NOTICE OF FILING

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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.

Filed pursuant to Order of Thawley J dated 24 April 2026

BCC/TMNF Annexure A

No. NSD 602 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 (ACN 000 016 722) and others named in the Schedule

First Respondent

Filed on behalf of (name & role of party) BCC Trade Credit Pty Ltd, Second Respondent and Cross-claimant; and Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), Fourth Respondent and Cross-claimant

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Schedule

No. NSD 602 of 2023

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

Applicants

Second Applicant:	Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG

Respondents

Second Respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Third Respondent:	Greg Brereton
Fourth Respondent	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Fifth Respondent:	Marsh Pty Ltd (ACN 004 651 512)
Sixth Respondent:	Marsh Limited

BCC CROSS-CLAIM

Cross-claimant	BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-Respondent	Greensill Capital (UK) Ltd
Second Cross-respondent	Greensill Bank AG
Third Cross-respondent	Greensill Capital Pty Ltd (in liquidation)

BCC/TMNF FIRST CROSS-CLAIM

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

BCC/TMNF SECOND CROSS-CLAIM

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

Filed pursuant to Order of Thawley J dated 24 April 2026

ANNEXURE A

ANNEXURE A 1

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GREENSILL'S PRIOR MISREPRESENTATIONS AND NON-DISCLOSURES TO BCC

This annexure has been prepared for the purposes of it being annexed to defences filed by the **BCC/TM Parties** in multiple proceedings and for that reason uses internally defined terms rather than terms defined in the defences to which it is annexed. The BCC/TM Parties means, as the context requires, any and or each of BCC Trade Credit Pty Ltd, Tokio Marine Management (Australasia) Pty Ltd and Tokio Marine & Nichido Fire Insurance Co., Ltd.

In this annexure, "all material times" refers to the period from on or about 27 December 2017 to on or about 5 March 2021.

1 GREENSILL GROUP AND MARSH

1. At all material times:

   a. Greensill Capital Pty Ltd (**GCPL**) was a company incorporated in Australia;

   b. Greensill Bank AG (**Greensill Bank**) was a company incorporated in Germany;

   c. Greensill Capital (UK) Limited (**GCUK**) was a company incorporated in the United Kingdom;

   d. Greensill Bank and GCUK were wholly-owned subsidiaries of GCPL; and

   e. GCPL, Greensill Bank and GCUK (together, **Greensill**) were members of a corporate group that carried on or purported to carry on a business of providing supply chain and trade credit financing.

2. Further, at all material times:

   a. Greensill purported to obtain insurance cover in respect of its business of providing supply chain and trade credit financing from BCC Trade Credit Pty Ltd (**BCC**) as corporate authorised representative of Insurance Australia Limited (**IAL**); and

   b. Marsh Pty Ltd and Marsh Limited (together, **Marsh**) was engaged by Greensill as its insurance broker and agent, including for the purposes of effecting or placing insurance with BCC as corporate authorised representative of IAL; and

   c. in the premises, Marsh's actual knowledge of matters pertaining to Greensill's supply chain and trade credit financing business and the insurance cover it purported to place or effect in respect of that business is to be imputed to Greensill.

Particulars

i. Marsh's appointment as an agent by Greensill (noting that each Greensill entity was an insured under the policies pleaded below) to effect or place insurance with BCC is to be inferred from Marsh's conduct in acting as Greensill's insurance broker and agent in its dealings with BCC (including in email and telephone communications whereby it sought to place risks with BCC) and Greensill's conduct in permitting that to occur.

ii. The particular terms on which Marsh was engaged by Greensill are not known. Further particulars will be provided following disclosure.

2 THE 90/10 MASTER POLICIES AND PARALLEL POLICIES AND THE BINDING OF RISKS UNDER THEM

3. On or about 27 December 2017:

a. GCPL and GCUK (defined as the "Insured") purported to enter into Trade Credit Insurance Policy TB-03691 with unique market reference BO509FINCW1800044, with BCC as corporate authorised representative of IAL (defined as the "Insurer") (**2017 90/10 Master Policy**); and

b. GCPL and Greensill Bank (defined as the "Insured") purported to enter into Trade Credit Insurance Policy TB-03690 with unique market reference BO509FINCW1800045, with BCC as corporate authorised representative of IAL (defined as the "Insurer") (**2017 90/10 Parallel Policy**),

(together, the **2017 90/10 Policies**).

Particulars

i. The 2017 90/10 Policies are in writing. BCC holds a copy signed by Mr Greg Brereton, as representative of BCC, on or about 15 June 2018. BCC is not presently able to say who (if anyone) signed the 2017 90/10 Policies as representatives of GCPL, GCUK and Greensill Bank and on what date (if at all).

ii. For the avoidance of doubt, the use of the expression 2017 90/10 Policies in this document, and references to them being signed or endorsements being issued under them, does not involve any admission as to the validity or

effectiveness of the purported 2017/10 Policies or any purported endorsements issued under them.

4. In or about March 2019:

a. GCPL and GCUK (defined as the "Insured") purported to enter into Trade Credit Insurance Policy TB-03691 with unique market reference BO509FINCW1900011, with BCC as corporate authorised representative of IAL (defined as the "Insurer") (**2019 90/10 Master Policy**); and

b. GCPL and Greensill Bank (defined as the "Insured") purported to enter into Trade Credit Insurance Policy TB-03690 with unique market reference BO509FINCW1900009, with BCC as corporate authorised representative of IAL (defined as the "Insurer") (**2019 90/10 Parallel Policy**),

(together, the **2019 90/10 Policies**).

Particulars

i. The 2019 90/10 Master Policy is in writing and was signed by Jonathan Lane as representative of GCPL and GCUK on or about 15 February 2021 and by Mr Greg Brereton as representative of BCC between about 4-6 March 2019.

ii. The 2019 90/10 Parallel Policy is in writing and was signed by Bjorn Heise and Julia Michaelis as representatives of Greensill Bank on or about 13 March 2019, by Jonathan Lane as representative of GCPL on a date unknown, and by Mr Greg Brereton as representative of BCC on or about 13 March 2019.

iii. For the avoidance of doubt, the use of the expression 2019 90/10 Policies in this document, and references to them being signed or endorsements being issued under them, does not involve any admission as to the validity or effectiveness of the purported 2019 90/10 Policies or any purported endorsements issued under them.

5. The 2017 90/10 Parallel Policy and the 2017 90/10 Master Policy contained substantially the same terms save for the identity of the insureds, the deductible or percentage insured, and the premium payable.

6. The 2019 90/10 Policies were in effect a renewal or extension of the 2017 90/10 Policies and were in substantially the same terms as the 2017 90/10 Policies.

7. At all material times the general practice of Greensill in purporting to procure insurance from BCC was to:

   a. propose to BCC that a particular risk or group of risks be bound on both the then applicable 90/10 Master Policy and the then applicable 90/10 Parallel Policy, by way of the issue to the relevant insureds by BCC of one or more Customer Endorsements, Debt Endorsements or Loss Payee Endorsements;

Particulars

The proposals were generally made by email sent to Mr Greg Brereton, BCC, by a representative of Marsh (as insurance broker and agent for Greensill) or a representative of Greensill. The same emails generally contained proposals in respect of both the then applicable 90/10 Master Policy and then applicable 90/10 Parallel Policy.

   b. invite BCC to consider the risk or group of risks under both the then applicable 90/10 Master Policy and the then applicable 90/10 Parallel Policy together;

Particulars

The particulars to subparagraph 7.a. of this Annexure are repeated.

   c. provide BCC with draft endorsements to be issued to the relevant insureds under both the then applicable 90/10 Master Policy and the then applicable 90/10 Parallel Policy; and

Particulars

The draft endorsements were generally provided as attachments to emails sent to Mr Greg Brereton by a representative of Marsh or Greensill. The same emails generally attached endorsements in respect of both the then applicable 90/10 Master Policy and the then applicable 90/10 Parallel Policy.

   d. obtain from BCC signed endorsements binding the risks proposed under both the then applicable 90/10 Master Policy and the then applicable 90/10 Parallel Policy.

Particulars

The signed endorsements were generally sent to Greensill or Marsh by email from BCC. The same emails generally attached signed endorsements in respect of both the then applicable 90/10 Master Policy and 90/10 Parallel Policy.

8. In the premises, at all material times, the binding of risks under the 2017 90/10 Master Policy and the 2019 90/10 Master Policy (together, the **90/10 Master Policies**) and 2017 90/10 Parallel Policy and the 2019 90/10 Parallel Policy (together, the **90/10 Parallel Policies**) occurred as part of the provision of a single program of insurance by BCC to Greensill or alternatively as part of the provision of a series of programs of insurance in respect of particular Greensill customers but in each case the program involved binding risks under both the then applicable 90/10 Master Policy and the corresponding 90/10 Parallel Policy.

3 LEX GREENSILL

9. Alexander "Lex" Greensill (**Lex Greensill**) was, at all material times:

a. the co-founder and CEO of the group of companies that included Greensill Bank, GCPL and GCUK (the **Greensill Group**);

b. a director, the Chief Executive Officer and a major shareholder of GCPL (of which GCUK and Greensill Bank were wholly owned subsidiaries);

c. a director and Chief Executive Officer of GCUK;

d. the ultimate controlling party of GCUK;

e. the *wirtschaftlich berechtigte* ('beneficial owner') of Greensill Bank, through his shareholdings in GCPL;

Particulars

i. GCUK Annual Report and Financial Statements for the years ended 31 December 2014 to 31 December 2019.

ii. Greensill Bank's filings from the German Transparency Register for the period 5 April 2017 to 15 March 2021.

iii. ASIC company search for GCPL.

iv. 'Intro to Greensill' PowerPoint Presentation dated 3 March 2020 (AGB.0002.0002.4371).

v. 'Greensill Capital Pty Limited - % equity shares' PowerPoint Presentation dated November 2017, which noted that Lex Greensill held a 32.65% equity stake in GCPL at the relevant time (GBA.0004.0026.9460).

vi. Greensill Equity Deck dated 22 October 2020, which noted that Lex Greensill held a 28.06% equity stake in GCPL at the relevant time (GBA.0004.0024.1117_0057).

vii. Letter dated 19 February 2021 from Federal Financial Supervisory Authority (**BaFin**) to Greensill Bank (GBA.0004.0026.9963).

ea. a member of the Greensill Credit Committee, as described in paragraphs 10A.11 and 10A.12 below; and

f. involved in procuring a program of insurance or alternatively a series of programs of insurance for Greensill in respect of risks relating to the business of Greensill in accordance with the practice pleaded in paragraph 7 of this Annexure.

Particulars

i. Lex Greensill was personally involved in procuring insurance from BCC in respect of Bluestone (paragraphs 29 to 33 of this Annexure) and Catfoss (paragraphs 62 to 67 of this Annexure).

ii. Under each of the 90/10 Master Policies and 90/10 Parallel Policies Lex Greensill was named as the contact person for GCPL (cl 14.1 of each of the 90/10 Master Policies and 90/10 Parallel Policies).

10. In procuring a program of insurance or alternatively a series of programs of insurance for Greensill in accordance with the practice pleaded in paragraph 7 of this Annexure, Lex Greensill acted as agent for Greensill (being each of GCPL, GCUK and Greensill Bank) and for that purpose was a person whose knowledge and conduct is to be attributed to each of GCPL, GCUK and Greensill Bank insofar as it pertained to Greensill's supply chain and trade credit financing business and the insurance cover it purported to place or effect with BCC in respect of that business.

A POLICY DOCUMENTS AND DUTIES

10A.1 Section G of this Annexure identifies all policies and endorsements purportedly issued by BCC to Greensill as relied on by the Greensill Applicants[1] as a basis for coverage in each of the Greensill Proceedings[2] (the **Relevant Policies and Endorsements**).

10A.2 If, which is denied, the Relevant Policies and Endorsements were valid and binding on IAL:

a. the proper law of those policies and endorsements was the law of New South Wales; and

Particulars

Choice of law clauses in each of the Relevant Policies stipulate that they are to be governed and construed in accordance with the laws of New South Wales (Australia): 2019 90/10 Parallel Policy (CSA.0001.0008.0571), Policy TB-05369 (B0509FINCW1900040) (GBA.0004.0025.4709) (**Policy 5369**), and Policy TS-03088 (B0509FINCW1900008) (CSA.0001.0001.3228) (**Policy 3088**) cl 16.1.

b. the *Insurance Contracts Act 1984* (Cth) (**Insurance Contracts Act**) applied to the policies and endorsements and to Greensill, IAL and BCC in respect of the policies and endorsements.

Particulars

Insurance Contracts Act, section 8.

10A.3 Before each of the Relevant Policies and Endorsements was purportedly issued and before each was purportedly renewed or replaced, Greensill owed duties inter alia:

a. not to make misrepresentations; and

b. to disclose all matters known to it which it knew, or ought reasonably to have known, were material to the decision of the insurer whether to accept each risk and, if so, on what terms.

[1] The applicants in the various "Greensill Proceedings" (as defined in footnote 2).
[2] NSD1039 of 2021, NSD1216 of 2021, NSD106 of 2022, NSD110 of 2022, NSD169 of 2023, NSD173 of 2023, NSD174 of 2023, NSD175 of 2023, NSD177 of 2023 and NSW 602 of 2023.

Particulars

The duties arise by operation of the general law and under the Insurance Contracts Act, section 21.

B ATTRIBUTION

Structure of the Greensill Group

10A.4 GCPL was:

a. the parent and holding company of the Greensill Group; and

b. by reason of the matters referred to in subparagraph b. below:

i. the ultimate owner of Greensill Bank from 2014 to 13 December 2018; and

ii. the sole shareholder of Greensill Bank from 14 December 2018.

Particulars

GCPL's annual report and financial statements for the years ended 31 December 2014 to 31 December 2019.

10A.5 GCUK was:

a. at all times, a wholly owned subsidiary of GCPL;

Particulars

GCUK's annual report and financial statements for the years ended 31 December 2014 to 31 December 2019.

b. the majority shareholder, and then sole shareholder, of Greensill Bank from 2014 until 14 December 2018, when GCUK transferred its shareholding to GCPL.

Particulars

GCUK's annual report and financial statements for the years ended 31 December 2014 to 31 December 2018.

10A.6 In the premises of paragraphs 10A.4 and 10A.5 above, Greensill Bank was, at all relevant times, under the ultimate control of GCPL.

SCF Business

10A.7 GCPL conducted most of the Greensill Group's supply chain finance (**SCF**) business through two core operating entities, being GCUK and Greensill Bank, where:

a. GCUK originated SCF programmes for companies and obtained funding for those programmes, including from Greensill Bank;

b. Greensill Bank:

i. operated as a financier to the group, with most of its assets being trade receivables from transactions originated by GCUK through its SCF programmes; and

ii. acted on behalf of GCUK in the origination process in countries within the European Economic Area where regulations only permitted SCF transactions to be carried out by a credit institution; and

Particulars

Issuer Rating Report for Greensill Bank dated 29 August 2019 by Scope Rating (CSA.5000.0003.3030).

Insurer Information Pack dated 27 February 2018 (MAR.0004.0004.2942).

Supply Chain Overview dated February 2017 (BCC.0001.0001.0026).

c. the operational relationship between GCUK and Greensill Bank was governed by successive service level agreements (**SLAs**) and an Origination Framework Agreement.

Particulars

Service Level Agreement dated 18 August 2016 between GCUK and Greensill Bank and attachments (**2016 SLA**) (GBA.0004.0027.1314, GBA.0004.0027.1320, GBA.0004.0027.1319, GBA.0004.0027.1321, GBA.0004.0027.1316, GBA.0004.0027.1323, GBA.0004.0027.1311, GBA.0004.0027.1312,

GBA.0004.0027.1318, GBA.0004.0027.1313, GBA.0004.0027.1315, GBA.0004.0027.1317, GBA.0004.0027.1310 and GBA.0004.0027.1322).

Service Level Agreement dated 13 January 2020 between GCUK and Greensill Bank and attachments (**2020 SLA**) (GBA.0004.0027.4509, GBA.0004.0027.4510, GBA.0004.0027.4511, GBA.0004.0027.4512 and GBA.0004.0027.4513).

Origination Framework Agreement between GCUK (as Originating Agent and Funding Agent), Greensill Bank and other entities in the Greensill Group dated 5 September 2016 as amended and restated on 6 December 2017 and 6 March 2018 (GBA.0004.0024.0047).

Greensill Bank 'Business and risk strategy' paper dated April 2018 (GBA.0004.0027.4165 at 0021).

10A.8 The Greensill Group's business model operated such that:

a. GCUK was responsible for the entire infrastructure of the SCF business and the coordination of services between GCUK and Greensill Bank under the SLAs;

ab. Greensill Bank's core functions included:

i. the acquisition of SCF assets originated by GCUK and assumption of the primary credit risks associated with those assets; and

ii. the refinancing and liquidity management of SCF portfolios acquired from GCUK;

b. GCUK and Greensill Bank were interdependent, both economically and operationally; and

c. Greensill Bank relied on GCUK for, among other things:

i. the provision of all necessary documentation, data and information necessary for Greensill Bank to carry out its role as described in subparagraph b above; and

ii. the performance of obligations under trade credit insurance policies obtained by GCUK for the benefit of Greensill Bank.

Particulars

Greensill Bank 'Business risk and strategy' paper dated April 2018 (GBA.0004.0027.4165 at 0011).

Letter dated 11 September 2020 from BaFin to Greensill Bank (GBA.0004.0016.3950).

Letter dated 19 February 2021 from BaFin to Greensill Bank (GBA.0004.0026.9963).

Roles and responsibilities of key personnel

10A.9 The BCC/TM Parties repeat paragraph 9 above.

10A.10 Further, GCPL, GCUK and Greensill Bank had common directors and senior management personnel, including:

a. Lex Greensill, who held the positions described in paragraph 10A.9 above;

b. Maurice Thompson, who was:

i. a registered director, and the chairman, of GCUK from 25 September 2014 to 22 January 2018;

ii. a registered director, and the chairman, of GCPL from 22 January 2018 to 5 March 2021; and

iii. the chairman of the supervisory board, or *Vorsitzender des Aufsichtsrates* of Greensill Bank;

Particulars

ASIC company search of GPCL.

GCUK's filing with the Companies House: https://find-and-update.company-information.service.gov.uk/company/08126173 (accessed on 25 October 2024).

Greensill 'Supply Chain Finance Overview' presentation dated June 2016 (MAR.0004.0001.0080).

Greensill presentation to Credit Suisse/MUFG dated July 2019 (CSA.5000.0003.3351).

Greensill Group Board Directors and Senior Management dated August 2020 (AGB.0002.0002.4371).

c. William Roland Hartley-Urquhart, who was:

i. a registered director of GCPL between 6 November 2015 and 11 February 2021;

ii. a registered director of GCUK between 20 May 2015 and 22 January 2018;

iii. the Global Head of Origination of the Greensill Group from at least 2016;

iv. the Vice Chairman of the Greensill Group from 2017; and

v. a member of the Greensill Credit Committee, as described in paragraph 10A.12 below;

Particulars

ASIC company search of GPCL.

GCUK's filing with the Companies House: https://find-and-update.company-information.service.gov.uk/company/08126173 (accessed on 25 October 2024).

Greensill 'Supply Chain Finance Overview' presentation dated June 2016 (MAR.0004.0001.0080).

Greensill presentation to Credit Suisse/MUFG dated July 2019 (CSA.5000.0003.3351).

Greensill Group Board Directors and Senior Management dated August 2020 (AGB.0002.0002.4371).

Email dated 19 January 2017 from Lex Greensill to Greensill Capital Core Team (GBA.0004.0005.8810).

Presentation slides titled 'Greensill Group Board Directors' and 'Greensill Group Senior Management' dated August 2020 (AGB.0002.0002.4371).

d. Danyon Lloyd, who was:

i. on the executive board or *Vorstand* of Greensill Bank, first as Chief Executive Officer/Chairman and then Chief Operating Officer, from at least 2015 until at least October 2019; and

ii. a member of the Greensill Credit Committee, as described in paragraph 10A.12 below.

Particulars

Email from Ingo Natusch (Head of Risk Monitoring Department) of Auditing Association of German Banks to Markus Nünnerich (Chief Risk Officer) of Greensill Bank dated 1 December 2015 (GBA.0004.0025.4729).

Greensill 'Supply Chain Finance Overview' presentation dated June 2016 (MAR.0004.0001.0080).

Presentation titled 'Management Meeting – Greensill Bank' (GBA.0004.0014.8473).

10A.11 At all relevant times, ~~GCUK~~ the Greensill Group had a Credit Committee responsible for:

a. all matters relating to GCUK's credit exposures, including credit risk evaluation and management; and

b. subject to any delegation levels, approving the establishment of, and changes to, credit facilities extended by GCUK.

Particulars

The governance arrangements of the Credit Committee, including quorum, membership and further delegations, were covered in the Credit Committee's Terms of Reference published by GCUK and updated from time to time.

Credit Committee Terms of Reference dated 25 September 2015 (AGB.0003.0001.0713).

Credit Committee Terms of Reference dated 16 December 2016 (BCC.0001.0001.0413).

Credit Committee Terms of Reference dated 12 July 2019 (AGB.0002.0006.0377).

Credit Committee Terms of Reference dated 1 June 2020 (MAR.0004.0004.2944).

Greensill Credit Policy (v1) dated September 2019 (BCC.0001.0005.5813).

Greensill Capital Credit Approval Grid dated 28 March 2018 (BCC.0001.0001.0411).

10A.12 Pursuant to the Credit Committee's Terms of Reference:

a. the members of the Credit Committee included board members of companies in the Greensill Group and Designated Credit Officers (**DCO**), including:

i. Lex Greensill, as CEO, from September 2015 until 11 July 2019;

ii. Danyon Lloyd, as a DCO, from September 2015 until 11 July 2019; and

iii. William Roland Hartley-Urquhart, as a DCO, from September 2015 until 11 February 2021;

b. all credit transactions required approval from the relevant 'Sponsor';

c. the 'Sponsor' of a transaction was the relevant Global or Regional Heads of Origination, Product Vertical Heads, or the CEO of GCUK; and

d. certain types of credit transactions could be approved by individuals holding delegated authority from the Credit Committee.

Placement of the Relevant Policies and Endorsements

10A.13 At all relevant times, trade credit insurance was an integral part of the Greensill Group's SCF business and was used by:

a. GCUK to meet investor requirements that its SCF assets be insured; and

b. Greensill Bank as a 'credit risk mitigant' in order to ~~comply with international~~ reduce its capital requirements under European and German banking regulations.

Particulars

'Greensill Overview' document prepared by GCUK and provided to Tokio Marine on 17 January 2017 (MAR.0004.0001.0081).

Email from Julian Macey-Dare of Marsh ~~Pty Ltd (**Marsh**)~~ to Eddie Feather of Marsh dated 12 May 2017, titled 'Greensill Capital' (MAR.0004.0001.0361).

Email from Julian Macey-Dare to Danyon Lloyd (Chief Executive Officer) of Greensill Bank dated 24 January 2018, titled 'FW: Confidential: BaFin / CRM recognition of our policies' (AGB.0002.0003.3900).

Grant Thorton's Joint Administrators' proposals for GCUK and Greensill Capital Management (UK) Limited dated 28 April 2021 (TMA.0001.0005.1886).

10A.14 The 90/10 Master Policies (under which GCPL and GCUK were insured) and the 90/10 Parallel Policies (under which GCPL and Greensill Bank were insured) formed part of an integrated policy scheme for the benefit of the Greensill Group's SCF business.

Particulars

The operation of the 90/10 Master and Parallel Policies as a 'common scheme' is demonstrated by the premium calculation. Under the 90/10 Parallel Policies, the premium was set at USD1, which was, in and of itself, commercially disproportionate to the risk purportedly being underwritten. It is to be inferred that the premium set under the 90/10 Master Policies was intended to reflect the risk that was purportedly being underwritten across both policies.

10A.15 In obtaining placement of the Relevant Policies and Endorsements, the general practice of the officers, employees and agents of GCUK involved in this process was:

a. to make representations to Greg Brereton and BCC, on behalf of each of GCPL and Greensill Bank, for the purpose of complying with GCPL's and Greensill Bank's duty of disclosure under the Insurance Contracts Act;

b. in making such representations, not to differentiate between the 90/10 Master Policies and the 90/10 Parallel Policies, or the respective positions of each of GCUK, GCPL and Greensill Bank; and

c. thereafter to assume responsibility for effecting the administrative arrangements necessary to place the Relevant Policies and Endorsements on behalf of each of GCPL and Greensill Bank.

Particulars

This general practice is evidenced by the conduct of GCUK in respect of each of the risks described in Section D of this Annexure.

The letter from GCUK and Greensill Bank to Chubb European Group SE dated 16 November 2020, which stated: 'The interests of GCUK and [Greensill Bank] are aligned in this regard, and whilst there are a number of differences between the two policies, neither GCUK nor [Greensill Bank] differentiates between what they are required to do under their respective policies. Both entities commonly share information and each would be expected to be aware of any material facts know[n] to the other. Any obligation including but not limited to any report or notice or the disclosure of any fact or circumstance that either GCUK or [Greensill Bank] may be obliged to provide you under the policies will be provided regardless of whether the obligation has or has not arisen under their respective policies' (MAR.0004.0004.6391).

In March 2021, Lex Greensill gave a witness statement in insolvency proceedings in respect of GCUK, which referred to the relationship between GCUK and Greensill Bank at paragraph 5.19. In particular, Lex Greensill set out how GCUK and Greensill Bank relied upon each other in respect of the GFG asset receivables and the interconnected nature of their relationship (BCC.0001.0009.4357).

10A.16 Further, under the terms of each of the 2016 SLA and 2020 SLA between GCUK and Greensill Bank, GCUK was required, with respect to the Relevant Policies and Endorsements, to:

a. provide Greensill Bank with all necessary support to ensure compliance with its insurance obligations;

b. fulfil Greensill Bank's reporting obligations, including the preparation and transmission of monthly insurance reports; and

c. for any insurance claim, prepare the claim form for Greensill Bank to forward to the Insurer and supply any necessary documentation.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.7 above.

10A.17 In the premises of paragraph 10A.15 above, GCPL authorised GCUK to act on its behalf in the placement of the Relevant Policies and Endorsements.

Particulars

GCUK's authority can be implied or inferred from GCPL's conduct and the surrounding circumstances, including:

a. GCPL's acquiescence to the placement of the Relevant Policies and Endorsements on its behalf, according to the general practice identified in paragraph 10A.15 above;

b. GCPL's payment of insurance premiums on GCUK's behalf under the 90/10 Master Policies (Exhibit MJB-1 to Matthew James Byrnes affidavit in the White Oak Proceeding, page 36); and

c. GCPL's execution of the Relevant Policies: see the 2019 90/10 Parallel Policy and Policy 5369.

10A.18 In the premises of paragraphs 10A.15 and 10A.16 above, Greensill Bank authorised GCUK to act on its behalf in the placement of the Relevant Policies and Endorsements.

Particulars

GCUK's authority can be implied or inferred from Greensill Bank's conduct and the surrounding circumstances, including:

a. Greensill Bank's acquiescence to the placement of the Relevant Policies and Endorsements on its behalf, according to the general practice identified in paragraph 10A.15 above;

b. Greensill Bank's knowledge and involvement in the placement of the Relevant Policies and Endorsements, including the email from Danyon Lloyd to Lex Greensill, copying Julian Macey-Dare, John Whelan (Deputy General Counsel) of GCUK and others, dated 23 February 2018 (AGB.0002.0003.3958);

c. Greensill Bank's execution of the Relevant Policies: see the 2019 90/10 Parallel Policy, Policy 5369 and Policy 3088; and

d. that Greensill Bank authorised GCUK to perform services to ensure its compliance with the Relevant Policies as described in paragraph 10A.16 above.

Attribution of conduct and knowledge to GCPL

10A.19 The insured risks referred to in this section are those set out in Section D below.

10A.20 The conduct and knowledge of Lex Greensill pleaded in connection with each of the insured risks is to be attributed to GCPL by reason of:

a. his position as CEO and co-founder of GCPL, such that he was part of the directing mind and will of GCPL; ~~and/or~~

b. the fact that he obtained knowledge of the relevant matters by virtue of his position and his involvement in the management of the Greensill Group's SCF business~~.~~; and/or

c. the fact that he procured insurance coverage on behalf of GCPL in respect of at least a significant number of the insured risks.

10A.21 The conduct and knowledge of William Roland Hartley-Urquhart pleaded in connection with each of the insured risks is to be attributed to GCPL by reason of:

a. his position as a director of GCPL, such that he was part of the directing mind and will of GCPL; and/or

b. the fact that he obtained knowledge of the relevant matters by virtue of his position and his involvement in the management of the Greensill Group's SCF business.

10A.22 [Not used.] ~~Further or alternatively to paragraphs 10A.20 and 10A.21 above:~~

~~a. the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the placement of insurance – as pleaded in connection with each of the insured risks – is to be attributed to GCUK; and~~

~~b. the relevant conduct and knowledge of GCUK is to be attributed to GCPL because GCUK had authority to arrange, and conduct the transactions involved in the arrangement of, the Relevant Policies and Endorsements on behalf of GCPL.~~

~~**Particulars**~~

~~BCC refers to the particulars in paragraphs 10A.17 and 10A.18 above.~~

~~Attribution of knowledge arises as a special rule of attribution having regard to the legislative scheme and policy of Part IV of the Insurance Contracts Act.~~

10A.22A Further or alternatively to paragraphs 10A.20 and 10A.21 above:

a. at all material times, GCUK:

i. was responsible for arranging the placement of the Relevant Policies and Endorsements on behalf of GCPL; and/or

ii. was an agent of GCPL and acted within the scope of its authority in respect of the placement of the Relevant Policies and Endorsements,

such that its conduct and knowledge in connection with each of the insured risks is to be attributed to GCPL; and

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.17 above.

b. for the purposes of subparagraph a., the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the arrangement of insurance for and/or GCUK's dealings in connection with the insured risks as pleaded in Section D is to be attributed to GCUK.

10A.22B Further or alternatively to paragraphs 10A.20, 10A.21 and 10A.22A above:

a. in the circumstances described in paragraphs 10A.4 to 10A.15 and 10A.17 above, the conduct and knowledge of GCUK in respect of each of the insured risks is to be attributed to GCPL as a special rule of attribution; and

Particulars

Attribution of knowledge arises as a special rule of attribution having regard to the legislative scheme and policy of Part IV of the Insurance Contracts Act.

b. for the purposes of subparagraph a., the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the arrangement of insurance for, and/or GCUK's dealings in connection with, the insured risks – as pleaded in Section D – are to be attributed to GCUK.

Attribution of conduct and knowledge to Greensill Bank

10A.23 The insured risks referred to in this section are those set out in Section D below.

10A.24 Lex Greensill:

a. by reason of the matters described in paragraphs 9, 10A.8 and 10A.9 above, exercised controlling influence over Greensill Bank at all times;

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 9, 10A.8 and 10A.9 above.

Letter dated 19 February 2021 from BaFin to Greensill Bank (GBA.0004.0026.9963 at 0004 and 0006).

Letter dated 11 September 2020 from BaFin to Greensill Bank (GBA.0004.0016.3950).

b. was involved in the conduct of the affairs of Greensill Bank and its day to day management;

Particulars

Email from Danyon Lloyd to Lex Greensill dated 22 October 2016 (GBA.0004.0019.6163).

Email from Lex Greensill to Thorbjörn Karp (Prufungsverband deutscher Banken e.V. (***PVDB***)), copying Maurice Thompson (Director) of GCUK, Markus Nünnerich (Chief Executive Officer) of Greensill Bank, Danyon Lloyd (Chief Operating Officer) of Greensill Bank and PVDB representatives, dated 17 July 2019 (GBA.0004.0018.5608).

Email from Lex Greensill to Markus Nünnerich dated 31 July 2019 (GBA.0004.0007.5248).

Email from Markus Nünnerich to Danyon Lloyd dated 26 November 2019 (AGB.0003.0003.3816).

Email from Markus Nünnerich to Lex Greensill dated 2 December 2019 (GBA.0004.0007.4948).

Email from Markus Nünnerich to Lex Greensill dated 22 January 2020 (GBA.0004.0007.4990).

Email from Markus Nünnerich to Danyon Lloyd and Lex Greensill dated 25 February 2020 (AGB.0003.0003.3824).

Email from Markus Nünnerich to Lex Greensill and Maurice Thompson and Danyon Lloyd, copying others dated 4 March 2020 (GBA.0004.0028.1714).

Email from Markus Nünnerich to Lex Greensill dated 23 June 2020 (GBA.0004.0007.5114).

Email from Lex Greensill to Markus Nünnerich dated 29 June 2020 (AGB.0003.0003.3946).

Email from Lex Greensill to Markus Nünnerich and Danyon Lloyd dated 23 July 2020, attaching a GFG Reduction Roadmap (AGB.0003.0003.3944 and AGB.0003.0003.3945).

Email from Lex Greensill to Neil Garrod (Chief Financial Officer) of GCUK, copying Markus Nünnerich and Danyon Lloyd, dated 28 August 2020 (GBA.0004.0007.4705).

Email from Markus Nünnerich to Lex Greensill, copying in Maurice Thompson, dated 4 November 2020 (AGB.0003.0003.3907).

Email from Raimund Roeseler (Chief Executive Director, Banking Supervision) of BaFin to Lex Greensill dated 1 March 2021 (AGB.0003.0003.3927).

Email from Lex Greensill to Raimund Roeseler dated 2 March 2021 (AGB.0003.0003.3926).

Email from Edward Smith of Marsh to Julian Macey-Dare of Marsh dated 13 October 2020 (MAR.0004.0004.5113).

Lex Greensill was an attendee at meetings of the *Vorsitzender des Aufsichtsrates* or supervisory board of Greensill Bank: GCU.0012.0006.9813; (GCU.0012.0006.9814; GCU.0012.0006.9815; GCU.0012.0006.9816; GCU.0012.0006.9817; GCU.0012.0006.9818; GCU.0012.0006.9819; GCU.0012.0006.9820.

c. was a person upon whose instructions Greensill Bank and its officers were accustomed to acting, and did so act;

Particulars

Email from Danyon Lloyd to Lex Greensill dated 29 July 2016 (GBA.0004.0019.6155).

Email from Lex Greensill to Markus Nünnerich dated 16 November 2019 (GBA.0004.0007.4677).

Email from Markus Nünnerich to Lex Greensill, copying Maurice Thompson and Danyon Lloyd, dated 19 November 2019(GBA.0004.0007.5067).

Email from Lex Greensill to Markus Nünnerich dated 17 August 2020 (GBA.0004.0007.5237).

Email from Markus Nünnerich to Lex Greensill, copying Danyon Lloyd, dated 30 September 2020 (GBA.0004.0007.4853).

Emails from Markus Nünnerich to Lex Greensill dated 3 and 4 November 2020 (GBA.0004.0007.4824; GBA.0004.0007.4825).

d. procured insurance coverage on behalf of Greensill Bank in respect of at least a significant number of the insured risks;

Particulars

Email from Lex Greensill to Edwatd Smith of Marsh dated 19 March 2019, in which he gave the order on behalf of both GCUK and Greensill Bank to bind Endorsement 4 in respect of Liberty House Group Pte Ltd (AGB.0002.0002.2068).

Email from Lex Greensill to Raimund Roeseler dated 2 March 2021 (AGB.0003.0003.3926).

This is further evidenced by the correspondence between Lex Greensill and Greg Brereton particularised in this Annexure A.

da. corresponded with German banking regulators, including the BaFin and PVDB, regarding Greensill Bank's regulatory compliance and enforcement actions;

Particulars

Email from Lex Greensill to Thorbjörn Karp (PVDB), copying Maurice Thompson (Director) of GCUK, Markus Nünnerich (Chief Executive Officer) of

Greensill Bank, Danyon Lloyd (Chief Operating Officer) of Greensill Bank and PVDB representatives, dated 17 July 2019 (GBA.0004.0018.5608).

Email from Lex Greensill to Raimund Roeseler of BaFin, copying Markus Nünnerich, Maurice Thompson and representatives of BaFin, dated 10 December 2020 (AGB.0003.0003.5092)).Greensill Bank Supervisory Board minutes of meeting dated 10 December 2020 (GBA.0004.0034.5281),

Emails between Lex Greensill and Raimund Roeseler of BaFin dated between 10 and 15 December 2020 (AGB.0003.0003.5092).

Email from Lex Greensill to Raimund Roeseler of BaFin, copying Markus Nünnerich, Maurice Thompson and representatives of BaFin, dated 1 February 2021 (AGB.0003.0003.4976).

Email from Raimund Roeseler of BaFin to Lex Greensill dated 1 March 2021 (AGB.0003.0003.3927).

Email from Lex Greensill to Raimund Roeseler dated 2 March 2021 (AGB.0003.0003.3926).

e. by reason of the matters set out in subparagraphs a. to da. above, was a person who exercised significant influence and/or practical control over the affairs of Greensill Bank; and

f. by reason of the matters set out in subparagraphs a. to e. above, was a *faktischer Geschäftsführer* of Greensill Bank under the law of Germany and/or a shadow director of Greensill Bank under the law of New South Wales.

10A.25 By reason of any one or more of the matters set out in paragraph 10A.24 above, the conduct and knowledge of Lex Greensill pleaded in connection with each of the insured risks is to be attributed to Greensill Bank.

10A.25A The conduct and knowledge of Danyon Lloyd pleaded in connection with each of the insured risks is to be attributed to Greensill Bank by reason of:

a. his position as the Chief Executive Officer/Chairman and then Chief Operating Officer of Greensill Bank, such that he was part of the directing mind and will of Greensill Bank; and/or

b. the fact that he obtained knowledge of the relevant matters by virtue of his position and his involvement in the management of the Greensill Group's SCF business.

10A.25B To the extent that Danyon Lloyd was aware of information that he knew was material to the decision to accept or renew the risk of insuring debts the subject of the proceedings (as pleaded below in respect of particular risks), GBAG knew or was recklessly indifferent to the fact that the information had not been disclosed to BCC or the Insurer before the risk was accepted or renewed.

Particulars

1. Danyon Lloyd knew the risks for which Greensill sought coverage under the Policy had characteristics that made them unattractive to a prudent underwriter of trade credit insurance (including rollovers of debt, underlying debts that were long-term and high-risk, and concentration of exposure to GFG-related obligors), with the consequence that it was likely that an underwriter with full knowledge of those characteristics would not have underwritten the risks.

2. Danyon Lloyd knew that GCUK had an incentive not to make full and proper disclosure to BCC and the Insurer because the terms of the Policy purported to insulate GBAG from any inaccuracy or omission in the information provided by GCUK to the Insurer.

3. Danyon Lloyd was thereby on notice of the need to inquire of Marsh and GCUK as to whether full and accurate disclosure had been made to BCC and the Insurer.

4. It is to be inferred that Danyon Lloyd:

    i. made such inquiries of Marsh and/or GCUK and was thereby aware that full or accurate disclosure had not been made to BCC and the Insurer of the matters which he knew were material to acceptance of the risk;

    ii. alternatively refrained from making such inquiry because he was aware of the probability that full or accurate disclosure of such matters had not been made; or

    iii. alternatively was recklessly indifferent to whether full or accurate disclosure of such matters had not been made to BCC and the Insurer.

10A.26 [Not used]. ~~Further or alternatively to paragraph 0 above:~~

~~a. the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the placement of insurance – as pleaded in connection with each of the insured risks – is to be attributed to GCUK; and~~

~~2. the relevant conduct and knowledge of GCUK is to be attributed to Greensill Bank because GCUK had authority to arrange, and conduct the transactions involved in the arrangement of, the Relevant Policies and Endorsements on behalf of Greensill Bank.~~

~~**Particulars**~~

~~BCC refers to the particulars in paragraph 10A.18 above.~~

~~Attribution of knowledge arises as a special rule of attribution having regard to the legislative scheme and policy of Part IV of the Insurance Contracts Act.~~

10A.26A Further or alternatively to paragraphs 10A.25 and 10A.25A above:

a. at all material times, GCUK was:

i. responsible for arranging the placement of the Relevant Policies and Endorsements on behalf of Greensill Bank; and/or

ii. an agent of Greensill Bank and acted within the scope of its authority in respect of the placement of the Relevant Policies and Endorsements,

such that its conduct and knowledge in connection with each of the insured risks is to be attributed to Greensill Bank;

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.18 above.

b. for the purposes of subparagraph (a), the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the arrangement of insurance for and/or GCUK's dealings in connection with the insured risks as pleaded in Section D is to be attributed to GCUK.

10A.26B Further or alternatively to paragraphs 10A.25, 10A.25A and 10A.26A above:

a. in the circumstances described in paragraphs 10A.4 to 10A.16 and 10A.18 above, the conduct and knowledge of GCUK in respect of each of the insured risks is to be attributed to Greensill Bank as a special rule of attribution; and

Particulars

Attribution of knowledge arises as a special rule of attribution having regard to the legislative scheme and policy of Part IV of the Insurance Contracts Act.

b. for the purposes of subparagraph (a), the conduct and knowledge of the officers, employees and agents of GCUK who were responsible for the arrangement of insurance for and/or GCUK's dealings in connection with the insured risks as pleaded in Section D is to be attributed to GCUK.

C BACKGROUND REPRESENTATIONS & NON-DISCLOSURES BY GREENSILL

C1 SCF Representation

10A.27 On or around 27 September 2017, Greensill, via its broker Marsh, represented to Greg Brereton that:

a. GCUK offered two types of SCF solutions to clients, being 'Traditional SCF' and 'Trade Advances (also known as Re-invoicing)';

b. both 'Traditional SCF' and 'Trade Advances' were finance solutions that were based on the underlying trade of goods or services;

c. the 'Traditional SCF' product offered by GCUK included the following features:

i. GCUK had a legal agreement with the Buyer and the Supplier;

ii. GCUK paid the Supplier;

iii. the Supplier bore the cost through a discount paid on invoices; and

iv. payment term extensions were to be done in conjunction with the Supplier as part of a contract renegotiation;

d. the 'Trade Advances' product offered by GCUK included the following features:

i. GCUK had a legal agreement with the Buyer and the Trade Advance Service Provider (**TASP**), while the Buyer had a legal agreement with the TASP;

ii. GCUK provided the Buyer with the funds to pay the Supplier; and

iii. the Buyer could push out payment terms up to 180 days without discussions with the Supplier;

e. GCUK would only provide 'Trade Advances' to new clients classified as 'Lower Risk' or 'Low to Medium Risk' meaning, among other things, that:

i. GCUK would collect physical or electronic underlying invoices that evidenced trade; and

ii. the underlying invoices would only be provided by suppliers unrelated to the client, or to subsidiaries of the client in legitimate cases,

(**SCF Representation**).

Particulars

Email from Ewan Berkemeier of Marsh to Greg Brereton, with the subject 'RE: Some queries....', dated 27 September 2017 and attachment titled 'Greensill Capital - SCF Underwriting Guidelines: Version 2.2 - October 2016' (BCC.0001.0001.0039 and BCC.0001.0001.0042).

10A.28 Greensill repeated the SCF Representation to Greg Brereton on or around 18 May 2018.

Particulars

Email from Ewan Berkemeier of Marsh to Greg Brereton, with the subject 'RE: Oracle Subcontractor Direct Financing', dated 18 May 2018 and attachment titled 'Greensill Capital – SCF Underwriting Guidelines: Version 4.0 – March 2018' (BCC.0001.0001.0410 and BCC.0001.0001.0412).

10A.29 The SCF Representation was a continuing representation made before entry into each of the Relevant Policies and Endorsements listed in Schedule G.

C2 Future Accounts Receivable Representation

10A.30 In or around February 2019, the concept of a 'future accounts receivable facility' was first presented by Greensill to Greg Brereton, in the context of a presentation regarding a proposed facility for Liberty OneSteel (Primary) UK Ltd (the **Liberty OneSteel AR Facility**).

Particulars

PowerPoint presentation presented by Greensill to Greg Brereton in or about February 2019 titled “Future Receivables Financing for Liberty OneSteel (Primary) UK Ltd” (TOK.502.00000052).

10A.31 The abovementioned presentation represented that the Liberty OneSteel AR Facility would operate in circumstances whereby GCUK would purchase future accounts receivable from a Seller where:

a. there was an existing commercial relationship between the Seller and the Account Debtors;

b. GCUK would lend against inventory to be sold to pre-determined Account Debtors under existing sales contracts, with the borrowing base of available inventory to be tested monthly;

c. the borrowing base of existing inventory able to be sold to Account Debtors under existing sales contracts would be valued by an independent third-party valuer by way of a desktop audit report within 30 days of the end of each month and an on-site audit report within 75 days of the end of each half-year;

d. GCUK would enter into a receivables purchase agreement with the Seller under which the accounts receivable to be created under the existing sales contracts with the Account Debtors by the sale of existing inventory to the Account Debtors would be assigned to GCUK; and

e. when the Seller requests a loan from GCUK it will provide a utilisation request indicating details of the Account Debtors to whom the existing inventory will be sold and in what amounts.

10A.32 In the premises of paragraph 10A.31 above, Greensill represented that a 'future accounts receivable facility' had the following general features:

a. account debtors under the facility would be parties to existing sales contracts with the seller;

b. the amounts of future accounts receivable to be financed would be supported at the time of drawdown by existing inventory; and

c. that the seller's existing inventory would be independently valued or verified on a periodic basis,

(**Future Accounts Receivable Representation**).

10A.33 The Future Accounts Receivable Representation was a continuing representation made before entry into each of the Relevant Policies and Endorsements listed in Schedule G, which were negotiated or executed on or from around February 2019.

C2A GFG and GAM

10A.33A. At all material times, the Gupta Family Group Alliance (**GFG**) was a group of companies that were associated with and ultimately controlled by Mr Sanjeev Gupta.

10A.33B. At all material times, GFG included the following companies:

a. Liberty Commodities Limited (**LCL**) which is, and was at all material times, incorporated under the laws of the United Kingdom and wholly owned by Liberty Commodities Group;

b. Liberty MDR Treasury Company UK Ltd (**Liberty TCUK**) which is, and was at all material times, incorporated under the laws of the United Kingdom;

c. Liberty Speciality Steel UK Limited (**SSUK**) which is, and was at all material times, incorporated under the laws of the United Kingdom;

d. Simec Group Ltd (**Simec**) which is, and was at all material times, incorporated under the laws of Hong Kong;

e. Liberty Galati & Skopje Limited (**Galati**), Liberty Ostrava Limited (**Ostrava**), Liberty Liege Limited (**Liege**) and Liberty Dudelange Limited (**Dudelange**) which are all companies incorporated in England and Wales (together, the **Delta HoldCos**);

f. Liberty House Group Pte Ltd (**Liberty House**) which is, and was at all material times, incorporated under the laws of Singapore;

g. Liberty France Aluminium Holdco (**Liberty France**) which is, and was at all material times, incorporated under the laws of the United Kingdom; and

h. Westford Limited (**Westford**) which was at all material times, incorporated under the laws of Hong Kong and carried on business as a commodities trading house and provided trade finance lending.

10A.33C. From around 2015, GCUK commenced providing credit facilities to GFG companies.

Particulars

The first facilities were provided to Simec and LCL in around October 2015.

GAM.

10A.33D. In the period 2015 to 2018, GCUK raised funds for its credit facilities from funds managed by GAM Holding AG (**GAM**).

10A.33E. The financing arranged by GCUK for GFG included the following debt securities bought by funds managed by GAM:

a. Kinlochleven power plant (**KLL**) Notes, which had the following features:

i. the KLL Notes had a total value of approximately GBP323.7 million;

ii. the KLL Notes were arranged by GCUK to raise financing for GFG's acquisition of the Alcan Aluminium UK Limited from Rio Tinto; and

iii. the KLL Notes were backed by a guarantee from the Scottish Government.

Particulars

Document titled "KLL Series Supplement (36273562_1)[4].pdf" which describes the underlying transaction in Annexure B dated 26 April 2017 [GCU.0010.0001.5958].

b. Little Red Boxes (**LRB**) Notes, which had the following features:

i. the LRB Notes had a total value of approximately GBP614 million

ii. the LRB Notes were arranged by GCUK to raise financing for GFG's acquisition of Arrium.

Particulars

a. in or around April 2019, GAM announced that GFG Alliance Group had agreed to repurchase all Liberty Industries PPA Ltd bonds (being, bonds secured by GFG's biofuel generators and referred to as 'Little Red Boxes' (the **LRB Bonds**)) held by GAM at the value at which they were purchased: https://www.reuters.com/article/world/exclusive-gam-whistle-blower-concerns-focused-on-bonds-sold-by-metals-tycoon-idUSKCN1S40UA/

b. in 2017, GAM had purchased more than GBP550 million worth of LRB Bonds: https://www.reuters.com/article/world/exclusive-gam-whistle-blower-concerns-focused-on-bonds-sold-by-metals-tycoon-idUSKCN1S40UA/

c. on or around 15 July 2019, the GFG Alliance Group repurchased from GAM approximately GBP614 million worth of LRB Bonds: How Sanjeev Gupta's empire is fuelled by opaque funding (afr.com) and Exclusive: GAM whistle blower concerns focused on bonds sold by metals tycoon | Reuters

https://www.afr.com/companies/manufacturing/how-sanjeev-gupta-s-empire-is-fuelled-by-opaque-funding-20190927-p52vns

C2B GFG Liquidity Issues and rolling

10A.33F. By no later than March 2019, and at all relevant times thereafter:

a. the GFG companies were GCUK's single largest relationship group;

Particulars

GCUK board paper on GFG facilities dated October 2018 [GCUK.0004.0019.0241], which states (at _0005) *"The GFG Alliance relationship is also the largest single relationship group both in terms of total facility sizing and overall outstandings, representing 15.7% and 35.1%(1) respectively*." The same paper (at 0008) records that GCUK had total outstandings of GBP 3.3 bn on facilities provided to GFG companies.

b. the GFG companies were interdependent, such that defaults by one GFG company increased the risk of default of other entities in the group; and

Particulars

Document with filename "GFG Alliance RCAP – Aug 2017 v9-9-17" dated 9 August 2017 [GCU.0004.0003.0073], sent to Lex Greensill and Danyon Lloyd (amongst others) on 10 August 2017 [GCU.0004.0003.0065]. This document states "*This is the first group combined RCAP for the GFG Alliance Group. Given the level of recent activity with the Group and the interlocking dependencies of the two main arms, Liberty House ("LHG") and SIMEC, it is now essential for aggregation purposes that these groups now be treated as one combined Group for credit and exposure reporting purposes".*

Document with filename "GFG SIMEC Group CAPvFCC" dated 8 November 2018 [GCU.0004.0020.7139], sent to Lex Greensill and Danyon Lloyd (amongst others) on 15 November 2018 [GCU.0004.0020.7136]. This document states "The majority of revenue is generated by other group entities, and the repayment of our facility is reliant upon the performance of the group, not the SIMEC Group Limited entity standalone."

Document with filename "GFG-Liberty Primary Receivables CreditApplicatoin Report 07-02-2019vCC" dated 7 February 2019 [GCU.0005.0005.9558], sent to Lex Greensill and Danyon Lloyd (amongst others) on 15 November 2018 [GCU.0004.0020.7136]. This document states "The majority of revenue is generated by other group entities, and the repayment of our facility is reliant upon the performance of the group, not the SIMEC Group Limited entity standalone.".

The particulars to 10A.33G below are repeated

c. GCUK had sold to its investors interests in the payment of debts owed by GFG companies to GCUK;

d. GCUK would be exposed to significant losses if GFG companies failed to pay their debts to GCUK and GCUK in turn failed to satisfy its corresponding obligations to its investors referrable to such debts.

Particulars

Email from Lex Greensill to Sanjeev Gupta on 1 September 2016 with subject "Greensill" [GCU.0001.0004.7933], in which Lex Greensill states "*What you and I agreed at the time is that you have a bullet-proof position provided we are trading. The only non-bullet proof position is insolvency – and you and I agreed (given our respective mutuality of risk – I am exposed to a $20mm insurance first loss deductible if you default, and I am providing a privileged position whereby we provide you with facilities at cost and access to all of our capabilities) that we could both take a commercial view.*"

Email from Brett Downes to Lex Greensill on 7 April 2018 [GCU.0004.0011.0051] with subject "LOSUK Update" in which Brett Downes states "One of the Concentration Risk issues arising from the Risk Committee work so far is to manage the Gupta relationship and this has fallen on me to talk to you. We have concentration risk not only from a revenue perspective but also from an exposure perspective."

Email from Scott Newby to Danyon Lloyd, Brett Downes (amongst others) at GCUK dated 15 May 2018 attaching a presentation with title 'Greensill – Concentration Risk Update April / May 2018' dated 14 May 2018, which at page 11 identified the risk that Greensill Capital's level of exposure to GFG had created a risk of significant damage to the financial results and health of Greensill Capital in a worst case scenario [GCU.0009.0003.3235].

Email from Sophie Dyke to Brett Downes, Danyon Lloyd (amongst others) at GCUK dated 16 October 2018 attaching a presentation with title 'Exposure Monitoring Update: GFG Alliance – September 2018' dated 16 October 2018, which identified that Greensill Capital's level of exposure to GFG had created a risk of significant damage to the financial results and health of Greensill Capital in a worst case scenario [GCU.0009.0005.5235].

10A.33G. By no later than March 2019, and at all relevant times thereafter:

a. GFG was in serious financial difficulty and GFG companies were unable to meet their debt commitments to GCUK on time or at all without incurring further debts to GCUK (the **GFG Liquidity Issues**);

Particulars

1. In late 2018, Lex Greensill and Sanjeev Gupta agreed that proceeds from the Liberty France facility would be used to discharge maturities owed by Westford and SIMEC:

   A. Email from Lex Greensill to Sanjeev Gupta dated 20 September 2018 [GCU.0005.0002.0321], in which Lex states: "*Monday 24 October – We are going to do an initial draw down under the Aluminium Dunkirk SCF facility such that the net proceeds are $30mm. These proceeds will not be paid to Westford or Liberty House Group, but will be re tained by Greensill and discharge the $30mm maturity due by SIMEC on Monday 24 October*."

   B. Email from Lex Greensill to Sanjeev Gupta on 29 September 2018, with subject "RE: Westford rolls" [GCU.0004.0018.3890], recording Lex Greensill's discussions with Sanjeev Gupta about the repayment Westford maturities due in October 2018. Sanjeev Gupta asks "*Let me know what u think of prepaying and redrawing this coming week ahead of AD*".

   C. Email from Lex Greensill to Sanjeev Gupta on 1 October 2018, with subject "RE: Aluminium France Industries UK Ltd – Signature Mandate" [GCU.0004.0018.4768], recording Lex Greensill's discussions with Sanjeev Gupta regarding the intended use for funds drawn down on the Aluminium France facility. Lex Greensill comments in respect of the Aluminium France drawdown "*I am sure you can look after the onward payment to WTS of exactly USD$20mm. Can you let Westford know that they need to flip that into our trust account*".

   D. Email from Lex Greensill to Valerie Kirkaldy on 1 October 2018, with subject "Westford" [GCU.0010.0005.2462], confirming the plan for Westford to repay their October 2018 maturities in one go. Lex Greensill notes "Westford are looking to pay all their October maturities on Wednesday".

   E. Email from Sanjeev Gupta to Lex Greensill on 1 October 2018, with subject "Re: Westford" [GCU.0004.0018.4822], recording an agreement between Lex Greensill and Sanjeev Gupta not to inform their respective teams that funds from the Aluminium France facility were to be used to repay Westford maturities. Lex Greensill notes "Please ensure that my team are not told that you are using the AD cash to fund the Westford maturity."

   F. Email from Ludwig Sels to Chris Bates on 3 October 2018, with subject "Re: Westford" [GCU.0005.0002.2898], recording confirmation that GCUK had received funds from Westford in payment of their October 2018 maturities.

2. In early 2019, notes with a value of approximately GBP 1.3bn (relating to the LRB and KLL projects referred to in paragraph 10A.33E were due to be repaid by GFG companies to the Swiss asset manager GAM.

3. The GFG borrowers were unable to repay the GAM funds and required urgent bridging loans and re-financing, as recorded in:

   A. Email from Henry Middleditch to Lex Greensill on 8 January 2019, with subject "KLL/LRB Strategy Summary" [GCU.0005.0004.6331] recording the strategy for LRB and KLL as discussed with Lex Greensill.

   B. Email from Lex Greensill to David Solo on 18 February 2019, with subject "FT inquiry" [GCU.0004.0023.8887], recording Lex Greensill discussions with Sanjeev Gupta about repurchasing and refinancing LRB notes. Lex Greensill notes that "I speak to Gupta about this daily. It is my highest priority".

   C. Email from David Solo to Ludwig Sels on 27 February 2019 with subject 'CS plan' [GCU.0010.0007.4342], in which Mr Solo explains that Credit Suisse needs to take over GAM Funds due to "significant cash demand on GFG to get GAM repaid early that is limiting the ability to meaningfully reduce the programs, which is in all of our interest to support".

   D. Email from Alexandra Hayes to Danyon Lloyd with subject "Re: SSUK Future Receivables" dated 8 March 2019 [GCU.0013.0005.0166] in which Alexandra Hayes states "Danyon - to bring you up to speed, we have been asked to put in place a new Future Receivables deal for Liberty's Speciality Steel UK Ltd entity by the end of quarter in order to be able to fund up to £200mm thereby enabling GFG to buy back the KLL notes that are currently sat in GAM. We intend the structure to be similar to the new Primary ARP deal but without the underlying loan."

4. Funds from facilities were being distributed to other GFG Alliance entities as intercompany loans or for related party financing:

   A. Document with filename "GFG Liberty Commodities AR-CreditApplicationReport vFCC 01-2019" [GCU.0005.0004.8540], sent to Lex Greensill and Danyon Lloyd (amongst others) on 14 January 2019 [GCU.0005.0004.8539]. This document states "*Funds will be used for working capital within LCL and LCG as well as being distributed via intercompany loans to other GFG Alliance entities."*

   B. Document with filename "GFG- Liberty Primary Receivables CreditApplicationReport 14-02-2019vCC" [GCU.0007.0002.4596], sent to

Lex Greensill and Danyon Lloyd (amongst others) on 14 February 2019 [GCU.0007.0002.4593]. This document states (in respect of Liberty Onesteel (Primary) UK Ltd) "*the management forecasts also show all free cash flow being used to repay intercompany borrowings which is the aforementioned trading balances, so we anticipate spare liquidity generated from these funds to be used for this purpose".* In respect of the same facility:

a. Email from Danyon Lloyd dated 8 February 2019 [GCU.0005.0005.9557] to Brett Downes copying Lex Greensill stating "*The insistence in the credit application that this is a loan is very unhelpful for funding at GB. As you know, GB has to look through to the Account Debtors to fund this*."

b. Email from Brett Downes dated 15 February 2019 [GCU.0005.0006.2308] to Lex Greensill, Danyon Lloyd and others approving the facility on the basis that there is no increase as "*it appears totally reliant on cross group support*."

b. GFG borrowers had repeatedly defaulted on their obligation to pay principal or interest to GCUK in accordance with the terms of facilities (**GFG Defaults**); and

Particulars

A. Email from Sanjeev Gupta to Lex Greensill on 11 September 2016 with subject "Re: Target list update UPDATE" [GCU.0001.0004.9818] in which Mr Gupta states "*also wanted to ask how and when the interest reduction will work from. I am assuming from the date I became a shareholder, or will it be from roll over dates?"*

B. Email from Sanjeev Gupta to Lex Greensill on 2 March 2017 with subject "Re: Follow Ups" [GCU.0001.0008.7027] in which Mr Gupta states "IN THE MEANTIME IF YOU ARE INDEED ABLE TO DO THE ROLL OVERS FROM YOUR OWN WHILE WAITING FOR EH *[Euler Hermes]* (ONLY SMALL ONES PAID AND COMING UP FOR NOW I THINK) IT WOULD BE A STRONG SIGNAL OF SUPPORT WHICH I COULD CERTAINLY CAPITALISE ON INTERNALLY"

C. Email from Sanjeev Gupta to Lex Greensill on 11 April 2017 with subject "Re: Scottish Government" [GCU.0001.0009.4881] in which Mr Gupta states "- *SIMEC dues today we will pay last week's one which you roll very kindly uninsured for now. The second that became due yesterday we will wait till Zurich sorted in the next couple of days and roll using that - last but not least can I send you 4-5 buyers all capable of 10-20m like Bliss, for a 50-100m draw on your stack?"*

D. Email from Sanjeev Gupta to Lex Greensill on 8 April 2017 (following a visit by Mr Gupta to Lex Greensill's family home) with subject "Thank you for a special morning" [GCU.0001.0009.4644], in which Mr Gupta states "*I will ensure SIMEC pushes out the overdues immediately. Thank you again for agreeing rolling these yet again with your own funds*".

E. Emails between Lex Greensill and various other GCUK employees on 20 April 2017 with subject "Simec and Liberty payments Not Received" [GCU.0009.0001.6308].

F. Email from Lex Greensill to John Luu (GCUK) on 8 September 2017 with subject "SIMEC Trade" [GCU.0004.0003.9258], in which Lex Greensill states "*Sanjeev wants all the cash now FFS. Just stagger the maturities and have them draw the lot now!*"

G. Email from Lex Greensill to Sanjeev Gupta and Jay Hambro (Simec) on 20 September 2018 with subject "AD and SIMEC" [GCU.0005.0002.0321], recording that GCUK proposed to "pre-pay" Simec maturity using its own cash then apply drawdowns under the Aluminium Dunkirk SCF facility to repay itself.

H. Email from Lex Greensill to Sanjeev Gupta on 2 October 2018 with subject "Westford" [GCU.0004.0018.4822], where Lex Greensill states "*Please ensure that my team are not told that you are using the AD [Aluminium Dunkirk] cash to fund the Westford maturity*". Mr Gupta replies "*Won't sir, in fact won't tell mine either*".

I. Email from Ivan Jesensky (GCUK) to Lex Greensill, and others, on 2 January 2019 with subject "Liberty/SIMEC/OneSteel" [GCU.0004.0022.5366], in which Mr Jesensky tells Lex Greensill that Liberty owes GCUK USD3.55m "as we topped up the maturity payment on their behalf back in October". In the same email, Mr Jesensky records that GCUK are the current noteholder for USD6m for LCL, AUD10m for Liberty OneSteel MDR, and GBP13.3m for OneSteel TCUK Multi-obliger.

J. Email from Lex Greensill to Al Eadie (GCUK) on 18 January 2019 with subject "Westford Maturity – Urgent top-up required" [GCU.0009.0007.0163], in which Lex Greensill instructs Mr Eadie to arrange for $2.3mm maturity on Westford facility to be paid by GCUK.

K. Email from Lex Greensill to Ludwig Sels (GCUK) on 11 February 2019 with subject "Trade Acceptance_2019-02-07-25-58" [GCU.0004.0023.6670], in which Lex Greensill instructs Mr Sels to top up a $3.6m payment due from Simec which had not been received.

L. Emails between Brett Downes and Lex Greensill on 19 February 2019 with subject "RE: UPDATED DETAILS AS DISCUSSED" [GCU.0004.0023.8946; GCU.0004.0023.8950] in response to a request from Lex Greensill to add new limits to the Liberty Commodities AR programme in which Brett tells Lex "*At present we have some US$300m approved for a company that cannot in any way repay that amount. We are by far the largest financier by a country mile. Other banks are running from them, including HSBC*."

M. Emails between Brett Downes and Lex Greensill on 19 February 2019 with subject "Liberty AR" [GCU.0004.0023.9813] in response to a request from Lex Greensill to add new limits to the Liberty Commodities AR programme in which Brett tells Lex "*Pretty hard to support when SIMEC can't make a single payment on time, and expect draws immediately. They are behind again. LCL is not much better."*

N. *Email from Ludwig Sels to Zara Hayes on 6 March 2019 with subject "Re: Today's current Short positions" regarding a request to top up USD5.8 million in maturities from Liberty House and Liberty Aluminium Holdco: "If we still can, can we please top up CS positions ie Liberty Aluminium Holdco AND Liberty House. Brett should ALWAYS be on these type of emails. Lex has verbally agreed these top ups."*

O. With respect to the period after March 2019, the BCC/TM Parties further refer to and repeat Section G of Annexure B to this Defence and each of the "**GFG Companies' Failures to Pay**" (as that term is defined therein) that occurred on the dates pleaded and particularised in Annexure B.

c. GCUK had a practice of "topping up" or "bridging" payments due under the GFG facilities by:

(i) using funds from its own balance sheet or from GBAG to repay investors in notes linked to debts owed by GFG borrowers; or

(ii) using funds from facilities advanced to other GFG borrowers,

(the **GFG Top Up Practice**).

Particulars

A. Emails from Zara Hayes (Middle Office, GCUK) to Lex Greensill on 11 March 2019 with subject "Late Payment Process" [GCU.0004.0024.6060], which discuss the process for "topping up an Obligor, where the maturity payments have not been received". The email attaches a presentation

titled “Late Payments Top Up Process” [GCU.0004.0024.6061] that describes the process including the role of the “Top Up Team”. Various GFG customers are listed as “Escalation Obligors” on p. 6 of the presentation.

B. Emails between Lex Greensill and Zara Hayes (Middle Office, GCUK) on 11-12 March 2019 with subject “Late Payment Process” [GCU.0005.0007.4062], whereby Lex Greensill approves the top up process described in the presentation mentioned in the preceding particular.

C. Email from Lex Greensill to Ludwig Sels, George Pavlou, Zara Hayes, Henry Middleditch and a group email for the “Top Up Team” on 13 March 2019 with subject “Potential Top ups 13th March 2019” [GCU.0009.0007.9779], in which Lex Greensill directs that Liberty House Group be topped up from GCUK funds.

D. The particulars of subparagraph b are repeated.

10A.33H. The GFG Liquidity Issues, GFG Defaults and GFG Top Up Practice continued up until GCUK went into administration in 2021.

Particulars

The particulars to paragraph 10A.33G(b) are repeated.

10A.33I. By no later than March 2019, and at all times thereafter, Lex Greensill was aware of:

a. the GFG Liquidity Issues;

b. the GFG Defaults or, alternatively, some of the GFG Defaults; and

c. the GFG Top Up Practice.

Particulars

Lex Greensill’s knowledge is evidenced by his receipt of the emails or documents referred particularised in paragraph 10A.33G above.

10A.33J. By no later than March 2019, and at all times thereafter, Danyon Lloyd was aware of:

a. the GFG Defaults or alternatively, some of the GFG Defaults; and

b. the GFG Top Up Practice.

Particulars

Email from Alan Parks to Lex Greensill copying Danyon Lloyd and others with subject "EOD Balances" [GCU.0001.0005.8527] dated 24 October 2016 which states "*$1m due in from GB tomorrow to cover SIMEC"*

Email from Danyon Lloyd to Tanja Royla (Greensill Bank) with subject "Fwd: Updated Loss payee Limit tracker" [GCU.0004.0017.3442] dated 4 September 2018 which states "*As discussed, please try and transfer additional funds to our Citi account so we can bridge a payment to SIMEC till Credit Suisse funds tomorrow*". Later in the email chain, Lex Greensill emails Danyon Lloyd and states "*We can top up with GC cash.*"

Email from Al Eadie to Brett Downes and others copying Danyon Lloyd and others with subject "Liquidity" [GCU.0004.0024.1878] dated 27 February 2019 which states "*Given GCUK balance sheet is being spanked by GFG currently we should be careful committing to any GCUK funding of assets this week*."

Credit Application Report for Liberty Commodities dated 28 March 2019 [GCU.0005.0008.2401] circulated to Danyon Lloyd and others on 29 May 2019 [GCU.0005.0008.2399] which states that "*Funds will be used for working capital within LCL and LCG as well as being distributed via intercompany loans to other GFG Alliance entities*."

Email from Ivan Jesensky to Danyon Lloyd, Lex Greensill and others subject "RE: The plan…" [GCU.0005.0013.1901] dated 10 July 2019 which records the proposal to raise funds and clear space in GBAG for Liberty Delta and states earlier in the chain "*IF GB raises EUR250m on top of the above (and no surprises !) we can fund the amount needed for LRB (this is a stretch and we may be EUR 20 short ,ie need to use our own B/S). We spoke to Danyon and we believe we are very close if this all happens."*

Email from Danyon Lloyd to Lex Greensill dated 11 October 2019 subject "LibCom AR" in which Mr Lloyd states "*Have built a model that should allow GB to bridge the LibCom assets for two weeks from Monday*."

Danyon Lloyd's knowledge is to further be inferred from the fact that he was copied on GCUK's EOD balance reports from at least October 2016 [GCU.0001.0005.6408], which from around November 2018 included a "key movements" summary which recorded, amongst other things, top ups or payments made by GCUK (e.g. [GCU.0004.0022.4265; GCU.0005.0007.5625]) from on or around 18 March 2019, the EOD balance reports included a dedicated "top up's" section which recorded the amount of money paid by GCUK to cover a maturity [GCU.0005.0007.7015].

10A.33K. The GFG Liquidity Issues, GFG Defaults and GFG Top Up Practice were each matters which:

a. Lex Greensill knew were material to the decision to accept or renew the risk of insuring debts owed to entities associated with Sanjeev Gupta, including GFG members; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of GFG Alliance companies being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

The pleadings and particulars at paragraph 10A.33F above are also repeated.

10A.33L. Further or in the alternative to paragraph 10A.33K above, the GFG Liquidity Issues, GFG Defaults and GFG Top Up Practice were each matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by entities associated with Sanjeev Gupta, including GFG members.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.33K above.

10A.33M. The GFG Defaults and GFG Top Up Practice were each matters which:

a. Danyon Lloyd knew were material to the decision to accept or renew the risk of insuring debts owed to entities associated with Sanjeev Gupta, including GFG members; or

b. alternatively to subparagraph (a) in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore

directly on the risk of GFG Alliance companies being unable to repay the amounts advanced to them.

10A.33N. Further or in the alternative to paragraph 10A.33M above, the GFG Defaults and GFG Top Up Practice were each matters which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by entities associated with Sanjeev Gupta, including GFG members.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.33K above.

10A.33O. The GFG Liquidity Issues were not disclosed to BCC, Greg Brereton or IAL before entry into any of the Relevant Policies and Endorsements negotiated or executed in or after March 2019 (the **GFG Liquidity Issues Non-Disclosure**).

10A.33P. The GFG Defaults were not disclosed to BCC, Greg Brereton or IAL before entry into any of the Relevant Policies and Endorsements negotiated or executed in or after March 2019 (the **GFG Defaults Non-Disclosure**).

10A.33Q. The GFG Top Up Practice was not disclosed to BCC, Greg Brereton or IAL before entry into any of the Relevant Policies and Endorsements negotiated or executed in or after March 2019 (the **GFG Top Up Practice Non-Disclosure**).

C3 Liberty Group Fraud Non-Disclosure

The Credit Suisse Concerns

10A.34 In or around November 2017, Credit Suisse told Lex Greensill about concerns it held regarding the Liberty House Group and other companies ultimately owned by Sanjeev Gupta, which formed part of ~~the Gupta Family Group (~~GFG~~) Alliance~~. Those concerns:

a. arose from 'adverse referrals' made to the International Maritime Bureau (**IMB**) in relation to *'issues resulting from financing the retrading of ship-based cargo multiple times while that cargo was in transit'*; and

b. resulted in Liberty Group being placed on an 'internal blacklist' by Credit Suisse,

(the **Credit Suisse Concerns**).

Particulars

Memorandum prepared by GCUK, titled 'Liberty Group: Commodity Trading and Shipping Practices', dated 6 August 2018 (CSA.5000.0001.1644) (the **Greensill Investigation Memorandum**).

10A.35 In early-2018, the Credit Suisse Concerns were again raised with Lex Greensill.

Particulars

The Greensill Investigation Memorandum (CSA.5000.0001.1644).

10A.36 On or around 6 August 2018, in response to the Credit Suisse Concerns, GCUK prepared the Greensill Investigation Memorandum. This memorandum:

a. recorded the steps undertaken by GCUK to investigate the Credit Suisse Concerns, comprising:

i. requesting and obtaining from the IMB copies of all information it held on the Liberty House Group;

ii. meeting with Simon Grenfell, Head of Financial Structuring and a Director at Wyelands Bank (formerly Tungsten Bank, which was purchased by Sanjeev Gupta in December 2016);

Particulars

Email from IMB to Michael Gemein dated 8 December 2017 (CSA.5000.0003.0870).

iii. meeting with representatives of Clyde & Co, solicitors for the Liberty House Group; and

iv. discrete enquiries with certain individuals within the commodities trading sector;

b. provided an explanation for the concerns raised by the IMB that would not be accepted by any person familiar with international shipping practice; and

c. concluded that the issues raised by the IMB did not give rise to any improper business practices on the part of Liberty House Group or Sanjeev Gupta.

Particulars

The Greensill Investigation Memorandum (CSA.5000.0001.1644).

10A.37 Having regard to the matters set out in paragraph 10A.36a. above, the Greensill Investigation Memorandum was substantially prepared in consultation with sources not independent of Sanjeev Gupta and Liberty House Group, and who could be relied upon to give opinions not adverse to Sanjeev Gupta or Liberty House Group and their interests.

The Diligence Paper Findings

10A.38 On or around 11 December 2018, Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM ~~Holding AG (**GAM**)~~) received an email from Michel Degen, Head of Asset Management & EMEA [Europe, Middle East, and Africa] at Credit Suisse. By this email, marked as 'Important', Michel Degen:

a. attached an extract from a report prepared by the fraud investigative firm Diligence International Group into the affairs of Liberty House Group, titled 'Involvement in Carousel Fraud and Use of Proxies' dated 22 November 2018 (the **Diligence Paper**); and

b. indicated that the parties would 'need to discuss [the Diligence Paper] asap' as Credit Suisse would 'need answers'.

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo, with the subject 're: Important', dated 11 December 2018 and attached Diligence Report dated 22 November 2018 (CSA.5000.0002.1866 and CSA.5000.0002.1867).

10A.39 The Diligence Paper contained, among other things, the following findings in relation to Liberty House Group and its Executive Chairman Sanjeev Gupta:

a. that Liberty House Group had 'willingly participated in an important carousel fraud with a set of Dubai based companies'. The nature of this scheme was that Liberty and others had covertly traded commodities between related entities before they were sold to end customers, in order to 'increase their turnover [and] increase their cash flow position while leaving unrelated companies with the risks of those trades';

b. that this carousel scheme was facilitated through various fraudulent practices, including but not limited to 'fake bill of ladings, undeclared related parties transactions, carousel of funds, undeclared use of proxy companies, multiple financing for the goods and fabricating paper trade';

c. that 'an overwhelming number of trades' listed in various excel spreadsheets connected with the Liberty House Group 'were simply fake';

d. that Liberty House Group and Sanjeev Gupta were a 'clear participant in the fraud', alongside the companies Ushdev International, Westford Trade Services (now known as Westford Limited as of 2 August 2019 (**Westford**)) and Sea Horse Shipping, and 'benefited largely from the carousel system'; and

e. that Liberty House Group played an 'instrumental role' in the fraud through 'the extent of the proxies they have used' in order to mask the involvement of multiple entities associated with the Liberty House Group in transacting with the same commodities;

(the **Diligence Paper Findings**).

10A.40 The Diligence Paper Findings were broader in scope and supported by specific evidence not addressed in the earlier Greensill Investigation Memorandum.

The Liberty Group Fraud Non-Disclosure

10A.41 The Credit Suisse Concerns were matters:

a. which Lex Greensill knew were material to the decision to accept or renew the risk of insuring debts owed by the Liberty House Group, Westford or other GFG ~~Alliance~~ members; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of GFG Alliance companies being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Liberty House Group companies being unable to repay the amounts advanced to them.~~

10A.42 Further or in the alternative to paragraph 10A.41 above, the Credit Suisse Concerns were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by the Liberty House Group, Westford or other GFG ~~Alliance~~ members.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.41 above.

10A.43 In the circumstances described in paragraph 10A.37 above, the Greensill Investigation Memorandum was not capable of satisfying Lex Greensill, or a reasonable person in the position of Lex Greensill, that the Credit Suisse Concerns did not need to be disclosed to Greg Brereton, BCC or IAL in compliance with Greensill's duty of disclosure under section 21 of the Insurance Contracts Act.

10A.44 The Diligence Paper Findings were matters:

a. which Lex Greensill knew were material to the decision to accept or renew the risk of insuring debts owed by the Liberty House Group, Westford or other GFG ~~Alliance~~ members; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty House Group companies being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Liberty House Group companies being unable to repay the amounts advanced to them.~~

10A.45 Further or in the alternative to paragraph 10A.44 above, the Diligence Paper Findings were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by the Liberty House Group, Westford or other GFG ~~Alliance~~ members.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.44 above.

10A.46 In the circumstances described in paragraphs 10A.37 and 10A.40 above, the Greensill Investigation Memorandum was not capable of satisfying Lex Greensill, or a reasonable person in the position of Lex Greensill, that the Diligence Paper Findings did not need to be disclosed to Greg Brereton, BCC or IAL in compliance with Greensill's duty of disclosure under section 21 of the Insurance Contracts Act.

10A.47 The Credit Suisse Concerns and the Diligence Paper Findings were not disclosed to BCC, Greg Brereton or IAL before entry into any of the Relevant Policies and Endorsements negotiated or executed after November 2017 (the **Liberty Group Fraud Non-Disclosure**).

D SPECIFIC MISREPRESENTATIONS AND NON-DISCLOSURES

D1 LIBERTY TCUK

D1.1 Policy and Endorsements

10A.48 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Liberty MDR Treasury Company UK Ltd (**Liberty TCUK**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of:

a. Customer Endorsement No 54, dated 4 April 2019 and effective 22 February 2019;

b. Customer Endorsement No 54(i), dated 2 May 2019 and effective 22 February 2019; and

c. Customer Endorsement No 54(i) dated 16 April 2020 and effective 22 February 2019,

(**Liberty TCUK Endorsements**).

Particulars

~~Second~~Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~21 August 2024~~24 December 2025 at paragraph 132.

D1.1A Liberty TCUK Misrepresentations

Background

10A.48A On or around 25 May 2018, Lex Greensill attended a meeting with Greg Brereton in relation to a proposal for a new accounts receivable purchase programme for SSUK.

Particulars

Email from John Whelan to Greg Brereton dated 25 May 2018, copy to Lex Greensill, Brett Downes and others (AGB.0002.0007.0275).

10A.48B On or around 25 May 2018, John Whelan of GCUK provided documents to Greg Brereton relating to the new accounts receivable purchase programme proposal referred to in paragraph 10A.48A above (**Liberty TCUK Facility Proposal**). The documents included a draft of the Underlying Seller RPA and a draft of the Ultimate Buyer RPA (among other proposed transaction documents).

Particulars

Email from John Whelan to Greg Brereton dated 25 May 2018, copy to Lex Greensill, Brett Downes and others (AGB.0002.0007.0275), attaching the following documents:

a. a presentation slide deck describing the proposed programme, payment flows and 'true up' mechanism (AGB.0002.0007.0276);

b. draft deed of cross guarantee (AGB.0002.0007.0278);

c. draft Security Agreement between Liberty TCUK and GCUK (AGB.0002.0007.0279);

d. draft True Up Side Letter between Liberty TCUK, OneSteel Trading Pty Limited and GCUK (AGB.0002.0007.0280);

e. draft Ultimate Buyer RPA between GCUK (as 'Buyer'), Liberty TCUK (as 'Seller') and OneSteel Trading Pty Limited (as 'Parent') (AGB.0002.0007.0281);

f. draft Underlying Seller RPA between Liberty TCUK (as 'Buyer') and SSUK (as 'Seller' and 'Seller Representative') (AGB.0002.0007.0282); and

g. draft endorsements for insurance coverage in respect of the proposed facility (AGB.0002.0007.0283, AGB.0002.0007.0284, AGB.0002.0007.0285, AGB.0002.0007.0286, AGB.0002.0007.0287, AGB.0002.0007.0288).

10A.48C On or around 25 May 2018, John Whelan of GCUK emailed Greg Brereton to confirm that under the Liberty TCUK Facility Proposal, GCUK would need to place '*limits on the account debtors (for non-payment of the AR [accounts receivable]) and a contingent limit on Liberty [TCUK] (for non-payment in relation to its repurchase obligation…)*'.

Particulars

Email from John Whelan to Greg Brereton (copy to Lex Greensill, Brett Downes and others) dated 25 May 2018 (AGB.0002.0009.1190).

10A.48D In the premises of paragraphs 10A.48A and 10A.48C above, GCUK represented that the proposed Liberty TCUK facility (**Liberty TCUK Risk**) had the following general features:

a. an *'accounts receivable purchase programme'* for which there were account debtors from which SSUK would receive *'collections'*;

b. the structure of the facility would involve:

i. an underlying RPA [receivables purchase agreement], whereby SSUK would assign receivables to Liberty TCUK;

ii. a second RPA between Liberty TCUK and GCUK, whereby Liberty TCUK would assign the same receivables to GCUK;

c. the obligations of Liberty TCUK under its RPA would be guaranteed by *'Liberty OneSteel AUD entities, SSUK and OneSteel Trading Pty Limited*';

d. GCUK would *'take a floating charge over all the assets of Liberty [TCUK], including the Liberty [TCUK] accounts into which collections are paid by SSUK'*;

e. credit limits would be placed on account debtors for *'non-payment of the AR'* [accounts receivable]; and

f. contingent limits would be placed on Liberty TCUK for *'non-payment in relation to its repurchase obligation*' under the facilities.

Particulars

The BCC/TM Parties repeat the particulars at paragraph 104A.48A and 10A.48C above.

10A.48E At a time presently unknown to the BCC/TM Parties (but by no later than June 2018):

a. Sanjeev Gupta, purporting to act on behalf of each of Liberty TCUK and SSUK, signed a document styled a "Receivables Purchase Deed" and dated June 2018;

b. representatives of GCUK, Liberty TCUK and Liberty OneSteel signed a document styled a "Receivables Purchase Deed".

10A.48F The BCC/TM Parties otherwise repeat paragraphs 490 and 490A of its Defence in proceeding no. NSD169/2023 dated 31 July 2025.

10A.48G On or about 22 June 2018, GCUK (through its broker Marsh) requested that BCC extend cover in relation to the Liberty TCUK Risk. This request purported to be for insurance coverage under Policy TW-03137 and Policy TW-02924.

Particulars

Email from Ewan Berkemeier to Greg Brereton dated 22 June 2018, copy to Edward Smith and John Whelan (AGB.0002.0009.1308), and attaching copies of documents purporting to be endorsements under Policy TW-03137 and Policy TW-02924 (AGB.0002.0009.1309, AGB.0002.0009.1310, AGB.0002.0009.1311, AGB.0002.0009.1312, AGB.0002.0009.1313).

10A.48H On or around 22 June 2018, Greg Brereton provided GCUK (through its broker Marsh) with signed copies of endorsements purportedly issued under Policy TW-03137 and Policy TW-02924 in respect of the Liberty TCUK Risk.

10A.48I At a time presently unknown to the BCC/TM Parties:

a. Sanjeev Gupta, purporting to act on behalf of various entities and Sanjay Tohani purporting to act on behalf of Liberty Steel Newport Ltd and Liberty Merchant Bar Plc, signed a document styled a "Deed of Amendment and Restatement" and dated 29 August 2018 (CSA.0001.0006.8676).

10A.48J The BCC/TM Parties otherwise repeats paragraphs 491 and 498 of its Defence in proceeding no. NSD169/2023 dated 31 July 2025.

10A.48K On or around 3 April 2019, GCUK (through its broker Marsh) wrote to Greg Brereton with respect to updates to the Liberty TCUK facility (and to request that BCC extend coverage under the 2019 90/10 Master Policy and the 2019 90/10 Parallel Policy to the Liberty TCUK Risk).

Particulars

Email from Edward Smith (Senior Vice President) of Marsh to Greg Brereton, copying Ewan Berkemeier, Angus Ward, Alexandre Weiss Bueno and Paul William Nash of Marsh, dated 3 April 2019 (BCC.0001.0001.2534), attaching (amongst other documents) an unsigned copy of Customer Endorsement 54 purportedly issued under the 2019 90/10 Master Policy (BCC.0001.0001.2538) and the 2019 90/10 Parallel Policy (BCC.0001.0001.2541).

10A.48L On or around 4 April 2019, Greg Brereton provided GCUK (through its broker Marsh) with signed copies of Customer Endorsement No 54, purportedly issued under the 2019 90/10 Master Policy and the 2019 90/10 Parallel Policy in respect of Liberty TCUK.

Particulars

Email from Greg Brereton to Edward Smith, copying Ewan Berkemeier, Angus Ward, Alexandre Weiss Bueno and Paul William Nash of Marsh, dated 4 April 2019 (MAR.0004.0002.1486), attaching copies of Customer Endorsement No 54 purportedly issued under the 2019 90/10 Master Policy and the 2019 90/10 Parallel Policy (MAR.0004.0002.1487, pages 3 to 4 and 9 to 10).

10A.48M On or around 4 April 2019, Angus Ward of Marsh forwarded signed copies of Customer Endorsement No 54 to Sophie Dyke and Craig Pinnington of GCUK.

Particulars

Email from Angus Ward of Marsh to Sophie Dyke and Craig Pinnington of GCUK, copying Edward Smith, Paul William Nash and Alexandre Weiss Bueno of Marsh dated 4 April 2019 (GCU.0009.0008.4681), attaching copies of Customer Endorsement No 54 purportedly issued under the 2019 90/10 Master Policy (GCU.0009.0008.4685) and the 2019 90/10 Parallel Policy (GCU.0009.0008.4683).

10A.48N On or around 10 April 2019, GCUK wrote to Greg Brereton with respect to further updates to the Liberty TCUK Risk. Among other matters, in this email, GCUK described its intention for 'the cover for new assets to fall under policies TB-03690 and TB-03691'.

Particulars

Email from John Whelan to Greg Brereton and Craig Pinnington of GCUK, copying Edward Smith, Julian Macey-Dare, Angus Ward, Paul William Nash and

Alexandre Weiss Bueno of Marsh and Sophie Dyke of GCUK, dated 10 April 2019 (MAR.0004.0002.2399), attaching copies of unnumbered customer endorsements purportedly issued under the 2019 90/10 Master Policy (MAR.0004.0002.2402) and the 2019 90/10 Parallel Policy (MAR.0004.0002.2401).

10A.48O At a time presently unknown to the BCC/TM Parties, a representative of GCUK, Sanjeev Gupta, Sanjay Tohani and an unknown person (purporting to act on behalf of various entities) signed a document styled a "Deed of Amendment and Restatement" and dated 12 April 2019 (CSA.0001.0006.8634).

10A.48P The BCC/TM Parties otherwise repeat paragraphs 491 and 498 of its Defence in proceeding no. NSD169/2023 dated 31 July 2025.

10A.48Q On or around 2 May 2019, Greg Brereton provided GCUK with signed copies of unnumbered customer endorsements purportedly issued under the 2019 90/10 Master Policy and the 2019 90/10 Parallel Policy in respect of the Liberty TCUK Risk.

Particulars

Email from Brereton to Sophie Syke, John Whelan and Craig Pinnington of GCUK, copying Edward Smith, Julian Macey-Dare, Angus Ward, Paul William Nash and Alexandre Weiss Bueno of Marsh dated 2 May 2019 (BCC.0001.0002.3129), attaching copies of unnumbered customer endorsements purportedly issued under the 2019 90/10 Master Policy and the 2019 90/10 Parallel Policy (BCC.0001.0002.3130, pages 1 to 2 and 4 to 5).

10A.48R On or around 2 May 2019, GCUK (through its broker Marsh) provided a signed copy of Customer Endorsement No 54(i) purportedly issued under the 2019 90/10 Parallel Policy in respect of the Liberty TCUK facility to Greensill Bank.

Particulars

Email from Angus Ward to 'Danyon' ('scf@greensill-bank.com'), copying Edward Smith and Alexandre Weiss Bueno of Marsh dated 2 May 2019 (GBA.0004.0004.8642), attaching a copy of Customer Endorsement No 54(i) purportedly issued under the 2019 90/10 Parallel Policy (GBA.0004.0004.8644).

10A.48S On or around 15 April 2020, GCUK wrote to Brereton with respect to updates to the Liberty TCUK Risk.

Particulars

Email from John Whelan (Deputy General Counsel) of GCUK to ~~Greg~~ Brereton, Edward Smith of Marsh and Angus Ward of Marsh, copying Lex Greensill, Tom Kennedy (Assistant General Counsel) of GCUK and Henry Middleditch (Vice President) of GCUK dated 15 April 2020 (BCC.0001.0001.5960) attaching (amongst others things):

a. an unsigned Amended and Restated Receivables Purchase Deed between GCUK, Liberty TCUK and Liberty House (BCC.0001.0001.5968); and

b. unsigned copies of the Customer Endorsement No 54(i) in respect of Liberty TCUK under the 2019 90/10 Master Policy and the 2019 90/10 Parallel Policy (BCC.0001.0001.5964 and BCC.0001.0001.5965).

10A.48T On or around 16 April 2020, Brereton provided GCUK with signed copies of Customer Endorsement No 54(i), purportedly issued under the 2019 90/10 Master Policy and the 2019 90/10 Parallel Policy in respect of the Liberty TCUK Risk.

Particulars

Email from Brereton to John Whelan, copying Lex Greensill, Tom Kennedy and Henry Middleditch dated 16 April 2020 (AGB.0002.0002.3513), attaching copies of Customer Endorsement No 54(i) purportedly issued under the 2019 90/10 Master Policy and the 2019 90/10 Parallel Policy (AGB.0002.0002.3514, pages 1 to 3 and 10 to 12).

Liberty TCUK Future AR Facility Misrepresentation

10A.48U In the communications referred to in paragraphs 10A.48S and 10A.48T above, GCUK:

a. represented that the updates to the Liberty TCUK facility were to 'take future AR'; and

b. did not inform Brereton that the future accounts receivable facility between GCUK and Liberty TCUK operated, or was intended to operate, in a manner different from that conveyed by the Future Accounts Receivable Representation (defined in paragraph 10A.32 above), in that the facility did not have one or more of the characteristics conveyed by the representation.

10A.48V By reason of the matters pleaded in paragraphs pleaded in section C2 and paragraphs 10A.48S and 10A.48T above, GCUK represented to Brereton that the updated facility to Liberty TCUK would operate as follows:

a. GCUK would lend funds to Liberty TCUK against or in respect of future accounts receivable;

b. account debtors would be parties to existing sales contracts;

c. the amounts of future accounts receivable to be financed would be supported at the time of drawdown by existing inventory;

d. the seller's existing inventory would be independently valued or verified on a periodic basis,

(the **Liberty TCUK Future AR Facility Misrepresentation**).

10A.48W The Liberty TCUK Future AR Facility Misrepresentation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Representations were misleading

10A.48X The Liberty TCUK Future AR Facility Misrepresentation referred to in paragraph 10A.48V above was false and/or misleading because:

a. GCUK did not intend to, and did not, require that alleged account debtors under the Liberty TCUK Risk be parties to existing sales contracts with an Underlying Seller;

Particulars

Many if not all of the account debtors were not verified by GCUK or confirmed by audit to be existing customers of the Underlying Sellers or to have been existing customers of the Underlying Sellers pursuant to existing sales contracts with the relevant Underlying Sellers, as evidenced by:

a. Email from Brett Downes to Ricardo Oliveira of GCUK with the subject 'TCUK upload' dated 27 December 2018 (GCU.0009.0006.7025), in which Brett Downes stated:

> *I think when the AR Programme split is going to happen we need to really be careful and do a deep-dive into the TCUK programme as its full of rubbish. […] They do absolutely minimal credit checks as a company […].*

b. Email from Craig Pinnington of GCUK to Brett Downes with the subject line 'TCUK' dated 15 January 2019 (GCU.0009.0006.9546). In response to an update from Brett Downes that '*Lex [Greensill] caught me last night and asked for an additional three commodity names to go into TCUK AR*', Craig Pinnington responded:

> *I don't like them either. I'm concerned that they may not even exist in some cases, lots of non-financial red flags on the names before and the three that Wilson had sent over earlier- Director*

changes, original and second set of director left, random and large share capital changes.

c. Email chain dated 29 April 2020 between (among others) Henry Middleditch, Craig Pinnington, Johanna Roberts, Tom Kennedy and Lex Greensill (GCU.0007.0003.0837) concerning a 'TCUK Letter for CS' in which:

Craig Pinnington writes in an email at 11.30am: '*Are we happy with the phrase in the centre of the document "As part of the TCUK Facility's eligibility criteria, there must be contracts in place between the Underlying Sellers and the debtors or else indemnification is required". It seems to invite questions*';

Johanna Roberts responds via email at 11.43am: '*I doubt we have seen any, Craig?*';

Craig Pinnington replies at 12.00pm, as follows:

Jo, I think you looked at Chevron recently as an exceptional case, and we did discuss some of their contracts with JLR and auto suppliers in the onboarding process for LAT and LPS, but didn't strictly review any wording in the contracts.

We did contract reviews on the Liberty Primary Future receivable program but that was only 9 account debtors so it was physically doable.

Johanna Roberts responds via email at 12.32pm:

Ah yes, actually it was only individual purchase orders I reviewed. The sheer number of debtors on TCUK would preclude a full review, but we could cherry pick some of the larger ones.

b. GCUK did not intend to, and did not, require that the amounts of future accounts receivable financed under the Liberty TCUK facility be supported at the time of drawdown by existing inventory valued on a monthly basis by a third party independent valuer;

Particulars

No Valuation Reports in respect of any of the alleged debts in Table 9.1 of Annexure P to the SOC have been provided to the Insurer despite requests.

None of the alleged debts in Table 9.1 of Annexure P to the SOC became the subject of an actual account receivable owing by an Account Debtor.

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

a. Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [32]);

b. in the first quarter of 2020, Sanjeev Gupta requested, and Lex Greensill provided, confirmation that the financing provided to his companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice (Third Witness Statement Sanjeev Gupta in Case No. CR-2021- 000622 before the UK Insolvency and Companies Court [35]-[36]);

c. in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [49]).

Further particulars may be provided after completion of discovery by GCUK.

c. In the premises of subparagraphs a to b, GCUK did not intend to, and did not, provide a facility to Liberty TCUK having the characteristics referred to in paragraph 10A.48V.

Knowledge of falsity of representations

10A.48Y Lex Greensill knew each of the matters set out in paragraph 10A.48X above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.48X above.

The knowledge of Lex Greensill is to be inferred from his involvement in GCUK's dealings with Liberty TCUK, and from his direct involvement in correspondence with BCC associated with the Liberty TCUK Risk, as demonstrated by:

a. the April 2020 Liberty TCUK Credit Application (GCU.0005.0025.3962), which:

i. identifies Lex Greensill as part of the 'Facility Team' in respect of the application (page 1);

ii. notes that 'GFG is amongst Greensill's largest exposures, if not its largest' and that '[t]here is a very strong relationship between the two firms and open and constant communication, in particular between Lex and Sanjeev (GFG Executive Chairman' (page 14);

b. the Minutes of the GCUK Credit Committee Meeting held on or about 15 April 2020, during which the application was considered and approved (GCU.0014.0001.8949) and which note, among other matters, that Lex Greensill '*asked for this restructure*' (page 2);

c. the particulars to paragraphs 10A.48S and 10A.48T above, which evidence Lex Greensill's involvement in the request for cover in respect of the Liberty TCUK Risk; and

d. the fact that the matters set out in paragraph 10A.48X above occurred from the time that cover was issued and was a practice that occurred in other financing provided by Greensill to GFG companies, including the SSUK Risk (and in that respect, the BCC/TM Parties refer to paragraphs 10A.78 and 10A.79 below).

The knowledge of Lex Greensill of the arrangements between GCUK and Liberty TCUK is also to be inferred from the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

a. a relationship with Lex Greensill *'built upon a degree of interdependence'* [28];

b. that *'the GFG Alliance became a valuable client of GCUK, if not its most valuable client'* [28];

c. that both Sanjeev Gupta and Lex Greensill *'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions'* [30]; and

d. that Sanjeev Gupta's relationship with Lex Greensill was one in which *'the essentials of our arrangements […] were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]'* [31].

10A.48Z The knowledge of Lex Greensill of each of the matters set out in paragraph 10A.48Y above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.48AA The knowledge of Lex Greensill of the matters set out in 10A.48Y above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

10A.48BB Further and in the alternative to paragraph 10A.48Y above:

a. William Roland Hartley-Urquhart (Vice Chairman of the Greensill Group) and Brett Downes (Chief Risk Officer) of GCUK knew the matters set out in 10A.4X above; and

Particulars

The BCC/TM Parties refer to the particulars at 10A.48Y above.

The knowledge of William Roland Hartley-Urquhart is to be inferred from his involvement in the Greensill Credit Committee (as set out in paragraph [10(c)] above) and specifically his participation in the Greensill Credit Committee meeting held on or about 14 April 2020 during which the credit application to amend the Liberty TCUK Risk to include future accounts receivables was approved (GCU.0014.0001.8949).

The knowledge of Brett Downes is to be inferred from:

a. his involvement in dealings with Liberty TCUK and other risks involving the Liberty Group (namely the SSUK Risk and the Liberty House Risk); and

b. his participation in the Greensill Credit Committee meeting held on or about 15 April 2020 and his comments in respect of the Liberty TCUK Risk, as recorded in the minutes of that meeting (GCU.0014.0001.8949)

b. Brett Downes (Chief Risk Officer), Henry Middleditch and Craig Pinnington (Senior Credit Analyst) of GCUK knew the matters set out in paragraph 10A.48X above.

Particulars

The BCC/TM Parties repeat the particulars to paragraphs 10A.48X above.

10A.48CC The knowledge of the abovementioned officers and employees of GCUK of each of the matters identified in paragraph 10A.48BB above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars at paragraph 10A.26A and 10A.26B above.

10A.48DD The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraph 10A.48BB above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars at paragraph 10A.22A and 10A.22B above.

Knowledge of materiality of representations

10A.48EE Each of the matters referred to in paragraphs 10A.48U and 10A.48V above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK facility, including the decision to enter into each of the Liberty TCUK Endorsements;

b. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

c. alternatively to subparagraphs (a) and (b), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

10A.48FF Each of the matters referred to in paragraph 10A.48X above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover

in respect of the Liberty TCUK Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

10A.48GG The knowledge of Lex Greensill of each of the matters set out in paragraphs 10A.48EE and 10A.48FF above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.48HH The knowledge of Lex Greensill of the matters set out in paragraphs 10A.48EE and 10A.48FF above is to be attributed to GCPL

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

10A.48II Further and in the alternative to paragraph 10A.48EE above, each of the matters referred to in paragraphs 10A.48U and 10A.48V above was a matter:

a. which other officers or employees of GCUK – comprising Brett Downes (Chief Risk Officer), Henry Middleditch and Craig Pinnington (Senior Credit Analyst) – knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

b. alternatively to subparagraph (a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

10A.48JJ Further and in the alternative to paragraph 10A.48FF above, each of the matters referred to in paragraph 10A.48X above was a matter:

a. which other officers or employees of GCUK – comprising William Roland Hartley-Urquhart (Vice Chairman of the Greensill Group) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

b. alternatively to subparagraph (a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

10A.48KK The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraphs 10A.48II and 10A.48JJ above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars at paragraph 10A.26A and 10A.26B above.

10A.48LL The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraphs 10A.48II and 10A.48JJ above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars at paragraph 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

10A.48MM In the premises of paragraphs 10A.48U to 10A.48W, 10A.48X, 10A.48Y, 10A.48Z, 10A.48AA, 10A.48BB to 10A.48DD, 10A.48FF to 10A.48HH, 10A.48JJ to 10A.48LL above:

a. Greensill misrepresented the risk presented by the Liberty TCUK Risk;

b. the Liberty TCUK Future AR Facility Misrepresentation was knowingly false and fraudulent;

c. the misrepresentation was known by Greensill to be material to the decision whether to renew insurance cover in respect of the Liberty TCUK Risk; and

d. if Greensill had not made the Liberty TCUK Future AR Facility Misrepresentation, insurance cover would not have been issued in respect of the Liberty TCUK Risk at all, or, in the alternative, on the same terms in which it purportedly was written.

10A.48NN If Greensill had not made the Liberty TCUK Future AR Facility Misrepresentation, insurance cover would not have been issued in respect of the Liberty TCUK Risk at all, or, in the alternative, on the same terms in which it purportedly was written.

10A.48OO By reason of the matters pleaded in paragraphs 10A.48MM and 10A.48NN above, IAL is entitled to avoid the Liberty TCUK Endorsements.

Innocent Misrepresentation

10A.48PP In the alternative to the matters pleaded in paragraphs 10A.48MM to 10A.48OO above, by reason of the matters pleaded in paragraphs 10A.48EE, 10A.48FF and 10A.48NN above, IAL is entitled to reduce its liability under the Liberty TCUK Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the Commodity Traders Misrepresentation and the Liberty TCUK Future AR Facility Misrepresentations had not occurred).

