) of the SOC, says that:

(i) pursuant to section 2.1(a) of the Second Amended and Restated Individual Guarantee dated 10 June 2019, James Justice III and Cathy L Justice agreed to guarantee the full and punctual payment, when due, of all "Payment Obligations";

(ii) "Payment Obligations" is defined in section 1.1 of the Second Amended and Restated Individual Guarantee dated 10 June 2019 as "the payment obligations of each Company (Blackstone) under applicable Transaction Documents in connection with the Customer Agreement or the Receivables Purchase Agreement";

(g) refers to all of the terms of the Individual Guarantees (as amended) referred to in the Particulars to paragraph 135 of the SOC for their full force and effect; and

(h) otherwise does not know and cannot admit paragraph 135 of the SOC.

136 As to paragraph 136 of the SOC, IAL:

(a) repeats paragraph 114A of this Defence;

(b) says that IAL was not, and is not alleged to be, a party to the document identified in paragraph 136 of the SOC;

(c) says that, at a time unknown to IAL, representatives of (inter alia) Bluestone Resources appear to have signed a document styled as a "Guarantee Agreement";

(d) says that the SOC does not identify what it means to sign an instrument in an entity's "capacity as Parent";

(e) says that Bluestone Resources was defined as the "Parent" in the Group Guarantee (as amended) (defined in paragraph 136 of the SOC), but that Bluestone Resources did not, on the face of the instrument, sign the guarantee "in its capacity as "Parent"";

(f) refers to all of the terms of the Group Guarantee for their full force and effect; and

(g) otherwise does not know and cannot admit paragraph 136 of the SOC.

137 As to paragraph 137 of the SOC, IAL:

(a) repeats paragraph 114A, 115, 131 and 136 of this Defence;

(b) says that pursuant to Exhibit A to the RPA (as amended), "Affiliate Guarantee" means "[t]hat certain Guarantee Agreement dated as of the date hereof and provided by the Parent and certain other subsidiaries and affiliates of the Parent in favour of the Buyer, as the same may be amended, supplemented or otherwise modified from time to time, and guaranteeing the obligations of the Sellers hereunder";

(c) says that the Applicants do not plead any material facts capable of establishing that the parties to the Group Guarantee were "subsidiaries and affiliates" of Bluestone Resources;

(d) refers to all of the terms of the Group Guarantee (as amended) for their full force and effect; and

(e) otherwise does not know and cannot admit paragraph 137 of the SOC.

138 As to paragraph 138 of the SOC, IAL:

(a) repeats paragraph 114A, 115, 121, 136 and 137 of this Defence;

(b) says that, under the Group Guarantee (as amended), the "Guaranteed Entities" were defined to mean Bluestone Coal and each of the other subsidiaries and affiliates of Bluestone Coal who is, or from time to time, becomes a party to the RPA (as amended) as a "seller" (Preliminary Statements (1));

(c) refers to all of the terms of the Group Guarantee (as amended) and the RPA (as amended) for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 138 of the SOC.

139 As to paragraph 139 of the SOC, IAL:

(a) repeats paragraph 114A and 136 of this Defence;

(b) says that, under the Group Guarantee (as amended), the "Guarantors" were defined to mean Bluestone Resources and each other affiliate or subsidiary of Bluestone Resources who is or becomes a party to the Group Guarantee (as amended) as a "guarantor";

(c) says that the guarantee given in section 1 of the Group Guarantee (as amended) was given by each "Guarantor";

(d) says that whether the Group Guarantors gave the guarantee in section 1 of the Group Guarantee (as amended) turns on whether each such Group Guarantor was a "Guarantor" within the meaning of the Group Guarantee (as amended);

(e) says that paragraph 139 of the SOC describes at a general level some of the effects of section 1 of the Group Guarantee (as amended), save that section 1 expressly states that, in the event that that "Guaranteed Entities" failed to pay or perform any obligations under the RPA (as amended), "then each Guarantor will itself duly and punctually pay and perform or observe, or cause to be duly and punctually performed or observed, such Obligation";

(f) refers to all of the terms of the Group Guarantee (as amended) for their full force and effect; and

(g) otherwise does not know and cannot admit paragraph 139 of the SOC.

140 As to paragraph 140 of the SOC, IAL:

(a) repeats paragraphs 114A, 119, 136 and 137 of this Defence;

(b) says that pursuant to section 3(b) of the First Amendment and Joinder to Receivables Purchase Agreement and Affiliate Guarantee dated 7 December 2018, the "New Seller" (being Blackstone) joined the "Affiliate Guarantee" for the purpose of becoming a "Guarantor" and agreed that from and after 7 December 2018, it was bound by all of the terms, conditions and provisions of, and shall be deemed to be a party to (as if it were an original signatory to), the "Affiliate Guarantee", in the capacity as a "Guarantor";

(c) refers to all of the terms of the Group Guarantee (as amended) for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 140 of the SOC.

141 As to paragraph 141 of the SOC, IAL:

(a) repeats paragraph 114A of this Defence;

(b) says that at a time unknown to IAL, representatives of Bluestone Coke (as defined in paragraph 141 of the SOC) and GCUK appear to have signed a document styled as a "Guarantee Agreement";

(c) says that it was a term of the "Guarantee Agreement" that Bluestone Coke guaranteed for the benefit of GCUK to cause the due and punctual performance, payment and observance by each "Guaranteed Entity" of all the terms (etc) of each "Guaranteed Entity" under (inter alia) the "Purchase Agreement" (section 1);

(d) says that the guarantee was not, as alleged in paragraph 141(a) of the SOC, a general guarantee of due and punctual performance and payment of each "Guaranteed Entity" of unspecified obligations;

(e) says that paragraph 141(b) of the SOC sets out the general effect of part of section 1 of the "Guarantee Agreement";

(f) refers to all of the terms of the "Guarantee Agreement" for their full force and effect; and

(g) otherwise does not know and cannot admit paragraph 141 of the SOC.

142 As to paragraph 142 of the SOC, IAL:

(a) repeats paragraph 114A of this Defence;

(b) says that, at a time presently unknown to IAL, representatives of the Group Guarantors (as defined in paragraph 136 of the SOC), Bluestone Resources, Bluestone Coal, Bluestone Coke, and Blackstone appear to have signed a document styled as a "Guarantee and Security Agreement";

(c) refers to all of the terms of the "Guarantee and Security Agreement" for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 142 of the SOC.

E.4 Customer Endorsements

143 IAL denies paragraph 143 of the SOC and says further that:

(a) it repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 90, 94, 99 and 108 of this Defence;

(b) on the proper construction of the Supplier Customer Endorsements (as defined in paragraph 143 of the SOC) (and in particular the "Maximum Tenor" referred to therein), in the event that the Supplier Customer Endorsements were valid and effective, then the persons identified as "Customer" in each such endorsement was a "Customer" for the purposes of the 2019 Policy (if valid and effective, which is denied) only if the relevant "Debt" was acquired by the "Insured";

(c) that:

(i) a person is an "Account Debtor" for the purposes of the RPA (as amended) only if the person is:

(A) listed in Schedule II to the RPA (as amended);

(B) listed in Exhibit B to the "First Amendment and Joinder to Receivables Agreement and Affiliate Guarantee"; or

(C) approved by GCUK in writing as an "Account Debtor";

(ii) says that the persons listed in Schedule II and/or Exhibit B included ArcelorMittal USA LLC, Nippon Steel & Sumitomo Metal USA Inc, United States Steel Corporation, AK Steel Corporation, Suncoke Energy Inc, Hyundai Steel America Inc, American Electric Power Company Inc, Contura Energy Inc, DTE Energy Company, Duke Energy Company, Mitsui & Co (USA) Inc, Posco America Corporation, SunCoke Energy Inc, and Virginia Electric Power Company Inc, but not any other of the persons referred to in paragraphs 143 and 155 of the SOC;

(iii) the Applicants do not plead any material facts capable of establishing that each of those other persons were "Account Debtors" within the meaning of the RPA (as amended);

(d) insofar as Brereton signed the "Customer Endorsements" referred to in paragraphs 143(a) to 143(d) of the SOC between 1 August 2017 and 9 April 2019, it denies that the "Customer Endorsements" were valid and effective to bind IAL, and in this regard repeats the matters in paragraphs 146(a) to 146(m) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to those customer endorsements;

(e) insofar as Brereton signed the "Customer Endorsements" referred to in paragraphs 143(e) to 143(h) of the SOC between 9 April 2019 and 30 June 2019, it denies that the "Customer Endorsements" were valid and effective to bind IAL, and in this regard:

(i) repeats the matters in paragraphs 146(c) to 146(m) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to those "Customer Endorsements", save that references to 'Underwriting Manual Version 2.0' are replaced with 'Underwriting Manual Version 3.0';

(ii) further, the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the "Customer Endorsements" because the customer limits in the "Customer Endorsements", alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under the 2019 Policy exceeded the Buyer Group Limit v 3.0;

(iii) further, the authority given by IAL under the IAL AAR Agreement to each of BCC and Brereton did not include an authority to enter into the "Customer Endorsements" referred to in paragraphs 143(d) to 143(h) of the SOC because BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and each of those "Customer Endorsements":

(A) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

(B) was not a mid-term alteration within the scope of the authority from IAL on each of BCC and Brereton; and

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(f) insofar as Brereton signed the "Customer Endorsements" referred to in paragraphs 143(i) to 143(n) of the SOC on or after 1 July 2019 (collectively, the **Post 1 July 2019 Supplier Customer Endorsements**):

(i) it repeats paragraphs 102(a) to 102(e) of this Defence;

(ii) the terms of the Post 1 July 2019 Supplier Customer Endorsements were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(iii) the amendments purportedly made by the Post 1 July 2019 Supplier Customer Endorsements (if valid):

(A) benefited Greensill Bank;

(B) gave no benefit, commercial or otherwise, to IAL;

(C) had no commercial or other legitimate justification;

(iv) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the Post 1 July 2019 Supplier Customer Endorsements because:

(A) the Post 1 July 2019 Supplier Customer Endorsements were signed by Brereton on behalf of BCC after BCC ceased to have authority to act for IAL as referred to in paragraphs 102(a) to 102(e) of this Defence;

(B) the authority given by IAL to BCC and Brereton did not include an authority to enter into the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(C) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(D) the customer limits in the Post 1 July 2019 Supplier Customer Endorsements, alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under the 2019 Policy:

a. exceeded the AUD50 million policy limit specified in Underwriting Manual Version 3.0;

b. exceeded the Buyer Group Limit v 3.0;

c. exceeded 95% of the AUD Binder Limit (of AUD50 million) for foreign policies specified in Underwriting Manual Version 3.0;

(v) says that BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and each of the Post 1 July 2019 Supplier Customer Endorsements:

(A) materially altered the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(vi) the Post 1 July 2019 Supplier Customer Endorsements purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(vii) by reason of the matters in paragraphs 143(f)(i) to 143(f)(vi) of this Defence, and each of them individually, each of the Post 1 July 2019 Supplier Customer Endorsements was invalid, of no effect and not binding on or enforceable as against IAL;

(viii) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute the Post 1 July 2019 Supplier Customer Endorsements:

(A) the Post 1 July 2019 Supplier Customer Endorsements purported to vary the 2019 Policy;

(B) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(C) each of the Post 1 July 2019 Supplier Customer Endorsements was not signed by or on behalf of Greensill Bank or GCPL, and was not a valid variation of the 2019 Policy;

(D) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of the Post 1 July 2019 Supplier Customer Endorsements;

(E) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for the Post 1 July 2019 Supplier Customer Endorsements;

(F) any power to issue Customer Endorsements under the 2019 Policy did not authorise the issuing of Customer Endorsements purporting to operate retrospectively;

(G) the Post 1 July 2019 Supplier Customer Endorsements purported to operate retrospectively;

(H) any Customer Endorsements issued under the 2019 Policy must specify a premium rate which was expressed as a percentage premium rate (Appendix 1 of the 2019 Policy);

(I) each of the Post 1 July 2019 Supplier Customer Endorsements did not specify a premium rate expressed as a percentage premium rate, rather was a fixed amount expressed as “$1 (one U.S. dollar)”;

(J) the entity named alongside "Customer Name" was not a "debtor in respect of a Debt" for the purposes of the definition of "Customer" in the 2019 Policy;

(K) by reason of the matters in:

a. paragraphs 143(f)(viii)(A) to 143(f)(viii)(C) of this Defence;

b. paragraphs 143(f)(viii)(D) and 143(f)(viii)(E) of this Defence;

c. paragraphs 143(f)(viii)(F) and 143(f)(viii)(G) of this Defence;

d. paragraphs 143(f)(viii)(H) and 143(f)(viii)(I) of this Defence; and/or

e. paragraph 143(f)(viii)(J) of this Defence,

each of the Post 1 July 2019 Supplier Customer Endorsements is invalid, of no effect and not binding on or enforceable as against IAL;

(ix) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(A) the Post 1 July 2019 Supplier Customer Endorsements had been issued;

(B) the Post 1 July 2019 Supplier Customer Endorsements had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and were inconsistent with the Approved Endorsements;

(x) executing the Post 1 July 2019 Supplier Customer Endorsements was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 143(f)(i) to 143(f)(ix) of this Defence.

(xi) the authority given by IAL to Brereton did not include an authority to enter into the Post 1 July 2019 Supplier Customer Endorsements because entering into the Post 1 July 2019 Supplier Customer

Endorsements was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 143(f)(i) to 143(f)(x) of this Defence.

(xii) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into the Post 1 July 2019 Supplier Customer Endorsements on behalf of IAL;

Particulars

Paragraphs 66A(f), 66A(h), 86(k) and 143(f)(iv) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 102(e) of this Defence) that TMMA had acquired BCC on 9 April 2019.

(g) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute the Post 1 July 2019 Supplier Customer Endorsements, they operated only prospectively from the date Brereton signed the Post 1 July 2019 Supplier Customer Endorsements) and applied only in relation to Assets acquired after that date; and

(h) says that, by reason of paragraphs 143(a) to 143(g) of this Defence, the Supplier Customer Endorsements were invalid, of no effect and not binding on or enforceable as against IAL.

144 As to paragraph 144 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 90, 94, 99, 108 and 143 of this Defence; and

(b) otherwise denies paragraph 144 of the SOC.

144A As to paragraph 144A of the SOC, IAL:

(a) repeats paragraphs 82 and 143 of this Defence; and

(b) otherwise denies paragraph 144A of the SOC.

144B As to paragraph 144B of the SOC, IAL:

(a) repeats paragraphs 143(f) to 143(h) of this Defence; and

(b) otherwise does not know and cannot admit paragraph 144B of the SOC.

145 As to paragraph 145 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 90, 94, 99, 108 and 143 of this Defence;

(b) says further that, in order for a person to be a "Customer" under the 2019 Policy, it is necessary that:

(i) the person be endorsed to the 2019 Policy under a valid, effective and binding "Customer Endorsement"; and

(ii) the person be a debtor in respect of a "Debt", being a debt of the type described in a relevant "Debt Endorsement",

(2019 Policy Sch 1, definition of "Customer"); and

(c) otherwise denies paragraph 145 of the SOC.

