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Registrar

Important Information

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Rule 16.32

Defence to Sixth Amended Statement of Claim

No. NSD 1039 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

WHITE OAK COMMERCIAL FINANCE EUROPE (NON-LEVERED) LIMITED

Applicant

INSURANCE AUSTRALIA LIMITED (ACN 000 016 722) and others named in the Schedule

First Respondent

To the Applicant's (White Oak Commercial Finance Europe (Non-Levered) Limited (**White Oak**)) Sixth Amended Statement of Claim (**ASOC**) filed 9 July 2026, the Sixth Respondent, Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291) (**TMNF**), says as follows.

PRELIMINARY MATTERS

(1) As pleaded further in the document titled "**Annexure A** to the Defences filed by the BCC/TM Parties" filed in these proceedings (**Annexure A to this Defence**), BCC Trade Credit Pty Ltd (**BCC**) alleges that it was induced to enter into the relevant insurance instruments by reason of non-disclosures and misrepresentations by or on behalf of Greensill Bank AG (**Greensill Bank**), Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Ltd (**GCUK**) (together, the **Greensill Group**) as to the underlying risks being presented to it for trade credit insurance throughout the relevant period.

(2) Nothing in this pleading should be understood as an affirmation of any of the documents referred to herein, or as a waiver of any rights to argue that those documents are void or voidable. In particular, and without limiting the generality of the foregoing, all references in this pleading to the Policy and to any purported endorsement thereto should be read, where applicable, as though it was followed by the words 'if valid' in parentheses. Whilst

Filed on behalf of (name & role of party) Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), Sixth Respondent

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TMNF admits that BCC and Brereton had ostensible authority to enter into the Policy and that it is binding on IAL, TMNF does not otherwise admit that the Policy and its endorsements are valid or not liable to be avoided, and to the extent that the pleading sets out coverage defences that are based on the wording of the Policy and its endorsements, it should be understood that those defences arise only in the alternative to any allegation that the Policy and its endorsements are invalid (including by reason of avoidance).

A. Summary / Nature of the Dispute

1. Paragraphs A7 to A9 and A14, and 1B to 1E of the ASOC broadly identify the nature of the dispute insofar as it concerns TMNF. TMNF denies or does not know and therefore cannot admit that all of the allegations of fact embedded within those paragraphs are true, as set out in further detail below. TMNF is a general insurer based in Japan. It became a parent company of BCC in April 2019 pursuant to an acquisition of BCC by a subsidiary of TMNF, Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455) (**TMMA**) (the Seventh Respondent). Prior to this acquisition, TMNF and TMMA had no involvement in the insurance underwriting agency business conducted by BCC.

B. Issues Likely to Arise

2. In addition to the issues identified at paragraphs 1F to 3F of the ASOC, the following issues are likely to arise in relation to TMNF:

    a. whether the Policy and its endorsements are valid;

    b. the extent to which the Policy is vitiated by any relevant failures on the part of entities in the Greensill Group on behalf of the Insured, including by reason of misrepresentations and non-disclosures;

    c. the scope of the coverage under the Policy and its endorsements, if any;

    d. whether TMNF as a foreign registered company based in Japan, an Australian Financial Services Licensee (Licensee) and ultimate parent company of both the TMMA, and BCC, owes a duty (either at common law or under statute) to warn a third party such as White Oak, with whom TMNF had no contractual or other relationship, of any suspicions it holds that insurance contracts entered into by an employee of BCC on behalf of IAL, may have been written outside of authority and may not therefore be valid and binding;

e. whether there was a common law duty of care on the part of TMNF to take reasonable precautions to avoid Credit Suisse, suffering economic loss and, if so, whether that duty was breached and whether Credit Suisse suffered loss as a result; and

f. whether the *Corporations Act 2001* (Cth) (**Corporations Act**) and the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), insofar as they are relied on to allege that TMNF engaged in misleading or deceptive conduct and unconscionable conduct, have extraterritorial application to the conduct of TMNF (based in Japan) towards White Oak (based in the United Kingdom).

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

C. The Parties

4. TMNF admits paragraphs 4 of the ASOC.

5. TMNF admits paragraph 5 of the ASOC.

6. TMNF admits paragraphs 6 of the ASOC.

7. TMNF admits paragraphs 7 of the ASOC.

7AA. TMNF admits paragraph 7AA of the ASOC.

D. Other Relevant Entities

Agent of Insurer

7A. TMNF admits paragraph 7A of the ASOC.

8. As to paragraph 8 of the ASOC, TMNF:

a. says that on 28 July 2016, BCC entered into an Agency & Authorised Representative Agreement (**CGU AAR Agreement**) with CGU Insurance Limited ACN 004 478 371 (**CGU**), by virtue of which it became an authorised representative of CGU;

b. says that on 1 August 2017, the insurance business of CGU was transferred to IAL pursuant to orders of the Federal Court of Australia under s 17F(1) of the *Insurance Act 1973* (Cth);

c. says that by virtue of that transfer, the CGU AAR Agreement was transferred from CGU to IAL, and BCC became an authorised representative of IAL;

d. says that BCC never entered into any Agency & Authorised Representative Agreement with IAG Agencies;

e. says that BCC never became an authorised representative of IAG Agencies;

f. says that on 9 April 2019, BCC and IAL entered into a new Agency & Authorised Representative Agreement (**IAL AAR Agreement**), which by virtue of cl 20.9(a) thereof, superseded the CGU AAR Agreement that had been transferred from CGU to IAL;

g. says that on 30 June 2019, the IAL AAR Agreement expired by virtue of cl 1 thereof; and

h. otherwise denies the paragraph.

9. There is no paragraph 9 of the ASOC.

9A. In response to paragraph 9A of the ASOC:

a. says that on 11 March 2016, Mr Brereton entered into a contract of employment (**Contract of Employment**) with Bond and Credit Company Pty Ltd (**Bond**);

b. admits that Mr Brereton's role was Head of Trade Credit;

c. admits that Mr Brereton was employed by Bond until 8 July 2020; and

d. otherwise denies the paragraph.

9B. In response to paragraph 9B of the ASOC,TMNF:

a. says that on or about 31 July 2017, Mr Brereton signed a document styled "Individual Authorisation Agreement" between IAG Agencies Pty Ltd (**IAGA**) and Mr Brereton (**IAGA Brereton Agreement**);

b. says that the IAGA Brereton Agreement annexed a document styled 'Individual Authorisation Notice', which stated that IAGA authorised Mr Brereton to provide and perform the 'Authorised Financial Services in relation to the Approved Products only on behalf of IAGA'; and

c. otherwise admits the paragraph.

9C. In response to paragraph 9C of the ASOC,TMNF:

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

b. says that subparagraphs 9C(a) and 9C(b) of the ASOC are paraphrases of clauses of the CGU AAR Agreement;

c. in respect of subparagraph 9C(b)(i), says that the amounts that BCC was permitted to deduct from any payment of Premiums to CGU under clause 8.1 were any amounts due to it under clause 3.1, not only commissions; and

d. says that subparagraph 9C(b)(ii) is a paraphrase of clause 4.5(a) of the CGU AAR Agreement;

e. says that subparagraph 9C(b)(iii) is a paraphrase of clause 4.5(b) of the CGU AAR Agreement;

f. relies on and refers to the CGU AAR Agreement for its full terms and effect; and

g. otherwise admits the paragraph.

9D. As to paragraph 9D of the ASOC, TMNF:

a. repeats paragraphs 8(e) and 8(f) above;

b. says that paragraph 9D(a) and 9D(b) of the ASOC are paraphrases of the IAL AAR Agreement;

c. in respect of paragraph 9D(b)(i), says that the amounts that BCC was permitted to deduct from any payment of Premiums to IAL under clause 8.1 were any amounts due to it under clause 3.1, not only commissions;

d. relies on and refers to the IAL AAR Agreement for its full terms and effect; and

e. otherwise admits the paragraph.

9E. TMNF admits paragraph 9E of the ASOC.

9F. As to paragraph 9F of the ASOC, TMNF:

a. says that the PACAO described TMMA and Bond together as Administrator;

b. says that, for the purposes of the PACAO, "Services" were defined to mean (cl 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;

c. says further that the PACAO also included the following defined terms in 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 Trade Credit and CGU dated 28 July 2016 (namely, the CGU AAR Agreement); (c) the Agency & Authorised Representative Extension Agreement between IAL and BCC Trade Credit (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. **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;

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

e. relies on the terms of the PACAO for their full force and effect; and

f. otherwise admits the paragraph.

9G. TMNF admits paragraph 9G of the ASOC.

9GA. TMNF admits paragraph 9GA of the ASOC.

9H. In response to paragraph 9H of the ASOC, TMNF:

a. admits that:

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

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

b. admits that to the extent BCC was authorised to act as IAL's representative or agent in the circumstances identified in paragraph 9H(a) of this Defence, it was a representative of IAL as that term is defined in s 910A of the Corporations Act; and

c. otherwise denies the paragraph.

9HA. In response to paragraph 9HA of the ASOC, TMNF:

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

b. otherwise denies the paragraph.

9HB. In response to paragraph 9HB of the ASOC, TMNF:

a. admits that the Bordereaux from time to time:

i. referred to trade credit insurance policies issued to GCPL; and

ii. referred to trade credit insurance policies TB-03691 and TS-03087 and the fact that endorsements had been entered into in relation to those policies;

b. denies that the Bordereaux referred to the Policy or any endorsements to the Policy;

c. says that the allegation is otherwise ambiguous and embarrassing for not identifying when or how BCC and Mr Brereton “otherwise informed” IAL of the pleaded matters; and

d. under cover of that objection:

i. does not know and therefore cannot admit the paragraph insofar as it makes allegations against Mr Brereton; and

ii. denies the paragraph insofar as it makes allegations against BCC.

9HC. TMNF admits paragraph 9HC of the ASOC.

9HD. In response to paragraph 9HD of the ASOC, TMNF:

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

b. otherwise denies the paragraph.

9HE. In response to paragraph 9HE of the ASOC, TMNF:

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

b. under cover of that objection:

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

ii. otherwise denies the paragraph.

9HF. In response to paragraph 9HF of the ASOC, TMNF:

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

b. relies on the CGU AAR Agreement for its full force and effect; and

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

Tokio Marine entities

9I. In response to paragraph 9I of the ASOC, TMNF:

a. says that TMMA is a wholly owned subsidiary of TMNF;

b. says that TMMA has been a local agent of TMNF since 20 October 2004; and

c. otherwise admits the paragraph.

9J. In response to paragraph 9J of the ASOC, TMNF:

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

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

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

d. otherwise admits the paragraph.

9K. TMNF admits paragraph 9K of the ASOC.

9L. TMNF denies paragraph 9L of the ASOC.

9M. In response to paragraph 9M of the ASOC, TMNF:

a. repeats paragraph 9J of this Defence; and

b. otherwise admits the paragraph.

9N. TMNF admits paragraph 9N of the ASOC.

Greensill Group of Companies

10. TMNF admits paragraph 10 of the ASOC.

11. TMNF admits paragraph 11 of the ASOC.

12. TMNF admits paragraph 12 of the ASOC.

13. TMNF admits paragraph 13 of the ASOC.

14. TMNF admits paragraph 14 of the ASOC.

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

    a. says that administrators were appointed to GCUK on 8 March 2021;

    b. says that notice of the administrators' appointment was filed with Companies House on 22 March 2021; and

    c. otherwise admits the paragraph.

16. As to paragraph 16 of the ASOC, TMNF:

    a. admits that at least part of the business conducted by the Greensill Group at the material times answered the description given in paragraph 16 of the ASOC; and

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

17. TMNF does not know and therefore cannot admit paragraph 17 of the ASOC.

Liberty Group of Companies

18. TMNF admits paragraph 18 of the ASOC.

19. TMNF does not know and therefore cannot admit paragraph 19 of the ASOC.

20. TMNF admits paragraph 20 of the ASOC.

21. As to paragraph 21 of the ASOC, TMNF:

    a. admits that LCL is a company that was incorporated and registered in England and Wales with company number 03349135; and

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

22. TMNF does not know and therefore cannot admit paragraph 22 of the ASOC.

Marsh

23. TMNF admits paragraph 23 of the ASOC.

E. The Receivables Purchase Deed and Group Guarantee

24A. In respect of paragraphs 24 to 37 of the ASOC, TMNF says generally that:

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

b. White Oak does not allege (and TMNF would not be in a position to admit, in any event) that paragraphs 24 to 37 of the ASOC exhaustively identify the documents that govern the relationship that exists between the parties to those documents; and

c. it will seek disclosure in relation to the matters the subject of paragraphs 24 to 37 of the ASOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced.

24. TMNF admits that the document referred to in paragraph 24 of the ASOC was executed by the parties there referred to and says further that:

a. the RPA was accompanied by a side letter dated 29 October 2018 executed by the three parties to the RPA (**Side Letter**), which set out terms additional to those set out in the RPA and which as between the parties prevailed over any conflicting terms of the RPA;

b. the agreements formed on 6 December 2019 included a "Deed of Amendment and Restatement" and an accompanying "Amended and Restated RPA"; and

c. Liberty FE was also a party to the agreements.

25. In response to paragraph 25 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the RPA which it particularises;

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

c. does not know and therefore cannot admit whether the contractual procedure for the purchase of Proposed Receivables referred to in paragraph 25 of the ASOC was followed in respect of any of the alleged debts or assets the subject of the ASOC; and

d. otherwise admits the paragraph.

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

a. repeats paragraphs 25(a) and (b) of this Defence; and

b. otherwise admits the paragraph.

27. In response to paragraph 27 of the ASOC, TMNF:

a. repeats paragraphs 25(a) and (b) of this Defence;

b. denies that the term there pleaded was a condition precedent of the RPA, and says that it was a condition of the submission of any Request (as defined); and

c. otherwise admits the paragraph.

27A. In response to paragraph 27A of the ASOC, TMNF:

a. repeats paragraphs 25(a) and (b) of this Defence; and

b. otherwise admits the paragraph.

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

a. repeats paragraphs 25(a) and (b) of this Defence; and

b. otherwise admits the paragraph.

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

a. repeats paragraphs 25(a) and (b) of this Defence; and

b. otherwise admits the paragraph.

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

a. repeats paragraphs 25(a) and (b) of this Defence; and

b. otherwise admits the paragraph.

31. TMNF does not plead to paragraph 31 of the ASOC, which contains no allegation against it, but says that it likewise relies upon the whole of the RPA for its full force and effect.

32. As to paragraph 32 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the effect of the Group Guarantee;

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

c. otherwise admits the paragraph.

32A. As to paragraph 32A of the ASOC, TMNF:

a. repeats paragraphs 32(a) and (b) of this Defence;

b. does not know and therefore cannot admit that White Oak was a valid "Transferee" within the definition of the Group Guarantee and therefore does not know and therefore cannot admit the paragraph insofar as it refers to White Oak; and

c. otherwise admits the paragraph.

33. As to paragraph 33 of the ASOC, TMNF:

a. repeats paragraphs 25(a) and (b) of this Defence; and

b. otherwise admits the paragraph.