D1.2 Liberty TCUK Non-Disclosures

~~*Knowledge of material underlying non-disclosures*~~

10A.49. [Not used] ~~On or around 15 April 2020, GCUK wrote to Greg Brereton with respect to updates to the Liberty TCUK facility (**Liberty TCUK Risk**).~~

~~**Particulars**~~

~~Email from John Whelan (Deputy General Counsel) of GCUK to Greg Brereton, Edward Smith of Marsh and Angus Ward of Marsh, copying Lex Greensill, Tom Kennedy (Assistant General Counsel) of GCUK and Henry Middleditch (Vice President) of GCUK dated 15 April 2020 (BCC.0001.0001.5960) attaching (amongst others things):~~

~~e. an unsigned Amended and Restated Receivables Purchase Deed between GCUK, Liberty TCUK and Liberty House (BCC.0001.0001.5968); and~~

~~f. unsigned copies of the Customer Endorsement No 54(i) in respect of Liberty TCUK under the 2019 90/10 Master Policy (TB-03691) and the 2019 90/10 Parallel Policy (BCC.0001.0001.5964 and BCC.0001.0001.5965).~~

10A.50. [Not used]. ~~On or around 16 April 2020, Greg Brereton provided GCUK with signed copies of Customer Endorsement No 54(i), purportedly issued under the 2019 90/10 Master Policy (TB-03691) and the 2019 90/10 Parallel Policy in respect of the Liberty TCUK Risk.~~

~~**Particulars**~~

~~Email from Greg Brereton to John Whelan, copying Lex Greensill, Tom Kennedy and Henry Middleditch dated 16 April 2020 (AGB.0002.0002.3513), attaching copies of Customer Endorsement No 54(i) purportedly issued under the 2019 90/10 Master Policy (TB-03691) and the 2019 90/10 Parallel Policy (AGB.0002.0002.3514, pages 1 to 3 and 10 to 12).~~

Knowledge of underlying matters

10A.51. At the time of requesting insurance cover for the Liberty TCUK Risk, including on each occasion that GCUK provided a draft Customer Endorsement to Brereton with a view to that endorsement being accepted and signed by Brereton on behalf of BCC, Lex Greensill knew:

a. The GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 10A.33G.

b. the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group (of which Liberty TCUK was affiliated) and Sanjeev Gupta (who was personal Guarantor of the Liberty TCUK facility risk) in prior dishonest and fraudulent conduct.

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're: Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

Personal Guarantee of Sanjeev Gupta dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

c. The facility was or would be used, in part, to service the GFG Alliance's intercompany loans and other intercompany transactions to manage repayment of other facilities;

Particulars

The GCUK Credit Application Report submitted to the Greensill Credit Committee on 11 March 2019 (GCU.0005.0007.3686) states that:

'*The funds will be used for working capital within LHG [Liberty House Group] as well as being distributed via intercompany loans to other GFG alliance entities*' (page 17); and

'*The client has confirmed funds will be used for […] intercompany transactions (there is a lot of cross selling amongst the GFG alliance and hence these AP will be paid more quickly through using the funds derived from this new facility)*' (page 17).

GCUK Credit Application submitted to the Greensill Credit Committee on 28 March 2019 (GCU.0005.0008.2205, page 16).

Email exchange between Henry Middleditch, Lex Greensill, Patrick Davis and other GCUK personnel with the subject 'RE: KLL, LRB, Lochaber Maturity Repayment using TCUK proceeds' dated 17 January 2019 (GCU.0004.0022.9484).

d. Liberty TCUK, and the GFG Alliance, did not have the capacity to repay the Liberty TCUK facility, such that GCUK would regularly roll maturities on the Liberty TCUK facility and exercise a 'top up' process to hold the maturities on GCUK's balance sheet;

Particulars

In March 2019, Lex Greensill was alerted to increasing late payments by Liberty, with the result that GCUK was required to 'bridge USD 12.5mm under the TCUK facility' (GCU.0004.0024.6470).

The practice of rolling maturities and exercising a 'top up' process to cover Liberty TCUK's maturity payments under the Liberty TCUK facility from GCUK's balance sheet is evidenced from the following documents:

a. Document titled 'Late Payments Top Up Process' dated February 2019 (GCU.0004.0024.6061). The 'OneSteel TCUK Multi Obligor Program 2018' is listed in the 'Escalation Obligor List' at Appendix i (page 6).

b. Email from Lex Greensill to Patrick Davis, copy to Henry Middleditch and others, dated 15 February 2019, with the subject 'TCUK Trade 21 Feb' (GCU.0004.0023.8310)

c. Email from Lex Greensill to Brett Downes, with the subject 'Liberty Trade Updates' dated 25 March 2019 (GCU.0004.0025.0696). As shown in the underlying email chain;

    i. On or around 25 March 2019, Lex Greensill approved a request to roll insurance for three commodity traders, 'Sterling' [Sterling Resources International Ltd], 'VS International' [VS International UK Ltd] and 'AIC' [AIC Commodities GmbH] 'to go to CS' [Credit Suisse] and for 'Greensill […] [to] bridge off our balance sheet'.

    ii. In response, on or around 25 March 2019, Brett Downes sent an email Lex Greensill and stated: '*We did not discuss bridging. I am not keen on that. These names will never get repaid now, so we need to hold this amount from any drawdown from SSUK. It is getting too complicated managing this name now*.'

    iii. On or around 25 March 2019, Lex Greensill replied: '*I am not keen either, Brett. This ensures nothing breaks, sir*.'

d. Email from Lex Greensill to Henry Middleditch dated 16 April 2019 with the subject 'OneSteel TCUK', approving a top-up of GBP 16.5 million and EUR 160,968.08 (GCU.0005.0009.2393).

e. Email from Henry Middleditch to Al Eadie and 'Support Ops UK' team of GCUK, copying Lex Greensill, with the subject 'TCUK Maturity Cover' dated 9 July 2019 (GCU.0004.0027.7058). The request was approved by Lex Greensill be reply email dated 9 July 2019 (GCU.0004.0027.7059).

f. Email from Lex Greensill to Al Eadie, Henry Middleditch and Greensill Payments Team, with the subject 'TCUK Maturity Cover (Tuesday)' dated 14 January 2020 (GCU.0005.0021.4517), approving GCUK to cover EUR 11.2 million equivalent cover in respect of the Liberty TCUK facility.

g. Email from Henry Middleditch to Lex Greensill, copying (among others) Brett Downes, with the subject 'GFG Maturity Cover Request W/C 6th April' dated

6 April 2020 (GCU.0005.0025.0368), requesting approval for GCUK to cover GBP 10 million for Liberty TCUK maturities due on 7 April 2020.

h. GCUK had a practice of permitting Liberty TCUK to draw on the Liberty TCUK facility in order to cover payment obligations without TCUK in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to TCUK. This practice is evident from the documents identified immediately above in the particulars to this paragraph 10A.51, and is further pleaded at Section C.2 of Annexure B to this defence.

e. the matters set out at in section C2 and paragraph 10A.48X.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.48Y above.

10A.51A. At the time of requesting the amendment to cover for the Liberty TCUK Risk to allow for future account receivables in April 2020, Lex Greensill knew:

a. the matters set out in paragraph 10A.51;

b. that the GFG Liquidity Issues had still not been resolved and had in fact worsened;

c. that Liberty TCUK had failed to disclose up-to-date financial information to GCUK, and GCUK was therefore unable to accurately assess the financial position of Liberty TCUK and GFG;

Particulars

April 2020 Greensill Credit Committee Meeting Minutes (GCU.0014.0001.8949). Lex Greensill is recorded as attending and participating in the meeting.

The meeting minutes record the following comments:

a. '*HM [Henry Middleditch] also confirmed that financial forecasting for the company is difficult at present. Financials are a sticking point, we are pushing hard for these. However, there is nothing available to us other than AFS [audited financial statements] from March 2019*'.

b. *'BD [Brett Downes] is concerned about restructuring the facility when we are totally unaware if they have any capacity to repay us, or even if they are insolvent, if the management have no idea about where they stand with cashflow or financials*'.

c. *'BD [Brett Downes] was concerned that we have no evidence that this group of companies makes any money or can repay anything. Whilst FR [future receivables] makes sense, all we are doing is 'moving deckchairs' instead of sitting down with the companies, acknowledging no financials or plans, they owe us a large amount of money, and working out a way to move forward rather than re-cut the facility'.*

Lex Greensill's knowledge can further be inferred from the following:

A. Email from Henry Middleditch to Al Eadie copying Lex Greensill dated 13 January 2020 subject line "TCUK Maturity Cover (Tuesday)" [GCU.0005.0021.4518] which states: "As a heads up, TCUK may need EUR 11.2mm equiv [sic] cover tomorrow. Will have a clearer picture mid-morning tomorrow but wanted to give plenty of warning" and Lex Greensill responds "Approved".

B. Email from Valerie Kirkaldy to various Greensill teams copying Lex Greensill dated 14 January 2020 subject line "TCUK Maturity Cover (Tuesday)" [GCU.0005.0021.4646] which states: "As per the below, Greensill will need to cover the maturity payments due today for TCUK and retain the proceeds to cover this payment from the new trade on Friday".

C. Email from Valerie Kirkaldy to Lex Greensill dated 9 March 2020 subject line "request to cover MDR Maturity payment" [GCU.0006.0001.4626] which states: "We have received the below request from Liberty, asking if GC can cover the TCUK maturities due tomorrow…This would need to stay on our Balance Sheet until Friday, when their new trade will be processed and we can retain the proceeds from this" and Lex Greensill responds "Approved".

D. Email from Henry Middleditch to Lex Greensill dated 3 April 2020 subject line "RE: GFG SSUK and TCUK upcoming maturities" [GCU.0005.0024.9588] which states: "GFG are going to need maturity support next week on TCUK and SSUK FR. Don't quite have final numbers, but I expect to be: * TCUK - GC to cover the full c.£20 owed on Tuesday, get back c.£5 on Thursday from new trade and the remainder once converted to FR (funding date: ~13th April). Will aim to keep initial cover to a minimum" and Lex Greensill responds "I am supportive, Henry."

d. the purpose of the conversion of the Liberty TCUK facility to a future accounts receivable facility was to support GFG to address the GFG Liquidity Issues in circumstances where GCUK had a very large exposure to companies in GFG, and a corresponding exposure to investors who had acquired interests in the payment of those debts;

Particulars

Email from Brett Downes to Andrew Kuyk and Divya Eapen dated 14 April 2020 subject line "TCUK -0 Were you aware" (GCU.0009.0014.7288), reporting on a call with Henry Middleditch. Mr Downes states "*Just to make it even more spicy, the funds are being used to fund Liberty Lochaber, KLL, and some other deal we have where we have transferred the risk to third parties (probably LRB) because the company cannot pay*".

The April 2020 Greensill Credit Committee Meeting Minutes (GCU.0014.0001.8949) record that:

a. *'Lex's plan is to move away from funding the GFG businesses on our core balance sheets (GB and CS) that are bringing greater stress to those. He feels that choices are limited, we either move to FR [future receivables], or we are filing for administration*' (page 2);

b. *'Only if we can keep Liberty stable, immediately recognising as discussed previously that GFG is all on watchlist, and we will work closely with them to get them through this period. No good to say no or even delay the process for actioning this, a strong request for credit committee's support'* (page 3);

c. *'He [Lex] discussed situation [sic] with Sanjeev Gupta 3 weeks ago and confirmed they do not have the liquidity to be able to have the facility amortise as it would as they do not have eligible receivables to put into the facility*' (page 2); and

d. comments from Andrew Kuyk, in response to a suggestion from Brett Downes that rather than transition to a future receivables facility Greensill should instead look to freeze the facility, that: '*a 'standstill' may trigger reporting requirement [sic] eg Infrabuild bond documentation, and whilst this would be the normal course of action with a distressed business it cannot be so with Liberty*' (page 3).

Further particulars may be provided after completion of discovery by GCUK.

e. that GCUK proposed to restructure the Liberty TCUK facility as a future accounts receivable facility, rather than putting the existing GFG facilities on standstill, to circumvent restrictions on insurance coverage known to GCUK, namely that Brereton 'doesn't insure loans'.

Particulars

The April 2020 Greensill Credit Committee Meeting Minutes (GCU.0014.0001.8949) record that *'Lex confirmed that in addition to AK's [Andrew Kuyk's] and DE's [Divya Eapen's] points that insurance won't work if we*

have it if we freeze the facilities. BD [Brett Downes] challenged, but Lex countered that Greg doesn't insure loans, which is what a standstill would make it' (page 3).

Further particulars may be provided after completion of discovery by GCUK.

10A.52. The knowledge of Lex Greensill of each of the matters in paragraphs 10A.51 and 10A.51A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10.26A and ~~10A.26~~ 10A.26B above.

10A.53. The knowledge of Lex Greensill of each of the matters in paragraphs 10A.51 and 10A.51A 0 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and ~~10A.22~~10A.22B above.

10A.53A. Further or in the alternative to paragraph 10A.51 above, Danyon Lloyd knew the matters set out in paragraphs 10A.51(a), 10A.51(c) and 10A.51(d) and the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

a) His position within the Greensill Credit Committee;

b) The document titled “Credit Application Report – Amendment – Liberty MDR Treasury Company UK LTD – 223651297” dated 11 March 2019 (GCU.0005.0007.5610) which was sent to the Greensill Credit Committee on or around the same date (GCU.0005.0007.5606);

c) The BCC/TM Parties refer to the particulars at paragraph 10A.51(c)above;

d) Email from Tariq Akrouk to Danyon Lloyd dated 20 March 2019 (GCU.0009.0008.0867) attaching a spreadsheet of Liberty assets with all programs on a daily basis (GCU.0005.0007.7833). Henry Middleditch replies, stating that "*TCUK is 140mm usd expected to roll but perhaps assumed 150mm for any surprises*".

e) The emails particularised at paragraph 10A.33J.

10A.53B. The knowledge of Danyon Lloyd of the matters in paragraphs 10A.51(a), 10A.51(c) and 10A.51(d) above and the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.25A above.

10A.53C. Further or in the alternative to paragraphs 10A.51 to 10A.51A, at the time of requesting cover for the Liberty TCUK Risk, William Roland Hartley-Urquhart (Vice Chairman of the Greensill Group), Brett Downes (Chief Risk Officer), Henry Middleditch and Craig Pinnington (Senior Credit Analyst) of GCUK variously knew each of the matters set out in paragraphs 10A.51(c) and/or 10A.51(d) and/or 10A.51A above.

Particulars

The BCC/TM Parties refer to the particulars to subparagraphs 10A.51(c) and 10A.51(d)above.

10A.53D. The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraph 10A.53C above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

10A.53E. The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraph 10A.53C above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph 10A.22A and 10A.22B above.

Knowledge of materiality

10A.54. Each of the matters referred to in paragraphs 10A.51 and 10A.51A above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and thus upon the Liberty TCUK Risk.~~

10A.55 Further or in the alternative to 10A.54 above, each of the matters referred to in paragraphs 10A.51 and 10A.51A above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Liberty TCUK Risk.

Particulars

The BCC/TM Parties refer to the particulars in 10A.54 above.

10A.56 The knowledge of Lex Greensill of the each of the matters set out in paragraphs 10A.54 and 10A.55 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and ~~10A.26~~10A.26B above.

10A.57 The knowledge of Lex Greensill of each of the matters set out in paragraphs 10A.54 and 10A.55 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

10A.57A. Further or in the alternative to paragraph 10A.54 above, each of the matters referred to in paragraphs 10A.51(c) and/or 10A.51(d) and/or 10A.51A above was a matter:

a. which William Roland Hartley-Urquhart (Vice Chairman of the Greensill Group), Brett Downes (Chief Risk Officer), Henry Middleditch and Craig Pinnington (Senior Credit Analyst) of GCUK variously knew was relevant to the decision to extend insurance cover in respect of the Liberty TCUK Risk and, if so, on what terms; or

b. alternatively to subparagraph (a), in respect of which Roland Hartley-Urquhart, Brett Downes, Henry Middleditch and Craig Pinnington were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Roland Hartley-Urquhart, Brett Downes, Henry Middleditch and Craig Pinnington is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill and as the non-disclosures bore directly on the risk of Liberty TCUK being unable to repay the amounts advanced to it and thus upon the nature of the Liberty TCUK Risk.

10A.57B. Further or in the alternative to paragraph 10A.57A above, each of the matters referred to in paragraphs 10A.51 and 10A.51A above was a matter which a reasonable person in the position of the abovementioned officers and employees of GCUK could be expected to know was relevant to the decision to extend insurance cover in respect of the Liberty TCUK Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.57A above.

10A.57C. The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraphs 10A.57A and 10A.57B above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

10A.57D. The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraphs 10A.57A and 10A.57B above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.57E. Further or in the alternative to paragraphs 10A.54, 10A.57A and 10A.57B above, the matters referred to in subparagraphs 10A.51(a), 10A.51(c) and 10A.51(d) above were matters:

a. which Danyon Lloyd knew were relevant to the decision to accept the Liberty TCUK Risk

and, if so, on what terms; or

b. alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

a. a person with substantial commercial experience in dealing with credit risks in the finance industry;

b. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

c. a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs [11] and [12(a)(ii)] above); and

d. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Liberty TCUK Risk.

10A.57F. Further or in the alternative to paragraph 10A.57E above, each of the matters referred to in subparagraphs 10A.51(a), 10A.51(c) and 10A.51(d) above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were relevant to the decision to extend insurance cover in respect of the Liberty TCUK Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.57E above.

10A.57G. The knowledge of Danyon Lloyd of the matters in paragraphs 64A and 64B above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A above.

Breach of duty of disclosure

10A.58 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 10A.51 and 10A.51A above before the cover was placed for the Liberty TCUK Risk.

10A.59 Greensill's failure to disclose the matters referred to in paragraphs 10A.51 and 10A.51A above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs ~~10A.52~~ 10A.51 to 10A.57G above.

Fraudulent non-disclosure

10A.60 By reason of the matters pleaded in paragraphs 10A.54, 10A.56, ~~and~~ 10A.57 and 10A.57C to 10A.57G above, Greensill's failure to disclose the matters referred to in paragraphs 10A.51 and 10A.51A above was fraudulent.

10A.61 The cover for the Liberty TCUK Risk would not have been issued if the matters referred to in paragraphs 10A.51 and 10A.51A above had been disclosed.

10A.62 In the alternative to the allegation in paragraph 10A.61 above, the cover for the Liberty TCUK Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 10A.51 and 10A.51A above had been disclosed.

10A.63 By reason of the matters pleaded in paragraphs 10A.60 to 10A.62 above, IAL is entitled to avoid the Liberty TCUK Endorsement.

Innocent non-disclosure

10A.64 In the alternative to the matters pleaded in paragraphs 10A.60 to 10A.63 above, and by reason of the matters pleaded in paragraphs 10A.58, 10A.59, 10A.61 and 10A.62 above, IAL is entitled to reduce its liability under the Liberty TCUK Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D2 SSUK

D2.1 Policy and Endorsements

10A.65 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Speciality Steel UK Limited (**SSUK**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of an unnumbered endorsement dated 10 June 2019 and effective 22 February 2019 (**SSUK Endorsement**).

Particulars

~~Second~~ Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~21 August 2024~~14 April 2025 at paragraph 137.

D2.2 SSUK Misrepresentations

SSUK Future AR Facility Representations

10A.65A On or around ~~8~~2 April 2019, ~~GCUK wrote~~Craig Pinnington sent an email to Greg Brereton with respect to cover for SSUK (**SSUK Risk**)~~.~~, attaching a spreadsheet with the title 'SSUK Future receivables request'. In that email, Craig Pinnington explained that the attached spreadsheet identified 'account debtors' and 'proposed limits' for each account debtor in connection with the SSUK Risk, and that '[w]e have reviewed the credit of these companies and their groups, and the limit proposed is the lower of the credit line or the expected sales during the year.'

Particulars

Email from Craig Pinnington (Senior Credit Analyst) of GCUK to Greg Brereton ~~and Edward Smith of Marsh~~, copying Brett Downes (Chief Risk Officer~~) of GCUK, John Whelan (Deputy General Counsel~~) of GCUK and Sophie Dyke (Insurance Analyst) of GCUK with subject 'SSUK Future receivables account debtors', dated ~~8~~2 April 2019 (~~AGB.0002.0001.1364~~BCC.0001.0001.2524), attaching a spreadsheet titled 'SSUK Future receivables ~~request08-04-2019~~request.xlsx' (~~AGB.0002.0001.1365~~BCC.0001.0001.2525).

10A.66 On or around 8 April 2019, Craig Pinnington sent a further email to Greg Brereton with respect to cover for the SSUK Risk~~ GCUK wrote to Greg Brereton with respect to cover for SSUK (SSUK Risk)~~.

Particulars

Email from Craig Pinnington to Greg Brereton and Edward Smith of Marsh, copying Brett Downes , John Whelan and Sophie Dyke with subject 'SSUK Future receivables request' dated 8 April 2019 (AGB.0002.0001.1364), attaching a spreadsheet titled 'SSUK Future receivables request08-04-2019.xlsx' (AGB.0002.0001.1365).

10A.67 The email containing that request in paragraph 10A.66 was subsequently forwarded to Lex Greensill.

Particulars

Email from Craig Pinnington to Brett Downes and Lex Greensill, copying Greg Brereton, John Whelan, Sophie Dyke and Patrick Davis (Project Manager) of GCUK, with subject 'FW: SSUK Future receivables insurance request', dated 8 April 2019 (BCC.0001.0001.2562 and BCC.0001.0001.2653).

10A.68 On or around 8 April 2019, as a further ~~forward~~ email to the email referred to in paragraph 10A.67 above, GCUK sent an email to Greg Brereton, attaching unsigned customer endorsements with respect to the SSUK Risk under the 2019 90/10 Master Policy ~~(TB-03691)~~ and the 2019 90/10 Parallel Policy.

Particulars

Email from John Whelan to Greg Brereton, copying Sophie Dyke, Patrick Davis, Craig Pinnington, Brett Downes, Lex Greensill and Edward Smith, with the subject 'Re: SSUK Future receivables insurance request', dated 8 April 2019 (AGB.0002.0001.1366), attaching unsigned Customer Endorsements in respect of SSUK under the 2019 90/10 Master Policy ~~(TB-03691)~~ and the 2019 90/10 Parallel Policy (AGB.0002.0001.1367, AGB.0002.0001.1368, AGB.0002.0001.1369 and AGB.0002.0001.1370).

10A.69 In the communications referred to in paragraphs ~~10A.66~~ 10A.65A to 10A.68 above, GCUK:

a. described the proposal as a 'receivables program' for which there were 'account debtors';

b. described the 'borrowing base' as comprising 'PPE, Stocks and AR'; and

c. stated that GCUK intended that the facility would:

i. concern 'approved account debtors', a list of which was said to be attached;

ii. be 'secured against all assets';

iii. be '[c]apped by sum of maximum lines against approved account debtors'; and

iv. include 'the usual seller endorsements under each of GC's and GB's policy'; and

d. did not inform Greg Brereton that the future accounts receivable facility between GCUK and SSUK operated, or was intended to operate, in a manner different from that conveyed by the Future Accounts Receivable Representation (defined in paragraph 10A.32 above).

Particulars

The BCC/TM Parties refer to the particulars in paragraphs ~~10A.66~~ 10A.65A to ~~and~~ 10A.68 above.

10A.70 By reason of the matters pleaded in paragraphs 10A.32 and ~~10A.66~~ 10A.65A to 10A.69 above, GCUK represented that GCUK intended to provide a facility to SSUK under which:

a. GCUK would lend funds to SSUK against or in respect of future accounts receivable;

b. account debtors would be parties to existing sales contracts;

c. the amounts of future accounts receivable to be financed would be supported at the time of drawdown by existing inventory; and

d. the seller's existing inventory would be independently valued or verified on a periodic basis,

(**SSUK Future AR Facility Misrepresentation**).

10A.71 The SSUK Future AR Facility Misrepresentation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.22A, 10A.22B, 10A.26A, 10A.26B and 10A.3 above.

SSUK Purpose representation

10A.71A. By reason of the matters pleaded in paragraphs 10A.65A to 10A.69 above, GCUK represented that GCUK intended to provide a facility to SSUK under which GCUK would lend funds to SSUK to finance trade between SSUK and its customers or account debtors (**SSUK Purpose Misrepresentation**).

10A.71B. The SSUK Purpose Misrepresentation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.22A, 10A.22B, 10A.26A, 10A.26B and 10A.3 above.

SSUK Account Debtor representations

10A.72 On or around 9 April 2019, Greg Brereton was presented with spreadsheets and/or emails from GCUK and/or Marsh, acting on behalf of GCPL and Greensill Bank (and GCUK to the extent that a corresponding customer endorsement was being proposed for the 2019 90/10 Master Policy)

identifying proposed account debtors, with a view to such proposed account debtors being agreed by Greg Brereton on behalf of BCC as authorised representative of IAL.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.66 above.

Email from Craig Pinnington to Greg Brereton and Edward Smith, copying Brett Downes, John Whelan and Sophie Dyke, with subject 'RE: SSUK Future receivables request' dated 9 April 2019 (BCC.0001.0002.2978).

10A.73 The emails referred to in paragraph 10A.72 above were subsequently forwarded or sent to Lex Greensill.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.67 above.

Emails between Greg Brereton and Lex Greensill dated 9 April 2019, copying Craig Pinnington, Brett Downes, John Whelan, Sophie Dyke, Edward Smith and Julian Macey-Dare of Marsh, with subject 'Re: SSUK Future receivables request' dated 9 April 2019 (BCC.0001.0002.2988).

10A.74 Each such submission of a proposed account debtor as pleaded in paragraph 10A.72 above constituted a representation by GCUK that each account debtor it proposed (referred to in the spreadsheet and/or email, as applicable) was either a customer of SSUK, or was an entity that GCUK intended to require to become, and would become, a customer of SSUK (the **SSUK Account Debtor Representations**).

10A.75 The SSUK Account Debtor Representations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.22A, 10A.22B, 10A.26A, 10A.26B and 10A.3 above.

10A.76 On or around 7 June 2019, Marsh emailed Greg Brereton, attaching proposed customer endorsements in respect of the SSUK Risk.

Particulars

Email from Ewan Berkemeier of Marsh to Greg Brereton, copying Angus Ward of Marsh, Alexandre Weiss Bueno of Marsh and Edward Smith, with subject 'Greensill pending open items – action required' dated 7 June 2019, attaching (amongst other things) a draft form of an unnumbered endorsement in respect of the SSUK Risk (MAR.0003.0002.3962 and MAR.0003.0002.3971).

10A.77 On or around 10 June 2019, Greg Brereton provided Marsh with a signed copy of an unnumbered customer endorsement, under which SSUK was purportedly endorsed as a customer under the 2019 90/10 Master Policy ~~(TB-03691)~~ and the 2019 90/10 Parallel Policy.

Particulars

Email from Greg Brereton to John Whelan, Ewan Berkemeier, copying Angus Ward, Edward Smith and Alexandre Weiss Bueno, with subject 'Re: Greensill pending open items – action required' dated 10 June 2019 and attachment (MAR.0003.0002.3994 and MAR.0003.0002.3995).

Representations were misleading

10A.78 The SSUK Future AR Facility Misrepresentation referred to in paragraph 10A.70 above was false and/or misleading because the SSUK Risk was a loan facility in which:

a. GCUK knew, or alternatively believed, that, at the time of the SSUK Future AR Facility Misrepresentation, SSUK intended:

i. that a portion of the facility would be diverted from SSUK to manage repayment of other facilities, including, for example 'KLL' [KLL Holdings] and 'LRB' [Little Red Boxes];

Particulars

Email from Alexandra Hayes of GCUK to Danyon Lloyd of Greensill Bank, copying Brett Downes of GCUK, with subject 'SSUK Future Receivables', dated 8 March 2019 (GCU.0009.0007.8655).

Email from Brett Downes to Alexandra Hayes, Craig Pinnington and others, with subject 'RE: Speciality Steels info pack with financials', dated 11 March 2019 (GCU.0010.0007.7530).

Email from Sanjeev Gupta to Lex Greensill, with subject 'RE: LSS Greensill Facility', dated 14 March 2019 (GCU.0005.0007.4945).

Email from Barnaby Lynch of GCUK to Lex Greensill, copying Henry Middleditch of GCUK, with subject 'KLL Refi', dated 27 March 2019 (GCU.0004.0025.1858).

Email chain between Lex Greensill, Barnaby Lynch and Henry Middleditch, with subject 'Re: KLL Timings', dated 1 April 2019 (GCU.0004.0025.3552).

Email chain between Brett Downes, Alexandra Hayes, Craig Pinnington and others, with subject 'RE: SSUK FR deal- Account debtor analysis', dated 1 April 2019 (GCU.0010.0008.1392).

Email from Barnaby Lynch to John Whelen and others, copying Lex Greensill and others, with subject 'KLL Trades', dated 2 April 2019, attaching a presentation titled 'KLL Bridge Structure_vGC4.pptx' (GCU.0005.0008.4480 and GCU.0005.0008.4481).

Email from Alexandra Hayes to Lex Greensill and Brett Downes, copying others, with subject 'FW: Receivables', dated 2 April 2019 (GCU.0005.0008.4106).

Email from Lex Greensill to Alexandra Hayes, copying Brett Downes and others, with subject 'Re: Receivables', dated 3 April 2019 (GCU.0005.0008.4596).

The GCUK Credit Application for SSUK dated 4 April 2019 (CSA.0001.0007.0515) at page 16.

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: SSUK Facility', dated 4 April 2019 (GCU.0005.0008.5429).

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: Limit on receivables | New Facility', dated 5 April 2019 (GCU.0005.0008.6568).

Email from Lex Greensill to Barnaby Lynch, with subject 'Re: KLL urgent question', dated 9 April 2019 (GCU.0005.0008.8883).

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019 (GCU.0004.0026.3400).

ii. that of the GBP150 million initial draw:

a. ~~A.~~ approximately GBP120 million (or alternatively, GBP150 million) would be immediately moved to Simec (or alternatively, to GCUK on trust for Simec) to facilitate the repayment of wider GFG facilities, including the buyback of KLL notes from Swiss fund manager, GAM;

b. ~~B.~~ approximately GBP20 million would be used by SSUK for their normal operations, described by GCUK as 'working capital buffers';

c. ~~C.~~ approximately GBP10 million would cover fees to Greensill for the facility and to provide SSUK the ability to absorb financial shocks in the coming months; and

Particulars

Email from Alexandra Hayes of GCUK to Danyon Lloyd of Greensill Bank, copying Brett Downes of GCUK, with subject 'SSUK Future Receivables', dated 8 March 2019 (GCU.0009.0007.8655).

Email from Brett Downes to Alexandra Hayes, Craig Pinnington and others, with subject 'RE: Speciality Steels info pack with financials', dated 11 March 2019 (GCU.0010.0007.7530).

Email from Sanjeev Gupta to Lex Greensill, with subject 'RE: LSS Greensill Facility', dated 14 March 2019 (GCU.0005.0007.4945).

Email from Barnaby Lynch of GCUK to Lex Greensill, copying Henry Middleditch of GCUK, with subject 'KLL Refi', dated 27 March 2019 (GCU.0004.0025.1858).

Email chain between Lex Greensill, Barnaby Lynch and Henry Middleditch, with subject 'Re: KLL Timings', dated 1 April 2019 (GCU.0004.0025.3552).

Email chain between Brett Downes, Alexandra Hayes, Craig Pinnington and others, with subject 'RE: SSUK FR deal- Account debtor analysis', dated 1 April 2019 (GCU.0010.0008.1392).

Email from Barnaby Lynch to John Whelen and others, copying Lex Greensill and others, with subject 'KLL Trades', dated 2 April 2019, attaching a presentation titled 'KLL Bridge Structure_vGC4.pptx' (GCU.0005.0008.4480 and GCU.0005.0008.4481).

Email from Alexandra Hayes to Lex Greensill and Brett Downes, copying others, with subject 'FW: Receivables', dated 2 April 2019 (GCU.0005.0008.4106).

Email from Lex Greensill to Alexandra Hayes, copying Brett Downes and others, with subject 'Re: Receivables', dated 3 April 2019 (GCU.0005.0008.4596).

The GCUK Credit Application for SSUK dated 4 April 2019 (CSA.0001.0007.0515), page 10.

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: SSUK Facility', dated 4 April 2019 (GCU.0005.0008.5429).

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: Limit on receivables | New Facility', dated 5 April 2019 (GCU.0005.0008.6568).

Email from Lex Greensill to Barnaby Lynch, with subject 'Re: KLL urgent question', dated 9 April 2019 (GCU.0005.0008.8883).

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019 (GCU.0004.0026.3400).

iii. that subsequent tranches would be used to repay other facilities;

Particulars

The GCUK Credit Application for SSUK dated 4 April 2019 (CSA.0001.0007.0515), page 10.

Email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: SSUK Facility', dated 4 April 2019 (GCU.0005.0008.5429)

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019 (GCU.0004.0026.3400).

b. there was no maximum duration, or in the alternative, a duration longer than 275 days;

Particulars

The GCUK Credit Application for SSUK dated 4 April 2019, which relevantly stated 'the facility is in place for 4 years on an uncommitted basis throughout' (CSA.0001.0007.0515, page 4).

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019, which relevantly stated 'Tenor (days): Facility - 365, Roll - 275' (GCU.0004.0026.3400, page 1).

c. GCUK did not intend to, and did not, require that Account Debtors be parties to existing sales contracts with an Underlying Seller;

d. GCUK did not intend to, and did not, require that the amounts of future accounts receivable financed under the SSUK facility be supported at the time of drawdown by existing inventory valued on a monthly basis by a third party independent valuer; and

Particulars

No Valuation Reports in respect of any of the alleged debts in Table 14.1 of Annexure P to the SOC have been provided to the Insurer despite requests.

None of the alleged debts in Table 14.1 of Annexure P to the SOC became the subject of an actual account receivable owing by an Account Debtor.

The invoices submitted in respect of the Account Debtors show a pattern of identical transactions. It is inherently implausible that such a level of consistency would be achieved in amounts expected to be owed by Account Debtors referable to real world transactions. GCUK's acceptance of these invoices indicates that GCUK must have known that the invoices were not genuine and did not object to it.

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

a. Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [32]);

b. in the first quarter of 2020, Sanjeev Gupta requested, and Lex Greensill provided, confirmation that the financing provided to his companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [16]);

c. in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [49]).

Zurich Insurance Company Limited Defence in CL-2023-000136 before the High Court of England and Wales at [25-26] and [66-70].

Further particulars will be provided after completion of discovery by GCUK ~~and GCPL~~.

e. in the premises of sub-paragraphs a. to d., GCUK did not intend to provide a facility to SSUK having the characteristics referred to in paragraph 10A.70.

10A.78A. The SSUK Purpose Misrepresentation referred to in paragraph 10A.71A was false and/or misleading because the SSUK Risk was a loan facility in which:

a. GCUK knew, or alternatively believed, that, at the time of the SSUK Purpose Misrepresentation, SSUK intended that a significant portion of the funds drawn be immediately moved to Simec (or alternatively, to GCUK on trust for Simec) to facilitate the repayment of wider GFG facilities, including the buyback of KLL notes from GAM;

Particulars

GCUK, SSUK and Simec entered into an arrangement by which the funds drawn on GCUK by SSUK were intended to be used to facilitate a transaction chain that caused Simec to, in substance, buy back KLL notes from GAM. This arrangement can be inferred from:

a. the particulars to subparagraph 10A.78a above;

b. email from Lex Greensill to James Doran of GCUK, copying others, with subject 'RE: WSJ' dated 9 August 2018 (GCU.0004.0016.1898);

c. email from Lex Greensill to David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM) of GCUK, with subject 'Re: MS & GFG' dated 25 October 2018 (GCU.0004.0019.9022);

d. email from Henry Middleditch to Lex Greensill, with subject 'KLL/LRB Strategy Summary', dated 8 January 2019 (GCU.0005.0004.6331);

e. email from Henry Middleditch to Lex Greensill, copying others, with subject 'LRB/KLL Strategy and KLL Documents', dated 8 January 2019, attaching a document titled 'LRB&KLL Strategy Final.docx' (GCU.0005.0004.6494 and GCU.0005.0004.6495);

f. email from Lex Greensill to Jay Hambro (Chief Investment Officer) of the GFG Alliance and Sanjeev Gupta, with subject 'RE: KLL/ Lochaber info request', dated 11 January 2019 (GCU.0005.0004.8195);

g. email from Henry Middleditch to Lex Greensill, copying others, with subject 'LRB/KLL Strategy and KLL Documents', dated 7 February 2019, attaching a document titled 'LRB&KLL Strategy Final.docx' (GCU.0005.0005.8860 and GCU.0005.0005.8861);

h. email from Sanjeev Gupta to Lex Greensill, with subject 'Fwd: GAM KLL buy back', dated 15 February 2019 (GCU.0005.0006.2445);

i. email from Barnaby Lynch to Lex Greensill, copying others, with subject 'RE: KLL Bridge – Update', dated 20 February 2020, attaching a document titled 'KLL Bridge Structure_v2.pdf' (GCU.0007.0002.4669 and GCU.0007.0002.4670); and

j. email from Sanjeev Gupta to Lex Greensill, with subject 'Recap of some of the cooking we did in Bunderburg', dated 5 March 2019 (GCU.0005.0007.0412).

b. by reason of subparagraph (a), GCUK knew, or alternatively believed, that, at the time of the SSUK Purpose Misrepresentation, SSUK did not intend that funds advanced by GCUK would be used to finance trade, or intended future trade, with SSUK and its customers (or account debtors).

Particulars

The BCC/TM Parties refer to the particulars to subparagraph 10A.78a. above.

10A.79 The SSUK Account Debtor Representations referred to in paragraph 10A.74 were false and/or misleading because:

a. having regard to the Future Accounts Receivable Representation at paragraph 10A.32 above, the concept of future accounts receivable was used by GCUK, and understood by Greg Brereton, to refer to receivables arising from existing sales contracts with predefined customers, as verified and audited on a periodic basis; and

b. while GCUK represented that the SSUK Risk involved future accounts receivable, and, relatedly, receivables arising from existing sales contracts with predefined customers, as verified and audited on a periodic basis, in fact the SSUK Risk was a loan facility in which:

i. GCUK did not require that Account Debtors be parties to existing sales contracts with an Underlying Seller;

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.78 above.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

ii. GCUK understood the intention of SSUK to be as pleaded in paragraph 10A.780. above.

Particulars

The BCC/TM Parties refer to the particulars in subparagraph 10A.780. above.

Knowledge of falsity of representations

10A.80 Lex Greensill knew each of the matters set out in paragraph 10A.78 above.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.78 above.

The knowledge of Lex Greensill is to be inferred from his involvement in GCUK's dealings with SSUK, and from his direct involvement in correspondence with BCC associated with the SSUK Risk, as demonstrated by:

a. Credit Application Report for SSUK dated 4 April 2019 (CSA.0001.0007.0515, page 2), which identifies Lex Greensill as the 'GC Relationship Owner' in respect of the application;

b. the particulars to paragraph 10A.67 above, which evidences Lex Greensill's involvement in the request for cover in respect of the SSUK Risk; and

c. the fact that the matters set out in Paragraph 10A.78c above occurred from the time that cover was issued and was a practice that occurred in other financing provided by Greensill to GFG ~~Alliance~~ companies, including Liberty House as set out in Paragraph 10A.155b below.

The knowledge of Lex Greensill is to be further inferred from the following matters:

a. Lex Greensill and GCUK would provide advice to GCUK's customers on the structure of the customer's debt facilities and overall capital structure (for example, GCU.0005.0007.0413, GCU.0005.0008.6570); and

b. Notwithstanding the fact that GCUK held itself out as a supply chain finance company, GCUK would regularly design debt facilities for its customers that were not linked to the genuine underlying trade of its customers (for example, GCU.0007.0002.4670; GCU.0009.0005.5676, GCU.0004.0015.9384).

The knowledge of Lex Greensill of the arrangements between GCUK and SSUK is also to be inferred from the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

a. a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

b. that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

c. that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

d. that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements…were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

Further particulars will be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.81 Lex Greensill knew each of the matters set out in paragraph ~~10A.79~~ 10A.78A above.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 1~~0.80A~~ 10A.78Aabove.

10A.81A. Lex Greensill knew each of the matters set out in paragraph 10A.79 above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10.79 above.

10A.82 The knowledge of Lex Greensill of each of the matters set out in paragraphs 10A.78, 10A.78A and 10A.79 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B ~~and 10A.26~~ above.

10A.83 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.78, 10A.78A and 10A.79 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refers to paragraphs 10A.20, 10A.22A and 10A.22B ~~and 10A.22~~ above.

10A.84 Further and in the alternative to paragraph 10A.80 above, John Whelan (Deputy General Counsel), Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew the matters set out in paragraph 10A.78a. above.

Particulars

The BCC/TM Parties refer to the particulars to subparagraph 10A.78a above.

The knowledge of Craig Pinnington can be inferred from:

a. his position as the submitter of the application; and

b. his involvement in dealings with other risks involving the Liberty Group, namely the Liberty House Risk.

The knowledge of Brett Downes can be inferred from his involvement in dealings with SSUK and other risks involving the Liberty Group, namely the LCL Risk and the Liberty House Risk.

The knowledge of John Whelan can be inferred from his involvement in dealings with SSUK and other risks involving the Liberty Group namely the Liberty House Risk.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.85 Further and in the alternative to paragraph 10A.81 above, other officers and employees of GCUK – comprising Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew the matters set out in paragraph ~~10A.79~~ 10A.78A above.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.78A and 10A.84 above.

10A.85A. Further and in the alternative to paragraph 10A.81A above, officers and employees of GCUK – comprising Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew the matters set out in paragraph 10A.79 above.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.79 and 10A.84 above.

10A.86 The knowledge of the abovementioned officers and employees of GCUK of each of the matters identified in paragraphs 10A.84, ~~and~~ 10A.85 and 10A.85A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

10A.87 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraphs 10A.84~~, and~~ 10A.85 and 10A.85A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality of representations

10A.88 Each of the matters referred to in paragraph 10A.78 above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

b. alternatively to ~~paragraph~~ subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of SSUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of SSUK being unable to repay the amounts advanced to it and thus upon the SSUK Risk.~~

10A.89 Each of the matters referred to in paragraph ~~10A.79~~ 10A.78A above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

b. alternatively to ~~paragraph~~ subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.88 above.

10A.89A. Each of the matters referred to in paragraph 10A.79 above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The BCC/TM Parties refers to the particulars to paragraph 10A.88 above.

10A.90 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.88, ~~and~~ 10A.89 and 10A.89A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refers to paragraph~~s~~ 10A.25, 10A.26A and 10A.26B above.

10A.91 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.88, ~~and~~ 10A.89 and 10A.89A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20, 10A22A and 10A.22B above.

10A.92 Further and in the alternative to paragraph 10A.88 above, each of the matters referred to in paragraphs 10A.78a. above was a matter:

a. which other officers or employees of GCUK – comprising John Whelan (Deputy General Counsel), Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

b. alternatively to ~~paragraph~~subparagraph a., in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

10A.93 Further and in the alternative to paragraph 10A.89 above, each of the matters referred to in paragraph ~~10A.79~~ 10A.78A above was a matter:

a. which other officers or employees of GCUK – comprising John Whelan (Deputy General Counsel), Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

b. alternatively to ~~paragraph~~subparagraph a., in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

10A.93A Further and in the alternative to paragraph 10A.89A above, each of the matters referred to in paragraph 10A.79 above was a matter:

a. which other officers or employees of GCUK – comprising John Whelan (Deputy General Counsel), Craig Pinnington (Senior Credit Analyst) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk; or

b. alternatively to subparagraph a., in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The officers or employees of GCUK's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

10A.94 The knowledge of the abovementioned officers and employees of GCUK of the matters set out in paragraphs 10A.92 to 10A.93A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.95 The knowledge of the abovementioned officers and employees of GCUK of the matters set out in paragraphs 10A.92 to 10A.93A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

10A.96 In the premises of paragraphs ~~10A.66~~10A.65A to 10A.71, 10A.78, 10A.80, 10A.82, 10A.83, 10A.84, 10A.86, 10A.87, 10A.88, 10A.90, 10A.91, 10A.92, 10A.94 and 10A.95 above:

a. Greensill misrepresented the risk presented by the SSUK Risk;

b. the SSUK Future AR Facility Misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to ~~renew~~ extend insurance cover in respect of the SSUK Risk.

10A.96A. In the premises of paragraphs 10A.65A to 10A.69, 10A.71A, 10A.71B, 10A.78A, 10A.81, 10A.82, 10A.83, 10A.85, 10A.86, 10A.87, 10A.89, 10A.90, 10A.91, 10A.93, 10A.94 and 10A.95 above:

a. Greensill misrepresented the risk presented by the SSUK Risk;

b. the SSUK Purpose Misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the SSUK Risk.

10A.97 In the premises of paragraphs 10A.65A to 10A.69, 10A.72 to 10A.77, 10A.79, 10A.81A, 10A.82, 10A.83, 10A.85A, 10A.86, 10A.87, 10A.89A, 10A.90, 10A.91, 10A.93A, 10A.94 and 10A.95 above:

a. Greensill misrepresented the risk presented by the SSUK Risk;

b. the SSUK Account Debtor Representations were knowingly false and fraudulent; and

c. the misrepresentations were known to be material to the decision whether to renew insurance cover in respect of the SSUK Risk.

10A.98 If Greensill had not made the SSUK Future AR Facility Misrepresentation, insurance cover would not have been issued in respect of the SSUK Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.98A. If Greensill had not made the SSUK Purpose Misrepresentation, insurance cover would not have been issued in respect of the SSUK Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.99 If Greensill had not made the SSUK Account Debtor Representations, insurance cover would not have been issued in respect of the SSUK Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.100 By reason of the matters pleaded in paragraphs 10A.78 to 10A.99 above, IAL is entitled to avoid the SSUK Endorsement.

Innocent misrepresentation

10A.101 In the alternative to the matters pleaded in paragraphs 10A.96 to 10A.100 above, by reason of the matters pleaded in paragraphs 10A.78, ~~10A.79~~10A.78A, 10A.98~~, and **Error! Unknown switch argument.**~~10A.98A and 10A.99 above, IAL is entitled to reduce its liability under the SSUK Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the SSUK Future AR Facility Misrepresentation, the SSUK Purpose Misrepresentation and the SSUK Account Debtor Representations had not occurred).

D2.3 SSUK Non-Disclosures

Knowledge of material underlying non-disclosures

10A.102 At the time of requesting insurance cover for the SSUK Risk, Lex Greensill knew:

a. the matters set out in paragraphs 10A.32, 10A.78, 10A.78A and 10A.79 above;

Particulars

The BCC/TM Parties refer to the particulars for paragraphs 10A.80, 10A.81 and 10A.81A.

b. the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure ~~that the GFG Group was in serious financial difficulty as it had negative working capital, was experiencing liquidity issues and there was a concern about the ability of the GFG Group to repay the monthly instalment amount~~; and

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 10A.33F. ~~The GCUK Credit Application for SSUK dated 4 April 2019 (CSA.0001.0007.0515) at page 1 which identifies Lex Greensill as the 'GC Relationship Owner' in respect of the application.~~

c. the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group (of which SSUK was affiliated) and Sanjeev Gupta (who was personal Guarantor of the SSUK facility risk) in prior dishonest and fraudulent conduct.

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're: Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

10A.103 The knowledge of Lex Greensill of the matters in paragraph 10A.102 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.104 The knowledge of Lex Greensill of the matters in paragraph 10A.102 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B0 above.

10A.105 Further or in the alternative to paragraph 10A.102 above, at the time of requesting insurance cover for the SSUK Risk, John Whelan (Deputy General Counsel of GCUK), Craig Pinnington (Senior Credit Analyst of GCUK) and Brett Downes (Chief Risk Officer of GCUK) knew each of the matters set out in subparagraphs 10A.102a. and 10A.102b. above.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.84 and 10A.85 above.

10A.106 The knowledge of the aforementioned officers and employees of GCUK of each of the matters in paragraph 10A.105 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.107 The knowledge of the abovementioned officers and employees of GCUK of each of the matters in paragraph 10A.105 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.107A. Further or in the alternative to paragraphs 10A.102 and 10A.105 above, at the time of requesting insurance cover for the SSUK Risk, Danyon Lloyd of Greensill Bank knew:

a. the matters pleaded in paragraphs 10A.78 and 10A.78A;

b. the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

Email from Alexandra Hayes of GCUK to Danyon Lloyd of Greensill Bank, copying Brett Downes of GCUK, with subject 'SSUK Future Receivables', dated 8 March 2019 (GCU.0009.0007.8655).

Email from David Keeling (Senior Risk Officer) of GCUK to Lex Greensill, Brett Downes, Danyon Lloyd and others, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 5th April 2019', dated 7 May 2019 (GCU.0004.0026.3400).

The knowledge of Danyon Lloyd is otherwise to be inferred from:

a. the involvement of Danyon Lloyd in Greensill's dealings with SSUK; and

b. Danyon Lloyds' position with GCUK's Credit Committee;

c. the emails particularised at paragraph at 10A.33F.

10A.107B. The knowledge of Danyon Lloyd of the matters pleaded in paragraphs 10A.78 and 10A.78A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to and repeats the particulars to paragraph 10A.25A and10A.106 above.

Knowledge of materiality

10A.108 Each of the matters referred to in paragraph 10A.102 above was a matter:

1. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk and, if so, on what terms; or

2. alternatively to ~~paragraph~~ subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of SSUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of SSUK being unable to repay the amounts advanced to it and thus upon the SSUK Risk.~~

10A.109 Further or in the alternative to paragraph 10A.108 above, each of the matters referred to in paragraph 10A.102 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the SSUK Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.108 above.

10A.110 The knowledge of Lex Greensill of each of the matters set out in paragraphs 10A.108 and 10A.109 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.25 ~~and 10A.26~~ above.

10A.111 The knowledge of Lex Greensill of each of the matters set out in paragraphs 10A.108 and 10A.109 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20 ~~and 10A.22~~ above.

10A.112 Further and in the alternative to paragraph 10A.108 above, each of the matters referred to in paragraph 10A.102 above was a matter:

a. which John Whelan (Deputy General Counsel of GCUK), Craig Pinnington (Senior Credit Analyst of GCUK) and Brett Downes (Chief Risk Officer of GCUK) knew was relevant to the decision to extend insurance cover in respect of the SSUK Risk and, if so, on what terms; or

b. alternatively to ~~paragraph~~ subparagraph a., in respect of which John Whelan, Craig Pinnington and Brett Downes was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of John Whelan, Craig Pinnington and Brett Downes is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the risk of SSUK being unable to repay the amounts advanced to it and thus upon the SSUK Risk.

10A.113 Further or in the alternative to paragraph 10A.112 above, each of the matters referred to in paragraph 10A.102 above was a matter which a reasonable person in the position of the abovementioned officers and employees of GCUK could be expected to know was relevant to the decision to extend insurance cover in respect of the SSUK Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.112 above.

10A.114 The knowledge of the abovementioned officers and employees of GCUK of the matters in paragraphs 10A.112 and 10A.113 above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.115 The knowledge of the abovementioned officers and employees of GCUK of the matters in paragraphs 10A.112 and 10A.113 above can be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.115A. Further or in the alternative to paragraphs 10A.108 and 10A.112 above, each of the matters referred to in paragraph 107A above was a matter:

a. which Danyon Lloyd knew was material to the decision whether to extend insurance cover in respect of the SSUK Risk and, if so, on what terms; or

b. alternatively to subparagraph a., in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred from his knowledge of the AIG Steilmann Claim Letter.

Danyon Lloyd's knowledge is to be further inferred as he was

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) was a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 10A.11 and 10A.12(a)(ii) above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the SSUK Risk.

10A.115B. Further or in the alternative to paragraphs 10A.109 and 10A.113 above, each of the matters referred to in paragraph 10A.107A above was a matter which a reasonable person in the position

of Danyon Lloyd could be expected to know was relevant to the decision to extend insurance cover in respect of the SSUK Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to and repeat the particulars to paragraph 10A.115A above.

10A.115C. The knowledge of Danyon Lloyd of the matters pleaded in paragraphs 10A.115A and 10A.115B above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20 and repeats the particulars to paragraph 10A.106 above.

Breach of duty of disclosure

10A.116 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 10A.102 above before the cover was placed for the SSUK Risk.

10A.117 Greensill's failure to disclose the matters referred to in paragraph 10A.102 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 10A.103 to 10A.115 above.

Fraudulent non-disclosure

10A.118 By reason of the matters pleaded in paragraphs 10A.103, 10A.104, 10A.106, 10A.107, 10A.108, 10A.110, 10A.111, 10A.112, 10A.114 and 10A.115 above, Greensill's failure to disclose the matters referred to in paragraph 10A.102 above was fraudulent.

10A.119 The cover for the SSUK Risk would not have been issued if the matters referred to in paragraph 10A.102 above had been disclosed.

10A.120 In the alternative to the allegation in paragraph 10A.119 above, the cover for the SSUK Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 10A.102 had been disclosed.

10A.121 By reason of the matters pleaded in paragraphs 10A.118 to 10A.120 above, IAL is entitled to avoid the SSUK Endorsement.

Innocent non-disclosure

10A.122 In the alternative to the matters pleaded in paragraphs 10A.118 to 10A.119 above, and by reason of the matters pleaded in paragraphs 10A.116, 10A.117, 10A.119 and 10A.120 above, IAL is entitled to reduce its liability under the SSUK Endorsement to nil (or such other amount as the Court may determine would place the BCC/TMT Parties in the same position as if the duty of disclosure had been complied with).

D3 WESTFORD

D3.1 Policy and Endorsements

10A.123 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Westford was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 139 dated 2 July 2020 (**Westford Endorsement**).

Particulars

~~Second~~Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~21 August 2024~~14 April 2025 at paragraph 136.

D3.1A Westford Misrepresentations

10A.123A. In or around early October 2018, GCUK inquired about the provision of insurance for various risks, including in respect of financing provided by GCUK to Westford (then known as Westford Trade Services Limited) (**Westford Risk**). In support of that request, GCUK provided Brereton with a 'Credit Analysis Pack' with respect to the Westford Risk.

Particulars

Email from Lex Greensill to Brereton dated 1 October 2018 (BCC.0001.0001.0930), attaching an Excel spreadsheet titled 'HIF TBCC InsReq vf 01102018' (BCC.0001.0001.0931).

Email from Sophie Dyke (Insurance Analyst) of GCUK to Brereton, copying Lex Greensill, Brett Downes (Chief Risk Officer) of GCUK and others, dated 3 October 2018 (AGB.0002.0002.0985), attaching (among other documents) a Credit Analysis Pack for Westford dated May 2018 (AGB.0002.0002.0998).

10A.123B. GCUK's 'Credit Analysis Pack' represented to BCC, among other matters, that:

a. the Westford Risk related to 're-invoicing', with a trade tenor of 120 days;

b. the financing arrangement was for Westford's 'continued working capital requirements',

(the **Westford Financing Misrepresentations**).

10A.123C. The Westford Financing Misrepresentations were continuing representations.

10A.123D. The Westford Financing Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, and 10A.26A and 10A.26B.

10A.123E. On or around 8 October 2018, Westford was purportedly endorsed as a customer by Customer Endorsement 1 under Policy TB-04278 and Policy TB-04271 with effect from 8 October 2018, and with a limit of USD11 million and a maximum tenor of 180 days.

Particulars

Email from Brereton to Ewan Berkemeier and Edward Smith of Marsh dated 8 October 2018 (AGB.0002.0009.1484) attaching a PDF containing various documents including signed copies of BCC Policy TB-04278, BCC Policy TB-04271 and Customer Endorsement 1 (AGB.0002.0009.1485).

Email exchange between Brereton, Ewan Berkemeier, Edward Smith of Marsh and Brett Downes dated 9 October 2018 (BCC.0001.0001.1047) attaching a PDF containing the 'Insurance Portfolio Limitsv2' schedule referred to in Customer Endorsement 1 (BCC.0001.0001.1048).

10A.123F. Policy TB-04278 and Policy TB-04271 subsequently expired on 8 October 2019.

10A.123G. Subsequently on or around 18 to 20 June 2020, GCUK requested that BCC once again extend insurance cover in respect of the Westford Risk.

Particulars

Emails between Lex Greensill and Greg Brereton, copying Edward Smith of Marsh, Ewan Berkemeier of Marsh, and Lindsey Sherrill (Chief of Staff) of GCUK, between 18 to 20 June 2020 (MAR.0003.0003.2812).

10A.123H. On or around 21 June 2020, Greg Brereton purported to agree to provide cover in respect of the Westford Risk up to a limit of USD51 million and a deductible of USD40 million.

Particulars

Emails between Lex Greensill, ~~Greg~~ Brereton and Edward Smith, copying Ewan Berkemeier, Angus Ward of Marsh, and Linsey Sherrill on 18, 20, 21 and 22 June 2020 (AGB.0002.0001.3018).

10A.123I. On or around 22 June 2020, Marsh sent an email to GCUK attaching documents relating to the request for cover for the Westford Risk and stated 'If all okay please give us the order to bind'.

Particulars

Email from Angus Ward to Craig Pinnington (Senior Credit Analyst) of GCUK, Edward Smith, Margarita Diagileva (Insurance Analyst) of GCUK and Arslan Gill (Insurance Analyst) of GCUK, copying Flavia Pritchard of Marsh, dated 22 June 2020 (MAR.0003.0003.2860) attaching two unsigned Customer Endorsements No 139 for Westford (MAR.0003.0003.2861 and MAR.0003.0003.2862).

10A.123J. On or around 23 June 2020, GCUK instructed Marsh to bind cover for the Westford Risk.

Particulars

Email from Craig Pinnington to Angus Ward, Edward Smith, Margarita Diagileva and Arslan Gill, copying Flavia Pritchard, dated 23 June 2020 (MAR.0003.0003.2868).

10A.123K. On or around 23 June 2020, Marsh sent an email to Greg Brereton which attached an unsigned copy of Customer Endorsement No 139 and stated that 'Greensill have confirmed NKORL [no known or reported losses] and have given us the order to bind.'

Particulars

Email from Angus Ward to Greg Brereton and Edward Smith, copying Ewan Berkemeier and Flavia Pritchard dated 23 June 2020 attaching two unsigned Customer Endorsements No 139 (MAR.0003.0003.2874, MAR.0003.0003.2875 and MAR.0003.0003.2876).

10A.123L. On or around 2 July 2020, Greg–Brereton provided GCUK, via its broker, Marsh, with signed copies of Customer Endorsement No 139, which purported, with effect from 22 June 2020, to endorse Westford as a Customer under the 2019 90/10 Parallel Policy in respect of the Westford Risk with an Aggregate Customer Limit of USD51 million.

Particulars

Email from Greg Brereton to Angus Ward and Edward Smith dated 2 July 2020 attaching a PDF containing signed endorsements (BCC.0001.0007.9651 and BCC.0001.0007.9652).

Representations were misleading

10A.123M. The Westford Financing Misrepresentations were false and/or misleading because:

a. having regard to the SCF Representation at paragraph 10A.27 above, the concept of 're-invoicing' was used by Greensill, and understood by Brereton, to refer to a form of short-term financing referable to genuine underlying invoices that evidence trade;

b. while GCUK represented that the Westford Risk involved 'reinvoicing' with a trade tenor of 120 days, or alternatively 180 days, and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact:

i. the Westford Risk related to a financing facility with no maximum duration or, in the alternative, a duration longer than 120 or 180 days; and

ii. Greensill did not intend that the financing facility be based on the underlying trade of goods or services, or alternatively did not maintain a continuing satisfaction that the financing facility was so based.

Particulars

GCUK's practice was to 'roll' all or part of Westford's maturity payment obligations, thereby effectively extending the term of the facility, as indicated by:

a. [*Not used];*

b. email between GCUK personnel, Johanna Roberts and Theirry Lassy-Taty dated 24 June 2020 with the subject line 'RE: Westford – Increase in facility from $22.04Mn to $62.04Mn' (GCU.0013.0008.6605), stating: '*A roll is when they cannot afford to repay, so the programme is "rolled" for the next maturity….It "rolled" in January because Westford could not afford to repay ie GFG could not afford to repay*'.

The fact that the facility was not based on underlying invoices evidencing trade of goods or services, or alternatively that it was not intended by GCUK that the invoices would relate to the trade of goods or services, may be inferred from (in addition to the above):

c. email exchange between GCUK personnel including Valerie Kirkaldy, Brett Downes and Lex Greensill (among others) dated 21 June 2018 with respect to a drawdown under the Westford facility (GCU.0004.0013.9736). Ms Kirkaldy states: *'Completely understand that we need an underlying invoice for the drawdowns…however from a conversation myself and Ludwig had with Lex yesterday evening, Lex advised the clients would drawdown the full amounts from the beginning'*. Mr Downes then says to Lex Greensill: '*Lex is this true? Why would we not get underlying invoices to show there is actually trade going on here?';*

d. email exchange between Lex Greensill and Valerie Kirkaldy (and others at GCUK) dated 26 June 2018 (GCU.0004.0014.1702);

e. email exchange between Lex Greensill and Valerie Kirkaldy (GCUK) between 17 to 18 January 2019 (GCU.0005.0005.1000), in which Lex Greensill states: *'… I should have asked you to get in touch with Westford to arrange new trades on this facility to roll it forward. Could you please urgently arrange for a new PAUF that rolls all of these forward (and ensures the maturity amounts are spread out as before). (This would mean we are offering notes out on Monday for the maturities from yesterday and also today and then each day of the subsequent maturities.) We can waive the need for invoices (so as not to slow the process down). You should let Ludwig know that I would like these offered to CS High Income Fund.'* He further states, *'I should add that it is fine if (as a consequence of the additional interest when we roll these amounts forward) if we exceed the credit limit slightly. I will approve same'*; and

f. the fact that:

   i. GCUK would prepare 'PAUFs' for Westford under the facility, which would detail new invoices in replacement of old invoices that were due to mature (effectively extending the maturities) (GCU.0005.0002.3004; GCU.0005.0005.1000; GCU.0009.0011.6295; GCU.0009.0007.0317; GCU.0009.0009.1116);

   ii. on occasion, Lex Greensill would instruct GCUK as to how the PAUFs were to be prepared for the Westford Risk, including that the maturities were to be 'rolled' forward (GCU.0005.0005.1000).

iii. Sanjeev Gupta was, on occasion, involved in the preparation of new 'trades' for Westford (GCU.0005.0021.1313); and

iv. the funds borrowed under the Westford facility were not intended to be, or in fact, paid to suppliers in connection with the purported underlying invoices, but instead were at least initially retained as cash collateral via a tripartite agreement between Liberty, Westford and Greensill. This is evidenced by an email between GCUK personnel, Johanna Roberts and Thierry Lassy-Taty, dated 24 June 2020 (GCU.0013.0008.6605), in which Lassy-Taty notes in relevant part: "But this is a SCF (Re-Invoicing) deal, so the funding is supposed to go directly to the suppliers, Westford is not supposed to get any monies. Is that correct? If yes how Westford could get the USD40m and then, lend them to Liberty."

g. GCUK had a practice of permitting Westford to draw on the Westford facility in order to cover payment obligations without Westford in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to Westford. This practice is evident from the documents identified immediately above in the particulars to this paragraph and is further pleaded at Section C.8 of Annexure B to this defence.

Further particulars may be provided after completion of discovery by GCUK.

Knowledge of falsity of representations

10A.123N. Lex Greensill knew each of the matters set out in paragraph 10A.123M above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

a. his involvement in GCUK's dealings with Westford, and from his direct involvement in correspondence regarding the Westford Risk set out in the particulars to paragraphs 10A.123A, 10A.123G, 10A.123H and 10A.123M above and 10A.130 below;

b. Lex Greensill's position of seniority within GCUK as the Chief Executive Officer; and

c. Lex Greensill's role as 'Sponsor' and 'Facility team member' for the Westford facility, and his involvement in the approval of the Westford facility as demonstrated by:

i. email exchange between Lex Greensill and other members of the Credit Risk Team dated 18 June 2018, approving the Westford facility and identifying Lex Greensill as the 'Sponsor' (GBA.0004.0015.3697);

ii. email from Pamela Nnoko (Senior Credit Analyst) of GCUK to Lex Greensill, Danyon Lloyd, Craig Pinnington and other GCUK personnel dated 26 June 2018, confirming final approvals from the Credit Committee and Board for the Westford facility (GBA.0004.0028.4170) and attaching a 'Credit Analysis Pack' dated May 2018 for Westford (GBA.0004.0028.4171);

iii. document titled 'Credit Application Redacted Report – Amendment' for Westford Limited dated 26 August 2020 (CSA.0001.0006.2285), which identifies Lex Greensill as a member of the 'Facility Team';

iv. the particulars to paragraph 10A.130(bd) and 10A.130(be) below.

Further particulars may be provided after completion of discovery by GCUK.

10A.123O. The knowledge of Lex Greensill of each of the matters set out in paragraph 10A.123M above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A26A and 10A.26B

10A.123P. The knowledge of Lex Greensill of the matters set out in paragraph 10A.123M above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

Knowledge of materiality of representations

10A.123Q. Each of the matters referred to in paragraph 10A.123M above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Westford Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Westford being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

10A.123R. Further or in the alternative to paragraph 10A.123Q above, each (alternatively, one or more) of the matters referred to in paragraph 10A.123M above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Westford Risk.

10A.123S. The knowledge of Lex Greensill of the matters set out in paragraphs 10A.129Q above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A26A and 10A.26B

10A.123T. The knowledge of Lex Greensill of the matters set out in paragraphs 10A.123Q above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

10A.123U. In the premises of paragraphs 10A.129M to 10A.129T above:

a. Greensill misrepresented the risk presented by the Westford Risk;

b. the Westford Financing Misrepresentations were knowingly false and fraudulent; and

c. the misrepresentations were known to be material to the decision whether to extend insurance cover in respect of the Westford Risk.

10A.123V. If Greensill had not made the Westford Financing Misrepresentations, insurance cover would not have been issued in respect of the Westford Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.123W. By reason of the matters pleaded in paragraphs 10A.129M to 10A.129V above, IAL is entitled to avoid the Westford Endorsement.

Innocent misrepresentation

10A.123X. In the alternative to the matters pleaded in paragraphs 10A.123U to 10A.123W above, by reason of the matters pleaded in paragraphs 10A.123M to 10A.129V above, IAL is entitled to reduce its liability under the Westford Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the Westford Misrepresentations had not been made).

D3.2 Westford Non-Disclosures

10A.124 [Not used].~~On or around 18 to 20 June 2020, GCUK requested that BCC extend insurance cover in respect of financing provided by GCUK to Westford (**Westford Risk**).~~

~~**Particulars**~~

~~Emails between Lex Greensill and Greg Brereton, copying Edward Smith of Marsh, Ewan Berkemeier of Marsh, and Lindsey Sherrill (Chief of Staff) of GCUK, between 18 to 20 June 2020 (MAR.0003.0003.2812).~~

10A.125 [Not used].~~On or around 21 June 2020, Greg Brereton purported to agree to provide cover in respect of the Westford Risk up to a limit of USD51 million and a deductible of USD40 million.~~

~~**Particulars**~~

~~Emails between Lex Greensill, Greg Brereton and Edward Smith, copying Ewan Berkemeier, Angus Ward of Marsh, and Linsey Sherrill on 18, 20, 21 and 22 June 2020 (AGB.0002.0001.3018).~~

10A.126 [Not used].~~On or around 22 June 2020, Marsh sent an email to GCUK attaching documents relating to the request for cover for the Westford Risk and stated *'If all okay please give us the order to bind'.*~~

~~Particulars~~

~~Email from Angus Ward to Craig Pinnington (Senior Credit Analyst) of GCUK, Edward Smith, Margarita Diagileva (Insurance Analyst) of GCUK and Arslan Gill (Insurance Analyst) of GCUK, copying Flavia Pritchard of Marsh, dated 22 June 2020 (MAR.0003.0003.2860) attaching two unsigned Customer Endorsements No 139 for Westford (MAR.0003.0003.2861 and MAR.0003.0003.2862).~~

10A.127 [Not used].~~On or around 23 June 2020, GCUK instructed Marsh to bind cover for the Westford Risk.~~

~~Particulars~~

~~Email from Craig Pinnington to Angus Ward, Edward Smith, Margarita Diagileva and Arslan Gill, copying Flavia Pritchard, dated 23 June 2020 (MAR.0003.0003.2868).~~

10A.128 [Not used].~~On or around 23 June 2020, Marsh sent an email to Greg Brereton which attached an unsigned copy of Customer Endorsement No 139 and stated that *'Greensill have confirmed NKORL* [no known or reported losses] *and have given us the order to bind*.'~~

~~Particulars~~

~~Email from Angus Ward to Greg Brereton and Edward Smith, copying Ewan Berkemeier and Flavia Pritchard dated 23 June 2020 attaching two unsigned Customer Endorsements No 139 (MAR.0003.0003.2874, MAR.0003.0003.2875 and MAR.0003.0003.2876).~~

10A.129 [Not used].~~On or around 2 July 2020, Greg Brereton provided GCUK, via its broker, Marsh, with signed copies of Customer Endorsement No 139, which purported, with effect from 22 June 2020, to endorse Westford as a Customer under the 2019 90/10 Parallel Policy in respect of the Westford Risk with an Aggregate Customer Limit of USD51 million.~~

~~Particulars~~

~~Email from Greg Brereton to Angus Ward and Edward Smith dated 2 July 2020 attaching a PDF containing signed endorsements (BCC.0001.0007.9651 and BCC.0001.0007.9652).~~

Knowledge of underlying matters

10A.130 At the time the insurance cover was requested and purportedly provided for the Westford Risk under the 2019 90/10 Parallel Policy, Lex Greensill knew:

a. [Not used]; ~~that the Westford Risk was to be endorsed under the 2019 90/10 Parallel Policy, being a policy for trade credit insurance;~~

~~Particulars~~

~~The knowledge of Lex Greensill is to be inferred from:~~

~~a. the pleadings and particulars in paragraphs 10A.9, 10A.13, 10A.14, 10A.20 and 0 above;~~

~~b. Lex Greensill's position of seniority within GCUK as the Chief Executive Officer; and~~

~~c. the particulars to paragraphs D3.2 and 10A.125 above which refer to Lex Greensill's direct involvement in the request for cover in respect of the Westford Risk.~~

b. [Not used]; ~~the nature and terms of the financing arrangement between Westford and GCUK under the Westford Customer Agreement dated 25 June 2018, which included that, from time to time Westford may enter into commercial trade transactions with suppliers for the sale of goods and/or the supply of services to Westford;~~

~~Particulars~~

~~BCC repeats the particulars to paragraph 10A.130ab. above.~~

~~The knowledge of Lex Greensill is to be further inferred from Lex Greensill's role as 'Sponsor' and 'Facility team member' for the Westford facility, and his involvement in the approval of the Westford facility as demonstrated by:~~

~~a. email exchange between Lex Greensill and other members of the Credit Risk Team dated 18 June 2018, approving the Westford facility and identifying Lex Greensill as the 'Sponsor' (GBA.0004.0015.3697);~~

~~b. email from Pamela Nnoko to Lex Greensill, William Roland Hartley-Urquhuart, Danyon Lloyd, Craig Pinnington and others dated 26 June 2018, confirming final approvals from the Credit Committee and Board for the Westford facility (GBA.0004.0028.4170) and attaching a 'Credit Analysis Pack' dated May 2018 for Westford (GBA.0004.0028.4171);~~

~~c. document titled 'Credit Application Redacted Report – Amendment' for Westford Limited dated 26 August 2020 (CSA.0001.0006.2285), which identifies Lex Greensill as a member of the 'Facility Team'.~~

~~Further particulars may be provided after completion of discovery by GCUK and GCPL.~~

ba. The matters referred to in paragraph 10A.123M above;

Particulars

The BCC/TM Parties repeat the particulars to paragraph 10A.123N above.

bb. that the Westford Risk was being used as a vehicle to fund entities within GFG;

Particulars

Westford directed funds borrowed under the Westford facility to entities within GFG. This is evidenced in, or can otherwise be inferred from the following:

a. email dated 8 October 2019 from Ricardo Oliveira (GCUK) to members of the Greensill Credit Committee, and including Lex Greensill (among others), containing minutes of a Credit Committee meeting on 27 September 2019 (GCU.0005.0017.1903). The minutes record: *'…we* [GCUK] *approved a deal for them* [Westford], *funded it and later found out that the sole purpose of the request was to fund another client…they were impacted by the G.C. Restrictive strategy on the GFG exposure as part of their invoices related to the* [GFG] *group'*;

b. email from Brett Downes to Myrjam Tschoeke (GCUK) and Sean Hanafin (GCUK) dated 8 October 2019 stating (GCU.0014.0003.0556): '*I have spoken to everyone on CC except you both to date about these two names [...]* While *the funding for these two names was done with non GFG invoices. I learned that Sanjeev did* [a] *deal with both companies to borrow the $20m we lend them to help the settlement of* [Infrabuild]*'*; (Lex Greensill was at all material times a member of the Greensill Credit Committee)

c. meeting notes from an 'in-camera credit committee' meeting dated 13 January 2020 and attended by members of the Greensill Credit Committee, including Brett Downes (GCU.0009.0013.5482). Those notes record: *'a concern was raised 'regarding the purpose of lending, which was for funds to be onward lent to Sanjeev Gupta. Noted this would cause serious friction with CS* [Credit Suisse] *if it comes to light. BD* [Brett Downes] *commented we should not be doing this. The reason for the extension is that SKG has not repaid the balances to Westford & Phoenix, as such they will not pay their maturities to Greensill. The borrowing was to support the equity injection required for the InfraBuild bond issuance.*'

d. email from Henry Middleditch to Lex Greensill that same day, being 13 January 2020 (, stating "*Just summarising the follow ups from the CC call to discuss at 5pm (to be confirmed in the minutes from credit) Westford & Phoenix: In principle agreement to extend for 6 months in two consolidated $20mm issuances on the basis that $40m liquidity is maintained on GCUK balance sheet that can be immediate deployed*."

Further to the above, Westford was reliant on GFG to pay its maturities in connection with funds borrowed under the Westford facility. This can be inferred from the following:

e. from time to time, including on 28 September 2018 and other occasions, details of Westford's maturities would be forwarded onto Sanjeev Gupta for payment, including by Lex Greensill (e.g. GCU.0004.0018.3890; GCU.0005.0005.0883; GCU.0005.0013.9721);

f. in or around October 2018, USD27m borrowed from GCUK under a facility with Aluminium Dunkerque France Industries UK Ltd was used to repay maturities owed under the Westford facility (GCU.0004.0018.4768; GCU.0005.0016.8404);

g. emails between Lex Greensill and Sanjeev Gupta on or around 2 October 2018, in which Lex says, '*Please ensure that my team are not told that you are using the AD* [Aluminium Dunkirk] *cash to fund the Westford maturity*' (GCU.0004.0018.4823);

h. email from Johanna Roberts (GCUK) to Thierry Lassy-Taty (GCUK) dated 24 June 2020 (GCU.0013.0008.6605), stating: *'It "rolled" in January because Westford could not afford to repay ie GFG could not afford to repay…basically it is another GFG loan…'*;

i. messages exchanged between Craig Pinnington (GCUK) and Thierry Lassy-Taty (GCUK) dated 22 June 2020 (GCU.0009.0016.1475), in which Mr Pinnington states: *'it is a bad risk. I don't support it but will see how the discussion goes. Westford are purely acting as vehicle for GFG to 'roll'/not-repay'*;

The BCC/TM Parties rely on the particulars to subparagraph 10A.130(f) below.

The BCC/TM Parties repeat the particulars to paragraph 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK.

bc. GCUK ceased trading with Westford in or around early to mid-2019 when the initial facility was closed off due to concerns with Westford's performance under the facility and relationship with GFG;

Particulars

As at early to mid-2019, Westford owed approximately USD$21,015,894 in outstanding maturities under the initial facility.

Email from Brett Downes to Lex Greensill dated 30 March 2019 (GCU.0004.0025.3248), stating: *'Lex this is pushing it. This is Simec not Liberty. This has to stop. Westford is next month and must be repaid. He needs to repay and we need to get rid of the crazy stuff. People are seeing this internally and people are not comfortable. These things add up. I have a feeling collection accounts use is also getting out of hand. We need to clean up…We can't keep doing this and I am feeling really really worried...'.*

Email from Brett Downes to GCUK personnel dated 23 April 2019 (GCU.0013.0005.4948), stating: *'…under no circumstances are we to trade any further Westford from today. Any maturities that cannot be paid by Westford are to remain overdue and/or funded from our balance sheet. Maturities that are attempted to be paid by third parties cannot be accepted. This is extremely important for a number of reasons. Please advise how we deal with each and every maturity'.*

Email from Brett Downes to Lex Greensill dated 19 July 2019 (GCU.0014.0003.0703), stating: *'Westford is also a major AML/CTF issue, not least because it is the same as Phoenix as it is not a real exposure to this name but a shadow exposure which is a major franchise issue for the firm and your name. CS are not fans either'.*

Email exchange between Lex Greensill and Sanjeev Gupta, dated 29 July 2019 (GCU.0005.0013.9721).

Email from Brett Downes to Lex Greensill dated 31 July 2019 (GCU.0009.0010.6853), stating: *'Under no circumstances will we trade any further. They must repay. Board level decision'.*

Meeting notes from a Greensill Credit Committee on 27 September 2019 (GCU.0005.0017.1911), recording concerns that: *'Westford had a lot of problems in previous time: We received adverse information about its dealings* with *various clients that could cause sanction issues; Also, we approved a deal for them, funded it and later found out that the sole purpose of the request was to fund another client; and They were impacted by the G.C. Restrictive strategy on the*

GFG exposure as part of their invoices related to the group. We decided to exit and commenced recovery of all outstanding balances, which took time…Restarting the facility at USD20million is the max we can do but subject to the review of the KYC processes, and under no circumstances will we receive or accept any invoices for GFG.'

GCUK spreadsheet titled 'GFG Facility Summary Sheet - BWD Update 25-4-19' (GCU.0005.0013.6475), which records:

a. Under the tab titled 'Cover Sheet Comments': *'Mr Gupta has been a good friend of the firm to date…However, the firm's relationship has to change and we can no longer agree to the types of deal we have done this week, nor carousel type trades like Westford and Phoenix where we are potentially exposed to Money Laundering issues'*. The document further records: *'Mr Gupta was warned that they should not be sending us any more commodity traders for funding that have ML/TF* [Money Laundering/Terrorism Financing] *issues as we had a couple of hits in 2018. This has worked as they improved their internal systems. However we were faced with a fresh issue last week when a repayment for Phoenix came to us from a third party. When I advised it had to go back, Phoenix concocted an email purporting to show this was okay. The money has been returned, however if it had not been I would have had to complete and file a Suspicious Activity Report. I now have to write a file note for this and for the Westford trades. Do I think there has been money laundering no, if I did I would fill in a SAR, but this is just not acceptable and places me at risk personally.'*;

b. Under the tab titled 'Summary Sheet', at row 22 regarding Westford: *'During 2018 Credit Suisse showed Greensill a due diligence report it had commissioned into Mr Gupta. That report was terrible in the sense it was discredited by our own internal due diligence report from a reputable source. However in the CS report it mentioned carousel trades with Westford. In hearing this the senior management team including Lex agreed to remove Westford from further trades. Unfortunately this has not occurred as again this is in effect SIMEC/Liberty debt and it is not being repaid by Mr Gupta. The CRO is writing a file note about the exposure. This needs to be cleared at the next opportunity. We cannot roll any more trades as this I* [sic] *now serious. Insurance is invalid. The facility is now Watchlisted and is considered impaired.'*

The BCC/TM Parties repeat the particulars to paragraph 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK.

bd. in or around September 2019, GCUK was asked to reinstate the Westford facility following discussions between Lex Greensill and Sanjeev Gupta. The reinstatement request was not approved by the Greensill Credit Committee when it considered the request at its meeting on 27 September 2019;

Particulars

Email from Sanjeev Gupta to Lex Greensill dated 8 September 2019 (GCU.0005.0015.6104).

Minutes from meeting of the Greensill Credit Committee dated 27 September 2019 (GCU.0005.0017.1911).

The BCC/TM Parties repeat the particulars to paragraph 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK.

be. subsequently on or around 30 September 2019, the Greensill Credit Committee granted temporary 'one off' approval for the reinstatement of the Westford facility for USD20m with a tenor of 120 days and with additional conditions imposed, including that 'no underlying invoice can be from the GFG group' (**Reinstated Facility**). This approval was formalised at the Greensill Credit Committee on 11 October 2019;

Particulars

Email from Brett Downes (GCUK) to members of the Greensill Credit Committee, and copied to Lex Greensill (among others) dated 11 October 2019 (GCU.0009.0011.8173), stating: *'…I am comfortable to approve the existing trades as one offs. We need to see the trades repaid in full and remind format for a couple of days/weeks…we also need to complete the full AML/CTF audit of both of these companies…I would also suggest that CC has an in camera meeting with Lex on both of these names before the maturities to determine the future of the support'.*

Minutes from meeting of the Greensill Credit Committee held on 11 October 2019 approving reinstatement as a 'one-off' with a limit of US20m and a tenor of 120 days (GCU.0009.0012.0030).

Email from Gaurav Sanan (GCUK) to Lex Greensill dated 16 October 2019 (GCU.0005.0017.5399) providing an update on approval of the Westford Reinstated Facility, and attaching a Credit Application Report for the Westford Risk dated 10 October 2019 (GCU.0005.0017.5400).

The BCC/TM Parties repeat the particulars to paragraph 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK.

bf. Westford failed to meet its first repayment obligations under the Reinstated Facility, and as a result the facility was 'rolled' against the advice of GCUK's Chief Risk Officer, Brett Downes;

Particulars

Westford was required to repay GCUK a total of USD20m on the reinstated facility in scheduled tranches of around USD2.5m starting from 3 January 2020. Westford failed to pay its first instalment obligation due on 3 January 2020 (GCU.0005.0021.1742; GCU.0005.0021.3982). As a result, Westford requested that the facility be extended for an additional 180 days with GCUK covering the currently due 'rolls'. This was approved by the majority of the Greensill Credit Committee on or around 13 January 2020, but voted against by Brett Downes (Chief Risk Officer) (GCU.0009.0013.5482). On 14 January 2020, Lex Greensill approved GCUK covering all overdue and upcoming maturities for Westford from *'Greensill's balance sheet with new assets issued with a 6 month tenor'* (GCU.0014.0003.2189; GCU.0005.0021.4560). On 16 January 2020, GCUK sent Hande Elmener (CEO of Westford) a 'PAUF' letter to be signed and returned by Westford which extended all maturity dates (GCU.0009.0012.9797; GCU.0009.0012.9798).

Email from Ilkka Tales (GCUK) to Lex Greensill dated 7 January 2020 (GCU.0005.0021.1770), forwarding an email from Brett Downes to GCUK personnel regarding Westford's request for 'rollover' in which Mr Downes stated: *'…I will not support. Credit Committee was quite clear last time it is for one roll. You are more than welcome to try and see if you can get the votes, but from an AML/CTF* [Anti-Money Laundering / Counter-Terrorism Financing] *perspective alone I cannot and will not approve. They must repay and we must remove them as a client.'*

Email from Gaurav Sanan (GCUK) to Lex Greensill dated 7 January 2020 (GCU.0005.0021.1742) providing a status update on the Westford risk.

The BCC/TM Parties repeat the particulars to paragraph 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK.

bg. that Westford had a history of non-payment and was reliant on GFG Alliance to repay maturities (despite the condition imposed in or around September 2019 that no underlying invoices could be GFG invoices);

Particulars

a. Email from Lex Greensill to Ludwig Sels dated 13 August 2019 subject line "Westford next steps" stating ("*We will pay the maturities each day in order to avoid a series event of default. We will get our cash back at the end of the week once W settle post Eid."*

The BCC/TM Parties repeat the particulars to subparagraph 10A.130 10A.123N(bb) and (bc) above.

Despite the condition that no underlying invoices could be GFG invoices, Westford was still reliant on the GFG Alliance to repay its maturities:

b. Email from Lex Greensill to Johanna Roberts (GCUK) dated 22 April 2020, responding to an email from Johanna Roberts to the Greensill mailing address 'GFGMC@greensill.com' (GCU.0009.0015.7982), that stated: '*In January the* [Westford] *facility was extended because Liberty had insufficient liquidity to repay us.'*

c. The BCC/TM Parties repeat the particulars to subparagraph 10A.130(f) below.

Further, there were also more general concerns within GCUK about the Westford risk, including Westford's capacity to pay:

d. Email exchange between David Keeling (GCUK) and Chris Tinsley (GCUK) dated 23 September 2019, forwarding an exchange with Brett Downes regarding the reinstatement of the Westford facility (GCU.0009.0011.4978);

e. Messages exchanged between David Keeling (GCUK) and Chris Tinsley (GCUK) on 23 September 2019 (GCU.0009.0011.5571);

f. Email exchange between Westford personnel and GCUK personnel, including Gaurav Sanan (GCUK), dated between 15 November 2019 and 3 January 2020 inclusive (GCU.0009.0012.8109), regarding Westford's financials. On 24 December 2019, Mr Sanan noted concerns about Westford's financial statements including a 'significant decline' in the projected financials and *'Cash positions shows* [sic] *a deteriorating trend.'*

The BCC/TM Parties repeat the particulars to paragraph 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK

c. that GCUK, Westford and Liberty House intended to enter into (or had entered into):

i. the undated letter of agreement between Westford and GCUK (IAL.500.002.5018) (**Westford Letter of Agreement**), which contained terms to the effect that:

A. Westford shall deliver a PAUF dated 25 August 2020 (**Applicable PAUF**) to GCUK under the terms of the Westford Customer Agreement, which among other items, shall include a Certified Amount in the sum of USD40 million (the **Applicable Certified Amount**);

B. GCUK understands there is a loan agreement between Westford, as lender, and Liberty House, as borrower, for an amount of at least USD40 million that has been entered into or will be entered into on or prior to the date of the letter agreement (the **Loan Agreement**);

C. GCUK understands that Westford intends to meet its obligation to lend to Liberty House on 25, 26, 27 and 28 August 2020 using monies it receives from GCUK following delivery of the Applicable PAUF;

D. separately, Liberty House intends to pay GCUK an amount of USD40 million as collateral for monies, debts and liabilities of any nature from time to time due or owing from a "GFG Group Member" to GCUK or any company, partnership or other entity directly or indirectly controlled by GCPL (the **Cash Collateral**);

E. Westford acknowledges and agrees that upon acceptance of the Applicable PAUF and the processing thereof, GCUK shall retain an amount equal to the Applicable Certified Amount as the Cash Collateral, which shall satisfy (i) GCUK's obligation to pay any Net FI Amount (as that term is defined in any applicable Supplier Agreement); (ii) Westford's lending of USD40 million to Liberty House under the terms of the Loan Agreement; and (iii) Liberty's payment of the Cash Collateral; and

F. GCUK and Westford agree that GCUK shall earn a fee (Fee) in an amount of USD525,000 payable no later than 25 August 2020 into a Designated Account, to be notified by GCUK to Westford.

ii. the undated letter of agreement of agreement between Liberty House and GCUK (IAL.500.002.5017) (**Liberty House Letter of Agreement**);

A. GCUK understands that under the terms of the Loan Agreement, Liberty House has to repay Westford an amount of at least USD40 million on 23 November 2020; and

B. upon that understanding, GCUK may therefore, at its discretion, release the Cash Collateral and apply the Cash Collateral as repayment by Westford of amounts drawn down under the Westford Customer Agreement on their maturity dates of 20 and 23 November 2020, and accordingly Liberty House agree that upon such payment USD40 million will be deducted from the amounts Liberty House owe to Westford under the Loan Agreement;

Particulars

The BCC/TM Parties rely on the full terms and effect of the:

a. Westford Letter of Agreement, being the undated letter of agreement between Westford and GCUK (IAL.500.002.5018); and

b. Liberty House Letter of Agreement, being the undated letter of agreement of agreement between Liberty House and GCUK (IAL.500.002.5017).

Document titled 'Credit Application Redacted Report – Amendment' for Westford Limited dated 26 August 2020 (CSA.0001.0006.2285) at page 5, which sets out, in summary form, details of the 'new structure'.

As to the knowledge of Lex Greensill, the BCC/TM Parties repeats the particulars to paragraph~~s~~ 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

d. that under the Westford Letter of Agreement and the Liberty House Letter of Agreement, USD40 million of the amount advanced (or to be advanced) under the Westford Customer Agreement was to be held by GCUK as collateral for debts owed by members of the GFG group to GCUK;

Particulars

The Westford Letter of Agreement (IAL.500.002.5018), which on page 1 sets out the terms agreed between those parties including (among other things) that:

a. Westford shall deliver a PAUF dated 25 August 2020 to Greensill under the Westford Customer Agreement in the amount of USD40 million;

b. Greensill understands there is a loan agreement between Westford, as lender, and Liberty House, as borrower, for an amount of at least USD40 million that had been entered into, or will be entered into, prior to the letter of agreement;

c. Greensill understands that Westford intends to meet an obligation to lend Liberty an amount of USD40 million under the abovementioned loan agreement on dates in August 2020 by using the monies it receives from GCUK following delivery of the PAUF; and

d. Separately, Liberty intends to pay to GCUK the amount of USD40 million as collateral for monies, debts and liability of any nature from time to time due or owing from a GFG Group Member (as defined in the letter) to GCUK.

The Liberty House Letter of Agreement (IAL.500.002.5017) which on page 1 sets out the terms agreed between those parties including (among other things) that:

a. Under the Westford Customer Agreement, Westford shall drawdown funds from GCUK in an amount equal to USD40 million;
b. Greensill understands that there is a loan agreement between Westford, as lender, and Liberty House, as borrower, for an amount of at least USD40 million;

c. Greensill understands that Westford intends to meet an obligation to lend Liberty an amount of USD40 million under the terms of the above mentioned loan agreement on 24 and 25 August 2020 by using the drawdown amount it receives from GCUK;

d. Separately, Liberty House hereby agree to pay to GCUK an amount of USD40 million as collateral for monies, debts and liabilities of any nature from time to time due or owing from a GFG Group member to GCUK;

e. Liberty acknowledges and agrees that upon the funding of the drawdown amount, GCUK shall retain an amount equal to the drawdown amount [USD40 million] as the cash collateral; and

f. Greensill understands that under the terms of the loan agreement between Liberty and Westford, Liberty has to repay Westford an amount of at least USD40 million by 23 November 2020~~.~~

As to the knowledge of Lex Greensill, the BCC/TM Parties repeat the particulars to paragraph~~s 10A.130a and 10A.130b~~ 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

e. at the time those arrangements were proposed, entities within the “GFG group” had already defaulted on making repayments to GCUK~~;~~

Particulars

As to the defaults by entities within the GFG group:

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

b. the BCC/TM Parties repeat paragraph ~~10A.102b. below~~ 10A.33G above and the particulars thereto;

c. document titled 'Greensill Board Papers – 21 April 2020' (GBA.0004.0024.8080), which in a section titled 'GFG Update' states:

i. 'GFG accounts for 28% of total outstandings and dominates the assets placed at Greensill Bank (73%)'; and

ii. In April 2020, 'all GFG facilities were added to the Watchlist and assigned an ORR of 8. This will further increase the EL [Expected Loss] relative to the presented Q1 2020 figures'.

As to the knowledge of Lex Greensill, the BCC/TM Parties repeat the particulars to paragraph~~s 10A.130a and 10A.130c~~ 10A.123N above.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

f. that repayment by Westford to GCUK under the Westford Customer Agreement was entirely ~~dependant~~ dependent upon receipt of monies from the GFG Alliance; and

Particulars

Document titled 'Greensill Board Papers – 21 April 2020' (GBA.0004.0024.8080), which identifies on page 90 that Westford is 'consolidated into GFG for reporting purposes as repayment is totally dependent on receipt of monies from GFG'.

Document titled 'Chief Risk Officer Report for Quarter End – March 2020' (GBA.0004.0026.0839).

Document titled “Credit Application Report – Amendment Westford Limited”, dated 26 August 2020 which states “On maturity (90 days), GFG has to repay Westford, who have to repay us. There will be no cash movement out of Greensill. Cash sitting in GCUK (cash collateral from GFG + upfront spread paid by Westford) will be used to settle the notes. In a Westford insolvency, we have the right to put the Westford debt back to LHG. We will then have the right under our documents with LHG to be able to set off the cash in GCUK against this position.” (GCU.0009.0017.5737)

Email from Lex Greensill to Sanjeev Gupta dated 4 October 2020 informing him that the Westford facility *'continues (as discussed)'* (GCU.0005.0021.1253).

Email from Lex Greensill to Gaurav Sanan (GCUK) dated 15 May 2020, stating (GCU.0005.0026.8742): *'We will not be extending or rolling over the facility. Given market conditions, we will be looking to Sanjeev Gupta – who guaranteed this facility – to attend to repayment. Brett and the credit team are aware. I will look after this directly with Sanjeev – if Hande has any questions, I suggest you direct her to Sanjeev*.'

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

Further to the above, ~~The~~ the knowledge of Lex Greensill is to be inferred from:

a. paragraph 10A.9 above and the particulars thereto, which refer to the senior roles held by Lex Greensill and his involvement in the Greensill Credit Committee;

b. the particulars to paragraphs ~~10A.124 and 10A.125~~ 10A.123G and 10A.123H above, which refer to Lex Greensill's direct involvement in correspondence with BCC regarding the Westford Risk;

c. the particulars to paragraphs ~~10A.130a. and 10A.130c~~ 10A.123N and 10A.130(ba); and

d. Lex Greensill's direct involvement with Liberty House, as demonstrated by:

    i. Credit Analysis Pack for Liberty House dated 4 October 2017 (MAR.0003.0001.2203, page 2), which identifies Lex Greensill as a 'GC Relationship Owner' in respect of the facility;
    ii. the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

A. a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

B. that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

C. that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

D. that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements…were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~

fa. that the approved Reinstated Facility limit was only USD21.1m, but GCUK intended to increase the facility limit to USD62.01m after the procurement of insurance to facilitate the arrangement with Liberty House referred to at subparagraphs 10A.130(d) to (f) above;

Particulars

As to the approved facility limit, the BCC/TM Parties rely on:

a. the GCUK Credit Committee approval on or around 14 January 2020 to increase the Reinstated Facility limit from USD20m to USD21.1m (GCU.0005.0021.4808); and

b. the GCUK Credit Committee approval on or around 24 August 2020 to increase the Reinstated Facility limit from USD21.1m to USD62.04m, noting that insurance had then been obtained (CSA.0001.0006.2285, GCU.0009.0017.5732, GCU.0009.0017.5733).

c. As to Lex's knowledge, the BCC/TM Parties repeat the particulars to paragraph 10A.123N above.

Further particulars may be provided following the completion of discovery by GCUK.

g. the Liberty Group Fraud Non-Disclosure, which implicated Westford ~~(formerly known as Westford Trade Services Limited)~~and Sanjeev Gupta in prior dishonest and fraudulent conduct;

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're: Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

GCUK spreadsheet titled 'GFG Facility Summary Sheet - BWD Update 25-4-19' (GCU.0005.0013.6475), including worksheet titled 'Cover Sheet Comments', rows 7, 13 and 14.

Further particulars may be provided following the completion of discovery by GCUK ~~and GCPL~~.

j. Further or alternatively to the above, the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure.

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 10A.33G.

10A.131 The knowledge of Lex Greensill of the matters in paragraph 10A.130 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.132 The knowledge of Lex Greensill of the matters in paragraph 10A.130 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20, 10A.22A and 10A.22B ~~and 10A.22~~ above.

10A.132A. Further or in the alternative to paragraph 10A.130 above, at the time the insurance cover was requested and purportedly provided for the Westford Risk under the 2019 90/10 Parallel Policy, Brett Downes (Chief Risk Officer) of GCUK knew each (alternatively, one or more) of the matters set out in paragraph 10A.130 above.

Particulars

The knowledge of Brett Downes is also to be inferred from:

a. his direct involvement with the Westford Risk as evidenced by the correspondence particularised throughout paragraph 10A.130 above;

b. email from Brett Downes to Andew Kyuk (GCUK) dated 14 January 2020 with the subject line 'RE: Westford and Phoenix Rolls' (GCU.0010.0011.5755); and

c. Brett Downes' senior position within GCUK as Chief Risk Officer and member of the Greensill Credit Committee.

Further particulars may be provided after completion of discovery by GCUK.

10A.132B. The knowledge of Brett Downes identified in paragraph 10A.132A above is to attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.132C. The knowledge of Brett Downes identified in paragraph 10A.132A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality

10A.133 Each (alternatively, one or more) of the matters referred to in paragraph 10A.130 above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Westford Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Westford being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person with substantial commercial experience in the insurance industry and the non-disclosures bore directly on the risk of Westford being unable to repay the amounts advanced to it and thus upon the Westford Risk.~~

10A.134 Further or in the alternative to paragraph 10A.133 above, each (alternatively, one or more) of the matters referred to in paragraph 10A.130 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Westford Risk.

10A.135 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.133 and 10A.134 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.136 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.133 and 10A.134 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

10A.136A. Further and in the alternative to paragraph 10A.133 above, each (alternatively, one or more) of the matters referred to in paragraph 10A.130 above were matters:

a. which Brett Downes (Chief Risk Officer) of GCUK knew were material to the decision whether to extend insurance cover in respect of the Westford Risk; or

b. alternatively to subparagraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes's knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the non-disclosures/misrepresentations bore directly on the risk of Westford being unable to repay the amounts advanced to it and thus upon the nature of the Westford Risk.

10A.136B. Further or in the alternative to paragraph 10A.136A above, each (alternatively, one or more) of the matters referred to in paragraph 10A.130 above was a matter which a reasonable person in the position of Brett Downes could be expected to know was material to the decision whether to extend insurance cover in respect of the Westford Risk.

10A.136C. The knowledge of Brett Downes of the matters set out in in 10A.136A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.26A and 10A.26B above.

10A.136D. The knowledge of Brett Downes of the matters set out in paragraph 10A.136A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refers to paragraph 10A.22A and 10A.22B above.

Breach of duty of disclosure

10A.137 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 10A.130 above before the cover was placed for the Westford Risk.

10A.138 Greensill's failure to disclose the matters referred to in paragraph 10A.130 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 10A.131 to 10A.136D above.

Fraudulent non-disclosure

10A.139 By reason of the matters pleaded in paragraphs ~~10A.133, 10A.135 and 10A.136~~ 10A135 to 10A.136D above Greensill's failure to disclose the matters referred to in paragraph 10A.130 above was fraudulent.

10A.140 The cover for the Westford Risk would not have been issued if the matters referred to in paragraph 10A.130 above had been disclosed.

10A.141 In the alternative to the allegation in paragraph 10A.140 above, the cover for Westford Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph ~~10A.130~~10A.130 above had been disclosed.

10A.142 By reason of the matters pleaded in paragraphs 10A.139 to 10A.141 above, IAL is entitled to avoid the Westford Endorsement.

Innocent non-disclosure

10A.143 In the alternative to the matters pleaded in paragraphs 10A.139 to 10A.142 above, and by reason of the matters pleaded in paragraphs 10A.137, 10A.138, 10A.140 and 10A.141 above, IAL is entitled to reduce its liability under the Westford Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D4 LIBERTY HOUSE

D4.1 Policy and Endorsements

10A.144 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Liberty House Group Pte Ltd (**Liberty House**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 122 dated 16 March 2020 (the **Liberty House Endorsement**).

Particulars

~~Second~~Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~14 August 2024~~24 December 2025 at paragraphs 133 and 474.

D4.2 Liberty House Misrepresentations

Representations

10A.145 On or around 7 December 2017, Lex Greensill sent an email to ~~Greg~~ Brereton and John Whelan to inquire about the provision of insurance cover with respect to the Liberty OneSteel AR Portfolio. In that email, Lex Greensill said 'In order to aid your discussions, John Whelan from our legal team will shortly sent you the form of debt endorsements for this programme. These would work with the standard Greensill insurance policy documentation previously shared with you by Marsh and my team'.

Particulars

Email from Lex Greensill to ~~Greg~~ Brereton and John Whelan (Deputy General Counsel) of GCUK, with subject 'Liberty OneSteel AR', dated 7 December 2017 (MAR.0003.0001.1753).

10A.146 On or around 13 December 2017, John Whelan sent an email to Lex Greensill and ~~Greg~~ Brereton, enclosing draft copies of the proposed Greensill insurance policy documentation and related documents with respect to the Liberty OneSteel facility. ~~In this email, GCUK represented to Greg Brereton, among other matters, that:~~

~~a. the policy documents provided to Greg Brereton were 'marked up against the previous version you have seen, with the Liberty OneSteel transaction in mind';~~

~~b. Greensill used a master and parallel policy structure;~~

~~c. under the master and parallel policy structure, the master policy would be issued to GCUK and GCPL, and the parallel policy would be issued to Greensill Bank and GCPL;~~

~~d. Greensill Bank and the loss payee would buy notes that were over-collateralised by a factor 'of at least 100/95', where the over-collateralisation of the note 'represents the first loss position [Greensill Bank] would take in relation to the insured debts'; and~~

~~e. GCUK may not hold any notes, and where it did not hold a note but held the accounts receivable directly, GCUK would have a first loss on each portfolio.~~

Particulars

Email from John Whelan of Greensill to ~~Greg~~ Brereton, with the subject Re: Liberty OneSteel AR', dated 13 December 2017 and its attachments (MAR.0003.0001.1753).

10A.147 On or around 13 December 2017, ~~Greg~~ Brereton sent an email addressed to John Whelan and Lex Greensill in response to John Whelan's email to say 'I understand that the process runs a Master Policy with the noted deductibles and a secondary policy under which the risks are attached (for assignment purposes) at 100% indemnity. That said the underwriter will always answer to the "Master policy"'.