146 IAL denies paragraph 146 of the SOC and says further that:

(a) it repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 99 and 108 of this Defence;

(b) on 13 March 2019, Brereton signed Customer Endorsement 5 and backdated it to 1 March 2019;

(c) the terms of Customer Endorsement 5 were authored by or on behalf of the purported insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(d) as at 13 March 2019, and at all material times between 1 August 2017 and 30 June 2019, BCC and Brereton's authority was confined in the manner described in paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60 and 66A of this Defence;

(e) the amendments purportedly made by Customer Endorsement 5 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(f) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Customer Endorsement 5 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or

power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to Approved Endorsements referred to in paragraph 8(i) of this Defence, and Customer Endorsement 5 was not an Approved Endorsement;

(iv) Customer Endorsement 5 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(v) the indemnity limit in Customer Endorsement 5 was 100%, which was above the maximum indemnity limit of 95% of Debt specified in Underwriting Manual Version 2.0;

(vi) the customer limit in Customer Endorsement 5, alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under the 2019 Policy:

(A) exceeded the AUD50 million policy limit specified in Underwriting Manual Version 2.0;

(B) exceeded the Buyer Group limit v 2.0;

(C) exceeded 95% of the AUD Binder Limit (of AUD50 million) for foreign policies specified in Underwriting Manual Version 2.0;

(g) by reason of the matters in paragraphs 146(b) to 146(f) of this Defence and each of them individually, Customer Endorsement 5 was invalid, of no effect and not binding on or enforceable as against IAL;

(h) if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute Customer Endorsement 5:

(i) Customer Endorsement 5 purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iii) Customer Endorsement 5 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(iv) the purported "Insured", Greensill Bank and GCPL, failed to pay any premium in respect of Customer Endorsement 5;

(v) the purported "Insured", Greensill Bank and GCPL, failed to provide any consideration for Customer Endorsement 5;

(vi) any power to issue "Customer Endorsements" under the 2019 Policy did not authorise the issuing of "Customer Endorsements" purporting to operate retrospectively;

(vii) Customer Endorsement 5 purported to operate retrospectively;

(viii) any "Customer Endorsements" issued under the 2019 Policy must specify a premium rate expressed as a percentage premium rate (Appendix 1 of the 2019 Policy);

(ix) Customer Endorsement 5 did not specify a premium rate expressed as a percentage premium rate, rather was a fixed amount expressed as "$1 (one U.S. dollar)";

(x) the entity named alongside "Customer Name" was not a "debtor in respect of a Debt" for the purposes of the definition of "Customer" in the 2019 Policy;

(xi) by reason of the matters in:

(A) paragraphs 146(h)(i) to 146(h)(iii) of this Defence;

(B) paragraphs 146(h)(iv) and 146(h)(v) of this Defence;

(C) paragraphs 146(h)(vi) and 146(h)(vii) of this Defence;

(D) paragraphs 146(h)(viii) and 146(h)(ix) of this Defence; and/or

(E) paragraph 146(h)(x) of this Defence;

Customer Endorsement 5 is invalid, of no effect and not binding on or enforceable as against IAL;

(i) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Customer Endorsement 5 had been issued;

(ii) Customer Endorsement 5 had been purportedly issued in breach of the CGU AAR Agreement and applicable Underwriting Manual Version 2.0 and was inconsistent with the Approved Endorsements;

(j) executing Customer Endorsement 5 was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 146(a) to 146(i) of this Defence.

(k) the authority given by IAL to Brereton did not include an authority to enter into Customer Endorsement 5 because entering into Customer Endorsement 5 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

The matters in paragraphs 146(a) to 146(j) of this Defence.

(l) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Customer Endorsement 5 on behalf of IAL; and

Particulars

Paragraphs 66A(f), 66A(h), 86(k) and 146(f) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 102(e) of this Defence) that TMMA had acquired BCC on 9 April 2019.

(m) if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute Customer Endorsement 5, it operated only prospectively, from the date Brereton signed Customer Endorsement 5, and applied only in relation to Assets acquired after that date.

147 As to paragraph 147 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 99, 108 and 146 of this Defence; and

(b) otherwise denies paragraph 147 of the SOC.

147B As to paragraph 147A of the SOC, IAL:

(a) repeats paragraph 146 of the Defence;

(b) repeats, in answer to the whole of paragraph 147A of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to Customer Endorsement 5 and their conduct referred to in paragraph 147A of the SOC; and

(c) otherwise denies paragraph 147A of the SOC.

148 As to paragraph 148 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82~~D.3.3~~, 99, 108, 146 and 147A of this Defence; and

(b) otherwise denies paragraph 148 of the SOC.

E.5 Debt Endorsement 2(iv)

149 IAL denies paragraph 149 of the SOC and says further that:

(a) it repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 90, 94, 99 and 108 of this Defence;

(b) it relies on the terms of Debt Endorsement 2(iv) (if valid and effective, which is denied) for their full force and effect;

(c) on 16 April 2020, Brereton signed Debt Endorsement 2(iv) and backdated it to 22 February 2019;

(d) it repeats the matters in paragraph 102(a) to 102(n) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to Debt Endorsement 2(iv); and

(e) further if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Debt Endorsement 2(iv):

(i) any power to issue Debt Endorsements under the 2019 Policy did not authorise the issuing of a "Debt Endorsement" or, alternatively, a unilateral "Debt Endorsement" which purported to expand and/or vary the meaning of "Eligible Debt" whether at all, or in a manner which purported to bring within the 2019 Policy debts of the kind purportedly covered by Debt Endorsement 2(iv);

(ii) any power to issue Debt Endorsements under the 2019 Policy only authorised the issuing of Debt Endorsements describing the nature of a debt that "is after the date of such endorsement able to be a Debt for the purposes of th[e] Policy" (definition of “Debt Endorsement” in the

2019 Policy) and, therefore, any such power did not authorise the issuing of Debt Endorsements purporting to operate retrospectively;

(iii) Debt Endorsement 2(iv) purported to operate retrospectively;

(iv) any Debt Endorsements issued under the 2019 Policy must specify a premium rate in an associated Customer Endorsement, which in turn was required to be expressed as a percentage premium rate (Appendix 1 and Appendix 2 of the 2019 Policy);

(v) Debt Endorsement 2(iv) did not specify a premium rate; and

(vi) by reason of the matters in:

(A) paragraph 149(e)(i) of this Defence;

(B) paragraphs 149(e)(ii) and 149(e)(iii) of this Defence; and/or

(C) paragraphs 149(e)(iv) and 149(e)(v) of this Defence,

Debt Endorsement 2(iv) is invalid, of no effect and not binding on or enforceable as against IAL.

150 As to paragraph 150 of the SOC, IAL:

(a) repeats paragraphs 66A, 82, 99, 108 and 149 of this Defence; and

(b) otherwise denies paragraph 150 of the SOC.

150A As to paragraph 150A of the SOC, IAL:

(a) repeats paragraph 149 of this Defence; and

(b) otherwise denies paragraph 150A of the SOC.

150B As to paragraph 150B of the SOC, IAL:

(a) repeats paragraph 149 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 150B of the SOC.

151 As to paragraph 151 of the SOC, IAL:

(a) repeats paragraphs 66A, 82, 99, 108, 110E and 149 of this Defence;

(b) it refers to the terms of Debt Endorsement 2(iv) (if valid and effective, which is denied) for their full force and effect; and

(c) otherwise denies paragraph 151 of the SOC.

152 As to paragraph 152 of the SOC, IAL:

(a) repeats paragraphs 66A, 82, 99, 108, 110E and 149 of this Defence;

(b) says that paragraph 152 of the SOC describes at a general level the effect of part of the definition of "Repurchase Event" in Part B of Debt Endorsement 2(iv);

(c) it refers to the terms of Debt Endorsement 2(iv) (if valid and effective, which is denied) for their full force and effect; and

(d) otherwise denies paragraph 152 of the SOC.

153 As to paragraph 153 of the SOC, IAL:

(a) repeats paragraphs 66A, 82, 99, 108, 110E, 115, 149 and 150 of this Defence;

(b) pleads to the paragraph on the assumption (which is denied) that Debt Endorsement 2(iv) was valid and effective to prescribe the meaning of "Debt" for the purposes of the 2019 Policy;

(c) says that Debt Endorsement 2(iv) (if valid and effective, which is denied) contains two definitions of a "Receivables Purchase Agreement", one in Part A and one in Part B;

(d) says that it understands from paragraphs 167 and 168 of the SOC that the Applicants rely only on Part B of Debt Endorsement 2(iv), and in the premises only addresses the definition of "Receivables Purchase Agreement" in Part B;

(e) says that an agreement is a "Receivables Purchase Agreement" for the purposes of Part B of Debt Endorsement 2(iv) only if:

(i) under limb (i) of the definition of "Receivables Purchase Agreement":

(A) the agreement meets the description of being a "receivables purchase agreement";

(B) there is a "Customer", being a person who:

a. is a "Customer" within the meaning of the 2019 Policy;

b. is endorsed to the 2019 Policy under a "Customer Endorsement";

c. is a debtor in respect of a "Debt";

d. receives goods or services from the "Supplier";

e. has undertaken to make payment to the "Supplier" in consideration for the supply of the goods or services;

(C) there is a "Supplier", being a person that has provided goods and/or services to a "Customer" and in relation to which an accounts receivable is created;

(D) the agreement was entered into between a "Servicer" (being, GCUK) (and/or an Affiliate of the Servicer or a third party) and a "Supplier" or "Suppliers" (and/or an Affiliate of a Supplier or Suppliers);

(E) the agreement is one under which GCUK (and/or an Affiliate of the Servicer or a third party) acquires accounts receivable with recourse from one or more of the "Suppliers" that are parties to the agreement;

(ii) alternatively, under limb (ii) of the definition of "Receivables Purchase Agreement":

(A) there is an agreement meeting the description of being a "receivables purchase agreement";

(B) there is a "Customer", being a person who:

a. is a "Customer" within the meaning of the 2019 Policy;

b. is endorsed to the 2019 Policy under a "Customer Endorsement";

c. is a debtor in respect of a "Debt";

d. receives goods or services from the "Supplier";

e. has undertaken to make payment to the "Supplier" in consideration for the supply of the goods or services;

(C) there is a "Supplier", being a person that has provided goods and/or services to a "Customer" and in relation to which an accounts receivable is created;

(D) the parties to the agreement are a "Seller" (being a "Supplier" and/or an "Affiliate" of a "Supplier") and one or more "Affiliates" of such a "Seller" (being an "Underlying Seller");

(E) under the agreement, the "Seller" acquires accounts receivable with recourse from one or more "Underlying Sellers";

(F) under the agreement, the "Seller" acquires accounts receivable with recourse from one or more of the "Underlying Sellers" that are the parties to the agreement;

(f) says that the Applicants do not identify whether they rely on limb (i) or limb (ii) (or both) of the definition of "Receivables Purchase Agreement" in Part B of Debt Endorsement 2(iv);

(g) says that the Applicants implicitly allege that the "Suppliers" were Bluestone Coal, Blackstone and/or the "Account Debtors" identified at paragraph 155 of the SOC (SOC, paragraph 155, "Supplier" column);

(h) says that, in alleging that the RPA (as amended) was a "Receivables Purchase Agreement", the Applicants do not plead any material facts capable of establishing that:

(i) there was, relevantly, a "Customer";

(ii) Bluestone Coal, Blackstone and/or the "Account Debtors" had provided goods and/or services to a "Customer";

(iii) Bluestone Coal, Blackstone and/or the "Account Debtors provided goods and/or services to a "Customer" in relation to which accounts receivable were created;

(iv) one of the parties to the agreement was an "Affiliate" of Bluestone Coal and/or Blackstone;

(v) under the agreement, Bluestone Coal and/or Blackstone acquired accounts receivable, being accounts receivable with recourse to an "Affiliate";

(vi) who the relevant "Customer" (or "Customers") were;

(vii) what goods and/or services the "Supplier" provided to the "Customer", in relation to which accounts receivable were created;

(i) says that the RPA (as amended) was not an agreement pursuant to which a "Buyer" acquired accounts receivable with recourse from one or more "Sellers" because:

(i) a right does not meet the description of being an "account receivable" unless it is a present, existing right;

(ii) under the RPA (as amended), GCUK purportedly acquired possible future rights (as described in the definition of "Receivables" at paragraph 120 of the SOC);

(iii) the acquisition, or purported acquisition, of a possible future right was not the acquisition of an "account receivable" within the meaning of Part B of Debt Endorsement 2(iv); and

(j) otherwise denies paragraph 153 of the SOC.

154 As to paragraph 154 of the SOC, IAL:

(a) repeats paragraphs 66A, 82, 99, 108, 110E, 115, 149 and 150 of this Defence;

(b) says that it understands from paragraphs 167 and 168 of the SOC that the Applicants rely only on Part B of Debt Endorsement 2(iv), and in the premises only addresses the definition of "Receivables Purchase Agreement" in Part B;

(c) in Part B of Debt Endorsement 2(iv), a "Repurchase Event" is any event as described in the relevant "Receivables Purchase Agreement" which obliges the relevant "Seller" or "Underlying Seller" as the case may be, to repurchase or provide an indemnity payment with respect to accounts receivable sold by such "Seller" or "Underlying Seller" as the case may be, pursuant to a "Receivables Purchase Agreement", including but not limited to where a "Dispute" or "Dilution" exists, arises or is created or asserted with respect to any such accounts receivable;

(d) says that "Event of Repurchase" is defined in section 5 of the RPA;

(e) says that:

(i) an "Event of Repurchase" (under the RPA (as amended)) could be a "Repurchase Event" (under Part B of Debt Endorsement 2(iv)) only if the RPA (as amended) is a "Receivables Purchase Agreement" within the meaning of Debt Endorsement 2(iv);

(ii) the RPA (as amended) is not a "Receivables Purchase Agreement" for the reasons set out in paragraph 153 of this Defence;

(f) says further that:

(i) an event is a "Repurchase Event" under Part B of Debt Endorsement 2(iv) only if, on the occurrence of the event, there is an obligation to repurchase or provide an indemnity payment "with respect to accounts receivable";

(ii) a right is not an "account receivable" under Part B of Debt Endorsement 2(iv) if the right is only a possible future right;

(iii) an event is a "Repurchase Event" under Part B of Debt Endorsement 2(iv) only if, on the occurrence of the event, there is an obligation to repurchase or provide an indemnity payment with respect to accounts receivable "sold" by the "Seller";

(iv) the obligation to repurchase under the RPA (as amended) (being an "Event of Repurchase") is an obligation to repurchase "Purchased Receivables" (section 5), which include:

(A) rights that do not exist and are, at most, possible future rights (see section 1(a) and definitions of "Proposed Receivables" and "Receivables");

(B) rights that were never sold, but only purportedly sold (see section 1(a));

(v) in the premises, an obligation to repurchase "Purchased Receivables" under the RPA (as amended) is not a "Repurchase Event" within the meaning of Debt Endorsement 2(iv); and

(g) otherwise denies paragraph 154 of the SOC.

E.6 The Bluestone and Blackstone Purchased Receivables

155 As to paragraph 155 of the SOC, IAL:

(a) repeats paragraphs 114A and 115 of this Defence; and

(b) says that, in order for the Applicants to establish that, between 10 September 2020 and 25 February 2021, Bluestone Coal and/or Blackstone submitted "Requests" and "GCUK" agreed to purchase certain "Receivables", it is necessary for the Applicants to establish that:

(i) the conditions subsequent in clause 1(b)(2) of the RPA (as amended) were satisfied;

(ii) Bluestone Coal and/or Blackstone submitted a "Request" under clause 1(a) of the RPA (as amended);

(iii) the conditions precedent in clause 1(b)(1) of the RPA (as amended) were satisfied;

(iv) there were in existence "Receivables" within the meaning of the RPA (as amended);

(v) at material times (that is, at the time of the alleged sale), the "Receivables" comprised existing rights, rather than future rights; and

(vi) GCUK paid the "Purchase Price" as determined under clause 1(c);

(c) says that, on the proper construction of the RPA (as amended) and as a matter of general legal principle, any sale of a "Receivable" did not occur (inter alia) unless and until there was in existence a present right capable of sale, and a purported sale of a future right did not occur unless and until the future right became a present right;

(d) says that, it was a term of the RPA that a "Request" not be submitted more than once per calendar week and, on the face of the SOC, the "Request" with an alleged "Purchase Request Date" of 2 October 2020 was submitted in the same calendar week as the "Request" with the alleged "Purchase Request Date" of 1 October 2020;

(e) says that:

(i) the particularised documents do not establish that:

(A) the conditions subsequent in clause 1(b)(2) of the RPA (as amended) were satisfied;

(B) the conditions precedent in clause 1(b)(1) of the RPA (as amended) were satisfied;

(C) there were in existence "Receivables" within the meaning of the RPA (as amended);

(D) at material times (that is, at the time of the alleged sale), the "Receivables" comprised existing rights, rather than future rights; and

(E) GCUK paid the "Purchase Price" as determined under clause 1(c);

(ii) the Applicants have not pleaded any material facts capable of establishing the allegation in paragraph 155 of the SOC, including any material facts capable of establishing the matters described in paragraph 55(b) of this Defence;

(f) says that, on the Applicants' pleaded case, the conditions precedent in cl 1(b) were not met, including because, in circumstances where there were not in existence accounts receivable:

(i) Sellers' representations and warranties were not true and accurate in all material respects (cl 1(b)(ii)), including warranties (b), (c) and (d)

(ii) an Event of Repurchase existed (cl 1(b)(iv)), having regard at least to cl 5(1)(i);

(g) says that, as a result:

(i) immediately upon GCUK assuming an obligation to make a payment in respect of a purported "Proposed Receivable" or, alternatively, upon GCUK making such a payment, the applicable "Seller" assumed an obligation under cl 5(b) to indemnify GCUK in respect of some or all of the payment made (or to be made) by GCUK;

(ii) if the Group Guarantee was effective, Bluestone Resources Inc therefore also immediately assumed an obligation to indemnify GCUK;

(h) says that, as best it understands the Applicants' case, it is that the "Receivable" referred to in paragraph 155 of the SOC wholly or partially comprised possible future rights and, to the extent that is so, there was no sale and the paragraph is denied;

(i) says further that:

(i) the Applicants admit that the subject of each alleged "Request" and agreement to purchase was an "expected future payment obligation" of a person, labelled a "Supplier";

(ii) if and to the extent it is alleged that the persons identified as "Suppliers" were "Suppliers" within the meaning of Part B of Debt Endorsement 2(iv), that allegation is denied at least because:

(A) a "Supplier" under Part B of Debt Endorsement 2(iv) is a person who provides goods and/or services, not a person who assumes payment obligations;

(B) on the face of the allegation in paragraph 155 of the SOC (which is not admitted), the persons referred to as "Suppliers" in paragraph 155 of the SOC were persons who received goods and/or services and who owed payment obligations;

(iii) in respect of each "Request" the alleged subject of which was not an existing right, but was instead a possible future payment obligation, there was:

(A) no "account receivable" for the purposes of Part B of Debt Endorsement 2(iv);

(B) no sale under the RPA (as amended); and

(j) otherwise does not know and cannot admit paragraph 155 of the SOC.