F. Assignment to White Oak of GCUK's rights or interest in the RPA

34. As to paragraph 34 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the MAA which it particularises;

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

c. otherwise does not know and therefore cannot admit the paragraph, and in particular does not know and therefore cannot admit that any purported assignment, purchase or acquisition of receivables made by GCUK to White Oak under the MAA was valid and effective;

d. says that the assignment of payment obligations by GCUK to White Oak was relevantly governed by the MAA, which relevantly provided that:

i. GCUK could from time to time offer to assign, transfer and sell the whole, but not part, of any Payment Obligation and all Additional Rights relating thereto to White Oak and that White Oak at its sole direction may agree to purchase such Payment Obligation and the Additional Rights relating thereto from GCUK (cl 2.1);

ii. each offer of a Payment Obligation and all Additional Rights to White Oak pursuant to clause 2.1 in respect of any Business Day shall be made by

GCUK delivering an Offer File in respect of such Payment Obligation (and containing the relevant details thereof) to White Oak attached to an e-mail from an Authorised User and password protected at any time before the relevant Cut-Off Offer Time on such Business Day (an "**Offer**") (cl 2.2);

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

iv. "Offer File" was defined to mean, in respect of any Payment Obligation that GCUK proposes to assign to White Oak hereunder, an electronic file or data feed identifying such Payment Obligation, which shall include the following information in respect of such Payment Obligation:

(A) Currency;

(B) Maturity Date;

(C) Relevant Obligor;

(D) Relevant AR Seller;

(E) Settlement Date;

(F) Purchase Price;

(G) Identifier;

(H) Invoice Ref;

(I) Product Code; and

(J) Maturity Amount,

in the form set out in Schedule 2 (Form of Offer File) (the **General Offer File**) as supplemented by an Offer File supplement identifying the Compartment of the Purchaser to which the supplement is to be delivered and subsequent Offer made and which shall include the information required by White Oak to determine:

(A) Maturity Amount; and

(B) Expected Amount,

in each case, in respect of such Payment Obligation, in the form set out in Schedule 2A (Form of Offer File Supplement) or as otherwise agreed between White Oak and GCUK from time to time (the **Offer File Supplement**);

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

vi. "Identifier" was defined to mean, in respect of a Payment Obligation, the unique reference identifying such Payment Obligation and identifiable as such by the Relevant Obligor, as specified in the relevant Offer File (cl 1.2, definition of "Identifier");

e. does not know and therefore cannot admit that cll 2.1 to 2.3 of the MAA were followed, on the basis that:

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

ii. it does not appear from the evidence provided to TMNF to date that these Assignment Offer Reports were emailed by GCUK in accordance with cl 2.2 of the MAA by way of Offer;

iii. it does not appear from the evidence provided to TMNF to date that the Assignment Offer Reports were emailed from White Oak back to GCUK in accordance with cl 2.3 of the MAA by way of Acceptance;

iv. even if the Assignment Offer Reports had been so emailed, they do not, at least until 26 January 2021, contain the name of the "Relevant Obligor" (meaning the name of the entity liable for payment of the Payment Obligation), the "Invoice Ref" (meaning, in respect of an Accounts Receivable, the Supplier invoice reference number relating thereto) or the "Relevant AR Seller" (meaning, in respect of any Payment Obligation, the party that transfers such Payment Obligation to GCUK pursuant to the Relevant Receivables Purchase Agreement) as required by the MAA;

f. says that the "Assignment Offer Reports" relating to any payment obligations in respect of LCL failed to identify the underlying payment obligations to which they related in a manner consistent with the requirements of the MAA, or at all; and

g. says further that, as a result, TMNF does not know and therefore cannot admit that White Oak holds an interest in any payment obligations in respect of LCL, and accordingly that it has suffered a Loss in respect of those obligations within the meaning of the Policy.

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

a. repeats paragraphs 34(a) to (c) of this Defence; and

b. otherwise admits the paragraph.

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

a. repeats paragraphs 34 (a) to (c) of this Defence; and

b. otherwise admits the paragraph.

37. TMNF does not plead to paragraph 37 of the ASOC, which contains no allegation against it, but says that it likewise relies upon the whole of the MAA for its full force and effect.

G. The Insurance Policies

The Proposed Greensill Policy Structure and Proposed Greensill Policy Wording

37A. As to paragraph 37A of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the particularised email dated 15 September 2017 and its attachments;

b. relies on the text of the email and its attachments for their full force and effect; and

c. otherwise denies the paragraph.

37B. As to paragraph 37B of the ASOC, TMNF:

a. repeats paragraph 37A of this Defence; and

b. otherwise denies the paragraph.

37C. As to paragraph 37C of the ASOC, TMNF:

a. repeats paragraph 37A of this Defence; and

b. otherwise denies the paragraph.

37D. As to paragraph 37D of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the particularised emails dated 25 September 2017, 5 October 2017, 3 October 2017 and 5 October 2017 and their attachments;

b. relies on the text of the emails and their attachments for their full force and effect; and

c. otherwise denies the paragraph.

37E. As to paragraph 37E of the ASOC, TMNF:

a. repeats paragraph 37D of this Defence;

b. says further that the paragraph paraphrases the text of the particularised documents;

c. relies on the text of the documents for their full force and effect; and

d. otherwise denies the paragraph.

37F. TMNF does not plead to paragraph 37F of the ASOC, which contains no allegation against it.

2017 Standalone Policies

37G. As to paragraph 37G, TMNF admits that Brereton signed the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 for and on behalf of BCC as corporate authorised representative of IAL.

37H. TMNF does not plead to paragraph 37H of the ASOC, which contains no allegation against it.

37I. As to paragraph 37I of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the 2017 Standalone Policies;

b. relies on the text of the 2017 Standalone Policies for their full force and effect; and

c. otherwise denies the paragraph.

37J. TMNF admits paragraph 37J of the ASOC.

37K. TMNF admits paragraph 37K of the ASOC.

37L. TMNF admits paragraph 37L of the ASOC.

37M. TMNF admits paragraph 37M of the ASOC.

37N. TMNF admits paragraph 37N of the ASOC.

37O. TMNF does not know and therefore cannot admit paragraph 37O of the ASOC.

The Policy

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

a. admits that on or about 13 March 2019, GCPL and GBAG entered into the Policy with BCC acting for and on behalf of the Insurer

b. denies that White Oak was an "Insured" within the meaning of the Policy; and

c. says that the Policy was (subject to any valid avoidance) binding on IAL.

38A. As to paragraph 38A of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the Policy and the Master Policy;

b. relies on the text of the Policy and the Master Policy for their full force and effect; and

c. otherwise denies the paragraph.

38B. TMNF does know and therefore cannot admit paragraph 38B of the ASOC,

39. In response to paragraph 39 of the ASOC, TMNF:

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

b. says that the Policy also contained the following express written terms:

i. clause 1.1 provided that subject to the terms, conditions and limitations of the Policy, the Insurer agrees to indemnify the Insured for the Insured Percentage of all Losses suffered by the Insured and caused by or resulting from the occurrence of an Insured Cause (and any such amount payable by the Insurer under the Policy is to be paid to the Insured, or to the extent applicable any Loss Payee of the Insured);

ii. clause 3.1 provided that subject to clause 2, a Loss in respect of an Asset owned by the Insured and derived from an Eligible Debt owed by an Eligible Customer can be the subject of a Claim under the Policy in the event that, by reason of an Insured Cause, the Insured has failed to receive its Expected Allocation;

iii. clause 5.1 provided that the Insurer will indemnify the Insured for all Losses subject to the terms, conditions and limitations of the Policy, up to the lower of the Applicable Limit of Liability and the Maximum Limit of Liability;

iv. clause 5.2 provided that any sum paid by the Insurer under the Policy will reduce by a corresponding amount the Maximum Limit of Liability then remaining;

v. clause 5.3(a) provided that any sum paid by the Insurer under the Policy will reduce by a corresponding amount the Applicable Limit(s) of Liability then remaining in respect of each Eligible Customer and, if applicable, each Eligible Customer Group in respect of whose liabilities that sum was paid;

vi. clause 5.5 provided that subject to the Insured not exceeding the limits from time to time in force pursuant to the preceding provisions of clause 5, any Asset acquired by the Insured (or a Loss Payee) during a Policy Period shall to the extent the Insured wishes it to be insured under the Policy, automatically attach to the Policy and be on risk under the Policy from the time the Insured (or a Loss Payee) acquires risk in the Asset pursuant to the Transaction Documents, and that for the avoidance of doubt, where an Asset is acquired that breaches an applicable limit based on the reconciled utilisation of such limit on the day of purchase, no part of such Asset, to the extent that part breaches the limit based on the aforesaid reconciled utilisation, will attach to the Policy;

vii. clause 7.1 provided that the Insured acknowledges and agrees that it has a duty to the Insurer of a fair presentation in respect of the Policy and the risks insured thereunder;

viii. clause 8.3(a) provided 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 that 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, and that subject to paragraph (b), no Asset (arising from the applicable Customer, or Customer Group) acquired after the delivery of the Stop Asset Acquisition Instruction shall attach to the Policy;

ix. clause 9.7 provided that, without prejudice to clause 15.4, the Insurer will have no right to avoid or rescind the Policy as against the Insured by reason of any breach of clause 9 but the Insurer shall not be 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;

x. clause 10.1 provided that the Insured shall give notice to the Insurer within ten (10) Business Days of it becoming aware of a Potential Loss;

xi. clause 10.5 provided that the responsibility for (a) proving (i) a Loss under the Policy (including without limitation that the Claim is made in respect of an Asset derived from an Eligible Debt which complies with the Eligibility Criteria) and (ii) the amount which is the subject of the Claim and (b) evidencing that all terms and conditions of the Policy have been complied with, shall at all times rest with the Insured;

xii. clause 10.7(a) provided that without prejudice to the other provisions of this Clause 10, the Insured shall ensure that, following the occurrence of an event that may reasonably be expected to result in a Loss under this Policy, it shall by exercising the Insured's rights under the Transaction Documents, act reasonably and prudently to prevent, mitigate and minimise Losses at all times, and that 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 Policy;

xiii. clause 10.7(d) provided that in the event of the Insured's failure to mitigate Loss in accordance with Clause 10.7, the Insurer shall remain obliged to indemnify the Insured in respect of such Loss but, to the extent the Insurer is able to prove that a Loss would reasonably be expected to have been lower but for the failure to mitigate, the Insurer shall only be obliged to indemnify the Insured to the extent of that lower amount;

xiv. clause 15.3(a) provided that any variation of the Policy (except by way of Endorsement as provided in the Policy) may only be effected in writing signed by or on behalf of each party;

xv. clause 15.3(d) provided that any Loss under the Policy may be paid, after agreement with the Insured, to a named loss payee if such action is agreed by the Insurer in writing and evidenced as an appendix or endorsement hereto;

xvi. clause 15.4 provided (among other things) 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 the Insurer and all Claims payments thereunder after such false or fraudulent statements reports or Claim shall be forfeited and that nothing in the Policy will in any way restrict, limit or impair clause 15.4, or in any way restrict or impair the Insurer's statutory or common law rights and remedies with respect to fraud by the Insured;

xvii. Schedule 1 contained the following definitions (some of which are purportedly amended by later 'endorsements', which are particularised below where relevant):

A. "Affiliate" means, in respect of a person, its subsidiary or its subsidiary undertaking or its holding company (each as defined in the Companies Act 2006) or any subsidiary or subsidiary undertaking of its holding company;

B. "Asset" was defined to mean either (i) a Direct Asset, or (ii) an indirect beneficial ownership interest in an Eligible Debt acquired by virtue of a participation in the Trust Property held subject to the relevant Participant Trust, or (iii) a Note relating to Eligible Debt(s) issued by the SPV in order to raise funds to allow the SPV to purchase a

participation in the relevant Participant Trust, or Eligible Debts as the case may be;

C. “Applicable Limit of Liability” was defined to mean the maximum aggregate amount that the Insurer may be required to indemnify the Insured for Losses being applicable in the circumstances, namely whatever is the lower of the following, in relation to: (a) an Eligible Customer the relevant Customer Limit, and (b) an Eligible Customer that is part of an Eligible Customer Group, the relevant Customer Group Limit;

D. “Customer” was defined to mean any ‘Customer’ endorsed to the Policy under a Customer Endorsement, being a debtor in respect of a Debt and including any successor in title or at law to such debtor.

E. “Customer Endorsement” was defined to mean an endorsement to the Policy that is substantially in the form of Appendix 1 or such other form as the Insured and the Insurer may agree from time to time;

F. “Customer Group” was defined to mean, in respect of a Customer that is an Affiliate of other companies the group comprising the Customer and all Affiliates of that Customer;

G. “Customer Group Limit” was defined to mean, in respect of a Customer Group, the amount recorded in an Endorsement to the Policy, and which is the Insurer’s maximum liability for the aggregate of all Losses insured under the Policy for the Customer Group;

H. “Customer Limit” was defined to mean, in respect of a Customer, the amount recorded in an Endorsement to the Policy, and which is the Insurer’s maximum liability for the aggregate of all Losses insured under the Policy for the Customer;

I. “Debt” was defined to mean, as the context requires, a debt of the type described in the relevant Debt Endorsement;

J. “Debt Endorsement” was defined to mean an endorsement to the Policy that is substantially in the form of Appendix 2 or such other form as the Insured and the Insurer may agree from time to time and that describes the nature of a debt that is after the date of such endorsement able to be a Debt for the purposes of the Policy, and

which may contain amendments to the terms of the Policy in so far as the Policy relates to such Debts and Assets derived therefrom;

K. "Direct Asset" was defined to mean a direct ownership interest in an Eligible Debt;

L. "Eligibility Criteria" was defined to mean the criteria applicable to Customers, Customer Groups, Debts, and other matters that are specified as such in Schedule 7, as amended or supplemented by any Debt Endorsement;

M. "Eligible" was defined to mean, in the context of a Customer and/or a Customer Group, a Customer and/or a Customer Group in relation to which all the warranties set out in the Policy (including compliance with the Eligibility Criteria) are satisfied at the time of the purchase by the Insured of the Asset derived from such Debt;

N. "Eligible Debt" was defined to have the meaning set out in Schedule 7;

O. "Endorsement" was defined to mean any endorsement issued by the Insurer to the Insured, whether a Customer Endorsement or a Debt Endorsement or any other form of endorsement to the Policy;

P. "Expected Allocation" was defined to mean, where an Asset is (i) a Direct Asset, the Face Amount of the relevant Eligible Debt, or to the extent only part of an Eligible Debt comprises the Direct Asset, the amount due to the Insured in relation to such Eligible Debt, or (ii) neither a Direct Asset or a Note, in relation to any such Asset and the Insured, the expected distribution to the Insured of its entitlement to Trust Property consistent with the Asset acquired by it, as shown from time to time in a Trust Certificate, or (iii) where an Asset is a Note, in relation to any such Asset and the Insured, the Final Redemption Amount or aggregate of the 'Instalment Amounts' (as set out in the relevant 'Pricing Supplement' as defined in the Master Trust Deed) of the relevant Asset;

Q. "Insured Cause" means the failure of the Customer to make payment of an Eligible Debt on or before the Backstop Date for any reason;

R. "Loss" or "Losses" was defined to mean:

I. in respect of a Direct Asset owned by the Insured, the amount equal to the difference between:

(a) the Expected Allocation of the Insured in respect of such Asset; and

(b) the amount actually paid by the Customer or on its behalf in respect of such Asset; and

II. in respect of an Asset (which is neither a Direct Asset or a Note) owned by the Insured, the amount equal to the difference between:

(a) the Expected Allocation of the Insured in respect of such Asset, and

(b) the Insured's pro rata pari passu entitlement under the relevant Participant Trust in respect of any amounts actually paid by the Customer or on its behalf to the Trustee in respect of the Eligible Debt from which such Asset is derived; and

III. in respect of an Asset (which is a Note) owned by the Insured immediately prior to the payment of a Claim (which for the avoidance of doubt shall also include the Expected Allocation of the Insured in respect of each Asset acquired by the Insured from a Loss Payee after the occurrence of the Insured Cause but prior to payment of such Claim), the amount equal to the difference between:

(a) the Expected Allocation of the Insured in respect of such Asset, and

(b) the Insured's entitlement under the Master Trust Deed (including, but not limited to, the benefit of any Mortgaged Property as defined in the Master Trust Deed).

S. "Loss Payee" was defined to mean any entity endorsed to the Policy as a loss payee;

T. “Material Information” was defined to mean (for the purpose of construing any Proposal) any facts or matters known to the Insured or that ought to have been known to the Insured through a reasonable search of information available to the Insured as to the possibility of a Customer being unable or unwilling to pay debts which are (or might become) Eligible Debts;

U. “Material Policy Impact” was defined to mean a material increase in the likelihood of a Loss occurring and/or the amount of such Loss or a material decrease in the likelihood of the Insurer being able to enforce rights effectively in relation to the relevant Customer and/or the amount of any recovery in respect of such Loss (where “material” is based on the facts and circumstances that subsist at the time of the relevant breach, failure or Non-Compliance by the Insured);

V. “Maximum Limit of Liability” means, subject to Clause 5.4, the amount specified in Schedule 6, as updated from time to time being the maximum aggregate amount of Losses arising in relation to Rights to Payment acquired by the Insured during the Policy Period that the Insurer may be required to indemnify the Insured under the Policy;

xviii. Schedule 7, entitled “Eligibility Criteria”, provided that all Eligible Debts, from which are derived Assets owned by the Insured, must satisfy the following eligibility criteria at the time of acquisition of the relevant Asset by the Insured, and that an “Eligible Debt” means, at any time, any Debt:

A. the obligor (being the Customer) of which (a) is not an Affiliate of any 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 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;

c. refers to the full terms of the Policy for their full force and effect (if any); and

d. otherwise denies the paragraph.

