NOTICE OF FILING

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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File Number:	NSD173/2023
File Title:	GREENSILL BANK AG & ANOR v INSURANCE AUSTRALIA LTD & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

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

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

Form 17 Filed pursuant to Order of Thawley J ~~dated 24 April~~ made on 2 September 2024
Rule 8.05(1)(a)

~~Third~~ Fourth Amended Statement of cross-claim

No. NSD 173 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

~~**Greensill Bank AG** and another named in the Schedule~~

~~First Applicant~~

~~**Insurance Australia Limited** and others named in the Schedule~~

~~First Respondent~~

BCC TRADE CREDIT PTY LTD (ACN 608 296 233)

Cross-claimant

GREENSILL CAPITAL (UK) ~~LTD~~ LIMITED (IN ADMINISTRATION) and ~~others~~ another named in the Schedule

First Cross-respondent

PRELIMINARY MATTERS

A. Given the nature of the matters in which issue is joined between the parties, discovery and compulsory disclosure will be sought by the Cross-claimant, BCC Trade Credit Pty Ltd (**BCC**). In addition, BCC continues to investigate the circumstances in which the Policy came to be issued by BCC. Additional issues may come to light as a result of discovery, disclosure and further investigation, in which case an amended statement of cross-claim will be filed at an appropriate future time.

Filed on behalf of (name & role of party) BCC Trade Credit Pty Ltd (ACN 608 296 233), ~~Second Respondent and~~ Cross-claimant

Prepared by (name of person/lawyer) Matt Andrews

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CLAIMS AGAINST THE CROSS-RESPONDENTS

1. BCC is a company that was duly incorporated according to Australian law and is capable of bringing this cross-claim.

Misleading or deceptive conduct

2. As at 13 March 2019, being the date upon which Greg Brereton signed Comprehensive Trade Credit Insurance Policy TB-03690 with contract number B0509FINCW1900009 (the **2019 90/10 Parallel Policy**) (such policy purportedly having an effective date of 22 February 2019), each of the First~~,~~ and Second ~~and Third~~ Cross-respondents had made the misrepresentations and non-disclosures made prior to this date, as pleaded in Section H of Annexure A to this Amended Statement of cross-claim filed separately in these proceedings on 29 April 2026, pursuant to paragraph 6 of the Court's orders dated 24 April 2026 (the **Prior Wrongdoing**).

3. At all material times, a reasonable underwriter or agent in the position of BCC:

   a. could be expected to be informed of the Prior Wrongdoing (if those matters existed), because such matters would have been relevant to the decision of the insurer whether to accept the risk, and if so, on what terms, such that s 21 of the *Insurance Contracts Act 1984* (Cth) required the First~~,~~ and Second ~~and Third~~ Cross-respondents to disclose such matters; and

   b. would have assumed, if it was not so informed, that no such matters as the Prior Wrongdoing were known by the First~~,~~ and Second ~~and Third~~ Cross-respondents or their agents to exist.

4. As at 13 March 2019, none of the First~~,~~ and Second ~~and Third~~ Cross-respondents had disclosed the Prior Wrongdoing to BCC (the **Moral Hazard Non-Disclosure**).

5. In the premises, the Moral Hazard Non-Disclosure:

   a. conveyed a representation that no such matters as the Prior Wrongdoing were known by the First~~,~~ and Second ~~and Third~~ Cross-respondents or their agents to exist; and

   b. was thereby misleading or deceptive, or likely to mislead or deceive.

5A. On or about 4-6 March 2019, the Comprehensive Trade Credit Insurance Policy TB-03691 with contract number B0509FINCW1900011 (the **2019 90/10 Master Policy**) was signed by Greg Brereton (such policy purportedly having an effective date of 22 February 2019).

At no time prior to 4-6 March 2019 did any of the First~~,~~ or Second ~~or Third~~ Cross-respondents rectify the Moral Hazard Non-Disclosure by disclosing the Prior Wrongdoing to BCC.

5B. BCC repeats paragraph 225 of its Defence, which pleads to misrepresentations and non-disclosures made in connection with the Atlantic 57 facility (the **Atlantic 57 Misrepresentations and Non-Disclosures**).

6. The conduct of the First~~,~~ and Second ~~and Third~~ Cross-respondents in making the Moral Hazard Non-Disclosure and/or the Atlantic 57 Misrepresentations and Non-Disclosures was conduct:

   a. in relation to a financial service within the meaning of s 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**);

   b. in trade or commerce within the meaning of s 18 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **ACL**); or

   c. in trade or commerce and in relation to financial services within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

   d. in this jurisdiction within the meaning of s 5 of the *Corporations Act* and s 5 of the *ASIC Act* and within Australia for the purposes of the *ACL*.