Particulars

Email from ~~Greg~~ Brereton to Lex Greensill, with the subject 'RE: Liberty OneSteel AR', dated 13 December 2017 (BCC.0001.0002.0245).

10A.148 On or around 13 December 2017, Lex Greensill responded to ~~Greg~~ Brereton's email to say 'Your understanding below is correct on the distinction between the Master and Parallel Policies'.

Particulars

Email from Lex Greensill to ~~Greg~~ Brereton, with the subject 'RE: Liberty OneSteel AR', dated 13 December 2017 (BCC.0001.0002.0245).

10A.149 ~~On~~In or around the period 11 March 2020 to 15 March 2020, GCUK requested that BCC extend insurance cover in respect of ~~financing~~a re-invoicing facility provided by ~~Greensill~~GCUK to Liberty House (the **Liberty House Risk**).

Particulars

Discussion between Lex Greensill and Brereton on or about 11 March 2020, during which Lex Greensill requested that BCC provide $20m of reinvoicing cover on the same terms (on the basis of a 50% indemnity).

Email from Craig Pinnington (Senior Credit Analyst) of GCUK to Edward Smith of Marsh, Angus Ward of Marsh and Alexandre Weiss Bueno of Marsh, copying Margarita Diagileva (Insurance Analyst) of GCUK on 13 March 2020 with the subject 'TBCC cover for LHG reinvoicing' (MAR.0003.0002.9444), in which GCUK relayed details of a message from Lex Greensill which referred to a discussion with BCC earlier that week.

Email from Craig Pinnington to ~~Greg~~ Brereton, copying Margarita Diagileva, John Whelan ~~(Deputy General Counsel) of GCUK~~ and Lex Greensill on 15 March 2020 with the subject 'LHG endorsements', attaching an unsigned Customer Endorsement No 122 in respect of Liberty House under the 2019 90/10 Parallel Policy (MAR.0002.0001.2968 and MAR.0002.0001.2969), and which proposed an effective date of 11 March 2020 with reference to when the relevant agreements were made.

10A.149A [Not used].~~On or around 11 March 2020, Lex Greensill represented to Greg Brereton, among other matters, that the Liberty House Risk related to 're-invoicing'.~~

~~**Particulars**~~

~~The representation may be inferred from the email from Craig Pinnington (Senior Credit Analyst) of GCUK to Edward Smith of Marsh, Angus Ward of Marsh and Alexandre Weiss Bueno of Marsh, copying Margarita Diagileva (Insurance Analyst) of GCUK on 13 March 2020 with the subject 'TBCC cover for LHG reinvoicing'~~

~~(MAR.0003.0002.9444), in which GCUK relayed details of a message from Lex Greensill which referred to a discussion with BCC earlier that week in connection with 'LHG reinvoicing cover'.~~

10A.150 On 13 March 2020, GCUK emailed Marsh and requested that Marsh prepare endorsements for BCC to extend insurance cover to Liberty House. In making this request, GCUK ~~extracted~~ are produced a prior communication from Lex Greensill in which Lex Greensill relayed his discussion with BCC in the following terms: 'TBCC have agreed to provide $20mm of LHG reinvoicing cover on the same terms (although the indemnity will be 50%)'.

Particulars

Email from Craig Pinnington to Edward Smith, Angus Ward and Alexandre Weiss Bueno, copying Margarita Diagileva on 13 March 2020 with the subject 'TBCC cover for LHG reinvoicing' (MAR.0003.0002.9444).

10A.151 The reference to the 'same terms' in paragraph 10A.150 above, referred to cover provided by Zurich Insurance Plc (**Zurich**), effective 1 September 2019 which was provided on the following terms:

a. USD20 million customer limit;

b. 90% indemnity;

c. USD18 million maximum limit of liability;

d. Maximum 180 day tenor; and

e. Premium rate: 1.2% per annum.

Particulars

The BCC/TM Parties refer to the ~~particular in~~ particulars to paragraph 10A.150 above.

Customer Endorsement No 4(I), Zurich Policy Number 711715719 issued to GCUK by Zurich dated 30 August 2019, effective 1 September 2019 (MAR.0003.0002.9217).

10A.152 On 15 March 2020, GCUK emailed ~~Greg~~ Brereton, attaching proposed Customer Endorsements in respect of the Liberty House Risk. GCUK noted that the proposed Customer Endorsements were 'in line with your [~~Greg~~ Brereton's] agreement with Lex' and confirmed

'NKORL [no known or reported losses] (and have confirmed separately as well to Marsh)' and requested that ~~Greg~~ Brereton sign and return the endorsements.

Particulars

Email from Craig Pinnington to ~~Greg~~ Brereton, copying Margarita Diagileva, John Whelan and Lex Greensill on 15 March 2020 with the subject 'LHG endorsements' (MAR.0002.0001.2968), attaching proposed Customer Endorsement No 122 to the 2019 90/10 Master Policy (TB-03691) (MAR.0002.0001.2970) and proposed Customer Endorsement No 122 to the 2019 90/10 Parallel Policy (MAR.0002.0001.2969).

Proposed Customer Endorsement No 122 to the 2019 90/10 Master Policy provided, relevantly, that:

1. the Customer Name was Liberty House Group Pte Ltd;
2. the Maximum Tenor was 180 days;
3. the Aggregate Customer Limit as at the date of the Endorsement was USD20 million;
4. the Insured Percentage was 50%; and
5. the Maximum Limit of Liability as at the date of the Endorsement was USD10 million.

Proposed Endorsement No 122 to the 2019 90/10 Parallel Policy was on similar terms to Customer Endorsement No 122 to the 2019 90/10 Master Policy, save for, relevantly, that:

a. the Maximum Limit of Liability as at the date of the Endorsement was USD20 million; and
b. the Insured Percentage was 100%.

10A.153 On or around 15 March 2020, ~~Greg~~ Brereton returned to GCUK signed copies of a document styled "Customer Endorsement No 122", under which Liberty House was described as being endorsed as a customer under the 2019 90/10 Master Policy ~~(TB-03691)~~ and the 2019 90/10 Parallel Policy.

Particulars

Email from ~~Greg~~ Brereton to Craig Pinnington, copying Margarita Diagileva, Arslan Gill (Insurance Analyst) of GCUK, John Whelan and Lex Greensill, with the subject 'RE: LHG endorsements', dated 15 March 2020 and attached Customer Endorsement No 122 (BCC.0001.0001.5582 and BCC.0001.0001.5583). The endorsements were issued on similar terms to the proposed Customer Endorsements referred to in paragraph 10A.152.

10A.153A. By reason of the matters pleaded in paragraphs 10A.145 to 10A.148 above, at all material times, including at the time GCUK and/or Marsh made the requests referred to in paragraphs 10A.149 to 10A.152 above and at the time Brereton signed the documents referred to in paragraph 10A.153 and provided those documents to GCUK, Greensill represented to Brereton that:

a. the policy documents provided to Brereton were 'marked up against the previous version you have seen, with the Liberty OneSteel transaction in mind';

b. Greensill used a master and parallel policy structure;

c. under the master and parallel policy structure, the master policy would be issued to GCUK and GCPL, and the parallel policy would be issued to Greensill Bank and GCPL;

d. Greensill Bank and the loss payee would buy notes that were over-collateralised by a factor 'of at least 100/95', where the over-collateralisation of the note 'represents the first loss position [Greensill Bank] would take in relation to the insured debts';

e. because GCUK did not hold any notes but would hold the accounts receivable directly, GCUK would have a first loss on each portfolio under the master policy; and

f. as a result of the above matters the structure of the master and parallel policies meant that the loss position between Greensill Bank and GCUK under the master and parallel policy structure would always be the same.

10A.154 ~~At~~Further by reason of the representations referred to in paragraph 10A.153A above (and the conduct referred to therein), at all material times ~~for the purposes of the Liberty House Risks~~, including ~~as at 15 March 2020 when Greg Brereton engaged in the conduct~~ at the time GCUK and/or Marsh made the requests referred to in paragraphs 10A.149 to10A.152 above and at the time Brereton signed the documents referred to in paragraph 10A.153 and provided those documents to GCUK, Greensill represented to ~~Greg~~ Brereton that:

a. the effect of the endorsement;

b. its intention in requesting the endorsement; and

c. its understanding of the effect of the endorsement,

was to limit the maximum exposure of the Insurer in respect of the cover to 50% of the Aggregate Customer Limit (**Liberty House Aggregate Customer Limit Misrepresentation**).

Particulars

With respect to subparagraph ~~10A.154a~~ 10A.154(a) the BCC/TM Parties refer to and repeats the allegation in paragraph 10A.153A above and the particulars ~~in~~to paragraph 10A.152 above.

With respect to subparagraphs 10A.154b and 10A.154c, the representations were implied by the ~~express representations~~ matters alleged in paragraph 10A.153A above and the matters alleged in paragraph 10A.152 above (and the particulars thereto).

10A.154A. [Not used].

10A.154B. By reason of the matters pleaded in paragraphs 10A.149 to 10A.153, at all material times, including at the time GCUK and/or Marsh made the requests referred to in paragraphs 10A.149 to 10A.152 above and at the time Brereton signed the documents referred to in paragraph 10A.153 and provided those documents to GCUK, Greensill represented to Brereton that the Liberty House Risk related to a 're-invoicing' facility with a maximum tenor of 180 days (**Liberty House Facility Misrepresentation**).

Particulars

The representation may be inferred from the email from Craig Pinnington (Senior Credit Analyst) of GCUK to Edward Smith of Marsh, Angus Ward of Marsh and Alexandre Weiss Bueno of Marsh, copying Margarita Diagileva (Insurance Analyst) of GCUK on 13 March 2020 with the subject 'TBCC cover for LHG reinvoicing' (MAR.0003.0002.9444), in which GCUK relayed details of a message from Lex Greensill which referred to a discussion with BCC earlier that week in connection with 'LHG reinvoicing cover'.

10A.154C. Further, at all material times, including at the time Greensill and/or Marsh made the requests referred to in paragraphs 10A.149 to 10A.152 above and at the time Brereton signed the documents referred to in paragraph 10A.153 and provided those documents to GCUK,

Greensill represented to Brereton that there had been no defaults or non-payments under the Liberty House facility, and there was no basis to expect a future default (the **Liberty House No Default Misrepresentation**).

Particulars

The Liberty House No Default Misrepresentation was partly express and party implied.

In so far as it was express, the correspondence referred to and particularised in paragraph 10A.152 stated that GCUK had confirmed there were 'NKORL' [no known or reported losses].

In so far as it was implied, it was implied by the fact that at no time prior to the request to provide insurance cover, or prior to the signing and delivery of the documents referred to in paragraph 10A.153 above, was Brereton informed of any defaults or non-payments under the 're-invoicing' facility subject of the Liberty House Risk, which matters would have been material to Brereton's decision to execute and deliver those documents.

10A.154D. Each of the Liberty House Aggregate Customer Limit Misrepresentation, the Liberty House Facility Duration Misrepresentation and the Liberty House No Default Misrepresentation were continuing representations.

10A.154E. The Liberty House Aggregate Customer Limit Misrepresentation, the Liberty House Facility Misrepresentation and the Liberty House No Default Misrepresentation were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.21, 10A.22A, 10A.22B, 10A.25, 10A.25A, 10A.26A and 10A.26B above.

Representations were misleading

10A.155 The ~~representation referred to in paragraphs 10A.149A above~~ Liberty House Facility Misrepresentation was false and/or misleading because:

a. having regard to the SCF Representation at paragraph 10A.27 above, the concept of 're-invoicing' was used by GCUK, and understood by ~~Greg~~ Brereton, to refer to a form

of short-term financing referable to genuine underlying invoices that evidence trade; and

b. while GCUK represented that the Liberty House Risk involved 'reinvoicing' with 'a maximum tenor of 180 days', and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact~~,~~:

i. the Liberty House Risk related to a financing facility with no maximum duration or, in the alternative, a duration longer than 180 days~~.~~; and

ii. Greensill did not intend that the financing facility be based on the underlying trade of goods or services by Liberty House, or alternatively did not maintain a continuing satisfaction that it was so based.

Particulars

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

a. Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [32]);

b. in the first quarter of 2020, Sanjeev Gupta requested, and Lex Greensill provided, confirmation that the financing provided to his companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [16]);

c. in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [49]).

Zurich Insurance Company Limited Defence in CL-2023-000136 before the High Court of England and Wales at [25-26] and [66-70].

Under the Liberty House Customer Agreement and the Bramid Supplier Agreement, having regard to the definition of “Account Receivables”, there could be payment obligations whether or not there was an actual supply or goods or services, an actual promise to supply goods or services, or an actual, definite, probable or intended payment obligation, or an actual business relationship (IAL.500.002.2228 and IAL.500.002.2242).

The nature of financing provided to Liberty House involved:

a. Liberty House submitting invoices to GCUK which purported to be for the purchase of specified quantities of nickel briquettes, with payment terms described as 'Cash Against Documents', and with one of the following entities described as the 'seller':

    (i) Aar Tee Commodities (UK) Ltd (eg, GCU.0004.0017.7394);

    (ii) AIC Commodities (Asia) Ltd (eg, CSA.0001.0008.2646);

    (iii) Inter Globe Enterprises Ltd (eg, AGB.0002.0002.1688);

    (iv) Metallics Trading Pte Ltd (eg, GCU.0009.0011.1576)

    (v) Pan Pacific Trading Ltd (eg, GCU.0009.0002.1675);

    (vi) Paras Metallics Pte Ltd (eg, AGB.0002.0002.1690);

    (vii) Secant Trading DMCC (eg, CSA.0001.0008.2640);

    (viii) Taurus Metallurgicals Limited (eg, TMA.0001.0005.5445);

    (ix) UBG Commodities HK Ltd (eg, GCU.0004.0014.1219); and

    (x) Vision Commodities HK Ltd (eg, GCU.0009.0019.7829).

b. Shortly before the maturity date of the outstanding invoices in connection with the Liberty House Risk, Liberty House would submit new invoices to replace the outstanding invoices that were due to mature (eg, IAL.500.002.2236).

The fact that the invoices uploaded by Liberty House did not relate to any physical trade of goods or transfer of title to goods may be inferred from the fact that:

(a) entities within the GFG Alliance had been referred to the IMB due to issues concerning paperwork connected to shipments of various commodities, most commonly LME nickel (CSA.5000.0003.0870); and

(b) a number of financial institutions had ceased to provide funding to the commodities trading business of the GFG Alliance due to concerns about the paperwork provided by entities within the GFG Alliance: J Farchy, M

Burton and G Finch, As Sanjeev Gupta Rose From Trader to Tycoon, Several Banks Backed Away (16 April 2021), Bloomberg, https://www.bloomberg.com/news/articles/2021-04-16/as-sanjeev-gupta-liberty-house-rose-from-trader-to-tycoon-banks-backed-away (accessed on 25 October 2024) and D Griffin and J Farchy, A Credit Suisse Unit Blacklisted Gupta as Another Bankrolled Him (28 May 2021), Bloomberg, https://www.bloomberg.com/news/articles/2021-05-28/a-credit-suisse-unit-blacklisted-gupta-as-another-bankrolled-him (accessed on 25 October 2024).

The fact that invoices uploaded by Liberty House did not relate to the physical trade of goods or transfer of title to goods, or alternatively that it was not intended by GCUK that the invoices uploaded by Liberty House and accepted by GCUK relate to the physical trade of goods or transfer of title to goods, may be further inferred from the fact that:

(a) GCUK understood that Liberty House itself did not engage in trading activities, but rather derived its revenues from dividends paid by subsidiary companies of Liberty House (GCU.0009.0005.9032);

(b) Credit Suisse Group AG had informed GCUK about concerns with entities within the GFG Alliance, including Liberty House, and in response, GCUK obtained from the IMB all information held by the IMB concerning entities within the GFG Alliance: Memo prepared by GCUK, with title 'Liberty Group: Commodity Trading and Shipping Practices', dated 6 August 2018 (CSA.5000.0001.1644);

(c) Liberty House would describe the upload of invoices as replacing an invoice that was due to mature (IAL.500.002.2236); and

(d) GCUK did not consider that it was necessary to provide Zurich with supporting documents, such as bills of lading, with respect to invoices in connection with the Liberty House Risk when requested to do so (AGB.0002.0002.1682)

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.156 The Liberty House Aggregate Customer Limit Misrepresentation was false and/or misleading because it was neither the intention nor understanding of Greensill that the effect of Endorsement No 122 would be to limit the Insurer's maximum exposure under the 2019 90/10 Parallel Policy to 50% of the Aggregate Customer Limit.

Particulars

The fact that Greensill understood and intended that the Insurer's maximum exposure under the 2019 90/10 Parallel Policy was not to be limited to 50% of the Aggregate Customer Limit is to be inferred from:

a. The insurance coverage previously provided by Zurich issued to Greensill Bank with respect to the Liberty House Risk provided for a Maximum Limit of Liability of ~~USD 20,000,000~~USD20 million (MAR.0004.0002.7793);

b. The insurance coverage previously provided by Zurich with respect to the Liberty House Risk had expired on 29 February 2020, and Zurich had communicated to Greensill, either directly or through Marsh, that it would not extend cover with respect to the Liberty House Risk (AGB.0002.0002.3233);

c. Under the Liberty House facility, Greensill was unable to accept invoices from Liberty House to replace maturing invoices unless insurance was 'in place' (IAL.500.002.2236); and

d. The email from Angus Ward of Marsh to Credit Suisse, with the subject 'Greensill – Loss Payee Limit Tracker 16/03/2020', dated 17 March 2020, which stated 'Please find updated Loss Payee limit tracker attached – new TBCC limit for Liberty House Group added', and attached an Excel spreadsheet which described the limit for 'Liberty House Group Pte Ltd' under the "BCC Standalone Policy TB-03690' as '20,000,000' (AGB.0002.0001.5142~~,~~ and AGB.0002.0001.5143).

Further particulars may be provided following completion of discovery by GCUK ~~and GCPL~~.

10A.156A. The Liberty House No Default Misrepresentation was false and/or misleading because prior to 10 March 2020, there were known defaults and/or instances of non-payments with respect to the 're-invoicing' facility subject of the Liberty House Risk.

Particulars

Email from Ludwig Sels to Zara Hayes, copying Brett Downes among others, with subject 'Re: Today's current Short positions', dated 6 March 2019 (GCU.0009.0007.8159). Mr Sels states '[i]f we still can, can we please top up CS positions ie Liberty Aluminium Holdco AND Liberty House…Lex has verbally agreed these top ups.'

Email from Henry Middleditch (GCUK) to Lex Greensill, copying Brett Downes, Craig Pinnington and Patrick Davis, with subject 'Liberty Late Payments', dated 7 March 2019 (GCU.0004.0024.4664).

Email from Brett Downes to David Keeling, copying others, with the subject 'RE: Potential Top Ups 13th March 2019', dated 13 March 2019 (GCU.0009.0007.9771).

GCUK had a practice of permitting Liberty House to draw on the 're-invoicing' facility subject of the Liberty House Risk in order to cover payment obligations without Liberty House in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to Liberty House. This practice is evident from the documents identified immediately above in the particulars to this paragraph [10A.156A], and is further pleaded at Section C.6 of Annexure B to this defence.

Knowledge of falsity of representations

10A.157 Lex Greensill knew that Credit Suisse would require 100% indemnity of the Aggregate Customer Limit under the 2019 90/10 Parallel Policy in order for Credit Suisse to purchase notes related to the Liberty House Risk.

Particulars

Email from Luc Mathys of Credit Suisse to Lex Greensill, with the subject 'FW: Missing Insurance', dated 3 October 2019 (CSA.5000.0003.3372).

10A.158 Lex Greensill knew the matters set out in paragraphs 10A.155 and 10A.156A above.

Particulars

The BCC/TM Parties refer to and repeats the particulars to paragraph 10A.155 above.

~~The~~Lex Greensill's knowledge ~~of Greensill~~ is to be inferred from ~~the~~his direct involvement ~~of Lex Greensill in the~~in company's dealings with Liberty House~~,~~ and ~~from Lex Greensill's direct involvement~~ in correspondence with BCC associated with the Liberty House Risk, as demonstrated by:

a. Credit Analysis Pack for Liberty House dated 4 October 2017 (MAR.0003.0001.2203, page 2), which identifies Lex Greensill as a 'GC Relationship Owner' in respect of the facility; and

b. ~~the~~The particulars to paragraphs 10A.149A and 10A.152 ~~and 10A.153~~ above, which refer to Lex Greensill's involvement in the request for cover in respect of the Liberty House Risk.

The knowledge of Lex Greensill is to be further inferred from the following matters:

a. Lex Greensill and GCUK would provide advice to GCUK's customers on the structure of the customer's debt facilities and overall capital structure (for example, GCU.0005.0007.0413, GCU.0005.0008.6570); and

b. Notwithstanding the fact that GCUK held itself out as a supply chain finance company, GCUK would regularly design debt facilities for its customers that were not linked to the genuine underlying trade of its customers (for example, GCU.0007.0002.4670; GCU.0009.0005.5676, GCU.0004.0015.9384).

The knowledge of Lex Greensill of the arrangements between GCUK and Liberty House is also to be inferred from the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

a. a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

b. that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

c. that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

d. that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements…were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

Further particulars will be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.159 Lex Greensill knew the matters set out in paragraphs 10A.153A, 10A.154, and 10A.156 above.

Particulars

The BCC/TM Parties refer to and repeats the particulars to paragraph 10A.156 above.

The knowledge of Lex Greensill of the effect of Endorsement No 122 is evident from the fact that:

a. Lex Greensill knew that ~~Greg~~ Brereton understood the indemnity with respect to the Liberty House Risk was to be 50% (MAR.0003.0002.9444);

b. Lex Greensill had confirmed to ~~Greg~~ Brereton that the underwriter would always answer to the 'master policy' (BCC.0001.0002.0245);

c. The notes programme with respect to the Liberty House Risk was not amended in a manner to ensure that the insurer's maximum exposure under the 2019 90/10 Parallel Policy was the same as the insurer's maximum exposure under the 2019 90/10 Master Policy ~~(TB-03691)~~.

Further particulars will be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.160 The knowledge of Lex Greensill ~~of the matters set out in paragraphs 10A.155 and 10A.156~~pleaded in paragraph 10A.159 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.24 and 10A.25 ~~and 10A.26~~ above.

10A.161 The knowledge of Lex Greensill ~~of the matters set out~~pleaded in paragraphs 10A.155 and 10A.156 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20 ~~and 10A.22~~ above.

10A.162 Further and in the alternative to paragraph ~~10A.160~~ 10A.159 above, another officer and employee of GCUK – Craig Pinnington (Senior Credit Analyst) – knew the matters set out in subparagraph ~~10A.155b~~ 10A.155(b) above.

Particulars

The BCC/TM Parties refer to and repeats the particulars to subparagraph 10A.155(b) above.

In an email from Craig Pinnington to Edward Smith, Sophie Dyke (Insurance Analyst) of GCUK and Brett Downes (Chief Risk Officer) of GCUK on 22 February 2019, GCUK

was unable to provide Zurich with any bills of lading with respect to invoices in connection with the Liberty House Risk when requested to do so (AGB.0002.0002.1682);

The knowledge of Craig Pinnington is otherwise to be inferred from his involvement of in dealings with Liberty House and other risks involving the Liberty Group, namely the SSUK Risk.

~~Further particulars may be provided after completion of discovery by GCUK and GCPL.~~

10A.163 The knowledge of Craig Pinnington ~~of the matters identified~~pleaded in paragraph 10A.162 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in 10A.26A and 10A.26B above.

10A.164 The knowledge of Craig Pinnington ~~of the matters identified~~pleaded in paragraph 10A.162 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refers to paragraphs ~~10A.20 and~~ 10A.22A and 10A.22B above.

Knowledge of materiality of representations

10A.165 Each of the matters referred to in paragraphs 10A.155, 10A.156 and 10A.156A above were matters:

a. which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty House Risk; or

b. alternatively to a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty House being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Liberty House being unable to repay the amounts advanced to it and thus upon the Liberty House Risk.~~

10A.166 [Not Used]. ~~Each of the matters referred to in paragraph 10A.156 above were matters:~~

~~a. which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty House Risk; or~~

~~b. alternatively to a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.~~

~~**Particulars**~~

~~BCC refers to the particulars in paragraph 10A.165 above.~~

10A.167 The knowledge of Lex Greensill of the matters set out in paragraph~~s~~ 10A.165 ~~and 10A.166~~ above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.25 ~~and 10A.126~~ above.

10A.168 The knowledge of Lex Greensill of the matters set out in paragraph~~s~~ 10A.165 ~~and 10A.166~~ above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20 ~~and 10A.122~~ above.

10A.169 Further and in the alternative to paragraph 10A.165 above, each of the matters pleaded in subparagraph ~~10A.155b~~ 10A.155(b) above were matters:

a. which another officer and employee of GCUK – Craig Pinnington (Senior Credit Analyst) – knew were material to the decision whether to extend or renew insurance cover in respect of the Liberty House Risk; or

b. alternatively to ~~paragraph~~ subparagraph a., in respect of which the abovementioned ~~officer or employee~~ officers or employees of GCUK ~~was~~ were wilfully blind or recklessly indifferent to the possibility that ~~his~~ they were material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

10A.170 The knowledge of Craig Pinnington of the matters ~~set out in~~ pleaded in paragraph 10A.169 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.26A and 10.26B above.

10A.171 The knowledge of Craig Pinnington of the matters ~~set out~~ pleaded in paragraph 10A.169 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs ~~10A.22 10A.21~~ 10A.26A and 10.26B above.

Misrepresentations were fraudulent

10A.172 In the premises of paragraphs ~~10A.145~~ 10A.146 to 10A.171 above:

a. Greensill misrepresented the risk presented by the Liberty House Risk; and

b. the misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover with respect to the Liberty House Risk.

10A.173 If Greensill had not made the representations in paragraphs 10A.150, 10A.152 and 10A.154 above Liberty House Aggregate Customer Limit Misrepresentation, the Liberty House Facility Misrepresentation or the Liberty House No Default Misrepresentation, insurance cover would not have been issued in respect of the Liberty House Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.174 By reason of the matters pleaded in paragraphs ~~10A.155~~ 10A.153A to 10A.173 above, IAL is entitled to avoid the Liberty House Endorsement.

Innocent misrepresentation

10A.175 In the alternative to the matters pleaded in paragraphs 10A.172 to 10A.174 above, by reason of the matters pleaded in paragraphs ~~10A.155 and 10A.173~~ 10A.153A to 10A.174 above, IAL is entitled to reduce its liability under the Liberty House Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D4.3 Liberty House Non-Disclosures

Knowledge of material underlying non-disclosures

10A.176 At the time of requesting insurance cover for the Liberty House Risk, Lex Greensill knew:

a. the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 10A.33G

b. the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group and Sanjeev Gupta (who was personal Guarantor of the Liberty House facility risk) in prior dishonest and fraudulent conduct.

Particulars

Email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're: Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

10A.177 The knowledge of Lex Greensill of the matters in paragraph 10A.176 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refers to paragraph~~s~~ 10A.25 ~~and 10A.26~~ above.

10A.178 The knowledge of Lex Greensill of the matters in paragraph 10A.176 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20 ~~and 10A.22~~ above.

Knowledge of materiality

10A.179 Each of the matters referred to in paragraph 10A.176 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty House Risk and, if so, on what terms; or

b. alternatively to ~~paragraph~~ subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty House being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Liberty House being unable to repay the amounts advanced to it and thus upon the Liberty House Risk.~~

10A.180 Further or in the alternative to paragraph 10A.179 above, each of the matters referred to in paragraph 10A.176 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend insurance cover in respect of the Liberty House Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.179 above.

10A.181 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.179 and 10A.180 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.25 ~~and 10A.26~~ above.

10A.182 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.179 and 10A.180 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20 ~~and 10A.22~~ above.

Breach of duty of disclosure

10A.183 Greensill did not disclose to ~~Greg~~ Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 10A.176 above before the cover was placed ~~or renewed~~ for the Liberty House Risk.

10A.184 Greensill's failure to disclose the matters referred to in paragraph 10A.176 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 10A.177 to 10A.182 above.

Fraudulent non-disclosure

10A.185 By reason of the matters pleaded in paragraphs 10A.177, 10A.178, 10A.179, 10A.181 and 10A.182 above, Greensill's failure to disclose the matters referred to in paragraph 10A.176 above was fraudulent.

10A.186 The cover for the Liberty House Risk would not have been issued if the matters referred to in in paragraph 10A.176 above had been disclosed.

10A.187 In the alternative to the allegation in paragraph 10A.186 above, the cover for the Liberty House Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 10A.176 above had been disclosed.

10A.188 By reason of the matters pleaded in paragraphs 10A.185 to 10A.187 above, IAL is entitled to avoid the Liberty House Endorsement.

Innocent non-disclosure

10A.189 In the alternative to the matters pleaded in paragraphs 10A.185 to 10A.188 above, and by reason of the matters pleaded in paragraphs 10A.183, 10A.184, 10A.186 and 10A.187 above, IAL is entitled to reduce its liability under the Liberty House Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D5 LIBERTY COMMODITIES LIMITED

D5.1 Policy and Endorsements

10A.190 In Federal Court of Australia proceedings no. NSD169/2023 (**CS Global Proceeding**), no. NSD175/2023 (**LCL Proceeding**) and no. NSD 1039/2021 (**White Oak Proceeding**), the applicants allege that Liberty Commodities Limited (a company incorporated in England & Wales (company number 03349135)) (**LCL**), among others, was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsements No 19, 19(i) and 19(ii) dated 13 March 2019.

Particulars

~~Second~~Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~21 August 2024 at~~14 April 2025 at paragraph 128.

Fifth Amended Statement of Claim in proceeding no. NSD175/2023 dated ~~14 March 2024~~11 June 2025 at paragraph 145.

Fourth Amended Statement of Claim in proceeding NSD1039/2021 dated 7 November 2023 at paragraph 46.

10A.191 The applicants in the LCL Proceeding ~~(NSD175/2023)~~ allege that, on and from 13 March 2019, various further endorsements to the 2019 90/10 Parallel Policy were executed by BCC, including the following endorsements as defined in ~~GBAG's~~ the Amended Statement of Claim:

a. the Customer Endorsements;

b. the RPA Debt Endorsement;

c. the other Liberty Endorsements; and

d. the LCL Endorsement.

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD175/2023 dated ~~14 March 2024~~ 11 June 2025 at paragraphs 139, 140, 145 and 147.

10A.192 The applicants in the CS Global Proceeding ~~(NSD169/2023)~~ allege that, on and from 13 March 2019, various further endorsements to the 2019 90/10 Parallel Policy were executed by BCC, including the following endorsements as defined in the ~~Second Amended~~Fifth Amended Statement of Claim:

a. ~~Debt~~ Endorsements 1, 2, 2(iii) and 2(iv);

b. the Customer Endorsements;

c. the Virtuoso Loss Payee Endorsement (Endorsement 3);

d. the Nova Loss Payee Endorsement (Endorsement 6);

e. the Liberty TCUK Endorsement;

f. the Liberty Commodities RPA; and

g. the SSUK Endorsement.

Particulars

~~Second~~Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~21 August 2024~~ 14 April 2025 at paragraph 128.

10A.192A The applicant in the White Oak Proceeding (NSD1039/2021) alleges that, on and from 13 March 2019, various further endorsements to the 2019 90/10 Parallel Policy were executed by BCC, including the following endorsements as defined in White Oak's Fourth Amended Statement of Claim:

a. Endorsement 18;

b. the Customer Endorsements;

c. the RPA Debt Endorsement;

d. the Liberty Endorsement;

e. the LCL Endorsement; and

f. the Loss Payee Endorsement.

Particulars

Fourth Amended Statement of Claim in proceeding NSD1039/2021 dated 7 November 2023 at paragraph 41A.

D5.2 LCL Misrepresentations

Representations

10A.193 [Not used]. ~~On or around 29 August 2018, GCUK requested (through its broker, Marsh) that BCC extend cover for certain risks associated with a supply chain financing arrangement with LCL. This request was expressed as an 'immediate need from Greensill for cover' for 'another USD50 million combined on Liberty House, Liberty Commodities, SIMEC, and [Liberty OneSteel]'.~~

~~Particulars~~

~~Email from Edward Smith of Marsh to Greg Brereton, with the subject 'Greensill - Liberty Request', dated 29 August 2018 (BCC.0001.0001.0805) and its attachments.~~

10A.194 [Not used]. ~~On or around 31 August 2018, Greg Brereton responded to this request (adding Lex Greensill to the email chain) to say that BCC already had 'a wide array of commitment on parts of Liberty, SIMEC, GFG etc', but to agree a 'new USD25 million on Simec Group Ltd' on the terms proposed by Marsh.~~

Particulars

~~Email from Greg Brereton to Edward Smith and Lex Greensill, with the subject 'RE: Greensill - Liberty Request', dated 31 August 2018 (AGB.0002.0001.0277).~~

10A.194A. On or around 15 October 2018, GCUK prepared a draft term sheet setting out the indicative principal terms and conditions to provide a "Limited Recourse Accounts Receivable Purchase Facility" to LCL.

Particulars

Email from Henry Middleditch of GCUK to Lex Greensill, with the subject 'Liberty Commodities AR', dated 15 October 2018 (GCU.0004.0019.3454), attaching a copy of the draft term sheet (GCU.0004.0019.3455).

10A.194B. On or around 25 October 2018, Craig Pinnington of GCUK provided documents to GCUK's Credit Committee which related to a request for approval of an accounts receivable facility with a US$100 million limit to be provided by GCUK to LCL (the LCL Facility). The documents comprised a Credit Analysis Pack, Relationship Credit Analysis Pack and a spreadsheet titled 'GFG Facility Summary Sheet – 19-10-18'.

Particulars

Email from Craig Pinnington, with the subject 'Credit approval request- GFG Alliance Liberty Commodities Limited', dated 25 October 2018 (GCU.0004.0019.9367).

Credit Analysis Pack dated 25 October 2018 (GCU.0004.0019.9368).

Relationship Credit Analysis Pack dated 25 October 2018 (GCU.0004.0019.9369).

GFG Facility Summary Sheet (GCU.0004.0019.9370).

10A.194C. On or around 26 October 2018, GCUK's Credit Committee approved provision of the LCL Facility.

Particulars

The approval is recorded in the minutes of a meeting of GCUK's Credit Committee held on 26 October 2018 (GCU.0007.0002.2400).

10A.194D. On or around 29 October 2018, GCUK as Buyer, LCL as Seller Representative and Servicer, and certain other parties entered into a Receivables Purchase Deed (GCU.0004.0020.0283).

10A.195 On or around 9 November 2018, GCUK (through its broker, Marsh) requested that BCC extend cover in relation to ~~a new limb of~~ the LCL ~~facility, involving an accounts receivable financing~~

~~arrangement to be provided to LCL~~ Facility (the **LCL Risk**). This request was initially for the financing of accounts receivable associated with two purported account debtors of LCL, Gulf Petrochem FZC (**Gulf**) and Phoenix Commodities Pvt Ltd (**Phoenix**).

Particulars

Email from Edward Smith to Greg Brereton, with the subject 'Greensill Request - Gulf/Phoenix', dated 9 November 2018 (~~TMDR.0000001999~~BCC.0001.0001.1210).

10A.196 On or around 9 November 2018, Greg Brereton replied to this request to say: 'I can confirm on this one as you have requested'.

Particulars

Email from Greg Brereton to Edward Smith, with the subject 'RE: Greensill Request - Gulf/Phoenix', dated 9 November 2018 (~~TMDR.0000020358~~AGB.0002.0003.5834).

10A.197 On or around 13 November 2018, Customer Endorsement No 47 was signed by BCC and provided to Marsh by which LCL, Liberty FE Trade DMCC and Liberty Commodities Group were endorsed under the Policy TB-03690 (B0509FINCW1800045) (**2018 Policy**). Signed Customer Endorsements for Gulf and Phoenix were also provided to Marsh.

Particulars

Email from Greg Brereton to Edward Smith, with the subject 'RE: Greensill Request - Gulf/Phoenix', dated 13 November 2018 and attached PDF (BCC.0001.0002.2007 and BCC.0001.0002.2008).

10A.198 Subsequently, Customer Endorsements 19, 19(i) and 19(ii) were signed, effective from 1 March 2019, by which LCL, Liberty FE Trade DMCC and Liberty Commodities Group were endorsed as customers under the 2019 90/10 Parallel Policy.

Particulars

Customer Endorsement No 19, 19(i) and 19(ii) executed by Greg Brereton for and on behalf of BCC dated 13 March 2019, 29 January 2020 and 29 April 2020, respectively.

10A.199 On and from ~~13 March 2019~~21 November 2018, further endorsements were executed by BCC and provided to Marsh, in order to continue to extend cover for the LCL Risk to the accounts receivable of other alleged account debtors of LCL. The Customer Endorsements under which claims have been made are as follows:

a. the following Customer Endorsements pleaded at paragraph 139 of the Fifth Amended Statement of Claim in the LCL Proceeding:

i. Customer Endorsement No 20 for Trafigura Pte Ltd dated 13 March 2019;

ii. Customer Endorsement No 36(i) for Aperam Sourcing SCA dated 24 May 2019;

iii. Customer Endorsement No 68 for ArcelorMittal Sourcing SCA dated 24 May 2019;

iv. Customer Endorsement No 69 (i) for Salzgitter Flachstahl GmbH dated 28 June 2019;

v. Customer Endorsement No 99 for JFE Steel Corporation dated 14 August 2019;

vi. Customer Endorsement No 74(i) for Allegheny Technologies Incorporated dated 23 September 2019;

vii. Customer Endorsement No 60(ii) for Voestalpine Böhler Edelstahl GmbH dated 1 October 2019;

viii. Customer Endorsement No 61(ii) for BGH Edelstahl Freital GmbH dated 1 October 2019;

ix. Customer Endorsement No 63(ii) for RPS Rohstoff-, Press- und Schneid-Betrieb Siegen GmbH dated 1 October 2019;

x. Customer Endorsement No 66(ii) for Wieland Werke AG dated 1 October 2019;

xi. Customer Endorsement No 83(i) for Aktien-Gesellschaft der Dillinger Hüttenwerke dated 1 October 2019;

xii. Customer Endorsement No 105 for Saarstahl Aktiengesellschaft dated 1 October 2019;

xiii. Customer Endorsement No 100(i) for Panasonic Corporation dated 29 January 2020;

xiv. Customer Endorsement No 45(iii) for Cargill, Incorporated dated 24 February 2020;

xv. Customer Endorsement No 46(iii) for Outokumpu Oyj dated 24 February 2020; and

xvi. Customer Endorsement No 72(ii) for Mitsubishi Corporation International (Europe) PLC dated 25 June 2020;

b. the following Customer Endorsements pleaded at paragraph 46 of White Oak's Fourth Amended Statement of Claim:

i. Customer Endorsement No 111(i) for Howmet Aerospace Inc dated 2 July 2020;

ii. Customer Endorsement No 101(i) for Marubeni Corporation dated 24 February 2020;

iii. Customer Endorsement No 90(ii) for Mitsui Bussan Metals Co Ltd dated 24 February 2020;

iv. Customer Endorsement No 91(iii) for Posco International Corporation dated 24 February 2020;

v. Customer Endorsement No 119 for Samsung Electronics Co Ltd dated 26 February 2020;

vi. Customer Endorsement No 64(iv) for Sumitomo Corporation Europe Limited dated 25 June 2020;

vii. Customer Endorsement No 47(v) for Thyssenkrupp Materials Trading GmbH dated 24 February 2020; and

viii. Customer Endorsement No 73(i) for Toyota Tsusho Asia Pacific Pte Ltd dated 1 October 2019; and

c. the following Customer Endorsements pleaded at paragraph 128 of CS Global's Fifth Amended Statement of Claim:

i. Customer Endorsement No 94(ii) for Acerinox SA;

ii. Customer Endorsement No 103 for AMAG Austria Metall AG;

iii. Customer Endorsement No 92(i)) for Baosteel Resources International Company Limited;

iv. Customer Endorsement No 135 for LG International Corporation;

v. Customer Endorsement No 89 for Minmetals Cheerglory Limited;

vi. Customer Endorsement No 95(ii)) for Nucor Trading SA;

vii. Customer Endorsement No 136 for Sorin Corporation;

viii. Customer Endorsement No 114 for SSAB AB;

ix. Customer Endorsement No 112 for Tenaris S.A.; and

x. Customer Endorsement No 81(i) for Universal Stainless & Alloy Products, Inc.

10A.200 The endorsements identified in paragraphs ~~10A.190~~10A.191 to 10A.192A and 10A.199 above are hereafter referred to as the **LCL Endorsements**.

10A.201 Each of the Customer Endorsements identified in paragraph 10A.199 above was provided in draft form by GCUK (through its broker, Marsh) to Greg Brereton, with a view to that endorsement being accepted and signed by Greg Brereton on behalf of BCC.

Particulars

a. Email from Edward Smith of Marsh to Brereton, with the subject 'RE: Greensill Standalone Renewal' dated 4 March 2019 (regarding Trafigura Pte Ltd) (BCC.0001.0001.1912).

b. Email from Angus Ward of Marsh to Greg Brereton, with the subject 'RE: Liberty Commodities AR Increase Requests' dated 16 May 2019 (regarding Aperam Sourcing SCA, and ArcelorMittal Sourcing SCA) (BCC.0001.0001.2802).

c. Email from Angus Ward of Marsh to Brereton, with the subject ‘RE: Greensill - Liberty Commodities AR account debtor increases' dated 24 June 2019 (regarding Salzgitter Flachstahl GmbH) (AGB.0002.0001.1631).

d. Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - Liberty Commodities AR account debtors' dated 27 June 2019 (regarding Minmetals Cheerglory Limited and Universal Stainless & Alloy Products, Inc.) (BCC.0001.0001.3162).

e. Email from Edward Smith of Marsh to Greg Brereton, with the subject 'RE: Greensill - Liberty Commodities AR additional account debtor' dated 13 August 2019 (regarding JFE Steel Corporation) (BCC.0001.0001.3603), which was forwarded to Lex Greensill on 14 August 2019 (AGB.0002.0001.5935).

f. Email from Angus Ward of Marsh to Greg Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 20 September 2019 (regarding Allegheny Technologies Incorporated) (BCC.0001.0001.4033).

g. Email from Edward Smith of Marsh to Greg Brereton, copying Lex Greensill, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 26 September 2019 (regarding Aktien-Gesellschaft der Dillinger Hüttenwerke, Toyota Tshusho Asia Pacific Pte Ltd, Acerinox SA, AMAG Austria Metall AG, Voestalpine Böhler Edelstahl GmbH, BHG Edelstahl Freital GmbH, Wieland Werke AG, RPS Rohstoff- Press- und Schneid-Betrieb Siegen GmbH and Saarstahl Atkiengesellschaft) (BCC.0001.0001.4079).

h. Email from Angus Ward of Marsh to Brereton, with the subject 'RE: Liberty Commodities Debtors for Tuesday' dated 14 October 2019 (regarding Baosteel Resources International Company Limited, SSAB AB and Tenaris S.A) (BCC.0001.0001.4185).

i. Email from Angus Ward of Marsh to Brereton, with the subject 'RE: Greensill Request - Liberty/Panasonic Increase Request' dated 28 January 2020 (regarding Panasonic Corporation) (MMC_GCUK08_00014923).

j. Email from Angus Ward of Marsh to Greg Brereton and Edward Smith, with the subject 'RE: Greensill - LCL Increase Request' dated 24 February 2020 (regarding Marubeni Corporation, Mitsui Bussan Metals Co Ltd, Thyssenkrupp Materials Trading GmbH, Nucor Trading SA and Posco International Corporation) (BCC.0001.0001.5420).

k. Email chain from Angus Ward of Marsh to Brereton, with the subject 'RE: Greensill – LCL Increase Request' dated 24 February 2020 (regarding Outokumpu Oyj and Cargill, Incorporated) (BCC.0001.0001.5420).

l. Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - LCL Increase Request' dated 25 February 2020 (regarding Samsung Electronics Co Ltd) (BCC.0001.0001.5463).

m. Email from Angus Ward of Marsh to Greg Brereton, with the subject 'RE: GREENSILL/LCL - AR Increase Limit Request - 18/05/2020' dated 19 May 2020 (regarding Mitsubishi Corporation International (Europe) PLC and Sumitomo Corporation Europe Limited) (BCC.0001.0001.6956)).

n. Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - Liberty Commodities Additional Names' dated 23 June 2020 (regarding LG International Corporation and Sorin Corporation) (BCC.0001.0001.6961).

o. Email from Angus Ward of Marsh to Brereton, with the subject 'Greensill -Arconic Name Change Endorsements' dated 26 June 2020 (regarding HowmetAerospace Inc) (BCC.0001.0001.7034).

10A.202 By the correspondence referred to in paragraph 10A.201 above, GCUK represented that the customer referred to in ~~such a draft~~ each draft Customer Endorsement was a genuine customer of LCL (the **LCL Genuine Customer Misrepresentations**).

10A.203 The LCL Genuine Customer Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, ~~and~~ 10A.26A and 10A.26B above.

10A.204 In providing the draft Customer Endorsements identified in paragraph 199 above to Greg Brereton for acceptance, or in other correspondence ~~immediately following that email~~, GCUK (through its broker, Marsh) confirmed that each relevant customer – with the exception of Panasonic Corporation - had 'NKORL' [no known or reported losses].

~~**Particulars**~~

~~BCC refers to the particulars to paragraph 10A.201 above.~~

Particulars

Relevant emails include:

(a) Email from Edward Smith to Brereton, with the subject 'RE: Greensill - Liberty commodities AR - Trafigura cover', dated 20 November 2018 (MAR.0006.0001.1399).

(aa) Email from Edward Smith to Brereton, with the subject 'RE: Greensill Request - Liberty commodities AR', dated 11 January 2019 (MAR.0003.0001.9026).

(ab) Email from Edward Smith to Brereton, with the subject 'RE: Greensill Standalone Renewal', dated 4 March 2019 (MAR.0006.0001.2011).

(ac) Email from Angus Ward to Brereton, with the subject 'Greensill | LCL AR - New account debtors', dated 18 April 2019 (BCC.0001.0001.2645).

(ad) Email from Angus Ward to Brereton, with the subject 'RE: Liberty Commodities AR Increase Requests' dated 16 May 2019 (BCC.0001.0001.2802).

(ae) Email from Angus Ward to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities new AR debtor', dated 29 May 2019 (AGB.0002.0001.1569).

(af) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR account debtor increases', dated 24 June 2019 (AGB.0002.0001.1631).

(ag) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR account debtors', dated 28 June 2019 (AGB.0002.0001.1657).

(b) Email from Edward Smith to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR additional account debtor' dated 13 August 2019 (BCC.0001.0001.3603), which was forwarded to Lex Greensill on 14 August 2019 (AGB.0003.0001.1040).

(c) Email from Angus Ward to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 20 September 2019 (BCC.0001.0001.4033), which was forwarded to Craig Pinnington (Senior Credit Analyst) at GCUK on 16 October 2019 (CSA.0001.0006.6764).

(ca) Email from Edward Smith to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits', dated 26 September 2019 (MAR.0012.0001.1244).

(cb) Email from Angus Ward to Brereton, with the subject 'RE: Liberty Commodities Debtors for Tuesday', dated 15 October 2019 (AGB.0002.0001.1892).

(d) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - LCL Increase Request' dated 25 February 2020 (BCC.0001.0001.5420).

(e) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - LCL Increase Request' dated 25 February 2020 (BCC.0001.0002.4895).

(f) Email from Angus Ward to Brereton, with the subject 'RE: Greensill - Liberty Commodities Additional Names', dated 23 June 2020 (AGB.0002.0001.3064).

10A.204A. Prior to each instance on which GCUK (through its broker, Marsh) communicated to Brereton that a particular relevant customer had no known or reported losses, GCUK communicated to Marsh that the particular customer had no known or reported losses.

Particulars

Relevant emails include:

a. Email from Sophie Dyke to Edward Smith, with the subject 'RE: Liberty commodities AR- Trafigura cover', dated 20 November 2018 (AGB.0002.0002.1321).

b. Email from Sophie Dyke to Angus Ward, with the subject 'RE: LCL AR- New account debtors', dated 19 April 2019 (AGB.0002.0003.2781).

c. Email from Sophie Dyke to Angus Ward, with the subject 'RE: Liberty Commodities AR Increase Requests', dated 15 May 2019 (AGB.0002.0003.2811).

d. Email from Sophie Dyke to Angus Ward, with the subject 'RE: Liberty Commodities AR account debtor increases', dated 24 June 2019 (AGB.0002.0003.3084).

e. Email from Craig Pinnington to Angus Ward, with the subject 'RE: Liberty Commodities AR account debtor increases', dated 28 June 2019 (AGB.0002.0003.3097).

f. Email from Sophie Dyke to Edward Smith, with the subject 'RE: Liberty Commodities AR account debtor increases', dated 13 August 2019 (AGB.0002.0001.5934).

g. Email from Sophie Dyke to Edward Smith, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits', dated 26 September 2019 (MAR.0003.0002.6557).

h. Email from Sophie Dyke to Angus Ward, with the subject 'RE: Liberty Commodities Debtors for Tuesday', dated 15 October 2019 (AGB.0002.0003.5109).

i. Email from Arslan Gill to Angus Ward, with the subject 'RE: LCL - AR Increase Limit Request – Posco', dated 25 February 2020 (MAR.0004.0003.2135).

j. Email from Craig Pinnington to Angus Ward, with the subject 'RE: BCC - Liberty Commodities Additional Names', dated 23 June 2020 (MAR.0003.0003.2867).

10A.205 By the correspondence referred to in paragraph 0 above, GCUK represented that:

a. Invoices were issued in relation to genuine trades with those customers; and

b. GCUK had in fact considered or reviewed the customer's trading history with LCL in a way that enabled it to confirm that the trading history did not include any defaults by the relevant customer,

(the **LCL Genuine Trades Misrepresentations**).

10A.206 The LCL Genuine Trades Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, ~~and~~ 10A.26A and 10A.26B above.

10A.207 In the instances particularised below, the correspondence exchanged between Marsh (on behalf of GCUK) and Greg Brereton – prior to BCC's acceptance of the relevant Customer Endorsement contained statements to the effect that the customer in question had a strong financial position or had been assigned a particular credit rating.

Particulars

Email from Edward Smith to Brereton, with the subject 'RE: Greensill Request - Liberty commodities AR', dated 9 January 2019 (MAR.0003.0001.9026).

Email from Angus Ward to Brereton, with the subject 'Greensill - Liberty Commodities Limited AR account debtor requests', dated 30 May 2019 (regarding Toyota Tsusho Asia Pacific Pte Ltd and Allegheny Technologies Incorporated) (AGB.0002.0001.1573).

Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill - Liberty Commodities AR account debtors' dated 27 June 2019 (regarding Baosteel Resources International Company Limited, Posco Daewoo Corporation, Mitsui Bussan Metals Co Limited, Minmetals Cheerglory Limited, NUCOR Trading SA, Mitsubishi Corporation International (Europe) PLC, and Universal Stainless & Alloy Products Inc) (AGB.0002.0001.1653).

Email from Edward Smith to Brereton, with the subject 'RE: Greensill - Liberty Commodities AR additional account debtor', dated 6 August 2019 (regarding JFE Steel Corporation and Panasonic Corporation) (BCC.0001.0001.3603).

Email chain between Angus Ward, Lex Greensill and Greg Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 26 September 2019 (regarding Saarstahl Aktiengesellschaft) (AGB.0002.0001.1821).

Email from Edward Smith to Brereton, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits', dated 30 September 2019 (regarding SSAB AB and Tenaris S.A.) (BCC.0001.0002.4001).

Email from Angus Ward of Marsh to Brereton and Edward Smith, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 1 October 2019 (regarding Howmet Aerospace (formerly Arconic Inc.) and Baosteel Resources International) (AGB.0002.0001.1866).

Email from Edward Smith of Marsh to Brereton, with the subject 'Greensill – Liberty Commodities Additional Names' dated 21 May 2020 (regarding Sorin Corporation and LG International Corporation) (AGB.0002.0001.2980).

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.208 By the correspondence referred to in paragraph 10A.207 above, GCUK represented that:

a. the identity and creditworthiness of those customers was relevant to the risk; and

b. the creditworthiness of those customers had been assessed,

(the **LCL Customer Creditworthiness Misrepresentations**).

10A.209 The LCL Customer Creditworthiness Misrepresentations were representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, ~~and~~ 10A.26A and 10A.26B above.

10A.209A. On each instance that a Customer Endorsement identified in paragraph 10A.199 above was provided in draft form by GCUK (through its broker, Marsh) to Brereton, the draft customer endorsement recorded a maximum tenor of 90 days.

10A.210 On or around 28 April 2020, a copy of the LCL Receivables Purchase Deed dated 29 October 2018 was provided to Greg Brereton by Edward Smith of Marsh. The Deed was signed by Sanjeev Gupta on behalf of LCL, and included terms to the effect that:

a. the information in the request in respect of any Proposed Receivables was true and correct (Schedule 6(a));

b. the Proposed Receivables were Eligible Receivables (Schedule 6(c));

c. the maximum Discount Period for Eligible Receivables was 90 days (unless otherwise agreed in writing) (definition of 'Eligible Receivable(i));

d. LCL was the legal and beneficial owner of the Proposed Receivables (clause 2.6);

e. no information provided by LCL was misleading or inaccurate in any material respect (Schedule 6 (m)); and

f. the Receivables were secured, by way of a Group Guarantee from each Subsidiary Guarantor and the Parent and an individual Security Agreement (2.1(b); Definitions).

Particulars

Email from Edward Smith to Greg Brereton, with the subject Greensill Liberty Commodities Policy Endorsements', dated 28 April 2020, attaching a copy of the LCL Receivables Purchase Deed (BCC.0001.0001.6470).

LCL Receivables Purchase Deed dated 29 October 2018 (CSA.0001.0006.6317).

10A.211 ~~In providing the LCL Receivables Purchase Deed to Greg Brereton (through its broker, Marsh)~~By reason of the matters referred to in paragraphs 10A.209A to 10A.210 above, GCUK represented that the finance to be provided by Greensill would be short-term financing secured by genuine receivables (the **LCL Short-term Financing Misrepresentation**).

10A.212 The LCL Short-term Financing Misrepresentation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, ~~and~~ 10A.26A and 10A.26B above.

10A.212AA. On 26 June 2020, Lex Greensill informed Brereton that:

a. LCL had a practice of requesting early settlement from a particular purported account debtor, Trafigura;

b. LCL did not arrange for funds from Trafigura to be swept to the Greensill collection account until the original due date (plus buffer period), meaning LCL benefited from the Trafigura cash for longer than envisaged;

c. LCL had informed GCUK that Trafigura was the only customer for which it took early settlements, and GCUK had no reason to believe or evidence to suggest otherwise; and

d. LCL had a spotless trading history with GCUK over a period of years.

Particulars

Email from Lex Greensill to Brereton, with the subject 'Liberty Commodities AR Facility', dated 26 June 2020 (AGB.0002.0001.3168).

10A.212AB. By reason of the matters referred to in paragraphs 10A.204, 10A.204A, 10A.209A, 10A.210 and 10A.212AA above, GCUK represented that, with the exception relating to Trafigura identified in Lex Greensill's email dated 26 June 2020:

a. LCL did not retain the benefit of finance advanced under the LCL Facility, or cash collections from account debtors, for longer than the period permitted under the LCL Facility; and

b. there were no material issues with LCL's performance under the LCL Facility,

(the **LCL Facility Performance Misrepresentations**).

10A.212AC. The LCL Facility Performance Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, and 10A.26A and 10A.26B above.

Representations were misleading

10A.212A At the time of their alleged default in early-to-mid 2021, each of the LCL customers the subject of Customer Endorsements under which claims have been made in the LCL Proceeding, CS Global Proceeding and White Oak Proceeding were solvent.

Particulars

a. *Trafigura Pte Ltd*: Registered as active as at 21 November 2024 on Singaporean registry (Accounting and Corporate Regulatory Authority Singapore).

b. *Aperam Sourcing SCA*: Annual Report 2021, page 118.

c. *ArcelorMittal Sourcing SCA*: Annual Report 2021, page 241.

d. *Salzgitter Flachstahl GmbH*: Registered as active at 21 November 2024 on German company register (Bundesanzeiger Verlad).

e. *JFE Steel Corporation*: Registered as active by Orbis database of companies as at 22 November 2024.

f. *Allegheny Technologies Incorporated*: Annual Report 2021, page 1.

g. *Voestalpine Böhler Edelstahl GmbH*: Registered as active at 21 November 2024 on the Austrian commercial register (Die Österreichischen Justiz).

h. *BGH Edelstahl Freital GmbH*: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

i. *RPS Rohstoff-, Press- und Schneid-Betrieb Siegen GmbH*: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

j. *Wieland Werke AG*: Company documents lodged with Unternehmens register for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

k. *Aktien-Gesellschaft der Dillinger Hüttenwerke*: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

l. *Saarstahl Aktiengesellschaft*: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

m. *Panasonic Corporation*: 2021 Annual Report, page 2.

n. *Cargill, Incorporated*: 2021 Annual Report, page 2.

o. *Outokumpu Oyj*: 2021 Annual Report, page 5.

p. *Mitsubishi Corporation International (Europe) PLC*: Annual Report and Financial Statements 2021 and 2022.

q. *Howmet Aerospace Inc*: 2021 Annual Report, page 1.

r. *Marubeni Corporation*: 2021 Annual Report, page 148.

s. *Mitsui Bussan Metals Co Ltd*: Company website trading news from 2021. Registered as active by Orbis database of companies as at 22 November 2024.

t. *Samsung Electronics Co Ltd*: 2021 Annual Report.

u. *Sumitomo Corporation Europe Limited*: 2021 Annual Report.

v. *Thyssenkrupp Materials Trading GmbH*: Company documents lodged with Unternehmensregister for year 2021 and registered as active as at 21 November 2024 on German company register (Bundesanzeiger Verlad).

w. *Toyota Tsusho Asia Pacific Pte Ltd*: Registered as active as at 21 November 2024 on Singaporean registry (Accounting and Corporate Regulatory Authority Singapore).

x. *Acerinox SA*: 2021 Auditor´s Report, Annual Accounts at 31 December 2021.

y. *AMAG Austria Metall AG*: Financial Report 2021, page 2.

z. *Baosteel Resources International Company Limited*: Registered as active by Orbis database of companies as at 22 November 2024.

aa. *LG International Corporation*: Name changed to LX International Corp (a holding company of LG Corporation). Annual Report 2022.

bb. *Minmetals Cheerglory Limited*: Orbis database indicates company was active and trading in 2021.

cc. *Nucor Trading SA*: 2021 Annual Report, page 3.

dd. *Sorin Corporation*: Name changed to KZ Trading Co Ltd August 2024. Registered as active by Orbis database of companies as at 22 November 2024, which indicates company was trading in 2021.

ee. *SSAB AB*: Annual Report 2021, page 109.

ff. *Tenaris S.A:* Annual Report 2021, page 7.

gg. *Universal Stainless & Alloy Products, Inc.*: 2021 Annual Report, page 23.

10A.213 With regard to each of the customers named in the particulars below, the LCL Genuine Customer Misrepresentations referred to in paragraph 0 above were false and/or misleading because, at the time that they were made, the customers put forward as putative obligors of LCL:

a. had no trading relationship with LCL; and

b. did not owe debts to LCL.

Particulars

Exhibit MJA-9 to Matt James Andrews' affidavit in the White Oak Proceeding(MJA-9 Exhibit), comprising the letter from Allen & Overy dated 7 May 2021 to Taylor Wessing LLP (MJA-9 Exhibit, page 1423) (BCC.0001.0013.006425) and, among others, the following exhibits:

a. *Regarding JFE Corporation*: Letter from Ashurst to Kennedys dated 22 May 2023, re: 'Alleged Trading Between JFE Steel Corporation and Liberty Commodities Limited', which stated: 'JFE has not entered into any transaction with Liberty Commodities Limited (Liberty); and accordingly,

there are no amounts that are outstanding owed by JFE to Liberty.' (MJA-9 Exhibit, page 1587) (BCC.0001.0019.0513).

b. *Regarding RPS Rohstoff-, Press- und Schneid-Betrieb Siegen GmbH*: Email from Gunnar Kohlschein, CEO of RPS Rohstoff-, Press- und Schneid-Betrieb Siegen GmbH, to Matt Andrews of Kennedys, dated 24 November 2022, which stated, among other things: '…we did not knowingly deal with any company that is or was partially or wholly owned by Mr. Gupta….we are not aware that we at RPS would have received any invoice for a nickel shipment from a company that is or was owned in whole or in part by Mr. Gupta. However, we are sure that we never received a nickel delivery or an invoice for such a delivery from LCL…' (MJA-9 Exhibit, page 1635) (BCC.0001.0019.0305).

c. *Regarding Wieland-Werke AG*: Letter from Wieland-Werke AG to Kennedys dated 17 November 2022, re: 'Trading between Wieland-Werke AG and Liberty Commodities Limited', which stated, among other things: 'According to our books and records and to the best of our knowledge, there has never been any business relationship, whether directly or indirectly, between Wieland-Werke AG and Liberty Commodities Limited, Liberty Commodities Group Pte Ltd. or Greensill Capital (UK) Limited.' (MJA-9 Exhibit, page 1699) (BCC.0001.0019.0296).

d. *Regarding Mitsui Bussan Metals Co Ltd*: Letter from K&L Gates, on behalf of Mitsui Bussan Metals Co Ltd, to Kennedys dated 2 December 2022, which stated, among other things: 'MBM has no trading or transactional history with Liberty Commodities Limited (LCL). No sums are owing or outstanding from MBM to LCL.' (MJA-9 Exhibit, page 1610) (BCC.0001.0019.0310).

e. *Regarding Toyota Tsusho Asia Pacific Pte Ltd*: Email from Ang Hou Fu, Senior Legal Counsel, Toyota Tsusho Asia Pacific Pte Ltd, to Kennedys dated 23 March 2023, which stated, among other things: 'We confirm we have no business or trading relationship with Liberty Commodities Limited. Accordingly, we have no record of the invoices described in your Schedule.' (MJA-9 Exhibit, page 1682) (BCC.0001.0019.0463).

f. *Regarding Acerinox SA*: Letter from Acerinox SA to Kennedys dated 14 November 2022, which stated, among other things: 'Acerinox, S.A. has never developed any business or commercial relationship with Liberty Commodities Limited. Therefore, Acerinox, S.A. does not owe any amount to the mentioned entity, we do not recognize the Alleged Invoice and

therefore we consider it as non-existing or non-valid.' (MJA-9 Exhibit, page 1529) (BCC.0001.0019.0288).

g. *Regarding AMAG Austria Metall AG*: Letter from Markus Dorner, General Counsel AMAG Austria Metall AG, to Kennedys dated 8 November 2022, which stated, among other things: 'We have never had any business relationship with Liberty Commodities at any time. We have diligently investigated the matter internally and we do not find any records of invoices or an underlying business relationship which would have led to such claims. As outlined in various media reports, we assume that fake or future non existing AMAG receivables have been sold by Liberty Commodities.' (MJA-9 Exhibit, page 1538) (BCC.0001.0019.0210).

h. *Regarding Nucor Trading SA*: Letter from Johan Lundberg, Managing Director, Nuncor Trading SA, to Kennedys dated 7 October 2022, which stated: '…I can [assure] you that we never had any business with Liberty Commodities, although I am aware that they used our name when issuing a fake invoices for their supply chain finance scheme.' (MJA-9 Exhibit, page 1612) (BCC.0001.0019.0157).

i. *Regarding SSAB AB*: Email from Johan Paulsson, Chief Legal Counsel SSAB Group, to Kennedys dated 10 November 2022, which stated, among other things: 'SSAB AB therefore has no business relationship with Liberty Commodities or any other Liberty company. I therefore question how SSAB AB can be referred to as a debtor in this case.' (MJA-9 Exhibit, page 1659) (BCC.0001.0019.0219).

j. *Regarding Tenaris S.A.*: Letter from Tenaris S.A. to Kennedys dated 27 February 2023, which stated: 'Neither Tenaris S.A. nor any of its subsidiaries ever engaged in trading activities with Liberty Commodities Limited (LCL), and no such entity exists on our records … We confirm that no amount remains outstanding between Tenaris and LCL'. (MJA-9 Exhibit, page 1670) (BCC.0001.0019.0378).

k. *Regarding RPS Siegen, AMAG Austria, Salzgitter Flachstahl, and Voestalpine Bohler Edelstahl*: Article of Robert Smith, Cynthia O'Murchu and Owen Walker in the *Financial Times* dated 10 April 2021, titled 'Suspect Sanjeev Gupta invoices used in Greensill loans raise fraud concerns', which stated: 'Six European metals companies named in Credit Suisse's fund accounts – RPS Siegen, AMAG Austria, KME Germany, Salzgitter Flachstahl, Voestalpine Bohler Edelstahl and Trimet Aluminium

– all confirmed to the FT they had never traded with Liberty Commodities' (MJA-9 Exhibit, page 1414) (CSA.6000.0002.0314).

The absence of these genuine customer relationships can also be inferred from the fact that the debts remain unpaid despite the solvency of the alleged debtors, as pleaded in paragraph 10A.212A above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.214 The LCL Genuine Trades Misrepresentations referred to in paragraph 10A.205 above were false and/or misleading because the customer invoices alleged to have been defaulted upon, as the basis of the claims made in the ~~proceedings no. NSD169/2023, no. NSD175/2023 and no. NSD 1039/2021,~~LCL Proceeding, CS Global Proceeding and White Oak Proceeding were not genuine invoices.

Particulars

The BCC/TM Parties refer to paragraphs 10A.212A and 10A.213 above. In circumstances where:

a. no trading relationship existed and/or no debts were owed between LCL and the customers particularised in paragraph 10A.213; and

b. the alleged debts remain unpaid by alleged customers that are still solvent,

it can be inferred that the customer invoices alleged to have been defaulted upon in the relevant proceedings were not genuine.

The following exhibits to the letter from Allen & Overy dated 7 May 2021 to Taylor Wessing LLP (MJA-9 Exhibit, page 1423 and following) (BCC.0001.0013.006425):

a. *With regard to Trafigura Pte Ltd*: Article of Robert Smith and Neil Hume in the *Financial Times* dated 2 June 2021, titled 'Trafigura warned Credit Suisse over Gupta invoice last year', which stated, among other things: 'However, Trafigura executives told bankers at Credit Suisse that they did not believe this invoice was genuine, according to the people familiar with the discussions' (MJA-9 Exhibit, page 1418).

b. *With regard to Aperam Sourcing SCA*: Email from Carl Landuydt of Aperam Sourcing SCA to Matt Andrews of Kennedys dated 9 November 2022, with the subject line 'Alleged Trading between Aperam Sourcing

SCA and Liberty Commodities Limited', which stated: 'The invoices listed under items 4(a) to 4(g) of your letter are unknown to us. To the best of our knowledge, these invoices were never received by us and we could not find any records of such invoices with our accounting team...' (MJA-9 Exhibit, page 1542) (BCC.0001.0019.0212).

c. *With regard to ArcelorMittal Sourcing SCA*: Letter from ArcelorMittal Sourcing to Kennedys dated 11 November 2022, which stated: 'AMS confirms hereby that it has not received and does not have in its accounting records (already audited) any invoice with such reference and amount, therefore such invoice was never due for payment to Liberty or to any other third party. Additionally, please consider that as of today there is no pending amount to be paid by AMS to Liberty' (MJA-9 Exhibit, page 1552) (BCC.0001.0019.0233).

d. *With regard to Cargill, Incorporated*: Email from Cheryl Toh of Cargill to Lucy Stafford of Kennedys dated 31 March 2023 with the subject line 'RE: Alleged Trading between Cargill Incorporated and Liberty Commodities Limited', which stated: 'I confirm that we did not identify any transactions by Cargill, Incorporated as referenced in your schedule' (MJA-9 Exhibit, page 1558) (BCC.0001.0019.0467).

e. *With regard to Mitsubishi Corporation International (Europe) Plc*: Email from Mitsubishi Corporation International (Europe) Plc to Kennedys dated 14 November 2024 with the subject 'Alleged Trading between Mitsubishi Corporation International (Europe) PLC and Liberty Commodities Limited', which stated: '…Mitsubishi Corporation International (Europe) Plc only had one purchase spot business 5 years ago (April 2017) with Liberty Commodities and the payment under that purchase had been completely performed. We are not aware of the existence of the invoices mentioned in the Letter of Demand' (MJA-9 Exhibit, page 1605) (BCC.0001.0019.0283).

f. *With regard to Posco International Corporation*: Email from Posco International Corporation to Kennedys dated 15 December 2022, which stated: 'Posco ~~does not recognise the~~International Corporation has not engaged in said transactions with LCL~~ referenced in Kennedys' letter. Posco and LCL were involved in several transactions with LCL over the last few years, but these do not correlate with the invoice amounts referenced in Kennedys' letter. Posco confirmed that there are no monies owed/~~… neither the amounts listed at point 4 in the Letter nor any other amounts currently remain outstanding ~~and that all invoices have been~~

~~fully settled~~ as between LCL and Posco~~'~~ International Corporation' (MJA-9 Exhibit, page 1629) (BCC.0001.0019.0333).

g. *With regard to Thyssenkrupp Materials Trading GmbH*: Letter from Rainer Piwinski, Head of Finance, Governance & Risk at Thyssenkrupp Materials Trading GmbH to Kennedys dated 20 October 2022, which stated, among other things: 'There are no amounts outstanding between thyssenkrupp Materials Trading GmbH and LCL. There are no records regarding any of the amounts listed in your letter, neither with regard to the invoices indicated nor the representations; they do not relate to any transactions carried out between thyssenkrupp Materials Trading GmbH and LCL' (MJA-9 Exhibit, page 1675) (BCC.0001.0019.0171).

h. *With regard to Universal Stainless & Alloy Products, Inc*.: Universal Stainless & Alloy Products, Inc. confirmed via voicemail with Matt Andrews of Kennedys that it had no record of a USD 39m trade with LCL (MJA-9 Exhibit, page 2011).

More broadly, the alleged defaults forming the basis of the LCL claim submitted on 1 March 2022 occurred within a very short period of time. Of the defaults of the 17 Account Debtors claimed under the Comprehensive Trade Credit Insurance Policy Claim Form and the attached Appendix 1 to the Claim Form dated 1 March 2022, the first default is said to have occurred on 3 March 2021 and the final default on 20 May 2021 (IAL.500.002.4231 and IAL.500.002.4233). It is inherently implausible that such a large number of defaults of genuine and solvent obligors operating in several different countries around the world would have occurred within a period of less than three months.

See also Appendix 1 to the Claim Form dated 28 February 2022 in respect of the Notes purchased at issuance by Credit Suisse Virtuoso SICAV-SIF, wherein the first default is said to have occurred on 2 March 2021 and the final default on 20 May 2021 (~~CTRL.0000039987 and CTRL.0000039788~~IAL.500.002.2171 and IAL.500.002.1972).

See further the email from Rehana Box of Ashurst to Serena Arabian (Claims Manager) of BCC dated 24 May 2021 and the enclosed schedule of receivables the subject of White Oak's claims 1–10 (BCC.0001.0006.1056). The schedule of receivables indicates that all of the alleged defaults occurred within the period 4 March 2021 to 20 May 2021.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.215 The LCL Customer Creditworthiness Misrepresentations referred to in paragraph 10A.208 above were false and/or misleading because:

a. the identity and creditworthiness of those customers was not relevant to the risk; and

b. the creditworthiness of those customers had not been assessed by GCUK.

Particulars

The BCC/TM Parties refer to paragraphs 10A.213 and 10A.214 above.

The credit risk that GCUK considered was not that of the customers but of LCL. This is evident from the following documents:

a) Email from Brett Downes, with the subject 'RE: UPDATED DETAILS AS DISCUSSED' dated 19 February 2019 (GCU.0004.0023.8946).

b) Email from Sanjeev Gupta, with the subject 'Fwd: Update on Current Situation' dated 24 April 2019 (GCU.0005.0009.5420).

c) Email from Brett Downes, with the subject 'RE:Liberty' dated 29 May 2019 (GCU.0009.0009.5095).

d) email from Brett Downes to Lex Greensill, with the subject 'RE: Liberty Primary & Commodities', dated 12 June 2019 (GCU.0004.0027.1545).

e) email from Brett Downes, with the subject 'GFG - File Note and LCL Request - Friday 14th June 2019', dated 19 June 2019 (GCU.0004.0027.3234).

f) email from Brett Downes, with the subject 'RE: Greensill AR / Liberty Submissions 74 – 11/08/2019" dated 12 August 2019 (GCU.0005.0014.5370).

g) document titled 'Liberty weekly credit & insurance review' dated 5 August 2019 (GCU.0015.0001.0345).

h) email from Craig Pinnington, with the subject "LCL AR Submission" dated 22 August 2019 (GCU.0009.0011.0390).

i) Email Gloria Millia, with the subject "Greensill Capital – CREDIT COMMITTEE MEETING – MINUTES Friday 23rd August 2019" dated 2 September 2019 (GCU.0009.0011.1386).

j) Email from Craig Pinnington to Brett Downes, with the subject 'FW: LCL AR – Tuesday's Maturity' (GCU.0010.0010.7976).

k) Email from Craig Pinnington, with the subject “FW: LCL AR – Today’s Maturity” (GCU.0009.0012.2385).

l) Email from Brett Downes, with the subject “RE: LCL” (GCU.0014.0003.1042).

10A.216 The LCL Short-term Financing Misrepresentation referred to in paragraph 10A.211 above was false and/or misleading because the form of financing provided by Greensill was, in effect, unsecured and long-term.

Particulars

The financing was effectively unsecured as a result of the absence of genuine receivables owed to LCL from the obligors endorsed to the 2019 90/10 Parallel Policy.

GCUK had a practice of funding all or part of the cost of LCL's maturity payment obligations which effectively extended the term of the finance GCUK provided to LCL. This practice is evident from the following documents:

a. email from Henry Middleditch, with the subject 'Liberty Commodities AR L: Trafigura to GB tomorrow.', dated 15 January 2019 (GCU.0009.0006.9389);

b. email from Lex Greensill, with the subject 'RE: Liberty commodities AR utilisation and insurance', dated 11 February 2019 (GCU.0005.0006.1670);

c. email from Lex Greensill, with the subject 'Re: Liberty Commodities Maturities', dated 9 April 2019 (GCU.0005.0008.8722);

d. email from Lex Greensill, with the subject 'Re: LibCom maturity Tuesday', dated 26 April 2019 (GCU.0004.0026.1236);

e. email from Lex Greensill, with the subject 'Re: LibCom AR Maturity', dated 14 May 2019 (GCU.0004.0026.4812);

f. email from Lex Greensill, with the subject 'RE: LibCom Maturity Payment Tomorrow', dated 20 May 2019 (GCU.0005.0010.6705);

g. email from Andrew McKnight, with the subject 'LCL 57', dated 4 June 2019 (GCU.0004.0026.9758);

h. email from Craig Pinnington, with the subject 'RE: LCL', dated 5 June 2019 (GCU.0013.0005.8405);

i. email from Joanne Bowley, with the subject 'FW: LCL 70', dated 31 July 2019 (GCU.0004.0028.0831);

j. document titled ‘Liberty weekly credit & insurance review’ dated 5 August 2019 (GCU.0015.0001.0345);

k. email from Lex Greensill, with the subject 'Re: LCL AR Maturity Cover', dated 27 August 2019 (GCU.0005.0015.1060);

l. email from Lex Greensill, with the subject 'RE: LCL maturity tomorrow', dated 16 September 2019 (GCU.0005.0015.9269);

m. email from Lex Greensill, with the subject 'RE: LCL AR - Tomorrow's Maturity', dated 21 October 2019 (GCU.0005.0017.7893);

n. email from Lex Greensill, with the subject 'RE: LCL AR - Tomorrow's Maturity', dated 25 November 2019 (GCU.0001.0010.7762);

o. email from Lex Greensill, with the subject 'FW: LCL Xmas Maturities', dated 20 December 2019 (GCU.0005.0020.7366);

p. email from William Brown, with the subject 'RE: LCL Maturity Payments', dated 7 April 2020 (GCU.0010.0012.8148);

q. email from Lex Greensill, with the subject 'RE: LCL AR maturity cover', dated 14 April 2020 (GCU.0005.0025.4099);

r. email from Lex Greensill, with the subject 'RE: URGENT FOR APPROVAL: LCL financial information', dated 29 April 2020 (GCU.0017.0002.0171);

s. email from Henry Middleditch, with the subject 'RE: LCL Approval for today', dated 29 April 2020 (GCU.0013.0008.1974);

t. email from Becci Miller, with the subject 'RE: WhiteOak - GFG', dated 13 May 2020 (GCU.0010.0013.3248);

u. email from David Ndafundje, with the subject 'FW: Completed: LCL USD Top up request 26.05.20', dated 26 May 2020 (GCU.0010.0013.4939) and its attachment (GCU.0010.0013.4940);

v. email from Connor Argue, with the subject 'RE: LCL 128- Payment today', dated 2 June 2020 (GCU.0009.0015.7551);

w. email from Becci Miller, with the subject 'RE: Greensill / WhiteOak', dated 3 June 2020 (GCU.0009.0015.7803);

x. email from Joanne Bowley, with the subject 'Verdi - Rolls', dated 25 June 2020 (GCU.0005.0028.9554);

y. email from David Ndafundje, with the subject 'LCL top up request 22.07.20 and 23.07.20', dated 21 July 2020 (GCU.0009.0016.7842) and its attachments (GCU.0009.0016.7843; GCU.0009.0016.7844);

z. email from Valerie Kirkaldy, with the subject 'FW: URGENT ACTION REQUIRED : Today --- LCL AR', dated 19 August 2020 (GCU.0009.0017.3760);

aa. email from Lex Greensill, with the subject 'Re: URGENT APPROVAL REQUIRED: LCL w/c 21st September', dated 23 September 2020 (GCU.0009.0018.1242);

bb. email from Becci Miller, with the subject 'RE: GBM Flow', dated 9 October 2020 (GCU.0009.0018.6891);

cc. email from Rosie Cavanagh, with the subject 'RE: LCL Support - Approval Required', dated 21 October 2020 (GCU.0010.0015.7265);

dd. spreadsheet titled '20201028_List of Roll Progs - Comparison' (GCU.0006.0003.5560);

ee. document titled 'LCL Drawdown Request User Guide' (GCU.0009.0021.8806);

ff. email from Lex Greensill, with the subject 'RE: URGENT APPROVAL REQUIRED: LCL w/c 9th November', dated 10 November 2020 (GCU.0006.0003.9548);

gg. email from Lex Greensill, with the subject 'Re: LCL Maturity Today', dated 12 January 2021 (GCU.0009.0020.8214); and

hh. email from Lex Greensill, with the subject 'FW: APPROVAL REQUESTED - LCL Maturity Cover', dated 2 February 2021 (GCU.0006.0005.4706).

GCUK had a practice of permitting LCL to draw on the LCL Facility in order to cover payment obligations without LCL in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to LCL. This practice is evident from the documents identified immediately above in the particulars to this paragraph 10A.216, and is further pleaded at Section C.1 of Annexure B to this defence.

In relation to the long-term nature of the financing, see the sworn Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court (Exhibit SG3), where Sanjeev Gupta states that:

a. Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' [at 32];

b. in the first quarter of 2020, he requested, and Lex Greensill provided, confirmation that the financing provided to Sanjeev Gupta's companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice [at 36];

c. from the start of their relationship, Lex Greensill had assured him that 'the financing provided by GCUK to the GFG Alliance was long-term financing' as it 'would not have been commercially sensible … to be reliant on capital that could have been withdrawn on short notice' [at 33-34]; and

d. in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' [at 50].

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.216A. The LCL Facility Performance Misrepresentations referred to in paragraph 212AB above were false and/or misleading because:

a. LCL had retained the benefit of finance advanced under the LCL Facility, or cash collections from account debtors, for longer than the period permitted under the LCL Facility; and/or

Particulars

The BCC/TM Parties repeat the particulars to paragraph 10A.216.

Email from Brett Downes, with the subject 'GFG - File Note and LCL Request - Friday 14th June 2019', dated 19 June 2019 (GCU.0004.0027.3234).

LCL had failed to pay maturities under the LCL Facility when they fell due for payment, from which it can be inferred that any funds received from purported account debtors (if any) were retained by LCL for other purposes. LCL's failure

to pay maturities due under the LCL Facility when they fell due for payment is evidenced by, or may be inferred from, the following correspondence:

a. email from Brett Downes to Lex Greensill, with the subject 'Re: Liberty AR', dated 20 February 2019 (GCU.0005.0006.5317);

b. email from Henry Middleditch, with the subject 'RE: Credit Check – Potential Top Ups/Late Payments – 26th March 2019', dated 26 March 2019 (GCU.0004.0025.1241);

c. email from Sanjeev Gupta, with the subject 'Recap with Lex re KLL and LRB refi', dated 11 April 2019 (GCU.0005.0008.9837);

d. email from Brett Downes to Lex Greensill, with the subject 'RE: Liberty Primary & Commodities', dated 12 June 2019 (GCU.0004.0027.1545);

e. email from Craig Pinnington to Henry Middleditch, with the subject RE: Greensill AR / Liberty Submission 58 - 06/06/2019, dated 12 June 2019 (GCU.0009.0009.7309);

f. email from Brett Downes, with the subject 'GFG - File Note and LCL Request - Friday 14th June 2019', dated 19 June 2019 (GCU.0004.0027.3234); and

g. document titled 'GFG REC June 19' dated 18 July 2019 (GCU.0014.0003.2341);

b. there were material issues with LCL's performance under the LCL Facility.

Particulars

The BCC/TM Parties repeat the particulars to paragraphs 10A.215, 10A.216 and 10A.216A above.

Email from Brett Downes, with the subject 'RE: GFG – Request for Maturity Assistance', dated 6 April 2020 (GCU.0009.0014.5397).

On 29 May 2020 and several occasions thereafter, LCL had requested that GCUK permit a deferral of its interest repayment obligations and fund part of the cost of its maturity payment obligations (GCU.0009.0018.5774). It can be inferred from these requests that LCL lacked the financial capacity to meet those obligations itself as and when they fell due.

Knowledge of falsity of representations

10A.217 Lex Greensill knew the matters set out in paragraph 10A.213 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

~~a. the~~(a) his direct involvement ~~of Lex Greensill and other employees in the company's~~in dealings with LCL, including the following items: GCU.0005.0006.5317, GCU.0004.0025.1241, GCU.0005.0008.9837, GCU.0004.0027.1545, GCU.0004.0027.3234, AGB.0002.0001.1359, AGB.0002.0001.1397, AGB.0002.0001.1399, AGB.0002.0001.1430, AGB.0002.0001.1451 and AGB.0002.0001.1821;

~~b.~~ (b) Lex Greensill's senior position within Greensill; and

~~c.~~ (c) the email from Michel Degen of Credit Suisse to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM), with the subject 're: Important', dated 11 December 2018 (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.218 Lex Greensill knew the matters set out in paragraph 10A.214 above.

Particulars

The BCC/TM Parties repeat the particulars to paragraph 10A.217 above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.219 Lex Greensill knew the matters set out in paragraph 10A.215 above.

Particulars

Lex Greensill was personally involved and at times copied into the relevant correspondence with Greg Brereton and BCC in which the LCL Customer Creditworthiness Misrepresentations were made:

a. Email chain between Edward Smith and Greg Brereton, copying Lex Greensill, with the subject 'RE: Greensill Request - Liberty Commodities

AR New Limits' dated 26 September 2019, which included 11 of the LCL Endorsements set out in paragraph 10A.199 above (BCC.0001.0001.4079).

b. Email from Lex Greensill to ~~Greg~~ Brereton, with the subject 'Liberty Commodities Debtors for Tuesday' dated 1 October 2019, where Lex Greensill stated to ~~Greg~~ Brereton, amongst other things, '…I would like to ask if you could please expedite your analysis on the below names. We are funding on Wednesday so a response tomorrow morning would be much appreciated' (AGB.0002.0001.1889).

c. Email chain between Angus Ward, Edward Smith and Greg Brereton, copying Lex Greensill, with the subject 'RE: Greensill – LCL Increase Request' dated 19 February 2020, which stated, among other things, 'Greensill would like to put this in place today so if you could sign and return the attached endorsements as soon as you can that would be much appreciated. We have had the order to bind and confirmation of NKORL' (AGB.0002.0001.2140).

The BCC/TM Parties otherwise refer to the particulars in paragraph 10A.217 above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.220 Lex Greensill knew the matters set out in paragraph 10A.216 above.

Particulars

The knowledge of Lex Greensill is evident from the testimony of Sanjeev Gupta to the UK Insolvency and Companies Court as to the statements made to him by Lex Greensill: see Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 dated 22 August 2022 (Exhibit SG3).

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.220A. Lex Greensill knew the matters set out in paragraph 216A above.

Particulars

Lex Greensill was personally involved and at times copied into the relevant correspondence with Brereton and BCC in which the LCL Facility Performance Misrepresentations were made.

The BCC/TM Parties repeat the particulars to paragraph 10A.216A and 10A.217 above.

Further particulars may be provided before trial.

10A.221 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.217 to 10A.220A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.222 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.217 to 10A.220A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, ~~and~~ 10A.22A and 10A.22B above.

10A.223 Further and in the alternative to paragraph 10A.217 above, Brett Downes (Chief Risk Officer of GCUK) – knew the matters set out in paragraph 10A.213 above.

Particulars

The knowledge of Brett Downes (Chief Risk Officer) of GCUK is to be inferred from:

a. ~~the~~ his direct involvement ~~of Brett Downes in the company's~~ in dealings with LCL, including the following items: GCU.0005.0006.5317, GCU.0004.0027.1545, GCU.0004.0027.3234, AGB.0002.0001.0734, AGB.0002.0001.6143, AGB.0002.0003.3020, AGB.0002.0003.4968, MAR.0004.0002.8179, MMC_GCUK12_00001505 and MMC_GCUK15_00000227;

b. Brett Downes' senior position within GCUK as Chief Risk Officer; and

c. the representations made by GCUK that it conducted due diligence of all clients of Greensill's SCF solutions (BCC.0001.0001.0412).

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.224 Further and in the alternative to paragraph 10A.218 above, Brett Downes (Chief Risk Officer) of GCUK, knew the matters set out in paragraph 10A.214 above.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.223 above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.225 Further and in the alternative to paragraph 10A.219 above, Brett Downes (Chief Risk Officer) of GCUK, knew the matters set out in paragraph 10A.215 above.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.223 above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.226 Further and in the alternative to paragraph 0 above, Brett Downes (Chief Risk Officer) of GCUK, knew the matters set out in paragraph 10A.216 above.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.223 above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.226A. Further and in the alternative to paragraph 220A above, Brett Downes (Chief Risk Officer) of GCUK, knew the matters set out in paragraph 216A above.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.216A and 10A.223 above.

Further particulars may be provided before trial.

10A.227 The knowledge of Brett Downes identified in paragraphs 10A.223 to 10A.226A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refers to the particulars in paragraphs 10A.26A and 10A.26B above.

10A.228 The knowledge of Brett Downes identified in paragraphs 10A.223 to 10A.226A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.228A. Further and in the alternative to paragraphs 10A.217 and 10A.223 above, Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK knew the matters set out in paragraph 10A.213 above.

Particulars

The knowledge of Craig Pinnington is to be inferred from his direct involvement in dealings with LCL, including the following items: GCU.0004.0019.9367, GCU.0014.0001.3855, GCU.0009.0007.1535, GCU.0009.0007.4733, GCU.0009.0009.8292, GCU.0013.0006.5053, GCU.0009.0011.4520, GCU.0005.0016.4957, GCU.0010.0010.7976, GCU.0009.0011.0390, GCU.0009.0012.2385, GCU.0013.0005.8405, and GCU.0009.0009.7309.

The knowledge of Henry Middleditch is to be inferred from his direct involvement in dealings with LCL, including the following items: (a) GCU.0004.0019.3454, AGB.0002.0001.5935, AGB.0003.0001.1040, AGB.0002.0001.5934, GCU.0004.0027.3234, GCU.0015.0001.0345, GCU.0009.0011.1386, GCU.0009.0012.2385, GCU.0009.0006.9389, GCU.0005.0006.1670, GCU.0005.0008.8722, GCU.0004.0026.1236, GCU.0004.0026.4812, GCU.0005.0010.6705, GCU.0013.0005.8405, GCU.0004.0028.0831, GCU.0005.0015.1060, GCU.0005.0015.9269, GCU.0005.0017.7893, GCU.0001.0010.7762, GCU.0017.0002.0171,

GCU.0013.0008.1974, GCU.0010.0013.3248, GCU.0009.0017.3760, GCU.0009.0018.1242, GCU.0006.0003.9548, GCU.0009.0020.8214.

Further particulars may be provided before trial.

10A.228B. Further and in the alternative to paragraphs 10A.218 and 10A.224 above, Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK, knew the matters set out in paragraph 10A.214 above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 228A above.

Further particulars may be provided before trial.

10A.228C. Further and in the alternative to paragraphs 10A.219 and 10A.225 above, Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK knew the matters set out in paragraph 10A.215 above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.228A above.

Further particulars may be provided before trial.

10A.228D. Further and in the alternative to paragraphs 10A.220 and 10A.226 above, Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK knew the matters set out in paragraph 216 above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.228A above.

Further particulars may be provided before trial.

10A.228E. Further and in the alternative to paragraphs 10A.220A and 10A.226A above, Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK knew the matters set out in paragraph 10A.216A above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.216A and 10A.228A above.

Further particulars may be provided before trial.

10A.228F. The knowledge of Craig Pinnington and Henry Middleditch identified in paragraphs 228A to 228E above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.26A and 10A.26B above.

10A.228G. The knowledge of Craig Pinnington and Henry Middleditch identified in paragraphs 228A to 228E above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs10A.22A and 10A.22B above.

Knowledge of materiality of representations

10A.229 Each of the matters referred to in paragraphs 10A.213 to 10A.216A above were matters:

a. which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the LCL Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill was personally involved and at times copied into the relevant correspondence with Greg Brereton and BCC associated with the placement or renewal of the LCL Risk:

a. Email chain between Edward Smith and ~~Greg~~ Brereton, copying Lex Greensill, with the subject 'RE: Greensill Request - Liberty Commodities AR New Limits' dated 26 September 2019, which included 11 of the LCL Endorsements set out in paragraph 10A.198 above (BCC.0001.0001.4079).

b. Email from Lex Greensill to ~~Greg~~ Brereton, with the subject 'Liberty Commodities Debtors for Tuesday' dated 1 October 2019, where Lex Greensill stated to ~~Greg~~ Brereton, amongst other things, '…I would like to ask if you could please expedite your analysis on the below names. We are funding on Wednesday so a response tomorrow morning would be much appreciated.' (AGB.0002.0001.1867).

c. Email chain between Angus Ward, Edward Smith and ~~Greg~~ Brereton, with Lex Greensill copied, with the subject 'RE: Greensill – LCL Increase Request' dated 19 February 2020, which stated, among other things, 'Greensill would like to put this in place today so if you could sign and return the attached endorsements as soon as you can that would be much appreciated. We have had the order to bind and confirmation of NKORL' (AGB.0002.0001.2140).

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of LCL being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the LCL Risk.~~

10A.229A Further or in the alternative to paragraph 10A.229 above, each of the matters referred to in paragraphs 10A.213 to 10A.216A above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the LCL Risk.

10A.230 The knowledge of Lex Greensill of the matters set out in paragraph 10A.229 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.231 The knowledge of Lex Greensill of the matters set out in paragraph 10A.229 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20 ~~and 10A.22~~, 10A.22A and 10A.22B above.

10A.232 Further and in the alternative to paragraph 10A.229 above, each of the matters referred to in paragraphs 10A.213 to 10A.216A above were matters:

a. which Brett Downes (Chief Risk Officer) of GCUK knew were material to the decision whether to extend insurance cover in respect of the LCL Risk; or

b. alternatively to subparagraph a., in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes was personally involved and at times copied into the relevant correspondence with Greg Brereton and BCC associated with the placement or renewal of the LCL Risk:

a. email chain from Brett Downes to Lex Greensill, copying ~~Greg~~ Brereton, with the subject line 'RE: TBCC asks' dated 1 March 2019, where Brett Downes wrote to Lex Greensill: 'Lex, as discussed, can you please discuss with Greg: Liberty Commodities AR …' (AGB.0002.0001.0734);

b. email from Brett Downes to Angus Ward, with the subject 'RE: Liberty Commodities Debtors for Tuesday' dated 30 October 2019 (AGB.0002.0001.6143);

c. email from Brett Downes to Edward Smith, with Lex Greensill copied on previous emails, dated 8 January 2019 with the subject 'FW: Additional account debtors for Liberty Commodities AR program' (AGB.0002.0003.4968);

d. email chain between Brett Downes, Craig Pinnington and Sophie Dyke (Insurance Analyst) of GCUK, and Edward Smith and Angus Ward, with the subject line 'RE: Liberty Commodities AR New Limit Requests' (MAR.0004.0002.8179); and

e. email from Brett Downes to Edward Smith with the subject line 'FW: LibCom insurance – URGENT' dated 18 February 2020, where Brett Downes stated, among other things:

'*…we need urgent clarification on Liberty Commodities insurance from Zurich and TBCC…. In short it is my belief that insurance will cover us for 90% of the 90% we advance, ie the amount actually out the door. This is logical because insurers know we have skin on the game… It may be in the end we were clever enough to get this past the insurers*'

(MMC_GCUK15_00000227).

Brett Downes' knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the LCL Risk.

10A.232A Further or in the alternative to paragraph 10A.232 above, each of the matters referred to in paragraphs 10A.213 to 10A.216A above was a matter which a reasonable person in the position of Brett Downes could be expected to know was material to the decision whether to extend insurance cover in respect of the LCL Risk.

10A.233 The knowledge of Brett Downes of the matters set out in in paragraph 10A.232 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

10A.234 The knowledge of Brett Downes of the matters set out in paragraph 10A.232 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.234A. Further and in the alternative to paragraph 10A.229 and 10A.232 above, each of the matters referred to in paragraphs 10A.213 to 10A.216A above were matters:

a. which Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK knew were material to the decision whether to extend insurance cover in respect of the LCL Risk; or

b. alternatively to subparagraph (a), in respect of which Craig Pinnington and Henry Middleditch were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Craig Pinnington was personally involved in, and at times copied into the relevant correspondence with Brereton and BCC associated with, the placement or renewal of the LCL Risk:

(a) Email from Craig Pinnington to Greg Brereton with the subject line 'Liberty commodities Limited AR – account debtor limits' dated 3 May 2019, requesting 'additional account debtor limits of the Liberty Commodities AR programme from BCC today' (BCC.0001.0002.3138);

(b) Email from Sophie Dyke to Lex Greensill, Greg Brereton and Craig Pinnington with the subject line 'RE: Liberty commodities Limited AR – account debtor limits' dated 3 May 2019, further discussing the additional account debtor requests following the correspondence above (MAR.0004.0002.4052).

(c) Email from Craig Pinnington to Angus Ward and Sophie Dyke with subject line 'RE: Liberty Commodities AR account debtor increases' dated 28 June 2019, where Craig Pinnington confirms NKORL for requested increases for Minmetals Cheerglory and Posco Daewoo (AGB.0002.0003.3097);

(d) Email from Craig Pinnington to Angus Ward, Arslan Gill and Margarita Diagileva with subject line 'RE: BCC – Liberty Commodities Additional Names' dated 23 June 2020. Craig Pinnington confirms NKORL following a request for additional account debtors, including LS-Nikko Copper Inc., LG International Corp. and Sorin Corporation (MAR.0003.0003.2867);

(e) Email from Lex Greensill to Greg Brereton, copying in Craig Pinnington with subject line 'RE: Liberty Commodities AR' dated 30 April 2019. In regards to an increase on Cargill's limit, Lex Greensill asks 'Team Marsh, could you please formalise for use at Greensill Bank?' (AGB.0002.0001.1430).

(f) Email from Julian Macey-Dare to Lex Greensill, Craig Pinnington and Greg Brereton with subject line 'RE: Liberty commodities Limited AR – account debtor limits' dated 3 May 2019, with requests for additional account debtors (AGB.0002.0001.1451).

(g) Email from Greg Brereton to Edwards Smith and Lex Greensill, copying in Craig Pinnington with subject line 'RE: Liberty Commodities Debtors for Tuesday' dated 4 October 2019' regarding analysis on new debtors for the Liberty Commodities AR programme (AGB.0002.0001.1889).

Craig Pinnington's knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the nature of the LCL Risk.

Henry Middleditch was personally involved in, and at times copied into the relevant correspondence with Lex Greensill, Greensill and Marsh associated with the placement and renewal of the LCL Risk:

(a) Email from Lex Greensill to Craig Pinnington and Greg Brereton, copying in Henry Middleditch with subject line 'RE: Liberty commodities Limited AR – account debtor limits', dated 3 May 2019. This email concerns a request for additional account debtor limits (BCC.0001.0002.3139).

(b) Email from Angus Ward to various Greensill personnel, copying in Henry Middleditch with subject line 'RE: Liberty Commodities Limited AR account debtor requests', dated 10 June 2019, attaching several signed new account debtor requests (GCU.0005.0011.5908).

(c) Email from Angus Ward to Sophie Dyke and Edward Smith, copying in Henry Middleditch with subject line 'RE: Liberty Commodities and Phoenix Global DMCC', dated 17 July 2019, regarding increasing existing account debtor limits (GCU.0009.0010.4346).

(d) Email from Angus Ward to Sophie Dyke and other Greensill personnel, copying in Henry Middleditch with subject matter 'RE: Liberty Commodities AR account debtor increases' dated 14 August 2019, confirming NKORL and attaching new account debtor increases (AGB.0003.0001.1040).

(e) Email from Edward Smith to Greg Brereton and Lex Greensill, copying in Henry Middleditch with subject line 'Liberty Commodities Debtors for Tuesday', dated 1 October 2019, requesting new account debtors for Liberty Commodities AR programme (MMC_GCUK08_00013070).

(f) Email from Greg Brereton to Henry Middleditch, copying in Lex Greensill with subject line 'RE: GREENSILL/LCL – AR Increase Limit Request – 18/05/2020', dated 19 May 2020, discussing limit increases

for two account debtors under the Liberty Commodities AR facility (BCC.0001.0001.6749).

Henry Middleditch's knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the nature of the LCL Risk.

10A.234AB. Further or in the alternative to paragraph 10A.234A above, each of the matters referred to in paragraphs 10A.213 to 10A.216A above was a matter which a reasonable person in the position of Craig Pinnington or Henry Middleditch could be expected to know was material to the decision whether to extend insurance cover in respect of the LCL Risk.

10A.234B. The knowledge of Craig Pinnington and Henry Middleditch of the matters set out in paragraph 10A.234A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.26A and 10A.26B above.

10A.234C. The knowledge of Craig Pinnington and Henry Middleditch of the matters set out in paragraph 10A.234A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

10A.235 In the premises of paragraphs 10A.193 to 10A.234C above:

a. Greensill misrepresented the risk presented by the LCL Risk;

b. the misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the LCL Risk.

10A.236 If Greensill had not made the LCL Genuine Customer Misrepresentations, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.237 If Greensill had not made the LCL Genuine Trades Misrepresentations, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.238 If Greensill had not made the LCL Customer Creditworthiness Misrepresentations, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.239 ~~If Greensill had not made the LCL Short-term Financing Misrepresentation, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.~~[Not used].

10A.239A. If Greensill had not made the LCL Facility Performance Misrepresentations, insurance cover would not have been issued in respect of the LCL Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.240 By reason of the matters pleaded in paragraphs 10A.213 to 10A.239A above, IAL is entitled to avoid the LCL Endorsements.

Innocent misrepresentation

10A.241 In the alternative to the matters pleaded in paragraphs 10A.235 to 10A.240 above, by reason of the matters pleaded in paragraphs 10A.213 to 10A.216A, and 10A.236 to 10A.239A above, IAL is entitled to reduce its liability under the LCL Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the LCL Genuine Customer Misrepresentations, LCL Genuine Trades Misrepresentations, LCL Customer Creditworthiness Misrepresentations, ~~and LCL Short-term Financing Misrepresentation~~ and LCL Facility Performance Misrepresentation had not occurred).

D5.3 LCL Non-Disclosures

Knowledge of underlying matters

10A.242 At the time of requesting insurance cover for the LCL Risk, including on each occasion that GCUK provided a draft Customer Endorsement to Brereton with a view to that endorsement being accepted and signed by Brereton on behalf of BCC, Lex Greensill knew:

a. the true nature of the ~~supply chain~~ accounts receivable financing arrangements between Greensill and Liberty which involved, among other things, the provision of what was, in effect, unsecured long-term debt not backed by any genuine accounts receivables owed to LCL by customers endorsed to the 2019 90/10 Parallel Policy; ~~and~~

Particulars

The knowledge of Lex Greensill is evident from the testimony of Sanjeev Gupta to the UK Insolvency and Companies Court as to the statements made to him by Lex Greensill: see Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 dated 22 August 2022 (Exhibit SG3).