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

a. admits that the Policy contains the terms particularised;

b. notes that at paragraph 38(i)(iii) of its defence, IAL denies that any amount was paid by way of a premium in respect of the Policy; and

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

41. In response to paragraph 41 of the ASOC, TMNF:

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

b. says that this document was not an Endorsement within the meaning of the Policy, on the basis that the Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement;

c. says that clause 15.3(a) of the Policy provided that any variation of the Policy could only be effected in writing signed by or on behalf of each party;

d. says that the document signed on 27 June 2019 was not signed on behalf of GCPL or Greensill Bank, and was not a valid variation of the Policy;

e. says that the Policy expired on 22 February 2020; and

f. otherwise denies the paragraph.

BCC as agent of the Insurer

41A. In response to paragraph 41A of the ASOC, TMNF:

a. admits the paragraph;

b. says further that IAL (through its agents Mr Brereton and BCC) entered into those agreements by reason of the information provided by the Greensill Group when procuring the cover (as pleaded further below) and the misrepresentations and non-disclosures by the Greensill Group pleaded in Annexure A to this Defence (the **Prior Misrepresentations and Non-Disclosures**).

41B. As to paragraph 41B of the ASOC, TMNF:

a. admits paragraph 41B(b);

b. with respect to paragraph 41B(c),

i. admits that the conduct alleged at paragraph 41A of the ASOC related to the provision of a financial service;

ii. says that Brereton and BCC had actual authority to enter into the Loss Payee Endorsement for and on behalf of IAL to the extent it endorsed White Oak as a loss payee under the Policy (if issued within authority);

iii. says that if GBAG relied in good faith on the conduct alleged in paragraphs 41A of the ASOC, IAL would be bound as between IAL and GBAG (subject to any valid avoidance) by each of the documents referred to at paragraph 41A of the ASOC by operation of section 917B or 917C of the *Corporations Act 2001* (Cth) (**Corporations Act**) whether or not BCC and/or Brereton acted within the scope of their authority;

iv. says that, if White Oak relied in good faith on the conduct alleged at paragraph 41A of the ASOC, IAL would be bound, as between IAL and White Oak (subject to any valid avoidance), by each of the documents referred to at paragraph 41A of the ASOC by operation of section 917B or 917C of the Corporations Act, whether or not BCC and/or Brereton acted within the scope of their authority;

v. denies subparagraph 41B(c)(v) and:

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

B. further or in the alternative, denies that GBAG, GCPL or White Oak could reasonably be expected to rely on that conduct on or after 2 July 2020 by reason of BCC's notifications to Greensill and its broker, Marsh, of concerns regarding Brereton's authority; and

Particulars

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

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

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

4. Letter from Toby Guy to GCPL, GCUK and GBAG, copied to Marsh dated 4 August 2020 (CSA.0001.0008.0327).

5. Letter from Mark Callahan to GCPL, GBAG and GCUK dated 28 August 2020 (CSA.0001.0015.0006).

6. Letter from Toby Guy to GCPL, GBAG and GCUK dated 1 September 2020 (MMC_GCUK08_00022720).

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

42. [Not used]

43. [Not used]

44. [Not used]

45. [Not used]

Customers under the Policy

46. TMNF admits paragraph 46 of the ASOC and says further that:

a. each of the purported customer endorsements pleaded in paragraph 46 of the ASOC was submitted in draft by Marsh, acting on behalf of GCPL and Greensill Bank (and GCUK to the extent that a corresponding customer endorsement was being proposed for Comprehensive Trade Credit Insurance Policy TS-03691), to Mr Brereton, with a view to that endorsement being accepted and signed by Mr Brereton on behalf of BCC as authorised representative of IAL;

Particulars

The relevant emails and draft endorsements include:

TOK.001.00113460, TOK.001.00113491, TOK.001.00107372, TOK.001.00107373, TOK.001.00107377, TOK.001.00096093, TOK.001.00096116, TOK.001.00087854, TOK.001.00087855, TMDR.0000002009, TMDR.0000002009.0003, TMDR.0000002009.0005, TMDR.0000002009.0009, TMDR.0000002009.0011, TMDR.0000002009.0015, TMDR.0000002007, TMDR.0000002007.0004, TOK.001.00076472, TOK.001.00076474, TOK.001.00072322, TOK.001.00072323.

b. with the exception of Endorsement No. 19 each such submission of a proposed customer endorsement constituted a representation by Marsh, made on behalf of the Greensill Group, that each customer referred to in the draft customer endorsement was, or was about to become, a customer of LCL;

c. if, as is pleaded at paragraph 67 of the ASOC, the customers referred to in paragraph 46 of the ASOC (or any of them) had no amounts owing to LCL or no recent trade with LCL, the representations pleaded at paragraph 46(c) of this Defence were false at the time that they were made;

Particulars

If the customers named in the Customer Endorsements did not have a trading relationship with LCL in 2021 such that assignment by LCL of debts said to be owed by those customers was the purported assignment of non-existent debts, it is to be inferred such a practice was deployed by LCL throughout the Policy Period.

d. generally, each covering email sent by Marsh on behalf of GCPL and Greensill Bank (and GCUK to the extent that a corresponding customer endorsement was being proposed for the Master Policy) attaching a proposed customer endorsement (including but not limited to the customer endorsements pleaded at paragraph 46 of the ASOC) also included a statement to the effect that the Greensill Group had confirmed that the customer in question had “NKORL”, meaning “no known or reported losses”;

e. each such statement was a representation that the Greensill Group had in fact considered or reviewed the customer’s trading history with LCL in a way that

enabled them to confirm that that trading history did not include any defaults by the relevant customer;

f. if, as is pleaded at paragraph 67 of the ASOC, the customers referred to in paragraph 46 of the ASOC (or any of them) had no amounts owing to LCL or no recent trade with LCL, the representations pleaded at paragraph 46(f) of this Defence were false at the time that they were made, as the customers had no trading history with LCL at all;

Particulars

TMNF repeats the particulars to paragraph 46(d) of this Defence.

g. Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate, and that the Customer Endorsements the subject of paragraph 46 are invalid because they did not express a percentage premium rate (but rather a fixed dollar amount of $1);

h. each of the representations pleaded in paragraphs 46(b) and (e) of this Defence was a misrepresentation by the Greensill Group entitling IAL under s 28(3) of the ICA to reduce the amount of the claims the subject of these proceedings to the amount that would place it in a position in which it would have been if the failure had not occurred, which is that the Customer Endorsements pleaded in paragraph 46 of the ASOC would not have been executed;

i. each such misrepresentation was also a breach of clause 7.1 of the Policy, and one that had a Material Policy Impact within the meaning of the Policy, with the result that by operation of clause 9.7 of the Policy, the Insurer is not liable to indemnify the Insured for any Loss arising therefrom; and

j. says that, in the premises, IAL is not liable to indemnify the Insured (or White Oak) for any of the alleged losses claimed in these proceedings.

RPA Debt Endorsement

47. TMNF admits paragraph 47 of the ASOC and further says that:

a. the paragraph is a paraphrase of the provisions of the RPA Debt Endorsement;

b. the relevant terms of the RPA Debt Endorsement are referred to for their full force and effect;

c. Part A, Additional Condition 1 of the RPA Debt Endorsement provided that where any Repurchase Event occurs in relation to any Debt, Losses arising directly from the non-payment of such Debt by the applicable Customer shall be excluded from cover under the Policy;

d. the RPA Debt Endorsement was superseded by another document styled "Debt Endorsement 2(iv)" (**Debt Endorsement 2(iv)**), which was signed by Mr Brereton on 16 April 2020; and

e. the Policy did not authorise the issue of a "Debt Endorsement" or any other endorsement that purported to operate retrospectively, and that each of the endorsements the subject of the ASOC could only have effect from the date of signing onwards, if at all.

48. In response to paragraph 48 of the ASOC, TMNF:

a. says that the RPA Debt Endorsement defined Repurchase Event to mean any event as described in the relevant Receivables Purchase Agreement which obliges the relevant Seller to repurchase or provide an indemnity payment with respect to accounts receivable sold by such Seller pursuant to the Receivables Purchase Agreement, including but not limited to where a Dispute or Dilution exists, arises or is created or asserted with respect to any accounts receivable sold by the Seller under the Receivables Purchase Agreement; and

b. otherwise denies the paragraph.

49. In response to paragraph 49 of the ASOC, TMNF admits the paragraph, save to note that "Receivables Purchase Agreement" did not refer exclusively to the RPA, but was capable of applying to other agreements answering the description given in the definition to that term.

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

a. repeats paragraphs 48(a) and 49 of this Defence;

b. says that Repurchase Event is defined in Debt Endorsement 2(iv) to mean 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; and

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

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

a. repeats paragraphs 28, 30, 38, 39, 47(c) and 69 of this Defence;

b. otherwise admits that by the RPA Debt Endorsement, a Debt under the Policy could in principle include the payment or amount pleaded in paragraphs 28(b), 28(b1) and 32A of the ASOC, provided that each such payment or amount satisfied the conditions prescribed by the RPA and the RPA Debt Endorsement (including the conditions in sub-paragraph 51(d) below), which TMNF does not know and therefore cannot admit;

b2. says that if Debt Endorsements 2, 2(iii) and 2(iv) were valid "Debt Endorsements" within the meaning accorded to that term by the Policy:

i. the RPA was a "Receivables Purchase Agreement" within the meaning of Part A and/or Part B of Debt Endorsements 2, 2(iii) and/or 2(iv) only to the extent that the RPA provided for the sale by LCL to GCUK of actual accounts receivable owing at the time of sale from a Customer in respect of goods and/or services provided by LCL or its Affiliate to the Customer; and

ii. the RPA was not a "Receivables Purchase Agreement" within the meaning of Part A and/or Part B of Debt Endorsements 2, 2(iii) or 2(iv) to the extent that it purported to provide for the sale of non-existent accounts receivable and future or expected accounts receivable which were not then owing by a Customer in respect of goods or services provided by LCL or its Affiliate to the Customer (**Non-Existent LCL Receivables**); and

Particulars

Definitions of "Receivables Purchase Agreement(s)" and "Supplier" in Part A and Part B of Debt Endorsement 2, 2(iii) and 2(iv).

b3. says that, to the extent that the RPA imposed payment obligations on LCL referrable to Non-Existent LCL Receivables, any amount payable by LCL to GCUK with respect to a Non-Existent LCL Receivable is not a "Debt" within the

meaning of Part B of Debt Endorsements 2, 2(iii) or 2(iv), and therefore not a "Debt" or "Eligible Debt" covered by the Policy; and

c. as to the payment or amount pleaded in paragraph 30 of the ASOC, which relates to interest payable under the RPA, TMNF:

i. says that neither the RPA Debt Endorsement nor Debt Endorsement 2(iv) refers to interest;

ii. says that neither of the definitions of Debt in the RPA Debt Endorsement extends to any interest payable by a Customer to the Servicer;

iii. repeats paragraph 39.b.xvii.R of this Defence and says that in calculating the extent of any Loss in respect of a Direct Asset, which is relevantly the difference between the Expected Allocation and the amount actually in paid in respect of the Direct Asset, the Expected Allocation means the Face Amount of the relevant Eligible Debt, being the amount of a Debt as shown in the File relating thereto;

iv. says that no part of the aforementioned definitions provides for interest on a Debt to attach to the Policy;

v. denies that Debt within the meaning of the RPA Debt Endorsement (or Debt Endorsement 2(iv)) includes interest; and

f. otherwise denies the paragraph.

Liberty Customer Endorsement

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

a. repeats paragraphs 38, 39 and 47(e) of this Defence;

b2. denies that the Liberty Endorsement had any effectiveness or operation prior to 29 April 2020;

b3. says that Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate, and that the Liberty Endorsement was invalid as it did not express a percentage premium rate (but rather a fixed dollar amount of $1);

b4. says that insofar as the Liberty Endorsement purported to be a "Customer Endorsement" within the terms of the Policy, it was valid only to the extent that it

identified a Customer, and not to the extent that it purported to vary the terms of the Policy or prescribe new terms inconsistent with those in the Policy (including, without limitation, by purporting to provide for the indefinite resetting of the Aggregate Customer Limit and of the Maximum Limit of Liability); and

c. otherwise admits the paragraph.

53. In response to paragraph 53 of the ASOC, TMNF:

a. admits that the Liberty Endorsement contained terms broadly to the effect pleaded, save that the term providing for reset of the Customer Limit and Maximum Limit of Loss pleaded in paragraph 53(c) of the ASOC applied only in the event of a claim;

b. says that, insofar as the document purported to be a Customer Endorsement, it was valid only to the extent that it identified a Customer, and not to the extent that it purported to vary the terms of the Policy or prescribe new terms inconsistent with those in the Policy;

c. refers to the relevant terms of the Liberty Endorsement for their full force and effect; and

d. otherwise denies the paragraph.

LCL Endorsement

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

a. admits that the LCL Endorsement contained terms broadly to the effect pleaded;

b. says that the LCL Endorsement was not a Customer Endorsement within the meaning of the Policy insofar as it purported to amend the terms of the Policy;

c. says that clause 15.3(a) of the Policy provided that any variation of the Policy could only be effected in writing signed by or on behalf of each party;

d. says that the LCL Endorsement was not signed on behalf of GCPL or Greensill Bank, and therefore was not a valid variation of the Policy;

e. says that, in the premises, to the extent that the LCL Endorsement purported to vary the Policy, it did not validly do so; and

f. otherwise admits the paragraph.

55. In response to paragraph 55 of the ASOC, TMNF:

a. repeats paragraph 54 of this Defence;

b. admits that the LCL Endorsement contained terms broadly to the effect pleaded; and

c. otherwise denies the paragraph.

56. In response to paragraph 56 of the ASOC, TMNF:

a. repeats paragraphs 54 and 55 of this Defence in response to the allegation that the LCL Endorsement constitutes a Customer Endorsement;

b. says that the LCL Endorsement does not constitute a Debt Endorsement as it does not describe the nature of a debt that is able to be a Debt for the purposes of the Policy; and

c. otherwise denies the paragraph.

Loss Payee Endorsement

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

a. says that the Loss Payee Endorsement, was valid only to the extent that it identified a Loss Payee, and not to the extent that it purported to vary the terms of the Policy or prescribe new terms inconsistent with those in the Policy; and

b. otherwise admits the paragraph.

58. In response to paragraph 58 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the Loss Payee Endorsement to which it refers;

b. refers to the relevant terms of the Loss Payee Endorsement for their full force and effect;

c. says that paragraph 58(b) is not an accurate summary of the relevant provision of the Loss Payee Endorsement to which it refers, and says that that provision provides that in any circumstances where the Insured is incapacitated (including but not limited to “as a result of” the Insolvency of the Insured or the loss by the

Insured of any regulatory licence, authorisation or consent), White Oak could in principle submit a claim under the Policy directly to the Insurer;

d. says that the Insured is not presently incapacitated, and that it has brought other proceedings in the past 6 months in which it sued on the Policy;

Particulars

Federal Court of Australia proceeding *Greensill Bank AG & Anor v Insurance Australia Ltd & Ors* (NSD1216/2021).

e. says that because White Oak cannot bring the claim directly under the Policy (as amended by the Loss Payee Endorsement) unless the Insured is incapacitated, then it likewise has no right to do so under s 48(1) of the ICA unless that same condition is satisfied, as s 48(1) only permits claims to be brought "in accordance with the contract", and the Policy limits White Oak's right to bring a claim so that it arises only where the Insured is incapacitated;

f. says that in the premises, White Oak has no right to sue directly on the Policy, or at all;

g. says that White Oak accordingly has no standing to bring this proceeding; and

h. otherwise denies the paragraph.

58A. In response to paragraph 58A of the ASOC, TMNF:

a. repeats paragraphs 57 and 58 of this Defence; and

b. otherwise denies the paragraph.

59. TMNF does not know and therefore cannot admit paragraph 59 of the ASOC.

59A. TMNF denies paragraph 59A of the ASOC.

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

a. repeats paragraphs 59A of this Defence; and

b. otherwise denies the paragraph.

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

a. repeats paragraphs 59A and 59B above; and

b. otherwise denies the paragraph.

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

a. repeats paragraphs 57 and 59A of this Defence; and

b. otherwise denies the paragraph.