7. By making the Moral Hazard Non-Disclosure and/or the Atlantic 57 Misrepresentations and Non-Disclosures, the First~~,~~ and Second ~~and Third~~ Cross-respondents each engaged in conduct in contravention of s 1041H of the Corporations Act, s 18 of the ACL and s 12DA of the ASIC Act.

8. Had the Prior Wrongdoing, or any material part of it, been disclosed to BCC at or about 4-6 March 2019 (in the case of the 2019 90/10 Master Policy) or 13 March 2019 (in the case of the 2019 90/10 Parallel Policy), then BCC would not have executed or issued the 2019 90/10 Master Policy and 2019 90/10 Parallel Policy as corporate authorised representative of IAL.

9. ~~If BCC is liable to the Applicants by reason of the matters pleaded in the SOC relying on~~ In this proceeding, the Applicants instituted and prosecuted claims against BCC based upon BCC's execution or issuance of the 2019 90/10 Parallel Policy and the customer endorsement for the Atlantic 57 facility (the **GBAG Claim**).

9A. The GBAG Claim would not have been instituted and prosecuted but for ~~that liability and any associated costs and expenses will constitute loss or damage suffered because of~~ the contravening conduct of the First~~,~~ and Second ~~and Third~~ Cross-respondents pleaded above and, accordingly, the costs and expenses incurred by BCC in its defence of the GBAG Claim constitute loss or damage suffered because of the contravening conduct of the First and Second Cross-respondents.

10. Accordingly, BCC is entitled by action under s 236 of the ACL, s 1041I of the Corporations Act, and/or s 12GF of the ASIC Act, to recover compensation from the First~~,~~ and Second ~~and Third~~ Cross-respondents for that loss and damage ~~any amount it is ordered to pay the Applicants in this proceeding, and any associated costs and expenses~~.

Deceit

11. At the time of the Moral Hazard Non-Disclosure, the First~~,~~ and Second ~~and Third~~ Cross-respondents knew that the matters not disclosed were required to be disclosed to BCC as corporate authorised representative of IAL or, in the alternative, were reckless as to whether such matters were required to be disclosed to BCC.

12. At all material times, the First~~,~~ and Second ~~and Third~~ Cross-respondents knew and intended that BCC would act in reliance on the completeness of the disclosures made by them in entering into the 2019 90/10 Master Policy and 2019 90/10 Parallel Policy as corporate authorised representative of IAL.

13. In the premises, the First~~,~~ and Second ~~and Third~~ Cross-respondents are liable to pay BCC damages in an amount equal to the total amount (if any) that BCC is held liable to pay the Applicants in this proceeding, and any associated costs and expenses.

Date: ~~1 May~~ 2 September 2026

Signed by Matt James Andrews
Lawyer for the Cross-claimant
~~By his partner, Raylee Joy Hartwell~~

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

Certificate of lawyer

I, ~~Raylee Joy Hartwell~~ Matt James Andrews, certify to the Court that, in relation to the Amended Statement of Cross-Claim filed on behalf of the Cross-claimant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~1 May~~ 2 September 2026

Signed by ~~Raylee Joy Hartwell as partner of~~ Matt James Andrews, Lawyer for the Cross-claimant

Schedule

No. NSD 173 of 2023

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

~~**Applicants**~~

~~Second Applicant: Dr Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG~~

~~**Respondents**~~

~~Second Respondent: BCC Trade Credit Pty Ltd~~
~~Third Respondent: Greg Brereton~~
~~Fourth Respondent Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)~~

BCC CROSS-CLAIM

Cross-claimant: BCC Trade Credit Pty Ltd (ACN 608 296 233)

First Cross-respondent: Greensill Capital (UK) ~~Ltd~~ Limited (In Administration)
~~Second Cross-respondent: Greensill Bank AG~~
~~Third~~ Second Cross-respondent: Greensill Capital Pty Ltd (In Liquidation) (ACN 154 088 132)

~~**BCC/TMNF FIRST CROSS-CLAIM**~~

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

~~First Cross-respondent: Marsh Pty Ltd (ACN 004 651 512)~~
~~Second Cross-respondent: Marsh Limited~~

~~BCC/TMNF SECOND CROSS-CLAIM~~

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

~~Cross-respondent: Insurance Australia Limited (ACN 000 016 722)~~

~~IAL CROSS-CLAIM~~

~~Cross-claimant: Insurance Australia Limited (ACN 000 016 722)~~

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