The knowledge of Lex Greensill is otherwise to be inferred from:

a. the involvement of Lex Greensill and other employees in the company's dealings with LCL, including the following items: AGB.0002.0001.1867, AGB.0002.0001.1359, AGB.0002.0001.1397, AGB.0002.0001.1399, AGB.0002.0001.1430, AGB.0002.0001.1451 and AGB.0002.0001.1821; and

b. Lex Greensill's senior position within Greensill.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

aa. LCL had retained, or would retain, the benefit of finance advanced under the LCL Facility, or cash collections from account debtors, for longer than the period permitted under the LCL Facility;

ab. there were material issues with LCL's performance under the LCL Facility; and

Particulars

The BCC/TM Parties repeat the particulars to paragraph 10A.215, 10A.216 and 10A.216A above.

ac. The GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 10A.33G

2. the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group (of which LCL was affiliated) and Sanjeev Gupta (who was a director of LCL and a personal guarantor of the LCL Facility) in prior dishonest and fraudulent conduct.

Particulars

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

The knowledge of Lex Greensill is evident from the fact that the Diligence Paper was sent to Lex Greensill on 11 December 2018 (CSA.5000.0002.1866 and CSA.5000.0002.1867).

10A.243 The knowledge of Lex Greensill of the matters in paragraph 10A.242 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.244 The knowledge of Lex Greensill of the matters in paragraph 10A.242 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

10A.245 Further or in the alternative to paragraph 10A.242 above, at the time of requesting insurance cover for the LCL Risk, Brett Downes knew each of the matters set out in subparagraphs 10A.242a., 10A.242aa. and 10A.242b. above.

Particulars

The knowledge of Brett Downes is to be inferred from:

a. the involvement of Brett Downes in the company's dealings with LCL, including the following items: GCU.0005.0006.5317, GCU.0004.0027.1545, GCU.0004.0027.3234, AGB.0002.0001.0734, AGB.0002.0001.6143, AGB.0002.0003.3020, AGB.0002.0003.4968, MAR.0004.0002.8179, MMC_GCUK12_00001505 and MMC_GCUK15_00000227;

b. Brett Downes' senior position within GCUK as Chief Risk Officer; and

c. the representations made by GCUK that it conducted due diligence of all clients of Greensill's SCF solutions (BCC.0001.0001.0412).

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.246 The knowledge of Brett Downes of the matters in subparagraph 10A.204h.a10A.194x.a., 10A.242a., 10A.242aa., 10A.242ab. and 10A.242b. above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

10A.247 The knowledge of Brett Downes of the matters in subparagraphs 10A.242a., 10A.242aa., 10A.242ab. and 10A.242b. above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph 10A.20A and 10A.20B above.

10A.247A. Further or in the alternative to paragraphs 10A.242 and 10A.246 above, at the time of requesting insurance cover for the LCL Risk, Craig Pinnington and Henry Middleditch knew the matters set out in paragraph 242 above.

Particulars

The knowledge of Craig Pinnington is to be inferred from:

a. the involvement of Craig Pinnington in the company's dealings with LCL, including the following items: BCC.0001.0002.3138, AGB.0002.0003.3097, MAR.0003.0003.2867, AGB.0002.0001.1430, AGB.0002.0001.1451 and AGB.0002.0001.1889; and

b. Craig Pinnington’s position within GCUK as Senior Credit Analyst; and

The knowledge of Henry Middleditch is to be inferred from:

a. the involvement of Henry Middleditch in the company's dealings with LCL, including the following items: GCU.0004.0019.3454, GCU.0005.0006.1670,

GCU.0005.0008.8722, GCU.0004.0027.3234, AGB.0002.0001.5934, GCU.0009.0011.1386, GCU.0013.0008.1974.

Further particulars may be provided before trial.

10A.247B. The knowledge of Craig Pinnington and Henry Middleditch of the matters in paragraph 10A.242 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.26A and 10A.26B above.

10A.247C. The knowledge of Craig Pinnington and Henry Middleditch of the matters in paragraph 10A.242 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.22A and 20A.22B above.

10A.247D. Further or in the alternative to paragraphs 10A.242, 10A.246 and 10A.247A above, at the time of requesting insurance cover for the LCL Risk, Danyon Lloyd knew the matters set out in subparagraphs 10A.242(a), 10A.242(aa) and 10A.242(ab) above.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

a. the involvement and knowledge of Danyon Lloyd in the company's dealings with LCL, including as evidenced by the following documents: GCU.0005.0017.3912 GCU.0009.0011.8705 GCU.0009.0008.5727 GCU.0004.0025.6218 GCU.0005.0009.4276 GCU.0005.0012.5582 GCU.0009.0010.0382; and

b. Danyon Lloyds' position within GCUK's credit committee.

10A.247E. The knowledge of Danyon Lloyd of the matters in subparagraphs 10A.242(a), 10A.242(aa) and 10A.242(ab) above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.25A above.

Knowledge of materiality

10A.248 Each of the matters referred to in paragraph 10A.242 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the LCL Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of LCL being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the LCL Risk.~~

10A.249 Further or in the alternative to paragraph 10A.248 above, each of the matters referred to in paragraph 10A.242 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend insurance cover in respect of the LCL Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.~~46~~248 above.

10A.250 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.248 and 10A.249 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.251 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.248 and 10A.249 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

10A.252 Further or in the alternative to paragraph 10A.248 above, each of the matters referred to in paragraph 10A.242 above were matters:

a. which Brett Downes (Chief Risk Officer of GCUK) knew were relevant to the decision to accept the LCL Risk and, if so, on what terms; or

b. alternatively to subparagraph a., in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes' knowledge is to be inferred by virtue of his position and experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the LCL Risk.

10A.253 Further or in the alternative to paragraph 10A.252 above, each of the matters referred to in paragraph 10A.242 above were matters which a reasonable person in the position of Brett Downes could be expected to know were relevant to the decision to extend insurance cover in respect of the LCL Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.252 above.

10A.254 The knowledge of Brett Downes of the matters in paragraphs 10A.252 and 10A.253 above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

10A.255 The knowledge of Brett Downes of the matters in paragraphs 10A.252 and 10A.253 above can be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and 10A.22B above.

10A.255A. Further or in the alternative to paragraph 10A.248 and 10A.252 above, the matters referred to in paragraph 10A.242 above were matters:

a. which Craig Pinnington (Senior Credit Analyst) and Henry Middleditch (Vice President) of GCUK knew were relevant to the decision to accept the LCL Risk and, if so, on what terms; or

b. alternatively to subparagraph (a), in respect of which Craig Pinnington and Henry Middleditch were wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and as the non-disclosures bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the nature of the LCL Risk.

Henry Middleditch's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and as the non-disclosures bore directly on the risk of LCL being unable to repay the amounts advanced to it and thus upon the nature of the LCL Risk.

10A.255B. Further or in the alternative to paragraph 10A.255A above, the matters referred to in paragraph 10A.242 above were matters which a reasonable person in the position of Craig Pinnington or Henry Middleditch could be expected to know were relevant to the decision to extend insurance cover in respect of the LCL Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.255A above.

10A.255C. The knowledge of Craig Pinnington and Henry Middleditch of the matters in paragraphs 10A.255A and 10A.255B above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.26A and 10A.26B above.

10A.255D. The knowledge of Craig Pinnington and Henry Middleditch of the matters in paragraphs 10A.255A and 10A.255B above can be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.22A and 10A.22B above.

10A.255E. Further or in the alternative to paragraph 248, 252 and 255AA above, the matters referred to in subparagraphs 242(a), 242(aa), 242(ab) and 247DD(b) above were matters:

(a) which Danyon Lloyd knew were relevant to the decision to accept the LCL Risk and, if so, on what terms; or

(b) alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

a. a person with substantial commercial experience in dealing with credit risks in the finance industry;

b. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

c. a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs [11] and [12(a)(ii)] above); and

d. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the LCL Risk.

10A.255F. Further or in the alternative to paragraph 255EE above, each of the matters referred to in subparagraphs 242(a), 242(aa), 242(ab) and 247DD(b) above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were relevant to the decision to extend insurance cover in respect of the LCL Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.255E above.

10A.255G. The knowledge of Danyon Lloyd of the matters in paragraphs 10A.255E and 10A.255F above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.25A above.

Breach of duty of disclosure

10A.256 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 10A.242 above before the cover was placed or renewed for the LCL Risk.

10A.257 Greensill's failure to disclose the matters referred to in paragraph 10A.242 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 10A.243 to 10A.255G above.

Fraudulent non-disclosure

10A.258 By reason of the matters pleaded in paragraphs 10A.243, 10A.244, 10A.246, 10A.247, 10A.247B, 10A.247C, 10A.247E, 10A.248, 10A.250 to 10A.252, 10A.254 and 10A.255 to 10A.255G above, Greensill's failure to disclose the matters referred to in paragraph 10A.242 above was fraudulent.

10A.259 The cover for the LCL Risk would not have been issued if the matters referred to in paragraphs 10A.242 and 10A.247DD above had been disclosed.

10A.260 In the alternative to the allegation in paragraph 10A.259 above, the cover for the LCL Risk would not have been extended on the same terms if the matters referred to in paragraphs 10A.242 and 247DD above had been disclosed.

10A.261 By reason of the matters pleaded in paragraphs 10A.258 to 10A.260 above, IAL is entitled to avoid the LCL Endorsements.

Innocent non-disclosure

10A.262 In the alternative to the matters pleaded in paragraphs 10A.258 to 10A.261 above, and by reason of the matters pleaded in paragraphs 10A.256, 10A.257, 10A.259 and 10A.260 above, IAL is entitled to reduce its liability under the LCL Endorsements to nil (or such other

amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D6 ATLANTIC 57

D6.1 Policy and Endorsements

10A.263 In Federal Court of Australia proceeding no. NSD173/2023, the applicants allege that Atlantic 57 Consultancy Limited (company number 1892772), a limited liability company incorporated in the British Virgin Islands (**Atlantic 57**), was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 4 dated 13 March 2019 (**Atlantic 57 Endorsement**).

Particulars

Second Amended Statement of Claim in proceeding no. NSD173/2023 dated 14 March 2024 at paragraphs 161 and 163.

D6.2 Atlantic 57 Misrepresentations

Purpose representation

10A.264 On or around 12 September 2018, Lex Greensill, on behalf of GCUK, requested that BCC extend insurance cover in respect of financing to be provided by Greensill to Atlantic 57 (**Atlantic 57 Risk**).

Particulars

Email from Lex Greensill to Greg Brereton dated 12 September 2018 and its attachment 'Atlantic 57 Consultancy Project Summary' (AGB.0003.0001.3869 and AGB.0003.0001.3870) (**Atlantic 57 Project Summary**).

10A.265 In making the request, Lex Greensill represented to Greg Brereton that the primary purpose of the proposed facility, an 'Instalment Payment Agreement' with a facility limit of USD40 million (**Atlantic 57 IPA**), was to finance an equity stake in the Steinway Project.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.264 above.

The Atlantic 57 Project Summary, among other things, described the proposed facility as 'an Instalment Payment Agreement (“IPA") from Atlantic 57 Consultancy Limited (“A57C”), a company incorporated in the British Virgin Islands. This is a US$40m 2 year committed facility'.

10A.266 In the premises of paragraph 10A.265 above, GCUK represented to Greg Brereton that the Atlantic 57 Risk to be covered concerned financing issued by GCUK to Atlantic 57 for the sole purpose of

funding, among other things, an equity stake in the Steinway Project (**A57 Purpose ~~Misrepresentation~~ Representation**).

10A.267 The Atlantic 57 Purpose ~~Misrepresentation~~ Representation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs ~~10A.17, 10A.18, 10A.2122 and 10A.26~~ 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, 10A.26A and 10A. 26B above.

10A.268 On or around 15 September 2018, Greg Brereton purported to agree to provide cover in respect of the Atlantic 57 Risk up to a policy limit of USD40 million and with a base premium of 1.25% per annum.

Particulars

Emails from Lex Greensill to Greg Brereton dated 14 September 2018 and 15 September 2018 (BCC.0001.0002.1578), which stated, in relation to the Atlantic 57 Risk, 'We plan to close Atlantic 57 on Monday, so it would be great if you could return the executed endorsements to us by open of business in London on Monday'.

Email from Greg Brereton to Lex Greensill, copying to John Whelan (Deputy General Counsel) of GCUK, Brett Downes (Chief Risk Officer) of GCUK and Ewan Berkemeier of Marsh dated 15 September 2018 (BCC.0001.0002.1578).

10A.269 On 17 September 2018, Greg Brereton provided Greensill with a signed ~~a~~ copy of Customer Endorsement No 28 purportedly issued under the 2018 Policy in respect of the Atlantic 57 Risk, effective from 17 September 2018, and with a premium of USD1.

Particulars

Email from Greg Brereton to John Whelan and Ewan Berkemeier, copying Lex Greensill and Brett Downes, dated 17 September 2018 (AGB.0003.0001.0002), attaching a signed copy of Customer Endorsement No 28 to the 2018 Policy, purportedly signed for and on behalf of the Insurer by Greg Brereton as representative of BCC on or around 17 September 2018 (AGB.0003.0001.0003_0005). Customer Endorsement No 28 had a Maximum Tenor of 180 days from the date the Insured acquires the Debt.

Guarantor Representations

10A.270 At the time of requesting insurance cover in respect of the Atlantic 57 Risk, Lex Greensill represented to Greg Brereton that;~~,~~

a. Andrew Ruhan, a proposed individual guarantor under the Atlantic 57 IPA, had assets with a combined total value of GBP161,570,000 and liabilities with a combined total value of GBP2, giving a net worth of GBP161,569,998; and

b. the proposed personal guarantee from Andrew Ruhan had actual value that GCUK could call upon in the event of default under the Atlantic 57 IPA,

(**Guarantor Representations**).

Particulars

Email from Lex Greensill to Greg Brereton dated 12 September 2018 (BCC.0001.0002.1549).

Email from Vicky Birch to Lex Greensill, Brett Downes, Danyon Lloyd and others with the subject "GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – MINUTES" dated 20 September 2018 (GCU.0004.0018.0444).

Settlement Agreement

10A.270A. At the time of requesting insurance cover in respect of the Atlantic 57 Risk, Lex Greensill represented to Greg Brereton that there was a 'Settlement Agreement' under which Atlantic 57 LLC had a right to receive proceeds from or in respect of the Steinway Project, of which 54% was payable by Atlantic 57 LLC to Atlantic 57 (**Settlement Agreement Representation**).

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.264 above.

GCUK used 'Settlement Agreement' to refer to a Limited Liability Company Agreement of Managing Member 111W57 LLC between Atlantic 57 LLC and the Property Markets Group and JDS Construction Group .

A57 Renewal

10A.271 On or around 28 February 2019, Edward Smith of Marsh sent an email to GCUK, attaching documents relating to a requested renewal of cover for the Atlantic 57 Risk. Marsh asked GCUK to confirm 'NKORL' [no known or reported losses] and an order to bind.

Particulars

Email from Edward Smith of Marsh to Sophie Dyke (Insurance Analyst) of GCUK, copying Craig Pinnington (Senior Credit Analyst) of GCUK, and the email address, insurance@greensill.com (AGB.0002.0002.1743), attaching, among other documents, an unsigned Customer Endorsement No 4 for Atlantic 57 (AGB.0002.0002.1756).

10A.272 On or around 28 February 2019, GCUK provided confirmation that there were no known or reported losses and instructed Marsh to renew cover under the 2019 90/10 Parallel Policy in respect of a number of risks, including the Atlantic 57 Risk.

Particulars

Email from Sophie Dyke to Edward Smith copying Craig Pinnington and the email address, insurance@greensill.com (MAR.0004.0001.9422).

10A.273 On or around 28 February 2019 and 4 March 2019, Marsh emailed Greg Brereton documents relating to the requested renewal of the policy and renewal of cover for the Atlantic 57 Risk, including the Atlantic 57 Endorsement. On each occasion, Marsh confirmed that 'Greensill have confirmed NKORL' and had given Marsh the order to bind.

Particulars

Email from Edward Smith to Greg Brereton, copying Ewan Berkemeier and other Marsh representatives, dated 28 February 2019 (MAR.0004.0001.9510), attaching (among other things) unsigned Customer Endorsement No 4 to the 2018 Policy (MAR.0004.0001.9513).

Email from Edward Smith of Marsh to Greg Brereton, copying Ewan Berkemeier and other Marsh representatives, dated 4 March 2019 (MAR.0004.0001.9739), attaching, among other things, an unsigned Customer Endorsement No 4 to the 2019 90/10 Parallel Policy (MAR.0004.0001.9781).

10A.273A By the correspondence referred to in paragraph 10A.273, GCUK represented to Greg Brereton that Atlantic 57 had paid any purported instalments under the Atlantic 57 IPA that had fallen due (**A57 Repayment Representation**).

10A.274 [Not used].

10A.275 [Not used].

10A.276 On or around 13 March 2019, Greg Brereton provided Greensill with a signed copy of the Atlantic 57 Endorsement to the 2019 90/10 Parallel Policy, which purported, with effect from 1 March 2019, to endorse Atlantic 57 as a 'Customer' under the 2019 90/10 Parallel Policy, with an 'Aggregate Customer Limit' of USD40 million.

Particulars

Email from Greg Brereton to Edward Smith, copying Ewan Berkemeier, dated 13 March 2019 (BCC.0001.0002.2777), attaching (among other endorsements) a signed copy of Customer Endorsement No 4 to the 2019 90/10 Parallel Policy (BCC.0001.0002.2778_0033).

Representations were misleading

10A.277 The A57 Facility Purpose Representation referred to in paragraph 10A.265 above was false and/or misleading because:

a. the Atlantic 57 IPA was in fact an aged facility and not a new facility:

i. on or around 21 September 2016, GCUK and Atlantic 57 appear to have entered into a Customer Agreement which purported to govern the assignment to GCUK of rights to accounts receivable owing to the Supplier;

Particulars

Customer Agreement dated 21 September 2016 (IAL.500.002.4904).

ii. on or around 28 September 2016, GCUK and Grenda Investments Limited (company number 1733832) (**Grenda** or **Supplier**) appear to have entered into a Supplier Agreement which purported to govern the transfer of accounts receivable to the Supplier (**Supplier Agreement**);

Particulars

Supplier Agreement dated 28 September 2016 (IAL.500.002.4902).

iii. on or around 28 September 2016, GCUK appears to have issued a side letter to Grenda (**Side Letter**) which purported to amend the Supplier Agreement and provided that the only account receivable 'that may be transferred by the Supplier to [GCUK] under the Supplier Agreement is the right to receive payments of money due and payable under the irrevocable receivable issued by- Atlantic 57 Consultancy Ltd. in favour of the Supplier on 21 September 2016 in the amount of USD22.6 million with a maturity date of 22 September 2017' (**First Receivable**);

Particulars

Side Letter dated 28 September 2016 (IAL.500.002.4903).

iv. on or around 29 September 2016:

a. ~~A.~~ a note for USD22.6 million was issued by Lagoon Park Capital SA (**Lagoon Park**), with a maturity date of 22 September 2017 (**First GAM Note**);

b. ~~B.~~ the First GAM Note was acquired by GAM and allocated to its Absolute Return Bond Master Fund (**ARMF**), an investment fund.

Particulars

Distribution History Report for Atlantic 57 (BCC.0001.0006.7253).

Document with filename “NotesOffer_SPV1_XS1453932565_20160929” with created date 29 September 2016 (GCU.0001.0005.3593).

Document with filename ”GRE01_IXS1453932565_F_PC_N_V01_20160929” with created dated 29 September 2016 (GCU.0001.0005.3546).

Email from Lex Greensill to Danyon Lloyd (Chief Executive Officer) of Greensill Bank dated 30 September 2016 (GBA.0004.0009.2760), which states, in relation to the First GAM Note: 'It is the Andy Ruhan property trade. GAM bought 100% of it uninsured' (GBA.0004.0009.2760).

v. the First GAM Note represented GAM's purchase of the right to the First Receivable payable by Atlantic 57 to GCUK by reason of the arrangements in subparagraphs i. and ii. in connection with an investment into the Steinway Project by Andrew Ruhan;

Particulars

Distribution History Report for Atlantic 57 (BCC.0001.0006.7253).

Distribution Report with Invoice Details for Atlantic 57 dated 14 June 2021 (BCC.0001.0006.7250).

Emails between Timothy Haywood and Lex Greensill, with the subject 'RE: Steinway Proposal' dated 16 September 2016 (GCU.0001.0005.1043).

Emails between Danyon Lloyd and Lex Greensill dated 30 September 2016 (GBA.0004.0009.2760).

vi. on 22 September 2017, being the maturity date of the First GAM Note:

a. ~~A.~~ Grenda rolled the USD22.6 million debt owed to it by Atlantic 57 under the First Account Receivable; and

b. ~~B.~~ Atlantic 57 issued a new irrevocable receivable in favour of Grenda for USD28.1 million payable on or before 17 September 2018 (**Second Receivable**);

Particulars

Distribution History Report for Atlantic 57 (BCC.0001.0006.7253).

Distribution Report with Invoice Details for Atlantic 57 dated 14 June 2021 (BCC.0001.0006.7250).

Emails between Timothy Haywood and Lex Greensill, with the subject 'RE: Steinway Proposal' dated 16 September 2016 (GCU.0001.0005.1043)

Email from Tom Kennedy to Andy Ruhan copying Lex Greensill and Jonathan Lane, with the subject "FW: Steinway" dated 3 July 2017 (GCU.0001.0010.6759).

Letter 'Re: Irrevocable Receivable' dated 22 September 2017 from Atlantic 57 to Grenda (IAL.500.002.4906).

vii. on 25 September 2017:

a. ~~A.~~ the First GAM Note was recorded in GCUK's records as paid, 3 days after its maturity date on Friday, 22 September 2017;

b. ~~B.~~ Lagoon Park issued a note for USD28.1 million backed by the Second Receivable, with a maturity date of 17 September 2018 (**Second GAM Note**); and

c. ~~C.~~ the Second GAM Note was acquired by GAM and allocated to its ARMF;

Particulars

Distribution History Report for Atlantic 57 (BCC.0001.0006.7253).

Distribution Report with Invoice Details for Atlantic 57 dated 14 June 2021 (BCC.0001.0006.7250).

Email from Rozlyn Bennett to Greensill-exec@morganstanley.com dated 25 September 2017 (GCU.0010.0001.9051) attaching document with filename "IXS1453932649_F_PC_N_V01_20170925" with created dated 22 September 2017 (GCU.0010.0001.9052).

Email from Rosalind Bell of Morgan Stanley dated 25 September 2017 (GCU.0012.0001.4661) attaching document with filename "IXS1453932649_F_PC_N_V01_20170925" with created dated 22 September 2017 (GCU.0012.0001.4662).

viii. by reason of the matters referred to in subparagraph 10A.277a above, the Second GAM Note represented, in substance, a rollover of the debt under the First GAM Note, plus interest;

b. the financing provided for under the Atlantic 57 IPA was in fact for:

i. the primary purpose of repaying the Second GAM Note of USD28.1 million or, in other words, the refinancing of Atlantic 57's debt; and

Particulars

Email from Lex Greensill to Ludwig Sels, with the subject "Re: Assets…" dated 2 August 2018 (GCU.0004.0015.9070)

Email from Hannah Yang to Myrjam Tschoeke and others, with the subject "RE: Credit Approval Request – Atlantic 57 Consultancy Limited" dated 14 September 2018 (GCU.0009.0004.8869)

Credit Analysis Pack for Atlantic 57 submitted to the Credit Committee on 14 September 2018 (GBA.0004.0024.0276_0001) (**A57 Credit Analysis Pack**).

Email from Lex Greensill to Vesna Vladusic, with the subject “Re: Atlantic 57” dated 15 September 2018 (GCU.0010.0004.9602)

Period Review - Atlantic 57 dated 27 March 2020 (GBA.0004.0009.1518 at 0009 and 0022) (**Atlantic 57 Periodic Review**), which stated, among other things, that:

a. 'The purpose of the facility is for the repayment of a US$28.1m GAM note maturing September 17th, 2018, and to cover legal fees and transaction costs'; and

b. 'Grenda Investments Limited, a company incorporated in the British Virgin Island, has made a debt investment totalling US$40.725m into A57 LLC. Then the US$40.725m promissory note from A57 LLC to Grenda Investment has been cancelled and re-issued as a US$21.895m note to Grenda Investments and US$18.83m going to A57C.'

Investor Funds Credit and Payments dated 17 September 2018 (AGB.0003.0002.0088).

Email from Ian Little to Chris Lockhart, copying Ian Bryan, dated 14 September 2018 (AGB.0003.0002.0091), which refers to a payment of USD28,100,000 'to be made by Greensill' representing a 'maturity payment'.

Manual Payment Request dated 17 September 2018 for USD28,100,000 to the Atlantic 57 trust account (AGB.0003.0002.0092).

ii. the ancillary purpose of paying the following costs and fees, namely:

a. ~~A.~~ an amount of USD1 million to Anthony Stevens for providing a personal guarantee and indemnity in favour of GCUK in respect of in respect of Atlantic 57's obligations under the Atlantic 57 IPA;

Particulars

Atlantic 57 Periodic Review (GBA.0004.0009.1518 at 0009 and 0022).

Email from Ian Little to Chris Lockhart, copying Ian Bryan, dated 14 September 2018 (AGB.0003.0002.0091), which refers to a payment of USD1,000,000 by GCUK to Anthony Stevens.

Manual Payment Request dated 17 September 2018 for USD1 million to Anthony Stevens (AGB.0003.0002.0090).

Investor Funds Credit and Payments dated 17 September 2018 (AGB.0003.0002.0088).

Personal Guarantee dated 11 September 2018 between Anthony Stevens and GCUK (IAL.500.002.4889), which was executed by Anthony Stevens in the presence of Lex Greensill as witness.

b. ~~B.~~ an amount of USD1 million to Grenda Investments for providing a company guarantee and indemnity in favour of GCUK in respect of Atlantic 57's obligations under the Atlantic 57 IPA, which appears to have been paid to Grenda's solicitors, Richard Slade and Company PLC;

Particulars

Atlantic 57 Periodic Review (GBA.0004.0009.1518 at 0009 and 0022).

Email from Ian Little to Chris Lockhart, copying Ian Bryan, dated 14 September 2018 (AGB.0003.0002.0091), which refers to a payment of USD1,000,000 by GCUK to Richard Slade.

Investor Funds Credit and Payments dated 17 September 2018 (AGB.0003.0002.0088).

Manual Payment Request dated 17 September 2018 for USD1 million to 'Richard Slade and Company PLC Client Account' (AGB.0003.0002.0091). Richard Slade & Company PLC is a law firm that acted for Anthony Stevens and Grenda in various proceedings from at least 2017 (see *Grenda Investments Ltd v Barton* [2017] EWHC 2372; *Richard Slade and Company Ltd & Anor v Guinevere Holdings Ltd & Anor* [2023] EWHC 1869 at [4] and [7]).

Company Guarantee dated 11 September 2018 between Grenda and GCUK (IAL.500.002.8683), which was executed by Anthony Stevens on behalf of Grenda, in the presence of Lex Greensill as witness.

c. ~~C.~~ an amount of USD4,944,345 to GCUK for costs, fees and margins payable for the provision of the Atlantic 57 IPA; and

Particulars

Atlantic 57 Periodic Review (GBA.0004.0009.1518 at 0022).

Investor Funds Credit and Payments dated 17 September 2018 (GBA.0004.0009.1518), which records the fees retained by GCUK as USD6,332,505.

d. ~~D.~~ an amount of USD1 million for the cost of insurance for the Atlantic 57 IPA.

Particulars

Atlantic 57 Periodic Review (GBA.0004.0009.1518 at 0022).

c. Atlantic 57 LLC's equity stake in the Steinway Project had been extinguished after one of the project's lenders, Spruce Capital Partners, foreclosed on project in 2017.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.278A below.

Email 'Fwd: Steinway Building /Ruhan Loan' from Tim Haywood to Lex Greensill dated 11 April 2018 (GCU.0004.0011.1505).

Email 'Re: Afternoon Andy' from Tim Haywood to Andy Ruhan, copying Lex Greensill, dated 10 May 2018 (GCU.0004.0012.2981).

Email "RE: Atlantic 57 question list" from Lex Greensill to David Keelings, Brett Downes and other GCUK employees, dated 11 September 2018 (GCU.0010.0004.8735).

10A.278 The Guarantor Representations referred to in paragraph 10A.270 above was misleading because, at the time it was made~~,~~;

a. less than a year earlier, Andrew Ruhan had represented that 'he [was] insolvent to the tune of £2m' in family law proceedings in the High Court of Justice (England & Wales)~~.~~;

b. the proposed personal guarantee from Andrew Ruhan had no actual value which could be drawn upon in the event of default under the Atlantic 57 IPA.

Particulars

Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam) (the **Ruhan Proceedings**) at [4] per Mostyn LJ.

The BCC/TM Parties refer to the particulars at paragraph 10A.280 below.

10A.278A. The Settlement Agreement Representation referred to in paragraph 10A.270A above was misleading because no Settlement Agreement, or other agreement which entitled Atlantic 57 LLC to receive proceeds from the Steinway Project, was ever entered into, either at the time the representation was made or subsequently.

Particulars

This can be inferred from email correspondence between Andy Ruhan, Anthony Stevens, Lex Greensill and other GCUK employees before and after the Settlement Agreement Representation regarding draft settlement documentation in relation to the Steinway Project below referring to the proposed Settlement Agreement, and subsequent proposed settlement documentation, and to the fact that they were still subject to agreement and execution.

Email "RE: Updated draft Amended & Restated LLC Agmt - privileged & confidential" from Lex Greensill to Andy Ruhan dated 30 July 2018 (GCU.0010.0004.8735).

Email from Andy Ruhan to Lex Greensill dated 12 July 2018 (GCU.0004.0015.0238), attaching a draft Amended and Restated Limited Liability Company Agreement of Manager Member 111W57 LLC between Manager JV Holdings 111W57 LLC and Atlantic 57 LLC (GCU.0004.0015.0243) and a draft General Mutual Release by Atlantic 57 LLC, 57 Madison LLC and Arthur Becker (GCU.0004.0015.0245).

Email from Lex Greensill to Andy Ruhan, copying Brett Downes and other GCUK employees, dated 7 September 2018 (GCU.0004.0017.5298).

Email "Re: A57" from Andy Ruhan to Hannah Yang, copying Lex Greensill, Brett Downes and other GCUK employees, dated 9 September 2018 (GCU.0004.0017.5576), attaching final draft of the "Amended and Restated Manager Member 111W57 LLC Agreement.DOCX' (GCU.0004.0017.5576).

Email “Re: Steinway” from Andy Ruhan to Lex Greensill dated 14 September 2018 (GCU.0005.0001.9697).

Email “Steinway” from Andy Ruhan to Lex Greensill, copying Kevin Maloney, dated 14 September 2018 (GCU.0005.0001.9697), and subsequent reply from Kevin Maloney (GCU.0004.0017.7954).

Emails from Andy Ruhan to Lex Greensill dated 16 September 2018 (GCU.0004.0017.8193; GCU.0004.0017.8231).

Email from Anthony Stevens to Steve Scott dated 23 June 2020 (GCU.0013.0008.6406).

Email from Anthony Stevens to Steve Scott dated 23 June 2020 (GCU.0010.0013.8030), attaching draft settlement documentation between Atlantic 57 LLC, Manager JV Holdings 111W57 LLC, PMG 111 W57 LLC and JDS 111W57th LLC (GCU.0010.0013.8031; GCU.0010.0013.8032; GCU.0010.0013.8033; GCU.0010.0013.8034).

10A.278B. The A57 Repayment Representation referred to in paragraph 10A.273A was false and/or misleading because:

a. Between 17 September 2018 and 13 March 2019, 13 maturities fell due under the Atlantic 57 IPA;

Particulars

Maturities falling due on 26 September 2018, 10 October 2018, 24 October 2018, 7 November 2018, 21 November 2018, 5 December 2018, 19 December 2018, 2 January 2019, 16 January 2019, 39 January 2019, 13 February 2019, 27 February 2019 and 13 March 2019 are recorded in:

Document titled “PAUF authorisation letter signed and dated 11-09-18” dated 11 September 2018 (GCU.0009.0004.9332).

Document titled “DW_Distribution_history_-_for_Atlantic 57” with created date 1 May 2024 (GCU.9000.0001.0001).

b. Atlantic 57 did not make any payments to GCUK between 17 September 2018 and 13 March 2019 as the facility operated by way of rolling of debt;

Particulars

Email Vesna Vladusic to Myrjam Tschoeke and other, with the subject "RE: Credit Approval Request – Atlantic 57 Consultancy Limited" dated 14 September 2018 (GCU.0009.0004.8890).

Email from James Hadley to Al Eadie, with the subject "RE: Atlantic 57" dated 18 September 2018 (GCU.0009.0004.9330).

Document titled "PAUF authorisation letter signed and dated 11-09-18" dated 11 September 2018 (GCU.0009.0004.9332).

Document titled "Deal Summary" with created date 24 September 2018 (GCU.0010.0005.1242).

Microsoft Outlook Appointment from Stephen Fleming with the subject "Atlantic 57 – Agenda: Numbered points below" dated 9 November 2018 (GCU.0002.0001.6056)

Document titled "IPA – background" with created date 15 November 2018 (GCU.0010.0005.9078).

Email Stephen Fleming to Nick Dugdale with the subject "FW: Follow up to IPA meeting" dated 12 March 2019 (GCU.0009.0007.9196).

Documented titled "Rolls" with created date 10 November 2020 (GCU.0014.0001.3198).

GCUK's practice of rolling the debts the subject of the Atlantic 57 facility, without Atlantic 57 in fact repaying any amount to GCUK, is evident from the documents identified immediately above in the particulars to this paragraph 10A.278B(b) and is further pleaded at Section F.1 of Annexure B to this defence

Knowledge of falsity of representations

10A.279 Lex Greensill knew the true purpose of the Atlantic 57 IPA as set out in paragraph 10A.277 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

a. his membership of the Credit Committee, which assessed and approved the financial accommodation provided to Atlantic 57;

b. his role as Sponsor of the Atlantic 57 transaction and a member of the related 'Deal Team';

c. his 'long established relationship' with Andrew Ruhan, in relation to which the BCC/TM Parties refer to the particulars in paragraph 10A.280 below; and

d. his 'long established relationship' with Anthony Stevens (GBA.0004.0010.1624_0017), in respect of which the BCC/TM Parties refer to the particulars in subparagraph 10A.293g. below;

e. the fact that he was the recipient or sender of emails particularised in paragraph 10A.277 which referred to the fact that the primary purpose of the Atlantic 57 IPA was for the repayment of the Second GAM Note;

f. the fact that he was the recipient or sender of emails particularised in subparagraph 10A.277(c) above which referred to the fact that Atlantic 57's equity stake had been wiped out on the foreclosure of the Steinway Project.

Credit Committee Terms of Reference dated 16 December 2016 (BCC.0001.0001.0413).

Email from Pamela Nnoko, to Lex Greensill, William Roland Harley-Urquhart and Danyon Lloyd and others dated 16 November 2018 (GBA.0004.0024.0275), attaching the A57 Credit Analysis Pack (GBA.0004.0024.0276).

The Atlantic 57 Periodic Review notes that 'Credit Approval was essentially provided at the outset of the [IPA] facility in September 2018' (GBA.0004.0009.1518_0020).

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.280 Lex Greensill knew the matters set out in paragraph 10A.278 above.

Particulars

Lex Greensill's knowledge can be inferred from the fact that he had a 'long established relationship' with Andrew Ruhan (GBA.0004.0010.1624_0017) arising by virtue of the matters referred to in paragraph 10A.293f below.

Further the matters were highly publicised. For example, see:

a. 'Property tycoon worth £200m, who was facing one of Britain's biggest divorce settlements, claims he is BROKE' published on 11 October 2017 in the Daily Mail Online (UK).

b. 'Property tycoon's estranged wife denies paying a hitman to 'get rid of' her husband who's 'pleading poverty' in their bitter divorce battle' published on 12 October 2017 in the Daily Mail Online (UK).

c. 'Wife denies hiring hitman to murder her tycoon husband' published on 13 October 2017 by The Sun (UK).

d. 'Estranged wife questioned over plot to kill millionaire' published on 13 October 2017 in The Times (London).

Email from Vicky Birch to Lex Greensill, Brett Downes, Danyon Lloyd and others with the subject “GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – MINUTES” dated 20 September 2018 (GCU.0004.0018.0444)

10A.280A. Lex Greensill knew the matters set out in paragraph 10A.278A above.

Particulars

Lex Greensill's knowledge can be inferred from the fact that he was the recipient or sender of emails particularised in paragraph 10A.278A which referred to the fact that the Settlement Agreement had not yet been agreed or executed.

10A.280B. Lex Greensill knew the matters set out in paragraph 10A.278B above.

Lex Greensill’s knowledge can be inferred from:

a. his membership of the Credit Committee, which assessed and approved the financial accommodation provided to Atlantic 57;

b. his role as Sponsor of the Atlantic 57 transaction;

c. his 'long established relationship' with Andrew Ruhan, in relation to which BCC refers to the particulars in paragraph 10A.280 below; and

d. his 'long established relationship' with Anthony Stevens (GBA.0004.0010.1624_0017), in respect of which BCC refers to the particulars in subparagraph 10A.247c.iii.g. below;

10A.281 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.279, ~~and~~ 10A.280, 10A.280A and 10A.280B above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs ~~10A.25 and 10A.26~~ 10A.25, 10A.26A and 10A.26B above.

10A.282 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.279, ~~and~~ 10A.280, 10A.280A and 10A.280B above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs ~~10A.20 and 10A.22~~10A.20, 10A.22A and 10A.22B above.

10A.282A Further and in the alternative to paragraph 10A.280B, Sophie Dyke (Insurance Analyst) of GCUK knew the matters set out in paragraph 10A.278B.

Particulars

The knowledge of Sophie Dyke is to be inferred from the following emails:

Email from Pamela Nnoko to Sophie Dyke with the subject “A57” dated 17 September 2018 attaching document entitled “RCAP Atlantic 57 Consultancy FCC 14092018(2)” (GCU.0009.0004.9118 and GCU.0009.0004.9122)

Email from Ian Bryan to Chris Lockhart and Stacey Ellams copying Sophie Dyke and others with the subject "RE Todays Trade Acceptance" dated 7 November 2018 (GCU.0013.0003.8521)

Email from Sophie Dyke to Brett Downes with the subject "Atlantic 57 Tenor" dated 8 November 2018 (GCU.0009.0005.8548)

Email from Stephen Fleming to Brett Downes and Vesna Vladusic copying Sophie Dyke, Mark Calvert-Jones and Al Eadie with the subject "Atlantic 57 Insurance: 182 day tenor issue" dated 22 November 2018 (GCU.0013.0004.0233)

10A.282B The knowledge of Sophie Dyke of the matters set out in paragraph 10A.280B above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

10A.282C The knowledge of Sophie Dyke of the matters set out in paragraph 10A.280B above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality of representations

10A.283 Each of the matters referred to in paragraphs 10A.277 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Atlantic 57 being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Atlantic 57 being unable to repay the amounts advanced to it and thus upon the Atlantic 57 Risk.~~

10A.283A Further or in the alternative to paragraph 10A.283 above, each of the matters referred to in paragraphs 10A.277 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the A57 Risk.

10A.284 Each of the matters referred to in paragraphs 10A.278, 10A.~~278~~278A and 10A.278B above were matters:

a. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.283 above.

10A.284A Further or in the alternative to paragraph 10A.284 above, each of the matters referred to in paragraphs 10A.278, 10A.278A and 10A.278B above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the A57 Risk.

10A.285 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.283 and 10A.284 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs ~~10A.25 and 10A.26~~ 10A.25, 10A.26A and 10A.26B above.

10A.286 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.283 and 10A.284 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs ~~10A.20 and 10A.22~~ 10A.20, 10A.22A and 10A.22B above.

10A.286A The matters referred to in paragraph 10A.278B above were matters:

a. which Sophie Dyke knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

b. alternatively to subparagraph a., in respect of which Sophie Dyke was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Email from Sophie Dyke to Edward Smith copied to others with the subject "RE: BCC Standalone Renewal Docs" dated 28 February 2019 (GCU.0009.0007.7014) Sophie Dyke's knowledge is to be inferred as she was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly upon the Atlantic 57 Risk.

10A.286AB Further or in the alternative to paragraph 10A.286A above, each of the matters referred to in paragraph 10A.278B above was a matter which a reasonable person in the position of Sophie Dyke could be expected to know was material to the decision whether to extend insurance cover in respect of the A57 Risk

10A.286B The knowledge of Sophie Dyke of the matters set out in paragraph 10A.286A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.286C The knowledge of Sophie Dyke of the matters set out in paragraph 10A.286A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

10A.287 In the premises of paragraphs 10A.279, 10A.281, 10A.282, 10A.283, 10A.285 and 10A.286 above:

a. Greensill misrepresented the true purpose of the financial accommodation provided to Atlantic 57 under the Atlantic 57 IPA by making the A57 Purpose ~~Misrepresentation~~ Representation;

b. the A57 Purpose ~~Misrepresentation~~ Representation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

10A.288 In the premises of paragraphs 10A.280, 10A.281, 10A.282, 10A.284, 10A.285 and 10A.286 above:

a. Greensill misrepresented the personal asset position of Andrew Ruhan by making the Guarantor Representations;

b. the Guarantor Representations were ~~was~~ knowingly false and fraudulent; and

c. the misrepresentations were ~~was~~ known to be material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

10A.288A. In the premises of paragraphs 10A.270A, 10.278A, 10.280A, 10A.281, 10A.282, 10A.284, 10A.285 and 10A.286 above:

a. Greensill misrepresented that Atlantic 57 LLC had a contractual right to proceeds from the Steinway Project, which Atlantic 57 could draw upon to meet its obligations under the Atlantic 57 IPA in making the Settlement Agreement Representation;

b. the Settlement Agreement Representation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Atlantic 57 Risk.

10A.288B. In the premises of paragraphs 10A.273A, 10.278B, 10.280B, 10A.281, 10A.282, 10A.284, 10A.285 and 10A.286 above:

a. Greensill misrepresented that Atlantic 57 had been making payments in respect of maturities that had fallen due under the Atlantic 57 IPA;

b. the A57 Repayment Representation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extent insurance cover in respect of the Atlantic 57 Risk.

10A.289 If Greensill had not made the A57 Purpose ~~Misrepresentation~~ Representation, insurance cover would not have been issued in respect of the Atlantic 57 Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.290 If Greensill had not made the Guarantor ~~Misrepresentation~~ Representations, insurance cover would not have been issued in respect of the Atlantic 57 Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.290A If Greensill had not made the Settlement Agreement Representation, insurance cover would not have been issued in respect of the Atlantic 57 Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.291 By reason of the matters pleaded in paragraphs 10A.289 to 10A.290A above, IAL is entitled to avoid the Atlantic 57 Endorsement to the 2019 90/10 Parallel Policy.

Innocent misrepresentation

10A.292 In the alternative to the matters pleaded in paragraphs 10A.287 to 10A.291 above, by reason of the matters pleaded in paragraphs 10A.277, 10A.278, ~~10A.289~~, 10A.278B, 10A.289, and 10A.290, and 10A.~~290 and 10.290A~~290A above, IAL is entitled to reduce its liability under the Atlantic 57 Endorsement to the 2019 90/10 Parallel Policy to nil (or such other amount as the Court may determine would place IAL in the same position as if the A57 Purpose ~~Misrepresentation~~ Representation, ~~and~~ the Guarantor ~~Misrepresentation~~ Representations, and Settlement Agreement Representation had not occurred).

D6.3 Atlantic 57 Non-Disclosures

Knowledge of underlying matters

10A.293 At the time insurance cover was purportedly renewed under the 2019 90/10 Parallel Policy, Lex Greensill knew:

a. the matters set out in subparagraphs 10A.277(a)-(c) and 10A.278B(b) above; ~~as noted in paragraph b, the actual purpose of the financing under the Atlantic IPA was the repayment of the Second GAM Note or, in other words, the refinancing of Atlantic 57's debt~~;

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.277 and 10A.278B(b) above.

b. in July 2018, Tim Haywood, the investment director business unit head of GAM's absolute return bond funds (**ARBF**) portfolio, which included the ARMF that held the Second GAM Note, was suspended over concerns about his conduct in respect of certain investment assets in the ARBF, specifically:

i. his risk management procedures;

ii. his failure to conduct or evidence sufficient due diligence; and

iii. his failure to make accessible internal records of documents;

Particulars

Lex Greensill had a close relationship with Tim Haywood (investment director business unit head of GAM's ARBF portfolio) which involved the latter travelling on the former's private jet between 2016 and 2018. See the Financial Conduct Authority's Final Notice dated 29 March 2022: https://www.fca.org.uk/publication/final-notices/timothy-haywood-2022.pdf%20 (accessed on 25 October 2024).

'Inside the scandal that rocked GAM' published on 19 March 2019 by the Financial Times (CSA.5000.0003.6607).

GAM's press release dated 30 July 2018 and 25 September 2018 published on its website: https://www.gam.com/en/news-articles/press-releases/corporate/gam-holding-ag-suspension-of-an-investment-director (accessed on 25 October 2024) and

https://www.gam.com/en/news-articles/press-releases/corporate/gam-holding-ag-response-to-media-speculation-sept18 (accessed on 25 October 2024).

Email from David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM) to Michel Degen of Credit Suisse dated 11 September 2018 (CSA.5000.0001.0191).

c. in August 2018, GAM Investment Management Limited, the portfolio manager of the ARBF, including the ARMF, suspended the ARBF after a high level of redemption requests following the suspension of Tim Haywood and subsequently placed the funds into liquidation;

Particulars

GAM's press releases dated 1 August 2018 and 28 August 2019 published on its website: https://www.gam.com/en/news-articles/press-releases/corporate/gam-fund-boards-suspend-dealing-in-unconstrained-absolute-return-bond-funds (accessed on 25 October 2024) and https://www.gam.com/en/news-articles/press-releases/corporate/gam-outlines-liquidation-plan-for-unconstrained-absolute-return-bond-funds (accessed on 25 October 2024).

Email from David Solo to Michel Degen dated 11 September 2018 (CSA.5000.0001.0191).

d. in relation to Andrew Ruhan:

i. the matters in paragraph 10A.278; and

ii. Andrew Ruhan had been found in the Ruhan Proceedings to be a person who was prepared to misrepresent the state of his financial affairs for financial gain;

Particulars

Lex Greensill's knowledge can be assumed from the fact that he had a 'long established relationship' with each of the personal guarantors of Atlantic 57's payment obligations under the Atlantic 57 IPA, Andrew Ruhan and Anthony Stevens (GBA.0004.0010.1624_0017).

Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam) at [23(vi)], [75], [76].

Email from Vicky Birch to Lex Greensill, Brett Downes, Danyon Lloyd and others with the subject “GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – MINUTES” dated 20 September 2018 (GCU.0004.0018.0444).

e. Anthony Stevens had been found in the Ruhan Proceedings to be a person who was prepared to misrepresent the state of his financial affairs for financial gain;

Particulars

The BCC/TM Parties refer to the particulars in subparagraph 10A.293d.ii. above.

f. Andrew Ruhan had a pre-existing relationship with Lex Greensill, by virtue of:

i. his previous ownership interest in Greensill Bank (then known as NordFinanz Bank);

ii. and his investment of AUD5,642,616 in GCPL on 14 December 2014; and

Particulars

Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam), 31.

iii. business dealings and joint ventures between him, or his related entities, and GCUK; and

Particulars

GCUK Pipeline Reports dated 19 August 2016 (GBA.0004.0024.5595), 31 March 2017 (GBA.0004.0024.5705) and 23 August 2017 (GBA.0004.0024.5820).

g. Anthony Stevens had a pre-existing relationship with Lex Greensill, by virtue of:

i. Grenda's investment of USD4,000,266.68 in GCPL on or around 28 September 2016; and

Particulars

Side Letter dated 28 September 2016 (IAL.500.002.4903).

Email dated 30 September 2016 from Lex Greensill to Danyon Lloyd (GBA.0004.0009.2760).

Grenda and Atlantic 57's Registers of Members and Registers of Directors (GBA.0004.0009.1782).

Email dated 30 April 2019 from Michel Réthoret to Lex Greensill, confirming Anthony Stevens and his family as the beneficiaries of The Jades 2014 Trust (GBA.0004.0027.3414_0001).

ii. Grenda's participation as an investor in GCUK's SCF Programmes from or around 2012.

Particulars

AIG Credit Insurance Proposal dated 23 January 2014 (MAR.0003.0001.0020_0013).

Email dated 10 June 2014 from Marsh to Euler Hermes (MAR.0003.0001.0029).

h. a credit risk assessment paper in respect of Atlantic 57 dated 19 September 2018 from Scope Risk Solutions, a credit agency, (**A57 Risk Report**), had identified 'credit challenges' to the Steinway Project, including:

i. deterioration of the Manhattan residential market, including price declines over the last 18 months, increased inventory levels and marketing times for properties;

ii. previous construction delays on the project; and

iii. unresolved legal issues surrounding the project.

Particulars

'Atlantic 57 Consultancy Limited – Assessment of Credit Risk – L3' paper dated 19 September 2018 by Scope Risk Solutions (GBA.0004.0004.2105).

Lex Greensill's knowledge of the A57 Risk Report is to be inferred from:

a. his membership of the Credit Committee, which assessed and approved the financial accommodation provided to Atlantic 57. The A57 Risk Report formed a part of the associated documentation to the A57 Credit Analysis Pack. See:

i. email from Pamela Nnoko to Roland Hartley-Urquhart, Michael Gilhuley, Brett Downs, Danyon Lloyd, Lex Greensill and Myrjam Tschoeke, copying other GCUK employees, dated 14 September 2018 (GCU.0004.0017.7667) attaching the A57 Credit Analysis Pack

(GCU.0004.0017.7669) and Relationship Credit Analysis Pack for Atlantic 57 (GCU.0004.0017.7668).

b. his roles as Sponsor of the Atlantic 57 transaction and a member of the corresponding 'Deal Team' and his involvement in the delivery of the A57 Risk Report by Scope Risk in those roles, as demonstrated by:

i. Email 'FW: Scope Request Atlantic 57 Consultancy Limited (project development)' from David Keeling to Lex Greensill land other GCUK employees dated 10 September 2018 (GCU.0007.0002.1370).

ii. Email from Lex Greensill to Andy Ruhan dated 11 September 2018 (GCU.0004.0017.7148).

iii. Email from Vesna Vladusic to Lex Greensill dated 12 September 2018 (GCU.0004.0017.6797).

10A.294 The knowledge of Lex Greensill of the matters in paragraph 10A.293 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs ~~10A.25 and 10A.26~~ 10A.25, 10A.26A and 10A.26B above.

10A.295 The knowledge of Lex Greensill of the matters in paragraph 10A.293 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs ~~10A.20 and 10A.22~~10A.20, 10A.22A and 10A.22B above.

10A.295A. At the time insurance cover was purportedly renewed under the 2019 90/10 Parallel Policy, Danyon Lloyd knew the matters in subparagraphs 10A.277(a) and (b) above.

Particulars

Email from Lex Greensill to Danyon Lloyd (Chief Executive Officer) of Greensill Bank dated 30 September 2016 (GBA.0004.0009.2760).

Email from Brett Downes to Danyon Lloyd dated 14 September 2018 (GCU.0009.0004.8736)

Email from Pamela Nnoko to Lex Greensill, William Roland Hartley-Urquhart and Danyon Lloyd and others dated 14 September 2018 (GCU.0004.0017.7673)

Email from Pamela Nnoko, to Lex Greensill, William Roland Hartley-Urquhart and Danyon Lloyd and others dated 16 November 2018 (GBA.0004.0024.0275), attaching the A57 Credit Analysis Pack (GBA.0004.0024.0276).

10A.295B. The knowledge of Danyon Lloyd of the matters in paragraph 10A.295A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25A above.

~~*GCUK*~~

10A.296 [Not used]. ~~At the time insurance cover was purportedly renewed under the 2019 90/10 Parallel Policy, GCUK knew that it had obtained, on or around 19 September 2018, a credit risk assessment paper in respect of Atlantic 57 from Scope Risk Solutions, a credit agency (**A57 Risk Report**), which had identified:~~

a. ~~'credit challenges' to Project Steinway, including:~~

i. ~~deterioration of the Manhattan residential market, including price declines over the last 18 months, increased inventory levels and marketing times for properties;~~

ii. ~~previous construction delays on the project; and~~

iii. ~~unresolved legal issues surrounding the project; and~~

~~Particulars~~

~~'Atlantic 57 Consultancy Limited – Assessment of Credit Risk – L3' paper dated 19 September 2018 by Scope Risk Solutions (GBA.0004.0004.2105).~~

~~Email dated 16 November 2018 from Pamela Nnoko to Lex Greensill, William Roland Harley-Urquhart and Danyon Lloyd and others (GBA.0004.0024.0275), attaching the A57 Credit Analysis Pack (GBA.0004.0024.0276). The A57 Risk Report formed a part of the associated documentation to the A57 Credit Analysis Pack.~~

~~b. that, in 2017, Spruce Capital had taken foreclosure action in connection with the Steinway Project.~~

~~Particulars~~

~~The A57 Risk Report states: 'During 2017 an original party to the deal Ambase were subject to foreclosure by Spruce Capital partners and subsequently failed in a legal bid to halt the foreclosure process. Spruce was founded in 2007 by Joshua Crane and Robert Schwartz (NYC real estate owners, developers and investors) and have a portfolio of assets in excess of USD 3bn. Spruce will need to be paid ahead of Atlantic 57 in the cash waterfall. Spruce have proven security over the transaction following their successful foreclosure over Ambase.'~~

Knowledge of Materiality

10A.297 Each of the matters referred to in paragraph 10A.293 above were matters which:

a. Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Atlantic 57 being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Atlantic 57 being unable to repay the amounts advanced to it and thus upon the Atlantic 57 Risk.~~

10A.298 Further or in the alternative to paragraph 10A.297 above, each of the matters referred to in paragraph 10A.293 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.297 above.

10A.299 The knowledge of Lex Greensill of the matters set out in paragraph 10A.297 and 10A.298 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs ~~10A.25 and 10A.26~~ 10A.25, 10A.26A and 10A.26B above.

10A.300 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.297 and 10A.298 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs ~~10A.20 and 10A.22~~ 10A.20, 10A.22A and 10A.22B above.

10A.300A. The matters referred to in paragraph 10A.295A above were matters which:

a. Danyon Lloyd knew were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk; or

b. alternatively to subparagraph a., in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

a. a person with substantial commercial experience in dealing with credit risks in the finance industry;

b. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

c. a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs [11] and [12(a)(ii)] above); and

d. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Atlantic 57 Risk.

10A.300B. Further or in the alternative to paragraph 10A.300A above, each of the matters referred to in paragraph 10A.295A above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Atlantic 57 Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.300A above.

10A.300C. The knowledge of Danyon Lloyd of the matters set out in paragraph 10A.297 and 10A.298 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A.above.

Breach of duty of disclosure

10A.301 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 10A.293, ~~and~~ 10A.~~296~~295A and 10A.296 above before the cover was placed or renewed for the Atlantic 57 Risk.

10A.302 Greensill's failure to disclose the matters referred to in paragraph 10A.293, ~~and~~ 10A.~~296~~295A and 10A.296 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, in the premises of matters pleaded in paragraphs 10A.297 to 10A.300C above.

Fraudulent non-disclosure

10A.303 By reason of the matters pleaded in paragraph 10A.297 to 10A.300C above, Greensill's failure to disclose the matters referred to in paragraphs 10A.293 and 10A.~~293~~295A above was fraudulent.

10A.304 The cover for the Atlantic 57 Risk would not have been issued or renewed if one or more of the matters referred to in ~~paragraph~~ paragraphs 10A.293(a), 10A.293(d) to 10A.293(e) and 10A.295A above had been disclosed.

10A.305 In the alternative to the allegation in paragraph 10A.304 above, the cover for the Atlantic 57 Risk would not have been issued or renewed on the same terms if one or more of the matters referred to in ~~paragraph~~ subparagraphs 10A.293(a), 10A.293(d) to 10A.293(e) and 10A.295A above had been disclosed.

10A.306 By reason of the matters pleaded in paragraphs 10A.303 to 10A.305 above, IAL is entitled to avoid the Atlantic 57 Endorsement to the 2019 90/10 Parallel Policy.

Innocent non-disclosure

10A.306A [Not Used]. ~~The cover for the Atlantic 57 Risk would not have been issued or renewed if one or more of the matters referred to in paragraph 10A.10A.296(b) above had been disclosed.~~

10A.306B [Not Used]. ~~In the alternative to the allegation in paragraph 10A.306A above, the cover for the Atlantic 57 Risk would not have been issued or renewed on the same terms if one or more of the matters referred to in paragraph 10A.10A.296(b) above had been disclosed.~~

10A.307 In the alternative to the matters pleaded in paragraphs 10A.303 to 10A.306, and by reason of the matters pleaded in paragraphs 10A.301, 10A.302, 10A.304 and 10A.305 above, IAL is entitled to reduce its liability under the Atlantic 57 Endorsement to the 2019 90/10 Parallel Policy to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D7 LIBERTY DELTA

D7.1 Policy and Endorsements

10A.308 In Federal Court of Australia proceeding no. NSD602/2023, the applicants allege that, on or about 26 June 2019, Greensill Bank, GCPL and IAL ~~(through its corporate authorised representative, BCC)~~executed and entered into Policy 5369, with each of GCPL and Greensill Bank being an Insured, and IAL as Insurer.

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD602/2023 dated ~~14 March 2024~~11 June 2025 at paragraphs 66A, 67 and 68~~65~~.

10A.309 On or around that same date, the applicants allege that Liberty House Group Pte. Ltd (**Liberty House**) and each of:

a. Liberty Galati & Skopje Limited (**Galati**);

b. Liberty Ostrava Limited (**Ostrava**);

c. Liberty Liege Limited (**Liege**); and

d. Liberty Dudelange Limited (**Dudelange**);

(together, the **Delta HoldCos**), were endorsed as Customers under Policy 5369 by way of Customer Endorsements No. 1–4 dated 25 June 2019 (the **Delta HoldCo Customer Endorsements**).

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD602/2023 dated ~~14 March 2024~~11 June 2025 at paragraph 165.

10A.310 During the Policy Period of Policy 5369, the applicants further allege that various other endorsements to Policy 5369 were executed by BCC, including:

a. the Further Delta HoldCo Customer Endorsements;

b. the Debt Endorsement;

c. the Limit Endorsement; and

d. the Account Debtor Endorsements.

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD602/2023 dated ~~14 March 2024~~11 June 2025 at paragraphs 168, 170, 176A and 179.

10A.311 The endorsements identified in paragraphs 10A.309 to 10A.310 above are hereafter referred to as the **Liberty Delta Endorsements**.

D7.2 Liberty Delta Misrepresentations

Representations

10A.311A. On or around 4 June 2019, Lex Greensill attended a meeting with Brereton in relation to 'Project Delta'. Documentation prepared for that meeting described the Liberty Delta facility as financing the acquisition 'of seven European steel plants from ArcelorMittal' and that 'Greensill are looking to provide financing for the plants through 5-6 future receivables facilities'.

Particulars

Email from Lex Greensill to Daniel Shuttleworth (Chief of Staff to the CEO of GCUK), with the subject 'Printing for BCC', dated 4 June 2019 (GCU.0004.0026.9623), and its attachment entitled 'Delta Background for BCC 040619.docx' (GCU.0004.0026.9624).

10A.312 On or around 20 June 2019, Lex Greensill wrote to Greg Brereton in relation to 'Project Delta', which he described as 'Liberty's acquisition of some of ArcelorMittal's European plants'. By that email, GCUK requested that BCC provide insurance cover for certain risks associated with an accounts receivable financing program that GCUK planned to offer the Delta HoldCos (the **Liberty Delta Risk**).

Particulars

Email from Lex Greensill to Greg Brereton, with the subject 'Project Delta', dated 20 June 2019 (BCC.0001.0001.2995).

10A.313 As part of this request, GCUK conveyed to BCC, among other matters, that:

a. the financing arrangement to be put in place between Greensill and the Delta HoldCos was, in effect, 'a series of working capital facilities';

b. the primary purpose of these working capital facilities, and the funds to be advanced to the Delta HoldCos, was to finance 'Liberty [House]'s acquisition of some of ArcelorMittal's European plants', being:

   i. Liège Steel Industry SA;

   ii. ArcelorMittal Dudelange S.A;

   iii. ArcelorMittal Ostrava a.s;

   iv. ArcelorMittal Galati S.A; and

   v. ArcelorMittal Skopje CRM,

   (collectively, the **Delta OpCos**);

c. the transaction structure would involve Greensill remitting funds to each of the Delta HoldCos to allow them to acquire the Delta OpCos, and receiving in exchange 'security over the shares in the targets and [Delta] Holdcos' and a 'negative pledge from the targets in respect of their dealings in their receivables'. Greensill would also take guarantees from the Delta HoldCos and from Liberty House, but not from the targets themselves;

d. the working capital facilities to be put in place would reflect, at least in part, 'those you [BCC] have previously seen with Liberty Primary and Speciality Steel';

e. Greensill would be 'funding [the Delta HoldCos] against future accounts receivable to start with', however it was 'expected the facilities will switch to normal RPA [receivables purchase agreement] terms in due course', and on that basis Greensill considered the arrangement to fit within 'the familiar AR [accounts receivable] type debt endorsement';

f. the proposed facility limit was EUR2 billion, comprising:

i. EUR700 million in respect of the Ostrava plant;

ii. EUR700 million in respect of the Galati plant;

iii. EUR300 million in respect of the Liege Steel plant;

iv. EUR300 million in respect of the Dudelange plant; and

g. the maximum tenor for accounts receivable purchased by Greensill under the facilities would be 180 days.

10A.314 An attachment to Lex Greensill's abovementioned email was an Excel spreadsheet setting out, by reference to each of the Delta OpCos, a list of their account debtors. This document was described in the covering email as a 'list of debtors per facility'. In providing this information, GCUK represented to BCC that:

a. the identity of the Delta OpCo's customers was relevant to the risk; and

b. there were already (or alternatively, would be) genuine accounts receivable owed to the Delta OpCo's and insured under Policy 5369.

10A.315 In the premises of paragraphs ~~10A.312~~10A.311A to 10A.314 above, GCUK represented that:

a. The primary purpose of the facilities was to finance the acquisition by Liberty House, as part of the GFG Alliance, of the Delta OpCos;

b. the facilities were a short term 'working capital facility';

c. the maximum tenor for accounts receivable purchased by Greensill under the facilities would be 180 days;

d. the facilities were of a 'familiar' type, and reflected financing arrangements that BCC had 'previously seen'; and

e. the funding provided by Greensill would be secured against genuine 'future receivables' that Greensill intended to require would be owed by preexisting account debtors of the Delta OpCos,

(the **Liberty Delta Misrepresentations**).

10A.316 The Liberty Delta Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, ~~10A.22 and 10A.26~~ 10A.22A, 10A.22B, 10A.26A and 10A.26B above.

10A.317 On or around 23 June 2019, and apparently further to a discussion between (at least) Lex Greensill and Greg Brereton on or around 21 June 2019, Greg Brereton purported to agree to provide cover in relation to the Liberty Delta Risk.

Particulars

Email from Greg Brereton to Edward Smith of Marsh and John Whelan (Deputy General Counsel) of GCUK, copying Lex Greensill, with the subject 'Project Delta', dated 23 June 2019 (BCC.0001.0002.3482).

10A.318 On or around 25 June 2019, Greg Brereton returned to Marsh an executed copy of Policy 5369, with a facility limit of EUR2.2 billion, and separately, a copy of the Delta HoldCo Customer Endorsements.

Particulars

Email from Greg Brereton to Edward Smith and John Whelan, with the subject 'RE: Project Delta', dated 25 June 2019 (BCC.0001.0002.3488).

Further email from Greg Brereton to Edward Smith and John Whelan, with the subject 'RE: Project Delta', dated 25 June 2019 (MAR.0004.0002.5721).

10A.319 In the period following 25 June 2019, the balance of the Liberty Delta Endorsements were executed by BCC and provided to Marsh, in order to continue to extend cover for the Liberty Delta Risk.

10A.319A. At the same time that it was seeking the balance of the Liberty Delta Endorsements, GCUK (directly and/or through its broker Marsh) provided Brereton with spreadsheets in the same format as those described at paragraph 10A.314 above, identifying proposed account debtors with a view to increasing the insured limits for those account debtors under Policy 5369. In providing this information, GCUK represented to BCC that:

a. the identity of the Delta OpCo's customers was relevant to the risk; and

b. there were already (or alternatively, would be) genuine accounts receivable owed to the Delta OpCo and insured under Policy 5369.

Particulars

Email from Craig Pinnington (Senior Credit Analyst) of GCUK to Brereton, with the subject 'Liberty Project Delta Named account debtor insurance requests' dated 5 July 2019 (AGB.0002.0001.3383, AGB.0002.0001.3384, AGB.0002.0001.3414)

Email from Ewan Berkemeier to Brereton, with the subject 'Greensill Urgent Items', dated 18 July 2019 (AGB.0002.0001.3413, BCC.0001.0002.3488).

Email from Henry Middleditch of GCUK to Brereton with the subject 'Delta_Insurance Increases' dated 12 August 2019 (GCU.0009.0010.8508; GCU.0009.0010.8509).

Email from Craig Pinnington of GCUK to Brereton with the subject 'Delta_Insurance Increases' dated 16 August 2019 (GBA.0004.0025.4399)

Email from Craig Pinnington to Brereton with the subject 'Liberty Delta- additional account debtor requests' dated 4 November 2019 (AGB.0002.0001.3477, AGB.0002.0001.3478).

Email from Craig Pinnington to Brereton with the subject 'Liberty Delta- additional account debtor requests' dated 9 November 2019 (AGB.0003.0002.2743; AGB.0003.0002.2744; AGB.0003.0002.2745).

Email from Craig Pinnington to Brereton with the subject 'RE: Liberty delta – additional account debtor requests' dated 13 November 2019 (AGB.0002.0001.3481; AGB.0002.0001.3482).

10A.319B. In the premises of paragraph 10A.319A above, GCUK represented to BCC that the funding provided by Greensill would be secured against genuine 'future receivables' that Greensill

intended to require would be owed by preexisting account debtors of the Delta OpCos (the **Further Liberty Delta Misrepresentations**).

Representations were misleading

10A.320 The Liberty Delta Misrepresentations were false and/or misleading because, in respect of the representation set out in subparagraph 10A.315a above, a substantial proportion of the funds advanced under the facility were in fact proposed to be used for purposes other than the acquisition of the Delta OpCos, and Liberty House (or, alternatively, one or more companies in GFG) in fact used those funds for those other purposes.

Particulars

The acquisition price for the Delta OpCos (ie, EUR740 million) was less than half the amount advanced by GCUK to SSUK (ie, approximately EUR2.18 billion). Liberty House ultimately paid only EUR600 million of the acquisition price to ArcelorMittal Holdings AG, and continues to be pursued through the UK courts for the outstanding EUR140 million of the acquisition price.

See orders made by the High Court of Justice in England and Wales in ArcelorMittal Holdings AG v Liberty House Group Pte Limited & Ors (CL-2023-000080), 24 February 2023; M Miner, ArcelorMittal Takes Legal Action Against Liberty Steel Over Unpaid Debt (9 November 2023): https://oilprice.com/Metals/Commodities/ArcelorMittal-Takes-Legal-Action-Against-Liberty-Steel-Over-Unpaid-Debt.html#:~:text=ArcelorMittal%20Takes%20Legal%20Action%20Against%20Liberty%20Steel%20Over%20Unpaid%20Debt,-By%20Metal%20Miner&text=ArcelorMittal%20has%20obtained%20a%20court,which%20dates%20back%20to%202019 (accessed on 25 October 2024).

It may be inferred that a significant proportion of the funds GCUK proposed to advance, and did advance, ~~advanced to SSUK~~ were used to repay existing debts owed by ~~the~~ GFG ~~Alliance Group~~ to GAM from the fact that:

a. in or around April 2019, GAM announced that GFG ~~Alliance Group~~ had agreed to repurchase all Liberty Industries PPA Ltd bonds (being, bonds secured by GFG's biofuel generators and referred to as 'Little Red Boxes' (the **LRB Bonds**)) held by GAM at the value at which they were purchased: https://www.reuters.com/article/world/exclusive-gam-whistle-blower-concerns-focused-on-bonds-sold-by-metals-tycoon-idUSKCN1S40UA/ (accessed on 25 October 2024);

b. in 2017, GAM had purchased more than GBP550 million worth of LRB Bonds: https://www.reuters.com/article/world/exclusive-gam-whistle-blower-concerns-focused-on-bonds-sold-by-metals-tycoon-idUSKCN1S40UA/ (accessed on 25 October 2024);

c. on 30 June 2019, the sale of the Delta OpCos completed for EUR740 million, with EUR610 million of that amount having been transferred from Liberty House to ArcelorMittal S.A. on 28 June 2019: ArcelorMittal 2019 Annual Report, https://corporate-media.arcelormittal.com/media/arflayy2/2019-parent-company-statutory-financial-statements.pdf (accessed on 25 October 2024);

d. on or around 12 July 2019, SSUK submitted, and GCUK accepted, two drawdown files totalling approximately EUR1,594.5 million (sufficient both to fund the acquisition of the Delta OpCos and repurchase the LRB Bonds) (IAL.500.002.2662 and IAL.500.002.2667); and

e. on or around 15 July 2019, the very next working day following SSUK's 12 July 2019 drawdown requests, GFG ~~Alliance Group r~~epurchased from GAM approximately GBP614 million worth of LRB Bonds (AGB.0003.0002.2590): How Sanjeev Gupta's empire is fuelled by opaque funding (afr.com) (accessed on 25 October 2024) and Exclusive: GAM whistle blower concerns focused on bonds sold by metals tycoon | Reuters (accessed on 25 October 2024).

That a significant proportion of the funds were used to repay existing debts owed by GFG to GAM is supported by the following contemporaneous correspondence:

i. Email from Henry Middleditch (Vice President) of GCUK to Myrjam Tschoeke of GCUK dated 4 June 2019, titled 'RE: Delta' (GCU.0004.0026.9661), in which Mr Middleditch states:

> The proposed project aims to achieve the following:
> 1. Enable the acquisition outlined below
> 2. Enable Liberty to pay down outstanding LRB from the proceeds
> 3. Consolidate GFG AR programmes in the long term.
>
> There are three proposed stages to the project:
> 1. Future receivables facilities to enable points 1 & 2 above
> 2. Shift facilities to True Sale AR and reduce leverage
> 3. Exit: capital market investment/IPO (2 year horizon)

ii. A Greensill Credit Application Report dated 20 June 2019 stated that the Liberty Delta facility would 'form part of the wider GFG strategy including paying down the LRB Facility with Liberty purchasing the outstanding notes directly from GAM and extinguishing them', and identified 'paydown of LRB' as one of the intended uses of the funds (AGB.0003.0001.5405 on page 6). That report listed Lex Greensill as the Relationship Owner (page 2) and was executed by Craig Pinnington (Senior Credit Analyst) of GCUK.

iii. On or around 21 June 2019, a GCUK Credit Committee meeting occurred. The minutes of that meeting state that 'Lex presented', suggesting that Lex Greensill had direct involvement in the establishment and placing of the Liberty Delta facility. The minutes of that meeting summarised the purpose of the Liberty Delta facility as follows (AGB.0003.0002.4066):

> Use of funds is for: the purchase price of the assets from Arcelor Mittal; lock box created to cover Capex of business for year $100m; clear arrearages between Liberty Group and Greensill; working capital for Delta group; and repurchase of LRB notes held by GAM at original price, which is of strategic importance.
>
> Long run exit strategy for repayment is for this business to be IPO'd in Europe in c 2 years, potentially also including the iron ore and coal businesses from Australia. Have achieved 2 year timeframe within Australian business. Will also raise term debt at that time to repay our facility in full.

iv. Emails between Debora Santosa and Ilkka Tales of GCUK on 3 July 2019 in which Ms Santosa states (GCU.0009.0010.0779):

> Project Delta – Large facility (EUR 900m) to allow them to do acquisitions in Romania, Italy, Luxembourg, etc.… part of the proceeds will be used to pay down other facilities (but not any of the Australian ones). Most likely LIB and Dunkirk (?) which are now in GAM.

v. Emails between Patrick Davis, Lex Greensill and others at GCUK dated 9 July 2019 in which Patrick Davis states (GCU.0007.0002.7351): 'my understanding of the week is as follows; … 4. **Delta** a. issuance Friday to GB (Assignment)12/07 i. Amount TBD 5. FX Swaps (EUR/AUD – GBP) to be fixed 14:4512/07 for LRB repurchase. 6. LRB Repurchase 15/07

vi. Emails between Mirja Knoechelmann, Jim Tapper, Ann Jones, Steven Hollands, Barnaby Lynch, Henry Middleditch, John Whelan, Al Eadie of GCUK on 9 July 2019 in which Ms Knoechelman states (GCU.0009.0010.2315):

- We will raise the cash for the GBP 614.1m payment to GAM from the drawdown proceeds from the Liberty facility for Delta
- Drawdown proceeds to be used to make payment to GAM will be in Euro

vii. Emails between Mirja Knoechelmann, Steven Hollands, Ann Jones, Jim Tapper, Al Eadie, Barnaby Lynch, Henry Middleditch, Tariq Akrouk, Zara Hayes and Rebecca Rogers of GCUK on 15 July 2019 in which Mirja Knoechelmann states (GCU.0009.0010.3778):

Now that respective payments in a total amount of GBP 614,102,336.19 have been made and received by GAM could you confirm if there is any excess cash to be sent back to Liberty according to the Delta draw down requests (please see Delta drawdown amounts below)?

viii. A subsequent Greensill Credit Application Report dated 11 November 2019 (AGB.0003.0001.5404) confirmed this purpose (page 19) as follows:

> '*Re-financing LRB notes:*
>
> *1. This facility enabled GFG to repurchase LRB notes from GAM which were receiving negative media attention. These are currently held by Liberty and continue to be serviced.*
>
> *2. This has now been achieved and will not be impacted by the proposed facility increase.*
>
> *3. However, it is being re-highlighted here as a considerable amount of the initial draw down was used to facilitate this hence their need for the increase*.'

Page 4 of this report indicates that the purpose of the additional EUR200m advanced to Liberty Delta was to enable Liberty to service the facility, stating: 'The acquisition and its transition has been smooth. This increase will provide an incremental net notional of EUR 200mm that can be drawn against, enabling Liberty to service the facility: EUR 150m is being held aside for

interest payments throughout FY2020, maintains a cash balance of 50mm as an operational minimum…'.

This report listed Lex Greensill as being on the 'Facility Team' (page 1), and was executed by Craig Pinnington.
Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

ix. Bank statements for GCUK Citibank Accounts numbered 17057393 and 8014056663 are to be relied upon (noting that those statements are presently subject to a claim for confidentiality made by GCUK).

10A.321 The Liberty Delta Misrepresentations were false and/or misleading because, in respect of the representations set out in subparagraphs 10.315b and 10A.315c above:

a. ~~the~~The facility operated, in substance, as a form of term loan or long-term enterprise finance lending, first on an interest only basis (from 27 June 2019 until 30 April 2020), and then on an interest-free basis (from April 2020 onwards);

Particulars

The effect of clause 1 of the side letters entered into between GCUK and each of the Delta HoldCos on around 27 June 2019 (**Delta IPA Side Letters**) was that the full amount of the initial Drawdown Amount was loaned by GCUK ~~to~~ at the direction of each Delta HoldCo on a term basis without any reference or regard to amounts actually owed to the Acquired Group (as defined in the Delta IPA Side Letters) by any Account Debtors.

Between 27 June 2019 and 27 April 2020, GCUK advanced to the Delta HoldCos amounts that were discounted from the Settlement Amount of each IPU to reflect an annualised interest rate of 4.25% over the tenor of the IPU.

Expert Report of Mr Greg Halm dated 17 December 2025 at [25].

From 1 May 2020 until at least 8 January 2021, GCUK did not collect interest from the Delta HoldCos.

Expert Report of Mr Greg Halm dated 17 December 2025 at [27].

The effect of clauses 3 and 4 of the IPA Supplementary Letters from 20 May 2020 was as follows:

a. ~~f.~~ the Delta HoldCos were not required to submit Drawdown Files to maintain funding under the Delta IPAs;

b. ~~g.~~ the Delta IPAs were operated in fact as a term loan without any reference or regard to amounts actually owed by Account Debtors to the Delta OpCos; and

c. ~~h.~~ the Delta HoldCos had no obligation to repay the amounts owing by them to GCUK on each Maturity Date, as any obligation to do so was discharged by the simultaneous drawdown to occur automatically on each such date (ie, the Revolving Drawdown).

The effect of clauses 5 and 6 of the IPA Supplementary Letters from 20 May 2020 was as follows:

d. ~~a.~~ the Delta HoldCos were not required to pay interest on funding provided by GCUK under the Delta IPAs; and

e. ~~b.~~ an amount equal to LIBOR plus 4.25% per annum applied to the Repayment Amount was instead payable as a Facility Fee on written demand by GCUK.

Each of the IPA Supplementary Letters was signed by ~~Jonathon~~Jonathan Lane~~,~~ (General Counsel~~,~~) of GCUK.

GCUK's practice of revolving drawdowns the subject of the Liberty Delta facilities from 1 May 2020, without the Delta HoldCos in fact paying any amount to GCUK, is evident from the IPA Supplementary Letters and is further pleaded at Section C.5 of Annexure B to this defence.

b. the facility was provided to Liberty House on the agreement and understanding, between Lex Greensill (on behalf of the Greensill Group) and Sanjeev Gupta (on behalf of Liberty House, and the Delta HoldCos) that the funding advanced under the facility could not be withdrawn or required to be repaid to Greensill other than by Greensill giving at least three years' notice, regardless of the terms of the written contractual documents purporting to regulate the facility (including the Delta IPAs and related documents); and

Particulars

Email from Myrjam Tschoeke of GCUK to Tony Wonfor and Henry Middleditch of GCUK dated 4 June 2019, titled 'RE: Delta' (GCU.0004.0026.9661), in which Ms Tschoeke states that, if the transaction is to be 'a full corporate loan (as the IPA implies)', Greensill should have a '[f]ull financing plan including Sources and Uses, cashflow, etc. and analysis of the underlying assets as we will only be repaid from each asset independently'. Ms Tschoeke states that she would like to discuss a 'true AR deal' which would involve 'Collection into our account, no sweep mechanism'.

Greensill's Credit Application Report dated 20 June 2019 (AGB.0003.0001.5405), which at page 10 indicates that Liberty House and Greensill intended that Liberty would not make repayments when maturity dates transpired. Rather, 'Liberty will enter into an agreement up front which allows Greensill to automatically issue these rolls without needing to re-execute further agreements relating to that portfolio'.

The report listed Lex Greensill as the Relationship Owner (page 2) and was executed by Craig Pinnington.

Minutes of the Greensill Capital Credit Committee Meeting on 21 June 2019 (GCU.0007.0002.7111), which at page 8 indicate that Greensill had a '[l]ong run exit strategy for repayment' at the time of an IPO of the Delta business, circa two years following advancing the funds, and that Liberty will raise term debt at that time to repay the facility in full.

Greensill document titled 'Ostrava – EGAP: Working Capital Facility Credit Paper' dated 12 July 2020 (GBA.0005.0003.8771), which states on page 1: 'The Holdco Facilities carry an interest cost of roughly EUR90mm p.a (EUR 35mm of which is from Ostrava), with daily maturities and reissuances. Interest costs have been held as payment in kind (PIK) by Greensill for the last few months in light of COVID, standing today September 4 2020…' and includes multiple references to a tenor of three years.

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

a. Lex Greensill gave repeated oral commitments that GFG Alliance's funding (which was understood to encompass all of the facilities that had been provided by Greensill to companies within the GFG Alliance) could not be withdrawn without at 'least three years' warning and notice', whatever the written terms might state, and would often say to Sanjeev Gupta words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' [at 33-55]; and

b. Lex Greensill also indicated to him that the financing provided by Greensill to the GFG Alliance was long term financing, and the arrangement was referred to by both Lex Greensill and Sanjeev Gupta as 'evergreen' or 'perpetual' [at 34].

The letter sent for and on behalf of the Delta HoldCos to Grant Thornton UK LLP dated 7 April 2021. (GCU.0011.0001.0637) which states at paragraph 3: 'It was agreed and understood as between GCUK and the delta companies that GCUK was providing long term committed financing facilities to the Delta Companies'.

The letter quotes a letter sent by GCUK to Baker Tilly MKM in connection with its consolidated statement, in which GCUK states: '"… we wrote to each of the [Delta] companies confirming that **we will provide such companies with not less than 36 months' notice if we intend to terminate such agreements… in our opinion, such debts can be shown as non-current** in the consolidated financial statements of the Liberty Steel Group". (emphasis added)

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

c. the facility was used, in practice, for purposes that went substantially beyond those of a typical working capital facility, including to enable Liberty House, or other members of GFG, to make interest or other payments on pre-existing loans.

Particulars

A Greensill document titled 'Greensill Capital – Credit Committee Meeting – MINUTES – 21 June 2019' dated 26 June 2019 (AGB.0003.0002.4066) which includes comments from Lex Greensill's presentation at GCUK's Credit Committee Meeting outlining the following purposes of the Facility:

- *The purchase price of the assets from Arcelor Mittal;*
- *Lock box created to cover Capex of business for year $100m;*
- *Clear arrearages between Liberty Group and Greensill;*
- *Working capital for Delta group; and*
- *Repurchase of LRB notes held by GAM at original price, which is of strategic importance*

By 28 June 2019, the GFG Companies owed GCUK around USD 56m in missed 'interest' payments that they had failed to pay on debts owing to GCUK by companies including Liberty Commodities, Liberty House, and Simec, and which payments GCUK had paid to the relevant trust account or collection account from its own balance sheet (GCU.0009.0010.0591).

Greensill's Credit Application Report dated 11 November 2019 (AGB.0003.0001.5404) considers a EUR200 million increase in the size of the Liberty Delta facility. It notes that:

'This increase will provide an incremental net notional of EUR 200mm that can be drawn against, enabling Liberty to:

- *Service the facility: EUR 150mm is being held aside for interest payments throughout FY2020'*.

This report listed Lex Greensill as being on the 'Facility Team' (page 1), and was executed by Craig Pinnington, Senior Credit Analyst, GCUK.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.322 The Liberty Delta Misrepresentations were false and/or misleading because, in respect of the representations set out in subparagraphs 10A.315d. and 10A.315e. above:

a. in the premises of the Future Accounts Receivable Representation (referred to at paragraph 10A.32 above), the concept of 'future receivables' was used by GCUK, and understood by BCC, to mean receivables arising under existing sales contracts with predefined customers, as verified and audited on a periodic basis;

b. in actual fact, GCUK had no intention to require that the account debtors would be pre-existing customers of the Delta OpCos; and

Particulars

A vast majority of the GCUK Purchased Receivables set out at Annexure A to the applicants' Amended Statement of Claim dated 14 March 2024 have a corresponding purchased receivable value of EUR750,000 (ie, 2,113 line items or 96% of the total). It is inherently implausible that such a level of consistency would be achieved in amounts expected to be owed by Account Debtors referable to real world transactions.

It may ~~also~~ be inferred that the amount of EUR750,000 was selected to avoid the operation of §18 of the German Banking Act, which required GBAG to obtain the annual accounts of a borrower prior to granting a credit facility exceeding EUR750,000 unless an exception to the requirement was available ~~because, by its own internal guidelines, GCUK was required to prepare a compliance report for any Account Debtor owing an amount greater than EUR750,000 (GBA.0004.0004.6136)~~. Further, Greensill Bank would automatically approve Account Debtors with amounts less than EUR750,000 (GBA.0004.0004.5845). The relevance of the EUR 750,000 is described in a report prepared by KPMG Germany, following its audit into the Greensill Policies, dated 11 December 2020 which states words to the effect of (GBA.0004.0029.8066):

"*Depending on the nature of the financing and the risk involved, two votes are generally required for credit decisions at the bank. Credit decisions are all decisions that increase the bank's risk position, such as granting credit, extensions, increases, overdrafts, etc. The bank has defined a risk relevance limit of EUR 750,000. For credit transactions (regardless of maturity) up to this limit, the bank waives the preparation*

of an individual credit decision including a vote. Thus, general approval is granted for credit lines up to an amount of EUR 750,000 with corresponding 100% insurance coverage."

Email from Henry Middleditch of GCUK to Patrick Davis and others of GCUK dated 3 June 2019, titled 'RE: Questions & Next Steps: Project Delta' (GCU.0010.0008.9696), in which Mr Middleditch states in response to a question about investor requirements, 'GB ARE BRIEFED. THEIR DCL FOR DEBTORS IS EUR 750K (90 DAYS). WE ARE SEPARATELY REQUESTING INSURANCE DCLS OF 2MM. WE WILL AIM TO DO AS MUCH AS POSSIBLE BELOW DCLS OF 750 TO REDUCE CREDIT LIFT AT GB AND RELIANCE ON AM TO PROVIDE THE DATA.'

It may also be inferred that GCUK would split amounts greater than EUR750,000 expected to be owed by a single Account Debtor across multiple, EUR750,000 transactions, as evidenced by:

(a) Email from Tariq Akrouk of GCUK to Peter Mills of Wyelands Capital dated 18 November 2019, titled 'RE: Delta Trade 7' (AGB.0003.0003.5356), in which Mr Akrouk states: 'Please note that some of the larger names were broken down into 750k maturities as it eases things operationally, while also allowing maturity amounts to be more spread out for you.'

(b) Emails between Mark Kavanagh (Head of Product Risk) of GCUK and Britta Pein-Willems of GBAG dated 23 January 2020 titled 'WG: Max Invoice values on some Liberty Account debtors', and forwarded to Michel Meylacq of GCUK (GBA.0004.0004.5845), in which Mr Kavanagh asks: 'My question would be what if an AD had 2 invoices, both for EUR 750k each. This would mean the AD has EUR 1.5M. Does this trigger any different onboarding procedure. If I read the below onboarding document that you have previously sent me I would have to do much more due diligence in your shoes.' In response, Ms Pein-Willems states: 'As long as the tenor is < 90 days (even if we cash out EUR 125mm to you) and all 3 of the following requirements of Sec. 21,4 German Banking Act are fulfilled, we are allowed to refrain from checking the financials of the customer/group'; and

Further, the alleged defaults forming the basis of the Liberty Delta claim submitted on 28 February 2022 occurred within a very short period of time. Of the defaults of 2,526 account debtors claimed under the Claim Form, the first default is said to occur on 2 March 2021 and the final default on 28 June 2021. It is inherently implausible that

such a large number of defaults of genuine obligors operating in several different countries would occur within a period of less than four months.

Many if not all of the account debtors were not verified by GCUK or confirmed by audit to be existing customers of the Delta OpCos or ever to have been existing customers of the Delta OpCos, as evidenced by:

a. Emails between Tom Kennedy, Henry Middleditch and Tariq Akrouk of GCUK, dated 14 and 15 June 2019, titled 'RE: Project Delta structure' (GCU.0007.0002.6811), in which Mr Kennedy states:

> 'Greensill will neither document nor have visibility of the assignment/purchase arrangements between the target and the HoldCo that will transfer the receivables to HoldCo which will then allow HoldCo to sell them to Greensill, but Greensill will rely on this being done intergroup. Each Holdco will then use the funds it receives for the sale of the receivables to purchase the relevant target. Sufficient quantum will need to be raised by the Holdcos from the sale of the receivables on day 1 to allow Liberty to purchase the targets';

b. ~~a.~~ The 20 June 2019 Credit Application Report, which stated: 'Detailed credit analysis of individual debtor names [provided by Arcelor Mittal] has not been possible under the timeframe'; and that ArcelorMittal (the seller) told GFG/GCUK that '[customer] default data from mills tracing back to individual customers is not recorded. Above [data] therefore represents a best estimate and does not guarantee 100% accuracy.' (AGB.0003.0001.5405); ~~and~~

c. Email from Craig Pinnington of GCUK to Henry Middleditch and Tariq Akrouk of GCUK dated 4 July 2019, titled 'Additional account debtors' (GCU.0005.0012.8768), in which Mr Pinnington states: 'Still working through names, reckon I've potential for about €50m increase so far, which isn't stunning. We really need to expand into west and central Europe names if we are really going to get traction in increases.'

d. Email from Henry Middleditch of GCUK to Lex Greensill, Brett Downes (Chief Risk Officer) and Craig Pinnington of GCUK dated 5 July 2019, titled 'RE: Delta: Batch 2 Debtors' (GCU.0004.0027.6719), regarding issues onboarding a list of customers, in which Mr Middleditch states: 'It must be noted that it is not clear whether these are currently fully active customers';

e. Skype messages between Patrick Davis and Henry Middleditch of GCUK dated 10 July 2019 (GCU.0009.0010.2481), in which Mr Davis asks: 'how

many names are we thinking?' and 'are we backsolving from 750k again?', to which Mr Middleditch replies: 'yup' 'we need c.1000' 'to get to the 800mm'; and

f. Email from Tariq Akrouk of GCUK to Britta Pein-Willems and Markus Adler of GBAG dated 15 July 2019 titled 'Delta Trade 3' which states:

> 'I hope all is well. I wanted to let you know that we are looking to do a third trade this coming Thursday replicating what we did for the second trade last week; however this one will only be around ~270 names…From the list that Markus sent to Henry last week there were 153 names 'accepted, additional' names. There are also 73 names that were 'previously accepted' for Ostrava that we have included in the list attached. Further to this I was able to find addresses for almost all the names that were previously declined under the category 'declined, no full address'. If you could please review these names once more and confirm that they are accepted, that would be greatly appreciated… However, we will need at least a further 20 names from the 'Declined, possible group structure' category. What can we do today and tomorrow to get have these names included and accepted? As per usual, our team is at your disposal if we need to dig up compliance reports to locate the global ultimate parent or other info.' (GCU.0005.0013.4197);

g. ~~b.~~ The 11 November 2019 Credit Application Report, which stated:

> 'The facility was set up in such a way where all Liberty customer across the local opco entities were provided EUR 750K (net notional) limits. In subsequent rolls, larger limits have been provided against customers that have larger AR balances and anticipated future AR. This was in part the result of not having full transparency on the debtor books at the point of acquisition.' and 'It is understood that at this moment, there will be a mismatch between some of the customers in the facility and those actually trading. The plan is rectify this, but it will not be imminent due to operational complexities.' (AGB.0003.0001.5404).

~~See Appendix 1 to the Claim Form submitted by Greensill Bank under Policy 5369 on 28 February 2022 (IAL.500.002.2413 and IAL.500.002.2887).~~

h. Email from Britta Pein-Willems of GBAG to Tariq Akrouk, Patrick Davis and Craig Pinnington of GCUK, dated 15 November 2019, titled 'RE: URGENT: RE: Same Day Direct Sales Offers 22/11/2019' (GBA.0004.0009.0513), which states:

'We have an issue with one of our Delta AD's: According to the German Handelsregister (register of companies) our customer Krohm Stahl International GmbH went into insolvency in 2010 … As this is one of our "Batch customers" we haven't been aware of the insolvency up to know [sic]';

i. Email from Britta Pein-Willems of GBAG to Mark Kavanagh of GCUK dated 23 January 2020, titled 'Max Invoice values on some Liberty Account debtors' (GBA.0004.0004.5845), which states:

'Regarding Delta it is also important to know, that we don't have to work out a Credit Application up to EUR 750k! We have implemented a kind of automatically granted approval for customers below EUR 750k. This speeds up the process, especially in cases like Delta where we had to onboard and approve 1,800 customers in 3 weeks!';

j. Emails between Claudia Melcher and Julia Michaelis of GBAG and Marty McGovern, Charles Mensah, Craig Pinnington, Kelly Cliffe, Henry Middleditch and Tariq Akrouk of GCUK, between 13 March 2020 and 3 April 2020, titled 'RE: Shareholder Structure rff - Rohr-Flansch- Fitting Handels GmbH (Delta6)' (GBA.0004.0026.3632), in which:

i. Mr Pinnington states: 'Guessing from the title it is an account debtor under the Liberty Delta program. We wouldn't have done full DD on them, just established ownership through a basic D&B check'; and

ii. Ms Cliffe states: 'As Greensill do not have a business relationship with AR Account Debtor's [sic] they do not fall under the requirement for us to conduct AML checks and we are therefore unable to assist…'.

k. Email from Divya Eapen to Lindsey Sherrill of GCUK dated 24 January 2021, titled 'Information', attaching 'Checklist.xlsx' amongst other documents (GCU.0006.0005.2694; GCU.0006.0005.2699) which states: 'GB onboards all names, with analysis carried out on limits above Eur 750k'.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

c. GCUK's lending was not based on any assessment of the creditworthiness of any of the account debtors, or the likelihood of such account debtors becoming subject to payment obligations to sellers payable within 180 days of the advance sufficient to support the expected receivables, but was in the nature of long-term enterprise

finance lending on an interest only basis largely or wholly unsecured by any actual receivables or expected receivables.

Particulars

This may be inferred from the particulars outlined at paragraph 10A.322b. above.

Email from Tariq Akrouk of GCUK to Henry Middleditch of GCUK dated 6 June 2019, titled 'Project Delta Call Report 06.06.2019' (GCU.0009.0009.6068), in which it was stated: 'Will be taking all the names in the customer book and putting a limit of EUR 750m against all names to raise up to EUR 910m' and 'the question to GB is between these two files, can you get comfortable with this not being a loan'.

Email from Tariq Akrouk of GCUK to other GCUK personnel, dated 21 June 2019, providing instructions on the 'minimum data' required on account debtors (GCU.0005.0012.1908).

Email from Henry Middleditch of GCUK to Tariq Akrouk of GCUK dated 2 July 2019, titled 'RE: Top 20 Across Facilities' (GCU.0010.0009.3753), regarding due diligence of account debtors, in which Mr Middleditch states: 'Thanks. Looping in Craig [Pinnington]. Context here is that we are looking at names we could feasibly put up to 50mm limits against for the next draw. Need to get GB lined up ASAP so will need to request financials etc.'

Email from Britta Pein-Willems of GBAG to Tariq Akrouk of GCUK dated 11 September 2019, titled 'RE: FW: Delta 5' (GBA.0004.0004.2863), in which Ms Pein-Willems states: 'What we do is to check the D&B report and the internet for general information (what is the customer's core business, does he have access to the money market is the company externally rated, negative information (late payments, financial penalties, worse external ratings, declaration in lieu of an oath, and so on…) and of course, if there are financials included in the D&B report we have a quick look at it as well. But at the end of the day it's a very, very, veeeeeery short and superficially analysis. The credit line is insured, yes, so there is no risk. But I (and Helge) wonder whether the insurance company would pay out the money to us in an event of default with knowledge that we don't do an in-depth-analysis of the customer. I think we will (have to) re-work the simplified model soon (we haven't presented it yet to our auditors…) but currently we are working with the above process.'

Email from Tariq Akrouk of GCUK to Markus Adler and Britta Pein-Willems of GBAG dated 15 September 2019, titled 'RE: Delta Trade 3' (GBA.0004.0024.3143), requesting approval for customers, in which Mr Akrouk

states: 'However, we will need at least a further 20 names from the 'Declined, possible group structure' category. What can we do today and tomorrow to get have these names included and accepted? As per usual, our team is at your disposal if we need to dig up compliance reports to locate the global ultimate parent or other info.'

Emails between Charles Mensah, Johanna Roberts and Thierry Lassy-Taty of GCUK, copying Ricardo Oliveira of GCUK dated 19 October 2020, titled 'RE: GB DD Request' (GCU.0009.0018.8871).

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.322A. The Further Liberty Delta Misrepresentations were false and/or misleading because:

a. in the premises of the Future Accounts Receivable Representation (referred to at paragraph 10A.32 above), the concept of 'future receivables' was used by GCUK, and understood by BCC, to mean receivables arising under existing sales contracts with predefined customers, as verified and audited on a periodic basis;

b. in actual fact, GCUK had no intention to require that the account debtors would be pre-existing customers of the Delta OpCos; and

c. GCUK's lending was not based on any assessment of the creditworthiness of any of the account debtors, or the likelihood of such account debtors becoming subject to payment obligations to sellers payable within 180 days of the advance sufficient to support the expected receivables, but was in the nature of long-term enterprise finance lending on an interest only basis largely or wholly unsecured by any actual receivables or expected receivables.

Particulars

The BCC/TM Parties rely on the particulars to paragraph 10A.322 above.

Knowledge of falsity of representations

10A.323 Lex Greensill knew the matters set out in paragraph 10A.320 above.

Particulars

On 28 April 2019, Lex Greensill received an email from Brett Downes of GCUK in which he expresses concerns about the broader GFG Group's ability to repay existing debts including those under the SSUK facility and states: 'Lex, I have

been over the forecasts and am fine, but this is now really near the end of the line here…This additional A$70m makes it A$200m…Please can we stop this after this draw….I get financing Arcelor Mittal may be the way out and will support, but be realistic. If this gets up, we are starting to talk EUR2,5bn and that cannot be funded. We have large refinancing risk here.' (GCU.0004.0025.0695)

It can be inferred that Lex Greensill was aware of the contents of the relevant Greensill Credit Application Reports in circumstances where:

a. Lex Greensill was identified as the Relationship Owner on the face of the Greensill Credit Application Report dated 20 June 2019 (~~GBA.0004.0027.3234~~AGB.0003.0001.5405) (page 2); and

b. On 20 June 2019, Craig Pinnington sent Lex Greensill, among others, a draft of the Greensill Credit Application Report dated 20 June 2019 (GCU.0005.0012.0631, GCU.0005.0012.0670);

c. On 21 June 2019, Henry Middleditch sent Lex Greensill a copy of the Greensill Credit Application Report dated 20 June 2019 (GCU.0005.0012.2273; GCU.0005.0012.2274).

d. Lex Greensill presented to the Credit Committee on the Liberty Delta Risk on 21 June 2019 (Minutes of Credit Committee Meeting - AGB.0003.0002.4066);

e. ~~b.~~ Lex Greensill was identified as being part of the 'Facility Team' on the face of the Greensill Credit Application Report dated 11 November 2019 (~~AGB.0003.0001.5403~~AGB.0003.0001.5404) (page 1)~~.~~; and

f. Lex Greensill was (alternatively, had recently been) a member of the Credit Committee (AGB.0003.0002.4066).

On 4 June 2019, Lex Greensill was copied on an email from Henry Middleditch to Myrjam Tschoeke of GCUK, titled 'RE: Delta' (GCU.0004.0026.9661, page 2). In that email, Mr Middleditch described the Liberty Delta project as follows: '[t]he proposed project aims to achieve the following: 1. Enable the acquisitions outlined below 2. Enable Liberty to pay down outstanding LRB from the proceeds 3. Consolidate GFG AR programmes in the long term (i.e. Liberty Commodities)' (GCU.0004.0026.9661, page 2).

On 12 June 2019, Lex Greensill received an email from Brett Downes of GCUK in which he expressed concerns about the Liberty Primary and Commodities facilities stating: 'Liberty remains a real problem in my mind. They cannot repay any maturities. I am afraid I do not believe they will ever be able to do this. Money is clearly going out somewhere, and we continue to run the slush

fund…I am really worried now and can't think of a way out. Delta may not save us here. Where is the money going????' (GCU.0004.0027.1545)

On 21 June 2019, Lex Greensill presented to the Credit Committee on the Liberty Delta Risk (Minutes of Credit Committee Meeting - AGB.0003.0002.4066). Mr Greensill conveyed to the Credit Committee that:

a. the use of the funds was for 'the purchase of the assets from Arcelor Mittal; lock box created to cover Capex of business for year $100m; clear arrearages between Liberty Group and Greensill; working capital for Delta group; and repurchase of LRB notes held by GAM at original price, which is of strategic importance'; and

b. the facility '[e]nables us to ensure all liberty facilities are regularised and brought into good working order, and to end the GAM publicity'.

On 11 July 2019, Henry Middleditch sent Lex Greensill, among others, an email titled 'Delta: Trade Update', with a 'summary of the Delta trade updates' including that '3. GC makes up the difference for the LRB trade (expected EUR 90) 4. GC spots all or most EUR for GBP to do LRB (c.GBP 620 max/EUR 614 purchase price) 5. GC executes LRB trade as instructed by Liberty - just cash wire payments (not reliant on clearing systems)' (GCU.0005.0013.2571).

The knowledge of Lex Greensill is otherwise to be inferred from his direct involvement in the initial placement of the Liberty Delta Risk, including in the correspondence pleaded at paragraph ~~10A.311A~~ 10A.312 above, and by Lex Greensill's senior position within Greensill.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.324 Lex Greensill knew the matters set out in paragraph 10A.321 above.

Particulars

The knowledge of Lex Greensill is evident from the testimony of Sanjeev Gupta to the UK Insolvency and Companies Court as to the statements made to him by Lex Greensill: see particulars to subparagraph 10A.321b above.

It can be inferred that Lex Greensill was aware of the contents of the relevant Greensill Credit Application Reports ~~in circumstances where:~~; see particulars to paragraph 10A.323 above.