H. Power of Attorney

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

a. admits that on 29 April 2020 Greensill Bank executed a power of attorney in favour of White Oak;

b. says that the paragraph is a paraphrase of the provisions of the Power of Attorney to which it refers;

c. refers to the relevant terms of the Power of Attorney for their full force and effect;

d. says that this proceeding has been brought in the name of White Oak purportedly in its own right, and not in the name of Greensill Bank;

e. says that, in the premises, the Power of Attorney has no apparent application to the acts taken (or purportedly taken) by White Oak in connection with this proceeding to date; and

f. otherwise denies the paragraph.

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

a. says that the paragraph is a paraphrase of the provisions of the Power of Attorney to which it refers;

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

c. otherwise denies the paragraph.

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

a. repeats paragraphs 59A to 59C and 60 to 60A above;

b. says that White Oak has brought this proceeding in its own name and not in the name of Greensill Bank;

c. says that Greensill Bank is the Fourth Respondent to this proceeding; and

d. otherwise denies the paragraph.

I. Acquisition of Assets under the RPA

61. TMNF does not know and therefore cannot admit paragraph 61 of the ASOC.

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

a. repeats paragraphs 34 and 61 of this Defence;

b. does not know whether each of the alleged debts referred to at paragraph 61 of the ASOC were Eligible Debts at the time of their purchase (to the extent any such purchase occurred or was valid) by White Oak, and therefore cannot admit the paragraph.

63. In response to paragraph 63 of the ASOC, TMNF:

a. repeats paragraph 46 of this Defence; and

b. otherwise denies the paragraph.

Marsh confirmation emails

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

a. says that, at all material times, and to the extent that White Oak contends otherwise, Marsh had no authority to make representations on behalf of IAL, BCC or TMNF in any respect or in respect of the matters the subject of paragraphs 64(a) and (b) of the ASOC; and

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

Failure of Eligible Customers to Pay

65. TMNF does not know and therefore cannot admit paragraph 65 of the ASOC.

65A. TMNF does not know and therefore cannot admit paragraph 65A of the ASOC.

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

a. repeats paragraphs 62 and 63 of this Defence; and

b. otherwise denies the paragraph.

Occurrence of Event of Repurchase and Event of Termination

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

a. repeats paragraphs 62 and 63 of this Defence; and

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

66B. TMNF does not know and therefore cannot admit paragraph 66B of the ASOC.

67. TMNF does not know and therefore cannot admit paragraph 67 of the ASOC.

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

a. repeats paragraph 69 of this Defence; and

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

69. In response to paragraph 69 of the ASOC, TMNF:

a. says that on a proper construction of the RPA, there was no Event of Repurchase where GCUK was aware, at the time that they were made, that representations or warranties made by LCL were incorrect;

b. says that it does not know whether GCUK was aware, at the time that they were made, that the representations and warranties alleged in paragraph 69 of the ASOC to give rise to an Event of Repurchase in this case were incorrect; and

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

Notification of Event of Repurchase and Event of Termination

70. TMNF does not know and therefore cannot admit paragraph 70 of the ASOC.

71. TMNF does not know and therefore cannot admit paragraph 71 of the ASOC.

72. TMNF does not know and therefore cannot admit paragraph 72 of the ASOC.

73. TMNF does not know and therefore cannot admit paragraph 73 of the ASOC.

73A. TMNF does not know and therefore cannot admit paragraph 73A of the ASOC.

Failure by LCL, Liberty or Liberty FE to make payment of Repurchase Price

74. TMNF does not know and therefore cannot admit paragraph 74 of the ASOC.

75. As to paragraph 75 of the ASOC, TMNF:

a. repeats paragraphs 38, 41, 46 to 59, 63 and 66 of this Defence; and

b. otherwise denies the paragraph.

J. Claims on the Policy

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

a. admits that the claims numbered 1 to 10 (inclusive) were submitted by White Oak to BCC in a form which corresponds to the information set out in the columns titled "Name of Supplier", "Name of Eligible Customer" and "Amount of Expected Allocation";

b. admits that the claim numbered 10 in the column titled "Claim date" was submitted to BCC on the date there set out, but otherwise does not know and therefore cannot admit the claims numbered 1 to 9 (inclusive) were submitted to BCC on the dates there set out;

c. does not know and therefore cannot admit the information set out in the columns titled, "Date of Acquisition of Direct Asset" and "Invoice Due Date";

d. denies that claims there pleaded are failures of Eligible Customers to pay Eligible Debts or otherwise claims that the Insurer has any obligation to pay; and

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

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

a. admits that White Oak sent it the correspondence there pleaded which was broadly in the terms there set out; and

b. otherwise denies the paragraph.

78. TMNF admits paragraph 78 of the ASOC.

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

a. repeats paragraph 81 of this Defence;

b. denies that GCUK purchased any genuine accounts receivable from LCL between December 2020 and February 2021, and says that the debts purportedly purchased by GCUK in this period were Non-Existent LCL Receivables that had been fabricated through the creation of fictitious invoices;

c. does not know and therefore cannot admit that each purported sale of accounts receivable from LCL to GCUK between December 2020 and February 2021 was effected in a manner consistent with the requirements of the RPA in any event, including because, as to the majority of occasions when LCL submitted a Form of Request to LCL to GCUK, there is no evidence that GCUK ever accepted the offer by executing a Buyer Acceptance form (as it in fact did on a minority of occasions);

d. refers to paragraph 77 of the ASOC and denies that the Updated Claims were in respect of Losses from the failure of Eligible Customers to make payment of Eligible Debts;

e. says that the Updated Claims claimed 100% of the Payment Obligations on the basis that Eligible Debts were owing from LCL, Liberty and Liberty FE and arose from Events of Repurchase and/or Events of Termination; and

f. otherwise denies the paragraph.

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

a. admits that the Claims were lodged within 12 months after the Due Date of each alleged debt; and

b. denies that this gave rise to any liability on the part of the Insurer to meet those Claims.

81. In response to paragraph 81 of the ASOC, TMNF:

a. repeats paragraphs 38, 41, 46, 54, 57 and 58 of this Defence;

b. says that, by reason of Part A, Additional Condition 1 of the RPA Debt Endorsement (pleaded to at paragraph 47(c) of this Defence), to the extent that there has been an Event of Repurchase in respect of any of the debts the subject of the ten claims pleaded at paragraph 76 of the ASOC (which is not admitted), those debts are excluded from the Policy (and replaced by corresponding Part B

debts (if they qualify as such), by reason of the Event of Repurchase that has occurred in respect of each of them;

c. says that some or all of the alleged debts never attached to the Policy, because;

i. clause 5.5 (pleaded at paragraph 39(b)(vi) of this Defence) provided that no Asset or part of any Asset would attach to the Policy to the extent that it breached the limits from time to time in force pursuant of the provisions of clause 5 of the Policy;

ii. by cl 5.1, those limits included the Applicable Limit of Liability, which was relevantly defined to mean the Customer Limit;

iii. the Customer Limit for LCL, Liberty and Liberty FE was, by virtue of the Liberty Customer Endorsement, USD 5,000,000;

iv. in the premises, if (which is denied) USD 5,000,000 worth of Part B debts owed by LCL, Liberty and Liberty FE had attached to the Policy, clause 5.5 operated to prevent any further debts from those customers attaching to the Policy until those debts had been repaid so as to bring the total of Part B debts owed by LCL, Liberty and Liberty FE below USD 5,000,000;

v. Special Condition 2 to the Liberty Customer Endorsement did not apply, as it only made special provision for the resetting of customer limits once and to the extent that a Claim had been submitted, rather than at the point in time at which a Part B debt attaches to the Policy;

vi. having regard to the table at paragraph 61 of the ASOC, once a Part B debt had arisen in respect of the earliest payment obligation in that table, only the first USD 5,000,000 of that Debt could have attached to the Policy (if indeed the USD 5,000,000 limit had not already been reached by an earlier payment obligation preceding those in the table at paragraph 61 of the ASOC), and no further Part B debts in respect of the payment obligations in the table in paragraph 61 of the ASOC attached to the Policy;

vii. in the premises, the Insurer's liability for the debts the subject of this claim can be no greater than USD 5,000,000;

c1. says further and in the alternative that some of the alleged debts never attached to the Policy, because:

i. in the RPA:

A. "Aggregate OPP" was defined to mean "the aggregate of the Outstanding Collections of each Purchased Receivable" (cl 1.1);

B. "Maximum OPP" was defined to mean "USD 527,500,000 unless otherwise agreed between the relevant Seller or Seller Representative and the Buyer in Writing from time to time" (cl 1.1);

C. cl 2.2(G)(1) provided that following the sale and purchase of the Proposed Receivables set forth in the related Request, the Aggregate OPP must not exceed the Maximum OPP (cl 2.2(G)(1));

D. in the Policy, cl 5.5 provided that an Asset acquired by the Insured (or a Loss Payee) during a Policy Period shall to the extent the Insured wishes it to be insured under the Policy, automatically attach to the Policy and be on risk under the Policy from the time the Insured (or a Loss Payee) "acquires risk in the Asset pursuant to the Transaction Documents";

E. to the extent that White Oak (or any Loss Payee) acquired risk in the alleged Assets the subject of the ASOC in an aggregate amount exceeding USD 527,500,000, that risk was acquired contrary to cl 2.2(G)(1) of the RPA, and as a result, was not, to that extent, "acquire[d] … pursuant to the Transaction Documents" as required by cl 5.5 of the Policy; and

ii. in the premises, to the extent that the total debts originating under the RPA in respect of which claims are made by GBAG (or any Loss Payee) for an amount exceeding USD 527,500,000, those debts never attached to the Policy and accordingly are not covered thereby;

d.. says further and in the alternative that a Stop Asset Acquisition Instruction prevented some or all of the debts the subject of the claims pleaded in paragraph 76 of the ASOC from attaching to the Policy, because:

i. clause 8.3(a) (pleaded at paragraph 39.b.viii of this Defence) provided that a Stop Asset Acquisition Instruction would automatically be deemed to have been issued where a Customer has failed to pay a Debt on the relevant Due Date and such failure to pay has not been remedied within 10 Business Days;

ii. Part B debt owed by LCL, Liberty and Liberty FE came into existence no later than 22 February 2019 (being the date on which the representation and warranty by LCL under the RPA with respect to a debt from Cargill Incorporated was incorrect when made, in principle constituting an Event of Repurchase - subject to paragraphs 68 and 69 of this Defence);

Particulars

a. Cargill Incorporated, Customer Debt Payment Obligation Number 006249189-GS054A-FMV
b. Cargill Incorporated, Customer Debt Payment Obligation Number 006249189-GS054B-FMV
c. Emails containing acceptance documentation, with effective date for purchase of the receivables for those customer debts of 22 February 2019 [GCU.0005.0007.5217; GCU.0009.0008.0041]
d. "LCL-28" Acceptance Letter [GCU.0009.0008.0042]
e. "AcceptedAR_220219.xlsx" [GCU.0005.0007.5221]
f. 'LCL Rolling Balances v22.1.xlsx' [GCU.0005.0007.5218]
g. "Buyer_Remittance_LCL28.xlsx" [GCU.0005.0007.5219]
h. 'LOS_FMV_Statistics_LCL28.xlsx' [GCU.0005.0007.5220]

Affidavit of Aaron Thomas, Global Risk Leader at Cargill Incorporated, affirmed on 8 January 2026, at [12] which confirms that Cargill Incorporated did not have a trading relationship with LCL.

iii. LCL, Liberty and Liberty FE were required, by virtue of clause 6.1 of the RPA, immediately to make payment by way of indemnity of an amount equal to the Repurchase Price in respect of that debt;

iv. the obligation to make that indemnity payment was a Part B debt owed by LCL, Liberty and Liberty FE, and which attached to the Policy at that time;

v. clause 8.3(a) operated to require that Part B debt to be repaid by LCL, Liberty and Liberty FE within 10 Business Days, failing which, a Stop Asset Acquisition Instruction would automatically be deemed to have been issued;

vi. that Part B debt was not repaid within 10 Business Days (that is, by 8 March 2019 at the latest);

vii. a Stop Asset Acquisition Instruction therefore was issued no later than 8 March 2019, with the result that thereafter, no further debts from LCL, Liberty or Liberty FE attached to the Policy;

viii. as a result, no Part B debts arising after the date of the deemed Stop Asset Acquisition Instruction were capable of attaching to the Policy, with the result that any Part B debts arising after 8 March 2019 at the latest did not attach to the Policy;

d1. says further and in the alternative that a Stop Asset Acquisition Instruction prevented all of the debts the subject of the claims pleaded in paragraph 76 of the ASOC from attaching to the Policy, because:

i. TMNF repeats sub-paragraphs 81(d)(i), (iii)-(iv) of this Defence;

ii. LCL as Seller under the RPA was obliged to cause all payment it had received in respect of the Purchased Receivables to be directed and deposited into the Buyer's Account on or prior to the Payment Date of the relevant Purchased Receivable: cl 5(c) and (f) of the RPA dated 27 February 2019;

iii. LCL, Liberty and Liberty FE were required, by virtue of clause 6(a)(ii)(A) of the RPA, immediately to make payment by way of indemnity of an amount equal to the Repurchase Price of any Purchased Receivables in respect of which LCL as Seller fails to perform or observe any term or covenant under the RPA, including cl 5(c) and (f) of the RPA;

iv. LCL, Liberty and Liberty FE were required, by virtue of clause 6(a)(ii)(D) of the RPA, immediately to make payment by way of indemnity of an amount equal to the Repurchase Price in respect of any Overdue Receivable on its Final Settlement Date;

v. LCL was required, by virtue of a side letter dated 29 October 2018, to deposit into the Buyer's Account on the Payment Date of any Purchased Receivable or any Repurchased Receivable a sum equal to Expected Amount of each such Purchased Receivable and/or each such Repurchased Receivable: cl (A) of the True Up Side Letter

vi. by each of the dates set out in column A of Annexure B to this Defence at the latest, a Part B debt owed by LCL, Liberty and Liberty FE fell due under the RPA:

1. in respect of the corresponding purported customer debt payment obligations set out in column F of Annexure B;

2. which purported customer debt payment obligations backed the corresponding investor notes set out in column B of Annexure B,

being the due dates of the purported customer debt payment obligations and the maturity date of the investor notes;

vii. in the alternative, if (which is denied) any of the purported customer debt payment obligations in Annexure B were genuine trade receivables, a Part B debt owed by LCL, Liberty and Liberty FE arose in respect of each such debt on its Payment Date or, alternatively, Final Settlement Date if the Expected Amount was not paid into the Buyer's Account by that date;

viii. no amount was paid by LCL, Liberty and Liberty FE into the Buyer's Account in respect of the purported customer debt payment obligations by the due dates in column A of Annexure B to enable repayment of the maturing investor notes set out in column B of Annexure B;

ix. instead, GCUK made payment into the Buyer's Account from its own funds to enable repayment of the maturing investor notes in column B of Annexure B in circumstances where LCL, Liberty and Liberty FE were unable to make those payments;

x. GCUK did not reimburse itself in full from the proceeds of further investor notes issued under the LCL facility but recorded an "arrears" amount owing to it from LCL in respect of payments made by GCUK into the Buyer's Account on LCL's behalf, which by 27 June 2019 totalled USD 51,359,498.37;

xi. GCUK reimbursed itself, and cleared the "arrears" of unpaid amounts owing from LCL, Liberty and Liberty FE under the RPA, by retaining USD 56,397,464 from the proceeds of investor notes issued to GBAG under the Liberty Delta facility on or about 27 June 2019 (of which GCUK treated USD 51,359,498.37 as payment of unpaid amounts owing to it by LCL under the RPA);

xii. the Part B debts owed by LCL, Liberty and Liberty FE in respect of each of the purported customer debt payment obligations in column F of Annexure B were not paid by the dates in column H of Annexure B, being 10

Business Days of their due date, or within 10 Business Days of their Payment Date or Final Settlement Date (if, which is denied, the purported customer debt payment obligations were genuine trade receivables), and were only discharged by GCUK retaining an equivalent amount from new investor notes issued under the Libert Delta facility on or about 27 June 2019;

xiii. a Stop Asset Acquisition Instruction therefore was issued no later than each of the dates in column H of Annexure B, with the result that thereafter no further debts from LCL, Liberty or Liberty FE were capable of attaching to the Policy and none of the debts the subject of the claims pleaded in paragraph 76 of the ASOC attached to the Policy.