E.7 The Bluestone and Blackstone Notes

156 [Not used].

157 [Not used].

158 As to paragraph 158 of the SOC, IAL:

(a) repeats paragraphs 114A and 155 of this Defence;

(b) says that the Applicants do not identify:

(i) the agreement (if any) pursuant to which the assignment was allegedly effected;

(ii) the circumstances which establish that there was an assignment of the Bluestone and Blackstone Purchased Receivables;

(c) says that, as a matter of general law and on the proper construction of the Hoffman Master Assignment Agreement, there was no assignment by GCUK of Bluestone and Blackstone Purchased Receivables if and to the extent that the Bluestone and Blackstone Purchased Receivables:

(i) were not existing rights, but were instead possible future rights;

(ii) were not rights which had been assigned to GCUK under the RPA (as amended) (or otherwise);

(d) says that the pleaded case is confined to a case that what was assigned was the "Bluestone and Blackstone Purchased Receivables" as defined, and there is no pleading that any other rights (or purported rights) were assigned; and

(e) otherwise does not know and cannot admit paragraph 158 of the SOC.

159 As to paragraph 159 of the SOC, IAL:

(a) repeats paragraphs 110D, 114A, 114C, 155 and 158 of this Defence;

(b) says that the Applicants do not plead any material facts capable of establishing the Hoffman accepted the assignments;

(c) says, in respect of the allegation that Hoffman issued, by way of Pricing Supplements, the Bluestone and Blackstone Notes:

(i) the Pricing Supplements stated that they were to be read in conjunction with the "Base Memorandum" and the relevant "Series Supplement";

(ii) it was a term of the "Base Memorandum" that each "Tranche" of "Notes" issued by an "Issuer" will be linked to one or more "Relevant Claims"'

(iii) in order for a claim to be a "Relevant Claim", it must meet the conditions set out in paragraph 114E above;

(iv) there is no allegation of material fact establishing or capable of establishing that any of the Bluestone and Blackstone Notes were linked to "Relevant Claims";

(v) each of the particularised Pricing Supplements refers to a "list of Account Debtors in [an] enclosed Relevant Claim Report";

(vi) the enclosed "Relevant Claim Reports":

(A) each refer to a round number "Certified Amount";

(B) each refer to "Certified Amount" figures consistent with:

a. there being no underlying accounts receivable generated in the course of an actual supply of goods or service in the ordinary course of business;

b. the "Certified Amount" reflecting the provision of rolling finance divorced from any underlying accounts receivable;

(C) do not evidence or establish the existence of:

a. a payment obligation;

b. a "Relevant Claim Type";

c. a “Relevant Obligor”:

d. any other conditions for the existence of a “Relevant Claim” for the purposes of the Supplemental Trust Deed (or Base Memorandum);

(d) otherwise does not know and cannot admit paragraph 159 of the SOC.

160 As to paragraph 160 of the SOC, IAL:

(a) repeats paragraphs 110D, 114I, 155 and 159 of this Defence;

(b) says that:

(i) in order for a note to be secured over a receivable, it was necessary (inter alia) for:

(A) the receivable to be a present right, rather than merely a possible future right;

(B) the receivable to be held by the person granting the security;

(ii) the instruments establishing the Bluestone and Blackstone Notes in terms recognised that there was or may be no security in respect of future receivables because, according to the instruments:

(A) the majority of accounts receivable sold or purportedly sold are future accounts receivable (Series Supplement 2 page 12);

(B) future accounts receivable do not constitute actual or enforceable payment obligations owed by a "Relevant Obligor" (Series Supplement 2 page 12);

(C) the lack of a payment obligation creates a greater likelihood that the transactions will be characterised as an unsecured loan from "Greensill" to the applicable "Relevant AR Seller" (Series Supplement 2 page 12);

Particulars

In Series Supplement 2, "Greensill" is defined as GCPL, being the "Relevant Claims Seller" under "PART A – CONTRACTUAL TERMS" (Series Supplement 2 page 2).

(D) such a characterisation would likely be viewed as unsecured because until an actual payment obligation arises, there is nothing but an estimate of what may happen in the future (Series Supplement 2 page 12);

(E) the expectation alone is not a financial asset in which "Greensill" could take a security interest (Series Supplement 2 page 12);

(c) otherwise does not know and cannot admit paragraph 160 of the SOC.

161 As to paragraph 161 of the SOC, IAL:

(a) says that the SOC does not identify:

(i) the material facts (if any) said to establish that GCUK acquired the Bluestone and Blackstone Notes;

(ii) the offers (if any) communicated by GCUK;

(iii) the acceptances (if any) communicated by Greensill Bank;

(iv) the agreement (if any) pursuant to which the acquisition was allegedly effected;

(v) the circumstances which establish that there was an acquisition of the Bluestone and Blackstone Notes;

(b) says that if the Bluestone and Blackstone Notes were acquired by Greensill Bank between 11 September 2020 and 26 February 2021, Greensill Bank did not own the Bluestone and Blackstone Notes during the “Policy Period” which expired no later than:

(i) 22 February 2020; or

(ii) alternatively, 1 March 2020; and

(c) otherwise does not know and cannot admit paragraph 161 of the SOC.

161A As to paragraph 161A of the SOC, IAL:

(a) says that:

(i) there are no particularised documents evidencing or establishing the “FX Swap Amount” and “Amount Paid” columns;

(ii) the paragraph does not identify who is said to have “paid” the Notes:

(iii) it does not know what is meant by an allegation that someone “paid” the Notes;

(iv) there is no identification of the alleged “underlying receivables”, and no particularised documents establishing those receivables or the currency that they are denominated in;

(b) otherwise, does not know and cannot admit the paragraph.

161B As to paragraph 161B of the SOC, IAL:

(a) repeats paragraphs 159 and 161 above;

(b) says:

(i) in order for there to be an "Expected Allocation", it was necessary for there to be:

(A) an "Asset";

(B) a "Note" in relation to that "Asset";

(C) a relevant "Pricing Supplement" as defined in the "Master Trust Deed";

(D) a "Final Redemption Amount" or aggregate of the "Instalment Amounts" (as set out in the relevant "Pricing Supplement" as defined in the "Master Trust Deed");

(ii) there is no "Expected Allocation" column in paragraph 159 of the SOC;

(iii) in respect of the condition that there be a relevant "Pricing Supplement":

(A) in order for there to be a relevant "Pricing Supplement", it is necessary that there be a "Tranche" (Supplemental Master Trust Deed cl 10.1);

(B) there is a "Tranche" only if there are "Relevant Claims", "Relevant Obligors" and "Relevant Claim Types" (Supplemental Master Trust Deed cl 10.1);

(C) there is no pleading of material fact establishing or capable of establishing that the conditions for there to be a "Tranche" were met;

(c) otherwise, does not know and cannot admit the paragraph.

162 As to paragraph 162 of the SOC, IAL:

(a) repeats paragraphs 66A, 110D and 159 of this Defence; and

(b) otherwise denies paragraph 162 of the SOC.

163 As to paragraph 163 of the SOC, IAL:

(a) repeats paragraphs 66A, 110D, 156, 157, 162 and 165 of this Defence; and

(b) otherwise denies paragraph 163 of the SOC.

E.8 Events of Repurchase under the RPA

164 As to paragraph 164 of the SOC, IAL:

(a) repeats paragraphs 114A, 115, 126 and 155 of this Defence;

(b) says, as to paragraph 164(a) of the SOC, that:

(i) it does not know and cannot admit the sub-paragraph;

(ii) in the event that the Bluestone and Blackstone Purchased Receivables met the description in paragraph 164(a) of the SOC, each such right:

(A) was, at most, a possible future right, not an existing right;

(B) was not acquired by GCUK;

(C) was not an "accounts receivable" within the meaning of Part B of Debt Endorsement 2(iv);

(c) says, as to paragraph 164(b) of the SOC, that:

(i) under section 2 of the RPA (as amended), each "Seller" represented and warranted to "Buyer" on the date that it entered into or acceded to the RPA (as amended) and on each "Purchase Date" that the representations and warranties set forth in Exhibit C-1 were true and correct;

(ii) there was a representation that each "Applicable Receivable" is an "Eligible Receivable" (RPA, Exhibit C-1(b));

(iii) under section 5(a)(i) of the RPA (as amended), there was relevantly an "Event of Repurchase" only if a representation or warranty by a "Seller" with respect to any of the "Purchased Receivables" is incorrect when made or deemed to be made (RPA, section 5(a)(i));

(iv) there is no allegation in paragraph 164(b) of the SOC as to the time at which the "Purchased Receivables" were not "Eligible Receivables" and, in particular, whether each "Purchased Receivable" was not an "Eligible Receivable" at the time of entry into or accession to the RPA (as amended) and/or the "Purchase Date";

(v) it does not know and cannot admit the sub-paragraph; and

(d) otherwise does not know and cannot admit paragraph 164 of the SOC.

165 As to paragraph 165 of the SOC, IAL:

(a) repeats paragraphs 114A, 115 and 164 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 165 of the SOC.

166 As to paragraph 166 of the SOC, IAL:

(a) repeats paragraphs 114A, 115, 126, 136, 138 to 140 and 164 of this Defence;

(b) says, as to paragraph 166(a) of the SOC:

(i) any obligation under section 5(a) of the RPA (as amended) arose only upon the communication of an option and demand by GCUK;

(ii) any obligation under section 5(a) of the RPA (as amended) extended only to the "Purchased Receivables" (if any) then outstanding and affected the "Event or Repurchase";

(c) says, as to paragraph 166(b) of the SOC:

(i) it repeats paragraphs 138 to 140 of this Defence;

(ii) it refers to sections 1 and 2 of the Group Guarantee (as amended);

(iii) it puts the Applicants to proof on all conditions necessary for the arising of obligations on the part of Bluestone Resources under the Group Guarantee (as amended); and

(d) otherwise does not know and cannot admit paragraph 166 of the SOC.

167 As to paragraph 167 of the SOC, IAL:

(a) repeats paragraphs 66A, 80, 110D to 110G, 149 to 154 and 164 of this Defence;

(b) says, as to paragraph 167(a) of the SOC:

(i) it repeats paragraphs 146 to 148 of this Defence; and

(ii) it denies the sub-paragraph;

(c) says, as to paragraphs 167(b) and 167(c) of the SOC:

(i) it repeats paragraphs 136 to 140 and 149 to 154 of this Defence;

(ii) each of Bluestone Coal and Blackstone was not a "Customer";

(iii) there was no underlying account receivable, including because, on the pleaded case (which is not admitted), all that existed were possible future rights to accounts receivable, not existing and actual rights;

(iv) the RPA (as amended) was not a "Receivables Purchase Agreement" within the meaning of Part B of Debt Endorsement 2(iv);

(v) the RPA (as amended) did not relevantly impose obligations with respect to accounts receivable sold pursuant to the RPA (as amended) because the payment obligations relied on by the Applicants (which are not admitted) arose in respect of rights which, at all material times, did not exist (but were instead no more than possible future rights) and were not sold under the RPA (as amended);

(vi) the trigger for repurchase was not a "Repurchase Event" within the meaning of Part B of Debt Endorsement 2(iv);

(vii) the payment obligations were not originated in an accounts receivable purchase program because the RPA (as amended), relevantly, provided for the purported purchase of rights which were not accounts receivable, but were instead no more than possible future rights; and

(viii) it otherwise denies the sub-paragraphs;

(d) says further that:

(i) the Applicants do not plead any material facts capable of establishing that Bluestone Resource's obligation as guarantor of the obligations of Bluestone Coal and Blackstone (i.e. the Bluestone Guarantor Obligations as referred to in paragraph 173 of the SOC) were "Debts" within Part B of Debt Endorsement 2(iv); and

(ii) in any event, the Bluestone Guarantor Obligations were not "Debts" within Part B of Debt Endorsement 2(iv); and

(e) otherwise denies paragraph 167 of the SOC.

168 As to paragraph 168 of the SOC, IAL:

(a) repeats paragraphs 66A and 80 of this Defence;

(b) says that if, which is denied, BCC had authority to issue and/or execute the 2019 Policy and Debt Endorsement 2(iv), then it repeats paragraphs 110D to 110G, 114A, 115, 123, 139, 155, 164 and 167 of this Defence;

(c) says further, as to paragraph 168(a)(i) of the SOC:

(i) there could have been a breach of clause 2 of the RPA (as amended) only if there was a representation or warranty made in respect of the Bluestone and Blackstone Purchased Receivables; and

(ii) any representation or warranty was made in respect of the Bluestone and Blackstone Purchased Receivables (defined in paragraph 155 of the SOC) only if and to the extent that the Bluestone and Blackstone Purchased Receivables were "Applicable Receivables" (and, therefore, "Purchased Receivables") within the meaning of the RPA (as amended);

(d) says further, as to paragraph 168(a)(ii) of the SOC:

(i) there was an indemnity under clause 5(b) only if there was a sale to GCUK of a "Receivable" which purports to be a "Purchased Receivable" as to which the representations and warranties made in the RPA (as amended) were not true and correct on the "Purchased Date" therefor;

(ii) the allegation in paragraph 168(a)(ii) of the SOC is correct only if the Bluestone and Blackstone Purchased Receivables:

(A) were "Receivables";

(B) purported to be "Purchased Receivables"; and

(C) were "Applicable Receivables";

(e) says further, as to paragraph 168(b) of the SOC:

(i) it repeats paragraphs 136 to 140, 167 and 168(a) to 168(d) of this Defence;

(ii) it refers to sections 1 and 2 of the Group Guarantee; and

(iii) it puts the Applicants to proof on all conditions necessary for the arising of obligations on the part of Bluestone Resources under the Group Guarantee; and

(f) otherwise denies paragraph 168 of the SOC.

169 As to paragraph 169 of the SOC, IAL:

(a) repeats paragraphs 66A, 80~~D.3.1~~, 110E, 166, 167 and 168 of this Defence;

(b) says that, as best it understands the Applicants' case, the Applicants allege that obligations of Bluestone Resources referred to at paragraphs 167 and 168 of the SOC were "Eligible Debts" within the meaning of Sch 7 of the 2019 Policy (SOC, paragraph 169; the reference to paragraph 166 of the SOC appears to be an error);

(c) says that:

(i) the Applicants do not plead any material facts capable of establishing that Bluestone Resource's obligations referred to at paragraphs 167 and 168 of the SOC were "Eligible Debts"; and

(ii) in any event, Bluestone Resource's obligations were not "Eligible Debts"; and

(d) otherwise denies paragraph 169 of the SOC.