~~a. Lex Greensill was identified as the Relationship Owner on the face of the Greensill Credit Application Report dated 20 June 2019 (GBA.0004.0027.3234) (page 2); and~~

~~b. Lex Greensill was identified as being part of the 'Facility Team' on the face of the Greensill Credit Application Report dated 11 November 2019 (AGB.0003.0001.5403) (page 1).~~

On 4 June 2019, Myrjam Tschoeke of GCUK sent Tony Wonfor and Henry Middleditch of GCUK an email titled 'RE:Delta', copying Lex Greensill, stating that the 'IPA implies' that 'this is a full corporate loan' (GCU.0004.0026.9661).

The Greensill document titled 'Ostrava – EGAP: Working Capital Facility Credit Paper' dated 12 July 2020, which states: '[t]he Holdco Facilities carry an interest cost of roughly EUR90mm p.a (EUR 35mm of which is from Ostrava), with daily maturities and reissuances. Interest costs have been held as payment in kind (PIK) by Greensill for the last few months in light of COVID, standing today September 4 2020…' (GBA.0005.0003.8771, page 1) and refers to a tenor of three years. Lex Greensill is listed as the 'Sponsor' on the document (page 20).

On 5 November 2020, Henry Middleditch sent an email to the GFG MC mailing group and Lex Greensill, titled 'RE: GFG MC Weekly: Actions Required', stating that a quorum of the 'GFG MC' had 'confirmed to remove receivables from security package' in response to the '[q]uery as to whether we should remove receivables from the security package for Ostrava and its subsidiaries given the Holdco facility. Reasons for include taking them off the table for the upcoming capex financing requirement or any other financing protecting our interests in the long run. Reason against is that its contradicts the Delta future receivable structure' (GCU.0006.0003.8760, pages 2-3).

The knowledge of Lex Greensill is otherwise to be inferred from his direct involvement in the initial placement of the Liberty Delta Risk, including in the correspondence pleaded at paragraph ~~10A.311A~~ 10A.312 above, and by Lex Greensill's senior position within Greensill.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.325 Lex Greensill knew the matters set out in paragraph 10A.322 above.

Particulars

a. The contents of the Greensill Credit Application Report dated 20 June 2019 (AGB.0003.0001.5405). In particular, the Report states: 'Detailed credit

analysis of individual debtor names has not been possible under the timeframe but would be required ahead of any incremental increase above the EUR 750k limit'. It can be inferred that Lex Greensill was aware of the contents of this report: see particulars to paragraph 10A.323 above;

b. On 5 July 2019, Henry Middleditch sent an email to Lex Greensill, titled 'Delta: Batch 2 Debtors' (GCU.0004.0027.6719), stating that 800 account debtor names had been identified for Galati 'with sufficient data such that D&B complete their searches. It must be noted that it is not clear whether these are currently fully active customers. The challenge we have with Galati is that the active customer lists provided only cover the last 12 months and do not appear to be full lists (there were roughly 300 names in total)' and that 'Liberty separately have provided two lists of customers they expect to onboard (100 for Galati and 50 for Ostrava)';

c. The 'Liberty weekly credit & insurance review' PowerPoint dated 16 July 2019, which stated that: 'whilst full secured RPA position is being sought, GB needs to be taking RPAs not IPA, an undated RPA via SSUK has been proposed, if anything went unpaid the RPA gets signed and the receivables become due to GC, not just the IPA' (GCU.0009.0010.4148, page 11). The powerpoint was prepared for consideration by Lex Greensill (see email from Craig Pinnington to Brett Downes on 18 July 2019 (GCU.0005.0013.5773; GCU.0005.0013.5775).

d. On 14 August 2019, Henry Middleditch forwarded to Lex Greensill the email chain 'Delta_Insurance Increases', which included the email particularised at subparagraph 14(b) above, noting 'FYI, re our discussion earlier' (GCU.0005.0014.6526).

e. On 5 November 2020, Henry Middleditch sent an email to the GFG MC mailing group and Lex Greensill, titled 'RE: GFG MC Weekly: Actions Required', stating: 'Liberty have provided debtor names for the 6 businesses during the 1 year since acquisition (c.2400 debtors excluding Magona). Reconciliation with the debtors underlying the Delta facilities has so far matched c.900/2400 debtor names and an estimated EUR 900mm/EUR 2.2bn net notional. Full reconciliation unlikely to be possible against the full quantum and will require considerable reallocation of insurance and credit onboarding at GB. Notably, the original debtor book funded against includes 5 years of customers from the prior owner, ArcelorMittal'. The call notes record that the GFG MC 'viewed to be acceptable under insurance policy' the proposal of '[r]econciling the debtors

and reallocating insurance as best as possible' (GCU.0006.0003.8760, p 3).

f. The contents of the Greensill Credit Application Report dated 11 November 2019 (AGB.0003.0001.5404). It can be inferred that Lex Greensill was aware of the contents of this report: see particulars to paragraph 10A.323 above;

The knowledge of Lex Greensill is otherwise to be inferred from his direct involvement in the initial placement of the Liberty Delta Risk, including in the correspondence pleaded at paragraph 10A.312 above, and by Lex Greensill's senior position within Greensill.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.325A. Lex Greensill knew of the matters set out in paragraph 10A.322A above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10.325 above.

10A.326 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.320 to 10A.322A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 010A.25, 10A.26A and 10A.26B above.

10A.327 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.320 to 10A.322A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph 10A.20u, 10A.22A and 10A.22B above.

Knowledge of materiality of representations

10A.328 Each of the matters referred to in paragraphs 10A.320 to 10A.322A above were matters:

a. which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty Delta Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge of the materiality of these representations is to be inferred from his decision to convey these matters to Brereton in advance of the placement of the Liberty Delta Risk.

It is also to be inferred from the following matters:

a. On 18 June 2019, Myrjam Tschoeke of GCUK sent an email to Brett Downes and Craig Pinnington of GCUK, titled 'Re: Project Delta structure' (GCU.0013.0005.9476), stating that she 'took the liberty (!) to reach out to Lex and to voice my below concerns', including that:

   i. she was 'very concerned that the bank is being asked to book an IPA as an RPA under insurance from Day one. How can we state this is an IPA vis a vis regulators but treat it like an RPA in our own captive ? Disclosure to insurers and to the bank is key'; and

   ii. '[w]e are deeply deeply subordinated as there is no opco upstream guarantee. The only way out of breaches against our negative pledge is to call an EoD'.

b. Ms Tschoeke and Lex Greensill exchanged emails on the same date to arrange a call (GCU.0005.0012.0085).

c. The Minutes of the Credit Committee Meeting on 21 June 2019 recording Lex Greensill's presentation of the Liberty Delta Risk (AGB.0003.0002.4066). In particular, the minutes record Mr Greensill stating that the deal would be structured initially as an IPA, the proposal being to'[c]onvert the facility after an appropriate period, probably 30 days, to a receivables purchase facility which provides better form of protection'.

d. On 5 November 2020, Henry Middleditch sent an email to the GFG MC mailing group and Lex Greensill, titled 'RE: GFG MC Weekly: Actions Required', stating that a quorum of the 'GFG MC' had 'confirmed to give up first ranking share pledge for either second ranking and/or bidco share pledge in Holdco' in response to the following action item for 'Galati': 'Replacing first ranking share pledge held by GC EUR 815mm Holdco Facility with a second ranking share pledge (or first ranking share pledge Bidco's shares in the Holdco) to facilitate Eur 180mm Exim-backed facilities at Opco. This would leave Holdco facility heavily subordinated. Liberty have

agreed to a 25% reduction in the Holdco facility, although details provided. Further discussion advised between the GFG MC and Legal on the insurance disclosure requirements' (GCU.0006.0003.8760, page 2).

Lex Greensill's knowledge is further to be inferred from the following:

(e) The matters pleaded at paragraph 9 above;

(f) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(g) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(h) The matters misrepresented or not disclosed bore directly on the risk of SSUK being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Liberty House being unable to repay the amounts advanced to it and thus upon the Liberty Delta Risk.~~

c. alternatively to sub-paragraphs a and b above, which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend insurance cover in respect of the Liberty Delta Risk.

10A.329 The knowledge of Lex Greensill of the matters set out in paragraph 10A.328 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.330 The knowledge of Lex Greensill of the matters set out in paragraph 10A.328 is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20, 10A.26A and 10A.26B above.

Misrepresentations were fraudulent

10A.331 In the premises of paragraphs 10A.323~~, 10A.324, 10A.327, 10A.328, 10A.329 and~~ to 10A.330 above:

a. Greensill misrepresented the Liberty Delta Risk;

b. the misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Liberty Delta Risk.

10A.332 If Greensill had not made the Liberty Delta Misrepresentation or the Further Liberty Delta Misrepresentations, insurance cover would not have been issued in respect of the Liberty Delta Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.333 By reason of the matters pleaded in paragraphs 10A.320 to 10A.332 above, IAL is entitled to avoid Policy 5369 and each of the Liberty Delta Endorsements.

Innocent misrepresentation

10A.334 In the alternative to the matters pleaded in paragraphs 10A.331 to 10A.333 above, by reason of the matters pleaded in paragraphs 10A.320 to 10A.322 and 10A.332 above, IAL is entitled to reduce its liability under Policy 5369 and each of the Liberty Delta Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the Liberty Delta Misrepresentation had not occurred).

D7.3 Liberty Delta Non-Disclosures

Knowledge of underlying matters

10A.335 At the time of requesting insurance cover for the Liberty Delta Risk, Lex Greensill knew:

a. that a substantial proportion of the funds advanced under the facility were intended to be used for purposes other than the acquisition of the Delta HoldCos;

Particulars

See the particulars set out at paragraph 10A.323 above.

b. that in the premises of the Future ~~Account Receivables~~ Accounts Receivable Representation, Greensill's financing would not be secured against genuine 'future receivables', – as this term had been used by Greensill, and understood by Greg Brereton – and the approach would be entirely different in nature to what had been

presented to BCC in the Liberty OneSteel AR Facility presentation dated February 2019;

Particulars

See the particulars set out at paragraph 10A.324 above.

c. the understanding, between Lex Greensill (on behalf of the Greensill Group) and Sanjeev Gupta (on behalf of Liberty House and the Delta HoldCos) that the funding advanced under the facility would not be withdrawn or required to be repaid by GCUK other than by giving at least three years' notice, regardless of the terms of the written contractual documents purporting to regulate the facility (including the Delta IPAs and related documents);

Particulars

See the particulars set out at paragraph 10A.324 above.

d. the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 10A.33F.

e. the Liberty Group Fraud Non-Disclosure, which implicated Liberty House and Sanjeev Gupta in prior dishonest and fraudulent conduct; and

Particulars

The knowledge of Lex Greensill is evident from the fact that the Diligence Paper was sent to him by Michel Degen of Credit Suisse on 11 December 2018 (CSA.5000.0002.1866 and CSA.5000.0002.1867).

f. with respect to the Delta IPA Side Letters:

   i. that GCUK and the Delta HoldCos had entered into, or would shortly enter into, those agreements;

   ii. that, as a result of entering into those agreements, once Greensill Bank had advanced funds to GCUK to purchase interests in the payment of the

Delta HoldCos' payment obligations (**Delta Notes**), Greensill Bank would not receive any interest or profit on the maturity of each Delta Note, unless and until the Delta HoldCos had defaulted upon their payment obligations to GCUK; and

iii. accordingly:

a. the lending by Greensill Bank was not ordinary commercial lending;

b. the risk to Greensill Bank of investment in the Delta Notes was materially greater than the risk assumed by an ordinary trade credit financier in that any return earned by Greensill Bank on the investment was dependent on the Delta HoldCos defaulting in their payment obligations and the amount of any defaulted obligations being recovered in full from a trade credit insurer; and

c. the Liberty Delta Debt Programme would be uneconomic for Greensill Bank unless the Delta HoldCos defaulted and a valid claim were made on the Liberty Delta Policy.

Particulars

Clause 7 to each of the Delta IPA Side Letters.

The interest-free nature of the risk for Greensill Bank is further pleaded in Section C.5.a of Annexure B to this Defence, which is referred to and repeated.

The knowledge of Lex Greensill is to be inferred from the fact that Mr Greensill, acting on behalf of GCUK, personally executed each of the Delta IPA Side Letters on or about 27 June 2019.

~~that the GFG Alliance was in serious financial difficulty because it had negative working capital and was experiencing liquidity issues, such that Lex Greensill considered the GFG Alliance could not service its interest payments without incurring further debt to do so.~~

~~Particulars~~

~~Greensill's Credit Application Report dated 20 June 2019 (AGB.0003.0001.5405), which stated:~~

~~a. at page 20:~~

~~'"Beyond the first year, the business appears to be in a position to service the EUR 90mm interest, however, the first-year falls EUR 20mm short based on their forecasts. The proposal here is that Greensill would be able to improve the free cash flow position, at least temporarily, through raising incremental proceeds. In orange below, EUR 100mm adjustment has been applied as a working capital plug that would be in place temporarily and largely focused on the first year"'; and~~

~~b. at page 26:~~

~~'"The GFG group is low on cash and has negative working capital. As such the liquidity of the group is a concern and therefore so is there [sic] ability to repay the instalment amounts on a daily basis…"'~~.

10A.335A. At the time of requesting insurance cover for the Liberty Delta Risk, Danyon Lloyd knew:

a. the matters pleaded in subparagraphs 10A.335a and e above; and

b. the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure.

Particulars

Greensill Credit Application Report dated 20 June 2019, which was sent to Danyon Lloyd on 20 June 2019 (GCU.0005.0012.1373; GCU.0005.0012.1380).

On 26 June 2019, David Keeling of GCUK sent an email containing minutes of the 21 June 2019 Credit Committee meeting to the Credit Committee, including Danyon Lloyd. This email includes minutes of Lex Greensill's presentation to the Credit Committee on the purpose and structure of the Liberty Delta Risk, in which the purpose of the facility was described as follows (AGB.0003.0002.4066):

> *Use of funds is for: the purchase price of the assets from Arcelor Mittal; lock box created to cover Capex of business for year $100m; clear arrearages between Liberty Group and Greensill; working capital for Delta group; and repurchase of LRB notes held by GAM at original price, which is of strategic importance.*
> *Long run exit strategy for repayment is for this business to be IPO'd in Europe in c 2 years, potentially also including the iron ore and coal businesses from Australia. Have achieved 2 year timeframe within Australian business. Will also raise term debt at that time to repay our facility in full.*

Email from Danyon Lloyd to Al Eadie (GCUK) on 28 June 2019 in Greensill EOD balance email chain, 'Thought the GFG stuff was now resolved…' (GCU.0009.0010.0382).

The knowledge of Danyon Lloyd is also to be inferred from the involvement and knowledge of Danyon Lloyd in the company's dealings with the facility, including the following items:

a. On 24 June 2019, Henry Middleditch of GCUK sent an email to Britta Pein-Willems, with Danyon Lloyd and other GBAG and GCUK personnel copied, attaching 'GB insurance policies' for Liberty Delta including endorsements (GCU.0009.0009.9106, attaching GCU.0009.0009.9107, GCU.0009.0009.9108, GCU.0009.0009.9109, GCU.0009.0009.9110, GCU.0009.0009.9111, GCU.0009.0009.9112, GCU.0009.0009.9113 attached);

b. On 10 July 2019, Al Eadie (CFO of GCUK) copied Danyon Lloyd and others into an email chain titled 'LRB steps' (GCU.0013.0006.2345) in which it was stated, among other matters, that: 'Liberty is buying back a load of GBP note obligations it has to GAM funds (total €614m) and is funding by issuing new EUR notes to GB under delta 2, which are identical in structure to delta 1 (EUR 900m)…'

c. On 11 July 2019, Henry Middleditch of GCUK sent an email to Lex Greensill and Danyon Lloyd, amongst others, providing a summary of Delta trade updates, including in relation to the proposed LRB trades. (GCU.0005.0013.2571);

d. On 19 July 2019, Brett Downes sent an email to Danyon Lloyd attaching a draft PowerPoint titled 'GFG Weekly Call Review – July Month End Summary' including updates on Liberty Delta (GCU.0013.0006.2345 attaching GCU.0009.0010.4910);

e. On 1 October 2019, Tariq Akrouk of GCUK emailed Britta Pein-Willems (GBAG) titled 'Delta Facility Limit Increase' requesting review of names to increase the facility credit limit for Delta by 200m, which was forwarded to GBAG personnel and Danyon Lloyd on 2 October 2019 (GCU.0010.0010.5769);

f. On 31 March 2020, Markus Nunnerich sent an email to Danyon Lloyd, attaching a zip of materials titled 'Liberty for GB' (GCU.0010.0012.7111) attaching, amongst other documents, a Credit Application Report for Liberty Ostrava dated 11 March 2020 (GCU.0010.0012.7112);

g. the emails particularised at paragraph at 10A.33F; and

h. Danyon Lloyd's position on GCUK’s credit committee.

10A.336 The knowledge of Lex Greensill of the matters in paragraph 10A.335 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.337 The knowledge of Lex Greensill of the matters in paragraph 10A.335 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

10A.337A. The knowledge of Danyon Lloyd of the matters in subparagraphs 10A.355a and e above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A above and Danyon Lloyd's position as CEO of Greensill Bank.

Knowledge of materiality

10A.338 Each of the matters referred to in paragraph 10A.335 above were matters:

a. which Lex Greensill knew were material to the decision to accept or renew the Liberty Delta Risk and, if so, on what terms; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty Delta being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

(e) In the case of the matter in paragraph 10A.335(f), the matters not disclosed bore directly on the risk that Greensill Bank would make a claim on the policy.

~~as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Liberty being unable to repay the amounts advanced to it and thus upon the Liberty Delta Risk.~~

10A.339. Further or in the alternative to paragraph 10A.338 above, each of the matters referred to in paragraph 10A.335 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Liberty Delta Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.338 above.

10A.339A. Each of the matters referred to in subparagraphs 10A.335(a) and (e) above were matters:

a. which Danyon Lloyd knew were material to the decision to accept or renew the Liberty Delta Risk and, if so, on what terms; or

b. alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

a. a person with substantial commercial experience in dealing with credit risks in the finance industry;

b. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

c. was a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 10A.11 and 10A.12(a)(ii) above); and

d. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747;

GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Liberty Delta Risk.

10A.339B. Further or in the alternative to paragraph 10A.339A above, each of the matters referred to in subparagraphs 10A.335(a) and (e) above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Liberty Delta Risk.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.339A above.

10A.340 The knowledge of Lex Greensill of the matters in paragraphs 10A.338 and 10A.339 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.25, 10A.26A and 10A.26B above.

10A.341 The knowledge of Lex Greensill of the matters in paragraphs 10A.338 and 10A.339 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph~~s~~ 10A.20 , 10A.22A and 10A.22B above.

10A.341A. The knowledge of Danyon Lloyd of the matters in paragraphs 10A.339A and 10A.339B above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A above and Danyon Lloyd's position as CEO of Greensill Bank.

Breach of duty of disclosure

10A.342 Greensill did not disclose to Greg Brereton or any representative of BCC any (or all) of the matters referred to in paragraph 10A.335 above before the cover was placed or renewed for the Liberty Delta Risk.

10A.343 Greensill's failure to disclose the matters referred to in paragraph 10A.335 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 10A.336 to 10A.341 above.

Fraudulent non-disclosure

10A.344 By reason of the matters pleaded in paragraphs 10A.335, 10A.336. 10A.337, 10A.338, 10A.339, 10A.340 and 10A.341 above (concerning Lex Greensill's knowledge), Greensill's failure to disclose the matters referred to in paragraph 10A.335 above was fraudulent.

10A.344A. Further or alternatively, by reason of the matters pleaded in paragraphs 10A.335A, 10A.337A, 10A.339A, 10A.339B and 10A.341A above (concerning Danyon Lloyd's knowledge), Greensill Bank's failure to disclose the matters referred to in subparagraphs 10A.335(a) and (e) above was fraudulent.

10A.345 The cover for the Liberty Delta Risk would not have been issued if the matters referred to in paragraph 10A.335 above had been disclosed.

10A.346 In the alternative to the allegation in paragraph 10A.345 above, the cover for the Liberty Delta Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 10A.335 above had been disclosed.

10A.347 By reason of the matters pleaded in paragraphs 10A.335 to 10A.346 above, IAL is entitled to avoid Policy 5369 and each of the Liberty Delta Endorsements.

Innocent non-disclosure

10A.348 In the alternative to the matters pleaded in paragraphs 10A.344 to 10A.347 above, and by reason of the matters pleaded in paragraphs 10A.342, 10A.343, 10A.345 and 10A.346 above, IAL is entitled to reduce its liability under Policy 5369 and each of the Liberty Delta Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D8 SIMEC

D8.1 Policy and Endorsements

10A.349 In Federal Court of Australia proceedings no. NSD169/2023 and no. NSD177/2023, the applicants allege that, on or about 13 March 2019, Simec Group Limited (**Simec**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 2.

Particulars

~~Second~~Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~21 August 2024 at~~11 June 2025at paragraph 125.

~~Amended~~Fifth Statement of Claim in proceeding no. NSD177/ 2023 dated ~~14 March 2024~~11 June 2025 at paragraphs 147 to 149.

10A.350 The applicants further allege that:

a. the Customer Limit for Simec was increased to USD45 million by means of Customer Endorsement No 2(i) dated 24 April 2019; and

b. the Customer Limit for Simec was increased to USD95 million by means of Customer Endorsement No 2(ii) dated 31 January 2020.

Particulars

~~Second~~Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~21 August 2024 at~~11 June 2025 at paragraph 125.

Fifth Amended Statement of Claim in proceeding no. NSD177/ 2023 dated ~~14 March 2024 at~~11 June 2025 at paragraphs 150 to 155.

10A.351 The endorsements identified in paragraphs 10A.349 to 10A.350 above are hereafter referred to as the **Simec Endorsements**.

D8.2 Simec Misrepresentations

Representations

10A.352 ~~On or around~~In the period ~~28~~9 August 2018 to 31 August 2018, GCUK requested ~~(through its broker, Marsh)~~ that BCC extend insurance cover in respect of ~~financing~~"straight SCF facilities" with tenors of 180 days provided by GCUK to Simec (the **Simec Risk**). This request was expressed as an 'immediate need from Greensill for cover' for 'another USD50 million combined on Liberty House, Liberty Commodities, SIMEC, and [Liberty OneSteel]'.

10A.353 [Not used].~~As part of this request, GCUK represented to Greg Brereton, among other matters, that:~~

~~a. the financing arrangement in place between GCUK and Simec was a 'straight SCF [supply chain finance] facility'; and~~

~~b. the Simec facility was for short-term lending with 'tenors of 180 days',~~

~~(the **Simec Financing Arrangements Misrepresentations**).~~

~~**Particulars**~~

~~Email from Edward Smith of Marsh to Greg Brereton, with the subject 'Greensill - Liberty Request', dated 28 August 2018, and its attachments (BCC.0001.0001.0805).~~

~~Email from Lex Greensill to Greg Brereton, with the subject 'Re: Greensill - Liberty Request', dated 31 August 2018 (BCC.0001.0002.1456).~~

10A.354 [Not used].~~The matters referred to in paragraph 10A.353 above were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).~~

~~Particulars~~

~~BCC refers to paragraphs 10A.17, 10A.18, 10A.22 and 10A.26 above.~~

10A.355 On or around 31 August 2018, Greg Brereton responded to ~~this~~the request (adding Lex Greensill to the email chain) ~~to say~~stating that BCC already had 'a wide array of commitment on parts of Liberty, SIMEC, GFG etc', but ~~to~~that he would agree a 'new USD25 million on Simec Group Ltd' on the terms proposed by Marsh, to which Lex Greensill replied “Many thanks Greg”.

Particulars

Email from Greg Brereton to Edward Smith and Lex Greensill, with the subject 'RE: Greensill - Liberty Request', dated 31 August 2018 (AGB.0002.0001.0277).

Email from Lex Greensill to Brereton, with the subject 'RE: Greensill - Liberty Request', dated 31 August 2018 (BCC.0001.0002.1456)

10A.355A On around 3 September 2018, GCUK (through its broker Marsh) communicated to Brereton that GCUK had “confirmed NKORL”, meaning, ‘no known or reported losses’.

Particulars

Email from Edward Smith to Brereton, with the subject 'RE: Greensill - Liberty Request', dated 3 September 2018 and attached Customer Endorsement No 27 (BCC.0001.0001.0815 and BCC.0001.0001.0816).

10A.356 ~~On or around~~In the period 3 to 4 September 2018, ~~Greg~~GCUK (via Marsh) provided to Greg Brereton draft endorsements purportedly to give effect to Brereton’s agreement to extend insurance in respect of the Simec Risk. Brereton returned to Marsh a signed copy of Customer Endorsement No 27, ~~under~~ which purported to endorse Simec ~~was endorsed~~ as a customer under the 2019 90/10 ~~Parallel~~Master Policy.

Particulars

The BCC/TM Parties refer to paragraph 0 above.

Email from Greg Brereton to Edward Smith, with the subject 'RE: Greensill - Liberty Request', dated 4 September 2018 and attached Customer Endorsement No 27 (BCC.0001.0005.0776 and BCC.0001.0005.0777).

10A.357 ~~On or around~~In the period 4 October 2018 to 9 October 2018, GCUK made enquiries with Greg Brereton (through its broker, Marsh) to ascertain whether BCC had 'any additional capacity' in relation to the Simec Risk, and Brereton agreed to increase the level of insurance on 9 October 2018.

Particulars

Email from Edward Smith to Greg Brereton, with the subject 'Greensill Request - SIMEC Group Limited', dated 4 October 2018 and attached Simec Group Consolidated Audited Financials (BCC.0001.0001.0956 and BCC.0001.0001.0957).

10A.357A. On around 10 October 2018, GCUK (through its broker Marsh) communicated to Brereton that GCUK had "confirmed NKORL", meaning, 'no known or reported losses'.

Particulars

Email from Edward Smith to Brereton, with the subject 'RE: Greensill Priority items for today', dated 10 October 2018 (AGB.0002.0001.0377).

10A.358 On or around ~~9~~10 October 2018, Greg Brereton returned to Marsh a signed copy of Customer Endorsement No 27(i), under which cover in respect of the Simec Risk was increased to a facility limit of USD35 million with effect from 9 October 2018.

Particulars

Email from Greg Brereton to Edward Smith and others, with the subject 'RE: Greensill Priority items for today', dated ~~9~~10 October 2018 and attached Customer Endorsement No 27(i) (BCC.0001.0007.3346 and BCC.0001.0007.3347).

10A.359 On or around 28 February 2019, Edward Smith of Marsh sent an email to Greg Brereton attaching documents relating to a requested renewal of cover for the Simec Risk. ~~By that email,~~

Particulars

Email from Edward Smith to Greg Brereton, with the subject 'RE: Greensill Standalone Renewal', dated 28 February 2019 (BCC.0001.0001.1841).

10A.359A. On or around 1 March 2019, GCUK (through its broker~~,~~ Marsh) ~~represented to BCC that it~~communicated to Brereton that GCUK had 'confirmed NKORL', meaning 'no known or reported losses', and 'given [Marsh] the order to bind.'

Particulars

Email from Edward Smith to ~~Greg~~ Brereton, with the subject 'RE: Greensill Standalone Renewal', dated ~~28 February~~1 March 2019 (BCC.0001.0001.1841).

10A.360 On or around 13 March 2019, Greg Brereton returned to Marsh a signed copy of Customer Endorsement No 2, which purported, with effect from 1 March 2019, to endorse Simec as a customer under the 2019 90/10 Parallel Policy, with an Aggregate Customer Limit of USD35 million.

Particulars

Email from Greg Brereton to Marsh dated 13 March 2019 (BCC.0001.0002.2777 and BCC.0001.0002.2778).

10A.361 On or around 7 April 2019, Greg Brereton sent an email to Lex Greensill, with the subject 'Simec', in which he stated that he could 'agree USD10 million, per our discussion on Saturday evening'. In response, on or around 9 April 2019, Lex Greensill indicated that he would 'like to add this to our SIMEC SCF cover'.

Particulars

Email from Lex Greensill to Greg Brereton, with the subject 'FW: Simec', dated 9 April 2019 (BCC.0001.0002.2991).

10A.362 On or around 24 April 2019, Greg Brereton provided Marsh with a signed copy of Customer Endorsement No 2(i) to the 2019 90/10 Parallel Policy, which purported, with effect from 9 April 2019, to increase the Aggregate Customer Limit to USD45 million.

Particulars

Email from Greg Brereton to Angus Ward of Marsh, with the subject 'RE: Simec', dated 23 April 2019 (BCC.0001.0002.3060).

10A.363 On or around 30 January 2020, Lex Greensill sent an email to Greg Brereton, following a prior discussion between them, to request that BCC further extend the cover provided in relation to the Simec Risk. At the time of this request, GCUK represented, among other matters, that:

a. the request related to the 'current SIMEC SCF re-invoicing cover';

b. the proposed change was to increase the cover provided by IAL 'from $40mm on a 90% indemnity to $90mm with a 45% indemnity';

c. the purpose of the request was to enable Greensill to finalise the renewal of cover from another existing insurance provider; and

d. once insurance cover was reinstated, Greensill would immediately wish to reinstate the current cover of $40mm on a 90% indemnity basis.

Particulars

Email from Lex Greensill to Greg Brereton, with the subject 'SIMEC', dated 30 January 2020 (BCC.0001.0002.4742).

10A.364 On or around 30 January 2020, Angus Ward of Marsh sent an email to Greg Brereton attaching two endorsements with respect to the Simec Risk with an aggregate customer limit of USD95 million, and indicated that Marsh had 'amended the insured percentage on the GCUK endorsement to 42.63% in order to keep your max liability as it was'.

Particulars

Email from Angus Ward to Greg Brereton, with the subject 'RE: SIMEC', dated 30 January 2020 and attached endorsements (BCC.0001.0001.5246, BCC.0001.0001.5247 and BCC.0001.0001.5248).

10A364A. On or around 30 January 2020, GCUK (through its broker Marsh) communicated to Brereton that GCUK had “confirmed NKORL”, meaning, ‘no known or reported losses’.

Particulars

Email from Angus Ward to Brereton, with the subject 'RE: SIMEC', dated 30 January 2020 and attached endorsements (BCC.0001.0001.5243).

10A.365 Prior to ~~Angus Ward's email being sent, he~~his email of 30 January 2020 referred to in paragraph 10A.364 above, Angus Ward sought and received instructions from GCUK to convey to Greg Brereton the matters identified in paragraph 10A.364 above.

Particulars

Email from Angus Ward to Edward Smith, copying Lex Greensill, with the subject 'RE: SIMEC', dated 30 January 2020 (AGB.0003.0002.3268).

Email from Sophie Dyke (Insurance Analyst) of GCUK to Angus Ward and Edward Smith, copying Lex Greensill, with the subject 'RE: SIMEC', dated 30 January 2020 (AGB.0003.0002.3268).

10A.366 By the email from Angus Ward referred to in paragraph 10A.364 above, GCUK (through its broker, Marsh) represented to BCC that the effect of the endorsements was to increase the Aggregate Customer Limit but reduce the Insured Percentage by a corresponding amount, with the effect that BCC's maximum liability with respect of the Simec Risk would remain the same.

Particulars

Email from Angus Ward to Greg Brereton, with the subject 'RE: SIMEC', dated 30 January 2020 and attached endorsements (BCC.0001.0001.5246, BCC.0001.0001.5247 and BCC.0001.0001.5248).

10A.367 In the premises of paragraphs 10A.363 to 10A.366 above, GCUK represented that:

a. the Simec Risk was already subject to insurance cover from another pre-existing insurance provider;

b. its request to increase Simec's Aggregate Customer Limit with IAL was to allow Greensill to renew cover with that other insurance provider;

c. that:

i. the effect of the endorsement;

ii. Greensill's intention in requesting the endorsement; and

iii. Greensill's understanding of the effect of the endorsement,

was not to alter the maximum liability underwritten by the Insurer with respect to the Simec Risk; and

Particulars

With respect to subparagraph 10A.367c.i the BCC/TM Parties refer to the particulars in paragraphs 10A.363 and 10A.364 above.

With respect to subparagraphs 10A.367c.ii and 10A.367c.iii, the representations were implied by the express representations alleged in paragraph 10A.363 and 10A.364 above.

d. Greensill would seek to reduce the Aggregate Customer Limit once it had reinstated insurance cover with the other insurance provider,

(the **Simec Customer Endorsement 2(ii) Misrepresentations**).

10A.368 The Simec Customer Endorsement 2(ii) Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, ~~10A.22~~ 10A.22A and ~~10A.26~~10A.26A above.

10A.369 Later that day, Greg Brereton provided Marsh with signed copies of the two endorsements, which purported, with effect from 30 January 2020, to do the following in connection with the Simec Risk:

a. with respect to Policy No. TB-03691, increase the Aggregate Customer Limit to USD95 million and decrease the Insured Percentage to 42.63%, such that IAL's Maximum Limit of Liability remained at USD40.5 million; and

b. with respect to the 2019 90/10 Parallel Policy, increase the Aggregate Customer Limit to USD95 million, with a Maximum Limit of Liability of USD95 million.

(the **Simec January 2020 Cover Increase**)

Particulars

Email from Greg Brereton to Angus Ward, with the subject 'RE: SIMEC', dated 30 January 2020 and attaching signed endorsements (BCC.0001.0001.5249 and BCC.0001.0001.5250).

10A.369A. At all material times, including at the time Greensill and/or Marsh made the requests referred to in those paragraphs and at the time Brereton signed the documents referred to in those paragraphs and provided those documents to GCUK (via Marsh), Greensill represented to Brereton, among other matters, that:

a. the financing arrangement in place between GCUK and Simec was a 'straight SCF [supply chain finance] facility'; and

b. the Simec facility was for short-term lending with 'tenors of 180 days',

(the **Simec Financing Arrangements Misrepresentations**).

Particulars

Email from Edward Smith of Marsh to Brereton, with the subject 'Greensill - Liberty Request', dated 28 August 2018, and its attachments (BCC.0001.0001.0805).

Email from Lex Greensill to Brereton, with the subject 'Re: Greensill -Liberty Request', dated 31 August 2018 (BCC.0001.0002.1456).

10A.369B. The matters referred to in paragraph 10A.369A above were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.22A and 10A.26A above.

10A.369C. Further, at all material times including at the time of the requests for insurance and requests for renewal and the Simec January 2020 Cover Increase, and the signing and delivery of the documents by Brereton referred to in paragraphs 10A.352 and 10A.356 above, Greensill represented to Brereton that there had been no defaults or non-payments with respect to the

Simec Risks, and that there was no basis to expect a future default (the **Simec No Default Misrepresentation**). The Simec No Default Misrepresentation was a continuing representation.

Particulars

This representation was partly express and party implied.

In so far as it was express, the correspondence referred to at paragraphs 10A.355A0, 10A.357A, 10A.359A and 10A364A above which stated that GCUK had confirmed there were 'NKORL' [no known or reported losses].

In so far as it was implied, it was implied by the fact that at no time prior to the requests for insurance and requests for renewal and the Simec January 2020 Cover Increase, or prior to the signing and delivery of the documents referred to in paragraphs 10A.356, 10A.358, 10A.360 and10A.362 above, was Brereton told of any defaults or non-payments with respect to the Simec Risks or any concern about a future default, which matters would have been material to Brereton's decision to execute and deliver those documents.

The Simec No Default Misrepresentation were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.22A and 10A.26A above.

Representations were misleading

10A.370 The Simec Financing Arrangements Misrepresentations were false and/or misleading because ~~in relation to the representation set out in paragraph 10A.353 above~~:

a. having regard to the SCF ~~R~~representation at paragraph ~~10A.27~~10A.369A above, the concept of a 'straight SCF facility' was used by Greensill, and understood by Greg Brereton, as a form of short-term financing referable to genuine underlying invoices that evidence trade; and

b. while GCUK represented that the Simec Risk related to an SCF Facility with 'a tenor of 180 days' and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact~~,~~ :

i. the Simec Risk related to a financing facility with no maximum duration or, in the alternative, a duration longer than 180 days~~.~~; and

ii. Greensill did not intend that the financing facility be based on the underlying trade of goods or services by Simec, or alternatively did not maintain a continuing satisfaction that it was so based.

Particulars

Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, where he states that:

a. Lex Greensill would often say words to the effect of 'you don't have to worry about the documents' and 'the documents are irrelevant' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [32]);

b. in the first quarter of 2020, Sanjeev Gupta requested, and Lex Greensill provided, confirmation that the financing provided to his companies was subject to a 'three-year commitment', which meant that those facilities could not be terminated, nor could repayment be demanded, except on 36 months' notice (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [16]);

c. in January 2021, during a conference call, Lex Greensill confirmed to ThyssenKrupp AG (an acquisition target of GFG) and its advisors that all of the facilities provided by Greensill were 'in place for 3 years' (Third Witness Statement Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court [49]).

Zurich Insurance Company Limited Defence in CL-2023-000136 before the High Court of England and Wales at [25-26] and [66-70].

The nature of the financing provided to Simec involved:

a. Simec would submit invoices to GCUK which purported to be for the purchase of specified quantities of nickel briquettes, with payment terms described as 'Cash Against Documents', and with one of the following entities described as the 'seller':

i. Aar Tee Commodities (UK) Ltd; (eg, CSA.0001.0067.0495);
ii. AIC Commodities (Asia) Ltd (eg, AGB.0002.0002.1683);
iii. Avon International Pte Ltd (AGB.0002.0003.5244);
iv. Inter Globe Enterprises Ltd (eg, AGB.0003.0001.1759);
v. Metallics Trading Pte Ltd (AGB.0002.0003.5244);
vi. Pan Asia Commodities & Trading Pte Ltd (AGB.0002.0003.5244);

vii. Pan Pacific Trading Ltd (eg, AGB.0002.0002.1693);

viii. Paras Metallics Pte Ltd (AGB.0002.0003.5244);

ix. Secant Trading DMCC; (eg, AGB.0003.0001.1765);

x. Taurus Metallurgicals Limited (eg, AGB.0002.0002.2989); and

xi. Vision Commodities HK Ltd. (eg, AGB.0003.0001.1742);

~~Further particulars may be provided after completion of discovery by GCUK and GCPL.~~

b. shortly before the maturity date of the outstanding invoices in connection with the Simec Risk:

i. Simec would submit new invoices to replace the outstanding invoices that were due to mature (eg, CSA.0001.0067.0493, AGB.0003.0001.1762, AGB.0003.0001.1775, GCU.0010.0001.9183, GCU.0009.0008.7242, GCU.0004.0025.4495);

ii. Simec would not pay to GCUK the full amount of the outstanding invoices that were due to mature, nor would GCUK pay any amount to the purported suppliers named in the newly submitted invoices or alternatively pay an amount to Simec for the sole purpose of Simec paying the newly submitted invoices, but instead Simec would pay to GCUK the difference between the amount of the maturing invoices and the newly submitted invoices (AGB.0003.0001.1770 and CSA.0023.0002.0421 at page 10);

c. as a result of regular failures by Simec to pay the full amount of the outstanding invoices as and when they fell due, GCUK would 'top up' or extend further financial accommodation to Simec in a manner described internally at GCUK as a 'free overdraft' (GCU.0004.0024.6060, GCU.0004.0024.3239, GCU.0009.0008.4392).

The fact that the invoices uploaded by Simec, or alternatively, the funding provided to Simec did not relate to any physical trade of goods or transfer of title to goods may be inferred from the fact that:

a. entities within the GFG Alliance had been referred to the IMB due to issues concerning paperwork connected to shipments of various commodities, most commonly LME nickel (CSA.5000.0003.0870);

b. Aar Tee Commodities (UK) Ltd, which is the parent company of Taurus Metallurgicals Limited, had been referred to the IMB due to issues concerning bills of lading connected to shipments of nickel (CSA.5000.0003.0870);

c. a number of financial institutions had ceased to provide funding to the commodities trading business of the GFG Alliance due to concerns about the paperwork provided by entities within the GFG Alliance: J Farchy, M Burton and G Finch, As Sanjeev Gupta Rose From Trader to Tycoon, Several Banks Backed Away (16 April 2021), Bloomberg, https://www.bloomberg.com/news/articles/2021-04-16/as-sanjeev-gupta-liberty-house-rose-from-trader-to-tycoon-banks-backed-away (accessed on 25 October 2024) and D Griffin and J Farchy, A Credit Suisse Unit Blacklisted Gupta as Another Bankrolled Him (28 May 2021), Bloomberg, https://www.bloomberg.com/news/articles/2021-05-28/a-credit-suisse-unit-blacklisted-gupta-as-another-bankrolled-him (accessed on 25 October 2024).

GCUK's knowledge that the invoices uploaded by Simec, or alternatively, the funding provided to Simec, did not relate to any physical trade of goods or transfer of title to goods, or alternatively that it was not intended by GCUK that the invoices uploaded by Simec and accepted by GCUK relate to the physical trade of goods or transfer of title to goods, may be inferred from:

a. Credit Suisse Group AG had informed GCUK about concerns with entities within the GFG Alliance, including Simec, and in response, GCUK obtained from the IMB all information held by the IMB concerning entities within the GFG Alliance: Memo prepared by GCUK, with title 'Liberty Group: Commodity Trading and Shipping Practices', dated 6 August 2018 (CSA.5000.0001.1644);

b. the fact that GCUK would request Simec to upload new invoices shortly before the maturity date of outstanding invoices (AGB.0003.0001.1775) or alternatively Simec would describe the upload of invoices as replacing an invoice that was due to mature (CSA.0001.0067.0493, AGB.0003.0001.1762, GCU.0010.0001.9183, GCU.0009.0008.7242, GCU.0004.0025.4495);

c. the fact that GCUK did not consider that it was necessary to provide Zurich with supporting documents, such as bills of lading, with respect to invoices in connection with the Simec Risk when requested to do so (AGB.0002.0002.1682);

d. the fact that Simec would, in some instances, fail to pay maturities it owed GCUK using its own funds, and that GCUK would cover Simec's payment obligations from its own cash resources or by directing funds to be drawn down from other supply chain finance facilities and retained by GCUK to enable GCUK to meet maturities owed by GCUK to its investors referrable

to the Simec debts (GCU.0005.0002.0321; GCU.0010.0008.1919; GCU.0004.0025.7616);

e. the email from Lex Greensill to Brett Downes, with the subject 'RE: Simec', dated 8 April 2019, in which Lex Greensill states: 'Are you OK for me to bind this with BCC for SIMEC SCF? We would only use this insurance capacity to cover the Nexus run-off and the next insurance run off at the end of the month. This will also enable us to move the SIMEC we have on our balance sheet' (GCU.0005.0008.7460);

f. the fact that GCUK would, in some instances, allow for funds to be drawn down by Simec without the provision of invoices (e.g. GCU.0004.0001.0091);

g. the fact that GCUK was aware that Simec, in some instances, requested draw down amounts prior to providing an invoice (e.g GCU.0009.0001.6417; GCU.0004.0018.7960).

GCUK's practice of 'topping up' the debts the subject of the Simec reinvoicing facility, without Simec in fact paying amounts to GCUK, is evident from the documents identified immediately above in the particulars to this paragraph 10A.370 and is further pleaded at Section C.4.b of Annexure B to this defence.

10A.371 The Simec Customer Endorsement 2(ii) Misrepresentations referred to in paragraph 10A.367 above were false and/or misleading because:

a. while GCUK represented that the amendments given effect to by Endorsement 2(ii) would not alter the maximum liability underwritten by BCC with respect to the Simec Risk because the Insured Percentage was 42.63% of the Aggregate Customer Limit ~~of USD95 million under the 2019 90/10 Master Policy~~, it was neither the intention nor the understanding of Greensill that the effect of Customer Endorsement 2(ii) would be not to alter the maximum liability underwritten by the Insurer with respect to the Simec Risk;

Particulars

The fact that Greensill understood and intended that the Insurer's maximum liability would be increased is to be inferred from:

a. The email from Sophie Dyke to Edward Smith and others, with the subject 'RE: Simec Group', dated 20 January 2020 (MAR.0002.0001.2640), which states 'We would need the Zurich limit

in place before the end of Jan. We have assets which are maturing before the end of the month and Lex would like to extend the cover for a further 6 months to fund again';

b. The email from Luc Mathys of Credit Suisse to Lex Greensill, with the subject 'FW: Missing Insurance', dated 3 October 2019, which states that unless insurance coverage covered the full position of the Simec notes within the fund portfolio then 'Greensill would need to buy the position out of the Virtuoso portfolio' (CSA.5000.0003.3372);

c. The email from Angus Ward of Marsh to Credit Suisse, with the subject 'Greensill – Loss Payee Limit Tracker 31/01/2020', dated 31 January 2020, which stated 'Please see updated Loss Payee limit tracker attached – Simec has been updated', and attached an Excel spreadsheet which described the limit for 'Simec Group Ltd' under the "BCC Standalone Policy TB-03690' as '67,685,890.30' (AGB.0002.0001.5142, AGB.0002.0001.5143).

Further particulars may be provided following completion of discovery by GCUK ~~and GCPL.~~

b. while GCUK represented that the Simec Risk was subject to insurance cover from another existing insurance provider, in fact, the policy previously held with Zurich (being the other insurance provider) had expired on 1 September 2019;

Particulars

Email from Sophie Dyke to Edward Smith and others, with the subject 'Simec Group', dated 20 January 2020 (MAR.0002.0001.2639), which was later emailed to Lex Greensill on 21 January 2020 (GCU.0005.0021.8323).

c. while GCUK represented that its purpose in requesting an increase to the Aggregate Customer Limit was to allow Greensill to renew cover with another existing insurance provider, in fact, the true purpose was to enable Greensill to fund the Simec assets due to mature at or after the end of January 2020~~.~~ as the result of an agreement in or around July 2019 between Simec and GCUK to roll the entirety of Simec's outstanding maturities on a date before 30 August 2019.

Particulars

Email from Sophie Dyke to Edward Smith and others, with the subject 'RE: Simec Group', dated 20 January 2020 (MAR.0002.0001.2640).

Email from Valerie Kirkaldy to Lex Greensill with the subject line "SIMEC Maturities" attaching a document entitled "SIMEC Repurchase plan" (GCU.0005.0013.7166).

Email from Lex Greensill to Valerie Kirkaldy dated 23 July 2019 with the subject line "SIMEC Maturities" (GCU.0005.0013.7299).

Email from Henry Middleditch copying Lex Greensill with the subject line "SIMEC Repurchase Plan" (GCU.0004.0028.0322).

Simec's failure to pay the debts in the amount of USD 21,750,852 on 30 January 2020, and GCUK's payment of moneys into the relevant collection account in order to fund the maturity of the investor notes associated with those debts, is pleaded in Annexure B to this defence at Section C.4.b and Schedule SIM-1.

10A.371A. The Simec No Default Misrepresentation was false and/or misleading because:

a. By at least October 2018, and variously thereafter, GCUK was funding maturities or "topping up" the facility and/or rolling those maturities.

Particulars

Email from Chris Bates to Jason Austin and Al Eadie dated 17 October 2018 with the subject line "Top up authorisation?" (GCU.0009.0005.5444).

Email from Chris Lockhart to Valerie Kirkaldy and others dated 11 December 2018 with the subject line "RE: SIMEC Trade" (GCU.0005.0003.5716).

Email from Joanne Bowley to Lex Greensill and others dated 11 December 2018 with the subject line "EOD Balances" (GCU.0005.0003.5746).

GCUK's practice of 'topping up' the debts the subject of the Simec reinvoicing facility, without Simec in fact paying amounts to GCUK, is further pleaded at Section C.4.b of Annexure B to this defence.

b. By at least April 2017 and variously thereafter, it was known within Greensill that Simec was regularly failing to make payments to GCUK as and when they fell due and therefore had not satisfied or was unable to satisfy the maturities owed by it; and

Particulars

Email from Sanjeev Gupta to Lex Greensill dated 8 April 2017 (GCU.0001.0009.4638) and later emails to which Lex Greensill was copied (GCU.0005.0003.5716,

GCU.0004.0023.6670; GCU.0004.0023.9813; GCU.0009.0017.1515; GCU.0004.0025.7615);

Simec's inclusion on the list of obligors who "often pay late or who [Greensill] usually have to top up" (GCU.0004.0024.6060 and attachment);

The BCC/TM Parties further refer to the particulars to paragraph 10A.370 of this Annexure A.

c. By no later than 27 January 2020, it was known within Greensill that Simec could not afford to make the payments due under the facility.

Particulars

Email recording discussion between Val Kirkaldy and Craig Pinnington dated 27 January 2020 (GCU.0010.0011.8226) which records the following conversation with respect to the Simec Risk:

Craig Pinnington: "I still don't have a party line response for the strategy of why we are looking to extend now when we previously were looking to run off."

Val Kirkaldy: "does Henry have any more info on this than we do?..."and also, is there a reason (apart from can't afford to pay us) for us not decreasing the facility?"

Craig Pinnington "that's the problem. I think the reason is exactly that they can't. I would consider a more floaty response, overall consistent aim to reduce re-invoicing and we have achieved that."

d. by reason of the above matters, there were no reasonable grounds to expect that future defaults would not occur.

Knowledge of falsity of representations

10A.372 Lex Greensill knew the matters set out in paragraphs 10A.370 above.

Particulars

The knowledge of Lex Greensill as to the ~~SCF Representation~~ Simec Financing Arrangements Misrepresentations is evident from the fact that Lex Greensill described the Simec Risk as 'Simec SCF cover' (BCC.0001.0002.2991) or 'SIMEC SCF reinvoicing cover' (BCC.0001.0002.4742) in emails with ~~Greg~~ Brereton.

The knowledge of Lex Greensill that the financing of Simec was a facility with no maximum duration or, in the alternative, a duration longer than 180 days is evident from:

a. the testimony of Sanjeev Gupta to the UK Insolvency and Companies Court as to the statements made to him by Lex Greensill: see the particulars to paragraph 10A.370 above;

b. The Credit Analysis pack for Simec dated 9 August 2017 (GCU.0007.0001.6169 GBA.0004.0028.3431, page 2), which identifies Lex Greensill as the Sponsor of the facility.

The knowledge of Lex Greensill is to be further inferred from the following matters:

a. Lex Greensill and GCUK would provide advice to GCUK's customers on the structure of the customer's debt facilities and overall capital structure (for example, GCU.0005.0007.0413, GCU.0005.0008.6570); and

b. Notwithstanding the fact that GCUK held itself out as a supply chain finance company, GCUK would regularly design debt facilities for its customers that were not linked to the genuine underlying trade of its customers (for example, GCU.0007.0002.4670; GCU.0009.0005.5676, GCU.0004.0015.9384).

The knowledge of Lex Greensill that Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facility would be based on the underlying trade of goods or services by Simec, and that Simec had not satisfied or was unable to satisfy the maturities owed by it, is evident from the fact that:

a. Lex Greensill suggested that GCUK 'pre-pay' the maturities owed by Simec to GCUK using its own funds or by directing that other supply chain finance facilities be drawn down and those amounts be retained by GCUK to satisfy maturities owed by Simec (GCU.0005.0002.0321);

b. Lex Greensill was made aware, at least by 8 April 2017, that Simec regularly failed to make payments to GCUK as and when they fell due and from time to time, GCUK would “top up” or pay the entirety of outstanding maturities owed by Simec(GCU.0005.0003.5716GCU.0004.0023.6670; GCU.0004.0023.9813; GCU.0009.0017.1515; GCU.0004.0025.7615; GCU.0001.0009.4638);

c. Lex Greensill was made aware, at least by 11 March 2019, that Simec regularly failed to make payments to GCUK as and when they fell due and that GCUK intended to implement a process to 'streamline the process for

topping up an Obligor, where the maturity payments have not been received' (GCU.0004.0024.6060);

d. Lex Greensill was made aware, at least by 4 April 2019, that Simec would submit new invoices to replace the outstanding invoices that were due to mature (GCU.0004.0025.4494 and its attachment GCU.0004.0025.4495; GCU.0004.0025.4620).

The knowledge of Lex Greensill of the arrangements between GCUK and Simec is also to be inferred from the Third Witness Statement of Sanjeev Gupta in Case No. CR-2021-000622 before the UK Insolvency and Companies Court, in which Sanjeev Gupta describes:

a. a relationship with Lex Greensill 'built upon a degree of interdependence' [28];

b. that 'the GFG Alliance became a valuable client of GCUK, if not its most valuable client' [28];

c. that both Sanjeev Gupta and Lex Greensill 'effectively controlled our respective businesses so that it was not necessary for us to involve others in our discussions' [30]; and

that Sanjeev Gupta's relationship with Lex Greensill was one in which 'the essentials of our arrangements…were agreed verbally between Lex [Greensill] and [Sanjeev Gupta]' [31].

The knowledge of Lex Greensill is otherwise to be inferred from his direct involvement in dealings with Simec and in the placement of the Simec Risk.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.373 At all material times, ~~Lex Greensill knew that~~ Greensill Bank and Credit Suisse ~~would~~ required 100% indemnity of the Aggregate Customer Limit under the 2019 90/10 Parallel Policy ~~(TB-0390)~~ in order for either Greensill Bank or Credit Suisse to purchase notes related to the Simec Risk.

Particulars

Email from Luc Mathys of Credit Suisse to Lex Greensill, with the subject 'FW: Missing Insurance', dated 3 October 2019 (CSA.5000.0003.3372).

Email from Sophie Dyke to Edward Smith and others, with the subject 'RE: Simec Group', dated 20 January 2020 (MAR.0002.0001.2640), which states 'We would need the Zurich limit in place before the end of Jan. We have assets which are maturing before the end of the month and Lex would like to extend the cover for a further 6 months to fund again.'

10A.374 Lex Greensill knew the matters set out in paragraph 10A.371 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

a. Emails between Lex Greensill and Brett Downes regarding reinstatement of the expired cover (GCU.0005.0021.8323);

b. ~~a.~~ the email from Lex Greensill to ~~Greg~~ Brereton, with the subject 'SIMEC', dated 30 January 2020 (BCC.0001.0002.4742);

c. ~~b.~~ Lex Greensill had confirmed to ~~Greg~~ Brereton that the underwriter would always answer to the 'master policy' (BCC.0001.0002.0245);

d. ~~c. The~~the notes programme with respect to the Simec Risk was not amended in a manner to ensure that the insurer's maximum exposure under the 2019 90/10 Parallel Policy (TB-03690) was the same as the insurer's maximum exposure under the 2019 90/10 Master Policy;

e. ~~d.~~ the involvement of Lex Greensill in the company's dealings concerning the level of insurance cover in connection with Simec Risk, and from Lex Greensill's direct involvement in correspondence with BCC associated with the Simec Risk, including the following items: CSA.5000.0003.3372, AGB.0002.0001.6544 and AGB.0002.0002.0805; and

f. ~~e.~~ Lex Greensill's senior position within Greensill.

~~Further particulars may be provided after completion of discovery by GCUK and GCPL.~~

10A.375 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.370 to 10A.37110A.373 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, ~~10A.26~~10A.26A0 and 10A.26B above.

10A.376 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.370 to 10A.371 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and ~~10A.22~~10A.22B above.

10A.376A Further or in the alternative to paragraph 10A.372, Sophie Dyke (Insurance Analyst) of GCUK knew the matters set out in paragraph 10A.371A

Particulars

The knowledge of Sophie Dyke is to be inferred from the following:

Email from Rajeev Gandhi to Brett Downes copied to Sophie Dyke and others with the subject "RE: Simec and Liberty payments Not Received" dated 25 April 2017 (GCU.0001.0009.8320);

Email from Sophie Dyke to Chris Lockhart with the subject "RE: Buy Offers Overdue Status_2017-08-16-10-30-14" dated 16 August 2017 (GCU.0013.0001.5227);

Email from Sophie Dyke to Brett Downes with the subject "Re: Simec Group Outstanding" dated 22 August 2017 (GCU.0009.0001.9680);

Email from Ludwig Sels to Sophie Dyke with the subject "Fwd: Simec" dated 9 April 2018 (GCU.0009.0003.1237);

Email from Sophie Dyke to Chris Lockhart with the subject "RE: SIMEC trade" dated 18 June 2018 (GCU.0004.0013.7553).

10A.376B The knowledge of Sophie Dyke of the matters set out in paragraph 10A.371A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

10A.376C The knowledge of Sophie Dyke of the matters set out in paragraph 10A.371A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality of representations

10A.377 Each of the matters referred to in paragraphs 10A.370 to 10A.371 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Simec Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(b) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(c) The matters misrepresented or not disclosed bore directly on the risk of Simec being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Simec being unable to repay the amounts advanced to it and thus upon the Simec Risk.~~

10A.377A Further or in the alternative to paragraph 10A.377 above, each (alternatively, one or more) of the matters referred to in paragraphs 10A.370 to 10A.371 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Simec Risk.

10A.378 The knowledge of Lex Greensill of the matters set out in paragraph 10A.377 is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A0 and ~~10A.26~~10A.26B above.

10A.379 The knowledge of Lex Greensill of the matters set out in paragraph 10A.377 is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and ~~10A.22~~10A.22B above.

10A.379A The matters referred to in paragraph 10A.371A above were matters:

a. which Sophie Dyke knew were material to the decision whether to extend or renew insurance cover in respect of the Simec Risk; or

b. alternatively to subparagraph (a) in respect of which Sophie Dyke was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Sophie Dyke's knowledge is to be inferred as she was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly upon the Simec Risk.

10A.379B The knowledge of Sophie Dyke of the matters set out in paragraph 10A.379A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above

10A.379C The knowledge of Sophie Dyke of the matters set out in paragraph 10A.379A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and 10A.22B above

Misrepresentations were fraudulent

10A.380 In the premises of paragraphs 10A.372 to 10A.379C:

a. Greensill misrepresented the Simec Risk;

b. the misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend or renew insurance cover in respect of the Simec Risk.

10A.381 If Greensill had not made the Simec Financing Arrangements Misrepresentations, ~~and/or~~ the Simec Customer Endorsement 2(ii) Misrepresentations and/or the Simec No Default Misrepresentations, insurance cover would not have been extended or renewed in respect of the Simec Risk, including in respect of the Simec Endorsements at all or, in the alternative, on the same terms in which it purportedly was written.

10A.382 By reason of the matters pleaded in paragraphs 10A.380 and 10A.381 above, IAL is entitled to avoid the Simec Endorsements.

Innocent misrepresentation

10A.383 In the alternative to the matters pleaded in 10A.380 to 10A.382, by reason of the matters pleaded in 10A.371A370, 10A.371, 10A.371A and 10A.381 above, IAL is entitled to reduce its liability under the Simec Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the Simec Financing Arrangements Misrepresentation, the Simec Customer ~~Limit Misrepresentation~~ Endorsement 2(ii) Misrepresentations and the Simec No Default Misrepresentations had not occurred).

D8.3 Simec Non-Disclosures

Knowledge of underlying matters

10A.384 At the time of requesting insurance cover for the Simec Risk, and at the time the cover was purportedly renewed under the 2019 90/10 Parallel Policy, Lex Greensill knew:

a. the Simec facility was related to a financing facility with no maximum duration or, in the alternative, a duration longer than 180 days;

Particulars

The BCC/TM Parties repeat the particulars at paragraph 10A.370 above.

b. Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facility be based on the underlying trade of goods or services by Simec;

Particulars

The BCC/TM Parties repeat the particulars at paragraph 10A.370 above.

c. the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph 10A.33G

d. the Liberty Group Fraud Non-Disclosure, which implicated Liberty House Group (an affiliate of Simec as part of the GFG Alliance) and Sanjeev Gupta (who was personal Guarantor of the Simec ~~Facility risk~~Risk and often communicated with Lex Greensill directly in relation to the Simec Risk) in prior dishonest and fraudulent conduct.

Particulars

Personal Guarantee of Sanjeev Gupta, dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

The knowledge of Lex Greensill is evident from the fact that the Diligence Paper was sent to Lex Greensill on 11 December 2018 (CSA.5000.0002.1866 and CSA.5000.0002.1867).

10A.384A At the time of requesting the Simec January 2020 Cover Increase, Lex Greensill was also aware that:

a. In around July 2019, he had approved a plan agreed between Simec and GCUK referred to internally within GCUK as the "Simec Repurchase plan" whereby Simec provided invoices to:

i. fund GCUK's repurchase of SIMEC notes held by investors; and

ii. replace all upcoming Simec maturities with new trades for a tenor of 180 days.

b. The maturities extended by reason of the "SIMEC Repurchase Plan" referred to in subparagraph a. above would become due and payable from around 30 January 2020 onwards; and

c. Cover was required to extend the above maturities for a further 180 days.

Particulars

The knowledge of Lex Greensill is evident from the following:

a. Email from Valerie Kirkaldy to Lex Greensill with the subject line "SIMEC Maturities" attaching a document entitled "SIMEC Repurchase plan" (GCU.0005.0013.7166)

b. Email from Lex Greensill to Valerie Kirkaldy dated 23 July 2019 with the subject line "SIMEC Maturities" (GCU.0005.0013.7299)

c. Email from Henry Middleditch copying Lex Greensill with the subject line "SIMEC Repurchase Plan" (GCU.0004.0028.0322)

10A.384B Further, Lex Greensill was aware that at the time of requesting insurance cover for the Simec Risk, and at the time the cover was purportedly renewed under the 2019 90/10 Parallel Policy and at the time of the Simec January 2020 Cover Increase:

a. there had been defaults or non-payments under the Simec facility; and

b. GCUK anticipated that there would be future defaults under the Simec facility.

Particulars

The particulars to 10A.370 and 10A.371A are repeated.

Further, the knowledge of Lex Greensill is evident from the following:

a. Email from Brett Downes to Lex Greensill dated 20 February 2019 with the subject line "Liberty AR" (GCU.0005.0006.5317)

b. Email from Valerie Kirkaldy to Lex Greensill dated 20 February 2019 with the subject line "SIMEC late payment on maturities" (GCU.0005.0006.8305)

c. Email from Al Eadie to Lex Greensill, Brett Downes and others dated 7 March 2019 with the subject line "SIMEC payment" (GCU.0004.0024.4917)

d. Email from Brett Downes to Lex Greensill dated 19 January 2020 with the subject line "Re: Simec: (GCU.0005.0021.7273)

10A.385 The knowledge of Lex Greensill of the matters in paragraphs 10A.384, 10A.384A and 10A.384B above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A0 and ~~10A.26~~10A.26B above.

10A.386 The knowledge of Lex Greensill of the matters in paragraphs 10A.384, 10A.384A and 10A.384B above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refers to paragraphs 10A.20, 10A.22A and ~~10A.22~~10A.22B above.

10A.386A Further or in the alternative to paragraph 10A.384 and 10A.384A above, Danyon Lloyd knew the matters set out in paragraphs 10A.384 and 10A.384A above.

Particulars

a. the involvement and knowledge of Danyon Lloyd in the company's dealings with Simec, including as evidenced by the following documents: GCU.0004.0011.0156; GBA.0004.0008.6290; GCU.0005.0003.5746; GBA.0004.0024.3200; GCU.0004.0023.8544.

b. Danyon Lloyd's position within GCUK's credit committee.

Knowledge of materiality

10A.387 The matters referred to in paragraphs 10A.384, 10A.384A and 10A.384B above ~~was a~~were matters:

a. which Lex Greensill knew was material to the decision whether to extend or renew insurance cover in respect of the Simec Risk; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(b) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(c) The matters misrepresented or not disclosed bore directly on the risk of Simec being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Simec being unable to repay the amounts advanced to it and thus upon the Simec Risk.~~

10A.388 Further, or in the alternative to paragraph 10A.387 above, each of the matters referred to in paragraphs 10A.384, 10A.384A and 10A.384B above was a matter which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Simec Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.387 above.

10A.389 The knowledge of Lex Greensill of the matters set out in paragraphs 10A.387 and 10A.388 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 010A.25, 10A.26A and ~~10A.26~~10A26B above.

10A.390 The knowledge of Lex Greensill of the matters set out in paragraphs ~~10A.387~~10A.387 and ~~10A.388~~10A.388 is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and ~~10A.22~~10A.22B above.

Breach of duty of disclosure

10A.391 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 10A.384, 10A.384A and 10A.384B above before the cover was placed or renewed for the Simec Risk.

10A.392 Greensill's failure to disclose the matters referred to in paragraphs 10A.384, 10A.384A and 10A.384B above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 10A.385 and 10A.390 above.

Fraudulent non-disclosure

10A.393 By reason of the matters pleaded in paragraph ~~10A.387~~10A.387 above, Greensill's failure to disclose the matters referred to in paragraphs 10A.384, 10A.384A and 10A.384B above was fraudulent.

10A.394 The cover for the Simec Risk would not have been issued if the matters referred to in paragraphs 10A.384, 10A.384A and 10A.384B above had been disclosed.

10A.395 In the alternative to the allegation in paragraph 10A.394 above, the cover for the Simec Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 10A.384, 10A.384A and 10A.384B had been disclosed.

10A.396 By reason of the matters pleaded in paragraphs 10A.393 to 10A.395 above, IAL is entitled to avoid the Relevant Simec Endorsements.

Innocent non-disclosure

10A.397 In the alternative to the matters pleaded in 10A.393 to 10A.396 above, and by reason of the matters pleaded in paragraphs 10A.391, 10A.392, 10A.394 and 10A.395 above, IAL is entitled to reduce its liability under the Simec Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D9 KERRY IRELAND

D9.1 Policy and Endorsements

10A.398 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Kerry Ireland Investments Limited (**Kerry Ireland**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 138 dated 25 June 2020 (**Kerry Ireland Endorsement**).

Particulars

~~Second~~Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated ~~21 August 2024~~24 December 2025 at paragraph 135.

10A.399 Kerry Ireland:

a. between 19 December 2019 and 20 December 2021, held 100% of the issued shares in M.I.S. Motorsport Limited (formerly named Kerry Leeds Investments Limited) (**Kerry Leeds**);

b. at all material times ~~for the purposes of the Kerry Ireland Risks~~ had Dermot Andrew Hanafin as its sole shareholder; and

c. between 13 November 2019 and 5 August 2020, had Dermot Andrew Hanafin as its sole director.

10A.400 Kerry Leeds:

a. between 7 January 2020 and 20 December 2021, had Dermot Andrew Hanafin as its director; and

b. between about 27 October 2017 and 19 December 2019, had Dermot Andrew Hanafin as its sole shareholder.

10A.401 Dermot Andrew Hanafin is a relative of Sean Hanafin, who at all material times ~~for the purposes of the Kerry Ireland Risks~~ was a director of GCUK and involved in the funding GCUK provided to Kerry Ireland and/or Kerry Leeds.

Particulars

In support of the fact that Sean Hanafin was involved in GCUK's funding of Kerry Leeds and/or Kerry Ireland, the BCC/TM Parties presently rely on the following documents:

a. email from Dermot Andrew Hanafin to Sean Hanafin dated 6 November 2019 (GCU.0012.0005.0329);

b. email from Dermot Andrew Hanafin to Sean Hanafin dated 6 December 2019 (GCU.0009.0012.4896);

c. email from Sean Hanafin to Dermot Andrew Hanafin dated 23 December 2019 enquiring about 'Kerry Leeds Outstanding Items for Fundings' (GCU.0009.0012.7273);

d. email exchange between Dermot Andrew Hanafin and Sean Hanafin dated 30 December 2019 (GCU.0013.0007.2863);

e. email from Dermot Andrew Hanafin to Sean Hanafin dated 11 February 2020 (GCU.0012.0005.3377) where Dermot states: 'All the guarantees need to be on Kerry Ireland Investments Ltd – presume you can agree and smooth over with Fortune & Lex?';

f. email exchange between Sean Hanafin, Stewart Cape and Dermot Andrew Hanafin between 24 and 25 February 2020 (GCU.0009.0013.6876);

g. email from Dermot Andrew Hanafin to Sean Hanafin dated 2 March 2020 (GCU.0009.0013.8498) requesting he assist to 'speed [Credit Committee approval] up with Andrew?';

h. email from Dermot Andrew Hanafin to Sean Hanafin dated 7 April 2020 (GCU.0010.0012.8097).

Further particulars maybe provided after completion of discovery by GCUK.

D9.2 Kerry Ireland Misrepresentations

10A.402 In or around January 2020, GCUK requested that Marsh arrange insurance cover for financing provided by GCUK to Kerry Leeds and/or Kerry Ireland (**Kerry Ireland Risk**).

Particulars

Email from Craig Pinnington (Senior Credit Analyst) of GCUK to Edward Smith of Marsh and Angus Ward of Marsh, copying Arslan Gill (Insurance Analyst) and Sophie Dyke (Insurance Analyst) of GCUK, dated 20 January 2020 (MAR.0003.0002.8485) and attaching:

a. document titled 'Kerry Leeds Insurance Overview' (MAR.0003.0002.8486); and

b. document titled 'Kerry Leeds Investments Overview' (MAR.0003.0002.8487).

Email from Craig Pinnington to Edward Smith and Angus Ward, copying Arslan Gill and Sophie Dyke, dated 30 January 2020 (MAR.0003.0002.8672).

10A.403 On or around 5 May 2020, GCUK sent an email to Marsh providing insurance disclosure documents in respect of the facility programmes offered by GCUK to its customers, and instructed Marsh to provide those documents to the insurers.

Particulars

Email from John Whelan (Deputy General Counsel) of GCUK to Edward Smith, copying Angus Ward and Craig Pinnington, dated 4 May 2020 (CSA.0001.0007.3402) attaching (among other documents):

a. document titled 'Greensill insurance disclose pack – May 2020 – clean' (CSA.0001.0007.3405); and

b. a document titled 'Lagoon Farm (Hoffman) - Product Annex - Supplier IPU; Supplier IPU Origination Model' (CSA.0001.0007.3420).

10A.404 On or around 12 May 2020, Marsh sent an email to Brereton providing the GCUK disclosure documents referred to in paragraph 10A.403 above in respect of the general facility programmes offered by GCUK to its customers.

Particulars

Email from Angus Ward to Greg Brereton, copying Ewan Berkemeier of Marsh, Julian Macey-Dare of Marsh and Edward Smith, dated 12 May 2020 (BCC.0001.0001.6688), attaching (among other documents):

a. a document titled 'Greensill insurance disclose pack – May 2020 – clean' (BCC.0001.0001.6707); and

b. a document titled 'Lagoon Farm (Hoffman) - Product Annex - Supplier IPU; Supplier IPU Origination Model' (BCC.0001.0001.6704).

10A.405 On or around 28 May 2020, GCUK (through its broker, Marsh) requested that BCC provide insurance cover with respect to the Kerry Ireland Risk with an insurance limit of USD2.9 million. The relevant obligor was expressed to be 'Kerry Leeds Investment Limited'.

Particulars

Email from Craig Pinnington to Edward Smith of Marsh and Greg Brereton, copying Lex Greensill, Andrew Kuyk (Chief Credit Officer) of GCUK, Mark Kavanagh (Head of Product Risk) of GCUK and Michael Gilhuely (Managing Director) of GCUK, dated 28

May 2020 (CSA.0001.0006.8696), attaching a document titled 'HIF Shortfall obligors 28-05-2020' (CSA.0001.0006.8699).

10A.406 In the premises of 10A.403 and 10A.405 above, in making the request for cover with respect to the Kerry Ireland Risk, GCUK (via its broker, Marsh) represented to ~~Greg~~ Brereton, among other matters, that:

a. the Kerry Leeds facility was a 'Seller Centric Accounts Receivables Finance' product with a 'Supplier Irrevocable Payment Undertaking' (**Supplier IPU**) subtype (**Kerry Ireland Risk**);

Particulars

Document titled 'HIF Shortfall obligors 28-05-2020' (CSA.0001.0006.8699) attached to the email referred to in the particulars to paragraph 10A.405 above, which identifies (among other things) the 'Product Type' for the Kerry Leeds facility as *'Seller Centric Accounts Receivables Finance'* and the 'Sub Type' as *'SIPU'.*

b. Greensill's Supplier IPU financing product was a variation of its 'typical accounts receivable purchase programmes' and involved:

i. acquiring accounts receivable from one or more sellers, with one or many thousands of underlying account debtors;

ii. the seller (or an affiliate thereof) providing Greensill with an irrevocable payment undertaking (**IPU**) relating to the underlying accounts receivable, such that Greensill has its primary recourse to the party providing the IPU rather than the underlying account debtors;

iii. Greensill typically requesting that the insurer insure non-payment by the entity providing the IPU, namely the seller of the accounts receivable to Greensill; and

Particulars

<u>The BCC/TM Parties</u> repeat the particulars to paragraph 10A.406.a above.

Document titled 'Greensill insurance disclose pack – May 2020 – clean' (BCC.0001.0001.6707) page 2, under the heading 'Supplier IPU model'. This document was attached to the email referred to in the particulars to paragraph 10A.403 above.

c. the Kerry Ireland Risk, being a Supplier IPU product, involved accounts receivable financing, in respect of debts owed to Kerry Leeds (and/or Kerry Ireland) in respect of the supply of goods and/or services,

(the **Kerry Ireland Misrepresentations**).

Particulars

The BCC/TM Parties repeat the particulars to subparagraphs 10A.406a and 10A.406b above.

Document titled 'Lagoon Farm (Hoffman) - Product Annex - Supplier IPU; Supplier IPU Origination Model' (BCC.0001.0001.6704) attached to the email referred to in the particulars to paragraph 10A.403 above. This document provides a comprehensive explanation of a typical Supplier IPU programme, including on page 6 (emphasis added):

a. *'Simultaneously or close to the time of the submission by the Relevant Obligor of each Payment Obligation File to the Relevant Claims Seller or such Intermediary Party (as the case may be), the Relevant Claims Seller or an Intermediary Party or an affiliate thereof (as the case may be) will agree to purchase from the Relevant Obligor or an affiliate thereof ("Supplier"), pursuant to a receivables transfer agreement (a "Receivables Transfer Agreement"),* ***a corresponding portfolio of accounts receivable*** *(each an "Accounts Receivable" and together the "Relevant Portfolio")* ***owed by debtors*** *(each a "Debtor") in one or more jurisdictions (each a "Relevant Jurisdiction"), pursuant to certain contracts of the type (the "Contract Type") specified in the relevant Series Supplement (each a "Contract") pursuant to which the* ***Debtor has agreed to pay the consideration agreed for goods sold and/or services rendered under their relevant Contract****'*; and

b. 'Each Accounts Receivable acquired pursuant to the Receivables Transfer Agreement represents the part of the scheduled payment payable by a Debtor to the Supplier pursuant to the relevant Contract in consideration for the **goods sold and/or services rendered under the relevant Contract**.'

In addition to the above, the fact that the Kerry Ireland Risk was represented to be in respect of genuine accounts receivable, as opposed to future accounts receivable, can be inferred from the fact that future receivables are not referred to in the document titled 'Lagoon Farm (Hoffman) - Product Annex - Supplier IPU; Supplier IPU Origination Model' (BCC.0001.0001.6704).

10A.407 The Kerry Ireland Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.22A, 10A.22B, 10A.26A and 10A.26B above.

10A. 408 On around 17 June 2020, GCUK (via its broker Marsh) requested an increase to the proposed insurance limit for the Kerry Ireland Risk to USD3 million. The relevant obligor remained expressed to be 'Kerry Leeds'.

Particulars

Email from Edward Smith to Greg Brereton, copying Ewan Berkemeier, Angus Ward and Flavia Pritchard of Marsh, dated 17 June 2020 (MAR.0004.0003.7556), attaching a document titled 'HIF shortfall obligors 28-05-2020' (MAR.0004.0003.7557).

10A.409 On or around 18 June 2020, Greg Brereton responded to GCUK's request and purported to agree to extend cover with respect to the Kerry Ireland Risk, with Kerry Leeds as the relevant obligor and a limit of USD3 million.

Particulars

Emails between Greg Brereton and Edward Smith, copying Ewan Berkemeier, Angus Ward and Flavia Pritchard, dated 18 June 2020 (BCC.0001.0002.5501).

10A.410 On or around 19 June 2020, GCUK sent an email to Marsh providing further details relating to the request for insurance cover for the Kerry Ireland Risk, including noting that the relevant obligor was to be 'Kerry Ireland Investments'.

Particulars

Email from Craig Pinnington to Edward Smith, copying email address insurance@greensill.com, Angus Ward and Flavia Pritchard, dated 19 June 2020 (MAR.0003.0003.2745), attaching a document titled 'HIF SOL Insurance request details' (MAR.0003.0003.2747).

10A.411 On or around 19 June 2020, Marsh sent an email to GCUK attaching documents related to the request for cover for the Kerry Ireland Risk, and asked GCUK to confirm 'NKORL' ~~[no known or reported losses]~~ and an order to bind.

Particulars

Email from Edward Smith to Craig Pinnington, copying the email address insurance@greensill.com, Angus Ward and Flavia Pritchard, dated 19 June 2020 (MAR.0003.0003.2778) attaching:

a. two unsigned versions of Endorsement 138 (MAR.0003.0003.2781 and MAR.0003.0003.2782); and

b. document titled 'Deductible Portfolio Limits' (MAR.0003.0003.2780) which identifies the relevant obligor as 'Kerry Ireland Investments Limited'.

10A.412 On or around 19 June 2020, GCUK provided confirmation to Marsh that there were no known or reported losses and instructed Marsh to bind cover under the 2019 90/10 Parallel Policy for the Kerry Ireland Risk.

Particulars

Email from Craig Pinnington to Edward Smith, copying email address insurance@greensill.com, Angus Ward and Flavia Pritchard, dated 19 June 2020 (AGB.0002.0002.3998).

Email from Craig Pinnington to Edward Smith and Arslan Gill, copying email address insurance@greensill.com, Angus Ward and Flavia Pritchard, dated 19 June 2020 (MAR.0003.0003.2799).

10A.413 On or around 19 June 2020, a representative of Marsh sent an email to Greg Brereton which attached documents relating to the request for cover, including a spreadsheet titled 'Deductible Portfolio Limits' which identified the relevant obligor as 'Kerry Ireland Investments Limited' and not Kerry Leeds. In that email, Marsh stated *'Greensill have confirmed NKORL* [no known or reported losses] *and have given us the order to bind'*.

Particulars

Email from Edward Smith to ~~Greg~~ Brereton, copying Angus Ward and Flavia Pritchard, dated 19 June 2020 (MAR.0003.0003.2788) and attachments:

a. document titled 'Deductible Portfolio Limits' (MAR.0003.0003.2789), identifying Kerry Ireland as the relevant obligor (among others); and

b. two unsigned versions of Customer Endorsement No 138 (MAR.0003.0003.2790 and MAR.0003.0003.2791).

10A.414 On or around 25 June 2020, ~~Greg~~ Brereton provided GCUK (via its broker Marsh) with a signed copy of Customer Endorsement No 138 to the 2019 90/10 Parallel Policy, which allegedly purported, with effect from 12 June 2020, to endorse Kerry Ireland as a Customer under the 2019 90/10 Parallel Policy, with an Account Debtor Sublimit of USD3 million and a tenor of 1095 days.

Particulars

Customer Endorsement No 138 was executed by BCC on behalf of the Insurer on 25 June 2020 (CSA.0001.0006.8940).

Email from ~~Greg~~ Brereton to Edward Smith, copying Ewan Berkemeier, dated 25 June 2020 (MAR.0003.0003.2950), attaching Customer Endorsement No 138 to the 2019 90/10 Parallel Policy signed by BCC (MAR.0003.0003.2951).

Representations were misleading

10A.415 The Kerry Ireland Misrepresentations referred to in paragraph 10A.406 above were false and/or misleading because:

a. while GCUK represented that the Supplier IPU was to provide funding secured by accounts receivable, ~~the primary purpose of~~ in fact the Kerry Leeds (and/or Kerry Ireland) facility was ~~to fund the~~ a long term corporate loan primarily intended to fund Kerry Ireland's acquisition of the business known as 'MIS Motorsports';

Particulars

Emails exchanged between Craig Pinnington and Edward Smith, copying Arslan Gill and Sophie Dyke, on the following dates:

a. 20 January 2020 (MAR.0003.0002.8485), in which Craig Pinnington states 'it [the facility] is different to our typical business lines and is more of an acquisition funding strategy…'.;

b. ~~2 March~~3 February 2020 (MAR.0004.0003.1320), in which Edward Smith states 'This isn't really one we can assist with as essentially Kerry Leeds is an

insurer and we generally don't have other insurers willing to front for another'; and

c. 7 February 2020 (MMC_GCUK14_00001021), in which Craig Pinnington states 'Kerry Leeds –…it [the facility] is purely a corporate loan structure. On a separate note, if by shopping this name we can build contacts of insurers that are keen to consider these corporate loan like deals, that will help us for future deals as we expect more of this to come this year rather than purely trade receivables based transactions'.

Greensill document titled 'Weekly Obligor Reporting' dated 21 June 2021 (CSA.5000.0002.8526), which states on page 16 under the heading 'Overview' that *'the purpose of the facility was to facilitate the acquisition of MIS Motorsports, providing motorsport insurance to wealthy individuals'*.

~~Greensill document titled 'Credit Paper: Kerry Ireland Investments Limited £5mm RCF CBILS Facility' dated 5 October 2020 (GBA.0004.0026.3096), which states on page 1 *'KII strategy for 2020 which was the basis of our initial transaction funded in January 2020 for £14m was to…acquire a small European entity to enable passporting of services following Brexit'.*~~

Brian Carey, 'Double trouble in Greensill's Irish Loans car crash', The Times (online, 3 December 2023): https://www.thetimes.com/article/double-trouble-in-greensills-irish-loans-car-crash-cct8xdzhx (accessed on 25 October 2024).

Further particulars may be provided after completion of discovery by GCUK~~ and GCPL~~.

b. the Supplier IPU facility had been drawn down based solely on the 'projected revenue' of Kerry Leeds (**Loan Funds**), being purported future accounts receivables; and

Particulars

Administrators' statement of proposals for Kerry Ireland Investments Limited dated 16 February 2022 (CSA.0001.0001.5242), which states on page 5 that *'In December 2019, the funds of £10m were advanced to the Company* [Kerry Ireland] *under the PUD* [defined below]. *It is understood that further funds were expected to be advanced by GC(UK) to facilitate future acquisitions by the Company*'.

In support of the fact that the draw down and Supplier IPU was in respect of ~~'projected revenue'~~ purported future accounts receivables, the BCC/TM Parties presently rely on the following documents:

a. Offer Notice of Kerry Leeds to GCUK dated 6 January 2020 (BCC.0001.0006.6746), and accompanying Offer File dated 6 January 2020 (BCC.0001.0006.6782) which refers to 'projected revenue' of Kerry Ireland; ~~and~~

b. document titled 'Kerry Leeds Investment Overview' dated January 2020 (MAR.0003.0002.8487), which states on page 5 that 'The future receivables are the Kerry Leeds receipts which are in the form [of] net commission from insurance underwriters for the brokerage Kerry Leeds originate and place'~~.~~;

c. email from Tim Armstrong (GCUK) to GCUK personnel including Andrew Kuyk and Craig Pinnington dated 14 November 2019 (GCU.0012.0005.0591), which states: 'My view on how we structure this is that it should be a Future Receivable deal with the future receivables generated by an agreed list / portfolio of existing customers. The performance of the receivables is then underwritten via an IPU from MIS Insurance';

d. email from Craig Pinnington (GCUK) to Fortune Gweru (GCUK), Tariq Akrouk (GCUK), Tim Armstrong (GCUK) and Ben Allmond (GCUK) dated 22 November 2019 (GCU.0009.0012.3094) and attached document titled 'Early Read Report M.I.S Motorsport Limited' dated 20 November 2019 (GCU.0001.0010.7713) which states on page 4 that: *'the facility will be a SIPU where Greensill will purchase the Future Receivables that MIS expects to generate, along with an IPU for that amount. It will also incorporate monthly cash paid rolls…the future receivables are the MIS receipts which are in the form net commission from insurance underwriters for the brokerage MIS originate and place';*

e. email from Liam Carden (GCUK) to Brett Downes (GCUK), Ludwig Sels (GCUK), Andrew Kuyk (GCUK) and others dated 6 January 2020 (GCU.0009.0012.8304) and attached document titled ‘Credit Application Report – Amendment Kerry Leeds Investments Limited’ dated 20 December 2019 (GCU.0009.0012.8306) which states on page 4 that: 'the facility will be a SIPU where Greensill will purchase the Future Receivables that Kerry Leeds expects to generate, along with an IPU for that amount. It will also incorporate monthly cash paid rolls…the future receivables are the Kerry Leeds receipts which are in the form net commission from insurance underwriters for the brokerage Kerry Leeds originate and place';

f. email from Ben Allmond (GCUK) to Dermot Andrew Hanafin dated 23 December 2019 which states 'we have prepared a draft offer file based on expense future premium payments for the next 3 years' (GCU.0013.0007.2741); and

g. email from Fortune Gweru to Wendy Burrton (GCUK), Susanne Lohneiss (GCUK), Andrew Kuyk (GCUK) and Helen Hubert (GCUK) dated 27 January 2021 (GCU.0013.0010.4978) stating 'the Kerry Ireland deal is structured as a future receivables deal with multiple IPUs'.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

c. the Loan Funds had been, or alternatively were intended to be, applied by Kerry Ireland for purposes other than GCUK providing funding secured by accounts receivable, including a payment of GBP7.5 million to Dermot Andrew Hanafin personally as consideration for Kerry Ireland acquiring ~~another~~ his ownership share in Kerry Leeds, which was the parent company ~~owned by Dermot Andrew Hanafin~~ of, 'MIS Motorsports'.

Particulars

The payment to Dermot Andrew Hanafin is demonstrated by:

a. The BCC/TM Parties repeat the particulars to paragraph 10A.401 above.

b. Administrators' statement of proposals for Kerry Ireland Investments Limited dated 16 February 2022 (CSA.0001.0001.5242) which states on page 5 'Of the funds initially loaned to the Company under the PUD, £7.5m is understood to have been used to purchase the share capital of MIS, a specialist motorsports insurance brokerage, from Dermot Hanafin on 19 December 2019';

c. Brian Carey, 'Double trouble in Greensill's Irish Loans car crash', The Times (online, 3 December 2023) https://www.thetimes.com/article/double-trouble-in-greensills-irish-loans-car-crash-cct8xdzhx (accessed on 25 October 2024);

d. Greensill document titled 'Kerry Leeds Investment Overview' dated January 2020 (MAR.0003.0002.8487), which states on page 7 'Full cash trap – where no company shall distribute excess funds after regular operating costs (other than an initial £7.5m from our financing proceeds which shall go to Dermot Hannafin [CEO of Kerry Leeds])'. This document was provided by Craig

Pinnington to Marsh on 20 January 2020, as particularised at paragraph 10A.402 above; and

e. 'Kerry Leeds / Kerry Ireland' presentation document (CSA.0001.0001.5266), which states 'In January 2020 £10m was borrowed by Kerry Leeds and later transferred to its parent company Kerry Ireland investments…£7.5m of the proceeds was used by Kerry Ireland to purchase MIS…A further £1.4m was used to settle deferred payments due from Dermot Hanafin to Lockton, from whom he purchased the business for £1.4m (and £1.4m deferred) in 2018 (so £2.8m total).;

f. document titled 'Early Read Report' dated 20 November 2019 (GCU.0001.0010.7713);

g. email from Craig Pinnington (GCUK) to Andrew Kuyk (GCUK), Myrjam Tshoeke (GCUK) and copied to the Greensill 'credit risk team' dated 4 December 2019 (GCU.0009.0012.4444), attaching a 'Credit Application Report' also dated 4 December 2019 (GCU.0009.0012.4445). The covering email stated: 'Please find attached paper to support request for a GBP10m SIPU facility, with 3 year tenor. This will be used to fund MIS Motorsport, a well-established insurance broker in the High Net Worth Individual space focussing on insuring track-based racing';

h. email from Mr Paul Johnson (Mills Reeve) to Ben Allmond (GCUK) and copied to Dermot Andrew Hanafin dated 10 December 2019 (GCU.0009.0012.5110), stating: 'We had always understood that Kerry Ireland would acquire Kerry Leeds (which has the MIS business and the receivables). This would happen prior to drawdown of the Greensil [sic] funding but the consideration for this would be paid once the funding had been drawn down. What has been suggested is that the shares in Kerry Leeds are sold for £7.5m and this amount is paid to Dermot from the Greensil [sic] funding…There are a number of reasons for structing [sic] the process in this way…Dermot will pay will pay 20% tax on the sale rather than be paid a dividend or other distribution which would incur a much higher tax rate…The documentation we have received is all pretty much acceptable…save for the fact that £7.5m of the amount drawn down will be paid personally to Dermot. Hopefully this is agreed from Greensil's [sic] perspective'. This email was forwarded by Dermot Andrew Hanafin to Sean Hanafin on the same date;

i. email from Fortune Gweru (GUCK) to Ben Allmond (GCUK) and others at GCUK dated 12 December 2019 (GCU.0010.0011.3121) stating: '*Am sending*

Dermot the tables below with the team on copy so we separate the sources and uses as they relate to the acquisition group from those of Dermot in his personal capacity'. This email was forwarded to Craig Pinnginton (GCUK) on 18 December 2019 (GCU.0009.0012.6566);

j. email from Bence Osvath (GCUK) to Craig Pinnington (GCUK), Andrew Kuyk (GCUK) and others dated 29 April 2020 (GCU.0005.0025.9750), attaching a document titled 'Credit Application Report' dated 23 April 2020 (GCU.0005.0025.9753), which states on page 27 under the heading "Sources and Uses" that: 'utilisation of cash proceeds by Dermot Hanafin from 100% sale of equity in Kerry Leeds to Kerry Ireland GBP 7, 500,000';

k. email exchange between Alexandra Hayes (GCUK) and Tariq Arouk (GCUK) between 25 and 26 February 2020 (GCU.0009.0013.7497) in which Ms Hayes queried: 'do we have any recourse to the £7.5mm that has gone to Dermot Hannafin? How is it going to get repaid if it is not linked directly to insurance proceeds coming in?';

l. email from David Fitzpatrick (GCUK) to Brett Downes (GCUK) and others dated 5 May 2020 (GCU.0009.0015.2704), attaching a document titled 'Credit Application Report' dated 29 April 2020 (GCU.0009.0015.2708), which similarly states on page 27 under the heading "Sources and Uses" that: 'utilisation of cash proceeds by Dermot Hanafin from 100% sale of equity in Kerry Leeds to Kerry Ireland GBP 7, 500,000'

m. email from Michel Meylacq (GCUK) to the GBAG Corporate Development team and others at GBAG dated 15 October 2020 (GCU.0009.0018.8290), attaching a document titled 'Credit Application Report' dated 13 October 2020 (GCU.0009.0018.8291), which indicates on page 9 under the heading 'Financial Analysis' 7,500,000.00 being paid in cash for share consideration;

Further particulars to be provided after completion of discovery by GCUK ~~and GCPL~~.

Knowledge of falsity of representations

10A.416 Craig Pinnington (Senior Credit Analyst of GCUK) knew of the matters set out in paragraph 10A.415 above.

Particulars

The BCC/TM Parties refer to particular ~~(~~c.~~)~~ at paragraph 10A.415~~c.~~ above.

The knowledge of Craig Pinnington is to be further inferred from:

a. his role as a Senior Credit Analyst of GCUK and Designated Senior Credit Analyst for Greensill, as demonstrated by:

i. document titled 'Greensill Group Approval Committees Terms of Reference, Version: 1 June 2020' (AGB.0002.0002.4372), which on page 17 (Appendix 4) identifies Craig Pinnington as a 'Designated Senior Credit Analyst' as of 1 July 2019;

ii. document titled 'Credit Policy' (GBA.0004.0024.1326), which refers to the role of Credit Analysts;

b. the particulars to paragraphs 10A.402, 10A.403, 10A.405 and 10A.410 to 10A.412 above, which refer to Craig Pinnington's involvement in the:

i. general disclosure of GCUK's facility programmes; and

ii. dealings with Kerry Ireland and/or Kerry Leeds, including the placement of insurance cover for the Kerry Ireland Risk.

Further particulars may be provided after completion of discovery by GCUK ~~and GCPL~~.

10A.417 The knowledge of Craig Pinnington of GCUK of the matters identified in paragraph 10A.416 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.418 The knowledge of Craig Pinnington of GCUK of the matters identified in paragraph 10A.416 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.418A. Brett Downes (Chief Risk Officer of GCUK) knew of the matters set out in paragraph 10A.415 above.

Particulars

The BCC/TM Parties refer to the particulars 10A.415 above.

The knowledge of Brett Downes is to be further inferred from:

a. his senior position as the Chief Risk Officer of GCUK for Greensill, as demonstrated by document titled 'Greensill Group Approval Committees Terms of Reference, Version: 1 June 2020' (AGB.0002.0002.4372), which on page 17 (Appendix 4) identifies Brett Downes as the Chief Risk Officer' as of 5 May 2015 until 26 May 2020; and

b. his involvement in the general disclosure of GCUK's facility programmes and specifically with correspondence associated with the Kerry Ireland Risk.

Further particulars may be provided after completion of discovery by GCUK.

10A.418B. The knowledge of Brett Downes of GCUK of the matters identified in paragraph 10A.418A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

10A.418C. The knowledge of Brett Downes of GCUK of the matters identified in paragraph 10A.418A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph 10A.22A and 10A.22B above.

Knowledge of the materiality of representations

10A.419 Each of the matters referred to in paragraph 10A.415 above was a matter:

a. which Craig Pinnington knew was material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk; or

b. alternatively to subparagraph a., in respect of which Craig Pinnington was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of his position as Senior Credit Analyst of GCUK and Designated Senior Credit Analyst of Greensill, and his

experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the nature of the Kerry Ireland Risk.

10A.419A Further, or in the alternative to paragraph 10A.419 above, each of the matters referred to in paragraph 10A.415 above was a matter which a reasonable person in the position of Craig Pinnington could be expected to know were material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk.

10A.420 The knowledge of Craig Pinnington of the matters set out in paragraphs 10A.419 and 10A.419A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.421 The knowledge of Craig Pinnington of the matters set out in paragraphs 10A.419 and 10A.419A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.421A. Each of the matters referred to in paragraph 10A.415 above was a matter:

a. which Brett Downes knew was material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk; or

b. alternatively to subparagraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Brett Downes' knowledge is to be inferred by virtue of his position as Chief Risk Officer and member of the Greensill Credit Committee and as the misrepresentations bore directly on the nature of the Kerry Ireland Risk.

10A.421B. Further, or in the alternative to paragraph 10A.421A above, each of the matters referred to in paragraph 10A.415 above was a matter which a reasonable person in the position of Brett Downes could be expected to know were material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk.

10A.421C. The knowledge of Brett Downes of the matters set out in paragraphs 10A.421A and 10A.421B above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.421D. The knowledge of Brett Downes of the matters set out in paragraphs 10A.421A and 10A.421B above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

10A.422 In the premises of paragraphs 10A.419~~, 10A.420 and 10A.421~~ to 10A.421D above:

a. Greensill misrepresented the risk presented by the Kerry Ireland Risk;

b. the misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk.

10A.423 If Greensill had not made the Kerry Ireland Misrepresentations, insurance cover would not have been issued in respect of the Kerry Ireland Risk at all or, in the alternative, on the same terms in which it purportedly was written.

10A.424 By reason of the matters pleaded in paragraphs 10A.422 to 10A.423 above, IAL is entitled to avoid the Kerry Ireland Endorsement.

Innocent misrepresentation

10A.425 In the alternative to the matters pleaded in paragraphs 10A.422 to 10A.424 above, by reason of the matters pleaded in paragraphs 10A.415 and 10A.423 above, IAL is entitled to reduce its liability under the Kerry Ireland Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the Kerry Ireland Misrepresentations had not occurred).

D9.3 Kerry Ireland Non-Disclosures

Knowledge of underlying matters

10A.426 At the time the insurance cover for the Kerry Ireland Risk was purportedly provided under the 2019 90/10 Parallel Policy, Craig Pinnington knew:

a. each of the matters set out in paragraph 10A.415 above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.415 above.

As to the knowledge of Craig Pinnington, the BCC/TM Parties repeat the particulars to paragraph 10A.416 above.

b. there were concerns about Kerry Ireland's and/or Kerry Leeds' ability to meet its repayment obligations under the facility, and to prevent a default:

i. Dermot Andrew Hanafin, on occasion, had to personally cover repayment obligations; and

ii. GCUK was required to use *'evergreen rolls'* to extend the repayment terms;

Particulars

Kerry Ireland was a non-trading ultimate parent company and therefore relied on the trading activities of its subsidiaries, including MIS Motorsport, to generate profits for the group.

By at least 2 April 2020, MIS Motorsport was effectively not trading and was facing financial difficulties. This is evidenced by or can otherwise be inferred from the following:

a. email exchange between GCUK personnel, Dermot Andrew Hanafin and others dated 2 to 7 April 2020 (GCU.0010.0012.8095) in which Mr Hanafin stated: *'…MIS Motorsport is effectively not trading because of the Covid19, and I am personally funding our obligations. Going forward it has been agreed with Fortune & I subject to approval that we will pay the interest only going forward and not the full receivable, to ease the facility going foward*'. Fortune Gweru (GCUK) responded stating: *'…I believe we may have a point of confusion which came about as I was speculating last week about how we address the rolls given you don't have any receivables at the moment.'*

b. email exchange between Fortune Gweru (GCUK), David Fitzpatrick (GCUK) and Tariq Akrouk (GCUK) dated 3 April 2020 (GCU.0012.0005.5806), in which Ms Gweru queried whether the facility could be changed to a "cashless" roll before Mr Fitzpatrick confirms that the facility is a "*cash roll*", which to change would require credit approval and structural operational changes to the product which is "*not a position they would generally support for a credit of this nature as the facility begins to look more like "core" debt and the structure is weakened*";

c. WhatsApp messages exchanged between Fortune Gweru (GCUK) and Andrew Kuyk (GCUK) which refer to Dermot Andrew Hanafin paying 'the last few interest bills out of his own cash' (GCU.0019.0001.0021) (page 110);

d. as to the knowledge of Craig Pinnington, the BCC/TM Parties repeat the particulars to paragraph 10A.416 above.

The fact that GCUK was required to use 'evergreen rolls' to extend the facility repayment terms to avoid default is evidenced by, or can otherwise be inferred from the following:

e. Email exchange between Brett Downes (GCUK), Andrew Kuyk (GCUK) and Craig Pinnington (GCUK) dated 22 May 2020 (GCU.0013.0008.3944), in which Mr Pinnington states: '*I don't see that we will be able to get insurance on these unless we take a significant deductible…Kerry Leeds is also a deal which while not technically committed does rely on evergreen rolls and a stop in those would potentially cause the default of the facility'*. Mr Downes responds: *'We cannot seek insurance for any name that is breaching covenants or is a poorly structured credit…Greg* [Brereton] *is not the answer here*';

f. email from Craig Pinnington (GCUK) to Lex Greensill and Brett Downes (GCUK) dated 22 May 2020, seeking their approval regarding the facility, which similarly describes it as '*a deal which while not technically committed does rely on evergreen rolls*' (GCU.0005.0027.1966); and/or

GCUK's practice of rolling the debts the subject of the Kerry Ireland facility, without Kerry Ireland's and/or Kerry Leeds' in fact repaying any amount to GCUK, is evident from the documents identified immediately above in the particulars to this subparagraph 10A.426(b)(ii) and is further pleaded at Section F.3 of Annexure B to this defence.

c. further to the performance issues referred to in (b) above, the Kerry Ireland Risk was not supported by any security over tangible assets of Kerry Ireland and/or Kerry Leeds, but merely purported accounts receivables that were not being generated at the time;

Particulars

Email from David Fitzpatrick (Vice President of GCUK) to Andrew Kuyk (GCUK), and Craig Pinnington (GCUK) dated 1 April 2020 (GCU.0009.0014.4649) stating: 'The security in Kerry Leeds that is being released was not over any tangible assets (as insurance brokers rarely have any) so essentially just the receivables

and these are protected by having the security in Kerry Ireland along with potentially a cash sweep'.

10A.427 The knowledge of Craig Pinnington of the matters set out in paragraph 10A.426 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.428 The knowledge of Craig Pinnington of the matters set out in paragraph 10A.426 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.428A. Further or in the alternative to paragraph 10A.426 above, at the time the insurance cover was purportedly provided for the Kerry Ireland Risk under the 2019 90/10 Parallel Policy, Brett Downes of GCUK knew each of the matters set out in paragraph 10A.426 above.

Particulars

The knowledge of Brett Downes is also to be inferred from:

a. his direct involvement with the Kerry Ireland Risk as evidenced by the correspondence and documents particularised throughout paragraphs 10A.415 and 10A.426 above; and

b. Brett Downes' senior position within GCUK as Chief Risk Officer and member of the Greensill Credit Committee.

Further particulars may be provided after completion of discovery by GCUK.

10A.428B. The knowledge of Brett Downes identified in paragraph 10A.426 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above..

10A.428C. The knowledge of Brett Downes identified in paragraph 10A.426 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph 10A.22A and 10A.22B above.

Knowledge of materiality

10A.429 Each of the matters referred to in paragraph 10A.426 above was a matter:

a. which Craig Pinnington knew was material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk; or

b. alternatively to subparagraph a., in respect of which Craig Pinnington was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of his position as Senior Credit Analyst of GCUK and Designated Senior Credit Analyst of Greensill, and experience in placing insurance on behalf of Greensill and as the non-disclosures bore directly on the nature of the Kerry Ireland Risk.

10A.430 Further or in the alternative to paragraph 10A.429 above, each of the matters referred to in paragraph 10A.426 above was a matter which a reasonable person in the position of Craig Pinnington could be expected to know was material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.429 above.