Particulars

TMNF refers to the aide-memoire served on or about the date of this Defence.

d2. says further and in the alternative that a Stop Asset Acquisition Instruction prevented all of the debts the subject of the claims pleaded in paragraph 76 of the ASOC from attaching to the Policy, because:

i. TMNF repeats sub-paragraphs 81(d1)(i), (v) and (vii) of this Defence;

ii. LCL as Seller under the RPA was obliged to take any and all actions necessary to ensure that any and all collections on account of a receivable sold under the RPA shall be wired directly to the Buyer's Account: cl 5.1(C)(1) of the RPA dated 6 December 2019;

iii. LCL as Seller under the RPA was obliged to cause all payment it had received in respect of the Purchased Receivables to be directed and deposited into the Buyer's Account within two business days of receipt or by the Payment Date: cl 5.3 and 5.6 of the RPA

iv. LCL, Liberty and Liberty FE were required, by virtue of clause 6.1 of the RPA, immediately to make payment by way of indemnity of an amount equal to the Repurchase Price of any Purchased Receivables in respect of which LCL as Seller fails to perform or observe any term or covenant under the RPA, including cl 5.1(C)(1), 5.3 and 5.6 of the RPA;

v. LCL, Liberty and Liberty FE were required, by virtue of clause 6.1 of the RPA, immediately to make payment by way of indemnity of an amount equal to the Repurchase Price in respect of any Overdue Receivable on its Final Settlement Date;

vi. On 3 June 2020, the following investor note maturities under the LCL facility totalling USD 26,006,915 backed by the following purported customer debt payment obligations fell due;

Investor note ISIN	**Purported customer debt payment obligation reference**
XS2077182629 (CS), XS2077182975 (CS), XS2077183197 (CS), XS2077182892 (GBAG), XS2077183866 (GBAG)	301713231-16945-FMV, 331495770-16946-FMV, 300009774-16947-FMV, 321074163-16944-FMV, 315000323-16948-FMV

vii. no amount was paid by LCL, Liberty and Liberty FE into the Buyer's Account by 3 June 2020 in respect of the above purported customer debt payment obligations to enable repayment of the above maturing investor notes;

viii. instead, GCUK made payment of USD 26,006,917.92 into the Buyer's Account from its own funds to enable repayment of the maturing investor notes in circumstances where LCL, Liberty and Liberty FE were unable to make that payment;

ix. on 3 June 2020, GCUK was due to make payment of USD 25,658,794.61 from an issuance of new Investor Notes under the Liberty Commodities Multi Obligor Debt Programme to LCL, however remitted only USD 49,244.69 to LCL, leaving USD 25,609,549.92 available to reimburse GCUK for the USD 26,006,917.92 it had paid into the Collection Account. This resulted in a shortfall of USD 348,123.31;

x. the Part B Debts owed by LCL, Liberty and Liberty FE in respect of the purported customer debt payment obligations in sub-paragraph (vi) above were not paid in full by 18 June 2020, being 10 Business Days of their due

date, or within 10 Business Days of their Payment Date or Final Settlement Date (if, which is denied, they were genuine trade receivables);

xi. a Stop Asset Acquisition Instruction therefore was issued no later than 18 June 2020, with the result that thereafter no further debts from LCL, Liberty or Liberty FE were capable of attaching to the Policy and none of the debts the subject of the claims pleaded in paragraph 76 of the ASOC attached to the Policy.

Particulars

TMNF refers to the aide-memoire served on or about the date of this Defence.

d3. says further and in the alternative that a Stop Asset Acquisition Instruction prevented all of the debts the subject of the claims pleaded in paragraph 76 of the ASOC from attaching to the Policy, because:

i. TMNF repeats sub-paragraphs (d1)(i)-(iv) and (vi) of this Defence;

ii. On 23 September 2020, the following Investor Note and Direct Asset maturities under the LCL facility totalling USD 22,082,278.67 backed by the following purported customer debt payment obligations fell due;

Investor note ISIN	**Purported customer debt payment obligation reference**
XS2140104022 (CS), XS2140104295 (GBAG), XS2140104378 (CS), XS2140104451 (GBAG), G34L9QZVLM8C (WO)	688021901-17509-FMV, 691197370-17521-FMV, 687925834-17512-FMV, 006249189-17511-FMV

iii. no amount was paid by LCL, Liberty and Liberty FE into the Buyer's Account by 23 September 2020 in respect of the above purported customer debt payment obligations to enable repayment of the above maturing investor notes;

iv. instead, GCUK made payment of USD 22,082,280.18 into the Buyer's Account from its own funds to enable repayment of the maturing investor

notes in circumstances where LCL, Liberty and Liberty FE were unable to make that payment;

v. the Part B Debts owed by LCL, Liberty and Liberty FE in respect of the purported customer debt payment obligations in sub-paragraph (ii) above were not paid in full by 8 October 2020, being 10 Business Days of their due date; and

vi. a Stop Asset Acquisition Instruction therefore was issued on 8 October 2020, with the result that thereafter no further debts from LCL, Liberty or Liberty FE were capable of attaching to the Policy and none of the debts the subject of the claims pleaded in paragraph 76 of the ASOC attached to the Policy.

Particulars

TMNF refers to the aide-memoire served on or about the date of this Defence.

d4. says further and in the alternative that a Stop Asset Acquisition Instruction prevented all of the debts the subject of the claims pleaded in paragraph 76 of the ASOC from attaching to the Policy, because:

i. TMNF repeats sub-paragraphs 81(d)(i) of this Defence

ii. On 14 March 2019, an investor note maturity under the Liberty France Debt Programme of USD 3,147,126 backed by a customer debt payment obligation owed by Liberty France Aluminium Holdco (Liberty France) fell due;

Investor note ISIN	Customer debt payment obligation reference
XS1914681637 (CS)	10004a

iii. no amount was paid by Liberty France, or any other member of the Customer Group (as defined in the Policy) of which Liberty France was a member, into the Buyer's Account by 14 March 2019 in respect of the above customer debt payment obligation to enable repayment of the above maturing investor note;

iv. instead, GCUK made payment of USD 3,147,126 into the Buyer's Account from its own funds to enable repayment of the maturing investor note in circumstances where Liberty France was unable to make that payment;

v. on 23 September 2020, GCUK was due to make payment of USD 21,791,367.29 from a issuance of new Investor Notes under the Liberty Commodities Multi Obligor Debt Programme to LCL, however remitted only USD 11,902.11 to LCL, leaving USD 21,779,465.18 available to reimburse GCUK for the USD 22,082,280.18 it had paid into the Collection Account. This resulted in a shortfall of USD 302,815;

vi. the customer debt owed by Liberty France in sub-paragraph (i) above was not paid in full by 28 March 2019, being 10 Business Days of its due date;

vii. each of Liberty France and Liberty House Group Pte Ltd (which guaranteed Liberty France's debts under the Liberty France Debt Programme) was a member of the same Customer Group as defined the Policy as LCL, Liberty or Liberty FE;

viii. a Stop Asset Acquisition Instruction therefore was issued on 28 March 2019, with the result that thereafter no further debts from LCL, Liberty or Liberty FE were capable of attaching to the Policy and none of the debts the subject of the claims pleaded in paragraph 76 of the ASOC attached to the Policy.

Particulars

TMMA refers to the aide-memoire served on or about the date of this Defence.

e. says that, in any event, there is no Loss within the meaning of the Policy, because:

i. the definition of Loss (as pleaded to at paragraph 39.b.xvii.R of this Defence) had three limbs, which relevantly required:

A. a Direct Asset owned by the Insured;

B. an Asset (which is neither a Direct Asset or a Note) owned by the Insured; or

C. an Asset (which is a Note) owned by the Insured immediately prior to the payment of a Claim (which for the avoidance of doubt shall also

include the Expected Allocation of the Insured in respect of each Asset acquired by the Insured from a Loss Payee after the occurrence of the Insured Cause but prior to payment of such Claim);

ii. the Assets the subject of the claims pleaded in paragraph 76 of the ASOC are Direct Assets which are not owned by the Insured, but instead are owned by White Oak (assuming that White Oak acquired those assets and did so validly, which is not admitted);

iii. although the LCL Endorsement purported to amend the first limb of the definition of Loss in the Policy, such that it would include a loss where a Direct Asset was owned by a Loss Payee rather than the Insured at the time of the claim, for the reasons pleaded at paragraphs 54 to 56 of this Defence, that document was not effective to vary the definition of Loss in the Policy;

e1. says further that, in the premises of paragraph 41(f) of this Defence, none of the alleged debts set out at paragraph 61 of the SOC was covered by the Policy, as the Policy expired on 22 February 2020, and each of those alleged debts came into existence after that date;

f. further or alternatively, if the Policy and the relevant endorsements were validly issued and there was a 'Loss' as defined in the Policy, then:

i. that loss is not recoverable by reason of the Prior Misrepresentations and Non-Disclosures as pleaded in paragraph 232 of this Defence;

ii. further or alternatively, TMNF repeats paragraph 81A of this Defence; and

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

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

ii. at the time that each subsequent risk relating to an entity in the same corporate group as Liberty OneSteel (Primary) UK Pty Ltd (**a Liberty Risk**) was presented to Brereton and/or BCC, the Greensill Group failed to

disclose that the Liberty Seaview Defaults had occurred (**the Liberty Seaview Defaults Non-Disclosures**);

iii. in the premises, pursuant to s 28(3) of the ICA:

A. any right White Oak has to indemnity that depends upon an endorsement purportedly executed in or after December 2019 in relation to a Liberty Risk, including the Liberty Endorsement, the LCL Endorsement and/or the Loss Payee Endorsement is reduced to the amount that would place IAL in the position it would have been had the Liberty Seaview Defaults Non-Disclosures not been made, that amount being nil; and

B. had IAL or BCC been aware that the Liberty Seaview Defaults had occurred, it would not have agreed to insure any Liberty Risk; and

iv. further or alternatively, pursuant to cl 9.7 of the Policy, White Oak has failed to comply with its duty of fair presentation and those failures together or separately had a "Material Policy Impact" such that IAL has no liability to indemnify White Oak for the loss claimed in this proceeding; and

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

i. the Liberty Seaview Defaults occurred by no later than December 2019;

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

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

iv. the Liberty Seaview Stop Asset Acquisition Instruction was issued by no later than 14 January 2020 to Liberty OneSteel (Primary) UK Ltd and to the

Liberty Customer Group, with the result that thereafter, no further debts from any member of the Liberty Customer Group, including Liberty MDR Treasury Company UK Ltd (**Liberty TCUK**), Speciality Steel UK Limited (**SSUK**), Simec Group Limited (**Simec**), Liberty France Aluminium Holdco, Liberty House Group Pte Ltd (**Liberty House**) and LCL, attached to the Policy; and

v. as a result, no debts arising after the date of the deemed Liberty Seaview Stop Asset Acquisition Instruction in respect of a customer in the Liberty Customer Group were capable of attaching to the Policy, with the result that any such alleged debts arising after 14 January 2020 at the latest did not attach to the Policy;

vi. in the premises, none of the alleged debts listed at paragraph 61 of the SOC attached to the Policy, as each of them post-dated the Liberty Seaview Stop Asset Acquisition Instruction; and

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

i. a Stop Asset Acquisition Instruction in relation to defaults by SSUK, which was issued by no later than 22 June 2020 to SSUK and to the Liberty Customer Group, as pleaded at paragraph 714(e) of TMNF's Defence to the 6ASOC in proceeding NSD 169 of 2023 (**TMNF's CS Global Defence to the 6ASOC**);

ii. a Stop Asset Acquisition Instruction in relation to defaults by Liberty TCUK, which was issued by no later than 24 December 2020 to TCUK and to the Liberty Customer Group, as pleaded at paragraph 525(f) of TMNF's CS Global Defence to the 6ASOC;

iii. a Stop Asset Acquisition Instruction in relation to defaults by Liberty House, which was issued by no later than 10 March 2021 to Liberty House and to the Liberty Customer Group, as pleaded at paragraph 477(d) of TMNF's CS Global Defence to the 6ASOC; and

iv. a Stop Asset Acquisition Instruction in relation to defaults by Simec, which was issued by no later than 12 February 2021 to Simec and to the Liberty

Customer Group, as pleaded at paragraph 643(d) of TMNF's CS Global Defence to the 6ASOC;

v. in the premises, none of the alleged debts listed at paragraph 61 of the SOC attached to the Policy, as each of them post-dated the Stop Asset Acquisition Instructions at (i) to (iv) above; and

j. otherwise denies the paragraph.

81A. In further answer to White Oak's claim, TMNF says:

a. if White Oak held an interest in any payment obligations in respect of LCL (which is not admitted), and White Oak met the definition of "Transferee" as that term is defined in the personal guarantee provided by Sanjeev Gupta, then White Oak had the benefit of that personal guarantee;

Particulars

Personal Guarantee given by Sanjeev Gupta to GCUK dated 17 April 2020 [BCC.0001.0006.4376]

b. on 6 October 2023, White Oak was substituted as petitioning creditor in proceedings in the High Court of Justice to wind up LCL in which White Oak claimed a "Petition Debt" against LCL of US$200,439,324.25;

c. on 25 January 2024, White Oak entered into a "Settlement Agreement" with LCL, Liberty and Liberty FE by which White Oak agreed to seek adjournments in the proceedings in consideration of certain payments and in principle to a settlement of the "Petition Debt" for a "Settlement Sum" of US $100,000,000 (inclusive of interest and costs);

d. the Settlement Agreement was entered into after three years of negotiation with Sanjeev Gupta, who controlled LCL, Liberty and Liberty FE and with whom White Oak had a relationship prior to participating in receivable financing with Greensill;

Particulars

Witness Statement of Thomas Kevin Otte in High Court of Justice proceeding CL-2023-000294 signed on 6 March 2025 at [9], [16].

e. the Settlement Agreement was not a reasonable settlement of White Oak's claims against LCL, Liberty and Liberty FE in circumstances where Sanjeev Gupta's "GFG Alliance" was conducting global metals manufacturing, trading and investments

businesses including the “LIBERTY” business, which had operations in the United Kingdom, Europe and Australia;

f. between 26 January 2024 and 26 April 2024, White Oak received US$30,000,291.67 from LCL, Liberty and/or Liberty FE pursuant to the Settlement Agreement;

g. LCL did not provide customary security in a form satisfactory to White Oak or at all prior to 23 April 2024, in breach of a requirement in the Settlement Agreement;

h. by email on 12 July 2024, White Oak agreed to vary the Settlement Agreement, including to require it to support a further adjournment and to delete the requirement for LCL to provide such security, in consideration for LCL, Liberty and/or Liberty FE agreeing to make payments which in total were approximately equal to the outstanding amount of the Settlement Sum;

i. White Oak did not obtain any substantial benefit by that variation of the Settlement Agreement;

j. between 12 July 2024 and 15 October 2024, White Oak received payments totalling $9,499,940.43 from LCL, Liberty and/or Liberty FE pursuant to the Settlement Agreement as varied on 12 July 2024;

k. LCL, Liberty and Liberty FE failed to make the other payments required by the Settlement Agreement as so varied;

l. by email on 4 November 2024, White Oak agreed to further vary the Settlement Agreement, including to require it to support a further adjournment, in consideration for LCL, Liberty and/or Liberty FE agreeing to make payments which in total were approximately equal to the outstanding amount of the Settlement Sum and to pay interest at 3% above the Barclays Bank base rate;

m. on 4 November 2024, White Oak received $2,000,020.57 from LCL, Liberty and/or Liberty FE pursuant to the Settlement Agreement as varied on 12 July 2024 and 4 November 2024;

n. LCL, Liberty and Liberty FE failed to make the other payments required by the Settlement Agreement as so varied;

o. on 21 February 2025, White Oak entered into a “Deed of Variation” with LCL, Liberty and Liberty FE by which White Oak agreed to seek dismissal of the winding up petition with no order as to costs in consideration of LCL agreeing to pay US$58,500,000, being

approximately the outstanding amount of the Settlement Sum, by 1 May 2025 and to provide valuable security;

p. the only substantial benefit obtained by the Deed of Variation was the requirement for LCL to provide security, which White Oak had previously foregone for no substantial benefit;

q. in the premises:

i. White Oak has received at least $41,500,252.67 from LCL, Liberty and/or Liberty FE, which is to be deducted from any indemnity payment:

1. on the basis that it was actually paid by or on behalf of a Customer in respect of an Asset within the definition of "Loss" in the Policy; or

2. alternatively, based on principles of indemnity and double recovery; and

ii. further or alternatively, the Settlement Agreement, variations on 12 July 2024 and 4 November 2024 and/or Deed of Variation were not reasonable settlements of the claims of White Oak against LCL, Liberty and Liberty FE;

r. on 25 February 2025, Liberty OneSteel (Primary) UK Pty Ltd granted security to White Oak over instruments issued by Liberty Bell Bay Pty Ltd (**Liberty Bell Bay**);

s. at some time prior to 6 March 2025, White Oak withdrew its winding up petition;

t. White Oak did not take any steps other than those referred to above to obtain payment from LCL, Liberty and/or Liberty FE prior to 6 March 2025, notwithstanding the breaches referred to above;

Particulars

No such steps are referred to in the Witness Statement of Thomas Kevin Otte in High Court of Justice proceeding CL-2023-000294 signed on 6 March 2025 at [16], referring to "steps" said to have been taken by White Oak "to get [its] money back" following the "collapse of Greensill".

u. LCL failed to pay US$58,500,000 by 1 May 2025 in breach of the Deed of Variation;

v. on 23 March 2026, nearly 11 months after such payment fell due and after the Australian Securities and Investments Commission had applied to wind up Liberty Bell Bay, White Oak appointed administrators to Liberty Bell Bay;

w. White Oak did not take any steps to obtain payment of the outstanding amount from LCL, Liberty, Liberty FE or Liberty OneSteel (Primary) UK Pty Ltd, including by exercising its security over instruments issued by Liberty Bell Bay, prior to that appointment;

Particulars

No such steps have been referred to in the email on 3 March 2026 at 10:20 am or any subsequent correspondence from White Oak's solicitors in response to queries from the solicitors for the BCC/TM Parties.

x. GCPL and Greensill Bank have not taken any steps to mitigate Loss (if any) since the execution of the Power of Attorney;

y. White Oak, Greensill Bank, GCUK and GCPL have not taken any, or any adequate steps, to enforce the personal guarantee given by Sanjeev Gupta to GCUK dated 17 April 2020, including by seeking to bankrupt Mr Gupta if he was unwilling or unable to comply with the personal guarantee dated 17 April 2020 in full;

z. in the premises, GCUK, GCPL, Greensill Bank and/or White Oak have failed to mitigate Loss (if any), such that any indemnity payment is to be reduced:

i. pursuant to cl 10.7 of the Policy; or

ii. alternatively, based on general principles of mitigation.