170 As to paragraph 170 of the SOC, IAL:

(a) repeats paragraph 114A of this Defence;

(b) will refer to all of the terms of the particularised letters for their full force and effect; and

(c) otherwise does not know and cannot admit paragraph 170 of the SOC.

171 As to paragraph 171 of the SOC, IAL:

(a) repeats paragraphs 155, 161 and 170 of this Defence;

(b) says that it puts the Applicants to proof on each condition necessary for there to be an allegation that:

(i) there were in existence Bluestone and Blackstone Purchased Receivables;

(ii) there were "Payment Obligations";

(iii) the "Payment Obligations were "referable to" certain "Notes"; and

(c) otherwise does not know and cannot admit paragraph 171 of the SOC.

172 As to paragraph 172 of the SOC, IAL:

(a) repeats paragraphs 114A, 115, 126, 155 and 170 of this Defence;

(b) says that the Applicants allege, or implicitly allege, that:

(i) an Event of Repurchase and Event of Termination had occurred under the RPA (as amended) in respect of the Bluestone and Blackstone Purchased Receivables;

(ii) neither Bluestone Coal nor Blackstone have repurchased the Bluestone and Blackstone Purchased Receivables at the Repurchase Price under the RPA (as amended) or paid interest on amounts due to Greensill Bank; and

(iii) as a result, Bluestone Coal and Blackstone have breached clause 5(a)(ii)(4) of the RPA (as amended);

(c) says that, although the paragraph refers to asserted failures to pay by Bluestone Coal and Blackstone, it does not understand the Applicants to assert that the relevant "Eligible Debts" were payment obligations of Bluestone Coal or Blackstone (and, in the event that that is the allegation, says that the Applicants do not plead any material facts capable of establishing that any such obligations were "Eligible Debts");

(d) says that it puts the Applicants to proof on each condition necessary for there to be an allegation that:

(i) there were in existence the Bluestone and Blackstone Purchased Receivables;

(ii) those receivables existed at all material times, including at the time of any purported assignment, at the time at which an "Asset" is said to have been derived from such receivables and at the time each such "Asset" was acquired by an "Insured"; and

(iii) there was a failure by Bluestone Coal and Blackstone to discharge obligations in relation to those receivables as alleged in paragraph 172 of the SOC; and

(e) otherwise does not know and cannot admit paragraph 172 of the SOC.

173 As to paragraph 173 of the SOC, IAL:

(a) repeats paragraphs 114A, 115, 136, 139, 170, 171 and 172 of this Defence;

(b) says that:

(i) the Bluestone and Blackstone Default is defined to be an event apparently occurring on the date of filing the SOC (see SOC, paragraph 172);

(ii) if Bluestone Resources became subject to the Bluestone Guarantor Obligations (as defined in paragraph 173 of the SOC) that did not (as alleged) arise by reason of an event occurring on the date of filing the SOC, but instead arose by reason of an event or events occurring earlier in time, being an event or events comprising the failure on the part of Bluestone Coal or Blackstone to discharge obligations at the time for performance; and

(iii) the pleading does not otherwise identify when the purported Bluestone and Blackstone Default occurred;

(c) says that, as best it understands the Applicants' case, the Bluestone Guarantor Obligations comprised, in whole or in part:

(i) obligations which, at all material times, did not presently exist; and

(ii) obligations which, if they could arise at all, would arise in the future and, relevantly, after the time(s) of the sales alleged in paragraph 155 of the SOC;

(iii) obligations referred to in the RPA (as amended) as "expected future payment obligation[s]";

(d) says that obligations of the kind referred to in paragraph 173(c) of this Defence:

(i) were not (contrary to the allegation in SOC, paragraph 155) sold under the RPA (as amended);

(ii) were not "Debts" within the meaning of any relevant Debt Endorsement;

(iii) were not "Eligible Debts" within the meaning of the 2019 Policy; and

(iv) were not obligations in respect of which there can have been a "failure to pay" as alleged in paragraph 174 of the SOC;

(e) says that it puts the Applicants to proof on each condition necessary for there to be an allegation that:

(i) there were in existence the Bluestone Guarantor Obligations;

(ii) those obligations existed at all material times, including at the time of any purported assignment, at the time at which an "Asset" is said to have been derived from such obligations and at the time each such "Asset" was acquired by an "Insured"; and

(iii) there was a failure to discharge those obligations as alleged in paragraph 174 of the SOC; and

(f) otherwise does not know and cannot admit paragraph 173 of the SOC.

174 As to paragraph 174 of the SOC, IAL:

(a) repeats paragraph 173 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 174 of the SOC.

175 As to paragraph 175 of the SOC, IAL:

(a) repeats paragraphs 110C to 110F and 174 of this Defence;

(b) says that there is an "Insured Cause" under the 2019 Policy only if there was the failure of a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date" for any reason;

(c) says that it understands the reference in the SOC to paragraph 188 to be intended to be a reference to paragraph 174;

(d) says that, as best it understands the Applicants' case, it is that:

(i) Bluestone Resources was a "Customer";

(ii) the "Eligible Debts" were the Bluestone Guarantor Obligations (as defined in paragraph 173 of the SOC);

(e) says that there is no articulation in the SOC of the "Backstop Date";

(f) as to the allegation that Bluestone Resources is a "Customer":

(i) IAL denies the allegation for the reasons at paragraph 146 of this Defence;

(ii) IAL otherwise puts the Applicants to proof on each condition necessary for Bluestone Resources to be a "Customer";

(g) as to the allegation that the Bluestone Guarantor Obligations were "Eligible Debts":

(i) IAL denies the allegation for the reasons at paragraph 110E of this Defence; and

(ii) IAL otherwise puts the Applicants to proof on each condition necessary for that obligation to be an "Eligible Debts";

(h) as to the requirement that there was a failure by Bluestone Resources to make payment on or before the "Backstop Date", for the purposes of the definition of "Insured Cause" under the 2019 Policy, IAL says:

(i) the Applicants do not plead any material facts capable of establishing the "Backstop Date";

(ii) it puts the Applicants to proof on each condition necessary for there to be a failure by Bluestone Resources to pay an "Eligible Debt" on or before the "Backstop Date"; and

(i) otherwise denies paragraph 175 paragraph of the SOC.

E.9 Notification and Claim by Greensill Bank under the 2019 Policy

176 As to paragraph 176 of the SOC, IAL:

(a) repeats paragraph 114A of this Defence;

(b) admits that on each of the dates listed in the paragraph (save for 10 February 2023), the administrator of GCUK issued a notification to BCC concerning "Potential Loss" under the 2019 Policy in respect of each customer detailed in the Appendix to each notice;

(c) says that:

(i) the appendix to each notice, which contained details of "Customers" and "Potential Loss", referred to "Bluestone AR Multiple Account Debtors";

(ii) the appendix to the notice dated 8 February 2023 referred to "overdue's" from 10 March 2021 to 25 August 2021 in relation "Bluestone AR Multiple Account Debtors (Receivables facility including future receivables)"; and

(d) otherwise does not know and cannot admit paragraph 176 of the SOC.

177 As to paragraph 177 of the SOC, IAL:

(a) says that on each of the dates listed in the paragraph, Dr Frege, on behalf of Greensill Bank, caused a notification to be issued to TMMA in respect of BCC concerning a potential loss under the 2019 Policy in relation to certain receivables relating to Bluestone; and

(b) otherwise does not know and cannot admit paragraph 177 of the SOC.

178 As to paragraph 178 of the SOC, IAL:

(a) repeats paragraph 175 of this Defence;

(b) says that:

(i) on or around 13 October 2021, Greensill Bank submitted a document styled "Claim Form" dated 12 October 2021 (**Claim Form**), enclosing three Appendices and 58 Attachments, which was sent by lawyers for Greensill Bank to BCC and to Clyde & Co as lawyers for IAL;

(ii) on or around 10 December 2021, Greensill Bank submitted a document styled "Claim Form" dated 10 December 2021 (**Resubmitted Claim Form**), enclosing four Appendices and relying on the 58 attachments enclosed to the Claim Form, which was sent by lawyers for Greensill Bank to BCC and to Clyde & Co as lawyers for IAL; and

(iii) on or around 20 February 2023, Gilbert + Tobin, lawyers for Credit Suisse Virtuoso and Credit Suisse Nova, sent a letter to Clyde & Co, lawyers for IAL, attaching an amended Appendix 1 to the Claim Form and Resubmitted Claim Form; and

(c) otherwise does not know and cannot admit paragraph 178 of the SOC.

179 As to paragraph 179 of the SOC, IAL:

(a) repeats paragraphs 175 and 178 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 179 of the SOC.

180 As to paragraph 180 of the SOC, IAL:

(a) repeats paragraphs 161, 178 and 179 of this Defence;

(b) says that:

(i) the Rasmussen Notes table in Appendix 1 to the Claim Form and Resubmitted Claim Form included a column titled "Date acquired by the Insured from a Loss Payee (if not acquired at issuance)";

(ii) certain entries relating to the Bluestone and Blackstone Notes in the Rasmussen Notes table stated "N/A" in the column titled "Date acquired by the Insured from a Loss Payee (if not acquired at issuance)"; and

(iii) paragraph 5.6 of Appendix 2 to the Claim Form and the Resubmitted Claim Form stated that: "the Insured notes the terms of Endorsement 9 (Claims Endorsement) to the Policy which applies in respect of those Notes held by the Insured and not transferred from a Loss Payee (i.e. those Notes with an "N/A" in the relevant column of the Rasmussen Notes table in Appendix 1)"; and

(c) otherwise does not know and cannot admit paragraph 180 of the SOC.

181 IAL admits paragraph 181 of the SOC.

182 IAL admits paragraph 182 of the SOC.

183 As to paragraph 183 of the SOC, IAL:

(a) says that on or about 11 May 2022, Clyde & Co, lawyers for IAL, received an email from CMS, lawyers for Greensill Bank, which attached a letter dated 10 May 2022 from CMS to Clyde & Co, copy to Marsh, BCC and Kennedys, which notified IAL of a proposed standstill and forbearance agreement; and

Particulars

Email from CMS Hasche Sigle to Clyde & Co dated 11 May 2023 (IAL.500.008.0304), attaching letter dated 10 May 2022 from CMS Hasche Sigle to Clyde & Co, copy to Marsh, BCC and Kennedys (IAL.500.008.0305).

(b) otherwise denies paragraph 183 of the SOC.

184 As to paragraph 184 of the SOC, IAL:

(a) says that:

(i) on or about 17 May 2022, Clyde & Co issued a letter to CMS dated 17 May 2022, copy to Marsh, Kennedys and Quinn Emanuel;

(ii) the letter referred to in paragraph 184(a)(i) of this Defence stated that:

(A) the 2019 Policy is not binding on IAL and GBAG should therefore act as a prudent uninsured; and

(B) IAL would not take any point that GBAG had failed to seek the insurer's consent pursuant to clauses 9.1 and 10.7(b) of the 2019 Policy, but fully reserve all other rights, including as to the validity of the 2019 Policy; and

Particulars

Letter dated 17 May 2022 from Clyde & Co to CMS Hasche Sigle, copy to Marsh, BCC and Kennedys (IAL.500.008.0307).

(b) otherwise denies paragraph 184 of the SOC.

185 As to paragraph 185 of the SOC, IAL:

(a) says that, on or about 4 July 2022, IAL was notified that the Standstill and Forbearance Agreement was entered into by the parties to that agreement on 24 June 2022; and

Particulars

Email dated 5 July 2022 from CMS Hasche Sigle Clyde & Co (IAL.500.011.1298), attaching a letter dated 4 July 2022 from CMS Hasche Sigle to Clyde & Co, copy to Marsh, BCC and Kennedys (IAL.500.011.1299), and a copy of an executed copy of the Standstill and Forbearance Agreement dated 24 June 2022 (IAL.500.011.1300).

(b) otherwise denies paragraph 185 of the SOC.

186 As to paragraph 186 of the SOC, IAL:

(a) says that on or about 4 August 2022, Clyde & Co received an email from CMS which attached a letter dated 3 August 2022 from CMS to Clyde & Co, copy to Marsh, TBCC and Kennedys, which stated that "on 25 July 2022, the Bankruptcy Court entered an order approving the Standstill and Forbearance Agreement"; and

Particulars

Email dated 4 August 2023 from CMS Hasche Sigle to Clyde & Co (IAL.500.011.1294), attaching letter dated 3 August 2022 from CMS Hasche Sigle to Clyde & Co, copy to Marsh, BCC and Kennedys (IAL.500.011.1295).

(b) otherwise does not know and cannot admit paragraph 186 of the SOC.

187 As to paragraph 187 of the SOC, IAL:

(a) repeats paragraph 186 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 187 of the SOC.

188 As to paragraph 188 of the SOC, IAL:

(a) says that the defined meaning of "Expected Allocation" in the 2019 Policy differs depending on the character of the "Asset";

(b) says that the only "Assets" alleged by the Applicants are "Notes", being the Bluestone and Blackstone Notes;

(c) says that the "Expected Allocation" in respect of a "Note" for the purposes of the 2019 Policy was the "Final Redemption Amount" (as set out in the relevant "Pricing Supplement" as defined in the "Master Trust Deed") of the relevant "Asset";

(d) says that, if the Bluestone and Blackstone Notes were "Assets" (which is denied), each was a separate "Asset" for the purposes of the 2019 Policy, and it is therefore erroneous to speak of an "Expected Allocation" for all of the notes, but rather each note had its own "Expected Allocation";

(e) says that there is no allegation as to why, in respect of the Bluestone and Blackstone Notes:

(i) there was an "Expected Allocation" (as defined) in the amount of USD 160,000,000;

(ii) that amount was the "Final Redemption Amount" as set out in the "Pricing Supplement" as defined in the "Master Trust Deed";

(f) says that there is no allegation or articulation as to why the value of the entitlements of a holder of the Bluestone and Blackstone Notes was nil and, for example, there is no identification of:

(i) the entitlements of a holder of the Bluestone and Blackstone Notes;

(ii) the sources of value of those entitlements;

(iii) the reason why, in the circumstances, the value of those entitlements was nil;

(g) says that there is no articulation of why the difference in value (if any) between the "Expected Allocation" and the value of the entitlements under a "Master Trust Deed" was caused by, or resulted from, an "Insured Cause"; and

(h) otherwise, does not know and cannot admit paragraph 188 of the SOC.

189 As to paragraph 189 of the SOC, IAL:

(a) repeats paragraphs 110D to 110G, 66A, 175, 178 to 179 and 188 of this Defence:

(b) says that the Applicants do not plead any material facts capable of establishing that:

(i) the asserted "Loss" (being the difference between the "Expected Allocation" and the value of Greensill Bank's entitlements under the "Master Trust Deed") was caused by or resulted from the occurrence

of Bluestone Resources' failure to pay the Bluestone Guarantor Obligations by the Backstop Date;

(ii) the Bluestone and Blackstone Notes had a "Final Redemption Amount" or "Instalment Amounts";

(iii) there was a "Pricing Supplement" in respect of the Bluestone and Blackstone Notes;

(iv) Greensill Bank's entitlements under the "Master Trust Deed", whether in respect of the Bluestone and Blackstone Notes or otherwise, were zero; and

(v) the cause of Greensill Bank's entitlements under the "Master Trust Deed" in respect of Bluestone and Blackstone Notes (or otherwise) being less than the "Expected Allocation" was the failure of Bluestone Resources to pay the Bluestone Guarantor Obligations on before the "Backstop Date" (including any counterfactual in the event that the alleged "Insured Cause" had not occurred);

(c) it puts the Applicants to proof on all material facts necessary for the arising of a "Loss";

(d) it denies that there was a "Loss", including because there was no "Insured Cause";

(e) further or alternatively, if Greensill Bank has suffered a "Loss" as defined in the 2019 Policy (which is not admitted), then:

(i) that "Loss" is not recoverable by reason of the matters pleaded in paragraph 296(b) of this Defence;

(ii) further or alternatively, IAL does not know what steps Greensill Bank has taken to mitigate Loss (if any), and reserves its right to allege that any indemnity payment to Greensill Bank should be reduced pursuant to clause 10.7 of the 2019 Policy following discovery and disclosure in this proceeding; and

(iii) further, or alternatively, IAL does not know what (if any) amounts Greensill Bank has recovered in respect of the "Assets" in issue in these proceedings, and if and to the extent Greensill Bank has recovered amounts in respect of the "Assets", any exposure of IAL is to that extent reduced; and

(f) otherwise denies paragraph 189 of the SOC.