10A.431 The knowledge of Craig Pinnington of the matters set out in paragraphs 10A.429 and 10A.430 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.432 The knowledge of Craig Pinnington of the matters set out in paragraphs 10A.429 and 10A.430 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.432A. Further and in the alternative to paragraph 10A.429 above, each of the matters referred to in paragraph 10A.426 above were matters:

a. which Brett Downes (Chief Risk Officer) of GCUK knew were material to the decision whether to extend insurance cover in respect of the Kerry Ireland Risk; or

b. alternatively to subparagraph a., in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes' knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the non-disclosures/misrepresentations bore directly on the risk of Kerry Ireland being unable to repay the amounts advanced to it and thus upon the nature of the Kerry Ireland Risk.

10A.432B. The knowledge of Brett Downes of the matters set out in 10A.432A above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

10A.432C. The knowledge of Brett Downes of the matters set out in 10A.432A above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph 10A.22A and 10A.22B above.

Breach of duty of disclosure

10A.433 Greensill did not disclose to Greg Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 10A.426 above before the cover was placed for the Kerry Ireland Risk.

10A.434 Greensill's failure to disclose the matters referred to in paragraph 10A.426 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 10A.429 to 10A.432C above.

Fraudulent non-disclosure

10A.435 By reason of the matters pleaded in paragraphs 10A.429, 10A.431 and 10A.432 to 10A.432C above, Greensill's failure to disclose the matters referred to in paragraph 10A.426 above was fraudulent.

10A.436 The cover for the Kerry Ireland Risk would not have been issued if the matters referred to in paragraph 10A.426 above had been disclosed.

10A.437 In the alternative to the allegation in paragraph 10A.435 above, the cover for the Kerry Ireland Risk would not have been issued on the same terms if the matters referred to in paragraph 10A.426 above had been disclosed.

10A.438 By reason of the matters pleaded in paragraphs 10A.435 to 10A.437 above, IAL is entitled to avoid the Kerry Ireland Endorsement.

Innocent non-disclosure

10A.439 In the alternative to the matters pleaded in paragraphs 10A.435 to 10A.438 above, and by reason of the matters pleaded in paragraphs 10A.433, 10A.434, 10A.436 and 10A.437 above, IAL is entitled to reduce its liability under the Kerry Ireland Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D9A BAUER

D9.4 Policy and Endorsements

10A.440 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Bauer's Intelligent Transportation Inc (**Bauer**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 138 dated 25 June 2020 (**Bauer Endorsement**).

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated 14 April 2025 at paragraph 135.

D9.5 Bauer Misrepresentations

10A.441 On or around 6 April 2020, GCUK instructed Marsh to have BCC extend insurance cover in respect of existing financing provided by Greensill Capital Investments Limited (**GCIL**) to Bauer (**Bauer Risk**).

Particulars

Email from Adam Cherubini (Director, Origination) of GCUK to Edward Smith of Marsh, Angus Ward of Marsh, Paul William Nash of Marsh and Alexandre Weiss Bueno of Marsh, copying insurance@greensill.com, Mireia Just (Director, Origination) of GCUK and Rachelle Bower (Analyst, Origination) of GCUK, dated 6 April 2020 (CSA.0001.0006.8704) and its attachments:

a. document titled 'FY 2018 – Annual Report' (CSA.0001.0006.8706);

b. document titled 'FY 2017 – Annual Report' (CSA.0001.0006.8707);

c. document titled 'Q3 2019 – Income Statement' (CSA.0001.0006.8708);

d. document titled 'Q3 2019 – Balance Sheet' (CSA.0001.0006.8709);

e. presentation deck titled 'Bauer's Intelligent Transportation – Instalment Payment Facility April 2020' (CSA.0001.0006.8710).

10A.442 At the time of the instruction, GCUK conveyed to Marsh, among other matters:

a. on each draw date notes with a maturity of up to 12 months are issued;

b. the maximum tenor of the underlying notes was to be 1 year;

c. the issue of notes was structured such that Bauer has the obligation to make repayments once a month; and

d. all repayments to date had been made by Bauer on time.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 010A.441 above.

10A.443 On or around 6 April 2020, Marsh requested that BCC extend insurance cover in respect of the Bauer Risk and conveyed the matters in paragraph 10A.442 0.

Particulars

Email from Edward Smith of Marsh to Brereton, copying Ewan Berkemeier of Marsh and Angus Ward of Marsh, dated 6 April 2020 (BCC.0001.0001.5824) and its attachments:

a. document titled 'FY 2018 – Annual Report' (BCC.0001.0001.5825);

b. document titled 'Q3 2019 – Balance Sheet' (BCC.0001.0001.5826);

c. document titled 'FY 2017 – Annual Report' (BCC.0001.0001.5827);

d. presentation deck titled 'Bauer's Intelligent Transportation – Instalment Payment Facility April 2020' (BCC.0001.0001.5828); and

e. document titled 'Q3 2019 – Income Statement' (BCC.0001.0001.5829).

10A.444 In the premises of paragraphs 10A.4420 and 10A.443 above, GCUK (including via Marsh) represented to Brereton, among other matters, that:

a. Bauer:

i. was required to make monthly repayments;

ii. had made its monthly repayments on time to date, (together with (i), the **Bauer Repayment Representations**); and

b. the maximum tenor of the underlying notes did not exceed 1 year (**Bauer Notes Tenor Representation**).

10A.445 The Bauer Repayment Representations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.17, 10A.18, 10A.22A, 10A.22B, 10A.26A and 10A.26B above.

10A.446 The Bauer Notes Tenor Representation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.17, 10A.18, 10A.22A, 10A.22B, 10A.26A and 10A.26B above.

10A.447 Marsh repeated the Bauer Repayment Representations and the Bauer Notes Tenor Representation on or around:

a. 23 April 2020;

Particulars

Email from Ewan Berkemeier of Marsh to Brereton, copying Julian Macey-Dare of Marsh, Edward Smith of Marsh and Angus Ward of Marsh, dated 23 April 2020 and its attachments (BCC.0001.0001.6589, BCC.0001.0001.6536 and BCC.0001.0001.6558).

b. 29 April 2020;

Particulars

Email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Julian Macey-Dare of Marsh and Angus Ward of Marsh, dated 29 April 2020 and its attachments (MAR.0004.0003.5246, MAR.0004.0003.5345 and MAR.0004.0003.5348).

c. 1 May 2020;

Particulars

Email from Edward Smith of Marsh to Brereton, copying Ewan Berkemeier of Marsh and Angus Ward of Marsh, dated 1 May 2020 and its attachments (MAR.0004.0003.5647, MAR.0004.0003.5751 and MAR.0004.0003.5756).

d. 4 May 2020;

Particulars

Email from Edward Smith of Marsh to Brereton, copying Ewan Berkemeier of Marsh and Angus Ward of Marsh, dated 4 May 2020 and its attachments (MAR.0013.0001.0674, MAR.0013.0001.0680 and MAR.0013.0001.0682).

e. 12 May 2020;

Particulars

Email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Angus Ward of Marsh, dated 12 May 2020 and its attachments (AGB.0002.0002.6395, AGB.0002.0002.6396 and AGB.0002.0002.6401).

f. 14 May 2020; and

Particulars

Email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Angus Ward of Marsh, dated 14 May 2020 and its attachments (AGB.0002.0002.6413, AGB.0002.0002.6414 and AGB.0002.0002.6419).

g. 27 May 2020.

Particulars

Email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Angus Ward of Marsh, dated 27 May 2020 and its attachment (MAR.0004.0003.6971 and MAR.0004.0003.6974).

10A.448 By no later than 28 May 2020, BCC had declined Marsh's request to extend insurance to cover the Bauer Risk.

Particulars

The event may be inferred from:

a. the email from Ewan Berkemeier of Marsh to Brereton and Edward Smith of Marsh, copying Angus Ward of Marsh, dated 14 May 2020 and its attachments (AGB.0002.0002.6413, AGB.0002.0002.6414 and AGB.0002.0002.6419), in which Marsh follows up with Brereton regarding its request from 6 April 2020 regarding insurance cover for the Bauer Risk on a standalone basis;

b. the email from Adam Cherubini of GCUK to Mireia Just of GCUK, Michael Gilhuley of GCUK and Jen Ganzi of GCUK dated 20 May 2020 (GCU.0013.0008.3809), in which Cherubini states that the request for insurance cover for the Bauer Risk 'is pending with TBCC';

c. the emails between Lex Greensill, Craig Pinnington (Senior Credit Analyst) of GCUK, Mark Kavanagh (Head of Product Risk) of GCUK), Adam Cherubini of GCUK and others between 21 May 2020 to 8 June 2020 (GCU.0013.0008.5163), in which:

   i. Kavanagh states, 'Bauers... Ed @ Marsh said we could potentially look at grouping this with other assets in HIF to make it more attractive, but otherwise it's a no to insurance on Bauers.'; and

   ii. Cherubini states, 'I understand that TBCC declined the $37mm request we made for Bauer on a standalone basis, but they are open to a portfolio solution with the other names above the SOL'; and

d. the email from Craig Pinnington of GCUK to Brereton and Edward Smith of Marsh, copying Lex Greensill, Andrew Kuyk GCUK, Michael Gilhuley of GCUK, Mark Kavanagh of GCUK, dated 28 May 2020 and attaching Excel sheet 'HIF shortfall obligors 28-05-2020' (CSA.0001.0006.8696 and CSA.0001.0006.8699), in which GCUK requests BCC to provide insurance cover on a portfolio basis, which included the Bauer Risk.

10A.449 On or around 28 May 2020, GCUK requested that BCC extend insurance cover in respect of certain HIF names, which included the Bauer Risk with a proposed limit of USD9.5 million, and conveyed to Brereton, among other matters, that the Bauer facility:

a. was a 'Buyer Centric Supply Chain Finance' product and the applicable 'sub-type' was an 'IPA' [Instalment Purchase Agreement]; and

b. had a max tenor of 364 days.

Particulars

Email from Craig Pinnington of GCUK to Brereton and Edward Smith of Marsh, copying Lex Greensill, Andrew Kuyk of GCUK, Michael Gilhuley of GCUK, Mark Kavanagh of GCUK, dated 28 May 2020 and attaching Excel sheet 'HIF shortfall obligors 28-05-2020' (CSA.0001.0006.8696 and CSA.0001.0006.8699).

10A.450 In the premises of paragraph 10A.449 above, GCUK represented to Brereton, among other matters, that the Bauer Risk related to short-term supply chain finance (**Bauer SCF Representation**).

10A.451 The Bauer SCF Representation was a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.17, 10A.18, 10A.22A, 10A.22B, 10A.26A and 10A.26B above.

10A.452 On or around 18 June 2020, Marsh requested that BCC extend insurance cover in respect of certain 'names from the high income fund', which included the Bauer Risk with a proposed limit of USD11 million.

Particulars

Email from Edward Smith of Marsh to Brereton, copying Ewan Berkemeier of Marsh, Angus Ward of Marsh and Flavia Pritchard of Marsh, dated 18 June 2020, and its attachment (BCC.0001.0002.5497 and BCC.0001.0002.5498).

10A.453 On or around 18 June 2020, BCC responded to Marsh and agreed to 'ok the limits on the basis of 15 mill first loss....'.

Particulars

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier of Marsh, Angus Ward of Marsh and Flavia Pritchard of Marsh, dated 18 June 2020 (BCC.0001.0002.5501).

10A.454 On or around 25 June 2020, Brereton provided GCUK (via its broker Marsh) with a signed copy of Customer Endorsement 138 to the 2019 90/10 Parallel Policy, which purported, with effect from 12 June 2020, to endorse Bauer as a Customer under the 2019 90/10 Parallel Policy, with an Account Debtor Sublimit of USD11 million.

Particulars

Customer Endorsement 138 was executed by BCC on behalf of the Insurer on 25 June 2020 (CSA.0001.0006.8940).

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier of Marsh dated 25 June 2020, attaching Customer Endorsement 138 to the 2019 90/10 Parallel Policy signed by BCC (MAR.0003.0003.2950 and MAR.0003.0003.2951).

Representations were misleading

10A.455 The Bauer Repayment Representations were false and/or misleading because amounts owing by Bauer to GCIL had been 'rolled', and accordingly Bauer did not make principal instalments on the payment instalment dates on which they were due.

Particulars

The effect of section 2.04 of the Program Side Agreement between Bauer and GCIL on 19 December 2019 (CSA.0001.0008.2545) (the **Bauer PSA**) was that GCIL was obliged to extend the maturity of a principal instalment prior to its principal instalment date following GCIL's receipt of a roll request from Bauer, meaning that Bauer was not required to make principal instalments on the payment instalment dates on which they were due.

GCIL did not require Bauer to meet its payment obligations to GCIL under the Instalment Payment Agreement executed by Bauer and GCIL dated 16 December 2019 (the **Bauer IPA**) (GCU.0010.0011.3807) and Bauer PSA on their maturity dates, but instead "rolled" such debts, which is evidenced by:

a. the email from Adam Cherubini of GCUK to Michael Gilhuley of GCUK and Rachelle Bower of GCUK, copying Mireia Just of GCUK and Jen Ganzi of GCUK, dated 25 November 2019 (GCU.0005.0019.4222), in which Cherubini states: 'A [Bauer] note will be rolled prior to the maturity of another note, such that Bauer can use these funds + their own to make the maturity amount due in a note';

b. the email from Adam Cherubini of GCUK to Marisa Lazatin of GCUK dated 17 March 2020 (GCU.0013.0007.8211), in which Cherubini states 'The [Bauer] deal rolls once a month for ~$2.3mm';

c. the email from Rachelle Bower of GCUK to Gary Schwartz of Bauer, copying Adam Cherubini of GCUK and Caroline Johnson of GCUK, dated 7 April 2020 (CSA.0001.0004.3247);

d. the email from Rachelle Bower of GCUK to Gary Schwartz of Bauer, copying Adam Cherubini of GCUK and Caroline Johnson of GCUK, dated 16 April 2020 (CSA.0001.0004.3226);

e. the email from Caroline Johnson of GCUK to Gary Schwartz of Bauer, copying Adam Cherubini of GCUK and Rachelle Bower of GCUK, dated 15 May 2020 (CSA.0001.0004.3236);

f. the email from Mireia Just of GCUK to Ivan Jesensky of GCUK and Ludwig Sels of GCUK, copying Freddy Boom of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK, Jen Ganzi of GCUK and others, dated 20 May 2020 (GCU.0013.0008.3839), in which Just states, 'We would have to discuss the coming rolls of Bauer and Blackbox in June. These two facilities are committed, rolls are small…';

g. emails between Adam Cherubini of GCUK and Divya Eapen of GCUK dated between 17 and 18 June 2020 (GCU.0010.0013.7656); and

h. messages between Adam Cherubini of GCUK and Rachelle Bower of GCUK dated 18 June 2020 (GCU.0010.0013.7621).

GCUK's practice of rolling the debts the subject of the Bauer facility, without Bauer in fact repaying any amount to GCUK from its own resources, is evident from the documents identified immediately above in the particulars to this paragraph 10A.455 and is further pleaded at Section F.2 of Annexure B to this defence.

Further particulars will be provided after completion of discovery by GCUK and GCPL.

10A.456 The Bauer Notes Tenor Representation was false and/or misleading because Bauer notes were 'rolled' or refinanced through the issuance of new Bauer notes, meaning the Bauer Risk was a loan facility in which there was no maximum duration, or in the alternative, a duration longer than 1 year.

Particulars

a. Email from Adam Cherubini of GCUK to Michael Gilhuley of GCUK and Rachelle Bower of GCUK, copying Mireia Just of GCUK and Jen Ganzi of GCUK, dated 25 November 2019 (GCU.0005.0019.4222), in which Cherubini states: *'A [Bauer] note will be rolled prior to the maturity of another note, such that Bauer can use these funds + their own to make the maturity amount due in a note'*.

b. Messages between between Adam Cherubini of GCUK and Nichole Nguyen of GCUK dated 12 March 2020 (GCU.0013.0007.7881), in which Adam Cherubini states that rolling of Bauer notes occurred 'because the tenor of the actual AR is longer than the 1 year we can fund' and '[rolling] allow[s] us to do a longer tenor'.

c. The BCC/TM Parties repeat the particulars to paragraph 10A.455 above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.457 The Bauer SCF Representation was false and/or misleading because:

a. having regard to the SCF Representation at paragraph 10A.27 above, the concept of 'Buyer Centric Supply Chain Finance' was used by Greensill, and understood by Brereton, to refer to a form of short-term financing referable to genuine underlying invoices that evidence trade;

b. while GCUK represented that the Bauer Risk related to a SCF facility with maximum tenor of 364 and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact:

i. the Bauer Risk related to a financing facility with no maximum duration or, in the alternative, a duration longer than 1 year;

Particulars

The BCC/TM Parties repeat the particulars to paragraphs 10A.449 and 10A.456 above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

ii. Greensill did not intend that the financing facility be based on the underlying trade of services by Bauer, or alternatively did not maintain a continuing satisfaction that it was so based; and

Particulars

The effect of sections 2.01 and 2.02 of the Bauer PSA was that the Bauer IPA could operate in fact as a term loan referrable to the value of Bauer's vehicle fleet and related equipment, and without reference or regard to amounts actually owed to Bauer by any account debtors.

Between 17 March 2020 and 21 January 2021, Bauer submitted, and GCIL accepted, PAUFs that identified the 'Supplier' for each advance as Bauer.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

c. Bauer had agreed under the Bauer PSA to pay GCIL an 'Upfront Fee' in an amount of US D 300,000 to GCIL from the proceeds of the Bauer facility.

Particulars

Section 2.02(b) of the Bauer PSA.

Knowledge of falsity of representations

10A.458 Adam Cherubini (Director, Origination of GCUK) knew of the matters set out in paragraphs 10A.455 and 10A.456 above.

Particulars

The knowledge of Adam Cherubini is to be inferred from:

a. Adam Cherubini's direct involvement in the presentation of the Bauer Risk to the Credit Committee for approval, as demonstrated by:

i. the email from Criag Pinnington of GCUK to Brett Downes of GCUK, Roland Hartley-Urquhart of GCUK, Myrjam Tschoeke of GCUK, Sean Hanafin of GCUK, Andrew Kuyk of GCUK and Michael Gilhuley of GCUK, copying Adam Cherubini of GCUK and others, and blind copying Lex Greensill, dated 28 November 2019 (GCU.0005.0019.6304), attaching a document titled 'Credit Application Report' for the Bauer Risk dated 25 November 2019 (GCU.0005.0019.6305). The Credit Application Report identifies Adam Cherubini as a member of the 'Facility Team';

ii. the email from Criag Pinnington of GCUK to Brett Downes of GCUK, Roland Hartley-Urquhart of GCUK, Myrjam Tschoeke of GCUK, Sean Hanafin of GCUK, Andrew Kuyk of GCUK and Michael Gilhuley of GCUK, copying Adam Cherubini of GCUK and others, dated 18 December 2019 (GCU.0009.0012.6369), enclosing the minutes of meeting in respect of the GCUK Credit Committee's meeting on 29 November 2019, at which Adam Cherubini was an attendee;

iii. the email from Jen Gazi of GCUK to 'CreditCommitteeAmericas@greensill.com', copying Adam Cherubini and others, dated 6 January 2021 (GCU.0009.0020.6719), attaching a document titled 'Credit Application Report – Amendment' for the Bauer Risk dated 6 January 2021, which identifies Adam Cherubini as a member of the 'Facility Team' (GCU.0009.0020.6720);

b. the particulars to paragraphs 010A.441, 10A.442, 10A.448, 10A.455 and 10A.456 above, which evidence Adam Cherubini's involvement in the dealings of the Bauer facility, including the placement of insurance cover

for the Bauer Risk, and his knowledge of the ultimate insurance arrangements for the Bauer Risk;

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.459 The knowledge of Adam Cherubini of GCUK of the matters identified in paragraphs 10A.455 and 10A.456 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.460 The knowledge of Adam Cherubini of GCUK of the matters identified in paragraphs 10A.455 and 10A.456 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.461 Craig Pinnington (Senior Credit Analyst of GCUK) knew of the matters set out in paragraph 10A.457 above.

Particulars

The knowledge of Craig Pinnington is to be inferred from:

a. his role as a Senior Credit Analyst of GCUK and Designated Senior Credit Analyst for Greensill, as demonstrated by:

   i. document titled 'Greensill Group Approval Committees Terms of Reference, Version: 1 June 2020' (AGB.0002.0002.4372), which on page 17 (Appendix 4) identifies Craig Pinnington as a 'Designated Senior Credit Analyst' as of 1 July 2019;

   ii. document titled 'Credit Policy' (GBA.0004.0024.1326), which refers to the role of Credit Analysts;

b. the particulars to paragraphs 10A.448 and 10A.449 above, which refer to Craig Pinnington's involvement in the dealings of the Bauer facility, including the placement of insurance cover for the Bauer Risk.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.462 The knowledge of Craig Pinnington of GCUK of the matters identified in paragraph 10A.457 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.463 The knowledge of Craig Pinnington of GCUK of the matters identified in paragraph 10A.457 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality

10A.464 Each of the matters referred to in paragraphs 10A.455 and 10A.456 above were matters:

a. which Adam Cherubini knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

b. alternatively to subparagraph (a), in respect of which Adam Cherubini was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Adam Cherubini's knowledge is to be inferred by virtue of his position and as the misrepresentations bore directly on the nature of the Bauer Risk.

10A.465 Further, or in the alternative to paragraph 10A.464, each of the matters referred to in paragraphs 10A.455 and 10A.456 above was a matter which a reasonable person in the position of Adam Cherubini could be expected to know were material to the decision whether to extend insurance cover in respect of the Bauer Risk.

10A.466 The knowledge of Adam Cherubini of the matters set out in paragraphs 10A.464 and 10A.465 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.467 The knowledge of Adam Cherubini of the matters set out in paragraphs 10A.464 and 10A.465 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.468 Each of the matters referred to in paragraph 10A.457 above were matters:

a. which Craig Pinnington knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

b. alternatively to subparagraph (a), in respect of which Craig Pinnington was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of his position as Senior Credit Analyst of GCUK and Designated Senior Credit Analyst of Greensill, and his experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the nature of the Bauer Risk.

10A.469 Further, or in the alternative to paragraph 10A.468, each of the matters referred to in paragraph 10A.457 above was a matter which a reasonable person in the position of Craig Pinnington could be expected to know were material to the decision whether to extend insurance cover in respect of the Bauer Risk.

10A.470 The knowledge of Craig Pinnington of the matters set out in paragraphs 10A.468 and 10A.468.469 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.471 The knowledge of Craig Pinnington of the matters set out in paragraphs 10A.468 and 10A.468.469 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

10A.472 In the premises of paragraphs 10A.464 to 10A.471 above:

a. Greensill misrepresented the Bauer Risk;

b. the misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend or renew insurance cover in respect of the Bauer Risk.

10A.473 If Greensill had not made the Bauer Repayment Representations, the Bauer Notes Tenor Representations and/or the Bauer SCF Representation, insurance cover would not have been extended or renewed in respect of the Bauer Risk, including in respect of the Bauer Endorsement at all or, in the alternative, on the same terms in which it purportedly was written.

10A.474 By reason of the matters pleaded in paragraphs 10A.455 to 10A.471 above, IAL is entitled to avoid the Bauer Endorsement.

Innocent Misrepresentation

10A.475 In the alternative to the matters pleaded in 10A.472 to 10A.474, by reason of the matters pleaded in 10A.455, 10A.456, 10A.457 and 10A.473 above, IAL is entitled to reduce its liability under the

Bauer Endorsement to nil (or such other amount as the Court may determine would place BCC in the same position as if the Bauer Repayment Representations, the Bauer Notes Tenor Representation and the Bauer SCF Representation had not occurred).

D9.6 Bauer Non-Disclosure

Knowledge of underlying matters

10A.476 At the time of requesting insurance cover for the Bauer Risk, Lex Greensill knew that there were concerns about the financial position of Bauer and its ability to repay the Bauer facility, including that Bauer had breached EBITDA covenants to which the Bauer facility was subject (EBITDA Covenants) for Q4 2019 and Q1 2020, being the financial quarters immediately preceding the request for cover for the Bauer Risk.

Particulars

This may be inferred from:

a. the email from Craig Pinnington of GCUK to Brett Downes of GCUK, Roland Hartley-Urquhart of GCUK, Myrjam Tschoeke of GCUK, Sean Hanafin of GCUK, Andrew Kuyk of GCUK and Michael Gilhuley of GCUK, copying Adam Cherubini of GCUK and others, and blind copying Lex Greensill, dated 28 November 2019 (GCU.0005.0019.6304), attaching a document titled 'Credit Application Report' for the Bauer Risk dated 25 November 2019 (GCU.0005.0019.6305). The Credit Application Report:

   i. identifies that one of the *'Key Risks'* of the Bauer facility is *'Bauer's inability to repay the Facility'*;

   ii. states that the Bauer facility *'structure also benefits from financial covenants such that if Bauer's financial performance weakens, Greensill would have the opportunity to early terminate or cause Bauer to cure such breach (by posting cash, amongst others)'*;

   iii. provides that Greensill may terminate the facility for breach of the covenants or cause Bauer to cure such breach;

b. the email from Criag Pinnington of GCUK to Brett Downes of GCUK, Roland Hartley-Urquhart of GCUK, Myrjam Tschoeke of GCUK, Sean Hanafin of GCUK, Andrew Kuyk of GCUK and Michael Gilhuley of GCUK, copying Adam Cherubini of GCUK and others, dated 18 December 2019 (GCU.0009.0012.6369), enclosing the minutes of meeting in respect of the GCUK Credit Committee's meeting on 29 November 2019, and at which Lex Greensill was an attendee;

c. the email from Brett Downes to Freddy Boom of GCUK, Lex Greensill, Sean Hanafin of GCUK and Andrew Kuyk of GCUK, copying Ludwig Sels of GCUK, Ivan Jesensky of GCUK, Michael Gilhuley of GCUK, Jen Ganzi of GCUK and Craig Pinnington of GCUK, dated 22 May 2020 (GCU.0005.0027.2170), in which Downes states: *'Bauer has been with insurers for a couple of weeks but it isn't making any headway under our existing insurance, as their business model has completely fallen away in the current environment as people work from home and it isn't a commercially viable line to underwrite. On the positive side, if there is one, Bauer is in breach of its covenants and this should allow us to get out of the commitment if we desire. I would also note that it is not possible to now ask insurers for cover when you* ***have a name that is in distress****.'* (emphasis added)

d. the email from Brett Downes to Andrew Kuyk and Craig Pinnington of GCUK dated 22 May 2020 (GCU.0010.0013.4502), in which Downes states: '*We cannot seek insurance for any name that is breaching covenants or is poorly structured credit… Greg is not the answer here'*.

e. The email from Lex Greensill to Sean Hanafin and Freddy Boom of GCUK dated 22 May 2020 (GCU.0005.0027.2170), which forwards Brett Downe's early email of 22 May 2020 and states: 'Leave this with me please'.

10A.477 The knowledge of Lex Greensill of the matters set out in paragraph 10A.476 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

10A.478 The knowledge of Lex Greensill of the matters set out in paragraph 10A.476 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph 10A.22A and 10A.22B above.

10A.479 Further or in the alternative to paragraph 10A.47610A.476 above, Adam Cherubini knew each of the matters set out in paragraph 10A.476 above.

Particulars

This may be inferred from:

a. items (a) and (b) of the particulars to paragraph 10A.476 above;

b. the minutes of meeting in respect of the GCUK Credit Committee's meeting on 29 November 2019 (GCU.0009.0012.6369), and at which Adam Cherubini was an attendee;

c. the messages between Adam Cherubini of GCUK and Jen Ganzi of GCUK dated 30 April 2020 (GCU.0009.0015.1679), in which the following exchange occurs:

> *Adam Cherubini 3:41 PM: FYI we need to waive the EBITDA for Bauer's*
>
> *Jen Ganzi 3:41 PM: (headbang) (headbang) (headbang) (headbang)*
>
> *Adam Cherubini 3:41 PM: as they tripped that in Q4 and Q1*
>
> *…*
>
> *Jen Ganzi 3:52 PM: rev was also like $3mm below*
>
> *Jen Ganzi 3:52 PM: but still ebitda should not have been hit that hard*
>
> *Jen Ganzi 3:53 PM: thats why its in hif i guess*
>
> *Jen Ganzi 3:54 PM: gross profit is off by $2mm so i guess that is the delta b/c opex was pretty fixed at least for the quarter*
>
> *Adam Cherubini 3:54 PM: yea, i also assume they can't do projections correctly*
>
> *Adam Cherubini 3:54 PM: but lets def have a call on Monday or Tuesday*
>
> *Jen Ganzi 3:54 PM: thats not the garys strength*

d. the email from Jen Ganzi of GCUK to the Greensill 'Watchlist Committee', copying Freddy Boom of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK, Mireia Just of GCUK, Rachelle Bower of GCUK, and Caroline Johnson of GCUK, dated 14 May 2020 (GCU.0010.0013.4703 at _0003), in which Ganzi:

   i. notes that *'Bauer breached the Facility's minimum EBITDA covenant in Q4 2019 and Q1 2020'*;

ii. notes that GCUK had made a request to the Watchlist Committee to *'[i]ssue a formal waiver for the EBITDA covenant breaches in Q4 2019 and Q1 2020'*;

iii. states *that '[i]t is likely that Bauer will also breach the Q2 2020 EBITDA covenant as well'*;

iv. states that *'[b]y waiving the Q4 2019 and Q1 2020 covenant breach, we are comfortable not having this termination trigger again until August 2020 when they report Q2 2020, at which time we will re-evaluate the facility'*; and

v. states that *'there is a reasonable probability that [Bauer will] also breach the EBITDA Covenant in future quarters, but we want to make them come back to us at that point if this is the case, perhaps to re-work the covenant scheme'*;

e. the email from Divya Eapen of GCUK to Jen Ganzi of GCUK and the Greensill Watchlist Committee, copying Freddy Boom of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK, Mireia Just of GCUK, Rachelle Bower of GCUK and Caroline Johnson of GCUK, dated 14 May 2020 (GCU.0010.0013.4703 at _0003), in which Eapen states: *'If we're having discussions on waiving covenants (and these breaches are quite significant), it does seem appropriate for this to remain on one of the Watchlist categories'*;

f. the email from Jen Ganzi of GCUK to Mireia Just of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK and Freddy Boom of GCUK, dated 28 May 2020 and attaching the document 'HIF SOL and required insurance' (GCU.0009.0015.6817), in which Ganzi states:

> *'…And we will almost certainly have another default in the June quarter on the EBITDA covenant, which we would know by mid-Aug (or whatever the end of the grace period is).*
>
> *…*
>
> *While they can easily explain away the Q1 2020 covenant breach on Covid-19, the same cannot be said for Q4 2019. Especially since this deal was done in Dec 2019, they should have had a better idea of what FY 2019 results were & have struck a covenant level accordingly. Thus a reasonable excuse around the Q4 miss is MUCH more difficult to manufacture, and highlighting the situation may not put them in the best light (i.e. inability to project*

a month out would not bode well for future financings), so I am not so certain that they are going to want to get too confrontational given the fact pattern.'

g. the email from Adam Cherubini to the Watchlist Committee dated 2 June 2020 (GCU.0010.0016.4399).

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.480 Further or in the alternative to paragraphs 10A.476 and 10A.479 above, Adam Cherubini knew the following matters:

a. that Bauer was likely to breach the EBITDA Covenants for Q2 2020;

b. that there was a significant possibility Bauer would breach the EBITDA Covenants for quarters subsequent to Q2 2020;

c. that Bauer's breach of the EBITDA Covenants for at least Q4 2019, and likely Q1 2020, was the result of underlying problems with Bauer's business not primarily attributable to the COVID-19 pandemic;

d. that GCUK had elected to issue a forbearance letter in respect of Bauer's breaches of the EBITDA Covenants for Q4 2019 and Q1 2020 rather than exercise its right under the facility to terminate the facility for those breaches, or cause Bauer to cure the breaches; and

e. that there was uncertainty whether, and concerns were held about, Bauer's ability to meet its repayment obligations under the Bauer facility.

Particulars

This may be inferred from:

a. the email from Jen Ganzi of GCUK to the Greensill 'Watchlist Committee', copying Freddy Boom of GCUK, Michael Gilhuley of GCUK, Adam Cherubini of GCUK, Mireia Just of GCUK, Rachelle Bower of GCUK, and Caroline Johnson of GCUK, dated 14 May 2020 (GCU.0010.0013.4703 at _0003);

b. the email from Adam Cherubini to the Watchlist Committee dated 2 June 2020 (GCU.0010.0016.4399); and

c. emails between Adam Cherubini and members of the Watchlist Committee between 23 June 2020 and 25 June 2020 (GCU.0010.0013.8489).

10A.481 The knowledge of Adam Cherubini of the matters set out in paragraphs 10A.476, 10A.479 and 10A.480 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.482 The knowledge of Adam Cherubini of the matters set out in paragraphs 10A.47610A.476, 10A.479 and 10A.480 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.483 Further or in the alternative to paragraph 10A.476 above, Craig Pinnington (Senior Credit Analyst of GCUK) knew each of the matters set out in paragraph 10A.476 above.

Particulars

This may be inferred from:

a. the particulars to paragraph 10A.476 above; and

b. the email exchange between Craig Pinnington of GCUK, Brett Downes of GCUK and Andrew Kuyk of GCUK dated 20 to 22 May 2020 (GCU.0010.0013.4502), in which:

i. Pinnington states: *'Bauers has been with insurers for a couple of weeks but it isn't making any headway under our existing insurance, as their business model has completely fallen away in the current environment as people work from home and it isn't a commercially viable line to underwrite. I don't see that we will be able to get insurance on these unless we take a significant deductible, but agree that for committed deals this would still be preferable to funding from balance sheet.'*; and

ii. Downes responds: *'We cannot seek insurance for any name that is breaching covenants or is a poorly structured credit. CS has to continue to take these names. Let's circle back later today. Greg is not the answer here.'*

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.484 The knowledge of Craig Pinnington of the matters set out in paragraph 10A.476 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.485 The knowledge of Craig Pinnington of the matters set out in paragraph 10A.476 above is to be attributed to GCPL.

Particulars

The TM/BCC Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.486 Further or in the alternative to paragraph 10A.476 above, Brett Downes (Chief Risk Officer) knew each of the matters set out in paragraph 10A.476 above.

Particulars

This may be inferred from the particulars to paragraphs 10A.476 and 10A.483 above.

Further particulars may be provided after completion of discovery by GCUK and GCPL.

10A.487 The knowledge of Brett Downes of the matters set out in paragraph 10A.476 above is to be attributed to Greensill Bank.

Particulars

The TM/BCC Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.488 The knowledge of Brett Downes of the matters set out in paragraph 10A.476 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality

10A.489 Each of the matters referred to in paragraph 10A.476 above were matters:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bauer being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

10A.490 Further or in the alternative to paragraph 10A.489 above, each of the matters referred to in paragraph 10A.476 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Bauer Risk.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.489 above.

10A.491 The knowledge of Lex Greensill of each of the matters referred to in paragraphs 10A.489 and 10A.490 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 010A.25, 10A.26A and 10A.26B above.

10A.492 The knowledge of Lex Greensill of each of the matters referred to in paragraphs 10A.489 and 10A.490 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.493 Further and in the alternative to paragraph 10A.489 above, each of the matters referred to in paragraph 10A.476 above was a matter:

a. which Adam Cherubini, Craig Pinnington and Brett Downes knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

b. alternatively to subparagraph (a), in respect of which Adam Cherubini, Craig Pinnington and Brett Downes were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

a. The knowledge of Adam Cherubini is to be inferred by virtue of his position and as the non-disclosures bore directly on the risk of Bauer being unable to repay the amounts advanced to it and thus upon the nature of the Bauer Risk.

b. The knowledge of Craig Pinnington and Brett Downes is to be inferred by virtue of:

i. their position and as the non-disclosures bore directly on the risk of Bauer being unable to repay the amounts advanced to it and thus upon the nature of the Bauer Risk; and

ii. the email from Brett Downes to Freddy Boom of GCUK, Lex Greensill, Sean Hanafin of GCUK and Andrew Kuyk of GCUK, copying Ludwig Sels of GCUK, Ivan Jesensky of GCUK, Michael Gilhuley of GCUK, Jen Ganzi of GCUK and Craig Pinnington of GCUK, dated 22 May 2020 (GCU.0005.0027.2170).

10A.494 Further or in the alternative to paragraph 10A.493 above, each of the matters referred to in paragraph 10A.476 above was a matter which a reasonable person in the position of the abovementioned officers and employees of GCUK could be expected to know was relevant to the decision to extend insurance cover in respect of the Bauer Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.493 above.

10A.495 The knowledge of Adam Cherubini, Craig Pinnington and Brett Downes of each of the matters referred to in paragraphs 10A.493 and 10A.494 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.496 The knowledge of Adam Cherubini, Craig Pinnington and Brett Downes of each of the matters referred to in paragraphs 10A.493 and 10A.494 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

10A.497 Further or in the alternative to paragraph 10A.493 above, each of the matters referred to in paragraphs 10A.479 and 10A.480 above was a matter:

a. which Adam Cherubini knew was material to the decision whether to extend insurance cover in respect of the Bauer Risk; or

b. alternatively to subparagraph (a), in respect of which Adam Cherubini was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Adam Cherubini is to be inferred by virtue of his position and as the non-disclosures bore directly on the risk of Bauer being unable to repay the amounts advanced to it and thus upon the nature of the Bauer Risk.

10A.498 Further or in the alternative to paragraph 10A.497 above, each of the matters referred to in paragraphs 10A.479 and 10A.480 above was a matter which a reasonable person in the position of Adam Cherubini could be expected to know was relevant to the decision to extend insurance cover in respect of the Bauer Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 10A.497 above.

10A.499 The knowledge of Adam Cherubini of each of the matters referred to in paragraphs 10A.497 and 10A.49810A.498 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

10A.500 The knowledge of Adam Cherubini of each of the matters referred to in paragraphs 10A.497 and 10A.498 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraph 10A.22A and 10A.22B above.

Breach of duty of disclosure

10A.501 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 10A.476, 10A.479 and 10A.480 above before insurance cover was placed for the Bauer Risk.

10A.502 Greensill's failure to disclose the matters referred to in paragraphs 10A.476, 10A.479 and 10A.480 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 10A.476 to 10A.500 above.

Fraudulent non-disclosure

10A.503 By reason of the matters pleaded in paragraphs 10A.477, 10A.478, 10A.479, 10A.481, 10A.482, 10A.484, 10A.485, 10A.487, 10A.488, 10A.491, 10A.492, 10A.495, 10A.496, 10A.499 and 10A.500 Greensill's failure to disclose any (or all) of the matters referred to in paragraphs 10A.476, 10A.479 and 10A.480 above before insurance cover in respect of the Bauer Risk was extended or renewed was fraudulent.

10A.504 The cover for the Bauer Risk would not have been issued if the matters referred to in paragraphs 10A.476, 10A.479 and 10A.480 above had been disclosed.

10A.505 In the alternative to the allegation in paragraph 10A.504 above, the cover for the Bauer Risk would not have been extended on the same terms if the matters referred to in paragraphs 10A.476, 10A.479 and 10A.480 above had been disclosed.

10A.506 By reason of the matters pleaded in paragraphs 10A.476 to 10A.500 above, IAL is entitled to avoid the Bauer Endorsement.

Innocent non-disclosure

10A.507 In the alternative to the matters pleaded in paragraphs 10A.503 to 10A.506 above, and by reason of the matters pleaded in paragraphs 10A.501, 10A.502 and 10A.504 above, IAL is entitled to reduce its liability under the Bauer Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D10 ~~PRIOR MISREPRESENTATIONS AND NON-DISCLOSURES IN RESPECT OF~~ BLUESTONE MULTI OBLIGOR

D10.1 [Not used].~~The Bluestone SCF Facility~~

11. [Not used].~~On or about 14 June 2018, a supply chain finance facility was agreed between Bluestone Resources Inc (**Bluestone**) and GCUK (**Bluestone SCF Facility**). The Bluestone SCF Facility was governed by the terms of the following agreements (as subsequently amended):~~

a. ~~a Master Supplier Agreement dated 10 August 2016 entered into by GCUK and Bramid Outsource Limited (**Bramid**) as re-invoicing intermediary;~~

b. ~~a Re-Invoicing Service Agreement (**RISA**) dated 13 June 2018 entered into by Bramid and Bluestone; and~~

c. ~~a Customer Agreement dated 14 June 2018 entered into by Bluestone and GCUK.~~

~~**Particulars**~~

~~Each of the Master Supplier Agreement, RISA and Customer Agreement are in writing.~~

12. [Not used].~~The Master Supplier Agreement, RISA and Customer Agreement provided that:~~

a. ~~GCUK was to make a facility available to Bluestone to be used for the purpose of settling "Supplier Invoices" submitted by Bluestone, being invoices for the sale, supply and purchase of goods and/or services by Bluestone;~~

b. Bluestone could submit Supplier Invoices for settlement by Bramid; and

c. Supplier Invoices were to be in respect of genuine and lawful trade transactions arising in the ordinary course of Bluestone's business for the sale, supply and purchase of goods and/or services between Bluestone and its suppliers;

Particulars

Master Supplier Agreement, cl 3.1; RISA, cl 3.1; Customer Agreement, Recitals A and B, cl 1A, 2 and cl 3.1.

13. [Not used].The Total Facility Limit under the Customer Agreement was initially USD60,000,000 and was increased to USD65,000,000 on 8 January 2021 and USD70,000,000 on 29 January 2021.

14. [Not used].At all times before about May 2019 the Bluestone SCF Facility was generally fully utilised, after which time the Bluestone SCF Facility was partially utilised.

15. [Not used].Greensill Bank asserts neither it nor GCUK has been able to recover funds advanced under the Bluestone SCF Facility and that the amount outstanding is at least USD20,000,000.

Particulars

Claim submitted by Greensill Bank to BCC on or about 13 October 2021.

D10.2 [Not used].**The Bluestone RPA**

16. [Not used].On or about 26 September 2018, Bluestone Coal Sales Corporation (**Bluestone Coal**) (as "Seller Representative", "Seller" and "Initial Servicer") and GCUK (as "Buyer") entered into a financing agreement titled "Receivables Purchase Agreement" (**Bluestone RPA**).

Particulars

The Bluestone RPA is in writing, stated to have been made on 26 September 2018, and signed by James Justice III as representative of Bluestone Coal and Jonathan Lane as representative of GCUK.

17. [Not used].By no later than 18 September 2018, Bluestone Coal and, further or alternatively, Bluestone, had mandated GCUK to enter into the Bluestone RPA or a financing agreement on substantially the same terms as the Bluestone RPA.

~~Particulars~~

~~The fact that the mandate was for the Bluestone RPA is to be inferred from emails from Lex Greensill sent to Greg Brereton on 18 September 2018 with time stamps of 2:41.01AM [TOK.001.00124931] and 4:37:55 PM [TOK.001.00124862] (**18 September 2018 Emails**) stating "Greensill has been mandated by Bluestone to provide them with an accounts receivable facility for Bluestone's coal sales" and listing the "initial customers" under the "accounts receivable facility", which initial customers generally align with the Account Debtors referred to in Schedule III of the Bluestone RPA.~~

18. [Not used].~~The Bluestone RPA provided for GCUK to advance funds to Bluestone Coal in amounts corresponding to:~~

~~a. existing payment obligations owed to Bluestone Coal and such of its affiliates as might, with GCUK's written approval, become sellers under the RPA (defined in the RPA as "Sellers") by certain specified customers of Sellers nominated by Bluestone Coal and accepted by GCUK (defined in the RPA as "Account Debtors") up to a specified monetary amount for each Account Debtor which was also to be nominated by Bluestone Coal and accepted by GCUK (defined in the RPA as the "Account Debtor's Purchase Sublimit") (defined for the purposes of this Annexure as Actual Receivables); and~~

~~b. amounts intended or expected to become payable to Sellers by Account Debtors up to each "Account Debtor's Purchase Sublimit" as a result of anticipated future sales of goods or services (defined for the purposes of this Annexure as **Expected Receivables**) but in each case:~~

~~i. the Expected Receivable had to be expected to be payable in an amount not less than the amount in respect of which financing was sought from GCUK;~~

~~ii. the Expected Receivable had to be based on an expected actual and bona fide rendition of services or sale of goods by the applicable Seller in the ordinary course of its business; and~~

~~iii. the Expected Receivable had to be scheduled or expected to be paid in full within 180 days of the advance of funds by GCUK in respect of it.~~

~~Particulars~~

~~Bluestone RPA, definitions of Receivable and Eligible Receivable, clauses 1(h), 2.~~

19. [Not used].~~The Bluestone RPA further provided for:~~

~~a. Actual Receivables to be assigned to GCUK upon funds being advanced to Bluestone Coal by GCUK by way of a purchase of each Actual Receivable;~~

~~b. Expected Receivables to be assigned to GCUK upon each Expected Receivable being converted to an actual payment obligation;~~

~~c. amounts advanced by GCUK on account of Actual Receivables and such Expected Receivables as had been converted into actual payment obligations to be repaid within 180 days of each amount being advanced, from the amount paid by the relevant Account Debtor in satisfaction of its actual payment obligations; and~~

~~d. in the event that amounts advanced by GCUK on account of Actual Receivables and Expected Receivables were not repaid in accordance with subparagraph c. above, including because an Expected Receivable did not convert into an actual payment obligation, the applicable Seller and Bluestone Coal (as Servicer) were to be jointly responsible for repaying such funds to GCUK (by way of "repurchasing" the Actual Receivable or Expected Receivable), in each case within 180 days of each amount being advanced by GCUK.~~

~~**Particulars**~~

~~Bluestone RPA, definition of "Purchased Receivable" and clauses 1(a) and 5.~~

20. [Not used].~~The Bluestone RPA provided that in the event an amount advanced by GCUK was not repaid within 180 days of it being advanced in accordance with subparagraphs 19.c and 19.d of this Annexure, GCUK was under no obligation to advance any further funds in respect of any Eligible Receivable.~~

~~**Particulars**~~

~~Bluestone RPA, cl 1(b)(vi).~~

21. [Not used].~~On or about 7 December 2018, Bluestone Coal and GCUK agreed to make Blackstone Energy Limited (**Blackstone**) a Seller under the Bluestone RPA.~~

22. [Not used].~~The maximum amount of outstanding funds that could be advanced by GCUK to Bluestone Coal under the Bluestone RPA by way of "purchasing" Actual Receivables or Expected Receivables at any one time (defined as the "Maximum Outstanding Purchase Price") was initially USD140,000,000, which amount was varied by purporting to add and remove Account Debtors under cl 1(h) of the Bluestone RPA as follows:~~

a. on 7 December 2018 it was increased to USD385,000,000 prior to 1 July 2021 decreasing monthly;

b. on or around 29 March 2019, it was increased to USD405,000,000 prior to 1 July 2021;

c. on or around 20 May 2019, it was increased to USD450,000,000 prior to 1 July 2021;

d. on 10 June 2019 it was increased to USD670,000,000 prior to 1 July 2021 decreasing monthly thereafter;

e. on 6 February 2020 it was increased to USD685,000,000, with a further uplift to USD690,000,000 depending on monthly volumes of coal sold;

f. on 14 April 2020 it was increased to USD705,000,000, with a further uplift to USD710,000,000 upon receipt of evidence of a major coal export contract;

g. on 31 July 2020 it was increased to USD755,000,000;

h. on 3 November 2020 it was increased to USD795,000,000;

i. on 8 January 2021 it was decreased to USD790,000,000; and

j. on 29 January 2021 it was decreased to USD785,000,000.

23. [Not used].At all material times for the purposes of the Bluestone Risks, the amount of outstanding funds advanced by GCUK to Bluestone Coal under the Bluestone RPA was approximately equal to, or exceeded, the Maximum Outstanding Purchase Price.

24. [Not used].Greensill Bank asserts that neither it nor GCUK has been able to recover any outstanding funds advanced to Bluestone Coal in the amount of approximately USD780,000,000 either from the purported Account Debtors, from Bluestone Coal (as Servicer), from any of the Sellers or from Bluestone as guarantor.

Particulars

The assertion is made in the claim made under the 2019 90/10 Parallel Policy by Greensill Bank in respect of the Bluestone RPA dated 12 October 2021 (**Bluestone Claim**).

D10.3 [Not used].~~**Actual arrangements between Greensill, Bluestone and Bluestone Coal**~~

25. [Not used].~~From at the latest 18 September 2018 to at the earliest November 2020, and contrary to the terms of the Bluestone RPA described above:~~

~~a. Account Debtors for the purposes of the Bluestone RPA included entities that were not and might not ever become customers of Bluestone Coal;~~

~~b. lists of Account Debtors were created by GCUK providing Bluestone Coal with a list of potential buyers of Bluestone's coal and asking Bluestone Coal to identify those buyers who Bluestone Coal believed might in the future be buyers of its coal;~~

~~c. GCUK selected Account Debtors based on their perceived attractiveness to an insurer (including their credit rating) and not by reference to the likelihood that they would actually purchase goods and services and generate actual receivables;~~

~~d. GCUK also determined in its absolute discretion, without input from Bluestone or Bluestone Coal:~~

~~i. the amount of each purported Expected Receivable;~~

~~ii. the Maximum Sublimit for each purported Account Debtor;~~

~~iii. the purported "maturity date" of each Expected Receivable, being the nominal date under the Bluestone RPA that Bluestone Coal would have to repay GCUK by repurchasing the Expected Receivable;~~

~~e. most of the purported Account Debtors were not existing customers of Bluestone Coal or any Sellers and had never been existing customers of Bluestone Coal or any Sellers;~~

~~f. from the inception of the Bluestone RPA, GCUK did not expect or require the purported Account Debtors or Bluestone Coal to repay each amount advanced against Expected Receivables within 180 days of them being advanced as required by the Bluestone RPA, or refuse to provide further finance in that event as it was entitled to do under the Bluestone RPA, but instead "rolled" such advances by:~~

~~i. in the period prior to about 30 July 2020, wiring to Bluestone Coal an amount equal to the value of the Expected Receivables that had reached their due date less a discount corresponding to the interest to be paid from that date until the next roll date and then receiving from Bluestone Coal the same amount of funds plus the amount of the discount; and then~~

ii. in the period from about 30 July 2020 onwards, extending the date for repayment of the Expected Receivables and collecting an amount corresponding to the interest to be paid up to the extended date, such that, in effect, from the inception of the Bluestone RPA until at the earliest about November 2020, Bluestone Coal was only ever required, in effect, to pay interest on the funds advanced to it by GCUK and not repay any principal;

g. GCUK represented to Bluestone Coal that the finance provided under the RPA was in the nature of long-term enterprise financing and that Bluestone Coal would not be required to begin to repay principal until 2023 at the earliest;

h. GCUK's lending to Bluestone Coal was not based on any assessment of the creditworthiness of any of the Account Debtors, or the likelihood of such Account Debtors becoming subject to payment obligations to Sellers payable within 180 days of the advance sufficient to support the Expected Receivables, but was in the nature of long-term enterprise finance lending on an interest only basis largely or wholly unsecured by any Actual Receivables or Expected Receivables; and

i. the amount of funding advanced by GCUK to Bluestone Coal from time to time under the Bluestone RPA in respect of Actual Receivables and Expected Receivables bore no relationship to the value of coal sold by Bluestone Coal or Sellers to customers in any 180 day period.

Particulars

i. Amended Complaint filed in *Bluestone Resources., Inc & Ors v Greensill Capital (UK) Limited*, United States District Court for the Southern District of New York, Civil Action No. 1:21-cv-02253 at paragraphs 1, 10-14, 18, 49-53, 83-89, 98 (**Bluestone Complaint**).

ii. In respect of subparagraph (c) only, GFG Alliance Evidence Submission to BEIS Select Committee / LIBERTY Steel and UK Steel Industry Inquiry, July 2021 at paragraph 57.

iii. All of the Account Debtors under the Bluestone RPA from time to time are recorded as either:

(a) having failed to make payment for the full amount of their respective Account Debtor Sublimit (as applicable at the relevant time) in Appendix 1 of the Bluestone Claim (in the case of 20 named Account Debtors); or

(b) having had their Account Debtor Sublimit cancelled, and hence are not listed as defaulting (in the case of Bank of Montreal, South Carolina Electric & Gas Company and Trafigura Trading LLC);

but in no case is any Account Debtor under the Bluestone RPA recorded as having partially paid those trade invoices detailed in Appendix 1 of the Bluestone Claim purportedly issued to it.

iv. Throughout the term of the Bluestone RPA the balance of the facility owed by Bluestone was many multiples of Bluestone's annual coal sales revenue at any time during the term of the Bluestone RPA as disclosed in Bluestone's financial statements.

v. Further particulars will be provided following disclosure.

26. [Not used].Further:

a. with regards to the Bluestone RPA, from a time not known to BCC but before 12 December 2018, and contrary to the terms of the Bluestone RPA, GCUK intended, and it was the case, that some funds advanced under the Bluestone RPA would be used to pay off existing debt held with Carter Bank.

Particulars

The intention is recorded in a letter issued by Carter Bank to GCUK dated 12 December 2018, in which Carter Bank states that it has been informed by Bluestone Coal or other Bluestone entities that GCUK "will be funding the transactions contemplated by the [RPA] from which certain debts owed to Carter Bank will be paid from a portion of the proceeds thereof". The debts that it is indicated were to be paid totalled USD 179,000,000.

b. with regards to the Bluestone SCF Facility, from a time not known to BCC but before 26 June 2018, and contrary to the terms of the Bluestone SCF Facility described above, GCUK intended, and it was the case, that funds advanced under the facility would be used to pay off existing debt held with Carter Bank.

Particulars

The intention is recorded in a letter issued by Carter Bank to GCUK dated 26 June 2018 which refers to "the transaction contemplated by the Customer Agreement from which certain debt owed to Carter Bank will be paid from a portion of the proceeds

~~thereof". The letter indicates the sum of USD34,852,916.47 would be paid to Carter Bank. BCC is not aware of any material indicating that the intention was not given effect. Further particulars will be provided following disclosure.~~

27. [Not used].~~Furthermore, GCUK forgave breaches of the Bluestone RPA and the Customer Agreement applicable to the Bluestone SCF Facility:~~

~~a. in relation to the Bluestone RPA:~~

~~i. a standstill and forbearance agreement was entered into on 6 February 2020 for the period until 31 May 2020 following the occurrence of "Events of Termination" under the Bluestone RPA, which otherwise entitled GCUK to declare that no further drawdowns could be obtained by Bluestone Coal;~~

~~ii. a waiver agreement was entered into on or about 8 June 2020 for the period ending 30 June 2020 in respect of the same types of breaches as the standstill and forbearance agreement dated 6 February 2020 (referred to in subparagraph i. above) as well as a decline in coal prices gave rise to further "Events of Termination" under the Bluestone RPA; and~~

~~b. in relation to the Customer Agreement applicable to the Bluestone SCF Facility, a standstill and forbearance agreement was entered into on 26 September 2018 (the same day as inception of the Bluestone RPA) in which GCUK agreed to forbear from exercising its right to reduce the total facility limit to zero following the failure by Bluestone to deliver its audited financial statements by 15 September 2018.~~

28. [Not used].~~In addition, in consideration for the finance advanced to Bluestone Coal under the Bluestone RPA:~~

~~a. GCUK received at least USD108,000,000 in fees which were at least partly paid utilising amounts advanced by GCUK under the Bluestone RPA and/or the Bluestone SCF Facility, with the consequence that a significant proportion of the purportedly insured lending was for the purpose of meeting GCUK's fees; and~~

~~b. GCUK received at least another USD100,000,000 in prospective equity value in Bluestone through warrants;~~

~~**Particulars**~~

~~The Bluestone Complaint records that fees in excess of USD108,000,000 were paid for finance advanced under the Bluestone RPA and that a warrant agreement dated~~

~~12 December 2018 was agreed pursuant to which GCUK obtained warrants that could be exercised to purchase, at negligible cost, 2.5% of the ownership interest of Bluestone. That was cancelled and replaced with a second warrant agreement dated 10 June 2019 pursuant to which GCUK obtained warrants that could be exercised to purchase, again at negligible cost, 10% of the ownership interest of Bluestone: Bluestone Complaint at [16].~~

D10.4 [Not used].~~**Conduct of Lex Greensill in procuring BCC to bind Bluestone Risks**~~

29. [Not used].~~On or about 30 May 2018, Lex Greensill, acting on behalf of Greensill, procured BCC to provide insurance cover to Greensill by issuing endorsements under the 2017 90/10 Polices in respect of funds advanced under the Bluestone SCF Facility.~~

~~**Particulars**~~

~~Emails from Lex Greensill to Greg Brereton dated 30 May 2018 and 1 June 2018 [TOK.001.00133283, TOK.001.00133284 and TOK.001.00133149].~~

30. [Not used].~~On or about 18 June 2018, Greg Brereton signed, and returned to Greensill, Customer Endorsements in respect of the Bluestone SCF Facility.~~

~~**Particulars**~~

~~Email from Greg Brereton to Edward Smith and Ewan Berkemeier [TOK.001.00046853].~~

31. [Not used].~~On or about 18 September 2018, Lex Greensill, on behalf of Greensill, procured BCC to provide insurance cover to Greensill by issuing endorsements under the 2017 90/10 Policies:~~

~~a. in respect of funds advanced under the Bluestone RPA, which he described as establishing an "accounts receivable facility" (**Bluestone AR Facility**); and~~

~~b. on the basis that the accounts receivable against which funds would be advanced would be with respect to seven identified customers of Bluestone, each of whom would be approved for a maximum limit of USD20,000,000 (**Initial Account Debtors**).~~

~~**Particulars**~~

~~The procuring occurred by:~~

~~i. the 18 September 2018 Emails; and~~

ii. a telephone call on or about 18 September 2018 referred to in the second of the 18 September 2018 Emails.

32. [Not used].On or about 19 September 2018, Greg Brereton signed, and returned to Greensill, Customer Endorsements in respect of the Initial Account Debtors.

33. [Not used].Greg Brereton issued further endorsements under the 2017 90/10 Policies and 2019 90/10 Policies, including as follows:

a. on 21 and 26 September 2018, documents purporting to be endorsements were signed purporting to extend the policy period of the 2017 90/10 Policies to 1 March 2019;

b. on 3 and 7 December 2018, Customer Endorsements for a further nine Account Debtors and for limit increases for the Initial Account Debtors under the Bluestone RPA;

c. on 5 and 13 March 2019, Customer Endorsements as part of the renewal of the 2017 90/10 Policies into the 2019 90/10 Policies for all existing Account Debtors at that time (including under the Bluestone RPA) as well as in respect of the Bluestone SCF Facility;

d. on 21 May 2019, Customer Endorsements for a further Account Debtor, limit increases for six existing Account Debtors under the Bluestone RPA and limit cancellations for two Account Debtors under the Bluestone RPA;

e. on 11 June 2019, Customer Endorsements for a further six Account Debtors under the Bluestone RPA;

f. on or about 21 June 2019 and/or 27 June 2019, documents purporting to be endorsements styled as an 'Endorsement' bearing the number 17 and an 'Endorsement' bearing the number 18, were signed purporting to extend the policy period of the 2019 90/10 Policies by a year to 1 March 2021 (the **Purported June 2019 Extension Documentation**);

g. on 4 September 2019, Customer Endorsements for a limit cancellation for one Account Debtor and limit increases for two existing Account Debtors under the Bluestone RPA;

h. on 12 February 2020, Customer Endorsements for limit increases for three Account Debtors under the Bluestone RPA; and

i. on 14 April 2020, Customer Endorsements increasing limits for three Account Debtors under the Bluestone RPA.

~~(the endorsements pleaded in paragraphs 31 to 33 of this Annexure are referred to in this Annexure as the "**Bluestone Risks**".)~~

D10.5 [Not used].~~**Fraudulent non-disclosure in respect of Bluestone Risks**~~

34. [Not used].~~Greensill was aware of the matters pleaded in paragraphs 25 to 28 of this Annexure concerning the actual relationship between Greensill, Bluestone and Bluestone Coal.~~

~~**Particulars**~~

~~i. The programs of insurance in respect of the Bluestone SCF Facility and the Bluestone AR Facility were initially procured by direct communications between Lex Greensill and Greg Brereton and Lex Greensill's knowledge in relation to those programs of insurance is to be imputed to Greensill.~~

~~ii. Lex Greensill's knowledge of the matters pleaded in paragraphs 25 to 28 of this Annexure concerning the actual relationship between Greensill, Bluestone and Bluestone Coal is to be inferred from his senior position within Greensill.~~

~~iii. Further, the Bluestone Complaint records that Lex Greensill visited Bluestone in April 2019, participated in discussions with Bluestone representatives concerning the relationship between Greensill, Bluestone and Bluestone Coal, and that Mr Hartley-Urquhart (another Greensill representative with whom Bluestone had dealings) represented that Lex Greensill was fully aware of the dealings between Greensill, Bluestone and Bluestone Coal.~~

35. [Not used].~~Greensill did not disclose to Greg Brereton or any representative of BCC or IAL in the course of seeking to procure cover in respect of the Bluestone Risks under the 2017 90/10 Policies or 2019 90/10 Policies or otherwise that, under the terms of the Bluestone RPA:~~

~~a. funds were proposed to be advanced by GCUK to Bluestone Coal on the basis of both Actual Receivables and Expected Receivables, such that GCUK would not take an actual assignment of Actual Receivables as security for all lending to Bluestone Coal; and~~

~~b. where funds were advanced by GCUK to Bluestone Coal on the basis of Expected Receivables, GCUK would only have recourse to the relevant Account Debtor in the event that the Expected Receivable converted into an actual payment obligation.~~

36. [Not used].~~Further, GCUK did not disclose to Greg Brereton or any representative of BCC or IAL in the course of seeking to procure cover in respect of the Bluestone Risks under the 2017 90/10 Policies or 2019 90/10 Policies or otherwise that, contrary to the terms of the Bluestone RPA:~~

~~a. the actual arrangements between Bluestone Coal and GCUK were as pleaded in paragraphs 25 to 28 of this Annexure;~~

~~b. in the premises, the Bluestone AR Facility was:~~

~~i. not proposed to be operated, or being operated, in accordance with the terms of the Bluestone RPA;~~

~~ii. not an accounts receivable facility at all; and/or~~

~~iii. in the nature of long-term enterprise finance lending on an interest only basis; and~~

~~c. by reason of the matters pleaded in subparagraphs a. and b. above, the risk being insured under the Bluestone Risks in respect of the Bluestone AR Facility was:~~

~~i. not the risk of non-payment of accounts receivable by Account Debtors in respect of goods or services supplied by Bluestone Coal or other Sellers, where the relevant credit risk was that of the Account Debtors (being the Initial Account Debtors and any other Account Debtors subsequently endorsed to the Policy); but rather~~

~~ii. the risk of non-payment by Bluestone, Bluestone Coal and/or Blackstone of the long-term enterprise finance lending advanced by Greensill, where the relevant credit risk was that of Bluestone, Bluestone Coal and/or Blackstone;~~

~~d. there had been "Events of Termination" under the RPA which gave GCUK the right to declare that no further drawdowns could be obtained by Bluestone Coal and/or Blackstone;~~

~~e. Bluestone was being charged exorbitant fees by GCUK in relation to the finance advanced to it under the Bluestone AR Facility and those fees would be paid from the sums advanced pursuant to the Bluestone AR Facility; and~~

~~f. that a significant proportion of the funds advanced under the Bluestone AR Facility were proposed to be used, and were used, to repay existing debts owed by Bluestone Coal, Bluestone and/or other Bluestone entities to Carter Bank.~~

37. [Not used].~~Greensill did not disclose to Greg Brereton or any representative of BCC or IAL, in the course of seeking to procure cover in respect of the Bluestone Risks under the 2017 90/10 Policies or 2019 90/10 Policies or otherwise, that under the Bluestone SCF Facility:~~

~~a. substantial funds advanced under the Bluestone SCF Facility were intended to be used, and were used, to repay existing debt with Carter Bank rather than for the purpose of meeting Supplier Invoices in accordance with the terms of the Bluestone SCF Facility; and~~

~~b. Bluestone had failed to deliver to GCUK its audited financial statements by 15 September 2018 in breach of the terms of the Bluestone SCF Facility and which gave GCUK the right to reduce the total facility limit to zero, which right GCUK had waived.~~

38. [Not used].~~Greensill did not disclose to Greg Brereton or any representative of BCC or IAL, in the course of seeking to procure cover in respect of the Bluestone Risks under the 2017 90/10 Policies or 2019 90/10 Policies or otherwise, that the Bluestone Misrepresentations (pleaded in paragraph 45 of this Annexure) were knowingly false and fraudulent misrepresentations by Greensill when made.~~

39. [Not used].~~The non-disclosures by Greensill alleged in paragraphs 35 to 38 of this Annexure (or alternatively, such of them as are established) (**Bluestone Non-Disclosures**):~~

~~a. were material to the decision to underwrite the Bluestone Risks;~~

~~**Particulars**~~

~~i. The nature of the lending under the Bluestone AR Facility, in particular the true nature of the credit risk assumed by Greensill and insured under the 2017 90/10 Policies and 2019 90/10 Policies, was a significant matter in assessing whether the Bluestone Risks should be bound.~~

~~ii. Bluestone's and Bluestone Coal's use of the funds lent to them, breaches of covenants by Bluestone and Bluestone Coal and waivers/forgiveness of same were relevant to the financial standing of Bluestone and Bluestone Coal and were thus further significant matters in assessing whether the Bluestone Risks should be bound.~~

~~iii. The circumstances that Greensill had an ownership interest in Bluestone through warrants and was charging exorbitant fees, impacted on the inferred ability of Greensill to make disinterested lending decisions and were thus further significant matters in assessing whether the Bluestone Risks should be bound.~~

iv. The Bluestone Non-Disclosures also bore directly upon the integrity and trustworthiness of the Greensill entities (GCPL, GCUK and Greensill Bank) as insureds.

b. were deliberate, and occurred in circumstances where Greensill knew that the matters would be material to the decision to underwrite the Bluestone Risks; and

c. in the premises, constituted fraudulent non-disclosure.

Particulars

i. Lex Greensill, on behalf of Greensill, knew that the matters would be material and acted deliberately on behalf of Greensill not to disclose them.

ii. Deliberate non-disclosure is to be inferred from the significance of the matters that were not disclosed, the nature of Lex Greensill's communications with Greg Brereton (pleaded below) and Lex Greensill's experience in commercial financing and in dealing with underwriters.

D10.6 [Not used].**Fraudulent misrepresentations in respect of the Bluestone Risks**

40. [Not used].When the Bluestone SCF Facility was first presented to BCC on or about 30 May 2018, Greensill represented that the whole or substantially the whole of the finance provided by Greensill under the Bluestone SCF Facility would be used to finance supplier invoices.

Particulars

Email from Lex Greensill to Greg Brereton dated 30 May 2018 [TOK.001.00133283 and TOK.001.00133284].

41. [Not used].When the Bluestone AR Facility was first presented to BCC on or about 18 September 2018, Greensill represented to Greg Brereton that:

a. GCUK (or some undisclosed member of the group of companies of which GCUK was a member) had been mandated by Bluestone to provide them with an accounts receivable facility for Bluestone's coal sales;

b. the funding provided by Greensill to Bluestone would be based on, and limited by, the value of invoices issued by Bluestone to existing customers of Bluestone who GCUK had approved or at least would be based on, and limited by, sales contracts or supply agreements entered into by existing customers;

c. the existing customers of Bluestone who GCUK had approved so far were:

i. Bank of Montreal (credit rating A+);

ii. Hyundai Steel Company (credit rating BBB);

iii. Nippon Steel & Sumitomo Metal Corporation (credit rating BBB);

iv. ArcelorMittal SA (credit rating BBB-);

v. Thyssenkrupp AG (credit rating BB);

vi. Suncoke Energy (credit rating BB-); and

vii. United States Steel Corporation (credit rating B);

d. further customers of Bluestone could be added to the facility if approved by Greensill, in which case Greensill would approach BCC and seek its approval, by way of further Customer Endorsements.

Particulars

BCC refers to the 18 September 2018 emails, and subsequent telephone call on or about 18 September 2018 between Lex Greensill and Greg Brereton.

42. [Not used].On or about 19 September 2018, Greensill further represented to Greg Brereton that:

a. any advances made under the Bluestone AR Facility would be for the acquisition of accounts receivable; and

b. any advances made under the Bluestone AR Facility would be secured against accounts receivable from Account Debtors such that GCUK's credit risk (and the risk insured under the Policy) was the risk of non-payment of accounts receivable by those Account Debtors.

Particulars

Email from John Whelan to Greg Brereton and Lex Greensill (amongst others) on 19 September 2018 at 6:16 am with subject line "RE: Bluestone AR Facility" [TOK.001.00124816].

43. [Not used].On or about 30 November 2018, Greensill represented to Greg Brereton that:

a. the Bluestone AR Facility was an accounts receivable facility;

b. the Initial Account Debtors of Bluestone and further customers proposed to be added for the purposes of the Bluestone AR Facility were all account debtors of Bluestone;

c. the further Account Debtors proposed to be added for the purposes of the Bluestone AR Facility were all acceptable credit risks in the opinion of Greensill; and

d. the funding provided by GCUK to Bluestone under the Bluestone AR Facility was and would continue to be based on, and limited by, the value of invoices issued by Bluestone to the Initial Account Debtors and the nominated further customers of Bluestone or alternatively, the value of bona fide purchase orders or firm commitments that Bluestone had received from the Initial Account Debtors and the nominated further customers.

Particulars

i. Email from Lex Greensill to Greg Brereton on 30 November 2018 at 4:26 pm with the subject line "Bluestone AR", and attaching excel spreadsheet titled "Bluestone Account Debtor List 11.27.2018 for BCC" [TOK.001.00119581 and TOK.001.00119582].

ii. Email from Lex Greensill to Greg Brereton on 1 December 2018 at 6:02 am with the subject line "Bluestone AR – Additional Account Debtors" [TOK.001.00119497].

iii. Telephone call between Lex Greensill and Greg Brereton at or around this time as referred to in the email from Lex Greensill to Greg Brereton on 30 November 2018 at 4:26 pm with the subject line "Bluestone AR" [TOK.001.00119581].

44. [Not used].On or about 3 December 2018 Greensill represented to Greg Brereton that:

a. the Bluestone AR Facility was an accounts receivable facility;

b. the Initial Account Debtors of Bluestone and further customers proposed to be added for the purposes of the Bluestone AR Facility were all account debtors of Bluestone;

c. the further Account Debtors proposed to be added for the purposes of the AR Facility were all acceptable credit risks in the opinion of Greensill; and

d. the tenor for the additional risks remained at 180 days.

~~Particulars~~

~~Email from Edward Smith (Marsh) to Greg Brereton, copying Lex Greensill and others, dated 3 December 2018 at 6:13 am with subject line "RE: Bluestone AR – Additional Account Debtors" and attaching proposed amended endorsements and further proposed endorsements [TOK.001.00119449].~~

45. [Not used].~~Having regard to the matters set out in paragraphs 25 to 25 of this Annexure, the representations pleaded in paragraphs 40 to 44 of this Annexure, or alternatively such of them as are established (**Bluestone Misrepresentations**) were:~~

~~a. false and misleading; and~~

~~b. material to the decision whether to advance, renew or extend insurance cover in respect of the Bluestone Risks.~~

~~Particulars~~

~~The particulars to paragraph 39 of this Annexure are repeated.~~

46. [Not used].~~At the time that the Bluestone Misrepresentations were made they were:~~

~~a. known by Greensill to be false and misleading; and~~

~~b. known by Greensill to be material to the decision whether to advance, renew or extend insurance cover in respect of the Bluestone Risks.~~

~~Particulars~~

~~The particulars to paragraph 39 of this Annexure are repeated.~~

~~c. in the premises, knowingly false and therefore fraudulent.~~

D10.7 [Not used].**~~Fraudulent misrepresentations made to Investors in respect of the Bluestone Risks~~**

47. [Not used].~~At all material times for the purposes of the Bluestone Risks, Greensill's intention was to securitise debts owed to it by Bluestone Coal and any other Seller or Servicer under the Bluestone RPA by way of a secured note program.~~

48. [Not used].~~For that purpose, GCUK assigned the receivables and collateral arising under the Bluestone RPA to a special purpose vehicle, Hoffman S.a.r.l (**Hoffman**) and appointed Citibank N.A., London Branch, as note trustee for the noteholders.~~

~~Particulars~~

~~Master Trust Deed dated 13 October 2018 Master Assignment Agreement dated 21 December 2018.~~

49. [Not used].~~At a time not known by BCC, but no later than 27 September 2018, Greensill caused a Series Supplement to be issued to potential purchasers of the notes, which stated, amongst other things:~~

~~a. that the majority of the accounts receivable sold to GCUK under the Bluestone RPA and assigned to Hoffman would be based on an expectation of coal sales anticipated to be made by the Sellers to the Account Debtors during a time to be agreed upon when funds were advanced in respect of each such account receivable, known as future accounts receivables;~~

~~b. that future accounts receivable would comprise expected future amounts which were intended on the date that funds were advanced to become payable by the relevant Account Debtor as a result of actual or anticipated future sales of goods or services, but which were not the subject of an actual or enforceable payment obligation; and~~

~~c. Greensill, the Sellers and the Account Debtors intended, and the Sellers would represent when funds were advanced, that each future accounts receivable would be evidenced by an existing business relationship between the applicable Seller and the Account Debtor, and an expectation, based on historical data, that the relevant future accounts receivable would become an actual payment obligation payable by its expected due date.~~

50. [Not used].~~By the Series Supplement, Greensill represented to potential purchasers of the notes, that whenever funds were advanced under the RPA on the basis of an Expected Receivable, GCUK, intended that there would be, and intended to require each Seller to represent and furnish evidence of:~~

~~a. an existing business relationship between the Seller and the Account Debtor; and~~

~~b. an expectation, based on historical data, that the Expected Receivable would convert into an actual payment obligation and be payable within, at latest, 180 days from the date of the advance.~~

51. [Not used].~~From at the latest 18 September 2018 to at the earliest November 2020, and contrary to the representations pleaded in paragraph 49 and 50 of this Annexure (**Bluestone Misrepresentations to Investors**):~~

~~a. GCUK did not intend that there would be, or intend to require each Seller to represent and furnish evidence of, an existing business relationship between the Seller and the Account Debtor;~~

~~b. GCUK did not intend that there would be, or intend to require each Seller to represent and furnish evidence of, an expectation, based on historical data, that the Expected Receivable would convert into an actual payment obligation and be payable within, at latest, 180 days from the date of the advance;~~

~~c. in fact at least a majority of Expected Receivables were with respect to purported Account Debtors:~~

~~i. with whom the Sellers under the RPA had no business relationship at any time; and~~

~~ii. for whom the Sellers under the RPA had no expectation of payment obligations on terms requiring payment within 180 days of the relevant advance.~~

~~Particulars~~

~~The particulars to paragraphs 25 of this Annexure are repeated.~~

52. [Not used].~~The Bluestone Misrepresentations to Investors were:~~

~~a. false and misleading; and~~

~~b. material to the decision of an investor whether to subscribe for notes pursuant to the Series Supplement.~~

~~Particulars~~

~~The nature of the lending under the Bluestone AR Facility, in particular the true nature of the credit risk assumed by Greensill was a significant matter in assessing whether to subscribe for notes pursuant to the Series Supplement.~~

53. [Not used].~~At the time that the Bluestone Misrepresentations to Investors were made they were:~~

~~a. known by Greensill to be false and misleading;~~

~~b. known by Greensill to be material to the decision of an investor whether to subscribe for notes pursuant to the Series Supplement; and~~

~~c. in the premises, knowingly false and therefore fraudulent.~~

~~Particulars~~

~~i. The person alleged to have had known that the Bluestone Misrepresentations to Investors were false is Lex Greensill.~~

~~ii. Knowledge is to be inferred from the significance of the matters about which investors were misled and Lex Greensill's experience in commercial financing.~~

D10.8 Policy and Endorsements

53A.1 In Federal Court of Australia proceedings no. NSD169/2023 and no. NSD174/2023, the applicants allege that Bluestone Resources was endorsed as a Customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement 5 dated 13 March 2019 (**Bluestone MO Endorsement**).

Particulars

Fifth Amended Statement of claim in proceeding no. NSD169/2023 dated 14 April 2025 at paragraphs 126(a) and 254.

Sixth Amended Statement of Claim in proceeding no. NSD174/2023 dated 11 June 2025 at paragraph 146.

53A.2 The applicants in the Bluestone Proceeding allege that, on and from 13 March 2019, an additional 14 entities were endorsed as Customers under the 2019 90/10 Parallel Policy by means of the following:

a. Customer Endorsement 9 for Arcelor Mittal SA (including its US subsidiary ArcelorMittal USA LLC) dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

b. Customer Endorsement 7 for Hyundai Steel Company (including its US subsidiary, Hyundai Steel America, Inc.) dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

c. Customer Endorsement 10 for SunCoke Energy Inc dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

d. Customer Endorsement 8 for Nippon Steel & Sumitomo Metal Corporation (including US subsidiary, Nippon Steel & Sumitomo Metal U.S.A., Inc.) dated on 13 March 2019, which

purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

e. Customer Endorsement 26(i) for Contura Energy Inc dated 21 May 2019, which purported to be effective from 20 May 2019 and had a Customer Limit of USD20 million;

f. Customer Endorsement 80 for PPL Corporation dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

g. Customer Endorsement 77 for The Southern Company dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

h. Customer Endorsement 78 for Xcel Energy Inc dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

i. Customer Endorsement 24(ii) for Duke Energy Corporation dated 4 September 2019, which purported to be effective from 21 August and had a Customer Limit of USD40 million;

j. Customer Endorsement 28(ii) for Mitsui & Co. (U.S.A.) Inc dated 12 February 2020, which purported to be effective from 30 January 2020 and had a Customer Limit of USD40 million;

k. Customer Endorsement 79(i) for NRG Energy Inc dated 12 February 2020, which purported to be effective from 30 January 2020 and had a Customer Limit of USD40 million;

l. Customer Endorsement 27(ii) for Posco America Corporation dated 14 April 2020, which purported to be effective from 9 April 2020 and had a Customer Limit of USD40 million;

m. Customer Endorsement 71(i) for Arch Coal Inc dated 14 April 2020, which purported to be effective from 9 April 2020 and had a Customer Limit of USD35 million;

n. Customer Endorsement 29(iii) for DTE Energy Company dated 14 April 2020, which purported to be effective from 9 April 2020 and had a Customer Limit of USD40 million;

Particulars

Sixth Amended Statement of Claim in proceeding no. NSD174/2023 dated 11 June 2025 at paragraph 143.

53A.3 The applicants in the CS Global Proceeding allege that, on and from 13 March 2019, 20 entities additional to Bluestone Resources were endorsed as Customers under the 2019 90/10 Parallel Policy. Those include the entities purportedly the subject of the Customer Endorsements in paragraph 53A.2 above, as well as the entities purportedly the subject of the following Customer Endorsements:

a. Customer Endorsement 12 for AK Steel Corporation dated 13 March 2019,which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

b. Customer Endorsement 21 for American Electric Power Company Inc dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

c. Customer Endorsement 76 for First Energy Corp dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

d. Customer Endorsement 75 for Tennessee Valley Authority dated 11 June 2019, which purported to be effective from 4 June 2019 and had a Customer Limit of USD40 million;

e. Customer Endorsement 11 for United States Steel Corporation dated 13 March 2019, which purported to be effective from 1 March 2019 and had a Customer Limit of USD40 million;

f. Customer Endorsement 23(ii) for Virginia Electric and Power Company dated 4 September 2019, which purported to be effective from 21 August 2019 and had a Customer Limit of USD40 million.

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated 14 April 2025 at subparagraph 126(b).

53A.4 The Customer Endorsements referred to in paragraphs 53A.2 and 53A.3 above are collectively referred to as the Bluestone Account Debtor Endorsements.

D10.9 Bluestone Multi-Obligor Misrepresentations

Representations

53A.5 On or around 18 September 2018, Lex Greensill, on behalf of GCUK, requested that BCC provide insurance cover in respect of accounts receivable financing to be provided by GCUK to Bluestone Resources (Bluestone MO Risk).

Particulars

Email from Lex Greensill to Brereton, with the subject 'Bluestone AR Facility', dated 18 September 2018 (AGB.0002.0004.0080).

53A.6 In making the request, Lex Greensill represented to Brereton that GCUK had been mandated by Bluestone Resources to provide an 'AR [accounts receivable] facility for their coal sales' (Bluestone AR Facility), where:

a. the 'Seller' was Bluestone Coal Sales Corporation (**Bluestone Coal**), with Bluestone Resources and its subsidiaries acting as 'guarantors';

b. funds would be advanced by GCUK against the account receivables of pre-approved customers (**Account Debtors**), up to the sublimits pleaded in subparagraph 53A.6(d)

below;

c. the initial list of Account Debtors and their respective credit ratings were:

i. Bank of Montreal (credit rating A+);

ii. Hyundai Steel Company (credit rating BBB);

iii. Nippon Steel & Sumitomo Metal Corporation (credit rating BBB);

iv. ArcelorMittal SA (credit rating BBB-);

v. Thyssenkrupp AG (credit rating BB);

vi. SunCoke Energy Inc (credit rating BB-);

vii. United States Steel Corporation (credit rating B);

viii. AK Steel Holding Corporation (credit rating B);

d. the facility limit was USD140 million, with a maximum sublimit of USD20 million for each initial Account Debtor;

e. the maximum tenor (described as the 'Maximum Customer Payment Term') was 180 days;

f. Bluestone Coal had not experienced any credit losses on any customers in the past 5 years; and

g. in relation to the security position, Bluestone Coal would have no borrowings (secured or unsecured) with any party other than GCUK, and GCUK would hold the following security:

i. a perfected first lien over all of Bluestone Resources' operating properties, providing GCUK with 'incremental security worth $366mm';

ii. a security interest over the personal assets of Bluestone Coal, Bluestone Resources and its subsidiaries, perfected by a UCC-1 filing; and

iii. personal guarantees from the owners.

53A.7 On or around 18 September 2018, Brereton agreed to provide cover in respect of the Bluestone MO Risk. Brereton also stated that 'other buyer risks may be added to the policy from time to time… even though the policy limit may not increase.'

Particulars

Email 'Re: Bluestone AR Facility' from Brereton to Lex Greensill, copying Ewan Berkemeier, John Whelan, Brett Downes, Edward Smith, and Julian Macey-Dare, dated 18 September 2018 (BCC.0001.0002.1605).

53A.8 On or around 18 September 2018, GCUK sent an email to Brereton attaching documents relating to the requested cover for the Bluestone MO Risk under the 2018 Policy. In the email, GCUK noted that the 'RPA [receivables purchase agreement]' pursuant to which the account receivables were being purchased did not include the covenants from the Bluestone SCF Facility (see paragraph 53A.107 below) bearing in mind that GCUK was purchasing account receivables.

Particulars

Email from John Whelan (Deputy General Counsel of GCUK) to Lex Greensill, copying Ewan Berkemeier, Brett Downes, Edward Smith, and Julian Macey-Dare, dated 18 September 2018 (BCC.0001.0001.0866), attaching, among other things, unsigned copies of Customer Endorsements purportedly under the 2018 Policy.

53A.9 On or around 19 September 2018, Brereton returned signed copies of various endorsements to the 2018 Policy in respect of the Bluestone MO Risk, including:

a. Debt Endorsement 2(A);

b. Customer Endorsement 30 for Bluestone Resources as the guarantor of the seller, Bluestone Coal, with an Aggregate Customer Limit of USD 5 million 'to be reset indefinitely if breached'; and

c. Customer Endorsements for the initial Account Debtors, as set out in subparagraph 53A.6(c) above, excluding Thyssenkrupp AG, each with an Aggregate Customer Limit of USD20 million.

Particulars

Email from Brereton to John Whelan and Lex Greensill dated 18 September 2018 (BCC.0001.0002.1618), and attaching, among other things, signed copies of Customer Endorsements (BCC.0001.0002.1619).

53A.10 In the premises of paragraphs 53A.6 and 53A.8 above, GCUK represented to Brereton that:

a. the Bluestone AR Facility was an accounts receivable facility, where:

i. GCUK would advance funds to purchase accounts receivable generated from coal sales by the Seller to the Account Debtors, as amended from time to time;

ii. any advances by GCUK would be based on the value of accounts receivable;

iii. the nature of the financing was short-term trade credit finance, with a maximum payment term of 180 days,

(the **Bluestone AR Facility Misrepresentation**);

b. each of the Account Debtors under the Bluestone AR Facility, as amended from time to time, was a customer of the Seller,

(the **Bluestone Genuine Customer Misrepresentation**).

53A.11 By reason of the matters in paragraph 53A.10, GCUK represented to Brereton that:

a. GCUK's credit risk under the Bluestone AR Facility was the risk of non-payment of accounts receivable by the Account Debtors;

b. the identity and creditworthiness of the Account Debtors were relevant to GCUK's lending decisions under the Bluestone AR Facility and, by extension, the credit assessment of the Bluestone MO Risk; and

c. GCUK considered the Account Debtors to be of acceptable credit risk,

(the **Bluestone Non-Payment Risk Misrepresentation**).

53A.12 The Bluestone AR Facility Misrepresentation, Bluestone Genuine Customer Misrepresentation and Bluestone Non-Payment Risk Misrepresentation were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, 10A.26A and 10A.26B.

53A.13 Each (alternatively, one or more) of the Bluestone AR Facility Misrepresentation, Bluestone Genuine Customer Misrepresentation and Bluestone Non-Payment Risk Misrepresentation was a continuing representation which endured during the issuance of each of the 2019 90/10 Parallel Policy, the Bluestone MO Endorsement and/or the Customer Endorsements referred to in Section [Insert Bluestone MO section no.] of this Annexure, including the Bluestone Account Debtor Endorsements.

Increase from USD140 million to USD400 million in December 2018

53A.14 On or around 30 November 2018, GCUK requested that BCC amend the cover for the Bluestone MO Risk to insure an increase in the size of the Bluestone AR Facility from USD140 million to USD400 million (December 2018 Upsize). Specifically, GCUK requested the following policy amendments:

a. an increase in the aggregate policy limit across all Account Debtors from USD140 million to USD430 million, on the basis that utilisation across the group could not exceed the maximum facility limit of USD$400 million;

b. increases to the Customer Limits of each of the initial Account Debtors in subparagraph 53A.6(c) above from USD20 million to USD40 million;

c. the addition of Blackstone Energy Ltd (**Blackstone**) as a 'Seller'; and

d. the addition of 9 new Account Debtors as Customers, with varying Customer Limits,

namely:

i. American Electric Power Company Inc;

ii. South Carolina Electric & Gas Company;

iii. Virginia Electric and Power Company;

iv. Duke Energy Corporation;

v. Trafigura Trading LLC;

vi. Contura Energy Inc;

vii. Posco America Corporation;

viii. Mitsui & Co. (U.S.A) Inc; and

ix. DTE Energy Company.

Particulars

Email from Lex Greensill to Brereton dated 29 November 2018 (GCU.0005.0003.1076) attaching excel spreadsheet titled 'Bluestone Account Debtor List 11.27.2018 for BCC' (GCU.0005.0003.1077).

Email from Lex Greensill to Brereton, copying Brett Downes, John Whelan, Michael Gilhuley, Sophie Dyke, Julian Macey-Dare and Ewan Berkemeier, dated 30 November 2018 (MAR.0004.0001.6855) and attaching 'Bluestone Account Debtor List 11.27.2018 for BCC.XLSX' (MAR.0004.0001.6856).

53A.15 On or around 29 and 30 November 2018, GCUK provided Brereton with an updated list of Account Debtors for the Bluestone AR facility, referring to the listed Account Debtors as 'solid names'. The Account Debtors list included:

a. the initial Account Debtors in subparagraph 53A.6(c) above;

b. the additional Account Debtors in subparagraph 53A.14(d) above, who were each identified as being a customer of either Bluestone Coal or Blackstone, with:

i. a Standard & Poor's (**S&P**) credit rating of BBB- or above; and/or

ii. a parent company with a S&P credit rating of BBB- or above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 53A.14 above.

53A.16 On or around 2 December 2018, Marsh sent an email to Brereton attaching documents relating to the request for amended cover for the Bluestone MO Risk under the 2018 Policy. In the email, Marsh

stated that 'Greensill have confirmed NKORL [no known or reported losses] and have given us the order to bind'.

Particulars

Email from Edward Smith of Marsh to Lex Greensill and Brereton, with subject 'RE: Bluestone AR – Additional Account Debtors', copying Brett Downes, John Whelan, Michael Gilhuley, Sophie Dyke, Julian Macey-Dare and Ewan Berkemeier (MAR.0004.0001.6905) and attaching, among other things, unsigned copies of Customer Endorsements purportedly issued under the 2018 Policy.

53A.17 By reason of the matters in paragraphs 53A.14, 53A.15 and 53A.16, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, which apply mutatis mutandis with respect to the additional Account Debtors referred to in subparagraph 53A.14(d) above.

53A.18 On or around 2 December 2018, Brereton returned to Marsh:

a. a signed copy of Customer Endorsements 30(i) for Bluestone Resources, which included Blackstone as an additional 'Seller'; and

b. signed copies of Customer Endorsements for the Account Debtors.

Particulars

Email 'RE: Bluestone AR – Additional Account Debtors' from Brereton to Edward Smith and Lex Greensill, dated 3 December 2018, copying Brett Downes, John Whelan, Michael Gilhuley, Sophie Dyke, Julian Macey-Dare, Ewan Berkemeier (GCU.0005.0003.1793), attaching among other things, signed copies of customer endorsements purportedly issued under the 2018 Policy (GCU.0005.0003.1794).

Renewal – 2019 Policy

53A.19 On or around 28 February 2019 and 4 March 2019, Marsh emailed Brereton documents relating to a request for renewal of cover under the 2019 90/10 Parallel Policy in respect of numerous risks, including the Bluestone MO Risk. On each occasion, Marsh stated that GCUK had 'confirmed NKORL' and given them an order to bind.

Particulars

Email from Edward Smith to Brereton, copying Ewan Berkemeier and other Marsh representatives, dated 28 February 2019 (MAR.0004.0001.9510), attaching, among other things, an unsigned Bluestone MO Customer Endorsement (MAR.0004.0001.9523) and unsigned Customer Endorsements for current Account Debtors (MAR.0004.0001.9511; MAR.0004.0001.9516; MAR.0004.0001.9518; MAR.0004.0001.9519; MAR.0004.0001.9522; MAR.0004.0001.9527; MAR.0004.0001.9529; MAR.0004.0001.9534; MAR.0004.0001.9535;

MAR.0004.0001.9536; MAR.0004.0001.9537; MAR.0004.0001.9540; MAR.0004.0001.9542; MAR.0004.0001.9547; MAR.0004.0001.9548; MAR.0004.0001.9549).

Email from Edward Smith to Brereton, copying Ewan Berkemeier and other Marsh representatives, dated 4 March 2019 (MAR.0004.0001.9739), attaching, among other things, an unsigned Bluestone MO Customer Endorsement (MAR.0004.0001.9763) and unsigned Customer Endorsements for current Account Debtors (MAR.0004.0001.9742; MAR.0004.0001.9743; MAR.0004.0001.9754; MAR.0004.0001.9756; MAR.0004.0001.9757; MAR.0004.0001.9759; MAR.0004.0001.9765; MAR.0004.0001.9766; MAR.0004.0001.9767; MAR.0004.0001.9768; MAR.0004.0001.9778; MAR.0004.0001.9782; MAR.0004.0001.9784; MAR.0004.0001.9785; MAR.0004.0001.9787; MAR.0004.0001.9788; MAR.0004.0001.9790.)

53A.20 On or around 13 March 2019, Brereton provided Marsh with signed copies of, among other things, the following in respect of the Bluestone MO Risk under the 2019 90/10 Parallel Policy:

a. the Bluestone MO Endorsement, which purported, with effect from 1 March 2019, to endorse Bluestone Resources as a 'Customer' under the 2019 90/10 Parallel Policy, in its capacity as a guarantor relating to the Sellers, Bluestone Coal and Blackstone, with an 'Aggregate Customer Limit' of 'USD 5,000,000 (to be reset indefinitely if the Aggregate Customer Limit is breached)'; and

b. Customer Endorsements for the Account Debtors, as at that time, including various of the Bluestone Account Debtor Endorsements, or initial versions of those Customer Endorsements.

Particulars

Email from Brereton to Edward Smith, copying Ewan Berkemeier, dated 13 March 2019 (BCC.0001.0002.2777), attaching, among other things, signed copies of various Customer Endorsements under the 2019 90/10 Parallel Policy (BCC.0001.0002.2778).

Increase in facility size from USD400 million to USD430 million

53A.21 On or around 28 March 2019, Michael Gilhuley of GCUK emailed Lex Greensill, copying Roland Hartley-Urquhart, Adam Cherubini and Rachelle Bower, about a proposed increase to the Bluestone AR Facility limit from USD400 million to USD430 million (**April 2019 Upsize**). Mr Gilhuley advised that GCUK's request of BCC was to increase the maximum exposure size on the policy from USD400 million to USD430million.

Particulars

Email 'Bluestone request for BCC upsize' from Michael Gilhuley to Lex Greensill, copying Roland Hartley-Urquhart, Adam Cherubini and Rachelle Bower, dated 28 March 2019 (GCU.0005.0008.2574), attaching 'Bluestone Account Debtor List 03.29.2019 for BCC.XLSX' (GCU.0005.0008.2575).

53A.22 In his response, Lex Greensill stated he was supportive of the increase and would be able to 'deliver the insurance in the next 72 hours'.

Particulars

Email 'Re: Bluestone request for BCC upsize' from Lex Greensill to Michael Gilhuley, copying Roland Hartley-Urquhart, Adam Cherubini and Rachelle Bower, dated 28 March 2019 (GCU.0005.0008.2582).

53A.23 On or around 3 April 2019, GCUK asked Marsh to confirm whether any action was required to extend the insurance for the Bluestone MO Risk to include the proposed increase in the Bluestone AR Facility limit, in circumstances where the aggregate customer limits against the Account Debtors were USD430 million, and there appeared to be no written restriction of the maximum limit of liability to USD400 million.

Particulars

Email 'RE: Bluestone AR facility' from Craig Pinnington to Edward Smith and other Marsh representatives, copying the mailing list 'Insurance (Greensill)', dated 3 April 2019 (GCU.0009.0008.4528).

53A.24 In response, Marsh stated to GCUK that GCUK was 'good to proceed' with the increase to the Bluestone AR Facility, explaining that the 'seller limit can be reinstated indefinitely, so up the sum of the written limits if required.'

Particulars

Email 'RE: Bluestone AR facility' from Edward Smith to Craig Pinnington, copied to other Marsh representatives, copying the mailing list 'Insurance (Greensill)', dated 3 April 2019 (GCU.0009.0008.4528).

53A.25 The increase was approved by the Credit Committee on or around 4 April 2019.

Particulars

Email 'Credit Approval request- Bluestone' from Craig Pinnington to Roland Hartley-Urquhart, Myrjam Tschoeke, Lex Greensill, Brett Downes, Danyon Lloyd and Michael Gilhuley, copying the Credit Risk Team and Ludwig Sels, dated 3 April 2019 (GCU.0005.0008.5250), attaching a GCUK Credit Application Report submitted on 3 April 2019 (GCU.0005.0008.5251).

Email 'RE: Credit Approval request – Bluestone' from Brett Downes to Craig Pinnington dated 4 April 2019 (GCU.0009.0008.4718).

Email 'Re Credit Approval Bluestone Resources Inc' from Craig Pinnington to Roland Hartley-Urquhart, Myrjam Tschoeke, Lex Greensill, Brett Downes, Danyon Lloyd and Michael Gilhuley and others dated 4 April 2019 (GCU.0005.0008.5836).

Increase from USD430 million to USD500 million in May 2019

53A.26 On or around 13 May 2019, GCUK requested that BCC vary the cover in respect of the Bluestone MO Risk to insure an increase in the size of the Bluestone AR Facility from USD430 million to USD500 million (**May 2019 Upsize**). Specifically, GCUK requested the following amendments:

a. the removal of two existing Account Debtors, Trafigura Trading LLC and South Carolina Power and Electric (which BCC understands is intended to refer to the South Carolina Electric & Gas Company);

b. increases to the Customer Limits of six Account Debtors by USD10 million each (being Posco America Corporation, Mitsui & Co. (U.S.A) Inc, DTE Energy Company, Virginia Electric and Power Company, Duke Energy Corporation, Contura Energy Inc); and

c. the addition of a new Account Debtor, Arch Coal Inc, as a Customer, with a Customer Limit of USD30 million.

Particulars

Email from Michael Gilhuley to Brereton, with the subject 'Urgent – Bluestone Insurance Increase Request – $430mm to $500mm', copying Adam Cherubini and the mailing list 'Insurance (Greensill)' and Marsh representatives, dated 13 May 2019 (GCU.0005.0010.4252), attaching a spreadsheet with the file name 'Account Debtor List – Bluestone – 05.12.2019 (TBCC)' (GCU.0005.0010.4253).

53A.27 In making the request, GCUK:

a. described the purpose of the upsize to the Bluestone AR Facility as being to provide Bluestone Resources with additional liquidity to begin ramping up production in light of a recent asset acquisition by the company;

b. provided Brereton with an updated list of Account Debtors under the Bluestone AR Facility showing:

i. the requested amendments to the Account Debtors in subparagraphs 53A.26(a) and 10A.407c above; and

ii. Arch Coal Inc as customer of Bluestone Coal with a S&P credit rating of BB-.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 53A.26 above.

53A.28 On or around 16 May 2019, following an exchange with Lex Greensill, Brereton agreed to vary the cover for the Bluestone MO Risk in accordance with GCUK's request of 13 May 2019, as referred to in paragraph 53A.26 above.

Particulars

Email from Brereton to Lex Greensill, 'Re: Urgent – Bluestone Insurance Increase Request - $430mm to $500mm', dated 16 May 2019 (GCU.0005.0010.5737), forwarded to Roland Hartley-Urquhart and Michael Gilhuley (GCU.0005.0010.5741).

53A.29 On or around 17 May 2019, Marsh sent an email to Brereton attaching documents relating to GCUK's requested variations to the coverage of the Bluestone MO Risk under the 2019 90/10 Parallel Policy. In the email, Marsh stated that GCUK had 'confirmed KNORL [sic]' and given them an order to bind. Marsh also requested that Brereton confirm acceptance of a request from GCUK to increase the maximum tenor for the Bluestone MO Risk from 180 days to 183 days.

Particulars

Email from Angus Ward to Brereton, copying other Marsh representatives, dated 17 May 2010 (MAR.0003.0002.3383), attaching copies of unsigned customer endorsements.

Internal GCUK documents referring to the 183 days tenor include:

a. Email from Chris Tinsley to Scott Newby and Brett Downes dated 27 April 2019, attaching, among other things, a presentation titled 'Long Term Facilities' (GCU.0009.0008.9856; GCU.0009.0008.9858).

b. Credit Application Report for Bluestone Resources submitted on 29 November 2018 (GCU.0005.0003.4417 at 0005).

53A.30 By reason of the matters in paragraphs 53A.26, 53A.27 and 53A.29 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors in the Account Debtors list referred to in paragraph 53A.2710A.407b above.

53A.31 On or around 21 May 2019, Brereton returned to Marsh signed copies of the Customer Endorsements provided on 17 May 2019, which included Bluestone Account Debtor Endorsements, or earlier versions of those Customer Endorsements.

Particulars

Email from Brereton to Angus Ward, copying Marsh representatives, dated 21 May 2019 (BCC.0001.0014.0117), attaching copies of signed Customer Endorsements to

the 2019 90/10 Parallel Policy, including Customer Endorsement 26(i) (BCC.0001.0014.0118).

Increase from USD500 million to USD730 million in June 2019

53A.32 On or around 4 June 2019, GCUK requested that BCC vary the cover for the Bluestone MO Risk to insure an increase in the size of the Bluestone AR Facility from USD500 million to USD730 million (**June 2019 Upsize**). Specifically, GCUK requested that BCC endorse six new Account Debtors as Customers under the 2019 90/10 Parallel Policy for various limits, which totalled USD 230 million:

a. Tennessee Valley Authority;

b. FirstEnergy Corp;

c. The Southern Company;

d. Xcel Energy Inc;

e. NRG Energy Inc; and

f. PPL Corporation.

Particulars

Email from Lex Greensill to Brereton, copying Edward Smith, Julian Macey-Dare, Brett Downes, Adam Cherubini, Roland Hartley-Urquhart, John Whelan and Sophie Dyke, dated 4 June 2019 (GCU.0017.0001.6769).

53A.33 On or around 4 June 2019, Brereton agreed in principle to GCUK's request in paragraph 53A.32 above.

Particulars

The BCC/TM Parties refer to and repeat the particulars to paragraph 53A.32 above.