K. Alleged Breach of Policy by Insurer

82. TMNF admits paragraph 82 of the ASOC and refers to the particularised letters for their full force and effect.

83. TMNF does not know what information the Greensill Group, Marsh or White Oak had available to them at the time of its letter, and therefore cannot admit paragraph 83 of the ASOC.

84. As to paragraph 84 of the ASOC, TMNF admits that IAL has not indemnified White Oak under the Policy nor confirmed that White Oak is entitled to be indemnified but says that White Oak is not entitled to indemnity under the Policy or at all.

85. TMNF denies paragraph 85 of the ASOC.

86. TMNF denies paragraph 86 of the ASOC.

87. TMNF denies paragraph 87 of the ASOC.

L. Loss or damage

88. TMNF denies paragraph 88 of the ASOC.

M. Claims against BCC, Mr Brereton & the Insurer

89. [Not used]

90. TMNF does not plead to paragraph 90 of the ASOC, which contains no allegation against it.

91. TMNF does not plead to paragraph 91 of the ASOC, which contains no allegation against it.

92. As to paragraph 92 of the ASOC, TMNF:

a. says that Brereton's actual authority as Head of Trade Credit allowed him to execute policies on behalf of BCC;

b. says that BCC and Brereton had actual authority to enter into the Loss Payee Endorsement, for and on behalf of IAL to the extent it endorsed White Oak as a loss payee under the Policy (if issued within authority);

c. says that the conduct of BCC and Brereton in entering into the Policy or any of the Endorsements as the Insurer's agent or otherwise on its behalf was:

i. within the ostensible authority of BCC and Brereton;

ii. if relied upon in good faith by GBAG, conduct for which, as between IAL and GBAG, IAL was responsible under section 917B or 917C of the Corporations Act even if BCC and Brereton acted outside their actual authority;

iii. if relied upon in good faith by White Oak, conduct for which, as between IAL and White Oak, IAL was responsible under section 917B or 917C of the Corporations Act even if BCC and Brereton acted outside their actual authority; and

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

92A. As to paragraph 92A of the ASOC, TMNF:

a. repeats paragraph 92 of this Defence; and

b. otherwise denies the paragraph.

Knowledge of BCC & Mr Brereton

93. As to paragraph 93 of the ASOC, TMNF:

a. repeats paragraph 93 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

94. As to paragraph 94 of the ASOC, TMNF:

a. repeats paragraph 94 of BCC's Defence in these proceedings; and

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

95. As to paragraph 95 of the ASOC, TMNF:

a. repeats paragraph 95 of BCC's Defence in these proceedings; and

b. otherwise admits the paragraph.

96. As to paragraph 96 of the ASOC, TMNF:

a. repeats paragraph 96 of BCC's Defence in these proceedings;

b. on the basis set out therein does not know and therefore cannot admit the paragraph.

97. As to paragraph 97 of the ASOC, TMNF:

a. repeats paragraph 95 and 96 of BCC's Defence in these proceedings; and

b. on the basis set out therein does not know and therefore cannot admit the paragraph.

97A. TMNF does not plead to paragraph 97A of the ASOC as it makes no allegations against it.

97B. As to paragraph 97B of the ASOC, TMNF:

a. repeats paragraph 97B of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

97C. As to paragraph 97C of the ASOC, TMNF:

a. repeats paragraph 97C of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

Breach of Warranty of Authority

98. As to paragraph 98 of the ASOC, TMNF:

a. repeats paragraph 98 of BCC's Defence in these proceedings; and

b. otherwise admits the paragraph.

99. As to paragraph 99 of the ASOC, TMNF:

a. repeats paragraph 99 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

100. As to paragraph 100 of the ASOC, TMNF:

a. repeats paragraph 100 of BCC's Defence in these proceedings;

b. otherwise does not plead to the paragraph, which makes no allegation against it.

101. As to paragraph 101 of the ASOC, TMNF:

a. repeats paragraph 101 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

102. As to paragraph 102 of the ASOC, TMNF:

a. repeats paragraph 102 of BCC's Defence in these proceedings; and

b. otherwise admits the paragraph.

103. As to paragraph 103 of the ASOC, TMNF:

a. repeats paragraph 103 of BCC's Defence in these proceedings;

b. otherwise does not plead to the paragraph, which contains no allegation against it.

104. As to paragraph 104 of the ASOC, TMNF:

a. repeats paragraph 104 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

Misleading or Deceptive Conduct

105. As to paragraph 105 of the ASOC, TMNF:

a. repeats paragraph 105 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

106. As to paragraph 106 of the ASOC, TMNF:

a. repeats paragraph 106 of BCC's Defence in these proceedings; and

b. otherwise does not plead to the paragraph, which makes no allegation against it.

107. As to paragraph 107 of the ASOC, TMNF:

a. repeats paragraph 107 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

108. As to paragraph 108 of the ASOC, TMNF:

a. repeats paragraph 108 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

109. As to paragraph 109 of the ASOC, TMNF:

a. repeats paragraph 109 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

110. As to paragraph 110 of the ASOC, TMNF:

a. repeats paragraph 110 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

111. As to paragraph 111 of the ASOC, TMNF:

a. repeats paragraph 101 of BCC's Defence in these proceedings;

b. otherwise denies the paragraph.

111A. As to paragraph 111A of the ASOC, TMNF:

a. repeats paragraph 101 of this Defence; and

b. otherwise denies the paragraph.

112. As to paragraph 112 of the ASOC, TMNF:

a. repeats paragraph 112 of BCC's Defence in these proceedings;

b. to the extent that it is an allegation against Mr Brereton, TMNF does not plead to the paragraph; and

c. otherwise denies the paragraph.

Contributory negligence

112A. The loss or damage the subject of White Oak's claim (if any) was at least partly a result of White Oak's own failure to take reasonable care, with the result that, pursuant to s 1041I(1B) of the Corporations Act (in respect of paragraphs 105 to 112 and 178 to 201 of the ASOC), s 12GF of the ASIC Act (in respect of paragraphs 105 to 112 and 178 to 201 of the ASOC) and ss 5R and 5S of the *Civil Liability Act 2005* (NSW) (the **Civil Liability Act**) (in respect of paragraphs 209 to 230 of the ASOC), the damages payable by TMNF (if any) should be reduced to the extent to which the court thinks just and equitable having regard to White Oak's share in the responsibility for the alleged loss and damage, on the following grounds:

a. at the time at which White Oak acquired each of the assets the subject of this claim, White Oak failed to undertake any or adequate, or alternatively failed to ensure that the entity to whom it delegated responsibility for the assets White Oak purchased from GCUK (together with White Oak, **White Oak Entities**) undertook any or adequate, investigations and/or due diligence into:

i. the transactions pursuant to which the Assets were acquired;

ii. the purported insurance arrangements (including the Policy and its purported endorsements); and

iii. BCC/Brereton's authority on behalf of IAL as referred to in the SOC;

Particulars

A. FT Collections, “Credit Suisse casts doubt on Sanjeev Gupta’s £200m bailout loan” (7 May 2021).

B. FT Collections, “Can Sanjeev Gupta escape the crisis engulfing his business?” (11 May 2021).

C. FT Collections, “White Oak: why the ‘white knight’ is so attached to Gupta’s metals group” (15 May 2021).

D. FT Collections, “Sanjeev Gupta’s GFG in talks with White Oak over European operations” (23 August 2021).

E. White Oak ABL LLC entered in a series of agreements with the Greensill Group on 15 December 2020 evidently designed to enable GBAG to reduce the apparent scale of its exposure to LCL by formally substituting White Oak ABL LLC as debtor in place of LCL, but with White Oak ABL LLC to transfer and assign any LCL receivable to GCUK in the event of any default, and without any trade credit insurance existing for the benefit of White Oak ABL LLC: see Instalment Payment Agreement between White Oak ABL, LLC as Customer and Greensill Capital (UK) Limited as Funder dated 15 December 2020 and the second Instalment Payment Agreement between White Oak ABL LLC and Greensill Capital (UK) Limited as Funder dated 15 December 2020.

F. Defence filed 28 July 2023 by Marsh Limited in High Court of Justice proceeding CL-2023-000294, [10.3], [10.5], [13].

G. Duncan Mavin, “The Pyramid of Lies: Lex Greensill and The Billion-Dollar Scandal” (MacMillan, 2022) pp 192, 283.

GA. The White Oak Entities are:

(a) White Oak; and

(b) White Oak Global Advisors, LLC (**WOGA**).

H. Further particulars may be provided after discovery and/or evidence.

b. The White Oak Entities failed to adequately identify, limit and monitor risks in the context of its business relationships with Lex Greensill and his companies (including Greensill Bank and GCPL) over a period of years;

Particulars

TMNF repeats the particulars to 112A(a) of this Defence

c. the White Oak Entities failed to perform any (or any adequate) analysis of the risk associated with the assets White Oak purchased from GCUK because White Oak had the benefit of a Deed of Indemnity from GCUK in favour of White Oak dated 29 April 2020 indemnifying White Oak for any loss suffered by it in respect of any Claim made but rejected by the Insurer;

Particulars

TMNF repeats the particulars to subparagraph (a) above, and particularly the Defence filed 28 July 2023 by Marsh Limited in High Court of Justice proceeding CL-2023-000294, [13].

d. the White Oak Entities failed to have in place adequate organisation structures for the identification, review and management of investment risks;

Particulars

TMNF repeats the particulars to 112A(a) of this Defence.

e. the White Oak Entities did not arrange their own insurance cover, but left it to the Greensill Group to arrange insurance cover for their benefit;

Particulars

TMNF repeats the particulars to 112A(a) of this Defence.

f. the White Oak Entities failed to realise, and failed to have adequate systems to enable them to realise, that the Greensill Group was financing companies whose creditworthiness was doubtful; and

Particulars

TMNF repeats the particulars to 112A(a) of this Defence.

g. the White Oak Entities failed to enforce their rights to enforce the debts owed by each Customer, LCL, and each Guarantor (as pleaded to at paragraphs 81A above and 112D to 112F below) to recover the amounts due from each Customer, LCL and each Guarantor;

Particulars

TMNF repeats paragraphs 112D to 112F of this Defence.

h. further or alternatively, TMNF refers to and relies on the matters set out in BCC/TM's Annexure D.

Proportionate liability defences

112B. In further response to paragraphs 105 to 112, 178 to 201 and 209 to 230 of the ASOC of the ASOC, TMNF says that to the extent that Greensill Bank and/or White Oak has suffered loss by reason of any alleged contravening conduct by TMNF (which is denied), the claims arising on White Oak's pleaded case are apportionable claims for the purposes of s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the Competition and Consumer Act and s 34 of the Civil Liability Act.

112C. Without admission and for the purposes only of this Defence, TMNF refers to and repeats the matters pleaded in paragraphs 24 to 37 and 61 to 76 of the ASOC.

112D. By virtue of the matters pleaded in paragraph 112C above, each of the entities listed as an "Eligible Customer" in the table at paragraph 76 of the ASOC (each, a **Customer**) is a concurrent wrongdoer, as its acts or omissions in failing to repay the debts owed by it to GCUK or to White Oak caused the damage or loss the subject of the claim:

a. the Customer failed to pay a debt that had been assigned to White Oak;

b. by virtue of its status as assignee of each such debt, White Oak was and is entitled to enforce payment of those debts in an action for debt against the relevant Customer;

c. each Customer is liable to White Oak in an action for debt in respect of each unpaid debt owed by the Customer as pleaded in the ASOC.

112E. By virtue of the matters pleaded in paragraph 112C above, LCL is a concurrent wrongdoer, as its acts or omissions in failing to repurchase the debts owed by it to GCUK or to White Oak caused the damage or loss the subject of the claim:

a. LCL failed to repurchase an unpaid debt that had been assigned to White Oak;

b. by virtue of its status as assignee of each such debt, White Oak was and is entitled to enforce LCL's obligation to repurchase those debts in an action for debt against LCL; and

c. LCL is liable to White Oak in an action for debt in respect of each debt that it has failed to repurchase as pleaded in the ASOC.

112F. By virtue of the matters pleaded in paragraph 112C above, each of Liberty and Liberty FE (**the Guarantors**) is a concurrent wrongdoer, as its acts or omissions in failing to make payment of the debts owed by LCL to GCUK caused the damage or loss the subject of the claim:

a. each Guarantor was and is liable, upon non-payment by LCL, to make payment of the debt that had been assigned to White Oak;

b. by virtue of its status as assignee of each such debt, White Oak was and is entitled to enforce payment of those debts in an action for debt against the Guarantor;

c. each Guarantor is liable to White Oak in an action for debt in respect of each unpaid debt owed by LCL as pleaded in the ASOC.

112G. Lex Greensill, Greensill Bank, GCPL and GCUK are concurrent wrongdoers on the basis that they owed a duty of care to White Oak to exercise reasonable skill and care to ensure that White Oak was not misled into believing that the assets which it acquired as pleaded in the ASOC were supported by insurance cover for the assets acquired, and yet each breached that duty as follows:

a. TMNF refers to and repeats the Prior Misrepresentations and Non-Disclosures by and on behalf of the Insureds alleged in Annexure A to this Defence;

b. Lex Greensill, Greensill Bank, GCPL and GCUK knew that White Oak would reasonably rely on representations made by Lex Greensill, Greensill Bank, GCPL and GCUK in relation to the transactions the subject of these proceedings in deciding whether to acquire the assets;

c. by reason of their role in procuring, encouraging, promoting and facilitating the abovementioned investments by White Oak in the assets, Lex Greensill, Greensill Bank, GCPL and GCUK owed a duty of care to take reasonable care to ensure

that the information they provided to White Oak in connection with those investments was accurate and complete;

d. Lex Greensill, Greensill Bank, GCPL and GCUK breached the duty of care owed by them to White Oak in failing to inform White Oak that Lex Greensill, Greensill Bank, GCPL and GCUK had made the Prior Misrepresentations and Non-Disclosures pleaded in Annexure A to this Defenceand that it was likely that the insurance purportedly obtained in support of the assets acquired by White Oak was liable to be avoided;

e. White Oak relied on the accuracy and completeness of the representations and information provided to them by Lex Greensill, Greensill Bank, GCPL and GCUK in deciding whether to acquire the Notes;

f. in the premises, Lex Greensill, Greensill Bank, GCPL and GCUK are liable to White Oak in the tort of negligence.