189A In further answer to the Applicants' claim, IAL:

(a) says that, under the 2019 Policy, the "Insurer" has or may have contractual rights of subrogation under clause 12.1, being rights exercisable against any person or organisation the subject of or otherwise involved in "Loss" (2019 Policy clause 12.1);

(b) says that, under the 2019 Policy, payment of a "Claim" under the policy is subject to and conditional upon the receivables, insurance proceeds or other sources of recovery to which the "Insurer" shall be subrogated in relation to that "Loss" not being subject to any lien, security interest or other third party claim superior to that of the "Insurer" created or granted by the "Insured" or, alternatively, by the "Insured" or a "Loss Payee" (2019 Policy clause 12.2); and

(c) says that it reserves its right to rely on clause 12.2 of the 2019 Policy in the event that the "Loss" the subject of the claim is subject to liens or other interests or claims referred to in clause 12.2.

190 As to paragraph 190 of the SOC, IAL:

(a) repeats paragraphs 110C to 110H and 189 of this Defence; and

(b) otherwise denies paragraph 190 of the SOC.

F CLAIMS

F.1 Breach of the 2019 Policy by Insurer

191 As to paragraph 191 of the SOC, IAL:

(a) repeats paragraphs 66A, 82, 99, 108, 110D to 110G, and 189 to 190 of this Defence;

(b) admits that it has not indemnified Greensill Bank under the 2019 Policy;

(c) says that Greensill Bank is not entitled to indemnity under the 2019 Policy; and

(d) otherwise denies paragraph 191 of the SOC.

192 As to paragraph 192 of the SOC, IAL:

(a) admits it has not paid the amount pleaded in paragraph 190 of the SOC;

(b) says that if Greensill Bank is entitled to an indemnity under the 2019 Policy (which is denied) it was not (and is not) unreasonable for IAL to withhold payment in circumstances where Greensill Bank has failed (and continues to fail) to provide material to IAL to support its claim;

Particulars

By letters dated 27 October 2021 (IAL.500.011.0580), 2 December 2021 (IAL.500.002.1512) and 17 December 2021 (IAL.500.002.5647) written without prejudice to IAL's authority defence the solicitors acting for IAL, Clyde & Co, wrote to the solicitors for Greensill Bank, CMS Hasche Sigle, requesting information in support of the Claim for indemnity. Greensill Bank has not provided any of the information requested. Further, adequate information has not been provided in the SOC or by way of particulars requested by the solicitors for IAL.

(c) says that Greensill Bank is not entitled to an award of interest under section 57 of the *ICA*; and

(d) otherwise denies paragraph 192 of the SOC.

F.1A Misleading or deceptive conduct by IAL

The 2017 LOS Authority Representations

192A In answer to paragraph 192A of the SOC, IAL:

(a) repeats paragraphs 40, 81 and 80O of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 81 and 80G to 80N) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2017 LOS Master Policy and 2017 LOS Parallel Policy were not communicated to IAL; and

(e) otherwise denies the paragraph.

192B IAL denies paragraph 192B of the SOC.

192C IAL denies paragraph 192C of the SOC.

2018 Excess Policy Representations

192D In answer to paragraph 192D of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O and 80X of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 81, 80G to 80N, and 80P to 80W) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2018 Master Excess Policy and 2018 Parallel Excess Policy were not communicated to IAL; and

(e) otherwise denies the paragraph.

192E IAL denies paragraph 192E of the SOC.

192F IAL denies paragraph 192F of the SOC.

Sub-Direct Policy Authority Representations

192G In answer to paragraph 192G of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X and 80AG of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 81, 80G to 80N, 80P to 80W, and 80Y to 80AF) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the Sub-Direct Master Policy and Sub-Direct Parallel Policy were not communicated to IAL; and

(e) otherwise denies the paragraph.

192H IAL denies paragraph 192H of the SOC.

192I IAL denies paragraph 192I of the SOC.

2017 Standalone Policy Representations

192J In answer to paragraph 192J of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG and 80AP of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 81, 80G to 80N, 80P to 80W, 80Y to 80AF, and 80AH to 80AO) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were not communicated to IAL; and

(e) denies the paragraph.

192K IAL denies paragraph 192K of the SOC.

192L IAL denies paragraph 192L of the SOC.

2018 LOS Policy Representations

192M In answer to paragraph 192M of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG, 80AP and 80AY of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 81, 80G to 80N, 80P to 80W, 80Y to 80AF, 80AH to 80AO, and 80AQ to 80AX) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2018 LOS Policies were not communicated to IAL; and

(e) otherwise denies the paragraph.

192N IAL denies paragraph 192N of the SOC.

192O IAL denies paragraph 192O of the SOC.

Nokia Policy Representations

192P In answer to paragraph 192P of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG, 80AP, 80AY and 80BH of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 81, 80G to 80N, 80P to 80W, 80Y to 80AF, 80AH to 80AO, 80AQ to 80AX, and 80AZ to 80BG) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the Nokia Master Policy and Nokia Parallel Policy were not communicated to IAL; and

(e) otherwise denies the paragraph.

192Q IAL denies paragraph 192Q of the SOC.

192R IAL denies paragraph 192R of the SOC.

2019 Excess Policy Representations

192S In answer to paragraph 192S of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG, 80AP, 80AY, 80BH and 80BQ of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 81, 80G to 80N, 80P to 80W, 80Y to 80AF, 80AH to 80AO, 80AQ to 80AX, 80AZ to 80BG, and 80BI to 80BP) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of Master Policy 3087 and Parallel Policy 3088 were not communicated to IAL; and

(e) otherwise denies the paragraph.

192T IAL denies paragraph 192T of the SOC.

192U IAL denies paragraph 192U of the SOC.

The 2019 Standalone Representations

192V In answer to paragraph 192V of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG, 80AP, 80AY, 80BH, 80BQ and 80BS of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 80, 81, 80G to 80N, 80P to 80W, 80Y to 80AF, 80AH to 80AO, 80AQ to 80AX, 80AZ to 80BG, 80BI to 80BP, and 80BR) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the Policy 3690 and Policy 3691 were not communicated to IAL; and

(e) otherwise denies the paragraph.

192W IAL denies paragraph 192W of the SOC.

192X IAL denies paragraph 192X of the SOC.

NMC Claim Payment Representations

192Y IAL denies paragraph 192Y of the SOC.

192Z IAL denies paragraph 192Z of the SOC.

192AA IAL denies paragraph 192AA of the SOC.

192AB IAL denies paragraph 192AB of the SOC.

192AC IAL denies paragraph 192AC of the SOC.

Misleading or Deceptive Conduct

192AD IAL denies paragraph 192AD of the SOC and in respect of:

(a) the "2017 LOS Policy Authority Representations", refers to and repeats paragraphs 192A to 192C of this Defence;

(b) the "2018 Excess Policy Authority Representations", refers to and repeats paragraphs 192D to 192F of this Defence;

(c) the "Sub-Direct Policy Authority Representations", refers to and repeats paragraphs 192G to 192I of this Defence;

(d) the "2017 Standalone Policy Authority Representations" refers to and repeats paragraphs 192J to 192L of this Defence;

(e) the "2018 LOS Policy Authority Representations", refers to and repeats paragraphs 192M to 192O of this Defence;

(f) the "Nokia Policy Authority Representations", refers to and repeats paragraphs 192P to 192R of this Defence;

(g) the "2019 Excess Policy Authority Representations", refers to and repeats paragraphs 192S to 192U of this Defence;

(h) the "2019 Standalone Policy Authority Representations", refers to and repeats paragraphs 192V to 192X of this Defence; and

(i) the "NMC Claim Payment Representations", refers to and repeats paragraphs 192Y to 192AC of this Defence.

(j) the omissions pleaded by the Applicants at paragraphs 192C, 192F, 192I, 192L, 192O, 192R, 192U, 192X and 192AC of the SOC, refers to and repeats paragraphs 192C, 192F, 192I, 192L, 192O, 192R, 192U, 192X and 192AC of this Defence.

192AE As to paragraph 192AE of the SOC, IAL:

(a) repeats to paragraphs 5(d), 8, 66A, 80 and 81 of this Defence;

(b) as to sub-paragraph (a), repeats paragraphs 80G to 80O of this Defence;

(c) as to sub-paragraph (b), repeats paragraphs 80P to 80X of this Defence;

(d) as to sub-paragraph (c), repeats paragraphs 80Y to 80AG of this Defence;

(e) as to sub-paragraph (d), repeats paragraphs 80AH to 80AP of this Defence;

(f) as to sub-paragraph (e), repeats paragraphs 80AQ to 80AY of this Defence;

(g) as to sub-paragraph (f), repeats paragraphs 80AZ to 80BH of this Defence;

(h) as to sub-paragraph (g), repeats paragraphs 80BI to 80BQ of this Defence; and

(i) insofar as the Applicants seek to rely on IAL establishing that each of the policies referred to in paragraph 192AE of the SOC was entered into by BCC

without IAL's authority and/or IAL did not believe on reasonable grounds that they were entered into with IAL's authority in order to support the Applicants' claims against IAL at Part F1A of the SOC, denies the paragraph.

192AF IAL denies paragraph 192AF of the SOC and repeats and refers to paragraphs 5(d), 8, 66A of this Defence.

192AG IAL denies paragraph 192AG of the SOC and repeats and refers to paragraphs 5(d), 8, 66A, 80O, 80X, 80AG, 80AP, 80AY, 80BH and 80BQ of this Defence and says further that no material facts establishing the alleged reasonable expectation are pleaded.

192AH IAL denies paragraph 192AH of the SOC, repeats and refers to paragraphs 5(d), 8, 66A, 80G, 80P, 80Y, 80AH, 80AQ, 80AZ and 80BI of this Defence.

Causation and Loss

192AI As to paragraph 192AI of the SOC, IAL:

(a) says that there is:

(i) no allegation of the time at which GCUK was allegedly aware of these matters;

(ii) no identification of the individual or individuals at GCUK who were allegedly aware of the identified matters;

(iii) no identification of the facts, matters and circumstances relied on to allege GCUK’s awareness; and

(b) denies the paragraph.

192AJ As to paragraph 192AJ of the SOC, IAL:

(a) says that:

(i) it understands the Applicants' case to be that the alleged inducement is established solely by the matter alleged in paragraph 192AI;

(ii) there is no identification of the individual or individuals who were allegedly induced by the Misleading Authority Representations and/or Misleading Authority Omissions to propose to BCC the instruments pleaded at paragraph 193 of the SOC; and

(b) denies the paragraph.

192AK As to paragraph 192AK of the SOC, IAL:

(a) says that there is no:

(i) identification of the individual or individuals at Greensill Bank who were allegedly aware of the identified matters;

(ii) identification of the facts, matters and circumstances relied on to allege Greensill Bank's awareness;

(b) says that there is no identification of the matter or matters said to have induced Greensill Bank enter into the instruments pleaded at paragraph 193 of the SOC and to acquire the Bluestone and Blackstone Notes, or which individual or individuals at Greensill Bank were so induced; and

(c) denies the paragraph.

192AL IAL denies paragraph 192AL of the SOC and says further that the allegation does not identify who at GCUK and Greensill Bank was responsible for making the decisions which, allegedly, would not have been made but for the alleged conduct.

192AM As to paragraph 192AM of the SOC, IAL:

(a) denies paragraph 192AM and repeats paragraphs 192AI to 192AL of this Defence; and

(b) says further that, to the extent IAL is liable for the loss or damage as alleged paragraph 192AM of the SOC (which is denied) it refers to and repeats paragraph 295 of this defence.

F.2 Claims against BCC

Breach of Warranty of Authority

193 Save to repeat that, for the reasons set out in paragraphs 5(d), 8 and 66A of this Defence, IAL denies that BCC or Brereton had the authority of IAL to enter into the instruments pleaded at paragraph 193 of the SOC, IAL does not know and cannot admit paragraphs 193 to 197 of the SOC, which do not make allegations against it.

194-197 [Not used].

197A As to paragraph 197A of the SOC, IAL:

(a) repeats paragraphs 82(a) to 82(k) of this Defence;

(b) further repeats paragraphs 102(a) to 102(b) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 197A(b) of the SOC says that the financial service the subject of the allegation in paragraph 197A(b) is not identified;

(d) denies paragraph 197A(c) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraph 193 of the SOC was conduct on which Greensill Bank could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 197A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 197A(c) of the SOC; and

(v) the conduct of BCC in paragraph 193 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 82(e)(v) of this Defence.

(e) denies paragraph 197A(d) of the SOC and says further that:

(i) there is no pleading as to the manner in which Greensill Bank in fact relied on the conduct referred to in paragraph 193 of the SOC or as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 197A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 197A(c) of the SOC; and

(iii) further, IAL reserves the right to rely on section 917D of the *Corporations Act* and contends that BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied); and

Particulars

Particulars under paragraphs 66A(f), 66A(g), 66A(h), 66A(j) and 86(k) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 102(e) of this Defence) that TMMA had acquired BCC on 9 April 2019.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) does not know and therefore cannot admit paragraph 197A(f) of the SOC; and

(g) otherwise denies paragraph 197A of the SOC.

Misleading or Deceptive Conduct

198 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, 66A, 193 and 197A of this Defence, IAL denies that BCC or Brereton was an agent of IAL for the purposes of engaging in the alleged BCC/Brereton conduct, IAL does not know and cannot admit paragraphs 198 to 206 of the SOC, which do not make allegations against it.

199-206 [Not Used].

206A As to paragraph 206A of the SOC, IAL:

(a) repeats paragraphs 82(a) to 82(k) of this Defence;

(b) further repeats paragraphs 102(a) to 102(b) of this Defence in respect of any conduct of BCC on and from 1 July 2019; and

(c) as to paragraph 206A(b) of the SOC:

(i) says that the financial service the subject of the allegation in paragraph 206A(b) is not identified;

(ii) subject to paragraphs 82(a) and 82(b) of this Defence, admits that if the conduct of BCC pleaded at paragraphs 198 to 200 of the SOC is established (which is denied), that conduct related to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(d) denies paragraph 206A(c) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 198 to 200 of the

SOC was conduct on which Greensill Bank could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 206A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 206A(c) of the SOC; and

(v) the conduct of BCC referred to in paragraphs 198 to 200 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 82(e)(v) of this Defence.

(e) denies paragraph 206A(d) of the SOC and says further that:

(i) there is no pleading as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 206A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 206A(c) of the SOC; and

(iii) further, IAL reserves the right to rely on section 917D of the *Corporations Act* and contends that BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied);

Particulars

Particulars under paragraphs 66A(f), 66A(g), 66A(h), 66A(j) and 86(k) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 102(e) of this Defence) that TMMA had acquired BCC on 9 April 2019.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) does not know and therefore cannot admit paragraph 206A(f) of the SOC; and

(g) otherwise denies paragraph 206A of the SOC.

Section 1041E Claim

207 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, 66A, 193, 197A, 198 and 206A of this Defence, IAL denies that BCC or Brereton was authorised by IAL to make an agreement in terms of any of the documents referred to in paragraph 193 of the SOC, IAL does not know and cannot admit paragraphs 207 to 211 of the SOC, which do not make allegations against it.

208-211 [Not Used].

211A As to paragraph 211A of the SOC, IAL:

(a) repeats paragraphs 82(a) to 82(k) of this Defence;

(b) further repeats paragraphs 102(a) to 102(b) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 211A(b) of the SOC, subject to paragraphs 82(a) and 82(b) of this Defence, admits that if the conduct of BCC pleaded at paragraphs 207 to 209 of the SOC is established (which is denied), that conduct related to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(d) denies paragraph 211A(c) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 207 to 209 of the SOC was conduct on which Greensill Bank could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 211A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 211A(c) of the SOC; and

(v) the conduct of BCC referred to in paragraphs 207 to 209 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 82(e)(v) of this Defence.