53A.34 In making the request, Lex Greensill represented to Brereton that:

a. the purpose of the increase in the Bluestone AR Facility was to provide Bluestone Resources with 'additional liquidity to begin ramping production and buy equipment for their newly acquired mines';

b. each of the six new Account Debtors referred to in paragraph 53A.32 above:

i. were customers of Blackstone;

ii. had S&P credit ratings of BBB and above; and

c. the six new Account Debtors referred to in paragraph 53A.32 above under were in addition to the existing Account Debtors referred to in paragraph 10A.407b above.

53A.35 [Not used].

53A.36 On or around 10 June 2019, Marsh sent an email to Brereton attaching documents relating to the requested variations to cover for the Bluestone MO Risk under the 2019 90/10 Parallel Policy. In the email, Marsh confirmed that Greensill had 'confirmed NKORL' and given them the order to bind.

Particulars

Email 'Re: Urgent - Bluestone Insurance Increase Request - $500mm to $730mm' from Angus Ward to Brereton and Alexandre Weiss Bueno of Marsh, copying Marsh representatives, dated 10 June 2019 (MAR.0012.0001.0928), attaching, inter alia, copies of unsigned Customer Endorsements to the 2019 90/10 Parallel Policy (MAR.0012.0001.0932; MAR.0012.0001.0933; MAR.0012.0001.0935; MAR.0012.0001.0937; MAR.0012.0001.0941; MAR.0012.0001.0943).

Email from Angus Ward to Sophie Dyke, Craig Pinnington and Brett Downes, copying Marsh representatives, dated 10 June 2019 (GCU.0009.0009.6619), attaching, inter alia, copies of unsigned Customer Endorsements to the 2019 90/10 Parallel Policy.

53A.37 By reason of the matters in paragraphs 53A.32, 53A.34 and 53A.36 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors referred to in paragraph 53A.3210A.407c above.

53A.38 On or around 10 June 2019, Brereton returned to Marsh signed copies of Customer Endorsements for the six new Account Debtors under the 2019 90/10 Parallel Policy, including several of Bluestone Account Debtor Endorsements, or earlier versions of those Customer Endorsements.

Particulars

Email from Brereton to Angus Ward and Alexandre Weiss Bueno, copying Marsh representatives, dated 10 June 2019 (MAR.0006.0001.2940), attaching, inter alia, copies of signed Customer Endorsements 75, 76, 77 and 80 to the 2019 90/10 Parallel Policy (MAR.0006.0001.2942).

Purported Amendments to Customer Limits in September 2019

53A.39 On or around 19 August 2019, GCUK requested (through its broker, Marsh) that BCC amend the customer limits of certain Account Debtors under the 2019 90/10 Parallel Policy as follows:

a. a reduction in customer limit for Bank of Montreal from USD40 million to USD0;

b. an increase in customer limit for each of Virginia Electric and Power Company, and Duke Energy Corporation, from USD20 million to USD40 million.

Particulars

Email 'Greensill Urgent Request - Bluestone AR Program - Account Debtor Limit Adjustment' from Angus Ward to Brereton, copying Marsh representatives, dated 18 August 2019 (BCC.0001.0001.3647).

53A.40 On or around 20 August 2019, Brereton agreed to GCUK's requested amendments to the customer limits, as set out in paragraph 41 above, following which Marsh sent Brereton an email attaching unsigned Customer Endorsements reflecting those amendments. In its email, Marsh stated that GCUK had 'confirmed NKORL' and given them the order to bind.

Particulars

Email from Angus Ward to Brereton, with subject 'RE: Greensill Urgent Request – Bluestone AR Program – Account Debtor Limit Adjustment', copying Marsh representatives, dated 20 August 2019 (BCC.0001.0001.3712), attaching copies of unsigned Customer Endorsements to the 2019 90/10 Parallel Policy.

Email from Angus Ward to Sophie Dyke, Craig Pinnington, and Marsh representatives, copying the mailing list 'Insurance (Greensill)' and Rachelle Bower, dated 20 August 2019 (GCU.0009.0010.9835), attaching copies of unsigned Customer Endorsements to the 2019 90/10 Parallel Policy.

53A.41 By reason of the matters in paragraph 53A.39 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors referred to in subparagraph 53A.39(b) above.

53A.42 On 4 September 2019, Brereton returned to Marsh signed copies of the Customer Endorsements, which included the Bluestone Account Debtor Endorsements for Virgina Electric and Power Company and Duke Energy Corporation.

Particulars

Email from Brereton to Angus Ward and Edward Smith, copying Marsh representatives, dated 4 September 2019 (BCC.0001.0002.3891), attaching inter alia copies of signed Customer Endorsements 23(ii) and 24(ii) and (BCC.0001.0002.3892).

Increase of USD25 million from USD730 million to USD755 million

53A.43 On or around 30 January 2020, following a discussion with Lex Greensill, Brereton agreed to vary the cover for the Bluestone MO Risk to include an increase in the Bluestone AR Facility from USD730 million to USD755 million (**January 2020 Upsize**). Specifically, BCC was requested to increase the Customer Limits of three Account Debtors, by a total of USD25 million.

Particulars

Email 'Bluestone – TBCC Insurance Increase', from Adam Cherubini to Marsh representatives, copying the mailing list 'Insurance (Greensill)', Roland Hartley-Urquhart and Rachelle Bower, dated 30 January 2020 (GCU.0009.0013.3960).

Email from Roland Hartley Urquhart to Adam Cherubini, copying GCUK representatives, dated 30 January 2020 (GCU.0009.0013.3961).

53A.44 On or around 3 February 2020, Marsh sent an email to Brereton attaching amended Customer Endorsements to the 2019 90/10 Parallel Policy for the three Account Debtors. In the email, Marsh set out an updated Bluestone Account Debtor List, and stated that GCUK had 'confirmed NKORL' and given them the order to bind.

Particulars

Email from Angus Ward to Brereton, with the subject 'Greensill – Bluestone Increase', dated 3 February 2020, copying Ewan Berkemeier and Edward Smith (BCC.0001.0001.5267), and attaching, among other things, unsigned copies of Customer Endorsements 28(ii), 29(ii) and 79(i) (BCC.0001.0001.5278; BCC.0001.0001.5279; BCC.0001.0001.5282).

53A.45 By reason of the matters in paragraph 53A.43 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors referred to in paragraph 53A.43 above.

53A.46 On or around 12 February 2020, Brereton returned to Marsh signed copies of the amended Customer Endorsements for Account Debtors Mitsui & Co. (U.S.A) Inc, DTE Energy Company and NRG Energy Inc under the 2019 90/10 Parallel Policy.

Particulars

Email from Brereton to Angus Ward, with 'Re: Greensill – Bluestone Increase', copying Marsh representatives, dated 12 February 2020 (BCC.0001.0001.5349), attaching copies of signed Customer Endorsements No. 28(ii), 29(ii) and 79(i) (BCC.0001.0001.5350).

Increase of USD20 million from USD755 million to USD775 million

53A.47 On or around 30 March 2020, GCUK (through its broker, Marsh) requested that BCC vary the cover the Bluestone MO Risk to include an increase of the Bluestone AR Facility limit from USD755 million to USD775 million (**April 2020 Upsize**). Specifically, GCUK requested that BCC approve increases to the customer limits of three Account Debtors (Posco America Corporation, DTE Energy Company and Arch Coal Inc), which increases totalled USD20 million.

Particulars

Email from Angus Ward to Brereton, copying Lex Greensill, Lindsey Sherill and Marsh representatives, dated 30 March 2020 (BCC.0001.0001.5728) attaching a document with the file name 'Bluestone - Transaction Overview (Insurance - TBCC) – FINAL' (BCC.0001.0001.5688)

53A.48 In making that request, GCUK (through its broker Marsh):

a. provided an updated Account Debtor List for the Bluestone AR Facility, reflecting the proposed limit increases for the relevant Account Debtors;

b. represented that GCUK held the following as security:

i. full recourse to Bluestone Resources, upon any failure by an Account Debtor to pay their full account receivables balance by the due date;

ii. a first priority claim on the account receivables it purchased;

iii. a mortgage over USD 1,213mm over coal reserves and fixed assets;

iv. a control agreement over the collections account of the Account Debtors;

v. in the event of default, the right to enforce its security over account receivables, collection accounts and fixed assets, and to engage with Account Debtors directly; and

c. represented that certain events would trigger an event of termination under the Bluestone AR Facility which would then become due over the following 180 days.

53A.49 On or around 9 April 2020, Brereton emailed Marsh advising that he had indicated to Lex Greensill he would agree to the variations requested and to the facility line.

Particulars

Email from Brereton to Angus Ward and Edward Smith, copying Lex Greensill, Lindsey Sherrill and Ewan Berkemeier, dated 9 April 2020 (BCC.0001.0002.5118).

53A.50 On or around 10 April 2020, Marsh sent an email to Brereton attaching unsigned copies of Customer Endorsements to the 2019 90/10 Parallel Policy relating to the proposed variations. In its email, Marsh stated that GCUK had 'confirmed NKORL and given [Marsh] the order to bind.'

Particulars

Email from Angus Ward to Brereton and Edward Smith, copying Ewan Berkemeier, dated 10 April 2020 (MAR.0004.0003.4168), attaching copies of unsigned Customer Endorsements.

53A.51 By reason of the matters in paragraphs 53A.48 and 53A.50 above, GCUK repeated the Bluestone AR Facility Misrepresentation, the Bluestone Genuine Customer Misrepresentation and the Bluestone Non-Payment Risk Misrepresentation, mutatis mutandis, in respect of the Account Debtors referred to in paragraphs 53A.4710A.407a and 53A.50 above.

53A.52 On or around 14 April 2020, Brereton returned to Marsh signed copies of the Customer Endorsements No. 27(iii), 29(iii) and 71(i).

Particulars

Email from Brereton to Angus Ward and Edward Smith, copying Ewan Berkemeier, dated 13 April 2020 (MMC_GCUK08_00017301), attaching copies of signed Customer Endorsements No. 27(iii), 29(iii) and 71(i) to the 2019 90/10 Parallel Policy (MMC_GCUK08_00017306).

Representations were misleading

53A.53 The Bluestone AR Facility Misrepresentation referred to in subparagraph 53A.10(a) above was false and/or misleading because:

a. the Bluestone AR Facility was, in substance, a term loan and not an accounts receivable facility;

Particulars

The Bluestone AR Facility was, by design, a loan presented as an accounts receivable program which was not secured against actual receivables, but rather was primarily funded against fictitious accounts receivables that may never come into existence.

The BCC/TM Parties rely on the particulars to paragraph 58 below.

Series Supplement No. 2 Compartment IU dated 10 December 2018 (AGB.0003.0002.0584 at 0011).

Email ‘Re: Bluestone’ from Brett Downes to Michael Gilhuley dated 3 August 2018 (GCU.0009.0004.2596).

Email 'Update on Bluestone' from Lex Greensill to Roland Hartley-Urquhart, copying Bill Crothers, dated 6 August 2018 (GCU.0004.0016.0371).

Minutes of meeting on 13 August 2018 between Adam Cherubini, Michael Gilhuley, Brett Downes, Deighton Sear, and Roland Hartley-Urquhart (GCU.0009.0004.3908).

Email 'Fwd: Bluestone IPA' from Ludwig Sels to Brett Downes dated 22 August 2018 (GCU.0009.0004.5295).

Email from Maxwell Gerard to David Keeling, Michael Gilhuley, Credit Risk Team, Brett Downes and Adam Cherubini, copying Ivan Jesensky and Roland Hartley-

Urquhart, dated 23 August 2018 (GCU.0009.0004.5481), attaching 'Bluestone AR – RCAP 08.23.2018' (GCU.0009.0004.5482).

Notes of Credit Committee meeting on 24 August 2018 between Lex Greensill, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Brett Downes (GCU.0017.0001.3251).

Email 'Re: Bluestone – RCAP update' from Brett Downes to Wasif Rasif, copying Ludwig Sels, dated 18 September 2018 (GCU.0013.0003.3708).

Email from Ludwig Sels to David Solo dated 5 October 2018 (GCU.0009.0005.3282).

Email from Brett Downes to David Solo dated 5 December 2018 (GCU.0009.0006.3371).

Email 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Tuesday 14th May 2019' from Myrjam Tschoeke to Brett Downes, Roland Hartley-Urquhart, Lex Greensill, Michael Gilhuley, and Danyon Lloyd, copying others dated 14 May 2019 (GCU.0005.0010.4737)

Email 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING - MINUTES Tuesday 14th May 2019' from David Keeling to Brett Downes, Roland Hartley-Urquhart, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, and Danyon Lloyd, copying others, dated 21 May 2019 (GCU.0005.0010.7196).

Document with the file name 'Final Responses to CC – May 24' dated 25 May 2019 (GCU.0007.0002.7066).

Amended Complaint filed in Bluestone Resources., Inc & Ors v Greensill Capital (UK) Limited, United States District Court for the Southern District of New York, Civil Action No. 1:21-cv-02253 (BCC.0001.0019.0294) (**Bluestone Complaint**).

b. the Bluestone AR Facility did not provide short-term trade credit financing, with a maximum tenor of 180 or 183 days, but long-term corporate finance with a minimum tenor of 3 years, and then, 4 years;

Particulars

While the maximum tenor for credit advanced under the Bluestone AR Facility was represented as 180 days, and later 183 days, the rolling of debts upon their maturity meant that the true tenor exceeded those durations.

a. [Not used].

b. Email from Maxwell Gerard to the email address bluestone@greensill.com, with subject 'Bluestone Documents and Credit', dated 10 September 2018 (GCU.0007.0002.1443), attaching, among

other things, a PowerPoint with the file name 'DRAFT Bluestone set up v0.4 9.10.pptx' (GCU.0007.0002.1444).

c. PowerPoint 'Rasmussen (Bluestone) rolls process' dated 16 October 2018 (GCU.0009.0005.6925).

d. Document with the file name 'Bluestone operations Process Overview' dated 29 October 2018 (GCU.0005.0002.5379)

e. Bluestone Complaint (BCC.0001.0019.0294 at 0006 to 0007, 0023 to 0028).

From the inception of the Bluestone AR Facility, GCUK did not expect or require the repayment of each amount advanced against purchased receivables within 180 days of them being advanced as required by the Bluestone RPA, or refuse to provide further finance in that event as it was entitled to do under the Bluestone RPA, but instead "rolled" such advances by:

f. in the period prior to about 30 July 2020, wiring to Bluestone Coal an amount equal to the value of the Expected Receivables that had reached their due date less a discount corresponding to the interest to be paid from that date until the next roll date and then receiving from Bluestone Coal the same amount of funds plus the amount of the discount; and then

g. in the period from about 30 July 2020 onwards, extending the date for repayment of the Expected Receivables and collecting an amount corresponding to the interest to be paid up to the extended date, such that, in effect, from the inception of the Bluestone RPA until at the earliest about November 2020, Bluestone Coal was only ever required, in effect, to pay interest on the funds advanced to it by GCUK and not repay any principal.

In or around December 2018, the Bluestone AR Facility was increased from a 3 year commitment to a 4-year commitment, which would not begin to amortise until July 2021. See:

h. Email 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 30th NOVEMBER 2018' from David Keeling to Lex Greensill, Brett Downes, Myrjam Tschoeke, Roland Hartley-Urquhart, Michael Gilhuley, Danyon Lloyd, copying others, dated 7 December 2018 (GCU.0005.0003.4934) attaching, among other things, the agenda for Credit Committee meeting (GCU.0005.0003.4935).

i. GCUK 'Long Term Assets Report' dated March 2019 (GCU.0009.0008.3427) records, in respect of the 'Bluestone Multi-Obligor

Program', a 'Credit Roll Tenor' of 183 days, and a 'Committed Tenor' of 1460 days.

The Bluestone AR Facility provided that repayments of the principal amounts advanced under the various facility limit upsizes would occur according to an amortisation schedule for the period from July 2021 to 2023, when the Bluestone AR Facility would expire. The rolling process and the amortisation of the principal enabled the Bluestone AR Facility to operate in substance as a four year loan. See:

j. Email 'FINAL APPROVALS' from Craig Pinnington to Brett Downes, Danyon Lloyd, Lex Greensill, Myrjam Tschoeke, Roland Hartley-Urquhart, Adam Cherubini and others, dated 12 December 2018 (GCU.0007.0002.5864), attaching 'Bluestone Increase US$400m 27 Nov 2018 update post CC' (GCU.0007.0002.5865).

k. Email 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING-MINUTES Friday 31st May 2019' from David Keeling to Brett Downes, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Danyon Lloyd, copying Adam Cherubini and others, dated 25 June 2019 (GCU.0007.0002.7064) , attaching, among other things, 'Final Responses to CC – May 24' (GCU.0007.0002.7066 at 0002, 0005).

GCUK's practice of rolling the debts the subject of the Bluestone AR facility, without Bluestone in fact repaying amounts to GCUK from its own resources, is evident from the documents identified immediately above in the particulars to this paragraph 53A.53(b) and is further pleaded at Section D.1 of Annexure B to this defence.

c. the amount of funding advanced by GCUK under the Bluestone AR Facility from time to time bore no relationship to the value of coal sold by the 'Sellers' to the Account Debtors, or the value of any supply contracts, purchase orders, or firm commitments between the 'Sellers' and the Account Debtors;

Particulars

Email 'Re: Bluestone Credit paper' from Rachelle Bower to Roland Hartley-Urquhart, David Keeling, Craig Pinnington, Adam Cherubini, copying Brett Downes and Michael Gilhuley, dated 2 April 2019 (GCU.0009.0008.4081), attaching 'CreditApplicationReport_BLUESTONE RESOURCES INC_4.2.2019.pdf' (GCU.0009.0008.4082).

Email 'Re: Bluestone' from Brett Downes to Michael Gilhuley dated 2 August 2018 (GCU.0009.0004.2598), forwarded to, among other people, Roland Hartley-Urquhart (GCU.0009.0004.2599).

Email 'Re: Bluestone' from Michael Gilhuley to Brett Downes dated 10 August 2018 (GCU.0009.0004.3821).

Email from Adam Cherubini to Ivan Jesensky and Marisa Lazatin, copying Ludwig Sels, Roland Hartley-Urquhart, Michael Gilhuley and Maxwell Gerard, dated 13 August 2018 (GCU.0013.0003.1398).

Email 'RE: Bluestone 2' from Jason Austin to Roland Hartley-Urquhart dated 21 August 2018 (GCU.0009.0004.4973).

Email 'GREENSILL CAPITAL – CREDIT COMMITTEE MEETING - MINUTES - FRIDAY 24TH AUGUST 2018' from Vicky Birch to Brett Downes, Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart, copying others, dated 31 August 2018 (GCU.0004.0017.2349).

Bluestone Complaint (BCC.0001.0019.0294 at 0005 to 0006 and 0023 to 0024).

d. GCUK determined in its absolute discretion, without input from Bluestone Coal or Blackstone:

i. the amounts and maturity dates of the receivables purportedly purchased under the Bluestone RPA; and

ii. the maximum sublimit for each purported Account Debtor.

Particulars

PowerPoint 'Rasmussen (Bluestone) rolls process' dated 16 October 2018 (GCU.0009.0005.6925).

Email 'Account limits' from Roland Hartley-Urquhart to Jay Justice dated 31 January 2019 (GCU.0009.0007.2118).

Email from Adam Cherubini to Jay Justice, copying Roland Hartley-Urquhart and Michael Gilhuley, dated 20 March 2019 (GCU.0010.0007.9276).

Bluestone Complaint (BCC.0001.0019.0294 at 0005 to 0006 and 0023 to 0024).

53A.54 The Bluestone Non-Payment Risk Misrepresentation referred to in paragraph 53A.11 above was false and/or misleading because the risk insured in respect of the Bluestone AR Facility was:

a. not the risk of non-payment by the Account Debtors of account receivables payable in respect of coal supplied by Bluestone Coal or Blackstone, where the relevant credit risk was that of the Account Debtors; and

b. the risk of non-payment by Bluestone Resources, Bluestone Coal and/or Blackstone of the long term enterprise finance advanced by GCUK, where the relevant credit risk was that of Bluestone Resources, Bluestone Coal and/or

Blackstone.

Particulars

From its inception, so that the Bluestone AR Facility could be funded through its warehouse financing facilities with Credit Suisse, GCUK structured the Bluestone AR Facility so that the relevant credit risk was ostensibly that of the Account Debtors, when it was in fact that of Bluestone Resources (as the borrower of what was in substance, corporate finance).

Credit Suisse Nova (Lux) Supply Chain Finance High Income Fund & (i) Lagoon Park Capital & (ii) Wickham, & (iii) Hoffman, Global Notes Programmes – Warehousing Facility Letter dated 28 March 2018 (GCU.0010.0006.8285).

Credit Suisse (Lux) Supply Chain Finance Fund & (i) Lagoon Park Capital & (ii) Wickham, & (iii) Hoffman, Global Notes Programmes — Warehousing Facility dated 14 December 2017 (CSA.5000.0001.0070).

Email 'Re: Bluestone' from Michael Gilhuely to Brett Downes dated 10 August 2018, forwarded to, among other people, Roland Hartley-Urquhart (GCU.0009.0004.3821).

Minutes of meeting on 13 August 2018 between Adam Cherubini, Michael Gilhuley, Brett Downes, Deighton Sels, and Roland Hartley-Urquhart (GCU.0009.0004.3908).

Email from Maxwell Gerard to David Keeling, Michael Gilhuley, Credit Risk Team, Brett Downes and Adam Cherubini, copying Ivan Jesensky and Roland Hartley-Urquhart, dated 23 August 2018 (GCU.0009.0004.5481), attaching 'Bluestone AR – RCAP 08.23.2018' (GCU.0009.0004.5482).

Notes of Credit Committee meeting on 24 August 2018 between Lex Greensill, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Brett Downes (GCU.0017.0001.3251).

Email 'Re: Bluestone – RCAP update' from Brett Downes to Wasif Rasif, copying Ludwig Sels, dated 18 September 2018 (GCU.0013.0003.3708).

Email 'FW:IG/NIG extra info' from Al Eadie to Lex Greensill, copying David Solo and James Hadley, dated 21 January 2019 (GCU.0005.0005.2144), attaching 'Bluestone Account Debtor List 11.29.2018 (Current Version) (1).xlsx' (GCU.0005.0005.2145) and 'Bluestone RCAP 11.29.2018.docx' (GCU.0005.0005.2146).

Email 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Tuesday 14th May 2019' from Brett Downs to David Keeling, Myrjam Tschoeke, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying others, dated 14 May 2019 (GCU.0005.0010.4676)

Email 'Bluestone – OK from Credit Perspective' from Rachelle Bower to Adam Cherubini dated 19 August 2019 (GCU.0010.0010.0282).

Bluestone Complaint (BCC.0001.0019.0294 at 0001 and 0004).

53A.55 The Bluestone Genuine Customer Misrepresentation referred to in subparagraph 53A.10(b) above was false and/or misleading because:

a. Account Debtors included entities that were not customers of Bluestone Coal or Blackstone (and there was no reasonable basis for believing that they would become customers of Bluestone Coal or Blackstone);

Particulars

Email 'Re: Customer Financial Requests' from Steve Ball to Adam Cherubini, copying Roland Hartley-Urquhart, Maxwell Gerard and Michael Gilhuley, dated 6 August 2018 (GCU.0009.0004.2938).

Email from Maxwell Gerard to Michael Gilhuley dated 29 August 2018 (GCU.0009.0004.6305), attaching documents received from Bluestone Resources, including, among other things, accounts receivable and projected accounts receivable reports (GCU.0009.0004.6306; GCU.0009.0004.6307; GCU.0009.0004.6308; GCU.0009.0004.6309; GCU.0009.0004.6310; GCU.0009.0004.6311).

Email 'RE: AR" from Maxwell Gerard to Steve Ball, copying Adam Cherubini and Michael Gilhuely, dated 4 September 2019 (GCU.0004.0017.3709) attaching a spreadsheet with the file name 'Updated Buyer Obligor List 9.4.2018_External' (GCU.0004.0017.3710).

Email chain 'RE: Conditional Approval for Bluestone Resources Inc - US$120m Receivables Monetisation Facility' from Maxwell Gerard to David Keeling and Brett Downs, copying Michael Gilhuley and others, dated 6 September 2018 (GCU.0005.0001.8120), attaching 'Updated Buyer Obligor List 9.6.2018' (GCU.0005.0001.8121).

Email 'RE: AR" from Steve Ball to Maxwell Gerard, copying Adam Cherubini and Michael Gilhuley, dated 7 September 2018 (GCU.0010.0004.8468).

Email from Maxwell Gerard to Roland Hartley-Urquhart dated 7 September 2018 (GCU.0009.0004.7668), attaching 'Rated Steel Companies' spreadsheet (GCU.0009.0004.7669).

Email 'Fwd: Rated Steel Companies' from Roland Hartley-Urquhart to Jay Justice dated 9 September 2018, attaching spreadsheet with the file name 'Rated Steel Companies'. (GCU.0009.0004.7703; GCU.0009.0004.7704)

Email 'Bluestone Offtakers' from Roland Hartley-Urquhart to Lex Greensill and Ludwig Sels dated 10 September 2018 (GCU.0004.0017.5633). Email forwarded to Brett Downes by Roland Hartley-Urquhart on 11 September 2018.

Email 'RE: Conditional Approval for Bluestone Resources Inc - US$120m Receivables Monetisation Facility' from Maxwell Gerard to David Keeling, copying Adam Cherubini, MG and the Credit Risk Team, dated 10 September 2018, attaching a spreadsheet entitled 'Updated Buyer Obligor List 9.10.2018', and email 'Bluestone Offtakers' from Roland Hartley-Urquhart to Lex Greensill and Ludwig Sels dated 10 September 2018 (GCU.0009.0004.8043).

Email 'FW: Conditional Approval for Bluestone Resources Inc - US$120m Receivables Monetisation Facility' from Roland Hartley-Urquhart to Brett Downes dated 12 September 2018 (GCU.0009.0004.8365).

Email 'Re: Counterparties' from Jay Justice to Roland Hartley-Urquhart dated 17 September 2018 (GCU.0013.0003.3636)

Email 'RE: Bluestone Credit - Counterparty Substitution' from Brett Downes to Lex Greensill and Roland Hartley-Urquhart, copying David Keeling, dated 18 September 2018 (GCU.0004.0017.9098).

Email 'Wilcox Targets' from Jay Justice to Roland Hartley-Urquhart, copying Steve Ball, dated 7 November 2018 (GCU.0009.0005.8536).

Email from Jay Justice to Adam Cherubini and Roland Hartley-Urquhart dated 1 November 2018, attaching '2020 Contract Status' (GCU.0005.0018.3863; GCU.0005.0018.3863).

Email from Jay Justice to Roland Hartley-Urquhart dated 19 November 2018 (GCU.0009.0006.0091), attaching 'Blackstone Energy – Anticipated Coal Contracts for 2019' dated 19 November 2018 (GCU.0009.0006.0092) .

Email from Jay Justice to Roland Hartley-Urquhart dated 18 February 2019 attaching 'Bluestone Shipments by Customer – December' (GCU.0009.0007.4557; GCU.0009.0007.4558).

Email from Jay Justice to Roland Hartley-Urquhart dated 31 January 2019 (GCU.0009.0007.2113) listing Bluestone Coal and Blackstone's actual customers at the time.

Email from Adam Cherubini to Jay Justice, copying Roland Hartley-Urquhart and Michael Gilhuley, dated 20 March 2019 (GCU.0010.0007.9276).

Email 'Fwd: BLK Sales March 2019' from Jay Justice to Adam Cherubini and Roland Hartley-Urquhart, attaching Blackstone Sales for March 2019 (GCU.0009.0008.9478; GCU.0009.0008.9479)

Email correspondence between Roland Hartley-Urquhart and Jay Justice between 16 and 17 July 2019 (GCU.0013.0003.0366).

Email 'Re Production' from Summer Harrison to Michael Gilhuley (GCU.0009.0011.0903), attaching July 2019 Sales for Bluestone Coal and Blackstone (GCU.0009.0011.0904; GCU.0009.0011.0905).

Letter dated 1 November 2019 from Jay Justice of Bluestone Resources to Roland Hartley-Urquhart enclosing an international customers update (GCU.0017.0001.8322).

Email from Sherry Tolley to Adam Cherubini and Roland Hartley-Urquhart dated 9 December 2019, attaching 'Master Sales 2018-2019' (GCU.0009.0012.5055; GCU.0009.0012.5056).

Update on Sale Discussions by Customer dated 16 December 2019 (GCU.0009.0012.6110).

Email 'Coal Buyer Summary' from Roland Hartley-Urquhart to Adam Cherubini and Jen Ganzi dated 16 December 2019 (GCU.0009.0012.6142).

Email 'FW: Sales by Customer' from Adam Cherubini to Roland Hartley-Urquhart, Jen Ganzi and Rachelle Bower, dated 21 January 2020 (GCU.0010.0011.7143), attaching '2019 Sales by Customer' (GCU.0010.0011.7144).

Email 'Coal Sales Summary- April 2020-March 2021' from Sherry Tolley to Adam Cherubini, copying Jay Justice, dated 11 March 2020 (GCU.0009.0014.0374), attaching 'Coal Sales Summary- April 2020-March 2021' (GCU.0009.0014.0375).

Email 'Re: Export Sales' from Matthew Gerber to Adam Cherubini, copying Jay Justice, Steve Ball, Roland Hartley-Urquhart and Rachelle Bower, dated 16 April 2020 (GCU.0009.0014.8364).

Bluestone Complaint (BCC.0001.0019.0294 at 0005 to 0006 and 0023 to 0024).

b. most of the Account Debtors were not customers of Bluestone Coal or Blackstone and had never been customers of either 'Seller';

Particulars

The BCC/TM Parties refer to the particulars to subparagraph 53A.55(a)10A.407a above.

c. most of the Account Debtors were proposed by GCUK based on their:

i. ability to meet the credit rating requirements under the warehousing facilities between GCUK and Credit Suisse; and

ii. by inference, perceived attractiveness to an insurer,

rather than by reference to the existence of a genuine trading relationship between them and the 'Sellers', or the likelihood that they would purchase coal from Bluestone Coal or Blackstone and generate actual receivables;

Particulars

GCUK deliberately constructed the Bluestone AR Facility to ensure that funding could be provided under GCUK's arrangements with Credit Suisse's investment funds, and meet Credit Suisse's requirements. In doing so, GCUK structured the facility in a manner that obscured the true nature and credit risk of the Bluestone AR Facility.

GCUK provided Bluestone Coal with lists of rated steel companies and consumers of Met coal and requested that Bluestone Coal identify those which might become buyers of its coal in the future.

Minutes of meeting on 13 August 2018 between Adam Cherubini, Michael Gilhuley, Brett Downes, Deighton Sels, and Roland Hartley-Urquhart (GCU.0009.0004.3908).

Notes of Credit Committee meeting on 24 August 2018 between Lex Greensill, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Brett Downes (GCU.0017.0001.3251).

Email from Maxwell Gerard to Michael Gilhuley dated 29 August 2018, attaching documents received from Bluestone Resources, including, among other things, accounts receivable and projected accounts receivable reports (GCU.0009.0004.6305; GCU.0009.0004.6306; GCU.0009.0004.6307; GCU.0009.0004.6308; GCU.0009.0004.6309; GCU.0009.0004.6310; GCU.0009.0004.6311)

Email 'Re: Bluestone – RCAP update' from Brett Downes to Wasif Rasif, copying Ludwig Sels, dated 18 September 2018 (GCU.0013.0003.3708).

Email from Roland Hartley-Urquhart to Jay Justice, with subject 'Fwd: Rated Steel Companies', dated 9 September 2018 (GCU.0009.0004.7703), attaching a spreadsheet with the file name 'Rated Steel Companies' (GCU.0009.0004.7704).

Email correspondence between David Keeling and Maxwell Gerard, copying Adam Cherubini, Michael Gilhuley, Credit Risk Team (credit.risk.team@greensill.com) dated 10 September 2018 (GCU.0007.0002.1447), attaching, among other things:

a. email from Roland Hartley-Urquhart to Lex Greensill and Ludwig Sels, with subject 'Bluestone Offtakers', copying the Bluestone mailing list (bluestone@greensill.com), dated 10 September 2018 (GCU.0007.0002.1448); and

b. 'Updated Buyer Obligor List 9.10.2018' (GCU.0007.0002.1449).

Email correspondence between Roland Hartley-Urquhart and Jay Justice, with subject 'Counterparties', dated 14 and 17 September 2018 (GCU.0013.0003.3634).

Email from Lex Greensill to Roland Hartley-Urquhart, with subject 'Re: Bluestone Credit – Counterparty Substitution', copying Brett Downes and David Keeling, dated 18 September 2018 (GCU.0004.0017.9097).

Email from Brett Downes to Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke and Roland Hartley-Urquhart, with subject 'Bluestone – RCAP update', copying Credit Risk Team, Maxwell Gerard, Ludwig Sels, Steven Hollands and Wasif Raza, dated 18 September 2018 (GCU.0004.0017.9327), attaching 'Bluestone AR - RCAP 18 Sept 2018 FCC.pdf' (GCU.0004.0017.9328).

Email 'Bluestone update' from Roland Hartley-Urquhart to Lex Greensill dated 22 October 2018 (GCU.0005.0002.3473).

Email from Jay Justice to Adam Cherubini, copying Roland Hartley-Urquhart, dated 23 April 2019 (GCU.0009.0008.8845).

Email 'Call follow up' from Matthew Gerber to Roland Hartley-Urquhart dated 4 November 2019 (GCU.0009.0012.0674), attaching a spreadsheet 'Steel Producers List 01' (GCU.0009.0012.0675).

Email 'Re: Bluestone – Account Debtors' from Brett Downes to Jen Ganzi, Ludwig Sels and the Credit Analysts team, copying Adam Cherubini, Rachelle Bower and Roland Hartley-Urquhart, dated 25 November 2019 (GCU.0009.0012.3235).

Bluestone Complaint (BCC.0001.0019.0294 at 0005 to 0006).

Knowledge of falsity of representations

53A.56 Lex Greensill knew the matters set out in paragraph 53A.53 above.

Particulars

The knowledge of Lex Greensill is to be inferred from:

a. his roles as Chief Executive Officer, a Board member, and a member of the Credit Committee;

b. his involvement in dealings with Bluestone Resources in those roles, including the placement of the Bluestone MO Risk, as demonstrated by:

i. the particulars to paragraphs 53A.5, 53A.6, 53A.8, 53A.14, 53A.22, 53A.28, 53A.32 and 53A.47 above which refer to Lex Greensill's direct involvement in the placement of insurance for the Bluestone MO Risk;

ii. the particulars to paragraphs 53A.53 to 53A.55 above which refer to Lex Greensill's involvement on the Credit Committee, which assessed and approved the financial accommodation provided to Bluestone Resources.

53A.57 Lex Greensill knew of the matters set out in paragraph 53A.54 above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 53A.56 above.

53A.58 Lex Greensill knew of the matters set out in paragraph 53A.55 above.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 53A.56 above.

53A.59 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 53A.53, 53A.54 and 53A.55 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

53A.60 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 53A.53, 53A.54 and 53A.55 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

53A.61 Further and in the alternative to paragraphs 53A.56, 53A.57 and 53A.58 above, the following individuals knew each (alternatively, one or more) of the matters set out in paragraphs 53A.53, 53A.54 and 53A.55 above:

a. Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure);

b. Brett Downes (Chief Risk Officer of GCUK);

c. Michael Gilhuley (Managing Director, Origination (USA), of GCUK); and

d. Adam Cherubini (Director, Origination, of GCUK).

Particulars

The knowledge of Roland Hartley-Urquhart can be inferred from:

a. his positions within the Greensill Group as described in subparagraph 10A.10(c);

b. his roles as 'Sponsor' and 'GC Relationship Owner' for Bluestone Resources, a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0004.0013.1084) and Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Credit Committee; and

c. his direct dealings with Bluestone Resources and his involvement in dealing with the Bluestone SO and MO Risk in those roles, as demonstrated by the particulars to paragraphs 53A.32, 53A.43, 53A.53, 53A.54 and 53A.55 above which refer to Roland Hartley-Urquhart.

The knowledge of Brett Downes can be inferred from:

a. his roles as the Chief Risk Officer of GCUK, a member of the 'Deal Team' for the Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Credit Committee; and

b. his direct dealings with Bluestone Resources (GCU.0007.0002.7068 at 0028) and his involvement in dealing with the Bluestone SO and MO Risk in those roles, as demonstrated by the particulars to paragraphs 53A.7, 53A.8, 53A.14, 53A.32 53A.53, 53A.54 and 53A.55 above which refer to Brett Downes.

The knowledge of Michael Gilhuley can be inferred from:

a. his roles as the Managing Director of Origination (USA) of GCUK, a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0009.0003.5485) and Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Credit Committee; and

b. his direct dealings with Bluestone Resources and his involvement in dealing with the Bluestone SO and MO Risk in those roles, as demonstrated by:the particulars to paragraphs 53A.14,53A.26 53A.53, 53A.54 and 53A.55 above which refer to Michael Gilhuley.

The knowledge of Adam Cherubini can be inferred from:

a. his roles as a Director of Origination of GCUK, a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0009.0003.5485) and the Bluestone AR Facility (GCU.0005.0002.2713 at 0004); and

b. his direct dealings with Bluestone Resources and his involvement in dealing with the Bluestone SO and MO Risks in those roles, as demonstrated by:

i. the particulars to paragraph 53A.26, 53A.32, 53A.43, 53A.53, 53A.54, and 53A.55 above which refer to Adam Cherubini;

ii. his role in managing the roll process for maturities under the Bluestone AR and SCF Facilities (GCU.0009.0006.9933; GCU.0005.0003.8741; GCU.0009.0007.2607; GCU.0010.0007.7079; GCU.0009.0006.6392; GCU.0013.0006.4272);

iii. his role in preparing credit application reports for Bluestone Resources presented to the Credit Committee (GCU.0004.0025.8297; GCU.0009.0016.0487; GCU.0009.0014.1823; GCU.0005.0010.5124; GCU.0005.0002.2705).

53A.62 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters identified in paragraph 0 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

53A.63 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters identified in paragraphs above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.21, 10A.22A and 10A.22B above.

Knowledge of the materiality of representations

53A.64 Each (alternatively, one or more) of the matters referred to in paragraph 53A.53 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bluestone being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

Each (alternatively, one or more) of the matters referred to in paragraph 53A.54 above were matters:

c. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk; or

d. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bluestone being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

53A.65 Each (alternatively, one or more) of the matters referred to in paragraph 53A.55 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bluestone being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

53A.65A The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 53A.64 to 53A.65 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

53A.65B Further or in the alternative to paragraphs 53A.64 and 53A.65 above, each of the matters referred to in paragraphs 53A.53 and 53A.55 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk

53A.66 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 53A.64 to 53A.65 above is to be attributed to GCPL.

Particulars

The BCC/TTM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

53A.67 Further and in the alternative to paragraphs 53A.64, 53A.65 and 53A.66 above, each (alternatively, one or more) of the matters referred to in paragraphs 53A.53, 53A.54 and 53A.55 was a matter:

a. which other individuals – comprising Roland Hartley-Urquhart (see subparagraph 10A.10(c) in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK), Michael Gilhuley (Managing Director, Origination (USA) of GCUK), and/or Adam Cherubini (Director, Origination of GCUK) - knew was material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk;

b. alternatively to subparagraph (a), in respect of which those individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that

decision.

Particulars

The individuals' knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

53A.67A Further or in the alternative to paragraph 53A.67 above, each of the matters referred to in paragraph 53A.53, 53A.54 and 53A.55 above was a matter which a reasonable person in the position of Roland Hartley-Urquhart, Brett Downes, Michael Gilhuly or Adam Cherubini could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk

53A.68 The knowledge of the abovementioned individuals of the matters set out in paragraphs 53A.53, 53A.54 and 53A.55 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

53A.69 The knowledge of the abovementioned individuals of the matters set out in paragraphs 53A.53, 53A.54 and 53A.55 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.21, 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

53A.70 In the premises of paragraphs 53A.56, 53A.59, 53A.60, 53A.61, 53A.62, 53A.63, 53A.64, 53A.65A, 53A.66, 53A.67, 53A.68 and 53A.69 above:

a. Greensill misrepresented the nature and operation of the Bluestone AR Facility;

b. the Bluestone AR Facility Misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk.

53A.71 In the premises of paragraphs 53A.57, 53A.59, 53A.60, 53A.61, 53A.62, 53A.63, 53A.64, 53A.65A, 53A.66, 53A.67, 53A.68 and 53A.69 above:

a. Greensill misrepresented the nature and operation of the Bluestone AR Facility;

b. the Bluestone Non-Payment Risk Misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk.

53A.72 In the premises of paragraphs 53A.58, 53A.59, 53A.60, 53A.61, 53A.62, 53A.63, 53A.64, 53A.65A, 53A.66, 53A.67, 53A.68 and 53A.69 above:

a. Greensill misrepresented the nature and operation of the Bluestone AR Facility;

b. the Bluestone Genuine Customer Misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk.

53A.73 If Greensill had not made the Bluestone AR Facility Misrepresentation, insurance cover would not have been issued in respect of the Bluestone MO Risk at all or, in the alternative, on the same terms in which it purportedly was written.

53A.74 If Greensill had not made the Bluestone Non-Payment Risk Misrepresentation, insurance cover would not have been issued in respect of the Bluestone MO Risk at all or, in the alternative, on the same terms in which it purportedly was written.

53A.75 If Greensill had not made the Bluestone Genuine Customer Misrepresentation, insurance cover would not have been issued in respect of the Bluestone MO Risk at all or, in the alternative, on the same terms in which it purportedly was written.

53A.76 By reason of the matters pleaded in paragraphs 53A.70 to 53A.73 above, IAL is entitled to avoid the Bluestone MO Endorsement and the Customer Endorsements referred to in Section D10 of this Annexure, including the Bluestone Account Debtor Endorsements, to the 2019 90/10 Parallel Policy.

Innocent misrepresentation

53A.77 In the alternative to the matters pleaded in paragraphs 53A.70 to 53A.76 above, by reason of the matters pleaded in paragraphs 53A.53, 53A.54, 53A.55, 53A.73, 53A.74 and 53A.75 above, IAL is entitled to reduce its liability under the Bluestone MO Risk and Customer Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the Bluestone AR Facility Misrepresentation, and the Bluestone Non-Payment Risk Misrepresentation had not occurred).

D10.10 Bluestone Multi-Obligor Non-Disclosures

Knowledge of underlying matters

53A.78 At the time insurance cover for the Bluestone MO Risk was purportedly renewed under the 2019 90/10 Parallel Policy, and/or at the times the Bluestone Account Debtor Endorsements were entered into (as applicable), Lex Greensill knew:

a. each (alternatively, one or more) of the matters set out in paragraphs 53A.53, 53A.54, and 53A.55 above;

Particulars

The BCC/TM Parties refer to the particulars to paragraph 53A.56 above.

b. the Bluestone AR Facility would be used to meet Bluestone Resources' liability under the Bluestone SCF Facility;

Particulars

Email from David Keeling to Lex Greensill, Danyon Lloyd, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart, Distribution (distribution@greensill.com) and Brett Downes, with the subject 'Conditional Approval for Bluestone Resources Inc – US$120m Receivables Monetisation Facility', copying Credit Risk Team, Charles Brough, Maxwell Gerard and Adam Cherubini (GCU.0004.0016.9237), attaching 'Bluestone AR – FCC RCAP 08.23.2018' (GCU.0004.0016.9239) and 'Bluestone AR FCC CAP 08.23.2018' (GCU.0004.0016.9238).

Notes of Credit Committee meeting on 24 August 2018 between Lex Greensill, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Brett Downes (GCU.0017.0001.3251).

Email from Vicky Birch to Brett Downes, Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart, with subject 'Greensill Capital – Credit Committee Meeting – Minutes – Friday 24 August 2018', copying Maxwell Gerard, Ludwig Sels, Adam Cherubini, Hugh McKee, Credit Risk Team and others, dated 31 August 2018 (GCU.0004.0017.2346).

c. a substantial portion of the funds advanced under the Bluestone AR Facility as part of the initial advance in September 2018 (**Initial Advance**) and December 2018 Upsize would be used by Bluestone Resources or its subsidiaries to repay outstanding loans from Carter Bank & Trust (**Carter Bank**). Specifically:

i. the initial advance would be used to repay an approximately USD68 million loan owed to Carter Bank by Bluestone Resources;

Particulars

Email 'Bluestone Group URGENT AMENDMENT AR RCAP' from David Keeling to Brett Downes, Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart, copying the Credit Risk Team, Maxwell Gerard, Ludwig

Sels, Steven Hollands, Wasif Raza and Adam Cherubini, dated 28 September 2018 (GCU.0005.0002.2703), attaching 'Bluestone AR - FCC RCAP 27 Sept 2018 - Amendments.pdf (GCU.0005.0002.2705).

ii. USD179 million of the December 2018 Upsize would be used to repay debts owed to Carter Bank by affiliates Bluestone Resources: Virginia Fuel Corporation, Kentucky Fuel Corporation, A&G Coal Corporation and Justice Coal of Alabama;

Particulars

Email, with subject 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING-MINUTES FRIDAY 30th NOVEMBER 2018' from David Keeling to Lex Greensill, Brett Downes, Myrjam Tschoeke, Roland Hartley-Urquhart, Michael Gilhuley, Danyon Lloyd, copying the Credit Risk Team, Ludwig Sels and Steven Hollands, dated 7 December 2018 (GCU.0007.0002.5867) and attachments (GCU.0007.0002.5868; GCU.0007.0002.5869).

Email, with subject 'FINAL APPROVALS – BLUESTONE', from Craig Pinnington to Brett Downes, Lex Greensill, Roland Hartley-Urquhart, Myrjam Tschoeke, Michael Gilhuley and other GCUK representatives dated 12 December 2018 (GCU.0007.0002.5864), attaching 'Bluestone Increase US$400m 27 Nov 2018 update post CC.pdf' (GCU.0007.0002.5865).

d. in return for each of the advances made to Bluestone Resources under the Bluestone AR Facility, GCUK received:

i. exorbitant fees which were largely deducted from (and therefore funded by) the sums advanced to Bluestone Resources;

Particulars

Funding	**Approx. Fee (USD)** (excl. quarterly admin fee of USD50,000)
Initial Advance	**USD14.95 million** Structuring & Arrangement Fee – USD14.5 million Upfront Fee – USD450,000
December 2018 Upsize	**USD$26 million** Structuring & Arrangement Fee – USD25.55 million Upfront Fee – USD450,000
April 2019 Upsize	**USD$2.755 million** Structuring & Arrangement Fee – USD2.35 million Upfront Fee – USD405,000
May 2019 Upsize	**USD$5.5 million**

	Structuring & Arrangement Fee – USD5.5 million
June 2019 Upsizes	**USD$45.75 million** Structuring & Arrangement Fee – USD20.3 million Upfront Fee – USD450,000 Warrant Cancellation Fee - USD25 million
February 2020 Upsize	**USD$2.8 million** Structuring & Arrangement Fee – USD2.75 million Upfront Fee – USD50,000
April 2020 Upsize	**USD$2.75 million** Structuring & Arrangement Fee – USD2.7 million Upfront Fee – USD50,000

Spreadsheet 'BRI Sources and Uses - 2018-2021 - 02.19.2021' dated 19 February 2021 (GCU.0006.0005.9875).

Fees paid by Bluestone Resources to GCUK are also documented in credit application reports provided to the Credit Committee (GCU.0005.0002.2712; GCU.0007.0002.5865; GCU.0007.0002.7068; GCU.0009.0013.3958; GCU.0017.0001.8434).

The fee of USD 15 million incurred with the Initial Advance is also recorded in the following documents:

> Email from Maxwell Gerard to Bluestone@Greensill.com with subject "RE: Flow of Funds" dated 26 September 2018 (GCU.0007.0002.1760) attaching document titled "Bluestone Roll Schedule and First Two Exhibits to Request 9.26.2018_135.5" (GCU.0007.0002.1761)
>
> Email from Maxwell Gerard to Steve Ball and others with subject "RE: Fee Letter" dated 27 September 2018 (GCU.0010.0005.2015)
>
> Letter from GCUK to Bluestone Resources with subject "Receivables Purchase Agreement – Transaction Fee Letter)" dated 26 September 2018 (GCU.0013.0003.4979).

The fee of USD 26 million incurred with the December 2018 Upsize is also recorded in the following documents:

> Email from Adam Cherubini to Ian Bryan and others with subject "RE: Bluestone – Bank Accounts for Funding" dated 12 December 2018 (GCU.0005.0003.6295)

Letter from GCUK to Bluestone Resources with subject "First Amendment and Joinder to Receivables Purchase Agreement – Amended and Restated Transaction Fee Letter" dated 7 December 2018 (GCU.0009.0006.3810)

The fee of USD$2.35 million incurred with the April 2019 Upsize is also recorded in the following documents:

Letter from GCUK to Bluestone Resources with subject "Increase Amendment to Receivables Purchase Agreement – Supplement to Transaction Fee Letter" dated 29 March 2018 (IAL.500.002.0258).

Email from Rachelle Bower to Laura Da Silveira and others with subject "RE: Bluestone Upsize – Funding Friday" dated 4 April 2019 (GCU.0004.0025.4742)

The fee of USD$5.5 million for the May 2019 Upsize is recorded in the following documents:

Email from Adam Cherubini to Ivan Jesensky, Ludwig Sels and others with subject "RE: Bluestone – Friday's Funding" dated 17 May 2019 (GCU.0009.0009.3722).

Email from Adam Cherubini to Roland Hartley-Urquhart with subject "FW: Bluestone – late trade" dated 20 May 2019 (GCU.0013.0005.7189).

Letter from GCUK to Bluestone Resources with subject "Increase Amendment to Receivables Purchase Agreement – Supplement to Transaction Fee Letter" dated 20 May 2019 (IAL.500.002.0259).

The fees of USD$45.75 million for the June 2019 Upsize, including the warrant cancellation fee of USD$25 million, is recorded in the following documents:

Email from Adam Cherubini to Roland Hartley-Urquhart with subject "Funding Breakdown" dated 6 June 2019 (GCU.0010.0009.0220)

Email from Adam Cherubini to Jim Justice III and Steve Ball with subject "Bluestone - Funding Breakdown" dated 6 June 2019 (GCU.0009.0009.6180)

Letter from GCUK to Bluestone Resources with subject "Increase to Receivables Purchase Agreement – Supplement to Transaction Fee Letter" dated 10 June 2019 (GCU.0009.0009.6755)

Email from Adam Cherubini to Emma Johnson, Roland Hartley-Urquhart and others with subject “RE: Bluestone Funding – Tuesday June 11 - $220mm” dated 10 June 2019 (GCU.0009.0009.6772).

Email from Adam Cherubini to James Hadley with subject “RE: Bluestone additional facility” dated 19 June 2019 (GCU.0009.0009.8171).

The fee of USD 2.8 million incurred with the February 2020 Upsize is also recorded in the following documents:

Email from Rachelle Bower to Support Ops UK and others with subject “Rasmussen - $15mm Upsize – February 6” dated 6 February 2020 (GCU.0005.0022.6012).

Letter from GCUK to Bluestone Resources with subject “Fee Letter to Increase Amendment to Receivables Purchase Agreement – Supplement to Transaction Fee Letter” dated 6 February 2020 (IAL.500.002.0263)

The fee of USD 2.8 million incurred with the April 2020 Upsize is also recorded in the following documents:

Email from Rachelle Bower to Support Ops UK and Payment Ops UK with subject “Bluestone Payment – Wednesday March 15” dated 14 April 2020 (GCU.0010.0012.8813).

Letter from GCUK to Bluestone Resources with subject “Fee Letter to Increase Amendment to Receivables Purchase Agreement – Supplement to Transaction Fee Letter” dated 10 April 2020 (GCU.0009.0014.7796).

ii. for the December 2018 Upsize, a warrant for 2.5% equity (**First Warrant**), which would become callable in an amount between USD20-50 million in the event of an asset sale by Bluestone Resources;

Particulars

Bluestone Resources warrant dated 12 December 2018 (GCU.0005.0009.1067).

Bluestone equity warrant summary dated 28 March 2019 (GCU.0005.0009.1066).

Email 'FINAL APPROVALS' from Craig Pinnington to Brett Downes, Danyon Lloyd, Lex Greensill, Myrjam Tschoeke, Roland Hartley-Urquhart, Adam Cherubini and others, dated 12 December 2018 (GCU.0007.0002.5864), attaching 'Bluestone Increase US$400m 27 Nov 2018 update post CC' (GCU.0007.0002.5865).

Bluestone Complaint (BCC.0001.0019.0294).

ii. for the June 2019 Upsize, a USD25 million as fee for the cancellation of the First Warrant and a new warrant for 10% equity (**Second Warrant**), which was exercisable at any time within 10 years of its execution date.

Particulars

Bluestone equity warrant summary - Update June 2020 dated 29 June 2020 (GCU.0006.0004.4254).

Bluestone Resources Warrant Number dated 10 June 2019 (GCU.0009.0009.6749).

Credit Application for Bluestone Resources submitted 19 March 2020 – (GCU.0009.0014.1823)

Bluestone Complaint (BCC.0001.0019.0294 at 0008 to 0009).

e. the December 2018 Upsize and April 2019 Upsize were intended to serve as bridge loans that would be repaid from the proceeds of an asset sale by Bluestone Resources anticipated to occur in 2019, upon which GCUK planned to monetise its First Warrant and restructure its facilities with Bluestone Resources in such a way as to permit orderly servicing and amortisation;

Particulars

Credit Application Report for Bluestone Resources submitted on 29 November 2018 by Adam Cherubini and Rachelle Bower (GCU.0007.0002.5869 at 0006).

Email 'GREENSILL CAPITAL- CREDIT COMMITTEE MEETING- MINUTES FRIDAY 30th NOVEMBER 2018' from David Keeling to Lex Greensill, Brett Downes, Myrjam Tschoeke, Roland Hartley-Urquhart, Michael Gihuley, Danyon Lloyd, copying others, dated 7 December 2018 (GCU.0005.0003.4934) attaching, among other things, the agenda for Credit Committee meeting (GCU.0005.0003.4935).

Email with subject 'Update on Bluestone Sale Process' from Roland Hartley-Urquhart to Lex Greensill and Al Eadie, copying Adam Cherubini, Michael Gilhuley, Brett Downes and Neil Davies, dated 1 April 2019 (GCU.0005.0008.3842).

Email with subject 'RE: Assurances Regarding the Financing" from Roland Hartley-Urquhart to Jim Justice, copying Stephen Ball, Lex Greensill and Jay Justice (GCU.0005.0011.4961).

f. the June 2019 Upsize and subsequent upsizes to the Bluestone AR Facility limit were part of long-term debt financing intended to help position Bluestone Resources for sale or an initial public offering, that would enable the AR Facility to be repaid and GCUK to monetise its Second Warrant;

Particulars

Email 'Re: Bluestone' from Rachelle Bower to Pia Schale, Adam Cherubini, David Keeling, Craig Pinnington and Ian Sales, copying Brett Downes, Roland Hartley-Urquhart and Michael Gilhuley, dated 8 May 2019 (GCU.0009.0009.1945).

Email 'GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Friday 31st May 2019' from David Keeling to Myram Tschoeke, Brett Downes, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying Adam Cherubini, Rachelle Bower, and others, dated 30 May 2019 (GCU.0007.0002.7065), attaching, among other things, 'Credit Application_Bluestone_30052019' (GCU.0007.0002.7068)

g. by reason of the matters in subparagraphs 53A.80(d) to 53A.80(f) above, GCUK had a vested interest in increasing the enterprise value of Bluestone Resources and effecting the relevant transactions, such that its relationship with Bluestone Resources was not at arms-length;

Particulars

GCUK's relationship with Bluestone Resources was more akin to that of an investor and investee. GCUK adopted a '[m]erchant banking approach' with Bluestone Resources, whereby it provided assistance with respect to the company's sales and market development, marketing and financing, in an effort to ready the company for an eventual sale or IPO and maximise the value of its Second Warrant.

a. Email 'Bluestone Update Deck' from Roland Hartley-Urquhart to Brett Downes, Al Eadie and Lex Greensill, copying Daniel Shuttleworth, dated 29 April 2019, attaching a presentation with the file name 'Bluestone Transactions 04.29.2019' (GCU.0005.0009.8482; GCU.0005.0009.8483).

b. Email 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Tuesday 14th May 2019' from Rachelle Bower to Myrjam Tschoeke, Brett Downes, David Keeling, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying Adam Cherubini and others, dated 15 May 2019 (GCU.0005.0010.4772).

c. Email 'GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Friday 31st May 2019' from David Keeling to Myram Tschoeke, Brett Downes, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying Adam Cherubini, Rachelle Bower, and others, dated 30 May 2019 (GCU.0007.0002.7065), attaching, among other things, 'Credit Application_Bluestone_30052019' (GCU.0007.0002.7068)

d. Email from Sean Hanafin to Lex Greensill, copying Rebecca Rogers and Lindsey Sherill, dated 9 October 2019 (GCU.0005.0017.2459).

e. Email 'RE: Bluestone Approval' from Sean Hanafin to Lex Greensill, Jen Ganz, Andrew Kuyk and Jade Langford, copying Michael Gilhuley, Roland Hartley-Urquhart, Adam Cherubini, Brett Downes, Myrjam Tschoeke, David Solo and others, dated 4 February 2020 (GCU.0006.0001.4322), attaching draft minutes of the Credit Committee meeting on 24 January 2020 (GCU.0006.0001.4323).

f. GCUK Credit Application Report – Amendment for Bluestone Resources submitted on 23 Jan 2020 (GCU.0007.0002.9795).

g. Email from Lex Greensill to Sanjeev Gupta dated 5 June 2019 (GCU.0005.0011.4157).

h. Email 'deck for Mercuria meeting' from Roland Hartley-Urquhart to Adam Cherubini dated 3 September 2019, attaching 'Project Titan CIP (Jan 2019)' presentation (GCU.0009.0011.1643; GCU.0009.0011.1644).

i. Email 'Re: deck for Mercuria meeting' from Adam Cherubini to Roland Hartley-Urquhart dated 4 September 2019 (GCU.0009.0011.1884), attaching 'Bluestone Transaction' presentation dated 2 May 2019 (GCU.0009.0011.1885), and 'Bluestone Overview – MET Coal Sales Project' presentation dated September 2019 (GCU.0009.0011.1886).

j. 'Bluestone Export Marketing Discussions' note dated 29 July 2019 prepared by Roland Hartley-Urquhart (GCU.0009.0010.6632).

k. Email 'Various Updates' from Roland Hartley-Urquhart to Lex Greensill dated 9 August 2019 (GCU.0012.0004.6327).

l. Email from Roland Hartley-Urquhart to Jen Ganzi, copying Michael Gilhuley, Adam Cherubini and Rachelle Bower, dated 1 November 2019 (GCU.0010.0010.8438), forwarding letter from Jay Justice of the same date regarding Bluestone Resources' coal marketing efforts (GCU.0010.0010.8439).

m. Email from Roland Hartley-Urquhart to Sean Hanafin and James Doran dated 17 September 2019, attaching a presentation on Bluestone Resources prepared by GCUK for Mercuria (GCU.0010.0010.4038; GCU.0010.0010.4039).

n. GCUK asked GFG for assistance with respect to Bluestone Resources, and to facilitate the sale of coal between GFG and Bluestone Resources; see:

i. Email 'RE: Note from Jay' from Roland Hartley-Urquhart to Cindy White of Bluestone Coal dated 6 February 2020 (GCU.0009.0013.4511).

ii. Email 'Fwd: Bluestone Visit and Options' from Sanjeev Gupta to Lex Greensill dated 6 March 2020 (GCU.0005.0023.7876).

iii. Email 'GFG / Bluestone - URGENT and IMPORTANT' from Roland Hartley-Urquhart to Lex Greensill, copying Lindsey Sherrill and Henry Middleditch, dated 15 March 2020 (GCU.0005.0024.1177).

iv. Email 'EMEA & Americas Credit Committee Minutes - 20th March 2020' from Molly Bellis to Brett Downes, Roland Hartley-Urquhart, Myrjam Tschoeke, Sean Hanafin, Michael Gilhuley and others, copying Adam Cherubini, Rachelle Bower and others, dated 7 April 2020 (GCU.0009.0014.5915).

v. Email 'Re: Bluestone Met Coal Update' from Roland Hartley-Urquhart to Jay Justice dated 21 October 2019 (GCU.0009.0011.9330).

vi. Email 'RE: Bluestone Met Coal and Coke' from Roland Hartley-Urquhart to Lex Greensill dated 16 January 2020 (GCU.0005.0021.6030).

h. GCUK forgave breaches of the Bluestone AR Facility and did not pursue enforcement, due to the size of its exposure to Bluestone Resources and the financial position of the company, which relied on GCUK for liquidity;

Particulars

This can be inferred from:

a. Standstill and Forbearance Agreement was entered into on 6 February 2020 for the period until 31 May 2020 following the occurrence of “Events of Termination” under the Bluestone RPA, which otherwise entitled GCUK to declare that no further drawdowns could be obtained by Bluestone Coal (BCC.0001.0006.2102).

b. a waiver agreement was entered into on or about 8 June 2020 for the period ending 30 June 2020 in respect of the same types of breaches as the Standstill and Forbearance agreement dated 6 February 2020 (referred to above) as well as a decline in coal prices gave rise to further “Events of Termination” under the Bluestone RPA (BCC.0001.0006.2101).

c. GCUK's lack of response to non-compliance by Bluestone Resources with performance covenants, giving rise to 'Events of Terminations' under the

RPA, in the period prior to the Standstill and Forbearance Agreement above. See:

i. Email from Adam Cherubini to Steve Ball and Summer Harrison, copying Michael Gilhuley and Roland Hartley-Urquhart, dated 27 November 2018 (GCU.0004.0021.4392), attaching 'Compliance Certificate – Final.xlsx' (GCU.0004.0021.4393).

ii. Email 'RE: Bluestone – December Compliance Certificate' from Adam Cherubini to Summer Harrison dated 1 February 2019 (GCU.0005.0005.7339), attaching 'Compliance Certificate & Production Numbers - December 2018.xlsx' (GCU.0005.0005.7340). Email was forwarded to Roland Hartley Urquhart (GCU.0005.0005.7343).

iii. Email 'Re: Bluestone - December Compliance Certificate' from Adam Cherubini to Steve Ball and Summer Harrison, copying Michael Gilhuley and Rachelle Bower, dated 21 February 2019 (GCU.0009.0007.5374).

iv. Email 'Compliance Certificate Production Numbers - December 2018 v2.xlsx' from Michael Gilhuley to Roland Hartley-Urquhart, Adam Cherubini and Hugh McKee, dated 1 March 2019, attaching 'Compliance Certificate Production Numbers - December 2018 v2.xlsx' (GCU.0005.0006.9726; GCU.0005.0006.9727).

v. Email 'Bluestone Compliance Certificate' from Adam Cherubini to Summer Harris, copying Rachelle Bower, dated 28 March 2019, attaching 'Compliance Certificate Production Numbers - February 2019.xlsx' (GCU.0005.0008.2533; GCU.0005.0008.2534).

vi. Email 'Bluestone Production & Sales Numbers' from Adam Cherubini to Roland Hartley-Urquhart, Rachelle Bower, Michael Gilhuley and Mireia Just, dated 14 June 2019 (GCU.0004.0027.2425), attaching, among other things, 'Compliance Certificate Production Numbers - May 2019.xlsx' (GCU.0004.0027.2426).

vii. Email 'Bluestone Meeting Follow Up Items – Part 2' from Adam Cherubini to Jay Justice, copying Roland Hartley-Urquhart and Rachelle Bower, dated 10 September 2027 (GCU.0005.0015.7168), attaching 'Compliance Certificate Production Numbers - August 2019.xlsx' (GCU.0005.0015.7169).

viii. Email 'Bluestone Deliverables' from Adam Cherubini to Roland Hartley-Urquhart, Jen Ganzi, Michael Gilhuley, Rachelle Bower, Jack Furr, Hugh McKee and Charles Bronowski dated 16 December 2019, attaching, among other things, 'Compliance Certificate Production Numbers – October 2019' (GCU.0009.0012.6107; GCU.0009.0012.6110)

ix. Credit Application Report for Bluestone Resources submitted on 30 January 2020 (GCU.0009.0013.3959 at 0007 and 0009).

x. Credit Application Report – Amendment for Bluestone Resources submitted on 19 March 2020 (GCU.0009.0014.2093 at 0008 and 0010)

53A.79 The knowledge of Lex Greensill of the matters in paragraph 53A.78 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

53A.80 The knowledge of Lex Greensill of the matters in paragraph 53A.78 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

53A.81 Further and in the alternative to paragraph 53A.78 above, at the time insurance cover for the Bluestone MO Risk was purportedly renewed under the 2019 90/10 Parallel Policy, and/or at the times the Bluestone Account Debtor Endorsements were entered into (as applicable):

a. Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure);

b. Brett Downes (Chief Risk Officer);

c. Michael Gilhuley (Managing Director, Origination (USA));

d. Adam Cherubini (Director, Origination); and/or

e. Rachelle Bower (Analyst, Origination),

knew each (alternatively, one or more) of the matters set out in paragraph 53A.78 above.

Particulars

The knowledge of the abovementioned individuals can be inferred from the matters in the particulars to paragraph 53A.78 above.

The knowledge of Rachelle Bower can also be inferred from her role as a member of the 'Facility Team' for the Bluestone AR Facility (GCU.0009.0013.3959), and her direct dealings and involvement in dealing with the Bluestone MO Risk in that role, as demonstrated by:

a. the particulars to paragraphs 53A.54 and 53A.55 above;

b. her role in preparing the credit application reports for Bluestone Resources presented to the Credit Committee (GCU.0010.0006.9074; GCU.0005.0008.5251; GCU.0009.0016.0487; GCU.0007.0002.6534; GCU.0005.0010.5124; GCU.0009.0014.1823); and

c. her role in managing the roll process for maturities under the Bluestone AR and SCF Facilities (GCU.0009.0006.9933; GCU.0005.0003.8741; GCU.0009.0007.2607; GCU.0010.0007.7079; GCU.0009.0006.6392; GCU.0013.0006.4272).

53A.82 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 53A.78 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

53A.83 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 53A.78 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.21, 10A.22A and 10A.22B above.

53A.84 Further or in the alternative to paragraph 53A.79 and 53A.82, at the time insurance cover for the Bluestone MO Risk was purportedly renewed under the 2019 90/10 Parallel Policy, and/or at the times the Bluestone Account Debtor Endorsements were entered into (as applicable), Danyon Lloyd knew each (alternatively, one or more) of the matters set out in paragraphs 53A.53, 53A.54, 53A.78(b), 53A.78(c), 53A.78(d), 53A.78(e) above.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

a. Danyon Lloyds' position as a member of the Credit Committee, as demonstrated by the particulars to paragraphs 53A.53, 53A.54, 53A.78(b), 53A.78(c), 53A.78(d), 53A.78(e) above;

b. the involvement and knowledge of Danyon Lloyd in the company's dealings with Bluestone Resources, including the following items: GCU.0004.0017.9327 GCU.0004.0017.9328 GCU.0005.0002.2703

GCU.0007.0002.5868 GCU.0005.0003.2594 GCU.0005.0003.4934
GCU.0005.0010.4219 GCU.0005.0010.4222 GCU.0005.0010.4734
GCU.0005.0010.5132 GCU.0004.0026.6058 GCU.0005.0010.7196
GCU.0007.0002.7064 GCU.0007.0002.7066
GCU.0005.0011.1218.

53A.85 The knowledge of Danyon Lloyd of the matters in paragraphs 53A.53, 53A.54, 53A.78(b), 53A.78(c), 53A.78(d), 53A.78(e) above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A above.

Knowledge of materiality

53A.86 Each (alternatively, one or more) of the matters referred to in paragraphs 53A.78 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bluestone being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

53A.87 Further or in the alternative to paragraph 53A.86 above, each (alternatively, one or more) of the matters referred to in paragraph above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Bluestone MO Risk.

Particulars

The BCC/TM Parties refer to paragraph 53A.86 above.

53A.88 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 53A.86 and 53A.87 is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 25, 26A and 26B above.

53A.89 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 53A.86 and 53A.87 is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A 10A.22B above.

53A.90 Further and in the alternative to paragraph 53A.86 above, each (alternatively one or more) of the matters referred to in paragraph 53A.78 was a matter:

a. which other individuals – comprising Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK) and Michael Gilhuley (Managing Director, Origination (USA), of GCUK), Adam Cherubini (Director, Origination, GCUK), and/or Rachelle Bower (Analyst, Origination of GCUK) - knew was material to the decision whether to extend insurance cover in respect of the Bluestone MO Risk;

b. alternatively to subparagraph (a), in respect of which those abovementioned individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Roland Hartley-Urquhart, Brett Downes, Michael Gilhuley, Adam Cherubini and Rachelle Bower is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill and as the non-disclosures bore directly on the risk of Bluestone Resources, Bluestone Coal and Blackstone being unable to repay the amounts advanced under the Bluestone AR Facility and thus upon the nature of the Bluestone MO Risk.

53A.91 Further or in the alternative to paragraph 53A.90 above, each (alternatively, one or more) of the matters referred to in paragraph 53A.78 above was a matter which a reasonable person in the position of the above mentioned individuals could be expected to know was relevant to the decision to extend insurance cover in respect of the Bluestone MO Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 053A.90 above.

53A.92 The knowledge of the abovementioned individuals of the matters in paragraphs 53A.900 and 53A.91 and above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

53A.93 The knowledge of the abovementioned individuals of the matters in paragraphs 53A.90 and 53A.91 above can be attributed to GCPL.

Particulars

The BCC/Parties refer to the particulars in paragraph 10A.21, 10A.22A and 10A.22B above.

53A.94 Further or in the alternative to paragraphs 53A.86 and 0 above, the matters referred to in paragraphs 53A.53, 53A.54, 53A.78(b), 53A.78(c), 53A.78(d), 53A.78(e) above were matters:

a. which Danyon Lloyd knew were relevant to the decision to accept the Bluestone MO Risk and, if so, on what terms; or

b. alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

(a) a person with substantial commercial experience in dealing with credit risks in the finance industry;

(b) the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

(c) was a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs [11] and [12(a)(ii)] above); and

(d) attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Bluestone MO Risk.

53A.95 Further or in the alternative to paragraph 53A.940 above, each (alternatively, one or more) of the matters referred to in paragraphs 53A.53, 53A.54, 53A.78(b), 53A.78(c), 53A.78(d), 53A.78(e) above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were relevant to the decision to extend insurance cover in respect of the Bluestone MO Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 53A.94 above.

53A.96 The knowledge of Danyon Lloyd of the matters in paragraphs 53A.94 and 53A.95 above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A above.

Breach of duty of disclosure

53A.97 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 53A.78 above before the cover was placed or renewed for the Bluestone MO Risk.

53A.98 Greensill's failure to disclose the matters referred to in paragraph 53A.78 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, in the premises of matters pleaded in paragraphs 53A.79 to 53A.96 above.

Fraudulent non-disclosure

53A.99 By reason of the matters pleaded in paragraphs 53A.79, 53A.80, 53A.81, 53A.82, 53A.83, 53A.84, 53A.85, 53A.86, 53A.88, 53A.89, 53A.90, 53A.92, 53A.93, 53A.94, 53A.96, Greensill's failure to disclose the matters referred to in paragraph 53A.78 above was fraudulent.

53A.100 The cover for the Bluestone MO Risk would not have been issued or renewed if one or more of the matters referred to in paragraph 53A.78 above had been disclosed.

53A.101 In the alternative to the allegation in paragraph 53A.100 above, the cover for the Bluestone MO Risk would not have been issued or renewed on the same terms if one or more of the matters referred to in paragraph 53A.78 above had been disclosed.

53A.102 By reason of the matters pleaded in paragraphs 53A.99 and 53A.101 above, IAL is entitled to avoid the Bluestone MO Endorsement and each of the Bluestone Account Debtor Endorsements.

Innocent non-disclosure

53A.103 In the alternative to the allegation in paragraphs 53A.99 to 53A.102 above, and by reason of the matters pleaded in paragraphs 53A.97, 53A.98, 53A.100 and 53A.101, IAL is entitled to reduce its liability under the Bluestone MO Endorsement and each of the Bluestone Account Debtor Endorsements to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D10.A BLUESTONE SINGLE OBLIGOR

D10A.1 Policy and Endorsements

53A.104 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Bluestone Resources Inc (**Bluestone Resources**), a company incorporated under the laws of Delaware, United States of America, was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement 44 dated 13 March 2019.

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated 14 April 2025 at paragraphs 126(c) and 289.

D10A.2 Bluestone Single-Obligor Misrepresentations

53A.105 On or around 30 May 2018, Lex Greensill, on behalf of GCUK, requested that BCC extend insurance cover in respect of a proposed 'SCF [supply chain finance] facility' to be provided by GCUK to Bluestone Resources (**Bluestone SO Risk**).

Particulars

Email from Lex Greensill to Brereton dated 30 May 2018 (BCC.0001.0001.0440), attaching a PowerPoint presentation titled 'SCF Facility for Bluestone - Request for Credit Insurance Cover' dated May 2018 (BCC.0001.0001.0441).

Email from Lex Greensill to Brereton dated 31 May 2018, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare and Edward Smith (GCU.0004.0013.1009), and attaching the Bluestone SCF Facility Presentation (GCU.0004.0013.1010).

53A.106 In the premises of paragraphs 10A.27 and 10A.28 above, the concept of an 'SCF' facility was used by GCUK, and understood by Brereton, to refer to a form of short-term financing based on genuine underlying invoices that evidence trade.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.27 and 10A.28 above.

Bluestone SCF Facility Misrepresentations / Invoices Misrepresentations

53A.107 On 31 May 2018, Lex Greensill requested a policy limit of USD40 million and a commitment for 3 years for the cover in respect of the Bluestone SO Risk, on the basis that GCUK and BCC would have a right to cancel the commitment if any of the following events occurred:

a. metallurgical (**MET**) coal production fell below 150,000 tonnes for the three most recent months (measured monthly);
b. MET coal prices (East Coast Low Vol FOB Norfolk) fell below $80/tonne;

c. a change of control of Bluestone Resources;

d. a failure to pay by Bluestone Resources of any amount due to GCUK;

e. an event of default, including a cross-default or material adverse change;

f. a failure by Bluestone Resources to provide quarterly management reports within 45 days of each quarter.

Particulars

Email from Lex Greensill to Brereton dated 31 May 2018, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare and Edward Smith (GCU.0004.0013.1009), and attaching the Bluestone SCF Facility Presentation (GCU.0004.0013.1010).

53A.108 In the premises of paragraphs 53A.105 to 53A.107 above, Lex Greensill represented to Brereton that:

a. the proposed facility (**Bluestone SCF Facility**) was for the purpose of financing payment of Bluestone Resources' trade invoices (**Bluestone SCF Misrepresentation**);

b. an invoice would only be financed under the Bluestone SCF Facility if the invoice was, or the underlying invoices were:

i. due and payable, but not overdue; and

ii. issued by a supplier for goods or services delivered to Bluestone Resources for the operation of its mining business;

(the **Bluestone Invoices Misrepresentations**).

Particulars

The Bluestone Invoices Misrepresentations can be inferred from the Bluestone SCF Representation and the 'Greensill Capital – SCF Underwriting Guidelines: Version 4.0 – March 2018' (BCC.0001.0001.0412) referred to in the particulars to paragraph 10A.28 above.

53A.109 The Bluestone SCF Facility Misrepresentation and Bluestone Invoices Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.20, 10A.22A, 10A.22B, 10A.25, 10A.26A and 10A.26B above.

53A.110 On 4 June 2018, Brereton purported to agree to provide cover in respect of the Bluestone SO Risk up to a policy limit of USD40 million, subject to having the right of cancellation as set out in paragraph 53A.107 above, and GCUK confirmed agreement between the parties.

Particulars

Email from Greg Brereton to Lex Greensill dated 4 June 2018, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare and Edward Smith (BCC.0001.0002.0968).

Email from Lex Greensill to Greg Brereton, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare, Edward Smith, John Whelan and Brett Downes, dated 4 June 2018 (GCU.0013.0002.6716).

53A.111 On 14 June 2018, Marsh sent Brereton an email attaching various documents, including unsigned copies of Customer Endorsement 6 for Bluestone Resources under the 2018 Policy and Customer Endorsement 6 for Bluestone Resources under the 2018 Master Policy. In the email, Marsh confirmed that GCUK had confirmed 'NKORL' and given them the order to bind.

Particulars

Email from Edward G Smith to Brereton, copying Ewan Berkemeier, Paul William Nash and Alexandre Weiss Bueno, dated 14 June 2018 (BCC.0001.0001.0483), attaching, among other things, unsigned Customer Endorsement 6 purportedly under the 2018 Policy and Customer Endorsement 6 purportedly under the 2018 Master Policy (BCC.0001.0001.0485; BCC.0001.0001.0486).

53A.112 On 15 June 2018, Brereton provided GCUK with signed copies of Customer Endorsement 6 to the 2018 Policy and Customer Endorsement 6 to the 2018 Master Policy where:

a. each purported, with effect from 15 June 2018, to endorse Bluestone Resources as a Customer, with a Maximum Tenor of 364 days, and an Aggregate Customer Limit of USD40 million, which was non-cancellable or reduceable for the duration of the policy period other than in accordance with its terms;

b. the terms of Customer Endorsement 6 to the 2018 Master Policy provided that if any of the following events, as defined in the Customer Agreement between Bluestone Resources and GCUK, occurred:

    i. a Material Adverse Change;

    ii. a Default Event;

    iii. a Change of Control;

    iv. a Coal Production;

    v. a Reporting Event,

each party would have the right, on prior written notice to the other party of at least 3 business days, to cancel the Customer Limit from the date of expiry of the notice, on and

from which no Debt acquired by the Insured would attach to the policy.

Particulars

Email from Greg Brereton to Julian Macey-Dare and Ewan Berkemeier dated 15 June 2018, copying John Whelan and Edward Smith (GCU.0013.0002.7842) and attaching Customer Endorsement No.6 (GCU.0013.0002.7843).

Customer Agreement between GCUK and Bluestone Resources Inc. dated 14 June 2018 (IAL.500.002.0494), clause 1A.3.

53A.113 On or around 5 March 2019, Brereton provided Marsh with a signed copy of Customer Endorsement 44 to the 2019 90/10 Master Policy, which purported, with effect from 1 March 2019, to endorse Bluestone Resources as a Customer under the 2019 90/10 Master Policy on the terms set out in subparagraph a and b above.

Particulars

Email from Brereton to Edward G Smith, copying Ewan Berkemeier, Angus Ward, Paul William Nash, and Alexandre Weiss Bueno, dated 5 March 2019 (BCC.0001.0002.2730), attaching, among other things, a signed copy of Customer Endorsement 44 to the 2019 90/10 Master Policy (BCC.0001.0002.2731 at 0040).

53A.114 On or around 13 March 2019, Brereton provided GCUK with a signed copy of Customer Endorsement 44 under the 2019 90/10 Parallel Policy, which purported, with effect from 1 March 2019, to endorse Bluestone Resources as a Customer under the 2019 90/10 Parallel Policy, on the terms set out in in subparagraph b above.

Particulars

Email from Greg Brereton to Edward Smith , copying Ewan Berkemeier, dated 13 March 2019 (BCC.0001.0002.2781), attaching among other things, Customer Endorsements No.44 (BCC.0001.0002.2782 at 0028).

Representations were misleading

53A.115 The Bluestone SCF Facility Misrepresentation referred to in subparagraph 53A.108(a) above was false and/or misleading because:

a. the financing under the Bluestone SCF Facility was not provided for the purpose of Bluestone Resources paying its supplier invoices, but for the purposes of Bluestone Resources refinancing its c.USD35 million loan from Carter Bank & Trust (**Carter Bank**) and purchasing equipment, and was in fact used for those purposes;

Particulars

Email from Pamela Nnoko to Roland Hartley-Urquhart, Danyon Lloyd, Lex Greensill, Brett Downes, Michael Gilhuley, Myrjam Tschoeke and others, copying

the Credit Risk Team, dated 1 June 2018 (GCU.0004.0013.1082), attaching a GCUK Credit Analysis Pack (GCU.0004.0013.1083) (**Bluestone CAP June 2018**) and GCUK Relationship Credit Analysis Pack for Bluestone Resources (GCU.0004.0013.1084) (**Bluestone RCAP June 2018**).

Email 'GREENSILL CAPITAL - CREDIT COMMITTEE MEETING - MINUTES FRIDAY 1st JUNE 2018', from Craig Pinnington to Roland Hartley-Urquhart, Lex Greensill, Brett Downes, Myram Tschoeke, Michael Gilhuley and Danyon Lloyd, copying the Credit Risk Team and others, dated 20 June 2018 (GCU.0014.0001.5268).

Email from Brett Downes to Ian Bryan and Griffith Williams, with subject 'RE: BRI - Invoice Summary.xlsx', copying Bluestone mailing list, dated 22 June 2018 (GCU.0009.0003.8057), attaching 'Reinvoicing Underlying Invoices Process 2018 v.1.docx' (GCU.0009.0003.8058).

Email from Roland Hartley-Urquhart to Lex Greensill, with subject 'FW: Bluestone Summary for BCC May 2018.pptx', copying Michael Gilhuley, dated 23 May 2018 (GCU.0004.0012.7322), attaching, among other things, the original version of the presentation 'Bluestone Summary for BCC 2018' provided to BCC on 30 May 2018 (GCU.0004.0012.7325).

Letter from Carter Bank to GCUK regarding the partial release of corrected deed of trust dated 26 June 2018 (IAL.500.002.0506).

Email 'Re: Bluestone Ops Update' from Ian Bryan to Griffith Williams and Bluestone mailing list, copying Robert Hough, dated 26 June 2018 (GCU.0009.0003.8769).

Manual Payment Request for USD19,358,001 to Bluestone Resources dated 27 June 2018 (GCU.0009.0003.8769).

Email 'RE: Bluestone Resources' from Adam Cherubini to Summer Harrison and Steve Ball, copying Bluestone mailing list, dated 27 June 2018 (GCU.0013.0002.9207).

Manual Payment Request for USD34,852,916.47 to Carter Bank (GCU.0009.0003.9032).

Email 'Re: Documents Executed by Bluestone' from Adam Cherubini to Jonathan Hauser, copying Bluestone mailing list, dated 27 June 2018 (GCU.0009.0003.9043).

b. the amounts advanced under the Bluestone SCF Facility were not, in fact, referable to invoices for commercial trade transactions payable by Bluestone Resources to its

suppliers;

Particulars

That amounts advanced under the Bluestone SCF Facility were only notionally connected to the supply of goods and services or underpinned by commercial trade transactions can be inferred from:

a. the matters in subparagraph 53A.115(a) above and paragraph 53A.116 below;
b. how the Bluestone SCF Facility operated in practice, including the systematic practice of 'rolling' maturities (refer to the particulars to subparagraph 53A.115 (c) below);
c. the invoices issued by Bramid Outsource Limited (**Bramid**) to Bluestone Resources which were purportedly the subject of the financing that GCUK provided to Bluestone Resources were generated by Bramid using information that GCUK provided it, rather than using invoices from Bluestone Resources' suppliers. The BCC/TM Parties refer to:

    i. Emails between representatives of GCUK and Bluestone with various subject lines, dated between 27 June 2018 and 25 February 2021 (GCU.0024.0001.0411; GCU.0024.0001.0413; GCU.0024.0001.0429; GCU.0024.0001.0460; GCU.0024.0001.0463; GCU.0024.0001.0466; GCU.0024.0001.0477; GCU.0024.0001.0494; GCU.0024.0001.0497; GCU.0024.0001.0499; GCU.0024.0001.0501; GCU.0024.0001.0509; GCU.0024.0001.0514; GCU.0024.0001.0548; GCU.0009.0014.5140; GCU.0009.0014.6264; GCU.0009.0014.8223; GCU.0009.0016.1872; GCU.0009.0016.8056; GCU.0009.0017.6021; GCU.0009.0018.5934; GCU.0017.0002.2676);

d. concerns raised within GCUK regarding Bluestone Resources' inability to provide sufficient 'eligible' invoices to underpin the level of funding provided under the Bluestone SCF Facility. The BCC/TM Parties refer to:

    i. the matters in paragraph 53A.116 below.

    ii. Email from Roland Hartley-Urquhart to Lex Greensill, with subject 'BCC Insurance for Bluestone / Facility Update', dated 6 June 2018 (GCU.0004.0013.3160).

    iii. Draft minutes of Credit Committee meeting on 14 May 2019, attended by Brett Downes, Roland Hartley-Urquhart, Michael Gilhuley, Myrjam Tschoeke and Lex Greensill (see email from Pia Schale to David

Keeling, with subject 'RE: Bluestone Minutes', dated 16 May 2019 (GCU.0009.0009.3275).

iv. Email 'RE: BRI Invoice Summary 12-31-18 through 2-28-19.xlsx' from Ian Bryan to Adam Cherubini, Roland Hartley-Urquhart, Brett Downes, Michael Gilhuley and David Keeling, copying Rachelle Bower and Support Ops UK, dated 19 March 2019 (GCU.0009.0008.0687).

v. Email 'RE: Bluestone invoices' from Adam Cherubini to Brett Downes, David Keeling, Craig Pinnington, Credit Risk Team, Rachelle Bower, copying Roland Hartley-Urquhart and Michael Gilhuley, dated 24 April 2019 (GCU.0009.0008.9176).

vi. Email 'RE: Bluestone' from Lex Greensill to Roland Hartley-Urquhart and Michael Gilhuley, copying Brett Downes and Adam Cherubini, dated 27 April 2019 (GCU.0005.0009.7650).

vii. Email 'Re: Bluestone invoices' from Adam Cherubini to Brett Downes, David Keeling, Craig Pinnington, Credit Risk Team and Rachelle Bower, copying Roland Hartley-Urquhart and Michael Gilhuley, dated 24 April 2019 (GCU.0009.0008.9175). See also, Accession Schedule to the Customer Agreement made on 25 April 2019 (IAL.500.002.0499).

viii. Email 'RE: Bluestone Invoices' from Craig Pinnington to David Keeling and the Credit Risk Team dated 24 April 2019 (GCU.0009.0008.9156), forwarded to Brett Downes by David Keeling (GCU.0009.0008.9158).

ix. Email 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Tuesday 14th May 2019' from Brett Downes to David Keeling, Myrjam Tschoeke, Danyon Lloyd, Roland Hartley-Urquhart, Lex Greensill and Michael Gilhuley, copying others, dated 14 May 2019 (GCU.0005.0010.4676).

x. Email 'RE: Invoice Summary - May 28th' from Brett Downes to David Keeling, Laura Da Silveira, Adam Cherubini, Craig Pinnington and Michael Gilhuley, dated 31 May 2019 (GCU.0009.0009.5390).

c. the Bluestone SCF Facility was not, in substance, a short-term financing facility with a maximum tenor of 364 days, but rather an interest only term loan of initially 3 years, subsequently extended to 4 years;

Particulars

Customer Agreement between GCUK and Bluestone Resources Inc. dated 14 June 2018 (IAL.500.002.0494).

First Amendment to the Customer Agreement between GCUK and Bluestone Resources Inc., dated 7 December 2018 (IAL.500.002.0484).

The Bluestone SCF Facility operated in a manner that was consistent with an interest only term loan. Relevantly:

a. GCUK advanced the gross available funds under the Bluestone SCF Facility, being the facility limit after deductions for fees and other amounts, in two lump sum payments to Carter Bank and Bluestone Resources on or around 27 June 2018. See:

    i. Bluestone RCAP June 2018 (GCU.0004.0013.1084);
    ii. Email from Ian Bryan to Robert Hough, with subject 'RE: Bluestone Ops Update', dated 26 June 2018 (GCU.0009.0003.8770); and
    iii. Email from Jonathan Hauser to Hugh McKee, Edelbrock Jack, and Steve Ball, with subject 'Payoff/Release letter', dated 26 June 2018 (GCU.0010.0003.8022), attaching letter dated 26 June 2018 from Litz Van Dyke (Chief Executive Officer of Carter Bank) to Hugh McKee (GCUK) (GCU.0010.0003.8023).

b. the principal was not payable until July 2021, which was then extended until July 2022. See:

    i. Email from Adam Cherubini to Roland Hartley-Urquhart and Michael Gilhuley dated 13 November 2018 (GCU.0004.0020.6361), attaching 'Bluestone Amortization Schedule Excel 11.12.2018' (GCU.0004.0020.6363);
    ii. 'Bluestone Amortization Schedule Excel 11.25.2018.xlsx' (GCU.0005.0004.5579); and~~/or~~
    iii. Email from Adam Cherubini to Roland Hartley-Urquhart, with subject 'Bluestone Items', copying Rachelle Bower, dated 19 February 2021 (GCU.0006.0005.9651), attaching, among other things, 'Bluestone Amortization Schedule Excel 02.18.2021.xlsx' (GCU.0006.0005.9652).

c. subsequent advances were made as part of the process used to roll maturities of the principal amount and to make interest payments to GCUK (see further below).

While the maximum tenor for credit advanced under the Bluestone AR Facility was represented as 364 days, the rolling of debts upon each maturity falling due meant that their true tenor exceeded the maximum tenor. See:

a. [*Not used*].

b. Email 'Re: Bluestone' from Brett Downes to Roland Hartley-Urquhart, copying Michael Gilhuley, dated 8 May 2018 (GCU.0009.0003.3140).

c. Email from Steve Ball to Hugh Kee, copying Bluestone mailing list and Mayer Brown representatives (acting for GCUK), dated 7 June 2018 (GCU.0013.0002.6962), attaching 'Bluestone Resources Inc Term Sheet June-5-2018 Final REDLINE' (GCU.0013.0002.6963).

d. Email from Adam Cherubini to Ian Little, Ian Bryan, and Rachelle Bower, with subject 'Bluestone Roll Discussion', dated 31 October 2018 (GCU.0005.0002.5378) and attaching 'Bluestone Operations Process Overview' (GCU.0005.0002.5379).

e. Email from Lex Greensill to Roland Hartley-Urquhart, with subject 'Bluestone Facility Amendments', dated 13 November 2018 (GCU.0005.0002.9491)

f. Email 'FINAL APPROVALS' from Craig Pinnington to Brett Downes, Danyon Lloyd, Lex Greensill, Myrjam Tschoeke, Roland Hartley-Urquhart, Adam Cherubini and others, dated 12 December 2018 (GCU.0007.0002.5864), attaching 'Bluestone Increase US$400m 27 Nov 2018 update post CC' (GCU.0007.0002.5865 at 0009).

g. Email from Roland Hartley-Urquhart to Lex Greensill, with subject 'Fwd: Bluestone Roll Restructure' dated 17 January 2019 (GCU.0005.0004.9987).

h. Email from Adam Cherubini to Steve Ball and Summer Harrison, with subject '$60mm Bluestone Facility Roll Process', dated 2 January 2019 (GCU.0009.0007.2251) and attaching 'CFC guide for clients, approving trades v1' (GCU.0009.0007.2252) and '1. CFC Form' (GCU.0009.0007.2253).

i. References to rolling of the Bluestone SCF Facility are also repeatedly made in correspondence between GCUK and Bluestone Resources, including on 26 February 2019 (GCU.0005.0006.7618), 11 April 2019 (GCU.0005.0009.0454), 17 April 2019 (GCU.0005.0009.3314), 24 September 2019 (GCU.0013.0006.6855) and 16 December 2019 (GCU.0010.0011.3493).

j. Bluestone Complaint (BCC.0001.0019.0294).

Further, on GCUK's own 'SCF Underwriting Guidelines' dated March 2018 (BCC.0001.0001.0412 at 0009), the Bluestone SCF Facility was categorised as a 'Medium Risk' to 'Higher Risk' loan, rather than a self-liquidating trade finance facility, on account of the matters in paragraph 53A.116 below.

GCUK's practice of rolling the debts the subject of the Bluestone SCF facility, without Bluestone in fact repaying amounts to GCUK from its own resources, is evident from the documents identified immediately above in the particulars to this paragraph 53A.115(c) and is further pleaded at Section D.2 of Annexure B to this defence.

53A.116 The Bluestone Invoices Misrepresentations referred to in subparagraph 53A.118(b) above were false and/or misleading because Bluestone Resources submitted for financing under the facility:

a. invoices that were past their due date;

Particulars

Prior to each advance under the Bluestone SCF Facility, Bluestone Resources submitted a spreadsheet listing the details of the invoices for which it was requesting funding (**Invoice Summary**). Relevantly:

a. For the initial advance in June 2018 (**Initial Advance**), Bluestone Resources submitted an Invoice Summary containing 2,034 invoice entries, of which 1,992 were past their due date. See:

i. Email from Steve Ball to Griffith Williams and Adam Cherubini, with subject 'Fwd: BRI - Invoice Summary.xlsx', copying Jay Justice, Roland Hartley-Urquhart and Summer Harrison, dated 21 June 2018 (GCU.0004.0013.9357), attaching 'BRI – Invoice Summary.xlxs' (GCU.0004.0013.9358). Email and attachment forwarded to Bluestone mailing list (GCU.0004.0013.9661; GCU.0004.0013.9662).

b. For the advance ('roll') on 14 March 2019, Bluestone Resources submitted an Invoice Summary on 12 March 2019 containing 1780 invoice entries, all of which were past their due date. See:

i. Email from Summer Harrison to Adam Cherubini, with subject 'RE: BRI Invoice Summary 12-31-18 through 2-28-19.xlsx', copying Rachelle Bower and Ian Bryan, dated 11 March 2019 (GCU.0005.0007.3781), attaching spreadsheet 'BRI Invoice Summary 12-31-18 through 2-28-19.xlsx' (GCU.0005.0007.3782).

ii. Email from Brett Downes to Griffith Williams and Bluestone, with subject 'RE: Bluestone – invoice spot checking', copying the Credit Risk

Team, dated 20 June 2018 (GCU.0004.0013.9156), attaching excel spreadsheet titled 'bluestone payments December 15 2017 to June 15 2018' (GCU.0004.0013.9157).

iii. Email from Ian Bryan to Brett Downes and Griffith Williams, with subject 'FW: BRI - Invoice Summary.xlsx', copying Bluestone mailing list, dated 22 June 2018 (GCU.0010.0003.7377), attaching 'SKMBT_28318062114480.pdf' (GCU.0010.0003.7378).

iv. Email from Brett Downes to Ian Bryan and Griffith Williams, with subject 'RE: BRI - Invoice Summary.xlsx', copying Bluestone mailing list, dated 22 June 2018 (GCU.0009.0003.8057), attaching 'Reinvoicing Underlying Invoices Process 2018 v.1.docx' (GCU.0009.0003.8058).

b. 'stale' invoices that had already been paid by Bluestone Resources;

Particulars

GCUK's criteria for 'valid invoices', being invoices GCUK accepted as eligible for funding under the Bluestone SCF Facility, included invoices that had already been paid. See:

a. Email from Brett Downes to Ian Bryan and Griffith Williams, with subject 'RE: BRI - Invoice Summary.xlsx', copying Bluestone mailing list, dated 22 June 2018 (GCU.0009.0003.8057), attaching 'Reinvoicing Underlying Invoices Process 2018 v.1.docx' (GCU.0009.0003.8058).
b. Email from Brett Downes to Roland Hartley-Urquhart, Michael Gilhuley, with subject 'Re-Invoicing Rules – Bluestone', copying Credit Risk Team, dated 7 June 2018 (GCU.0009.0003.5665).
c. Email from Brett Downes to Adam Cherubini, with subject 'Re: Bluestone - Re-Invoicing - Invoice Eligibility', copying Michael Gilhuley, dated 21 February 2019 (GCU.0009.0007.5371).
d. Email from Adam Cherubini to Summer Harrison and Rachelle Bower, copying Steve Ball and Ian Byran, dated 7 March 2019 (GCU.0005.0007.2096).
e. The same eligibility criteria was repeated by GCUK to Bluestone Resources on a number of occasions including on 20 March 2019 (GCU.0009.0008.1090), 11 April 2019 (GCU.0005.0009.0454), 17 April 2019 (GCU.0005.0009.3314), 24 September 2019 (GCU.0013.0006.6855), 18 October 2019

(GCU.0010.0010.7156) and 16 December 2019 (GCU.0010.0011.3493).

c. invoices relating to intra-company costs that were incapable of forming the basis of invoices and accounts receivable against which funding could be advanced under the Bluestone SCF Facility;

Particulars

Email from Jay Justice to Roland Hartley-Urquhart, with subject 'Invoice Snag', copying Steve Ball, dated 20 June 2018 (GCU.0010.0003.6922).

Email from Steve Ball to Griffith Williams and Adam Cherubini, with subject 'Fwd: BRI - Invoice Summary.xlsx', copying Jay Justice, Roland Hartley-Urquhart and Summer Harrison, dated 21 June 2018 (GCU.0004.0013.9357), attaching 'BRI – Invoice Summary.xlxs' (GCU.0004.0013.9358). Email and attachment forwarded to the Bluestone mailing list (GCU.0004.0013.9661; GCU.0004.0013.9662).

Email from Ian Bryan to David Keeling and Brett Downes, with subject 'RE: BRI Invoice Summary 12 31 18 through 2 28 19.xlxs', copying Adam Cherubini, Rachelle Bower and Support Ops UK, dated 13 March 2019 (GCU.0005.0007.5267).

Email from Brett Downes to Adam Cherubini, Ian Bryan and David Keeling, copying Rachelle Bower, Support Ops UK, Michael Gilhulley and Roland Hartley-Urquhart, with subject 'RE: BRI Invoice Summary 12-31-18 through 2-28-19.xlsx', dated 12 March 2019 (GCU.0009.0007.9217).

Email from Brett Downes to Roland Hartley-Urquhart, Michael Gilhuley, Ian Bryan, Adam Cherubini and David Keeling, with subject 'RE: BRI Invoice Summary 12 31 18 through 2 28 19.xlxs', copying Rachelle Bower and Support Ops UK, dated 13 March 2019 (GCU.0005.0007.5267).

Knowledge of falsity of representations

53A.117 Lex Greensill knew the matters set out in paragraph 53A.115 above.

Particulars

The knowledge of Lex Greensill in respect of the Bluestone SCF Facility Misrepresentation can be inferred from his membership of the Credit Committee and Board, which assessed and approved the financial accommodation provided to Bluestone Resources.

The BCC/TM Parties refer to the particulars to paragraph 53A.115 above which refer to Lex Greensill

53A.118 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraph 53A.117 above is to be attributed to Greensill Bank.

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

53A.119 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraph 53A.117 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

53A.120 Further and in the alternative to paragraph 53A.117 above, the following individuals knew the matters set out in paragraph 53A.115 above:

a. Roland Hartley-Urquhart (see subparagraph 10A.10(c) in Section B of this Annexure)

b. Brett Downes (Chief Risk Officer of GCUK); and/or

c. Michael Gilhuley (Managing Director, Origination, USA, of GCUK).

Particulars

The knowledge of Roland Hartley-Urquhart as to the Bluestone SCF Misrepresentation is to be inferred from:

a. his roles as:

   i. 'Sponsor' and 'GC Relationship Owner' for Bluestone Resources and a member of the 'Deal Team' for the Bluestone SCF Facility (GCU.0004.0013.1084); and

   ii. a member of the Credit Committee, which assessed and approved the financial accommodation provided to Bluestone Resources;

b. his involvement in dealings with Bluestone Resources in those roles, including the placement of the Bluestone SO Risk, as demonstrated by:

   i. Roland Hartley-Urquhart's role in preparing and/or reviewing the Bluestone SCF Facility Presentation referred to in the particulars to paragraph 53A.107 above.

      A. Roland Hartley-Urquhart sent an initial draft of the presentation to Lex Greensill on 23 May 2018 (GCU.0004.0012.7318; GCU.0004.0012.7321).

      B. The final version was sent to Lex Greensill on 27 May 2018 and incorporated changes made at his request

(GCU.0009.0003.4197 attaching GCU.0009.0003.4198; GCU.0009.0003.4248 attaching GCU.0009.0003.4249; GCU.0005.0001.4258 attaching GCU.0005.0001.4259; GCU.0009.0003.4490).

ii. email from Pamela Nnoko to Roland Hartley-Urquhart, Danyon Lloyd, Lex Greensill, Brett Downes, Michael Gilhuley, Myrjam Tschoeke and others, copying the Credit Risk Team, dated 1 June 2018 (GCU.0004.0013.1082), attaching Bluestone CAP June 2018 (GCU.0004.0013.1083) and Bluestone RCAP June 2018 (GCU.0004.0013.1084);

iii. the minutes for the Credit Committee meeting on 1 June 2018 (GCU.0014.0001.5268); and

iv. the particulars to paragraphs 53A.115 and 53A.116 above which refer to Roland Hartley-Urquhart.