Particulars

TMNF was not privy to the communications between White Oak and the representatives of the Greensill Group in relation to insurance cover allegedly obtained for the benefit of White Oak. TMNF will seek discovery of those communications and may provide further particulars thereafter.

112H. Lex Greensill, Greensill Bank, GCPL and GCUK are concurrent wrongdoers on the basis that they misled White Oak (in contravention of s 1041H of the Corporations Act, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act) by failing to disclose to White Oak that:

a. they had made the Prior Misrepresentations and Non-Disclosures pleaded in Annexure A to this Defence and that it was likely that the insurance purportedly obtained in respect of the assets acquired by White Oak was liable to be avoided accordingly.

Particulars

A. TMNF refers to and repeats the Prior Misrepresentations and Non-Disclosures by and on behalf of the Insureds alleged in Annexure A to this Defence;

B. GCPL, Greensill Bank, GCUK and Greensill misled White Oak by failing to disclose to White Oak that they had made the Prior Misrepresentations and Non-Disclosures pleaded in Annexure A to this Defence and that it was likely that the insurance purportedly obtained in support of the notes acquired by White Oak was liable to be avoided accordingly;

b. they had received (either directly or through their agent, Marsh) the correspondence from BCC, TMMA and/or TMNF pleaded or particularised at paragraphs 120, 128, 130, 131 and 132 of the ASOC and had not disclosed that correspondence to White Oak, in circumstances where White Oak alleges that they had a reasonable expectation that the matters addressed in that correspondence would be disclosed, that the failure to disclose those matters was misleading or deceptive or likely to mislead and that, but for the non-disclosure of those matters, they would not have purchased any Payment Obligations (as pleaded in paragraph 190(a1) and 191(a1) of the ASOC), or alternatively would not have relied upon the validity of enforceability of the Policy and/or the Endorsements and purchased or continued to purchase Payment the Obligations pleaded in paragraph 61 of the ASOC) (as pleaded in paragraph 190(a) and (b) and 191(a) and (b) of the ASOC.

Particulars

TMNF refers to and repeats paragraphs 119 to 132, 176 to 177 and 180 to 192 of the SOC.

112I. Marsh and Marsh Pty Ltd are each a concurrent wrongdoer on the basis that:

a. Marsh and Marsh Pty Ltd provided White Oak with documents confirming that the receivables it intended to purchase from GCUK were covered by the policies and endorsements the subject of this proceeding (the **Marsh Documents**);

b. Marsh and Marsh Pty Ltd owed a duty to White Oak to exercise reasonable skill and care in its dealings with White Oak, including to:

i. take reasonable steps to ensure that the statements in the Marsh Documents, and associated representations, were accurate;

ii. inform White Oak of matters brought to its attention by BCC, TMMA, TMNF and/or IAL from July 2020 onwards in relation to Brereton and the stance adopted by IAL in relation to the obligors under the relevant policies and endorsements; and/or

iii. inform White Oak that there was a real risk that the matters that had been brought to Marsh's attention from July 2020 onwards might affect White Oak's coverage under the policies and endorsements the subject of this proceeding, or that IAL might so contend.

c. Marsh and Marsh Pty Ltd breached the duty pleaded in paragraph (b) by:

i. failing to take reasonable steps to ensure that the statements in the Marsh Documents, and associated representations, were accurate; and/or

ii. failing at any stage after July 2020 to inform White Oak of the matters brought to its attention by BCC, TMMA, TMNF and/or IAL or that there was a real risk that those matters might affect White Oak's coverage under the policies and endorsements the subject of this proceeding, or that IAL might so contend; and

d. if BCC, TMMA and/or TMNF are found liable to White Oak for any apportionable claims (which is denied), then the negligent misrepresentation and/or breach of duty by Marsh and Marsh Pty Ltd pleaded above have caused, independently or jointly with any liability of BCC, TMMA and/or TMNF, the damage and loss the subject of those claims.

Particulars

i. Without admission and for the purposes only of this Defence, TMNF refers to and repeats the allegations made by White Oak against Marsh in paragraphs 1 to 56 and 58 to 63 of the Amended Particulars of Claim dated 22 November 2024 and filed for White Oak Commercial Finance Europe (Non-Levered) Limited in English Commercial Court (KBD) proceedings Claim No. CL-2023-000294.

ii. The Marsh Documents, and associated representations, are the documents and representations alleged at paragraphs 28 to 45 and Schedule 2 of the Amended Particulars of Claim.

iii. Marsh and Marsh Pty Ltd provided broking services to White Oak:

(1) under a single corporate name ("**Marsh**");

(2) for a common commercial benefit (the receipt of commissions); and

(3) principally through the conduct of employees of either entity, namely: Julian Macey-Dare (Marsh), Edward Smith (Marsh), Angus Ward (Marsh) and Ewan Berkemeier (Marsh Pty Ltd).

112J. IAL is a concurrent wrongdoer, on the basis that if BCC and Brereton were not authorised by IAL to enter into the policies and endorsements the subject of this proceeding, at all material times up to 30 June 2019:

a. BCC and Brereton were representatives of IAL for the purposes of Division 6 of Part 7.6 of the Corporations Act;

b. IAL was responsible for the conduct of BCC and Brereton for the purposes of s 917B of the *Corporations Act*;

c. IAL engaged in acts or omissions, including (inter alia):

i. failing to ensure that its authorised representatives, BCC and Brereton, acted within the scope of the authority granted to them;

ii. failing to ensure that BCC and Brereton did not enter into the policies and endorsements the subject of this proceeding;

iii. failing to ensure that BCC provided bordereaux to IAL that contained complete and accurate information in respect in respect of the policies and endorsements the subject of this proceeding;

d. the contravening conduct of BCC and Brereton alleged in Part M of the ASOC was conduct for which IAL was responsible for the purposes of s 917B of the Corporations Act;

e. the acts and omissions pleaded in subparagraphs (c) and (d) above caused the loss the subject of the claim;

f. in the premises, IAL is liable to White Oak for the loss suffered by it by reason of the contravening conduct of its representatives.

112JA WOGA is a concurrent wrongdoer, on the basis that:

a. WOGA voluntarily assumed a responsibility to White Oak to manage the investment in the assets White Oak purchased from GCUK;

b. WOGA knew, or ought to have known, that there was a material risk that, if it did not take reasonable precautions in relation to the management of White Oak's investment, White Oak would suffer loss or damage;

Particulars

The precautions that a reasonable person in the position of WOGA would have taken are those which TMNF alleges at paragraphs 112A(a) to (g) of this Defence that WOGA did not take.

c. further or alternatively to the matters pleaded at subparagraphs (a) and (b), TMNF refers to and relies on the matters set out in BCC/TM's Annexure D;

d. in the premises, WOGA owed a duty to White Oak to exercise reasonable care in relation to the management of White Oak's investment in the assets White Oak purchased from GCUK;

e. by reason of the acts and omissions pleaded in paragraphs 112A(a) to (g) of this Defence, it breached that duty to White Oak;

f. those acts and omissions caused the loss the subject of the claim; and

g. in the premises, it is liable to White Oak for the loss claimed in this proceeding.

112K. In the premises, the liability of BCC to White Oak in relation to its claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of TMNF's responsibility for the damage or loss, and the court may give judgment against TMNF for not more than that amount, pursuant to s 1041N of the Corporations Act s 12GR of the ASIC Act and/or s 35 of the Civil Liability Act.

Section 1041E Claim

113. As to paragraph 113 of the ASOC, TMNF:

a. repeats paragraph 113 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

114. As to paragraph 114 of the ASOC, TMNF:

a. repeats paragraph 114 of BCC's Defence in these proceedings; and

b. otherwise does not plead to this paragraph, which makes no allegation against it.

115. As to paragraph 115 of the ASOC, TMNF:

a. repeats paragraph 115 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

115A. TMNF denies paragraph 115A of the ASOC.

116. As to paragraph 116 of the ASOC:

a. repeats paragraph 116 of BCC's Defence in these proceedings and repeats paragraphs 81A and 112 of this Defence;

b. to the extent that it is an allegation against Mr Brereton or IAL, TMNF does not plead to the paragraph; and

c. otherwise denies the paragraph.

Deceit

116A. TMNF denies paragraph 116A of the ASOC.

116B. TMNF does not admit paragraph 116B of the ASOC, which makes no allegation against it.

116C. As to paragraph 116C of the ASOC, TMNF:

a. does not know and cannot admit that White Oak received each of the alleged representations; and

b. otherwise denies the paragraph.

Particulars

TMNF refers to and relies on the matters set out in BCC/TM's Annexure D.

116D. As to paragraph 116D of the ASOC, TMNF:

a. repeats paragraph 116C of this Defence; and

b. otherwise denies the paragraph.

Particulars

TMNF refers to and relies on the matters set out in BCC/TM's Annexure D.

116E. As to paragraph 116E of the ASOC, TMMA

a. BCC repeats paragraphs 81A and 112 of this Defence; and

b. otherwise denies the paragraph.

M1. Liability for conduct

117. As to paragraph 117 of the ASOC, TMNF:

a. admits that the conduct pleaded at paragraphs 93 to 116 of the ASOC related to the provision of a financial service within the meaning of s 917A(1) of the Corporations Act;

b. does not plead to sub-paragraphs 117(b) to (d), there being no allegations against it; and

c. as to subparagraph 117(e), denies the paragraph and, in respect of the alleged conduct of BCC and Brereton referred to in paragraphs 93 to 116 of the ASOC, repeats subparagraph 41B(b)(iv) above which applies mutatis mutandis to the conduct.

N. Claims arising from events in 2020

118. TMNF does not plead to paragraph 118 of the ASOC, which contains no allegation against it.

N1. Events in 2020

119. As to paragraph 119 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA and BCC knew, does not know and therefore cannot admit the paragraph;

b. admits that, as at July 2020, TMNF was concerned that, in respect of certain risks purportedly written on behalf of TMNF there may have been a failure to comply with TMNF's requirement that, from 1 July 2019, any exposures above A$15 million were to be approved by the Credit Committee;

c. says that TMNF was aware of the existence of the Policy by July 2020; and

d. otherwise denies the paragraph.

120. As to paragraph 120 of the ASOC, TMNF:

a. says that on 2 July 2020 BCC notified Marsh of concerns regarding Mr Brereton's authority;

b. admits that on 2 July 2020 Mr Callahan (who was then a Director of BCC and TMMA, and a person with the title of Executive Vice President of TMHCC) sent an email with the subject "BCC on behalf of Tokio Marine" to Marsh in which he stated that:

i. BCC and Mr Brereton has no authority to bind risk on IAL;

ii. BCC's and Mr Breton's authority to bind risk on IAL ended with the original expiration date of any existing policy;

iii. Mr Brereton's authority to bind risk on TMNF was reduced as of 1 June 2020, with no new exposures to be bound and no extensions granted to the Greensill Group on 28 May 2020;

iv. "all existing limits on Greensill buyers had been set to nil in our policy system";

c. relies on the text of the email for its full force and effect;

d. otherwise denies the paragraph.

121. As to paragraph 121 of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the particularised email dated 3 July 2020;

b. relies on the text of the email for its full force and effect; and

c. otherwise denies the paragraph.

122. As to paragraph 122 of the ASOC, TMNF:

a. says that on or about 3 July 2020, the Audit Committee of TMMA engaged Crowe Australasia (**Crowe**) to provide independent assurance of TMMA's processes to remediate the "Risk Management incident associated with operations at BCC", in circumstances where the "Risk Management incident" was associated with practices in relation to the Trade Credit insurance business; and

b. otherwise denies the paragraph.

123. TMNF admits paragraph 123 of the ASOC.

124. As to paragraph 124 of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the Crowe Report (as defined in the ASOC);

b. relies on the text of the Crowe Report for its full force and effect; and

c. otherwise denies the paragraph.

125. As to paragraph 125 of the ASOC, TMNF:

a. says that the allegation is ambiguous and embarrassing for not identifying the "further investigations" BCC and TMMA are alleged to have commenced in late July 2020;

b. under cover of that objection, admits that BCC and TMMA continued to investigate Mr Brereton's dealings with the Greensill Group; and

c. otherwise denies the paragraph.

125A. As to paragraph 125A of the ASOC, TMNF:

a. admits that, on or around 30 July 2020, TMNF made notifications to the Australian Securities & Investments Commission and Australian Prudential Regulatory Authority informing them that TMNF had formed the view that there had been a breach of its minimal capital requirement as a consequence of a breach of underwriting limits and that TMNF was investigating whether fraud had occurred;

b. relies on the text of the emails or documents referred to in the Particulars to the paragraph for their full force and effect;

c. repeats paragraph 230A of this Defence; and

d. otherwise denies the paragraph.

126. As to paragraph 126 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to the "purposes" of TMMA and BCC knew, does not know and therefore cannot admit the paragraph;

b. says that BCC and TMMA sought to determine TMNF's exposure to risks purportedly written by Mr Brereton on behalf of TMNF;

c. repeats paragraph 125 of this Defence; and

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

127. As to paragraph 127 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to the "purposes" of TMMA and BCC, does not know and therefore cannot admit the paragraph;

b. repeats paragraph 125 of this Defence; and

c. otherwise denies the paragraph.

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

a. says that the paragraph paraphrases the text of the particularised letter;

b. relies on the text of the letter for its full force and effect; and

c. otherwise denies the paragraph.

129. As to paragraph 129 of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the particularised letter;

b. relies on the text of the letter for its full force and effect; and

c. otherwise denies the paragraph.

130. As to paragraph 130 of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the particularised letter;

b. relies on the text of the letter for its full force and effect; and

c. otherwise denies the paragraph.

131. As to paragraph 131 of the ASOC, TMNF:

a. says that the paragraph paraphrases the text of the particularised letter;

b. relies on the text of the letter for its full force and effect; and

c. otherwise denies the paragraph.

132. TMNF denies paragraph 132 of the ASOC.

133. As to paragraph 133 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

133A. TMNF does not plead to paragraph 133A of the ASOC, which contains no allegation against it.

N2. BCC's knowledge

134. As to paragraph 134 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

135. As to paragraph 135 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

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

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

138. As to paragraph 138 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

139. As to paragraph 139 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

140. As to paragraph 140 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

N3. TMMA and TMNF's knowledge

141. As to paragraph 141 of the ASOC, TMNF:

a. repeats paragraphs 120, 121, 122, 125, 129 and 130 of this Defence; and

b. otherwise denies the paragraph.

142. TMNF admits paragraph 142 of the ASOC.

143. As to paragraph 143 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph;

b. repeats paragraphs 128 to 132 of this Defence;

c. admits that it was aware of the correspondence referred to in paragraphs 128 to 131 of the ASOC; and

d. otherwise denies the paragraph.

144. As to paragraph 144 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

145. TMNF denies paragraph 145 of the ASOC.

146. As to paragraph 146 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph;

b. repeats paragraphs 119 to 143 of this Defence;

c. admits that it was aware that Greensill Bank and GCUK were insureds under the Policy and Master Policy; and

d. otherwise denies the paragraph.

147. As to paragraph 147 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph; and

b. otherwise denies the paragraph.

148. As to paragraph 148 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph; and

b. admits that it was aware by 10 December 2020 that the purported term of the Policy expired on 1 March 2021; and

c. otherwise denies the paragraph.

149. As to paragraph 149 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph;

b. says that prior to December 2020, TMNF knew that several loss payee endorsements had purportedly been issued under the Policy; and

c. otherwise denies the paragraph.

150. As to paragraph 150 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph; and

b. otherwise denies the paragraph.

151. As to paragraph 151 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph;

b. otherwise denies the paragraph.

152. As to paragraph 152 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph;

b. repeats paragraphs 119 to 143 of this Defence;

c. says that as at 10 December 2020 and at all material times thereafter it was aware BCC was investigating the circumstances in which the Policy and endorsements thereto had come to be written; and

d. otherwise denies the paragraph.

153. As to paragraph 153 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph;

b. repeats paragraphs 121 and 129 of this Defence; and

c. otherwise denies the paragraph.