(e) denies paragraph 211A(d) of the SOC and says further that:

(i) there is no pleading as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 211A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 211A(c) of the SOC; and

(iii) further, IAL reserves the right to rely on section 917D of the *Corporations Act* and contends that BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied);

Particulars

Particulars under paragraphs 66A(f), 66A(g), 66A(h), 66A(j) and 86(k) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 102(e) of this Defence) that TMMA had acquired BCC on 9 April 2019.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) does not know and therefore cannot admit paragraph 211A(f) of the SOC; and

(g) otherwise denies paragraph 211A of the SOC.

F.3 Claims against Greg Brereton

Breach of Warranty of Authority

212 Save to repeat that, for the reasons set out in paragraphs 5(d), 8 and 66A of this Defence, IAL denies that BCC or Brereton had the authority of IAL to enter into the instruments pleaded at paragraph 193 of the SOC, IAL does not know and cannot admit paragraphs 212 to 216 of the SOC, which do not make allegations against it.

213-216 [Not used].

216A As to paragraph 216A of the SOC, IAL:

(a) repeats the matters in paragraph 197A of this Defence;

(b) does not know and therefore cannot admit paragraph 216A(f) of the SOC; and

(c) otherwise denies paragraph 216A of the SOC.

Misleading or Deceptive Conduct

217 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, 66A, 212 and 216A of this Defence, IAL denies that BCC or Brereton was an agent of IAL for the purposes of engaging in the alleged BCC/Brereton conduct, IAL does not know and cannot admit paragraphs 217 to 225 of the SOC, which do not make allegations against it.

218-225[Not used].

225A As to paragraph 225A of the SOC, IAL:

(a) repeats paragraph 206A of this Defence;

(b) does not know and therefore cannot admit paragraph 225A(f) of the SOC; and

(c) otherwise denies paragraph 225A of the SOC.

Section 1041E Claim

226 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, 66A, 212, 216A, 217 and 225 of this Defence, IAL denies that BCC or Brereton was authorised by IAL to make an agreement in terms of any of the documents referred to in paragraph 193 of the SOC, IAL does not know and cannot admit paragraphs 226 to 230 of the SOC, which do not make allegations against it.

227-230 [Not used].

230A As to paragraph 230A of the SOC, IAL:

(a) repeats paragraph 211A of this Defence;

(b) does not know and therefore cannot admit paragraph 230A(f) of the SOC; and

(c) otherwise denies paragraph 230A of the SOC.

F.4 Claims against Marsh and Marsh Pty Ltd

230B-290 As to paragraphs 230B to 290, IAL:

(a) says that:

(i) insofar as the allegations refer to BCC and/or Brereton's authority to act for or on behalf of IAL (including in relation to Policy 3690), IAL refers to and repeats paragraphs 5(d), 6(e), 8, 66A, and 80 to 81 of this Defence;

(ii) insofar as the allegations refer to a "LOS Policy":

(A) this term is not defined in the SOC;

(B) IAL otherwise refers to and repeats paragraphs 80A to 80O and 80BR of this Defence;

(iii) it does not plead to paragraphs 284AN to 284BP of the SOC, which makes no allegation against IAL;

(b) says further that:

(i) the allegations concern communications between, and relations of, Marsh, Marsh Pty Ltd, BCC, Brereton and Greensill entities;

(ii) IAL was not, and is not alleged to be, a party (or a direct party) to those communications and relations;

(iii) where those paragraphs paraphrase allegations made by IAL in its Defence, repeats the allegations from its Defence and does not adopt the paraphrase;

(c) otherwise, does not know and cannot admit the paragraphs.

F.5 Further Answer to Applicants' Claim

291 In further answer to the Applicants' Claim, IAL:

(a) says that it was an express term of the 2019 Policy (if valid and effective, which is denied) that the "Insured" shall ensure that, following the occurrence of an event that may reasonably be expected to result in a "Loss" under the 2019 Policy, it shall, by exercising the "Insured's" rights under the "Transaction Documents", act reasonably and prudently to prevent and mitigate "Losses" at all times and, in doing so, the "Insured" shall act as would a reasonable and prudent owner of the "Eligible Debt(s)" in question without assuming that any "Loss" may be covered under the 2019 Policy (clause 10.7(a));

(b) says that, on the Applicants' case, which is not admitted, the Hoffman Master Trust Deed was a "Master Trust Deed" and thus a "Transaction Document";

(c) says that the events that may reasonably be expected to result in a "Loss" under the 2019 Policy for the purposes of clause 10.7(a) include the alleged failure on the part of Bluestone Resources to discharge the alleged Bluestone Guarantor Obligations;

(d) says that following the occurrence of the alleged events described in paragraph 291(c) of this Defence:

(i) Greensill Bank (on the Applicants' pleaded case) acquired the Bluestone and Blackstone Notes; and

(ii) Greensill Bank, as the Insured under the 2019 Policy, thereby generated or created the potential for a "Loss" which would not

otherwise have existed because ownership of an "Asset" by an "Insured" is an essential condition of a "Loss" and, also, is an essential condition of a right of indemnity;

(e) says that, as best IAL understands the Applicants' case, in acquiring the Bluestone and Blackstone Notes, Greensill Bank exercised rights under the Hoffman Master Trust Deed;

(f) says that, there is no entitlement to an indemnity under the 2019 Policy to the extent that any "Loss" said to give rise to that entitlement has been caused by a breach of clause 10.7(a), which is, for the reasons referred to in paragraphs 192A(d) to 192A(f) of this Defence, the case here;

(g) says further that, in the premises, the Applicants have no entitlement to an indemnity.

292 In further answer to the Applicants' claim, IAL says:

(a) that it was an express term of the 2019 Policy (if valid and effective, which is denied) that the "Insurer" shall be deemed to have delivered a "Stop Asset Acquisition Instruction" to the "Insured" in relation to "Assets" arising from a "Customer" or if applicable a "Customer Group", where the "Customer" or any member of the applicable "Customer Group" has failed to pay a "Debt" on the relevant "Due Date" and such failure to pay has not been remedied within 10 Business Days after the "Due Date" (2019 Policy, clause 8.3(a));

(b) that, upon the deemed delivery of a "Stop Asset Acquisition Instruction", an "Asset" (arising from the applicable "Customer" or "Customer Group") acquired after the deemed delivery of the "Stop Asset Acquisition Instruction" shall not attach to the 2019 Policy;

(c) the asserted failures to pay by the alleged "Customers" occurred from approximately 6 March 2021 (SOC, paragraph 165) and, ten days following the first asserted failure to pay, IAL was deemed to have issued a "Stop Asset Acquisition" (under clause 8.3(a));

(d) the 2019 Policy did not attach to each "Asset" (including each of the Bluestone and Blackstone Notes) arising from Bluestone Coal, Blackstone and/or Bluestone Resources acquired by Greensill Bank thereafter;

(e) further, for the reasons alleged in paragraph 110E(ib) of this Defence, on and from 10 Business Days after Bluestone Coal and/or Blackstone sold or purportedly sold "Receivables" to GCUK pursuant to the RPA (as alleged in SOC, paragraph 155), Bluestone Resources failed to pay the Bluestone

Guarantor Obligations within 10 Business Days after the "Due Date" (within the meaning of clause 8.3(a) of the 2019 Policy) and none of the Bluestone and Blackstone Notes acquired by Greensill Bank thereafter attached to the 2019 Policy;

(f) further or alternatively, from at least 28 December 2018:

(i) if and when Bluestone Resources became obliged to pay amounts to GCUK under the RPA:

(A) GCUK wired to Bluestone Resources an amount equal to the value of the Bluestone Guarantor Obligations that had reached their due date less a discount corresponding to the interest to be paid from the date until the next roll date and Bluestone Resources re-transferred to GCUK some or all of those funds;

(B) alternatively, GCUK extended the due date for payment by Bluestone Resources, and collected an amount corresponding to the interest to be paid up to the extended date;

(C) in substance, Bluestone Resources only ever paid interest on the funds advanced to it by GCUK and did not repay any principal;

(ii) in all the circumstances, the transactions as between Bluestone Resources and GCUK did not effect a "pay[ment] by Bluestone Resources of "Debts" (if any) owing under the Bluestone RPA by the "Due Date" for payment, at all or within 10 Business Days, for the purposes of clause 8.3(a) of the 2019 Policy;

(g) further, in all the circumstances, there was a failure to pay the alleged debts by the asserted "Customers" from a time commencing before September 2020 because:

(i) at a time unknown to IAL but before 6 February 2020, the following events occurred:

(A) the Sellers failed to meet certain Coal Production Event Triggers; and

(B) the determination of certain legal judgments in excess of a threshold that would qualify as an Event of Termination;

Particulars

Appendix 3 to Resubmitted Claim Form dated 10 December 2021.

(ii) GCUK entered into a Standstill and Forbearance Agreement dated 6 February 2020 agreeing to forbear and standstill until 31 May 2020 from exercising its rights and remedies relating to the events in paragraph 292(g)(i) of this Defence;

Particulars

Appendix 3 to Resubmitted Claim Form dated 10 December 2021.

(iii) in the period between 6 February 2020 and 8 June 2020, additional alleged breaches of the RPA occurred, namely:

(A) the decline in coal pricing events triggering one or more Coal Pricing Events; and

(B) the failure by Bluestone to provide to GCUK with audited 2019 consolidated financial statements and audit report letter for Bluestone Resources in 2019,

(C) which breaches were waived by GCUK by letter dated 8 June 2020;

(iv) by letter dated 10 February 2021, GCUK waived the RPA requirement for an Account Debtor to be a US resident and domiciled in the US solely in respect of ArcelorMittal SA which became an Account Debtor under the terms of the RPA;

(v) on 30 July 2020 GCUK, unilaterally offered to modify the Bluestone Resources' payment obligations such that Bluestone Resources would only be required to pay the interest due on the entire amount due such that cashless rolls would be effected for the principal payment due under the RPA;

Particulars

Amended Complaint Civil Action No. 1:21-cv-002253 United States District Court for the Southern District of New York between Bluestone Resources, Inc and others v Greensill Capital (UK) Limited, Lex Greensill and Roland Hartley-Urquhart.

Further particulars may be provided following discovery.

(vi) on a date presently not known to IAL, in the event (which is not admitted) that the Bluestone Guarantor Obligations existed, GCUK

funded the Bluestone Guarantor Obligations from funds received from investors in the next batch of notes being issued;

Particulars

IAL refers to the Resubmitted Claim Form dated 10 December 2021 and specifically paragraph 2.3 of Appendix 3.

Further particulars may be provided following discovery.

(h) on the Applicants' pleaded case, the 2019 Policy did not attach to the Bluestone and Blackstone Notes, which are said to have been acquired Greensill Bank between 11 September 2020 and 26 February 2021 (SOC, paragraph 159); and

(i) there is no coverage in respect of the Bluestone and Blackstone Notes.

293 In further answer to the Applicants' claim, IAL:

(a) repeats paragraphs 74(d)(i) and 296 of this Defence;

(b) says that each of the matters in paragraphs 292(c) to 292(g) of this Defence was material information which ought to have been delivered by GCUK to IAL in response to the requests referred to in paragraph 192 of this Defence but was not; and

(c) says further that each of the matters in paragraphs 292(b) to 292(g) of this Defence constituted a "Material Policy Impact" as defined by the 2019 Policy, such that IAL has no liability to indemnify Greensill Bank for the loss claim in the proceeding.

294 In further answer to the Applicants' claim, IAL says:

(a) it was a term of the 2019 Policy (if valid and effective, which is denied) that the "Insurer" need not indemnify the "Insured" for "Losses" exceeding the lower of the "Applicable Limit of Liability" and the "Maximum Limit of Liability" (2019 Policy clause 5.2);

(b) the "Applicable Limit of Liability" was defined in Sch 1 and was the lower of (inter alia) the relevant "Customer Limit" of an "Eligible Customer";

(c) the "Maximum Limit of Liability" was defined in Sch 1 and Sch 6 and meant (inter alia), for any particular "Customer", the amount as set out in the relevant "Customer Endorsement";

(d) it was a term of the 2019 Policy that the "Insurer's" maximum liability for the aggregate of all "Losses" insured under the "Policy" for the "Customer" was a

"Customer Limit", being an amount recorded in an "Endorsement" to the "Policy" (Sch 1, definition of "Customer Limit"); and

(e) if, and to the extent that the "Loss" exceeds the "Applicable Limit of Liability" or the "Maximum Limit of Liability" in respect of relevant "Customers", there is no coverage.

295 In further answer to paragraphs 82, 85, 99, 101, 108, 110, 191, 192, 192AM, 206A and 225A of the SOC, insofar as IAL is liable for any loss and damage suffered by the Applicants, which is denied, IAL says that:

(a) it repeats paragraphs 82, 85, 99, 101, 108, 110, 192AM, 206A and 225A of this Defence, including the allegations as to the deficiencies in the Applicants' pleading based on Division 6 of Part 7.6 of the *Corporations Act*;

(b) the responsibility deemed by sections 917B and 917C of the *Corporations Act* does not extend to responsibility for conduct and/or causes of action for which BCC and/or Brereton have a defence as between BCC/Brereton and the Applicants;

(c) IAL's responsibility and/or liability to the Applicants is no greater than any responsibility and/or liability of BCC and/or Brereton to the Applicants;

(d) the causes of action alleged against BCC and Brereton include contraventions of:

(i) section 1041H of the *Corporations Act* (SOC, paragraphs 192AD, 192AF, 192AH, 200, 202, 219 and 221), in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 1041I of the *Corporations Act*;

(ii) section 18 of the *ACL* (SOC, paragraphs 192AD, 192AF, 192AH, 200, 202, 219 and 221) in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 236 of the *ACL*;

(iii) section 12DA of the *ASIC Act* in respect of alleged misleading or deceptive conduct (SOC, paragraphs 192AD, 192AF, 192AH, 200, 202, 219 and 221) said to give rise to a cause of action for loss or damage under section 12GF of the *ASIC Act*;

(da) the causes of action alleged against IAL include contraventions of:

(i) section 1041H of the *Corporations Act* (paragraphs 192AD.c, 192AF and 192AH of the SOC), in respect of alleged misleading or deceptive

conduct in relation to a financial service within the meaning of section 1041H of the *Corporations Act* said to give rise to a cause of action for loss or damage under section 1041I of the *Corporations Act*;

(ii) section 18 of the *ACL* (paragraphs 192AD.d, 192AF and 192AH of the SOC) in respect of alleged misleading or deceptive conduct in relation to trade or commerce within the meaning of section 18 of the ACL said to give rise to a cause of action for loss or damage under section 236 of the ACL;

(iii) section 12DA of the *ASIC Act* (paragraphs 192AD.e, 192AF and 192AH of the SOC) in respect of alleged misleading or deceptive conduct in trade or commerce and in relation to financial services said to give rise to a cause of action for loss or damage under section 12GF of the *ASIC Act*;

(e) the loss said to have arisen because of the alleged contraventions is USD160,000,000 (SOC paragraphs 192AM, 206, 211, 216, 225 and 230), being the "Expected Allocation" of the Bluestone and Blackstone Notes (SOC paragraphs 188 and 189);

(f) causes of action under each of section 1041I of the *Corporations Act*, section 236 of the ACL and section 12GF of the *ASIC Act* are subject to relevantly analogous proportionate liability regimes, set out in, relevantly, Part 7.10, Division 2A, of the *Corporations Act*, Part IVA of the *Competition and Consumer Act 2010* (Cth) (***CCA***) and Part 2, Division 2, Subdivision GA of the *ASIC Act*;

(g) in respect of the each of the proportionate liability regimes, the Applicants' claim is:

(i) a claim for damages (relevantly, under sections 1041I, 236 and/or 12GF) within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act* respectively;

(ii) a claim for "economic loss" within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act*; and

(iii) a claim for loss caused by conduct allegedly done in contravention of sections 1041H, 18 and/or 12DA, within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act* respectively;

(together the **Apportionable Claims**);

(h) each of the Apportionable Claims is an "apportionable claim" for the purposes of the relevant proportionate liability regimes;

(i) under each of the relevant proportionate liability regimes, a "concurrent wrongdoer" in relation to a claim is a person who is one of two or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim (*Corporations Act* section 1041L(3); *CCA* section 87CB(3); *ASIC Act* section 12GP(3));

(j) under each of the relevant proportionate liability regimes, in any proceedings involving an apportionable claim:

(i) the liability of a defendant who is a concurrent wrongdoer in relation to that 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 the defendant's responsibility for the damage or loss; and

(ii) the Court may give judgment against the defendant for not more than that amount,

(*Corporations Act* section 1041N(1); *CCA* section 87CD(1); *ASIC Act* section 12GR(1));

(k) under each of the relevant proportionate liability regimes, in apportioning responsibility between defendants in the proceeding:

(i) the Court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(ii) the Court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings,

(*Corporations Act* section 1041N(3); *CCA* section 87CD(3); *ASIC Act* section 12GR(3));

(l) says that the loss the subject of the Applicants' claim for the purposes of the relevant proportionate liability regimes is the alleged loss referred to in paragraphs 188 to 190 of the SOC;

(m) says that on the assumption, which is not admitted, that the claimed loss was loss or damage suffered because of the alleged contraventions, then:

(i) the First Applicant, Greensill Bank, was contributorily negligent as set out in paragraph 295(n) of this Defence; and

(ii) there were "concurrent wrongdoers" as set out in paragraphs 295(o) to 295(x) of this Defence (**Concurrent Wrongdoers**),

in respect of that loss, such that the liability of IAL, BCC and/or Brereton should be limited under the relevant proportionate liability regimes, and any responsibility of IAL for the conduct of BCC and/or Brereton under sections 917B or 917C of the *Corporations Act* for the conduct yielding that liability should be correspondingly reduced;

Greensill Bank

(n) says that:

(i) the First Applicant, Greensill Bank, was contributorily negligent because:

(A) it failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the transactions pursuant to and in respect of which it purportedly acquired the Bluestone and Blackstone Notes, in circumstances where it knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into the 2019 Policy (and its purported endorsements) and, had it done so, the damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

Particulars

IAL refers to the matters in paragraphs 66A(g) to 66A(j) and 149(d) of this Defence.