154. As to paragraph 154 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph;

b. repeats paragraphs 120, 128, 130, 132 144, 145 and 153 of this Defence;

c. says that:

i. no particulars are supplied of the existence of knowledge or suspicion or constructive knowledge or suspicion, and there is no proper allegation of the existence of knowledge or suspicion or constructive knowledge or suspicion;

ii. it was an express term of the Loss Payee Endorsement that it was the Insured's obligation, as distinct from the Insurer's obligation, to communicate any relevant information to White Oak; and

iii. in the premises, White Oak bargained for the Insured, not TMNF, to be the person who communicated relevant information to White Oak; and

d. otherwise denies the paragraph.

155. As to paragraph 155 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what TMMA knew, does not know and therefore cannot admit the paragraph;

b. repeats paragraphs 141 to 154 of this Defence;

c. says that White Oak does not plead any material facts capable of establishing that TMNF had constructive knowledge of the matters alleged in paragraphs 141 to 154 of the ASOC; and

d. otherwise denies the paragraph.

N4. The Insurer's knowledge

156. As to paragraph 156 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

157. As to paragraph 157 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

158. As to paragraph 158 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

159. As to paragraph 159 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

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

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

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

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

164. As to paragraph 164 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

165. As to paragraph 165 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

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

167. As to paragraph 167 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

168. As to paragraph 168 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

169. As to paragraph 169 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

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

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

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

173. As to paragraph 173 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

174. As to paragraph 174 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

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

N4A. Waiver/election

175A. TMNF does not plead to paragraph 175A of the ASOC, which contains no allegation against it.

N5. Non-disclosure to White Oak

176. As to paragraph 176 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not know and therefore cannot admit the paragraph;

b. repeats paragraphs 141 to 155 of this Defence;

c. says that BCC notified the Greensill Group and its broker, Marsh, of concerns regarding Brereton's authority;

Particulars

TMNF repeats the Particulars to paragraph 41B(b)(v)(B) of this Defence.

d. admits that it did not inform White Oak of any of the matters set out therein; and

e. otherwise denies the paragraph.

177. TMNF does not know and therefore cannot admit paragraph 177 of the ASOC.

N6. Misleading or Deceptive Conduct

178. As to paragraph 178 of the ASOC, TMNF repeats paragraphs 105 to 116 and 120 to 174 of this Defence.

179. As to paragraph 179 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

180. [NOT USED].

181. As to paragraph 181 of the ASOC, TMNF:

a. repeats paragraph 105 of this Defence;

b. denies that BCC's Representations, if made, were continuing representations;

c. otherwise denies the paragraph.

182. As to paragraph 182 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what BCC, TMMA and IAL knew, does not know and therefore cannot admit the paragraph;

b. repeats paragraphs 105 to 116 and 120 to 174 of this Defence; and

c. under cover of that objection, otherwise denies the paragraph.

183. As to paragraph 183 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. repeats paragraphs 119 to 174 and 176 of this Defence;

c. says that BCC, TMMA and/or TMNF did not enter into any relationship or have any interactions with White Oak; and

d. otherwise denies the paragraph.

184. As to paragraph 184 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. repeats paragraphs 179, 182 and 183 of this Defence; and

c. otherwise denies the paragraph.

185. As to paragraph 185 of the ASOC, TMNF:

a. says that the pleading is embarrassing because it is pleaded in the abstract and makes no relevant allegation;

b. repeats paragraph 105 of this Defence; and

c. otherwise denies the paragraph.

186. As to paragraph 186 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. repeats paragraphs 179 of this Defence; and

c. otherwise denies the paragraph.

187. As to paragraph 187 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. repeats paragraphs 176 and 179 to 185 of this Defence; and

c. otherwise denies the paragraph.

188. As to paragraph 188 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. says that section 1041H of the Corporations Act and sections 12DA, 12CA and 12CB of the ASIC Act (the **Provisions**) apply to conduct that takes place within Australia or between a place in Australia and a place outside of Australia;

c. says that TMNF is a Japanese company, having its head office at 2-6-4 Otemachi, Chiyoda-ku, Tokyo, Japan 100-8050;

d. says that White Oak is incorporated and has its registered office in London, United Kingdom;

e. says that the alleged conduct by TMNF is constituted by the alleged knowledge of TMNF and the alleged failure by TMNF to act upon that knowledge to warn White

Oak which concerned alleged omissions that took place wholly outside of Australia;

f. says that, in the premises of (e) above, the pleaded provisions do not apply to the alleged conduct by TMNF; and

g. otherwise denies the paragraph.

189. As to paragraph 189 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. repeats paragraph 178 to 188 of this Defence; and

c. otherwise denies the paragraph.

190. TMNF does not know and therefore cannot admit paragraph 190 of the ASOC.

191. TMNF does not know and therefore cannot admit paragraph 191 of the ASOC.

192. As to paragraph 192 of the ASOC, TMNF:

a. repeats paragraphs 81A, 112 and 178 to 191 of this Defence; and

b. otherwise denies the paragraph.

193. As to paragraph 193 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. repeats paragraphs 9H, 9K, 41B, 117, 179 and 183 of this Defence; and

c. otherwise denies the paragraph.

Ancillary liability of TMMA and/or TMNF

194. As to paragraph 194 of the ASOC, TMNF:

a. repeats paragraphs 9F(a), 9K, 9L, 52, 54 and 57 of this Defence;

b. denies, to the extent that it is alleged, that when Mr Brereton signed the April Endorsements (to which it is assumed paragraph 194 intends to refer), he was acting in the capacity of the authorised representative of TMNF; and

c. otherwise denies the paragraph.

195. As to paragraph 195 of the ASOC, TMNF does not know and therefore cannot admit the paragraph.

196. As to paragraph 196 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations as to what "had been determined" by TMMA, does not know and therefore cannot admit the paragraph;

b. says that the paragraph is embarrassing because it is unclear what is meant by the phrase "BCC's positions on the Policy" or what is said to have been "determined" by TMNF; and

c. otherwise denies the paragraph.

197. As to paragraph 197 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against TMMA, does not know and therefore cannot admit the paragraph; and

b. says that the allegation is ambiguous and embarrassing in that it does not identify the relevant correspondence or what is intended by the allegation that such correspondence was "directed or controlled" by TMMA and TMNF; and

c. otherwise denies the paragraph.

198. As to paragraph 198 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations about what TMMA knew, does not know and therefore cannot admit the paragraph; and

b. repeats paragraphs 141 to 154, 176, 187, 188, 189, 191, 193, 196 and 197 of this Defence; and

c. otherwise denies the paragraph.

199. As to paragraph 199 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against TMMA, does not know and therefore cannot admit the paragraph;

b. repeats paragraph 176 above; and

c. otherwise admits the paragraph.

200. As to paragraph 200 of the ASOC, TMNF:

a. repeats paragraphs 198 of this Defence; and

b. otherwise denies the paragraph.

201. As to paragraph 201 of the ASOC, TMNF:

a. repeats paragraph 200 of this Defence; and

b. otherwise denies the paragraph.

N7. Good faith and other implied terms

202. As to paragraph 202 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. repeats paragraphs 58A, 59B, 59D, 119 to 132, 176, 187, 188 and 193 of this Defence; and

c. otherwise denies the paragraph.

203. As to paragraph 203 of the ASOC, TMNF:

a. repeats paragraph 202 of this Defence; and

b. otherwise denies the paragraph.

204. TMNF does not know and therefore cannot admit paragraph 204 of the ASOC.

205. As to paragraph 205 of the ASOC, TMNF:

a. repeats paragraphs 81A, 112 and 202 of this Defence; and

b. otherwise denies the paragraph.

N8. Unconscionable conduct

206. As to paragraph 206 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against TMMA and BCC, does not plead to the paragraph;

b. repeats paragraphs 96, 97, 119 to 133 and 151 of this Defence;

c. notes that the pleading at paragraph 206(a) of the ASOC is inconsistent with the pleading at paragraph 120 of the ASOC and is therefore embarrassing; and

d. otherwise denies the paragraph.

207. As to paragraph 207 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against TMMA and BCC, does not plead to the paragraph;

b. repeats paragraph 188 of this Defence, which applies mutatis mutandis, and paragraph 206 of this Defence; and

c. otherwise denies the paragraph.

208. As to paragraph 208 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph;

b. repeats paragraphs 206 and 207 of this Defence; and

c. otherwise denies the paragraph.

N9. Negligence

Duty of care

209. TMNF repeats paragraphs 38 to 59D and 119 to 177 of this Defence.

210. As to paragraph 210 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraphs 119, 141 to 149 and 217(c) of this Defence; and

c. otherwise denies the paragraph.

211. As to paragraph 211 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraph 210 of this Defence; and

c. otherwise denies the paragraph.

212. As to paragraph 212 of the ASOC, TMNF:

a. repeats paragraphs 209 to 211 of this Defence;

b. as to paragraph 212(a), denies that White Oak "dealt" with Mr Brereton or BCC as alleged, and says that White Oak dealt only with the Greensill Group and Marsh, not with Mr Brereton or BCC;

c. says that paragraph 209 of the SOC does not specify, with any precision or at all, "loss or damage";

d. says that White Oak was not vulnerable to economic loss in respect of the Payment Obligations, including because:

i. at all material times, it was able to assess, and/or had assumed responsibility, for assessing the soundness of the Payment Obligations;

ii. it was able to bargain for, and did bargain for (including via the Loss Payee Endorsement), contractual protections in respect of the economic loss;

iii. it voluntarily assumed (at least via the Loss Payee Endorsement) the risk that Greensill Bank and GCPL would not communicate to it relevant information concerning:

1. the authority (or absence of authority) of BCC and Brereton; and

2. the risk of the Payment Obligations; and

e. otherwise denies the paragraph.

213. As to paragraph 213 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraph 212 of this Defence; and

c. otherwise denies the paragraph.

214. As to paragraph 214 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraph 212 of this Defence; and

c. otherwise denies the paragraph.

215. As to paragraph 215 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraphs 138 and 212 of this Defence; and

c. otherwise denies the paragraph.

216. As to paragraph 216 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraphs 215 of this Defence; and

c. says that the pleading is embarrassing because it refers to “loss or damage pleaded in paragraph 215” which is not in fact pleaded in paragraph 215;

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

217. As to paragraph 217 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraphs 209 to 216 of this Defence;

c. says further that:

i. TMNF, as BCC’s parent company, did not enter into any agreements with White Oak and did not have any direct dealings with it;

ii. White Oak could have arranged its own insurance in respect of its investment in the alleged payment obligations the subject of this claim, but instead elected to rely on Greensill Bank's insurance;

iii. White Oak could have, but did not, seek, as a condition of its investments, protections or warranties regarding BCC's authority to enter the Policy and endorsements; and

iv. White Oak could have, but did not, seek confirmation or other information from BCC or IAL as to BCC's authority to enter the Policy and its endorsements; and

d. otherwise denies the paragraph.

218. As to paragraph 218 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraph 217 of this Defence;

c. says that the reference in sub-paragraph (c) to "relevant officers and staff" and "relevant authority limits and guidelines", without any specification thereof, is vague and embarrassing;

d. says further that the reference in sub-paragraph (c) to "adequate" supervision and monitoring systems, without any specification of the matters that would make such systems adequate, is vague and embarrassing; and

e. otherwise denies the paragraph.

Breach of duty

219. As to paragraph 219 of the ASOC, TMNF:

a. says that the paragraph does not identify a proper risk of harm for the purposes of s 5B of the Civil Liability Act; and

b. otherwise denies the paragraph.

220. As to paragraph 220 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraph 219 of this Defence;

c. says that there is no allegation, or proper allegation, that the alleged tort was regulated by the Civil Liability Act; and

d. otherwise denies the paragraph.

221. TMNF does not plead to paragraph 221 of the ASOC, which contains no allegation against it

222. TMNF does not plead to paragraph 222 of the ASOC, which contains no allegation against it.

223. TMNF denies paragraph 223 of the ASOC.

224. TMNF does not plead to paragraph 224 of the ASOC, which contains no allegation against it.

224A. TMNF denies paragraph 224A of the ASOC and repeats its objections to paragraph 218 of the ASOC.

224B. TMNF denies paragraph 224B of the ASOC and repeats its objections to paragraph 218 of the ASOC.

225. TMNF does not plead to paragraph 225 of the ASOC, which contains no allegation against it.

226. TMNF does not plead to paragraph 226 of the ASOC, which contains no allegation against it.

227. TMNF denies paragraph 227 of the ASOC.

228. TMNF does not plead to paragraph 222 of the ASOC, which contains no allegation against it.

Causation

229. As to paragraph 229 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph;

b. repeats paragraph 217(c) of this Defence; and

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

Damage

230. As to paragraph 230 of the ASOC, TMNF:

a. insofar as the paragraph makes allegations against BCC, TMMA and IAL, does not plead to the paragraph; and

b. otherwise denies the paragraph and repeats paragraphs 81A and 112 of this Defence.

230A. In further answer to the whole of paragraphs 178 to 230 of the ASOC, TMNF:

a. says that each of the claims against TMNF pleaded in paragraphs 178 to 230 of the ASOC is, on a proper application of Australian choice of law rules, governed by Japanese law;

b. says that as a matter of Japanese law:

i. each of the claims pleaded against TMNF in paragraphs 178 to 230 of the ASOC is one that falls to be determined by considering whether the alleged conduct gives rise to any liability on the part of TMNF under article 709 of the Japanese Civil Code;

ii. on the proper construction of article 709 of the Japanese Civil Code, where any such claim seeks damages for pure economic loss, the claim cannot succeed unless the defendant intentionally inflicted harm on the plaintiff;

iii. further and additionally, on the proper construction of article 709 of the Japanese Civil Code, such a claim cannot succeed unless the defendant owed a duty of disclosure to the plaintiff;

iv. TMNF did not owe any duty of disclosure to White Oak as a matter of Japanese law;

c. says that the ASOC does not allege that TMNF intentionally inflicted harm on White Oak; and

d. says that, in the circumstances, the claims against TMNF pleaded in paragraphs 178 to 230 of the ASOC are not maintainable on a proper application of Japanese law; and

e. says that, in the circumstances, the claims against TMNF pleaded in paragraphs 178 to 230 of the ASOC must be dismissed.

230AA. The allegations in paragraph 230A above that the claims against TMNF are governed by Japanese law represents TMNF's primary position. To the extent that, contrary to that paragraph, Australian law governs White Oak's claims against TMNF, TMNF's allegations based on Australian law in the balance of this Defence are pleaded in the alternative.

O. The Relief Sought

231. As to paragraph 231 of the ASOC, TMNF admits that White Oak seeks the relief referred to but denies that it is entitled to that relief.

P. The Prior Misrepresentations and Non-Disclosures

232. In further answer to the entirety of the claim, BCC says that if the Policy and relevant endorsements were validly entered into on behalf of IAL by BCC then neither Greensill Bank nor White Oak has suffered any loss or damage by reason of the matters alleged against BCC, because, by reason of the Prior Misrepresentations and Non-Disclosures by and on behalf of the insureds alleged in Annexure A to this Defence:

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

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

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

Date: 29 July 2026



……..
Signed by Raylee Joy Hartwell as partner of
Matt James Andrews, Lawyer for the
Second, Sixth and Seventh Respondents

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

Certificate of lawyer

I, Raylee Joy Hartwell, certify to the Court that, in relation to the defence filed on behalf of the Sixth 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: 29 July 2026



Signed by Raylee Joy Hartwell as partner of
Matt James Andrews, Lawyer for the Second,
Sixth and Seventh Respondents

Schedule

No. NSD 1039 of 2021

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

Respondents

Second Respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Third Respondent:	Greg Brereton
Fourth Respondent:	Greensill Bank AG
Fifth Respondent:	Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG
Sixth Respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (~~AC~~RBN 000 438 291)
Seventh Respondent:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)

GREENSILL BANK CROSS-CLAIM

First Cross-claimant:	Greensill Bank AG
Second Cross-claimant:	Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

BCC CROSS-CLAIM

Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent	Greensill Capital (UK) Limited
Second Cross-respondent:	Greensill Capital Pty Limited (ACN 154 088 132) (In Liquidation)

BCC/TMNF/TMMA CROSS-CLAIM

First Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)

Second Cross-claimant:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

IAL CROSS-CLAIM

Cross-claimant:	Insurance Australia Limited (ACN 000 016 722)
First Cross-respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Second Cross-respondent:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Third Cross-respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)