IAL may provide further particulars after discovery.

(B) on the pleaded case (which is not admitted) it engaged in acts or omissions, including (inter alia):

a. agreeing to enter into the 2019 Policy (SOC, paragraph 66A) on the pleaded terms, alternatively agreeing to enter into the 2019 Policy when it knew the facts referred to in paragraphs 66A(a) to 66A(k) of this Defence;

b. entering into or agreeing to enter into various endorsements thereto; and

c. acquiring the Bluestone and Blackstone Notes (SOC, paragraph 161);

(C) further, Greensill Bank engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(D) further, at all material times Greensill Bank knew or ought to have known that:

a. BCC's authority on behalf of IAL before 30 June 2019 was limited to underwriting trade credit insurance and the 2019 Policy and its endorsements were not trade credit insurance products;

b. BCC's authority on behalf of IAL to issue Approved Products was subject to Special Acceptance requirements including that any non approved wording was expressly approved by IAL and Scor Re;

c. Scor Re and IAL had not approved the terms of the 2019 Policy;

d. since September 2017, IAL and Scor Re had not communicated to the Greensill Group, Lex Greensill or Marsh that the matters referred to in paragraphs 66A(h) to 66A(m) of this Defence had changed;

e. that BCC's authority was not unlimited and as at February 2019 was limited to $50 million for any one Policy subject to Special Acceptance approval by IAL and Scor Re;

f. in the premises, at all material times, Greensill Bank knew, or ought reasonably to have known, that:

i. before BCC and Brereton could agree to the 2019 Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

ii. IAL and Scor Re did not approve of the wording and structure of the 2019 Policy;

iii. IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy or any policy or endorsement which was not an Approved Product; and

(E) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Policy;

(F) Greensill Bank was recklessly indifferent to BCC's underwriting authority;

(G) the acts or omissions of Greensill Bank caused the loss the subject of the claim (inter alia) because:

a. they caused the 2019 Policy and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of the 2019 Policy and entry into related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 295(p) of this Defence;

ii. Hoffman to issue the Bluestone and Blackstone Notes (SOC, paragraph 159), being notes allegedly secured over the Bluestone and Blackstone Purchased Receivables (SOC, paragraph 160);

iii. Hoffman to enter into the MAA and purchase and have assigned to it "Payment Obligations" (SOC, paragraph 114G);

iv. Greensill Bank to acquire the Bluestone and Blackstone Notes (SOC, paragraph 161),

then those acts or omissions caused the loss the subject of the claim;

(H) they involved the acquisition of the Bluestone and Blackstone Notes by Greensill Bank which was a precondition to the arising of "Loss";

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) Greensill Bank's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) Greensill Bank's misrepresentations and non-disclosures were misleading or deceptive; and

(C) the matters set out in paragraph 295(n)(i)(D) to 295(n)(i)(H) of this Defence;

The Debtors

(o) says that:

(i) each of the entities who failed to pay the alleged debts the subject of Applicants' claim in the SOC, being:

(A) Bluestone Coal;

(B) Blackstone;

(C) Bluestone Resources; and

(D) each of the alleged "Suppliers" referred to in the "Supplier" column in the table at paragraph 155 of the SOC (to the extent that any of the Bluestone and Blackstone Purchased Receivables because the subject of an invoice or other clearly defined payment obligation owed the "Supplier"),

(together, the **Debtors**);

was a "concurrent wrongdoer" because:

a. it is a necessary element of the Applicants' case that, by reason of an "Insured Cause", the "Insured" has failed to receive its "Expected Allocation" (2019 Policy clause 3.1);

b. the loss alleged by the Applicants is the alleged "Expected Allocation" of the Bluestone and Blackstone Notes (SOC, paragraph 188);

c. the alleged “Insured Cause” is the alleged Bluestone Resources Default (SOC, paragraph 176);

d. the Bluestone Resources Default comprises alleged failures on the part of Bluestone Resources to:

   i. repurchase from GCUK, at the Repurchase Price under the RPA, the Bluestone and Blackstone Purchased Receivables the subject of the alleged Notice of Event of Repurchase (as referred to in paragraph 170 of the SOC); and

   ii. pay interest on amounts due to Greensill Bank as calculated under the RPA (SOC, paragraph 173);

e. Bluestone Resources became obliged, pursuant to the Group Guarantee, to make the payments referred to in paragraph 295(o)(i)(D)d above by reason of the alleged Bluestone and Blackstone Default (SOC, paragraph 173);

f. the Bluestone and Blackstone Default comprises alleged failures on the part of Bluestone Coal and Blackstone to:

   i. repurchase from GCUK, at the Repurchase Price under the RPA, the Purchased Receivables the subject of the alleged Notice of Event of Repurchase, allegedly in contravention of clause 5(a)(ii)(4) of the RPA (SOC, 172(a)); and

   ii. pay interest on amounts due to Greensill Bank as calculated under the RPA, allegedly in contravention of clause 5(a)(ii)(4) of the RPA (SOC, 172(b));

g. it is therefore a necessary element of the Applicants’ case that the loss for which it claims was caused, in whole or in part, by the acts or omissions of the Debtors, namely the Debtors’ Defaults individually;

(ii) the liability of IAL, BCC and/or Brereton in relation to the apportionable claims under section 1041I, section 236 and/or section 12GF is limited to an amount that the Court considers just having regard to the extent of their responsibility for the economic loss alleged by the Applicants and the Court may not give judgment against IAL, BCC and/or Brereton for more than that amount;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to (inter alia) the following matters:

(A) on the Applicants' pleaded case, the Debtors were each subject to voluntarily-assumed legal obligations to pay the amounts the subject of the Defaults;

(B) on the Applicants' pleaded case, it was the voluntarily-assumed legal obligations of the Debtors (and correlative rights of GCUK) from which the Bluestone and Blackstone Notes were derived and in respect of which, therefore, the claimed economic loss was suffered;

(C) it is not alleged that BCC and/or Brereton knew and/or ought to have been aware of any facts, matters or circumstances indicating that each or any of the Debtors would or might commit the alleged Defaults;

(D) on the Applicants' pleaded case, had the alleged Defaults not occurred, the loss the subject of the claim would not have been suffered;

GCUK

(p) says further that:

(i) GCUK is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted) it engaged in acts or omissions by entering the transactions to provide finance to Bluestone Coal and Blackstone on the terms alleged in the claim, including:

a. it entered into the "RPA" (as amended) on the terms alleged (SOC, paragraph 115);

b. it entered into the “Transaction Fee Letters” on the terms alleged (SOC, paragraph 116);

c. it entered into the “First Amendment and Joinder to Receivables Purchase Agreement and Affiliate Guarantee” dated 7 December 2018 on the terms alleged (SOC, paragraph 119);

d. it entered into certain documents from time to time that amended the “Maximum Outstanding Purchase Price” for the purpose of the RPA on the terms alleged (SOC, paragraph 130);

e. it agreed to purchase the Bluestone and Blackstone Purchased Receivables (as defined in paragraph 155 of the SOC) under the RPA from Bluestone Coal and/or Blackstone, each of which was allegedly an expected future payment obligation of a purported “Supplier” (SOC, paragraph 155); and

f. it assigned the Bluestone and Blackstone Purchased Receivables to Hoffman (SOC, paragraph 158);

(B) further, GCUK engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(C) further, at all material times GCUK knew or ought to have known of the matters pleaded in paragraph 295(n)(i)(D) of this Defence;

(D) GCUK was recklessly indifferent to BCC’s underwriting authority;

(E) the acts or omissions of GCUK caused the loss the subject of the claim (inter alia) because:

a. on the expressly or impliedly pleaded case (which is not admitted), as a result of GCUK’s acts or omissions:

i. Bluestone Coal and Blackstone assumed the obligation to repurchase the Bluestone and Blackstone Purchased Receivables at the Repurchase Price under the RPA in the

event of an Event of Repurchase or an Event of Termination under the RPA (SOC, paragraphs, 164, 166 and 172);

ii. Bluestone Resources assumed the Bluestone Guarantor Obligations under the Group Guarantee (as defined at paragraph 136 of the SOC) relied on by the Applicants (see SOC, paragraph 173);

iii. thereafter, Bluestone Coal, Blackstone and Bluestone Resources failed to repurchase the Bluestone and Blackstone Purchased Receivables at the Repurchase Price under the RPA, constituting the alleged Bluestone and Blackstone Default and the alleged Bluestone Resources Default (SOC, paragraphs 172 and 173), which failure to pay is said to be an "Insured Cause" (SOC, paragraph 175); and

iv. as a result of that Insured Cause, there have been "Losses" which are the subject of the claim (note clause 1.1 of the 2019 Policy and SOC, paragraph 188);

b. had the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC not been made, then the alleged damage or loss the subject of the claim would not have arisen or, alternatively, would have been less:

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) GCUK failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the parties to the transaction (Part E1 SOC), the RPA and related agreements (Part E2 SOC), the guarantees (Part E3 SOC), the Bluestone and Blackstone Purchased Receivables (Part E6 SOC), the Bluestone and Blackstone Notes (Part E7 SOC),

the insurance arrangements, and the authority of BCC to bind IAL;

(B) GCUK did not operate as a reasonably prudent lender in (i) its provision of finance to Bluestone Resources, Bluestone Coal and Blackstone (as alleged in Parts E2 and E6 SOC), (ii) in failing to procure adequate security for the alleged debts (as alleged in Part E3 SOC) and (iii) in extending cashless rolls of amounts owing by Bluestone Coal and Blackstone (as alleged in paragraph 292 of this Defence);

(C) GCUK has not taken steps, alternatively has not taken adequate steps, to recover payments from the Debtors (as defined in paragraph 295(o)(i) of this Defence);

(D) GCUK has not taken steps, alternatively has not taken adequate steps, to enforce the guarantees and/or security from those persons and/or entities identified in paragraph 295(s) of this Defence (together, the **Guarantors**) pursuant to their obligations as guarantors;

(E) the misrepresentations and non-disclosures made by GCUK were misleading or deceptive; and

(F) the matters set out in paragraph 295(p)(i) of this Defence;

GCPL

(q) says further that:

(i) GCPL is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted) it engaged in acts or omissions, including (inter alia):

a. agreeing to enter into the 2019 Policy (SOC, paragraph 66A) on the pleaded terms, alternatively agreeing to enter into the 2019 Policy when it knew the facts referred to in paragraphs 65(a) to 65(k) of this Defence;

b. entering into or agreeing to enter into various endorsements thereto;

(B) GCPL engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(C) further, at all material times GCPL knew or ought to have known of the matters pleaded in paragraph 295(n)(i)(D) of this Defence;

(D) GCPL was recklessly indifferent to BCC's underwriting authority;

(E) the acts or omissions of GCPL caused the loss the subject of the claim (inter alia) because:

a. they caused the 2019 Policy and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of the 2019 Policy and entry into the related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 295(p) of this Defence;

ii. Hoffman to issue the Bluestone and Blackstone Notes (SOC, paragraph 159), being notes allegedly secured over the Bluestone and Blackstone Purchased Receivables (SOC, paragraph 160);

iii. Greensill Bank to acquire the Bluestone and Blackstone Notes (SOC, paragraph 161),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) GCPL's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) GCPL's misrepresentations and non-disclosures were misleading or deceptive; and

(C) the matters set out in paragraph 295(q)(i) of this Defence;

Lex Greensill

(r) says further that:

(i) Lex Greensill is a concurrent wrongdoer because:

(A) he engaged in acts or omissions constituted by (inter alia) the exercise of control and decision-making authority over Greensill Bank, GCPL and GCUK, and conduct on behalf of those entities;

Particulars

Evidence of Lex Greensill to Treasury Committee, Ordered by the House of Commons on 11 May 2021.

(B) further, at all material times, Lex Greensill knew or ought to have known of the matters pleaded in paragraph 295(n)(i)(D) of this Defence;

(C) because of Lex Greensill's acts or omissions:

a. GCUK engaged in the conduct pleaded in paragraph 295(p) of this Defence;

b. Greensill Bank engaged in the conduct pleaded in paragraph 295(n) of this Defence;

c. GCPL engaged in the conduct pleaded in paragraph 295(q) of this Defence;

and, for the reasons set out in those paragraphs, thereby caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the matters set out in paragraphs 295(p), 295(n) and 295(q) of this Defence concerning apportionment to GCUK, Greensill Bank and GCPL;

(B) that at all material times Lex Greensill (and the Greensill Group) knew or ought to have known the matters set out in paragraph 295(n)(i)(D) of this Defence;

(C) Lex Greensill was recklessly indifferent to BCC's underwriting authority;

(D) Lex Greensill's central role across the entirety of the events the subject of the SOC;

The Guarantors

(s) says further that:

(i) each of the following persons and/or entities is a Guarantor (as defined in paragraph 295(p)(ii)(D) of this Defence):

(A) James C. Justice II;

(B) Cathy L. Justice;

(C) James C. Justice III;

Particulars

Individual Guarantee dated 26 June 2018 given by James C Justice II, Cathy Justice and James C Justice III in favour of GCUK (as defined at paragraph 133 of the SOC).

Amended and Restated Individual Guarantee dated 26 September 2018 given by James C. Justice II, Cathy L. Justice and James C. Justice III in favour of GCUK (as referred to at paragraph 135 of the SOC).

Reconfirmation and Acknowledgment of Amended and Restated Individual Guarantee dated 7 December 2018 given by James C. Justice II, Cathy L. Justice and James C. Justice III in favour of GCUK (as referred to at paragraph 135 of the SOC).

Individual Guarantee dated 10 June 2019 given by James C Justice III in favour of GCUK (as referred to at paragraph 135 of the SOC).

Second Amended and Restated Individual Guarantee dated 10 June 2019 given by James C Justice II and Cathy Justice in favour of GCUK (as referred to at paragraph 135 of the SOC).

(D) Bluestone Resources;

(E) National Resources Inc;

(F) Tams Management Inc;

(G) Bluestone Coal Sales Corp;

(H) Pay Car Mining Inc;

(I) Second Sterling Corp;

(J) Justice Highwall Mining Inc;

(K) NUFAC Mining Company Inc;

(L) Energy Plus Inc;

(M) Gilbert Mine Inc,

(the entities referred to in paragraphs 295(s)(i)(E) to 295(s)(i)(M) of this Defence, being collectively the **Bluestone Group Guarantors**); and

Particulars

The Group Guarantee (as defined in paragraph 136 of the SOC) given by Bluestone Resources and the Bluestone Group Guarantors in favour of GCUK.

First Amendment and Joinder to Receivables Purchase Agreement and Affiliate Guarantee dated 7 December 2018 (as referred to at paragraph 140 of the SOC).

(N) Bluestone Coke;

Particulars

Guarantee Agreement dated 6 February 2020 between Bluestone Coke and GCUK (as referred to at paragraph 141 of the SOC).

Guarantee and Security Agreement dated 3 November 2020 between the Bluestone Group Guarantors, Bluestone Coal, Blackstone, Bluestone Coke and GCUK (as referred to at paragraph 142 of the SOC).

(O) Bluestone Coal; and

(P) Blackstone;

Particulars

Guarantee and Security Agreement dated 3 November 2020 between Bluestone Resources, the Bluestone Group Guarantors, Bluestone Coal, Blackstone, Bluestone Coke and GCUK (as referred to at paragraph 142 of the SOC).

(ii) each of the Guarantors (as referred to in paragraph 295(s)(i) of this Defence) is a concurrent wrongdoer because:

(A) each engaged in acts or omissions, including the failure to pay the asserted "Eligible Debts" the subject of the claim pursuant to their obligations as guarantors;

(B) the Guarantors' acts and omissions, including their failure to pay the asserted debts, caused (on the pleaded case, which is not admitted) the debts not to be paid, the Bluestone

Resources Default, the "Insured Cause" (as alleged) and the loss the subject of the claim;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the fact that the Guarantors were the subject of voluntarily assumed legal obligations to discharge the debts;

Hoffman

(t) says further that:

(i) Hoffman is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted), it engaged in (inter alia) acts or omissions including:

a. agreeing to enter into the Master Trust Deed (see SOC, paragraph 159);

b. agreeing to receive or otherwise receiving assignment of the Bluestone and Blackstone Purchased Receivables from GCUK (SOC, paragraph 158);

c. issuing the Bluestone and Blackstone Notes (SOC, paragraph 159) on the terms alleged; and

d. selling the Bluestone and Blackstone Notes to Greensill Bank (SOC, paragraph 161);

(B) Hoffman's acts or omissions caused Greensill Bank to acquire the Bluestone and Blackstone Notes and to suffer the "Loss" the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the fact that Hoffman did not undertake or alternatively failed to undertake adequate, investigations and/or due diligence into the parties to the transaction (Part E1 SOC), the customer and supplier agreements (Part E2 SOC), the Bluestone and Blackstone Purchased Receivables (Part E5 SOC), the Bluestone and Blackstone Notes (Part E6 SOC), the insurance arrangements, the authority of BCC to bind IAL and the transactions referred to in the SOC;

Marsh

(u) says further that:

(i) Marsh, being each of Marsh Pty Ltd and Marsh Ltd (alternatively, any one of them), are concurrent wrongdoers because:

(A) each engaged in acts or omissions, including (inter alia):

a. setting up BCC as an approved underwriting agent on the Marsh billing system;

b. acting as the broker of Greensill Bank and GCPL;

c. the matters referred to in Section F4 of the SOC;

(B) they participated in the negotiations for the insurance instruments (including the 2019 Policy and those referred to earlier in this Defence and below at paragraph 295(u)(ii)(H)), and took other steps (not presently known to IAL, but which will be the subject of requests for compulsory production) which caused or contributed to Greensill Bank and GCPL's purported entry into the 2019 Policy and/or the pleaded endorsements thereto;

(C) those acts or omissions caused the loss the subject of the claim because:

a. they caused Greensill Bank and GCPL to purportedly enter into the 2019 Policy and related endorsements on the terms set out in them;

b. in the event that Greensill Bank and GCPL's purported entry into the 2019 Policy and related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 295(p) of this Defence;

ii. Hoffman to issue the Bluestone and Blackstone Notes (SOC, paragraph 159), being notes allegedly secured over the Bluestone and Blackstone Purchased Receivables (SOC, paragraph 160);

iii. Greensill Bank to acquire the Bluestone and Blackstone Notes (SOC, paragraph 161),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) Marsh's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) Marsh knew, or ought reasonably to have known, that BCC was only permitted to underwrite trade credit insurance and the 2019 Policy was not trade credit insurance;

(C) Marsh knew, or ought reasonably to have known, that:

a. before BCC and Brereton could agree to the 2019 Policy and any endorsements issued pursuant to that policy, it was necessary for IAL and Scor Re to agree to their terms and structure;

b. IAL and Scor Re did not approve of the wording and structure of the 2019 Policy or any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC; and

c. IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy or any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC;

d. BCC and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA;

e. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

(D) at the time of first setting up BCC as an approved underwriting agency Marsh ought to have obtained, and reasonably

satisfied itself of, the terms of the CGU AAR Agreement confirming the existence, duration of agreement and related limits, to ensure that it was aware of the limitations on BCC's authority;

(E) Marsh ought to have, but failed to, ensure that its employees and representatives were aware of and understood the terms of any agency agreement between IAL and BCC, and the limitation on BCC's authority;

(F) Marsh ought to have, but failed to, ensure that its employees and representatives were aware of and understood the terms of any authority arrangement between IAL and Brereton, and the limitation on Brereton's authority;

(G) Marsh ought to have, but failed to, review on an annual basis the ongoing authority of BCC including the terms on which it was permitted to underwrite Approved Products on behalf of IAL;

(H) Marsh ought to have, but failed to, obtain any or any proper confirmation or verification of BCC's authority to underwrite on behalf of IAL the LOS Policy, Policy TW-03137, Policy TS-03088, Policy TS-03087, the 2019 Policy, Policy TB-03691, Policy TB-04271, Policy TB-04278, Policy TB-04584, TB-05370, Policy TB-05369, Policy TW-03456, Policy TW-03457, Policy TW-05411 and Policy TW-05412 in circumstances where the combined limits of the identified Policies were in excess of any other insurers underwriting trade credit insurance in the Australian market and in circumstances where BCC was a start-up underwriting agency;

(I) Marsh facilitated the execution of Endorsements 17 and 18 to purportedly extend the policy period of the 2019 Policy in circumstances when Marsh knew from 15 April 2019 and before the execution of Endorsements 17 and 18 that BCC did not have authority to extend existing insurance arrangements issued on behalf of IAL;

(ua) says further or alternatively that, if the matters alleged by the Applicants at paragraphs 230B to 290 of the SOC are established:

(i) Marsh is a concurrent wrongdoer for the reasons alleged in those paragraphs; and

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including those alleged in those paragraphs;

(ub) says further or alternatively that, if the matters alleged by Credit Suisse at paragraphs 106DD to 106MMMM of the Sixth Amended Statement of Claim in proceedings NSD 106 of 2022 (which will be heard together with this proceeding) are established:

(i) Marsh is a concurrent wrongdoer for the reasons alleged in those paragraphs; and

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including those alleged in those paragraphs;

TMNF

(v) says further that:

(i) TMNF was a concurrent wrongdoer because on and from 1 July 2019:

(A) it engaged in acts or omissions, including (inter alia):

a. failing to ensure that its authorised representatives, BCC and Brereton, acted within the scope of what TMNF authorised them to do;

b. failing to ensure that BCC and Brereton did not purport to enter into the endorsements referred to in subparagraph (B) below in respect of the 2019 Policy on behalf of IAL on and from 1 July 2019;

c. failing to ensure that BCC provided bordereaux to IAL that contained complete and accurate information in respect of endorsements issued by BCC and Brereton on and from 1 July 2019;

(B) the acts and omissions of BCC and Brereton in purporting to enter the instruments on behalf of IAL, which were engaged

in (on the pleaded case) as agent and authorised representative of TMNF, being the entry of:

a. Endorsement 23 dated 5 February 2020 (SOC, paragraph 102);

b. Debt Endorsement 2(iv) dated 16 April 2020 (SOC, paragraph 149); and

c. each of the Post 1 July 2019 Supplier Customer Endorsements purportedly entered on or after 1 July 2019, as detailed in paragraphs 143(i) to 143(n) of the SOC;

(C) those acts and omissions caused the loss the subject of the claim because:

a. they caused BCC and/or Brereton to purportedly enter into the related endorsements to the 2019 Policy referred to in paragraph 295(v)(i)(B) of this Defence;

b. in the event that Greensill Bank and GCPL's entry into the 2019 Policy and related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 295(p) of this Defence;

ii. Hoffman to issue the Bluestone and Blackstone Notes (SOC, paragraph 159), being notes allegedly secured over the Bluestone and Blackstone Purchased Receivables (SOC, paragraph 160);

iii. Greensill Bank to acquire the Bluestone and Blackstone Notes (SOC 161),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the acts or omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) TMNF knew, or ought reasonably to have known, that:

a. IAL had not given authority to BCC and Brereton to enter into the 2019 Policy nor any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC;

b. BCC and Brereton's authority to write new policies or risks, or extend the term or scope of existing policies, on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA; and

c. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

The Administrators

(w) says further that:

(i) each of TMMA and Bond (together, **the Administrators**) was a concurrent wrongdoer because:

(A) each engaged in acts or omissions including (inter alia):

a. providing administration services to IAL under the PACAO;

b. failing to provide those services with due care and skill;

(B) those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the PACAO did not confer a general authority on Bond or BCC as Bond's delegate to act as IAL's agent to administer trade credit insurance policies issued by IAL on or before 30 June 2019, as pleaded in paragraph 37(e) of this Defence;

(B) it was a term of the PACAO after 9 April 2019 that Bond, or BCC as Bond's delegate, was not permitted to write new business or renewals on IAL paper (Sch 5, clause 2), as pleaded in paragraph 37(f) of this Defence;

(C) it was a term of the PACAO that Bond would prepare and disseminate monthly Written and Paid Bordereaux and reconcile reporting systems to bank and bordereaux reports (Sch 5, clause 2.1);

(D) it was a term of the PACAO that Bond would deliver administration services with due skill and care, efficiently and fairly (clause 5.1);

(E) it was a term of the PACAO that Bond would ensure that it properly supervised its staff (including Brereton) in relation to the provision of services (clause 5.1(c));

(F) there were further restrictions on the Administrators as stipulated in the PACAO, for which IAL repeats the matters pleaded in paragraphs 38(b), 38(c) and 38(d) of its Defence;

(G) the authority of BCC and Brereton was confined at all material times on and after 9 April 2019 until 30 June 2019, in the manner described in paragraphs 5(d)(i)(B), 5(d)(i)(E), 6(e)(i), 6(e)(iii), 6(e)(vi), 8(i), 8(k), 32, 33, 55, 60 and 66A of this Defence, a matter known by the Administrators;

(H) BCC and Brereton purported to issue endorsements after 9 April 2019 which were not Approved Endorsements and were outside of the authority referred to in the preceding sub-paragraph, including:

a. Endorsement 17 dated 21 June 2019 (SOC, paragraphs 90 and 91);

b. Endorsement 18 dated 27 June 2019 (SOC, paragraphs 94 and 95);

c. Endorsement 23 dated 5 February 2020 (SOC, paragraphs 102 and 103);

d. Debt Endorsement 2(iv) dated 16 April 2020 (SOC, paragraph 149);

e. Customer Endorsement 26(i) dated 21 May 2019 (SOC, paragraph 143(e));

f. Customer Endorsement 80 dated 11 June 2019 (SOC, paragraph 143(f));

g. Customer Endorsement 77 dated 11 June 2019 (SOC, paragraph 143(g));

h. Customer Endorsement 78 dated 11 June 2019 (SOC, paragraph 143(h));

i. Customer Endorsement 24(ii) dated 4 September 2019 (SOC, paragraph 143(i));

j. Customer Endorsement 28(ii) dated 12 February 2020 (SOC, paragraph 143(j));

k. Customer Endorsement 79(i) dated 12 February 2020 (SOC, paragraph 143(k));

l. Customer Endorsement 27(ii) dated 14 April 2020 (SOC, paragraph 143(l));

m. Customer Endorsement 71(i) dated 14 April 2020 (SOC, paragraph 143(m));

n. Customer Endorsement 29(iii) dated 14 April 2020 (SOC, paragraph 143(n));

(l) the acts or omissions of the Administrators were of substantial causal significance to the arising of the loss the subject of the claim;

(J) the Administrators knew, or ought reasonably to have known, that:

a. IAL had not given authority to BCC and Brereton to enter into the 2019 Policy nor any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC;

b. IAL had only authorised BCC and Brereton to issue Approved Products and the 2019 Policy was not an Approved Product;

c. BCC and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA;

d. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act* on and after 1 July 2019.

BCC and Brereton

(x) in the event that it is established that BCC and Brereton engaged in the misleading or deceptive conduct pleaded in paragraphs 193 to 230 of the SOC, BCC and Brereton were concurrent wrongdoers such that IAL's liability in relation to the Apportionable Claims is limited to an amount reflecting the proportion of the loss and damage claimed that is just, having regard to the extent of BCC's and Brereton's responsibility for the loss or damage suffered, pursuant to section 87CD of the *CCA*, section 1041N of the *Corporations Act* and section 12GR of the *ASIC Act*;

Reservation

(y) says further, in relation to the whole of paragraphs 295(a) to 295(x) of this Defence:

(i) it was not a party to the transactions the subject of the SOC (including the 2019 Policy, the endorsements thereto, and the various underlying transactional documents said to have given rise to claims under the 2019 Policy) which gave rise to the alleged loss and damage in respect of which the Applicants sue;

(ii) it does not know the circumstances in which the alleged loss arose, the identities of those who caused or contributed to the alleged loss and the role and culpability of those who did so;

(iii) it intends to pursue compulsory production and, following compulsory production and the development of evidence in the proceedings:

(A) it may become apparent that there are additional persons meeting the description of being a "concurrent wrongdoer";

(B) it may become appropriate to supplement or vary the circumstances identified in paragraphs 295(k) to 295(x).

296 In further answer to the whole of the claim, if:

(a) which is denied, IAL is bound by the 2019 Policy and the pleaded endorsements; and

(b) IAL establishes the matters pleaded by IAL in Annexure A to its Defence to the SOC:

(i) pursuant to clause 15.4 of the 2019 Policy or section 28(2) of the *ICA*, the 2019 Policy and any endorsements under that policy are liable to be avoided and IAL hereby avoids them;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.

(ii) further or alternatively, pursuant to section 28(3) of the *ICA*, if the 2019 Policy and pleaded endorsements are not avoided, the right to indemnity of Greensill Bank is reduced to the amount that would place IAL in the position it would have been had the matters pleaded by IAL in Annexure A to its Defence to the SOC, that amount being nil;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.

(iii) further, or alternatively, pursuant to clause 9.7 of the 2019 Policy, each of Greensill Bank and GCPL 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 these proceedings.

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.

297 In further response to the Applicants' claims pleaded against it in the SOC, IAL pleads the facts alleged in the document titled "Annexure B to Defences to IAL", which is filed in these Proceedings on 30 April 2026.

Date: 1 May 2026



Signed by Malcolm Stephens, solicitor on record

This pleading was prepared by Malcolm Stephens and settled by SG Finch, DFC Thomas, D Hume, C Ernst, H Cooper and N Wootton of Counsel

Certificate of lawyer

I Malcolm Stephens certify to the Court that, in relation to the defence filed on behalf of the First 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 May 2026

M Stephens

Signed by Malcolm Stephens, solicitor on record

Schedule

No. NSD174/2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent:	BCC Trade Credit Pty Ltd
Third Respondent:	Greg Brereton
Fourth Respondent:	Tokio Marine & Nichido Fire Insurance Co Ltd
Fifth Respondent:	Marsh Pty Ltd
Sixth Respondent:	Marsh Limited

CROSS CLAIM

Cross-Claimant:	BCC Trade Credit Pty Ltd
Cross Respondent:	Greensill Capital (UK) Ltd
Second Cross Respondent:	Greensill Bank AG
Third Cross Respondent:	Greensill Capital Pty Ltd