The knowledge of Brett Downes as to the Bluestone SCF Misrepresentation can be inferred from:

a. his roles as the Chief Risk Officer of GCUK, a member of the 'Deal Team' for the Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the GCUK Credit Committee;

b. his involvement in dealings with Bluestone Resources in those roles, including insurance cover for the Bluestone SO Risk, as demonstrated by:

i. email from Brett Downes to Roland Hartley-Urquhart, copying Michael Gilhuley, dated 8 May 2018 (GCU.0009.0003.3140);

ii. email from Pamela Nnoko to Roland Hartley-Urquhart, Danyon Lloyd, Lex Greensill, Brett Downes, Michael Gilhuley, Myrjam Tschoeke and others, copying the Credit Risk Team, dated 1 June 2018 (GCU.0004.0013.1082), attaching Bluestone CAP June 2018 (GCU.0004.0013.1083) and Bluestone RCAP June 2018 (GCU.0004.0013.1084);

iii. the minutes for the Credit Committee meeting on 1 June 2018 (GCU.0014.0001.5268);

iv. email from Lex Greensill to Brereton, copying Roland Hartley-Urquhart, Michael Gilhuley, Ewan Berkemeier, Julian Macey-Dare,

Edward Smith, John Whelan and Brett Downes, dated 4 June 2018 (GCU.0013.0002.6716);

v. the particulars to paragraphs 53A.107, 53A.115 and 53A.116 above which refer to Brett Downes.

c. the Greensill Capital – SCF Underwriting Guidelines, which identify the Chief Risk Officer as the 'Document Owner': see the particulars to paragraphs 10A.27 and 10A.28 above; and

d. email 'GC Credit Policies & Procedures' from Brett Downes to Julian Macey-Dare, copying the Credit Risk Team and Edward Smith, dated 27 March 2018, attaching, among other things, 'SCF Underwriting Guidelines (Public) V4.0' (MAR.0003.0001.2692; MAR.0003.0001.2696)

The knowledge of Michael Gilhuley of the Bluestone SCF Misrepresentation can be inferred from:

a. his roles as the Managing Director of Origination (USA) of GCUK, a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0009.0003.5485) and Bluestone AR Facility (GCU.0005.0002.2713 at 0004), and a member of the Credit Committee (MAR.0003.0001.2815); and

b. his involvement in dealing with Bluestone Resources in those roles, including the placement of insurance for the Bluestone SO Risk, as demonstrated by:

i. his role in preparing the Bluestone SCF Facility Presentation referred to in the particulars to paragraph 53A.107 above: (GCU.0009.0003.3774 attaching GCU.0009.0003.3775; GCU.0004.0012.7318 attaching GCU.0004.0012.7321; GCU.0009.0003.4160 attaching GCU.0009.0003.4161; GCU.0005.0001.4258 attaching GCU.0005.0001.4259; GCU.0009.0003.4490).

ii. his role in preparing the Bluestone RCAP June 2018 (GCU.0004.0013.1084);

iii. the minutes for the Credit Committee meeting on 1 June 2018 (GCU.0014.0001.5268); and

iv. the particulars to paragraphs 53A.107, 53A.115, 53A.116 and 53A.120 above which refer to Michael Gihuley.

53A.121 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters identified in paragraph 53A.115 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

53A.122 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters identified in paragraph 53A.115 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.21, 10A.22A and 10A.22B above.

53A.123 Brett Downes and Roland Hartley-Urquhart knew the matters set out in paragraph 53A.116 above.

Particulars

The knowledge of Brett Downes as to the Bluestone Invoices Misrepresentations is to be inferred from the particulars to paragraph 53A.120 above in relation to Brett Downes.

The knowledge of Roland Hartley-Urquhart as to the Bluestone Invoices Misrepresentations is to be inferred from the particulars to paragraph 53A.120 above in relation to Roland Hartley-Urquhart.

Email from Roland Hartley-Urquhart to Brett Downes and others, with the subject "Re: BRI – Invoice Summary.xlsx dated 22 June 2018 (GCU.0009.0003.8168).

53A.124 The knowledge of Brett Downes and Roland Hartley-Urquhart of each (alternatively, one or more) of the matters identified in paragraph 53A.116 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

53A.125 The knowledge of Brett Downes and Roland Hartley-Urquhart of each (alternatively, one or more) of the matters identified in paragraph 53A.116 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refers to the particulars in paragraphs 10A.21, 10A.22A and 10A.22B above.

Knowledge of the materiality of the representations

53A.126 Each (alternatively, one or more) of the matters referred to in paragraph 53A.115 above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bluestone Resources being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

Email from Lex Greensill to Brett Downes, Roland Hartley-Urquhart and others, with subject "RE: Liberty Trading – credit Submission". dated 14 July 2015 (GCU.0009.0001.0013)

'Greensill Capital – SCF Underwriting Guidelines: Version 4.0 – March 2018' (BCC.0001.0001.0412) acknowledged that "*[i]t is extremely important that the type of Trade Advance being considered in the underwriting decision is clearly highlighted as many of our insurance partners have policy issues with less trade like structures, especially in regards to their re-insurance treaties*".

53A.126A Further or in the alternative to paragraph 53A.126 above, each of the matters referred to in paragraph 53A.115 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

53A.127 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraph 53A.126 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

53A.128 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraph 53A.126 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

53A.129 Further and in the alternative to paragraph 53A.126 above, each (alternatively, one or more) of the matters referred to in paragraphs 53A.115 above was a matter:

a. which other individuals – comprising Roland Hartley-Urquhart (see subparagraph 10A.10(c) in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK), and/or Michael Gilhuley (Managing Director, Origination USA, of GCUK) – knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk;

b. alternatively to subparagraph (a), in respect of which those abovementioned individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The individuals' knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

'Greensill Capital – SCF Underwriting Guidelines: Version 4.0 – March 2018' (BCC.0001.0001.0412) acknowledged that "*[i]t is extremely important that the type of Trade Advance being considered in the underwriting decision is clearly highlighted as many of our insurance partners have policy issues with less trade like structures, especially in regards to their re-insurance treaties*".

Email from Lex Greensill to Brett Downes, Roland Hartley-Urquhart and others, with subject "RE: Liberty Trading – credit Submission" dated 14 July 2015 (GCU.0009.0001.0013).

53A.129A Further or in the alternative to paragraph 53A.129 above, each of the matters referred to in paragraph 53A.115 above was a matter which a reasonable person in the position of Roland Hartley-Urquhart, Brett Downes or Michael Gilhuley could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

53A.130 The knowledge of the abovementioned individuals of the matters set out in paragraph 53A.129 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

53A.131 The knowledge of the abovementioned individuals of the matters set out in paragraph 53A.129 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.21, 10A.22A and 10A.22B above.

53A.132 Each (alternatively, one or more) of the matters referred to in paragraph 53A.120 above was a matter:

a. which Brett Downes and Roland Hartley-Urquhart knew were material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

b. alternatively to subparagraph a., in respect of which Brett Downes and Roland Hartley-Urquhart were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

53A.132A Further or in the alternative to paragraph 53A.132 above, each of the matters referred to in paragraph 53A.120 above was a matter which a reasonable person in the position of Brett Downes or Roland Hartley-Urquhart could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

53A.133 The knowledge of Brett Downes and Roland Hartley-Urquhart of each (alternatively, one or more) of the matters set out in paragraph 53A.120 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 21 and 22 above.

53A.134 The knowledge of Brett Downes and Roland Hartley-Urquhart of each (alternatively, one or more) of the matters set out in paragraph 53A.120 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars at paragraphs 10A.21, 10A.22A and 10A.22B above

Misrepresentations were fraudulent

53A.135 In the premises of paragraphs 53A.117 to 53A.122 and 53A.126 to 53A.131 above:

a. Greensill misrepresented the risk presented by the Bluestone SO Risk;

b. the Bluestone SCF Facility Misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to provide, and whether subsequently to renew, insurance cover in respect of the Bluestone SO Risk.

53A.136 In the premises of paragraphs 53A.123, 53A.124, 53A.125, 53A.132, 53A.133 and 53A.134 above:

a. Greensill misrepresented the risk presented by the Bluestone SO Risk;

b. the Bluestone Invoices Misrepresentations was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to provide, and whether subsequently to renew, insurance cover in respect of the Bluestone SO Risk.

53A.137 If Greensill had not made the Bluestone SCF Facility Misrepresentation, insurance cover would not have been issued in respect of the Bluestone SO Risk at all, or, in the alternative, on the same terms in which it was purportedly written.

53A.138 If Greensill had not made the Bluestone Invoices Misrepresentation, insurance cover would not have been issued in respect of the Bluestone SO Risk at all, or, in the alternative, on the same terms in which it was purportedly written.

53A.139 By reason of the matters pleaded in paragraphs 53A.137 to 53A.138 above, IAL is entitled to avoid Customer Endorsement 44 to the 2019 90/10 Parallel Policy.

Innocent misrepresentation

53A.140 In the alternative to the matters pleaded in paragraphs 53A.135 to 53A.139 above, by reason of the matters pleaded in paragraphs 53A.115, 53A.116, 53A.137 and 53A.138 above, IAL is entitled to reduce its liability under Customer Endorsement No. 44 to the 2019 90/10 Parallel Policy.

D10A.3 Bluestone Single Obligor Non-Disclosures

Knowledge of underlying matters

53A.141 At the time of requesting the renewal of the insurance cover for the Bluestone SO Risk, Lex Greensill knew:

a. the matters set out in paragraph 53A.115 above;

Particulars

The BCC/TM Parties refer to the particulars in paragraph 53A.117 above.

b. that the true credit risk under the Bluestone AR Facility subsequently entered into between Bluestone Coal and GCUK, was also that of Bluestone Resources;

53A.142 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters in paragraph 53A.141 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

53A.143 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters in paragraph 53A.141 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

53A.144 Further and in the alternative to paragraph 53A.141 above, at the time of requesting the renewal of insurance cover in respect of the Bluestone SO Risk, Roland Hartley-Urquhart (see subparagraph

10A.10(c) in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK), Michael Gilhuley (Managing Director, Origination USA of GCUK) and/or Adam Cherubini (Director, Origination of GCUK) knew each (alternatively, one or more) of the matters set out in subparagraphs a) and (b) above.

Particulars

In respect of the knowledge of Roland Hartley-Urquhart, Brett Downes and Michael Gilhuley as to the matters in subparagraph 53A.141(a) above, the BCC/TM Parties refer to the particulars to paragraph 53A.120 above.

The knowledge of Adam Cherubini as to the matters in subparagraph 53A.141(a)is to be inferred from:

a. his roles as a Director of Origination at GCUK and a member of the 'Deal Team(s)' for the Bluestone SCF Facility (GCU.0009.0003.5486) and Bluestone AR Facility (GCU.0005.0002.2713);

b. his dealings with Bluestone Resources in those roles, as demonstrated by:

i. GCUK Relationship Credit Analysis Pack submitted 26 September 2018 (GCU.0005.0002.2713), which was prepared by Adam Cherubini and Michael Gilhuley; and

ii. the particulars to paragraphs 53A.115 and 53A.116 which refer to Adam Cherubini.

The knowledge of the individuals of the matters in subparagraph 53A.141(b) above is to be inferred from the particulars to paragraph.

53A.145 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 53A.144 is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

53A.146 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 53A.144 is to be attributed to GCPL.

Particulars

The BCC/TM Parties refers to paragraphs 10A.21, 10A.22A and 10A.22B above.

53A.147 Further or in the alternative to paragraph 53A.141 and 53A.144, at the time of requesting the renewal of insurance cover for the Bluestone SO Risk, Danyon Lloyd knew the matters set out in paragraph 53A.141(a) above.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

a. Danyon Lloyds' membership of GCUK's Credit Committee;

b. his involvement in GCUK's dealings with Bluestone Resources by virtue of that role, as demonstrated by:

i. email from Pamela Nnoko to Roland Hartley-Urquhart, Danyon Lloyd, Lex Greensill, Brett Downes, Michael Gilhuley, Myrjam Tschoeke and others, copying the Credit Risk Team, dated 1 June 2018 (GCU.0004.0013.1082), attaching Bluestone CAP June 2018 (GCU.0004.0013.1083) and Bluestone RCAP June 2018 (GCU.0004.0013.1084);

ii. the minutes for the Credit Committee meeting on 1 June 2018 (GCU.0014.0001.5268);

iii. the following items: GCU.0004.0017.9327 GCU.0004.0017.9328 GCU.0005.0002.2703 GCU.0007.0002.5868 GCU.0005.0003.2594 GCU.0005.0003.4934 GCU.0005.0010.4219 GCU.0005.0010.4222 GCU.0005.0010.4734 GCU.0005.0010.5132 GCU.0004.0026.6058 GCU.0005.0010.7196 GCU.0007.0002.7064 GCU.0007.0002.7066 GCU.0005.0011.1218.

53A.148 The knowledge of Danyon Lloyd of the matters in paragraph 53A.147 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A above.

53A.149 At the time of requesting the renewal of the insurance cover for the Bluestone SO Risk, Roland Hartley-Urquhart (see subparagraph 10A.10(c) in Section B of this Annexure), Brett Downes (Chief Risk Officer of GCUK), Michael Gilhuley (Managing Director, Origination USA, GCUK), Adam Cherubini (Director, Origination, GCUK) and/or Rachelle Bower (Analyst, Origination, GCUK) knew of each (alternatively, one or more) of the matters in paragraph 53A.116 above.

Particulars

In respect of the knowledge of Roland Hartley-Urquhart, Brett Downes and Michael Gilhuley, the BCC/TM Parties refer to the particulars to paragraph 53A.120 above.

The knowledge of Adam Cherubini and Rachelle Bowers is to be inferred from their involvements in dealings with Bluestone Resources, as demonstrated by the particulars to paragraph 53A.116 above.

53A.150 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 53A.149 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

53A.151 The knowledge of the abovementioned individuals of each (alternatively, one or more) of the matters in paragraph 53A.150 is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer paragraphs 10A.21, 10A.22A and 10A.22B above.

53A.152 At the time of requesting the renewal of the insurance cover for the Bluestone SO Risk, Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure), Michael Gilhuley (Managing Director, Origination USA, GCUK) and/or Adam Cherubini (Director, Origination, GCUK) knew:

a. a standstill and forbearance agreement was entered into on 26 September 2018 between Bluestone Resources and GCUK, pursuant to which GCUK agreed to forbear from exercising its right to reduce the total Bluestone SCF Facility limit to zero following the failure by Bluestone Resources to deliver its 2017 audited financial statements by 15 September 2018, which constitutes a 'Reporting Event' under the Customer Agreement; and

b. Bluestone Resources failed to deliver its 2017 audited financial statements before the end of the forbearance period on 31 October 2018.

Particulars

Email 'Bluestone / Greensill - Draft Forbearance Letter Agreement' from Hugh McKee to Jay Justice and Steve Ball, copying Roland Hartley-Urquhart, Michael Gilhuley and Adam Cherubini, dated 24 September 2018, attaching a draft standstill and forbearance deed (GCU.0009.0005.0937; GCU.0009.0005.0938)

Email from Hugh McKee to Steve Ball, with subject 'Bluestone I – Forbearance re: 2017 Financials', copying Jay Justice, the Bluestone mailing list and Roland Hartley-Urquhart, dated 28 September 2018 (GCU.0009.0005.2018), attaching a Standstill and Forbearance Agreement dated 26 September 2018 (GCU.0009.0005.2018).

As of 11 November 2018, Bluestone Resources' 2017 audited financials remained outstanding. See email from Adam Cherubini to Steve Ball, with subject 'RE: Bluestone Credit Items', copying Michael Gilhuley and Roland Hartley-Urquhart (GCU.0004.0021.4392; GCU.0004.0021.4393).

Knowledge of materiality

53A.153 Each of the matters referred to in paragraph 53A.141 above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Bluestone Resources being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

53A.154 Further or in the alternative to paragraph 53A.153 above, each of the matters referred to in paragraph 53A.141 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

53A.155 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 53A.153 and 53A.154 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 25, 26A and 26B above.

53A.156 The knowledge of Lex Greensill of each (alternatively, one or more) of the matters set out in paragraphs 53A.153 and 53A.154 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A 10A.22B above.

53A.157 Further and in the alternative to paragraph 53A.153 above, each (alternatively, one or more) of the matters referred to in paragraphs 53A.141 above was a matter:

a. which other individuals – comprising Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure), Brett Downes (Chief Risk Officer, GCUK), Michael Gilhuley (Managing Director, USA, GCUK) and/or Adam Cherubini of GCUK – knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk;

b. alternatively to subparagraph (a), in respect of which those individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Roland Hartley-Urquhart, Brett Downes, Michael Gilhuley and Adam Cherubini is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill and as the non-disclosures bore directly on the risk of Bluestone Resources being unable to repay the amounts advanced under the Bluestone SCF Facility and thus upon the nature of the Bluestone SO Risk.

53A.158 Further or in the alternative to paragraph 53A.157 above, each of the matters referred to in paragraph 53A.141 above was a matter which a reasonable person in the position of the abovementioned individuals could be expected to know was relevant to the decision to extend insurance cover in respect of the Bluestone SO Risk, and, if so, on what terms.

Particulars

The BCC/TM Parties refer to paragraph 53A.157 above.

53A.159 The knowledge of the abovementioned individuals of the matters in paragraph 53A.141 above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

53A.160 The knowledge of the abovementioned individuals of the matters in paragraph 53A.141 above can be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.21, 10A.22A and 10A.22B above.

53A.161 Further or in the alternative to paragraphs 53A.153 and 53A.157 above, each of the matters referred to in paragraph 53A.141 above was a matter:

a. which Danyon Lloyd knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

b. alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

a. a person with substantial commercial experience in dealing with credit risks in the finance industry;

b. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

c. a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs [11] and [12(a)(ii)] above); and

d. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Bluestone SO Risk.

53A.162 Further or in the alternative to paragraph 53A.161 above, each (alternatively, one or more) of the matters referred to in paragraphs 53A.141 above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 53A.161 above.

53A.163 The knowledge of Danyon Lloyd of the matters in paragraphs 53A.141 above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A above.

Invoices misrepresentation

53A.164 Each of the matters referred to in paragraph 53A.149 above was a matter:

a. which other individuals - comprising Roland Hartley-Urquhart (see paragraph 9 in Section B of this Annexure), Brett Downes (Chief Risk Officer), Michael Gilhuley (Managing Director, Origination USA, of GCUK), Adam Cherubini (Director, Origination, of GCUK) and/or Rachelle Bower (Analyst, Origination, of GCUK) - knew was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk; or

b. alternatively to subparagraph (a), in respect of which those individuals were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of Roland Hartley-, Brett Downes , Michael Gilhuley , Adam Cherubini and/or Rachelle Bower is to be inferred as he was a person of substantial commercial experience in the insurance industry and the non-disclosures bore directly on the risk of Bluestone Resources being unable to repay the amounts advanced to it and thus upon the nature of the Bluestone SO Risk.

53A.165 Further or in the alternative to paragraph 53A.164 above, each of the matters referred to in paragraph 53A.149 above was a matter which a reasonable person in the position of the abovementioned individuals could be expected to know was material to the decision whether to extend insurance cover in respect of the Bluestone SO Risk.

Particulars

The BCC/TM Parties refer to paragraph 53A.164 above.

53A.166 The knowledge of the abovementioned individuals of the matters in paragraph 53A.149 above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.26A and 10A.26B above.

53A.167 The knowledge of the abovementioned individuals of the matters in paragraph 53A.149 above can be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.21, 10A.22A and 10A.22B above.

Breach of duty of disclosure

53A.168 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 53A.141, 53A.149 and 53A.152 above before the cover was placed for the Bluestone SO Risk.

53A.169 Greensill's failure to disclose the matters referred to in paragraphs 53A.141, 53A.149 and 53A.152 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, in the premises of the pleaded in paragraphs 53A.153 to 53A.169 above.

Fraudulent non-disclosure

53A.170 By reason of the matters pleaded in paragraphs 53A.153, 53A.155, 53A.156, 53A.157, 53A.159, 53A.160, 53A.161, 53A.163, 53A.164, 53A.164, 53A.166 and 53A.167 above, Greensill's failure to disclose the matters referred to in paragraphs 53A.141, 53A.149 and 53A.152 above was fraudulent.

53A.171 The cover for the Bluestone SO Risk would not have been issued if the matters referred to in paragraphs 53A.141, 53A.149 and 53A.152 above had been disclosed.

53A.172 In the alternative to the allegation in paragraph 53A.171 above, the cover for the Bluestone SO Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 53A.141, 53A.149 and 53A.152 above had been disclosed.

53A.173 By reason of the matters pleaded in paragraphs 53A.170 and 53A.172 above, IAL is entitled to avoid its liability under Customer Endorsement 44.

Innocent non-disclosure

53A.174 In the alternative to the matters pleaded in paragraphs 53A.170 to 53A.173above, and by reason of the matters pleaded in paragraphs 53A.168, 53A.169, 53A.171 and 53A.172 above, IAL is entitled to reduce its liability in respect of the Bluestone SO Risk under Customer Endorsement 44 to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D11 ~~PRIOR MISREPRESENTATIONS AND NON-DISCLOSURES IN RESPECT OF~~ CATFOSS: CATFOSS GROUP AND CATFOSS RENEWABLES

D11.1 [Not used].~~**Catfoss and Catfoss IPA**~~

54. [Not used].~~On or around 29 June 2018, GCUK and Catfoss Renewables Ltd (a company incorporated in England & Wales (company number 09175861)) (**Catfoss**) entered into an "Instalment Payment Agreement" (**Catfoss IPA**), pursuant to which GCUK agreed to advance funds to Catfoss which Catfoss would use to discharge one or more payables, with a facility limit of GBP 23,000,000 (the **Catfoss Facility**).~~

~~**Particulars**~~

~~The Catfoss IPA was in writing.~~

55. [Not used].~~On the same date, GCUK and Catfoss entered into a further agreement known as the "Side Letter" (**Side Letter**) with the following terms:~~

~~a. Catfoss agreed to borrow the entire facility limit of GBP 23,000,000 in 26 equal drawdown amounts under the Catfoss IPA on a date to be agreed between the parties, with each~~

drawdown being rolled over on the maturity date for three (3) years from the date of the first drawdown;

b. notwithstanding any provisions of the Catfoss IPA, GCUK was required to accept the agreed drawdowns in accordance with subparagraph a. above;

c. it was a condition precedent of GCUK's entry into the Catfoss IPA that GCUK was granted an option to purchase 25% of the issued share capital of Catfoss for GBP 12,500,000 if such purchase occurred within five (5) years of the date of the IPA, or GBP 25,000,000 if the purchase occurred between the start of the sixth year of the term of the IPA and the tenth anniversary of the IPA;

d. it was a condition subsequent to GCUK's entry into the IPA that Neil Hobday (a former employee of Greensill) be appointed a director of Catfoss and hold (directly or by his nominee) 10% of the issued capital in Catfoss;

e. Catfoss was required to maintain separate accounts as follows:

i. an "Interest Account" in which sufficient monies are deposited to enable it to pay interest;

ii. a "Working Capital Capex Account" which was required to be credited with the amount of GBP 1,500,000 to be used for approved working capital and capital expenses, with withdrawals to be only made following a written request to GCUK and approved by GCUK; and

iii. a "Debt Service Reserve and Maintenance Account" which was required to be created with the amount up to the sum of GBP 1,250,000 to be used by Catfoss for business needs, with withdrawals to be only made following a written request to GCUK and approved by GCUK.

56. [Not used].On or around 13 July 2018, the following events had occurred in respect of the Catfoss Facility:

a. Catfoss had submitted, and GCUK accepted, a drawdown request for the entirety of the facility amount, being GBP 23,000,000 (the **Catfoss Drawdown**).

b. the Catfoss Drawdown had been paid by GCUK and used by Catfoss to pay:

i. GBP 12,000,000 to Mr Bentham (a director of Catfoss);

ii. GBP 1,500,000 to Mr Foreman (a director of Catfoss) and "Foreman Group" (as referred to in Neil Hobday of Greensill's email dated 27 June 2018 to various people including Lex Greensill and Mr Foreman); and

iii. GBP 5,000,000 to GCUK (including GBP 4,500,000 in fees).

57. [Not used].On 15 September 2018, Catfoss provided GCUK with a presentation (the **Catfoss Presentation**) that disclosed that:

a. it had breached its Environment Agency licence on three separate occasions;

b. it was experiencing difficulties with the Environmental Agency, creating a clear and present risk to processing waste of any scale at the Newcastle site;

c. it had not generated any income in July and August 2018; and

d. it would require an additional GBP 40,000,000 to fund its updated strategy for the waste facility (GBP 20,000,000 of which it proposed to obtain from GCUK).

Particulars

i. Presentation by Catfoss to Greensill titled 'Presentation to Greensill: Waste Processing and Waste to Energy Facility' and dated 18 September 2018.

ii. Although the Catfoss Presentation is dated 18 September 2018 the document properties indicate that it was created and last modified on 15 September 2018.

iii. BCC refers to [35(m)] of the Affirmation of Ian Wilson dated 6 March 2024 in the UK Director Disqualification Proceedings concerning Lex Greensill (Claim No. CR-2024-001426 EWHC in the High Court of Justice of England and Wales) (the Insolvency Affirmation): "On 15 September 2018 Mr Greensill received both by email and by courier to his home address, a presentation from Catfoss which sets out the details of the previous breaches by Catfoss."

iv. Further particulars of the date on which GCUK was provided with this document may be provided following discovery.

58. [Not used].By no later than 25 September 2018, Greensill was aware that:

a. Catfoss had withdrawn all of the money from the Interest Account without its approval, and had used that money to pay costs of the Newcastle plant and general costs of the Catfoss group of companies; and

b. Catfoss was out of funds and had no cash to pay wages.

Particulars

Email exchanges between David Keeling (Senior Risk Officer, Greensill), Brett Downes (Chief Risk Officer, Greensill), Andrew Foreman (Catfoss) and Ian Roundell (Catfoss), copying (amongst others) Neil Hobday (Greensill), on 24 September 2018 and 25 September 2018 with the subject line "Contact details".

59. [Not used].By no later than 28 September 2018, Catfoss had breached the Side Letter by:

a. failing to make interest payments in the amount of GBP 405,633.93; and

b. withdrawing funds totalling GBP 754,516.94 from the Interest Account without GCUK's prior written consent;

(the **Catfoss Facility Breaches**).

60. [Not used].By no later than 1 October 2018, GCUK had prepared a letter of non-waiver to Catfoss in respect of the Catfoss Facility Breaches (the **Catfoss Non-Waiver Letter**), which stated that there have been a number of issues with the recovered fuel preparation facility and plant located in Gateshead, Newcastle (the **Catfoss Project**) that "were not communicated to Greensill prior to transmission of the Drawdown Amount" and that the "way forward is to work together to present a coherent and costed business model that enables the Project to grow and reach its full potential".

Particulars

Letter from GCUK to Catfoss dated 1 October 2018.

61. [Not used].At a time presently unknown to BCC but no later than March 2019, GCUK appointed independent engineers from SOL (Environmental Agency) and Cobalt (external engineering company) who provided a report on the viability of the Catfoss Project to Lex Greensill on 1 March 2019 (the **Independent Engineers Report**).

~~Particulars~~

i. ~~Appendix 2 to Claim Form submitted by Greensill Bank to BCC on 27 August 2021.~~

ii. ~~BCC refers to [36(c)] of the Insolvency Affirmation: "On 1 March 2019 Mr Greensill was emailed a final technical and environmental due diligence report produced by Cobalt Energy Limited on the Catfoss project."~~

iii. ~~Further particulars may be provided following disclosure.~~

61A. [Not used].~~The Independent Engineers Report demonstrated that the Catfoss Project did not present a viable investment opportunity.~~

~~Particulars~~

i. ~~BCC refers to [36(c)] of the Insolvency Affirmation: "the report demonstrated that the Catfoss proposals did not present a viable investment opportunity."~~

D11.2 [Not used].**~~Placement of cover for Catfoss Risks~~**

62. [Not used].~~On or about 11 or 12 September 2018 Greensill procured BCC to provide insurance cover to Greensill by issuing endorsements under the 2017 90/10 Policies in respect of debt owed by Catfoss to GCUK pursuant to the Catfoss IPA (**Catfoss Risks**).~~

~~Particulars~~

~~The procuring occurred by:~~

i. ~~email from Miroslav Knezicky (Greensill) to Greg Brereton dated 11 September 2018 with the subject line "Insurance Request - Catfoss Renewables" and time stamp of 12:26 pm [TOK.001.00125127];~~

ii. ~~email from Lex Greensill (Greensill) to Greg Brereton dated 12 September 2018 with the subject line "Re: Insurance Request – Catfoss Renewables" and time stamp of 6:05 am [TOK.001.00125127]; and~~

iii. ~~telephone calls between Lex Greensill and Greg Brereton on or about 12 September 2018 [TOK.001.00125282].~~

63. [Not used].~~On or about 17 September 2018, Greg Brereton signed, and returned to Greensill, Customer Endorsement No.27 in respect of the Catfoss Risks (**Endorsement 27**), which provided that;~~

~~a. the aggregate customer limit was GBP 23,000,000;~~

~~b. the premium rate was 1.5% per annum; and~~

~~c. a 25% deductible applied to any claim under the 2017 90/10 Policies in respect of any Debt owed by Catfoss.~~

64. [Not used].~~As pleaded at paragraph 6 of this Annexure, in around March 2019, the 2017 90/10 Policies were in effect renewed as the 2019 90/10 Policies.~~

65. [Not used].~~On 13 March 2019, Greg Brereton signed, and returned to Greensill, Customer Endorsement No.3 under the 2019 90/10 Policies in respect of the Catfoss Risks (Customer Endorsement 3).~~

66. [Not used].~~Customer Endorsement 3 purported to endorse the Catfoss Risks under the 2019 90/10 Policies, but reduce the deductible for those risks from 25% to 10% under the 2019 90/10 Master Policy.~~

67. [Not used].~~On 1 May 2019, Customer Endorsement 3 was amended to correct the currency of the limits from USD to GBP.~~

D11.3 [Not used].~~**Fraudulent non-disclosure in respect of Catfoss Risks**~~

68. [Not used].~~When seeking to procure cover in respect of the Catfoss Risks, Greensill did not disclose to Greg Brereton or any representative of BCC or IAL:~~

~~a. that the Catfoss IPA and Side Letter had already been entered into; or~~

~~b. that the entire facility limit had already been advanced.~~

69. [Not used].~~When seeking to procure cover in respect of the Catfoss Risks and at all times until 27 August 2021, Greensill did not disclose to Greg Brereton or any representative of BCC or IAL:~~

~~a. that, at the time cover was sought, the facility had already been drawn down and the majority of the funds used to make payments to directors of Catfoss;~~

~~b. that it was a condition of the proposed facility that Neil Hobday be appointed a director and acquire an equity interest in Catfoss;~~

c. that GCUK had itself acquired an option to purchase a 25% interest in Catfoss; or

d. the Catfoss Presentation or the matters disclosed in the Catfoss Presentation.

70. [Not used].Further, when procuring the issue of the 2019 90/10 Policies and relevant endorsements under those policies and the purported entry into the June 2019 Extension Documentation, Greensill did not disclose to Greg Brereton or any representative of BCC or IAL:

a. that Greensill had failed to disclose the matters referred to in paragraphs 68 and 69 of this Annexure when originally procuring cover for the Catfoss Risks;

b. the deterioration in the viability of the Catfoss Project since the cover was originally provided for the Catfoss Risks, including:

i. [Deleted];

ii. the matters described in paragraph 58 of this Annexure;

iii. the Catfoss Facility Breaches;

iv. the terms of the Catfoss Non-Waiver Letter;

v. the "issues apparent with the Project" referred to in the Catfoss Non-Waiver Letter;

vi. the Independent Engineers Report and the findings of that report; or

c. that Catfoss was experiencing financial and regulatory difficulties which threatened its business operations, and therefore its ability to repay the advances under the Catfoss IPA.

71. [Not used].Further, Greensill did not disclose to Greg Brereton or any representative of BCC or IAL, in the course of seeking to procure cover in respect of the Catfoss IPA or otherwise, that it had made the Catfoss Misrepresentations as pleaded in paragraph 74 of this Annexure.

72. [Not used].The non-disclosures alleged in paragraphs 68 to 71 of this Annexure (**Catfoss Non-Disclosures**):

a. were material to the decision to underwrite the Catfoss Risks;

Particulars

The Catfoss Non-Disclosures bore directly on the risk of Catfoss being unable to repay the amounts advanced to it and thus upon the Catfoss Risks.

b. were deliberate and occurred in circumstances where Greensill knew that the matters would be material to the decision to underwrite the Catfoss Risks; and

Particulars

i. Lex Greensill, on behalf of Greensill, knew that the matters would be material and acted deliberately on behalf of Greensill not to disclose them.

ii. Deliberate non-disclosure is to be inferred from the significance of the matters that were not disclosed, the nature of Lex Greensill's communications with Greg Brereton (pleaded above) and Lex Greensill's experience in commercial financing and in dealing with underwriters.

c. in the premises, constituted fraudulent non-disclosure.

D11.4 [Not used].**Fraudulent misrepresentation in relation to Catfoss Risks**

73. [Not used].Between 11 September 2018 and 17 September 2018, Greensill represented to Greg Brereton that:

a. Catfoss was an entity unrelated to Greensill;

b. the Catfoss Facility was to be advanced by GCUK as "project finance" to Catfoss;

c. the GBP 23,000,000 funding to be provided pursuant to the Catfoss Facility was to be used:

i. as to GBP 21,250,000, to refinance the company's current banking facilities, working capital facilities and trade creditors;

ii. as to GBP 1,750,000, to transfer to a "Debt Service Reserve" to cover cash needs after production commences; and

d. Catfoss had in place all necessary permits to operate the autoclave facility at its Newcastle plant and to produce compost-like output, and had secured permits that could possibly be used in the future for expansion of operations including generation of electricity using waste.

Particulars

i. Email from Miroslav Knezicky (Greensill) to Greg Brereton (BCC) dated 11 September 2018 with the subject line "Insurance Request – Catfoss Renewables" and time stamp of 12:26 pm and its attachments [TOK.001.00125127].

ii. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 12 September 2018 with the subject line "Re: Insurance Request – Catfoss Renewables" and time stamp of 6:05 am [TOK.001.00125127].

iii. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 13 September 2018 with the subject line "Re: Insurance Request – Catfoss Renewables" and time stamp of 4:26 am [TOK.001.00125127].

74. [Not used].The representations pleaded in paragraph 73 of this Annexure (or such of them as are established) (**Catfoss Misrepresentations**) were false and misleading as:

a. Catfoss was not a company unrelated to Greensill, but was a company that was (or was to be) partially owned and/or controlled by a former employee of Greensill (Neil Hobday) and in which GCUK had negotiated an option to purchase a 25% equity interest; and

b. the funding to be provided by Greensill to Catfoss was not to be used "to refinance the company's current banking facilities, working capital facilities and trade creditors", but had already been advanced on around 13 July 2018 and primarily used to make payments to directors of Catfoss.

75. [Not used].At the time that the Catfoss Misrepresentations were made they were:

a. known by Greensill to be false and misleading;

b. known by Greensill to be material to the decision whether to advance, renew or extend insurance cover in respect of the Catfoss Risks; and

Particulars

The particulars to paragraph 72 of this Annexure are repeated.

c. in the premises, knowingly false and therefore fraudulent.

D11.5 Catfoss Group

D11.5A Policy and Endorsements

75.1 In Federal Court of Australia proceeding no. NSD106/2022, the applicants allege that Catfoss Renewables Ltd (a company incorporated in England & Wales (company number 09175861)) (**Catfoss Renewables**) was endorsed as a customer under the 2018 Policy (TB-03690) by means of Customer Endorsement No 27 dated 17 September 2018 and under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 3 dated 13 March 2019 (**Catfoss Renewables Endorsements**).

Particulars

Fourth Amended Statement of Claim in proceeding no. NSD106/2022 dated 21 August 2024 at paragraphs 30, 36, 38 and 41.

75.2 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Catfoss DBT Limited (a company incorporated in England & Wales (company number 11728528)) (**Catfoss DBT**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 34 dated 13 March 2019 (**Catfoss DBT Endorsement**).

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated 14 April 2025 at paragraph 325.

75.3 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Noviniti Poole Limited (a company incorporated in England & Wales) (**Noviniti Poole**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of:

a. Customer Endorsement No 16 dated 13 March 2019 and effective 1 March 2019; and

b. Customer Endorsement 16(i) dated 1 October 2019 and effective 27 September 2019,

(**Noviniti Poole Endorsements**).

75.4 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Noviniti Colchester Limited (a company incorporated in England & Wales (company number 11248796)) (**Noviniti Colchester**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of:

a. Customer Endorsement No 48 dated 28 March 2019 and effective 22 March 2019; and

b. Customer Endorsement No 48(i) dated 1 October 2019 and effective 27 September 2019,

(**Noviniti Colchester Endorsements**).

Particulars

Fifth Amended Statement of Claim in proceeding no. NSD169/2023 dated 14 April 2025 at paragraphs 555, 556 and 557.

D11.5B Catfoss Group

75.5 At all material times, the following entities were owned and controlled by Andrew Patrick Foreman.

a. Catfoss Renewables;

b. Catfoss DBT;

c. Noviniti Poole;

d. Noviniti Colchester;

e. Catfoss Investments Ltd (a company incorporated in England & Wales (company number 11600474)), formerly known as Schosween 44 Limited (**S44/Catfoss Investments**); and

f. Catfoss Investment Holdings Limited (a company incorporated in England & Wales (company number 13294626)),

(referred to collectively, together with other entities owned by Mr Foreman either directly or through S44/Catfoss Investments, as the **Catfoss Group**).

Particulars

From at least 2016 to February 2017, Mr Foreman owned all of the issued shares in Catfoss Renewables. In February 2017, Mr Foreman transferred 50% of the issued shares to Paul Bentham. In July 2018, 40% of the shares were transferred back to Mr Foreman (increasing his shareholding to 90% from this time).

From around 2 October 2018 to around 26 March 2021, Mr Foreman owned at least 75% of the shares in S44/Catfoss Investments. Mr Foreman was also the Chairman of the Catfoss Group and a director of S44/Catfoss Investments and other entities in the group.

In October 2021, Mr Foreman transferred his shareholding in S44/Catfoss Investments to Catfoss Investment Holdings Limited, a company in which he held 1 of 2 issued shares.

75.6 In around May 2018, GCUK was approached by Neil Hobday with a proposal to re-finance a waste project located in Newcastle, England, being developed by Catfoss Renewables (**Catfoss Proposal**).

Particulars

Email from Neil Hobday to Lex Greensill dated 26 May 2018 (GCU.0004.0012.8841).

75.7 At all material times, Mr Neil Hobday had a material conflict of interest with respect to the facilities provided to members of the Catfoss Group because he was:

a. retained by GCUK to introduce new business and paid a fee for his services; and

b. retained by the Catfoss Group to advise them on the Catfoss Proposal and other potential business opportunities,

(the **Hobday Conflict**).

Particulars

a. Email from Scott Newby (Head of Operational Risk, GCUK) to Brett Downes, copying David Keeling, dated 4 October 2018 (GCU.0013.0003.5939).

b. Email from Neil Hobday to Lex Greensill dated 7 December 2018 (GCU.0005.0003.4332).

75.8 At the time of the Catfoss Proposal, and at all times thereafter, the Catfoss Group of companies was in severe financial difficulty and was unable to pay its debts without further finance (the **Catfoss Liquidity Issues**).

Particulars

The financial difficulties facing the Catfoss Group were that multiple entities within that group had large outstanding debts to financiers and other creditors, including recurring interest payments for asset financing transactions, as recorded in GCUK's internal correspondence including:

a. Emails between Neil Hobday, Lex Greensill and Brett Downes dated 26 and 17 May 2018 (GCU.0004.0012.8841), in which Brett Downes states: *"In the end it seems apparent now that Foreman has cash moving all over the place to keep afloat. If he is that close to bankruptcy, then we should leave all of this alone, unless we can lock away Newcastle and we are comfortable it can actually work. It cannot bleed one penny to Foreman*."

b. Email from Andrew Foreman to Lex Greensill, copying Neil Hobday and Ian Roundell, dated 5 July 2018 (GCUK.0004.0014.7541), in which Andrew Foreman states: *'There are a series of critical payments that are due as early as tomorrow and through to the end of next week, where I had been managing the cash flow up until the end of June with the understanding that the refinance would make funds available to draw down from the beginning of July. I am faced with a number of urgent liability payments that are due or past due with no obvious way that I can make payment. Failure to pay is going to likely to destabilise myself, Newcastle and some of my other group companies*'.

c. Emails between Brett Downes and Lex Greensill dated 5 July 2025 (GCU.0004.0014.7541), in which:

   i. Lex Greensill asks: *'I would be content to give [Andrew Foreman] a £500k draw now. Will you support me?... '*; and

   ii. Brett Downes responds: *'He is this skint at present and flying really close to the wind'.*

d. Email from Myrjam Tschoeke to Brett Downes and Michael Gilhuley dated 13 July 2018 and titled '*RE: Credit Approval request for Instalment Payment Facility for CATFOSS RENEWABLES LTD, £23m'* (GCU.0010.0004.0313), in which Myrjam Tschoeke states:

   'I have gone over this deal and structure as well and have some severe problems with it:

• There is no business plan for this company, it does not even have a going concern and is loaded with debt.

• The management is unexperienced.

• A personal guarantee from Neil Hobday is worth nothing and his involvement, if anything, gives rise to concern and not comfort.

• We are financing a deal where the fees are disproportionately large compared to the financing and the overall size of the company.

• There is a mismatch in funding again

• We are asking an exception to CS HIF to put a higher than normal SOL on a bad risk into the HIF. This is a massive franchise risk considering that we take refinancing risk on a company without any business plan.

• The cashflows work such that we are financing the initial interest by funding the reserve account and paying for our own interest in year one. Now, in project finance style structures this may be ok, BUT here we have no future cashflows to look at that will ever repay the debt.

• The assets are not covering the debt either.

• This is a bridge to nowhere, a loan for a restructuring, this should be equity funded and not by debt. But PEs will stay clear of this as there is no business plan.

• I can see why this deal is pushed given the fee levels but it is not properly structured and should not be put into the HIF putting the Greensill franchise at risk.'

e. Email from Miroslav Kněžický of GCUK to David Keeling of GCUK dated 24 July 2018 (GCU.0010.0004.1450), in which Miroslav Kněžický states: *'This looks like cash burning and leakage all over wider catfoss group. With production not even starting till September/October we will have a problem… They will require £500k a month + 130k interest + probably more capex. This exceeds the calculations they provided us by miles. This is because it includes cash injections for wider Foreman's group*.'

f. Email from Brett Downes of GCUK to which Miroslav Kněžický and David Keeling of GCUK dated 26 July 2018 (GCU.0010.0004.1450), in which Brett Downes states in relation to the Catfoss Renewables Risk: *'I share your concerns and this is not good. We have been sold a complete bullshit deal now. I will have words with Lex this weekend. Have a think about this over the weekend. I cannot allow money to leak to Foreman when it is needed here.'*

g. Emails between Brett Downes and Mike Gilhuley (GCUK) dated 2 August 2018 (GCU.0009.0004.2601), in which Brett Downes states in relation to the Catfoss Renewables Risk: *'Btw Catfoss turning into a nightmare. They think they have a facility to allow Foreman to keep funding his business empire while we will refinance it in September and thereby fix up Newcastle and I they now think will run out of money in September. They have lied the whole way through. This is going to get messy. I will think over the weekend how to solve and I am with Lex next week in Sydney.'*

h. Email from David Keeling to Brett Downes and Miroslav Kněžický dated 3 August 2018 (GCU.0010.0004.2070), in which David Keeling states: *'I think we need to establish the viability of the entire Foreman group so that his outside Catfoss enterprises do not bring down the entire group and Greensill and cause issues for the HIF. My concern is that they have been ponzi styled juggling debt to meet these huge commitments for some time and have run out of avenues. Even on an annual salary of £6m after tax this would be difficult to meet for a footballer, asset finance of £300k+ per month is an insane commitment. Concern is this was there last ditched juggle, an all or nothing bet on the recycling at our expense…*

Questions:

1. Are we in effect trading insolvent now? No income, no ability to meet commitments.

2. Insolvency – cannot meet monthly commitments. There is now no way to establish a way out of this shortfall?

3. Legal implications?

4. How did they expect this to work, cashflow provided by them does not get past October? Where is the exit past 2 months? Are there other cashflows?

5. What assets are actually solely secured by one debt (ie. not cross collaterised)? We need a list and a plan for asset sales from Andrew to at least match our commitment. We put in £2m, he puts in £2m.'

i. Email from David Keeling to Chris Tinsley, copying Miroslav Kněžický, dated 3 August 2018 (GCU.0010.0004.2070), in which David Keeling states: *'NAB would lock down now and go to straight exist [sic] and asset sale, pressure them to get the cash together and get business moving or refinance, as this has not even technically had a single repayment, hard to push that anyway. As recovery takes so long this process would start, until the client could stop it. In this case it I very hard because there is no trading operation.'*

j. Emails between David Keeling, Brett Downes and Miroslav Knezicky dated 17 August 2018 (GCU.0013.0003.1557), in which David Keeling states: *'I did raise all required issues, outlined the position we are in, what cash is left, no EABITDA across group, need for modelling, 2 months left across the group. I raised HIF SOL's also with Lex privately, and also questioned Andrew about his personal assets and is there a reason he has not looked at disposing for all these non- performing assets and using the equity if these other opportunities are so sound.*

Lex at one point did suggest he would overrule committee when I raised the conditions of the approval, poisition, and issues they had with the deal we needed to look over still…. Think his words were "as I own the phucking company this is how I see it".. I don't think I was out of line though.'

k. Email from David Keeling of GCUK to Scott Newby of GCUK dated 22 August 2018 (GCU.0013.0003.1786), in which David Keeling states: *'This is really starting to annoy me, Neil ringing me privately to ask to keep Brett and everyone out and us two sort this out!! They are phucking broke.. he just bought a £100k Range Rover and a helicopter.'*

l. Email from Brett Downes to Lex Greensill dated 18 September 2018 (GCU.0004.0017.9096), in which Brett Downes states in respect of the Catfoss Renewables Risk: *'However I failed on the Project Finance 101 rules and sadly the deal has gone south from day one, and from what I have seen in the report, I feel it is getting worse.*

There are now major problems with the plant and they risk losing their EP licence. I have serious doubts anyone knows how to run the site. Instead of presenting a plan to fix this, we have been shown a summary plan which involves getting more money to change the plant. I remember the engineer from SIMEC saying don't touch this and now I wish I had listened more.

In the end here are the real issues: This is going to be a money sink for some time; I doubt the leadership team has any idea how to really idea or experience to fix it. Andrew is an entrepreneur, not a waste management specialist, and I see no evidence he has anyone on his team who is. Just handing over more money here on the basis of some plan is not smart. You should read some of the emails he sent as proof of the offtake contracts.'

D11.5C Catfoss/Noviniti Side Deals

75.9 Between June 2018 and 27 March 2019, GCUK provided four debt facilities to entities in the Catfoss Group, being:

a. an Instalment Payment Agreement between Catfoss Renewables and GCUK with a limit of GBP 23,000,000 (**Catfoss Renewables Facility**);

b. a Customer Agreement between Noviniti Poole and GCUK dated 31 October 2018 and a Re-invoicing Service Agreement between Noviniti Poole and Bramid dated 31 October 2018 (the **Noviniti Poole Facility**);

c. an Instalment Payment Agreement between Catfoss DBT and GCUK dated 19 December 2018 with an initial limit of GBP 15,300,000 (the **Catfoss DBT Facility**); and

d. an Instalment Payment Agreement between Noviniti Colchester and GCUK dated 19 December 2018 with an initial limit of GBP 8,700,000 (the **Noviniti Colchester Facility**),

(together, the **Catfoss/Noviniti Facilities**).

75.10 The Catfoss/Noviniti Facilities were intended to be used in whole or in part:

a. to assist Mr Foreman to seek to address the Catfoss Liquidity Issues and pay down debt across the Catfoss Group;

b. to allow GCUK to acquire an option to take an equity interest in Catfoss Renewables; and

c. to fund the Catfoss Group to pay significant fees to GCUK, equivalent to fees paid to investment banks for private equity deals,

(**Catfoss Facility Purposes**).

Particulars

a. The particulars to paragraphs 75.8 and 75.11 are repeated.

b. Email from Myrjam Tschoeke to Brett Downes and Michael Gilhuley dated 13 July 2018 (GCU.0010.0004.0313), in which Myrjam Tschoeke states: '*This is a bridge to nowhere, a loan for restructuring, this should be equity funded and not by debt … I can see why this deal is pushed given the fee levels but it is not properly structured and should not be put into the HIF putting the Greensill franchise at risk'*.

c. Email from Andrew Foreman to David Keeling, copying Brett Downes, Tom Kennedy, Neil Hobday and others, dated 25 September 2018 (GCU.0005.0002.1448), in which Andrew Foreman: "*I have tried to highlight, at the last two meetings with Lex and on various emails, that the deal, I believe, we agreed and I subsequently signed to with Greensill, was always on the understanding that a minimum of £1.250m for Foreman Group overheads as requested (on the email below) to be circulated by Neil on behalf of Lex. I have only found out since the deal and confirmed at the last meeting at Lex's House, that there was a separate internal arrangement to keep the £1.250m for additional debt servicing cover. So, I find it hard to believe, that you cannot understand why and how we have*

used a portion of these monies to service the Foreman / Catfoss Group debt – as per email below addressed to all parties".

75.11 The Catfoss/Noviniti Facilities were approved by GCUK's Credit Committee on the basis of the Catfoss Facility Purposes.

Particulars

a. Email from Vicky Birch to Lex Greensill, Brett Downes, Danyon Lloyd, Michael Gilhuley, Myrjam Tschoeke and Roland Hartley-Urquhart, copying others, dated 17 July 2018 (GCU.0004.0015.2838), which contains the Credit Committee's minutes of meeting for 13 July 2018. In respect of the Catfoss Renewables Risk, the meeting minutes record: "*Lex provided an overview to the deal and acknowledged this is a high-risk transaction… Myrjam commented that this is a Private Equity investment rather than a debt financing and that Lex agreed by stating this is why the fees were also PE like. Greensill also has an option to purchase 25% of the company for £12.5m within 5 years of closing, or £25.0m from years 6 to 10*".

b. Email from David Keeling to Lex Greensill, Brett Downes, Myrjam Tschoeke, Roland Hartley-Urquhart, Michael Gilhuley and Danyon Lloyd, copying others, dated 9 January 2019 (GCU.0007.0002.3850), which contains the Credit Committee's minutes of meeting for 19 December 2018. In respect of the Noviniti Colchester Risk and the Catfoss DBT Risk, the meeting minutes record that:

   i. Lex Greensill presented the Noviniti Colchester Facility and Catfoss DBT Facility;

   ii. Lex Greensill explained that the Catfoss DBT Facility was to be used to pay the profit portion of the deal upfront and that as part of the deal the Catfoss Group had agreed to pay GCUK a GBP 10,000,000, four year exclusive fee to fund these projects;

   iii. Lex Greensill described the Catfoss DBT facility as "an equity like risk" and stated "we are being paid on an equity basis from revenue share, fee and interest basis"; and

   iv. Myrjam Tschoeke (another Credit Committee member) raised a concern that it was unclear what GCUK was funding, and asked whether the insurer and investors were aware of what GCUK was funding;

v. Lex Greensill stated "we are looking at taking the fee and using future transactions to fund" and "confirms his belief, this was something he believed was acceptable funding"; and

vi. both facilities were approved subject to conditions precedent, including obtaining insurance, and with Ms Tschoeke requiring that the discussion be recorded in the minutes.

75.12 To effect the purpose set out in subparagraphs 75.10.b and c above, GCUK and certain entities in the Catfoss Group executed the following side agreements:

a. on or around 29 June 2018, GCUK and Catfoss Renewables executed a side letter to the Catfoss Renewables IPA (**Catfoss Renewables Side Letter**), which contained the following terms:

i. Catfoss agreed to borrow the entire facility limit in 26 equal drawdown amounts under the Catfoss Renewables Facility on a date to be agreed between the parties, with each drawdown being rolled over on the maturity date for three (3) years from the date of the first drawdown;

ii. notwithstanding any provisions of the Catfoss Renewables IPA, GCUK was required to accept the agreed drawdowns; and

iii. it was a condition precedent of GCUK's entry into the Catfoss IPA that GCUK was granted an option to purchase 25% of the issued share capital of Catfoss for GBP 12,500,000 if such purchase occurred within five (5) years of the date of the Catfoss Renewables IPA, or GBP 25,000,000 if the purchase occurred between the start of the sixth year of the term of the IPA and the tenth anniversary of the IPA.

Particulars

Side Letter to Instalment Payment Agreement between GCUK and Catfoss Renewables dated 29 June 2018 (BCC.0001.0006.1746).

b. on or around 20 December 2018, GCUK and S44/Catfoss Investments executed a side agreement (the **Exclusivity and Fee Letter**), under which S44/Catfoss Investments agreed to pay GCUK a structuring fee of GBP 10,400,000 in respect of certain GCUK facilities (the **Structuring Fee**);

Particulars

a. Lex Greensill was emailed drafts of the Exclusivity and Fee Letter by Henry Middleditch on 23 November 2018 (GCU.0004.0021.2894; GCU.0004.0021.2896) and on 5 December 2018 (GCU.0004.0021.6560, GCU.0004.0021.6563). On 5 December 2018, Lex Greensill sent a draft of the Exclusivity and Fee Letter to Benjamin Foreman (GCU.0005.0003.3912).

b. S44 Exclusivity and Fee Letter dated 20 December 2018 (CSA.0001.0006.1148).

c. on or around 20 December 2018, GCUK, Catfoss DBT and S44/Catfoss Investments entered into a side letter to the Catfoss DBT IPA (the **Catfoss DBT Side Letter**), pursuant to which Catfoss DBT provided an undertaking and covenanted that it would pay the Structuring Fee to GCUK by using amounts drawn down under the Catfoss DBT Facility.

Particulars

a. Lex Greensill was emailed drafts of the Catfoss DBT Side Letter by Tom Kennedy (Legal Counsel) of GCUK on 18 December 2018 (GCU.0005.0003.9121; GCU.0005.0003.9129) and on 19 December 2018 (GCU.0005.0003.9634; GCU.0005.0003.9639).

b. Catfoss DBT Side Letter dated 20 December 2018 (CSA.0001.0006.1153).

75.13 The Catfoss Renewables Side Letter, Exclusivity and Fee Letter and Catfoss DBT Side Letter (the **Side Deals**) were not disclosed to Brereton, BCC or IAL.

D11.5D Catfoss Group Non-Disclosures

75.14 Each of the:

a. Hobday Conflict;

b. Catfoss Liquidity Issues;

c. Catfoss Facility Purposes; and

d. Side Deals,

(together, the **Catfoss Group Matters**)

were matters:

i. which Lex Greensill knew were material to the decision to accept or renew insurance cover in respect of the risk of insuring debts owed to entities in the Catfoss Group, including the Catfoss Renewables Risk, the Catfoss DBT Risk, the Noviniti Poole Risk and the Noviniti Colchester Risk; and

ii. in the alternative, in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Catfoss Group being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

75.15 Further or in the alternative, each of the Catfoss Group Matters were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of debts owed by the entities within the Catfoss Group, including the Catfoss Renewables Risk, the Catfoss DBT Risk, the Noviniti Poole Risk and the Noviniti Colchester Risk.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 75.14 above.

75.16 None of the Catfoss Group Matters were disclosed to BCC, Greg Brereton or IAL before entry into or renewal of any of the Relevant Policies and Endorsements executed after 20 December 2018 (the **Catfoss Group Non-Disclosures**).

D11.6 Catfoss Renewables

D11.6A Catfoss Renewables Misrepresentations

Inception representations

75.17 On or around 11 September 2018, GCUK requested that BCC extend insurance cover in respect of financing to be provided by Greensill to Catfoss Renewables (**Catfoss Renewables Risk**).

Particulars

Email from Miroslav Kněžický (Senior Credit Analyst) of GCUK to Greg Brereton, copying David Keeling (Senior Risk Officer) of GCUK, dated 11 September 2018 (BCC.0001.0014.0018) and its attachments (BCC.0001.0014.0019; BCC.0001.0014.0020; BCC.0001.0014.0021; BCC.0001.0014.0022; BCC.0001.0014.0023; BCC.0001.0014.0024).

75.18 The email containing the request was sent to Lex Greensill and Brett Downes (Chief Risk Officer) of GCUK.

Particulars

a. Emails between Lex Greensill and Brereton dated between 12 and 13 September 2018 (BCC.0001.0002.1560; BCC.0001.0002.1563; CSA.0001.0001.5841).

b. Email from Lex Greensill to Brett Downes dated 13 September 2018 (CSA.0001.0001.5841).

75.19 In making that request, GCUK represented to Brereton, among other matters, that:

a. the Catfoss Renewables Risk was 'a project finance deal' relating to a waste treatment facility in Newcastle, United Kingdom;

b. the proposed facility limit was GBP23 million;

c. of that sum:

i. GBP21.25 million would 'be used to refinance all company's debt: banking facilities, working capital facilities and trade creditors'; and

ii. GBP1.75 million would 'be transferred to GC[UK] controlled Debt Service Reserve account' and would 'be used to cover cash needs in the first coming months after the production commences';

d. Catfoss Renewables had in place all necessary permits to operate the autoclave facility at its Newcastle plant and to produce compost-like output, and had secured permits that could possibly be used in the future for expansion of operations including generation of electricity using waste; and

e. in order to achieve a sufficient level of control and security, the deal would be treated as a project financing deal, and as such, the obligor (and its subsidiaries) would be ring-fenced from the other enterprises of Andrew Foreman, a director of Catfoss Renewables.

Particulars

Email from Miroslav Kněžický (Senior Credit Analyst) of GCUK to Greg Brereton, copying David Keeling (Senior Risk Officer) of GCUK, dated 11 September 2018 (BCC.0001.0014.0018), attaching a document titled 'Credit Analysis Pack: Non-Investment Grade Obligor Risk Assessment', pages 3, 5 and 7 (BCC.0001.0014.0018).

75.20 In the premises of paragraph 75.19 above, GCUK represented to Brereton that:

a. the financing to be provided by Greensill to Catfoss Renewables was only for the purposes pleaded in subparagraphs 75.19.a and 75.19.b above; and

b. the financing would not be used to pay debts owed by other entities within the Catfoss Group,

(**Catfoss Renewables Inception Misrepresentations**).

75.21 The Catfoss Renewables Inception Misrepresentations were a representation made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to paragraphs 10A.17, 10A.18, 10A.22A, 10A.22B, 10A.26A and 10A.26B above.

75.22 On or around 15 September 2018, Brereton indicated that he would agree to provide cover in respect of the Catfoss Renewables Risk up to a facility limit of GBP23 million and with a base premium of 1.5%.

Particulars

Emails between Lex Greensill and Greg Brereton dated between 13 and 15 September 2018 (BCC.0001.0002.1560; AGB.0002.0001.0291).

75.23 Between 17 September 2018 and 21 September 2018, Brereton provided Greensill with signed copies of Customer Endorsement No. 27 purportedly issued under the Master Policy TB-03691 (B0509FINCW1800044) (the **2018 Master Policy**) and the 2018 Policy, in respect of the Catfoss Renewables Risk.

Particulars

a. Email from Greg Brereton to John Wheelan (Deputy General Counsel) of GCPL and Ewen Berkemeier of Marsh, copying Lex Greensill, Brett Downes of GUCK and others, dated 17 September 2018 (AGB.0003.0001.0002), attaching signed copies of Customer Endorsement No 27 under the 2018 Policy in respect of the Catfoss Renewables Risk in favour of GCUK, Greensill Bank and GCPL (AGB.0003.0001.0003).

b. Email from Greg Brereton to Edward Smith of Marsh, copying Ewen Berkemeier of Marsh and others, dated 21 September 2018 (BCC.0001.0002.1650), attaching a signed copy of Customer Endorsement No 27 under the 2018 Master 2018 Policy in respect of the Catfoss Renewables Risk in favour of GCUK and GCPL (BCC.0001.0002.1651).

Renewal

75.24 On or around 27 February 2019, Marsh sent an email to GCUK, attaching documents relating to a requested renewal of cover under the 2019 90/10 Parallel Policy for the Catfoss Renewables Risk. Marsh asked GCUK to confirm 'NKORL' [no known or reported losses] and an order to bind.

Particulars

Email from Edward Smith, Vice President of Marsh to Sophie Dyke (Insurance Analyst) of GCUK, copying Craig Pinnington (Senior Credit Analyst) of GCUK, and the email address, insurance@greensill.com (MAR.0004.0001.9181), attaching a draft Customer Endorsement No. 3 under the 2019 90/10 Parallel Policy for Catfoss Renewables in favour of Greensill Bank and GCPL (MAR.0004.0001.9236).

75.25 On or around 28 February 2019, GCUK provided confirmation that there were no known or reported losses and instructed Marsh to renew cover under the 2019 90/10 Parallel Policy in respect of a number of risks, including the Catfoss Renewables Risk.

Particulars

Email from Sophie Dyke (Insurance Analyst) of GCUK to Edward Smith, Vice President of Marsh, copying Craig Pinnington (Senior Credit Analyst) of GCUK, and the email address, insurance@greensill.com, dated 28 February 2019 (MAR.0004.0001.9422).

75.26 On or around 28 February 2019 and 4 March 2019, Marsh emailed Brereton documents relating to the requested renewal of the 2019 90/10 Parallel Policy and renewal of cover under the 2019 90/10 Parallel Policy for the Catfoss Renewables Risk. Mr Smith stated that Greensill had 'confirmed NKORL' and had given Marsh the order to bind.

Particulars

Email from Edward Smith, Vice President of Marsh to Greg Brereton dated 4 March 2019 (MAR.0004.0001.9739), attaching a draft Customer Endorsement No. 3 in respect of Catfoss Renewables (MAR.0004.0001.9750).

75.27 On or around 13 March 2019, Brereton provided GCUK (via Marsh) with a signed copy of Customer Endorsements No 3, which purported, with effect from 1 March 2019, to endorse Catfoss Renewables as a Customer under the 2019 90/10 Parallel Policy with an 'Aggregate Customer Limit' of GBP23 million.

Particulars

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier of Marsh, dated 13 March 2019 (MAR.0006.0001.2343), attaching a signed copy of Customer Endorsement No 3 in favour of Greensill Bank and GCPL (MAR.0006.0001.2344).

Representations were misleading

75.28 The Catfoss Renewables Inception Misrepresentations were false and/or misleading because:

a. by 13 July 2018, Catfoss Renewables had drawn down the entire facility limit of the Catfoss Renewables Facility;

Particulars

a. Email from Andrew Foreman of Catfoss Renewables to Lex Greensill, Brett Downes of GCUK, Miroslav Kněžický of GCUK, Ian Little of GCUK, David Keeling of GCUK, copying Tom Kennedy of GCUK, Jessica Fielden of Schofield Sweeney (Catfoss Renewable's solicitors), Steven Millward of Schofield Sweeney, Ian Roundell of Catfoss Renewables, Neil Hobday of Greensill, Shaheeda Akhtar of Schofield Sweeney, dated 12 July 2018 (CSA.0001.0001.5741), attaching:

i. a letter from Catfoss Renewables dated 12 July 2018 (GCU.0004.0015.1117);

ii. a Payment Upload Assurance File (PAUF) with the file name 'CRL_PAUF_File' for a requested drawdown of approximately GBP23 million (GCU.0004.0015.1118); and

iii. an unsigned option agreement between GCUK and Catfoss Renewables for the grant to GCUK of an option to acquire share capital issued in Catfoss Renewables (GCU.0004.0015.1119).

b. Email from Jessica Fielden of Schofield Sweeney to Lex Greensill, Tom Kennedy of GCUK, Andrew Foreman of Catfoss Renewables, Ian Roundell of Catfoss Renewables, Neil Hobday of Greensill and Steven Millward of Schofield Sweeney, copying Brett Downes of GCUK, Miroslav Kněžický of GCUK, Ian Little of GCUK and David Keeling of GCUK, dated between 13 July 2018 (GCU.0004.0015.2232), in which Jessica Fielden states: *'I can confirm receipt of [the Catfoss Renewables facility] funds.'*

b. the funds advanced under the Catfoss Renewables Facility:

i. had not been used solely for the purposes of financing Catfoss Renewables' waste treatment facility project; and

ii. were not ringfenced from other entities in the Catfoss Group;

c. the funds advanced under the Catfoss Renewables Facility had in fact been used to:

i. pay debts owed by Andrew Foreman and/or other companies in the Catfoss Group, to seek to address the Catfoss Liquidity Issues; and

ii. refinance approximately GBP12 million in debt owed to Paul Bentham (a director of Catfoss Renewables);

Particulars to i and ii

a. Email from Neil Hobday of Greensill to Lex Greensill, Andrew Foreman of Catfoss Renewables, Brett Downes of GCUK and Tom Kennedy of GCUK, Steven Millward of Schofield Sweeny, David Keeling of GCUK, Miroslav Kněžický of GCUK and Ian Roundell of Catfoss Renewables, dated 27 June 2018 (CSA.5000.0004.6294), in which Neil Hobday states: *'Greensill are providing a £23m gross £18m net refinance facility to Catfoss Renewables Ltd Waste to Energy Facility in Newcastle deployed as follows:*

- [Paul Bentham] Bridge Refinance - £12m

…

- Andrew Foreman - £250k

…

- Foreman Group - £1.25m to be draw down as required via a monthly request form prepared and submitted by IR for Foreman Group overheads until Phase 2 refinance completes hopefully in QS

…

- GC Balance - £5m - closing costs & structure fee £4.5m + a further £500k to support the business cashflow.'

b. Email from Ian Roundell of Catfoss Renewables to Ian Little of GCUK, Steven Millward of Schofield Sweeney, Andrew Foreman of Catfoss Renewables, copying David Keeling of GCUK, Scott Gibson of Catfoss Renewables and Joanne Johnson of Catfoss Renewables , dated 11 July 2018 (CSA.0001.0006.0564), in which Ian Roundell states: *'Please find attached a list of the day 1 capex requirement and detailed analysis of the 30/6/18 creditor position as requested… Paul Bentham will be paid £12m.'*

c. Email chain between Lex Greensill, Tom Kennedy of GCUK, Andrew Foreman of Catfoss Renewables, Ian Roundell of Catfoss Renewables, Neil Hobday of Greensill, Brett Downes of GCUK, Miroslav Kněžický of GCUK, Ian Little of GCUK, David Keeling of GCUK, Steven Millward of Schofield Sweeney and Jessica Fielden of Schofield Sweeney, dated between 13 and 17 July 2018 (GCU.0004.0015.2232), which requires GBP 12,000,000 payment to Paul Bentham.

d. Email from Ian Roundell of Catfoss Renewables to David Keeling of GCUK, copying Andrew Foreman of Catfoss Renewables, Miroslav Kněžický of GCUK, Brett Downes of GCUK, Scott Gibson of Catfoss Renewables and Neil Hobday of Greensill, dated 20 July 2018 (GCU.0010.0004.1450), in which Ian Roundell states: *'Therefore of the £691,373 of creditors outstanding, we have been sent £450,000 – So we require a further £242,373 to be advanced to pay 30.6.18 creditors, in addition we require the £250,000 payable to Andrew Foreman to be released – so £492,373 in total.'*

e. Email from Steven Millward of Schofield Sweeney to Ian Roundell of Catfoss Renewables and David Keeling of GCUK, copying Andrew Foreman of Catfoss Renewables, Miroslav Knežický, Brett Downes, Scott Gibson of Catfoss Renewables, Neil Hobday of Greensill, dated 23 July 2018 (GCU.0004.0015.9595), which records payments made using funds advanced under Catfoss Facility;

f. Email from Miroslav Kněžický of GCUK to David Keeling of GCUK dated 24 July 2018 (GCU.0010.0004.1450), in which Miroslav Kněžický states: *'This looks like cash burning and leakage all over wider catfoss group. With production not even starting till September/October we will have a problem… They will require £500k a month + 130k interest + probably more capex. This exceeds the calculations they provided us by miles. This is because it includes cash injections for wider Foreman's group.'*

g. Miroslav Kněžický of GCUK to and David Keeling of GCUK dated 2 August 2018 (GCU.0010.0004.2070), in which Miroslav Kněžický states: *'What [Ian Roundell of Catfoss Renewables] suggests is minimum payments going to Renewables and most of the funds going outside to fund Mr Foreman's other business and personal endeavours (fucking joke).'*

h. Email exchange between Andrew Foreman and David Keeling, Brett Downes (and others) of GCUK dated 25 September 2018 (GCU.0005.0002.1448), where Andrew Foreman states: *'I have tried to highlight, at the last two meetings with Lex and on various emails, that the deal, I believe, we agreed and I subsequently signed to with Greensill, was always on the understanding that a minimum of £1.250m for Foreman Group overheads as requested (on the email below) to be circulated by Neil on behalf of Lex. I have only found out since the deal and confirmed at the last meeting at Lex's House, that there was a separate internal arrangement to keep the £1.250m for additional debt servicing cover. So, I find it hard to believe, that you cannot understand why and how we have used a portion of these monies to service the Foreman / Catfoss Group debt – as per email below addressed to all parties*'.

Knowledge of falsity of representations

75.29 Lex Greensill knew each of the matters set out in paragraph 75.28 above.

Particulars

a. The knowledge of Lex Greensill is to be inferred from his direct involvement in correspondence associated with the Catfoss Renewables Risk as set out in the particulars to paragraph 75.28 above, and from his senior position within the Greensill Group.

b. Lex Greensill was also the sponsor of the Catfoss Facility, as recorded in the Credit Analysis Pack for Catfoss Renewables dated 10 July 2018 (CSA.0001.0006.0546, page 3).

c. Further particulars may be provided after completion of discovery by GCUK and GCPL.

75.30 The knowledge of Lex Greensill of each of the matters set out in paragraph 75.29 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.205, 10A.26A and 10A.26B above.

75.31 The knowledge of Lex Greensill of each of the matters set out in paragraph 75.29 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.20, 10A.22A and10A.22B above.

75.32 Further and in the alternative to paragraph 75.29 above, other officers and employees of GCUK – namely Miroslav Kněžický (Senior Credit Analyst), David Keeling (Senior Risk Officer) and Brett Downes (Chief Risk Officer) – knew each of the matters set out in paragraph 75.28 above.

Particulars

a. The knowledge of these officers is to be inferred from their involvement in dealings with Catfoss Renewables pleaded above, and in the placement of the Catfoss Renewables Risk.

b. The BCC/TM Parties otherwise refer to the particulars to paragraph 75.28 above

c. Further particulars may be provided after completion of discovery by GCUK and GCPL.

75.33 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraph 75.32 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.26A and 10A.26B above.

75.34 The knowledge of the abovementioned officers and employees of GCUK of the matters identified in paragraph 75.32 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality of representations

75.35 Each of the matters referred to in paragraph 75.28 above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex's Greensill knowledge is to be inferred from the following:

a. The matters pleaded at paragraph 9 above;

b. Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

c. Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

d. The matters misrepresented or not disclosed bore directly on the risk of Catfoss Renewables being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

75.36 Further or in the alternative to paragraph 75.35 above, each of the matters referred to in paragraph 75.28 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 75.35 above.

75.37 The knowledge of Lex Greensill of each of the matters set out in paragraphs 75.35 to 75.36 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

75.38 The knowledge of Lex Greensill of the matters set out in paragraphs 75.35 to 75.36 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

75.39 Further and in the alternative to paragraph 75.35 above, each of the matters referred to in paragraph 75.28 above was a matter:

a. which other officers or employees of GCUK – namely Miroslav Kněžický (Senior Credit Analyst), David Keeling (Senior Risk Officer) and Brett Downes (Chief Risk Officer) – knew was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk; or

b. alternatively to subparagraph (a), in respect of which those abovementioned officers or employees of GCUK were wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

The knowledge of these officers and employees of GCUK is to be inferred by virtue of their position and experience in placing insurance on behalf of entities within the Greensill Group.

75.40 Further or in the alternative to paragraph 75.39 above, each of the matters referred to in paragraph 75.28 above was a matter which a reasonable person in the position of the abovementioned officers and employees of GCUK could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 75.39 above.

75.41 The knowledge of the abovementioned officers and employees of GCUK of each of the matters set out in in paragraphs 75.39 to 75.40 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

75.42 The knowledge of the abovementioned officers and employees of GCUK of each of the matters set out in paragraphs 75.39 to 75.40 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and10A.22B above.

Misrepresentations were fraudulent

75.43 In the premises of paragraphs 75.29 to 75.35, 75.37, 75.38, 75.39, 75.41 and 75.42 above:

a. Greensill misrepresented the inception risk presented by the Catfoss Renewables Risk;

b. the misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Catfoss Renewables Risk

75.44 If Greensill had not made the Catfoss Renewables Inception Misrepresentations, insurance cover would not have been issued in respect of the Catfoss Renewables Risk at all or, in the alternative, on the same terms in which it purportedly was written.

75.45 By reason of the matters pleaded in paragraphs 75.28 to 75.44 above, IAL is entitled to avoid the Catfoss Renewable Endorsements.

Innocent misrepresentation

75.46 In the alternative to the matters pleaded in paragraphs 75.43 to 75.45 above, by reason of the matters pleaded in paragraphs 75.28 and 75.44 above, IAL is entitled to reduce its liability under the Catfoss Renewable Endorsements to zero (or such other amount as the court may determine would place IAL in the same position as if the Catfoss Renewables Inception Misrepresentation had not occurred).

D11.6B Catfoss Renewables Non-Disclosures

Knowledge of underlying matters

75.47 At the time of requesting insurance cover for the Catfoss Renewables Risk, Lex Greensill knew;

a. the Catfoss Group Matters;

Particulars

The particulars to paragraphs 75.6 to 75.12 are repeated.

b. the existence and terms of the Catfoss Renewables Side Letter:

i. which governed the terms on which the facility was provided;

ii. which had the effect of converting the Catfoss Renewables Facility into a long term debt facility where debts owing from Catfoss Renewables to GCUK were to be 'rolled', and accordingly Catfoss Renewables would not make payments of principal on the payment instalment dates on which they were due; and

Particulars

GCUK's practice of rolling the debts the subject of the Catfoss Facilities, without the Catfoss Group in fact repaying amounts to GCUK from its own resources, is evident from the Side Deals and is further pleaded at Section E.1 of Annexure B to this defence.

iii. under which the facility had already been drawn down in full;

c. that GCUK had acquired an option to purchase a 25% equity interest in Catfoss Renewables;

d. that the Catfoss Renewables Facility was in the nature of a high-risk equity investment and had been approved by GCUK's Credit Committee on this basis;

Particulars to c. and d.

GCUK Credit Committee Minutes dated 17 July 2018 (GCU.0004.0015.2838), which record: *'Lex provided an overview to the deal and acknowledged this is a high-risk transaction but despite the risks Lex takes comfort from the recent £21m acquisition deal presented by Macquarie. He expressed his commitment to the deal and asked committee for their support. Myrjam commented that this*

is a Private Equity investment rather than a debt financing and that Lex agreed by stating that this is why the fees were also PE like

Greensill also has an option to purchase 25% of the company for £12.5m within 5 years of closing, or £25.0m from years 6 to 10.'

e. that GCUK had received a presentation from Catfoss Renewables (the **Catfoss Presentation**) that disclosed that Catfoss Renewables:

i. had breached its Environment Agency licence on three separate occasions;

ii. was experiencing difficulties with the Environmental Agency, creating a clear and preset risk to processing waste of any scale at the Newcastle site;

iii. had not generated any income in July and August 2018; and

iv. would require an additional GBP 40,000,000 to fund its updated strategy for the waste facility (GBP 20,000,000 of which it proposed to obtain from GCUK).

Particulars

The Catfoss Presentation was emailed by Andrew Foreman's personal assistant to Lex Greensill on 15 September 2018, and forwarded by Lex Greensill to Brett Downes, David Keeling, and other GCUK employees, on the same day. (GCU.0004.0017.8065)

The email records that the documents were also couriered to Lex Greensill's house on the same day.

75.48 At the time the insurance cover was purportedly renewed under the 2019 90/10 Parallel Policy, Lex Greensill knew:

a. the matters set out in paragraph 75.47 above;

b. that he had made the Catfoss Renewables Inception Misrepresentations when initially requesting cover;

c. that Catfoss Renewables had breached the terms of the Catfoss Renewables Side Letter, including by withdrawing, without GCUK's consent, all funds in an interest account that the IPA and Catfoss Renewables Side Letter required Catfoss Renewables to maintain, and by applying funds across the Catfoss Group;

d. that Catfoss Renewables had defaulted under the terms of the Catfoss Renewables IPA by failing to pay the sum of GBP405,633.93 in interest when it fell due on 28 September 2018;

e. that Catfoss Liquidity Issues had not been resolved, and Catfoss Renewables had no funds with which to pay wages; and

f. independent engineers from SOL (Environmental Agency) and Cobalt (an external engineering company) considered the Catfoss Renewables project not to be viable.

Particulars

a The BCC/TM Parties refer to the particulars to paragraphs 75.11, 75.28 and 75.47 above.

b Email exchange between David Keeling (Senior Risk Officer) of GCUK, Brett Downes (Chief Risk Officer) of GCUK, Andrew Foreman (Catfoss) and Ian Roundell (Catfoss), copied to Neil Hobday (Greensill), Miroslav Kněžický (Senior Credit Analyst) of GCUK and others, on 24 September 2018 and 25 September 2018, with the subject line *'Contact details'* (BCC.0001.0006.1729). In particular on 25 September 2018:

i. Andrew Foreman states: *'We are fully out of funds now…could you please advise when the other funds will be released as it is the end of the month and we must pay wages this week!'*; and

ii. David Keeling states: *'…there is a significant component of payments for the wider Catfoss group, outside the Newcastle Project … this is not how the deal was approved or agreed by committee, there are a number of large expenses we still have not received any detail on, or either invoices for any expenses OR bank statements…'*.

c Email exchange between Andrew Foreman and Lex Greensill dated 25 September 2018 (GCU.0005.0002.1448): *'We are going to be in a position if this is not resolved in the next 24 hours, were we are going to have to take emergency measures to try and find a way of raising additional funds quickly (which would be expensive, if even possible in the short timescale) for the Group to pay the month end wages and urgent creditors'*.

d Email exchange between David Keeling and Brett Downes dated 25 September 2018 (GCU.0012.0003.0342): *'I think there will be close to sufficient cash for 2 quarters interest (q2 and Q3), after approx.. £350K being deducted for the first quarters interest. This was supposed to be invoiced for the funding to 30 September interest…*

I think we are around completely exhausted of cash, but have sufficient for the next 2 quarters interest payments (pending solicitor and case confirmation)',

e Email exchange between Brett Downes and Lex Greensill dated 25 September 2018 (GCU.0005.0002.0958), attaching an excel spreadsheet received from Catfoss Renewables which recorded that GBP1,279,591.64 had been recorded as 'Other Group Costs', referring to the Foreman Group companies (GCU.0005.0002.0959). Brett Downes states: *'Lex, this is not acceptable. He does not need any more money now. He has taken more than £1.2m5 for his personal use according to this sheet and without our*

consent. David is confirming but there is very little money left, and not enough to pay interest and fund the accounts. We are in serious trouble here.'

f Email from Brett Downes (Chief Risk Officer) of GCUK to Lex Greensill, copying David Keeling (Senior Risk Officer), Miroslav Kněžický (Senior Credit Analyst) of GCUK and Tom Kennedy, dated 29 September 2018 (CTRL.0000018884), attaching a draft letter from GCUK to Catfoss Renewables dated 1 October 2018, described as a 'Letter of Non-Waiver' (CTRL.0000018884.0001) (***Catfoss Non-Waiver Letter***).

g The Catfoss Non-Waiver Letter stated that: *'Since provision of the facility by Greensill documented by the IPA enabled you to purchase a larger stake in the Project, there have been a number of issues apparent with the Project that were not communicated to Greensill prior to transmission of the Drawdown Amount by Greensill. The way forward is to work together to present a coherent and costed business model that enables the Project to grow and reach its full potential.'*

h Email from Dan Parkes (Cobalt Energy) to Brett Downes, copying Miroslav Knezicky, Neil Hobday, David Keeling, and Lex Greensill, dated 1 March 2019 (GCU.0005.0006.9735), attaching the Cobalt Energy Due Diligence Report (GCU.0005.0006.9736). The report includes the following findings in section 1.4:

i. *'The proposals received to date cannot deliver the intended outcome for the plant. Proposals for repair of the MRF and Autoclaves will not be able to deliver strong guarantees to the project. The reliance of the EfW plant on fuels arising from the front end mean that the reliability and performance of the EfW are interwoven with the reliability and performance of the front end.*

ii. *As a result of this interdependence, it is the opinion of CEL that any investment in an EfW facility reliant on fuel produced by the front end must be accompanied by a full replacement of that front end equipment….*

iii. *In considering the options available it is clear that the replacement and operational costs of the MRF and Autoclaves may be prohibitive. It is therefore the opinion of CEL that the removal of the front end processing equipment and development of an alternative energy from waste facility is likely to offer the most cost effective route forward.'*

i Skype conversation between Henry Middleditch and David Keeling on 29 November 2018 (GCU.0010.0006.0907) in relation to the preparation of the Credit Application Pack for Noviniti in which David Keeling remarked: *'…Who is presenting? Lex, will be very interesting removing controls on a group that have already failed in the first project we gave them money for, and now done the same. You are currently the meat b/w Brett and Lex on this one'.*

j Skype conversation between Miroslav Knezicky and David Keeling on 19 December 2018 (GCU.0013.0004.3142). In response to a question from Miroslav Knezicky as to whether Catfoss Renewables could repay earlier under the agreement, David Keeling remarked: *'ask Stephen how they will look to repay…they are insolvent. Or close to.'*

k Email exchange between Miroslav Knezicky and David Keeling dated 30 January 2019 (GCU.0012.0003.5434*): 'I wonder what happened with all the money cause it seems that the site remained in the same condition…'*

l Skype conversation between David Keeling and Miroslav Knezicky on 13 March 2019 in relation to Catfoss Renewables (GCU.0013.0005.0789), in which:

i. Miroslav Knezicky asks [sic]: *'Can you give me an advise what to most focus on and what Brett is expecting? Initially I thought it was clear but now when I am in the process of putting it together, I am not exactly sure. On top of the timeline I would like put a very short summary of what went wrong as well.'*

ii. David Keeling responds [sic]: *'He is going to seell the concept of stepping in and removing Andrew, so facyually stating the problems Andrew and Neil caused. Misrepresentatins (if it is fact), equitpment, the odour not being admitted as an inssue, the EA issues, the equity release, the stealing interest money, lack of a cashflow on new doirection, changing of dorection continually'.*

m Text message from Lex Greensill to Neil Hobday on 13 March 2019 (GCU.0010.0017.2491 at _0070): *'Neil, I am looking down the barrels of a £25mm+ loss on Catfoss Newcastle – and that knowledge is widely held in my credit team – I would tread very carefully with you[sic] claims of what has been achieved in the past year.'*

n Lex Greensill's knowledge is further to be inferred as he was a person of substantial commercial experience in the insurance industry and as the non-disclosures bore directly on the nature of the Catfoss Renewables

Risk, including the risk of Catfoss Renewables being unable to repay the amounts advanced to it.

75.49 The knowledge of Lex Greensill of each of the matters in paragraphs 75.47 and 75.48 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

75.50 The knowledge of Lex Greensill of each of the matters in paragraphs 75.47 and 75.48 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

75.51 Further or in the alternative to paragraph 75.47 above, at the time of requesting insurance cover for the Catfoss Renewables Risk Danyon Lloyd knew each of the matters set out in subparagraphs 75.47.a, 75.47.b, 75.47.c and 75.47.d above.

Particulars

a. Danyon Lloyd's knowledge is to be inferred as he was:

   i. a person with substantial commercial experience in dealing with credit risks in the finance industry;

   ii. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

   iii. a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 10A.11 and 10A.12.a.ii. above); and

   iv. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Catfoss Renewables Risk.

b. Email from Miroslav Kněžický to the Credit Committee dated 12 July 2018, including Danyon Lloyd, Brett Downes, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke, Roland Hartley-Urquhart and Ludwig Sels (GCU.0004.0015.0785) attaching a Catfoss Renewables Limited Credit Analysis Pack dated 10 July 2018 (GCU.0004.0015.0786) and a Catfoss Group Relationship Credit Analysis Pack dated 10 July 2018 (GCU.0004.0015.0787).

c. Email from Miroslav Kněžický to the Credit Committee dated 12 July 2018, including Danyon Lloyd, Brett Downes, Lex Greensill, Michael Gilhuley,

Myrjam Tschoeke, Roland Hartley-Urquhart and Ludwig Sels (GCU.0004.0015.0850) attaching Assessment of Credit Risk report by Scope, relating to Catfoss Renewables, dated 13 July 2018 (GCU.0004.0015.0851).

d. Email from Vicky Birch of GCUK to the Credit Committee and others dated 17 July 2018, including Danyon Lloyd, Brett Downes, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke and Roland Hartley-Urquhart, enclosing Minutes of the 13 July 2018 Credit Committee meeting (GCU.0004.0015.2837).

e. Email from Vicky Birch of GCUK to members of the Credit Committee and others dated 18 July 2018, including Danyon Lloyd, Lex Greensill, Michael Gilhuley and Myrjam Tschoeke (GCU.0004.0015.3478), in which Vicky Birch states: *'I can confirm that FINAL APPROAVALS have been obtained from Credit Committee and Board and the new deal for Catfoss Renewables Ltd is approved*'.

f. Email from Ed Smith of Marsh to the recipients of the scf@greensill-bank.com distribution list, which includes Danyon Lloyd, dated 21 September 2018 (GCU.0009.0005.0511). The email is titled "*RE: BCC Customer Endorsements*" and states: '*Danyon, Please see attached LPE from BCC'*. Attached to the email is the signed Limit Endorsement 5(iii) dated 21 September 2018 (GCU.0009.0005.0512), which lists '*Catfoss Renewables Ltd'* as a '*Customer'* with a '*Customer Limit written to the Insured*' of '*GBP 23,000,000'*.

g. Email from Scott Newby to Risk Committee dated 12 October 2018, including Danyon Lloyd and others (GCU.0009.0005.4764), attaching 'Risk Committee pack' for Risk Committee meeting on 16 October 2018 (GCU.0009.0005.4765). Included in the 'Risk Committee pack' is the Greensill 'Chief Risk Officer Report, Month End – September 2018' which states: '"*Catfoss Renewables: The difference between the EAD Max and EAD Actual relates to the First Loss associated with the insurance policy that only covers assets within CS Virtuoso with all assets residing in the HIF at month end…Insurance Portfolio - Catfoss Renewables 75/25 TBCC'*

h. Email from Scott Newby to Risk Committee dated 21 January 2019, including Danyon Lloyd and others (GCU.0012.0003.5037), attaching 'Risk Committee pack' for Risk Committee meeting on 23 January 2019 (GCU.0012.0003.5038).

i. Email correspondence between Danyon Lloyd and the Credit Committee dated 29 March 2019, including David Keeling, Michael Gilhuley, Roland

Hartley-Urquhart, Myrjam Tschoeke and Brett Downes, in relation to the Credit Committee Meeting Agenda for 29 March 2019 (GCU.0009.0008.3381).

j. Email from Danyon Lloyd to David Keeling and Brett Downes dated 26 April 2019 (GCU.0009.0008.9659) in which Danyon Lloyd states: '*Sorry, can't make the call today. Let me know if Brett requires my proxy for CC to be quorate*.'

k. Further particulars may be provided after completion of discovery by GCUK and GCPL.

75.52 Further or in the alternative to paragraph 75.51 above, each of the matters referred to in paragraphs 75.48 above was a matter which a reasonable person in the position of Danyon Lloyd could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 75.51 above.

75.53 Further or in the alternative to paragraphs 75.47 and 75.51 above, at the time the insurance cover was purportedly renewed under the 2019 90/10 Parallel Policy Danyon Lloyd knew each of the matters set out in paragraphs 75.47.a, 75.47.b, 75.47.c and 75.47.d above.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 75.51 above.

75.54 The knowledge of Danyon Lloyd of the matters set out in paragraphs 75.51 to 75.53 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25A above.

75.55 Further or in the alternative to paragraph 75.47 above, at the time of requesting insurance cover for the Catfoss Renewables Risk, Brett Downes (Chief Risk Officer of GCUK) knew each of the matters set out in paragraphs 75.47 above.

Particulars

a. The knowledge of Brett Downes is to be inferred from:

i. the involvement of Brett Downes in GCUK's dealings with Catfoss Renewables; and

ii. Brett Downes' senior position within GCUK as Chief Risk Officer.

b. Further particulars may be provided after completion of discovery by GCUK and GCPL.

75.56 The knowledge of Brett Downes of the matters in paragraph 75.47 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

75.57 The knowledge of Brett Downes of the matters in paragraph 75.47 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

75.58 Further or in the alternative to paragraph 75.48 above, at the time the insurance cover was purportedly renewed under the 2019 90/10 Parallel Policy, Brett Downes (Chief Risk Officer of GCUK) knew each of the matters set out in paragraph 75.48 above.

Particulars

a. The BCC/TM Parties refer to the particulars in paragraphs 75.32 and 75.48 above.

b. Emails from Sophie Dyke (Insurance Analyst) to Brett Downes (Chief Risk Officer) and Craig Pinnington (Senior Credit Analyst) of GCUK and others on 28 February 2019 and 28 February 2019, attaching an excel spreadsheet titled *'GB Loss Payee Limit Tracker 01-Mar-2019*' (MAR.0004.0001.9418; MAR.0004.0001.9419), from which it can be inferred that Brett Downes knew the circumstances in which the Catfoss Renewables Risk was renewed on behalf of Greensill.

c. The knowledge of Brett Downes is otherwise to be inferred from his involvement in correspondence associated with the Catfoss Renewables Risk, and from his senior position within the Greensill Group.

75.59 The knowledge of Brett Downes of each of the matters in paragraph 75.58 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

75.60 The knowledge of Brett Downes of each of the matters in paragraph 75.58 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality

75.61 Each of the matters referred to in paragraphs 75.47 and 75.48 above was a matter:

a. which Lex Greensill knew was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk; or

b. alternatively to paragraph 75.61.a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Catfoss Renewables being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

75.62 Further or in the alternative to paragraph 75.61 above, each of the matters referred to in paragraphs 75.47 and 75.48 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 75.47 and 75.48 above.

75.63 The knowledge of Lex Greensill of each of the matters set out in paragraphs 75.47 and 75.48 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

75.64 The knowledge of Lex Greensill of each of the matters set out in paragraphs 75.47 and 75.48 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

75.65 Further and in the alternative to paragraph 75.61 above, each of the matters referred to in paragraph 75.47 above was a matter:

a. which Danyon Lloyd knew was material to the decision whether to extend insurance cover in respect of the Catfoss Renewables Risk; or

b. alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

a. Danyon Lloyd's knowledge is to be inferred as he was:

i. a person with substantial commercial experience in dealing with credit risks in the finance industry;

ii. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

iii. a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 10A.11 and 10A.12.a.ii. above); and

iv. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Catfoss Renewables Risk.

b. The BCC/TM Parties refer to the particulars in paragraphs 75.47 and 75.51 above.

c. Further particulars may be provided after completion of discovery by GCUK and GCPL

75.66 Further or in the alternative to paragraph 75.65 above, each of the matters referred to in paragraph 75.47 above was a matter which a reasonable person in the position of Danyon Lloyd could be expected to know was material to the decision whether to extend or renew insurance cover in respect of the Catfoss Renewables Risk.

Particulars

The BCC/TM Parties refer to paragraphs 76.65 above.

75.67 The knowledge of Danyon Lloyd of the matters set out in paragraph 75.65 and 75.66 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25A above.

75.68 Further and in the alternative to paragraph 75.61 above, each of the matters referred to in paragraphs 75.47 and 75.48 above was a matter:

a. which Brett Downes (Chief Risk Officer) of GCUK knew was relevant to the decision of whether to accept or renew the Catfoss Renewables Risk and, if so, on what terms; or

b. alternatively to subparagraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that it was material to that decision.

Particulars

Brett Downes' knowledge is to be inferred by virtue of his position and experience in placing insurance on behalf of Greensill and as the misrepresentations bore directly on the risk of Catfoss Renewables being unable to repay the amounts advanced to it and thus upon the Catfoss Renewables Risk.

75.69 Further or in the alternative to paragraph 75.65 above, each of the matters referred to in paragraphs 75.47 and 75.48 above was a matter which a reasonable person in the position of Brett Downes could be expected to know was relevant to the decision to accept or renew the Catfoss Renewables Risk and, if so, on what terms.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 10A.26A and 10A.26B above.

75.70 The knowledge of Brett Downes of each of the matters in paragraphs 75.65 and 75.69 above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.26A and 10A.26B above.

75.71 The knowledge of Brett Downes of each of the matters in paragraphs 75.65 and 75.69 above can be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

Breach of duty of disclosure

75.72 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 75.47 and 75.48 above before the cover was placed or renewed for the Catfoss Renewables Risk.

75.73 Greensill's failure to disclose the matters referred to in paragraphs 75.47 and 75.48 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of the matters pleaded in paragraphs 75.49 to 75.57 and 75.61 to 75.71 above.

Fraudulent non-disclosure

75.74 By reason of the matters pleaded in paragraphs 75.61, 75.63 and 75.64 above, Greensill's failure to disclose the matters referred to in paragraphs 75.47 and 75.48 above was fraudulent.

75.75 The cover for the Catfoss Renewables Risk would not have been issued if the matters referred to in paragraphs 75.47 and 75.48 above had been disclosed.

75.76 In the alternative to the allegation in paragraph 75.75 above, the cover for the Catfoss Renewables Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 75.47 and 75.48 had been disclosed.

75.77 By reason of the matters pleaded in paragraphs 75.74 to 75.76 above, IAL is entitled to avoid the Catfoss Renewables Endorsements.

Innocent non-disclosure

75.78 In the alternative to the matters pleaded in paragraphs 75.74 to 75.77 above, and by reason of the matters pleaded in paragraphs 75.75 and 75.76 above, IAL is entitled to reduce its liability under the Catfoss Renewables Endorsements to zero (or such other amount as the court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D12 ~~PRIOR MISREPRESENTATIONS AND NON-DISCLOSURES IN RESPECT OF~~ CATFOSS: NOVINITI POOLE, CATFOSS DBT AND NOVINITI COLCHESTER

D12.1 [Not used].~~**The Catfoss Group**~~

75A.1. [Not used].~~At all material times for the purposes of the Catfoss DBT, Noviniti Poole and Noviniti Colchester Risks, Catfoss (defined at paragraph 54 above) was part of a group of companies known as the **Catfoss Group**.~~

75A.2. [Not used].~~At all material times for the purposes of the Catfoss DBT, Noviniti Poole and Noviniti Colchester Risks, the Catfoss Group:~~

~~a. had Catfoss Investments Ltd (a company incorporated in England & Wales (company number 11600474)), formerly known as Schosween 44 Limited (**S44/Catfoss Investments**) as the parent or holding company; and~~

~~b. was ultimately owned and controlled by Andrew Patrick Foreman.~~

~~**Particulars**~~

~~i. From around 2 October 2018 to around 26 March 2021, Mr Foreman owned at least 75% of the shares in S44/Catfoss Investments. Mr Foreman was also the Chairman of the Catfoss Group and a director of S44/Catfoss Investments and other entities in the group.~~

~~ii. Further particulars may be provided following discovery.~~

75A.3. [Not used].~~At all material times for the purposes of the Catfoss DBT, Noviniti Poole and Noviniti Colchester Risks, the following companies were also wholly-owned subsidiaries of S44/Catfoss Investments and members of the Catfoss Group:~~

~~a. Catfoss DBT Limited (a company incorporated in England & Wales (company number 11728528)) (**Catfoss DBT**);~~

~~b. Noviniti Poole Limited (a company incorporated in England & Wales (company number 11130351)) (**Noviniti Poole**); and~~

~~c. Noviniti Colchester Limited (a company incorporated in England & Wales (company number 11248796)) (**Noviniti Colchester**).~~

D12.2 [Not used].~~**The NHS Foundation Trust projects**~~

75A.4. [Not used].~~Catfoss DBT:~~

~~a. was engaged by the University Hospitals of Derby and Burton NHS Foundation Trust (**Derby and Burton Trust**) to deliver a modular construction project at Derby Hospital (the **Derby Hospital Project)**.~~

~~b. Deleted].~~

~~**Particulars**~~

~~Greensill Credit Application Report – Amendment – Catfoss DBT Limited dated 30 October 2020 [GBA.0004.0026.3372].~~

75A.4A. [Not used].~~Greensill intended that Catfoss DBT would enter into a sale and leaseback arrangement with the Derby and Burton Trust at the completion of the Derby Hospital Project whereby Catfoss DBT would purchase the completed development for an amount equal to the estimated construction cost of GBP 13,300,000, and then lease it back to the Derby and Burton Trust over a period of 30 years (the **Proposed Catfoss DBT Sale and Leaseback Arrangement**), which would enable the repayment to GCUK of financing provided by GCUK to Catfoss DBT.~~

~~**Particulars**~~

~~i. Greensill Credit Application Report – Amendment – Catfoss DBT Limited dated 30 October 2020 p 5: "Derby Trust will then lease back the space at £510-600k p.a. for 30 years. These cashflows will be monetised by Greensill~~

for expected proceeds of £15.9mm which will be used to repay the IPA facility amount." [GBA.0004.0026.3372].

ii. BCC refers to [37(a)] and [37(b)] of the Insolvency Affirmation.

iii. Further particulars may be provided following discovery.

75A.5. [Not used].Noviniti Poole:

a. was engaged by the Poole Hospital NHS Foundation Trust (**Poole Trust**) to deliver a main entrance foyer together with a centralised canopy corridor at the main hospital building (the **Poole Hospital Project**); and

b. completed the project in June 2019.

Particulars

'Case Studies: Poole Hospital', available: https://noviniti.co.uk/casestudies/poole-hospital/ [accessed 12 June 2023].

75A.5A. [Not used].Greensill intended that Noviniti Poole would enter into a lease arrangement with the Poole Trust at the completion of the Poole Hospital Project whereby the Poole Trust would "pay quarterly lease obligations for 35 years" to Noviniti Poole for the use of "the emergency department and main entrance" (the **Proposed Noviniti Poole Underlease Arrangement**), which would enable the repayment to GCUK of financing provided by GCUK to Noviniti Poole.

Particulars

Greensill Credit Application Report – Amendment – Noviniti Poole Limited dated 27 October 2020 p 9: "Once project is handed over to NHS trust, future rental income (£180kpa adjusted per CPI) will be monetised and used for repayment of the facility." [GBA.0004.0026.3374]

75A.6. [Not used].Noviniti Colchester:

a. was engaged by the East Suffolk and North Essex NHS Foundation Trust (**East Suffolk and North Essex Trust**) to deliver a new main entrance and emergency department at Colchester Hospital (the **Colchester Hospital Project**); and

b. completed the project in November 2019.

~~Particulars~~

~~'Case Studies: Colchester Hospital', available: https://noviniti.co.uk/casestudies/colchester-hospital/ [accessed 12 June2023].~~

75A.6A. [Not used].~~Greensill intended that Noviniti Colchester would enter into a lease arrangement with the East Suffolk and North Essex Trust Poole Trust at the completion of the Colchester Hospital Project whereby the East Suffolk and North Essex Trust would "pay quarterly lease obligations for 30 years" to Noviniti Colchester for the use of the emergency department and main entrance (the **Proposed Noviniti Colchester Underlease Arrangement**), which would enable the repayment to GCUK of financing provided by GCUK to Noviniti Colchester.~~

~~Particulars~~

~~Greensill Credit Application Report – Amendment – Noviniti Colchester Limited dated 30 October 2020 p 17: "Once the finished project is handed over to the NHS trust, future rental income for the entrance and emergency department (£328k p.a. adjusted per RPI) will be monetised and used to repay the IPU bridge facility"; p. 20 "Once handed over to the client, future rental income will be monetised and used for a bullet repayment of the facility" [GBA.0004.0026.3373].~~

75A.6B. [Not used].~~If the proposed arrangements pleaded at paragraphs 75A.4A, 75A.5A and 75A.6A did not come to fruition, Noviniti Poole, Catfoss DBT and Noviniti Colchester, each of which were SPVs, had no identified means of repaying to GCUK the amounts advanced to each of them pursuant to the Catfoss DBT / Noviniti Purported SCF Facilities, as defined at paragraph 75A.7 below.~~

~~Particulars~~

~~i. The particulars to paragraphs 75A.4A, 75A.5A and 75A.6A are repeated.~~

~~ii. The relevant Credit Application Reports indicate that the intended arrangements were not yet agreed, and would be the subject of separate credit applications.~~

D12.3 [Not used].**~~GCUK working capital facilities~~**

75A.7. [Not used].~~Between 31 October 2018 and 27 March 2019, GCUK purported to enter into a series of supply chain finance facilities with each of Catfoss DBT, Noviniti Poole and Noviniti Colchester to fund the construction costs of the NHS Foundation Trust projects pleaded in paragraphs 75A.4 to 75A.6 (**Catfoss DBT / Noviniti Purported SCF Facilities**).~~

Particulars

The purported supply chain finance arrangements were recorded in:

i. for Noviniti Poole: The Customer Agreement between Noviniti Poole and GCUK dated 31 October 2018 and Re-invoicing Service Agreement between Noviniti Poole and Bramid (as defined at paragraph 11 of this Annexure) dated 31 October 2018 (the **Noviniti Poole Purported SCF Facility**);

ii. for Catfoss DBT: The Instalment Payment Agreement between Catfoss DBT and GCUK dated 19 December 2018 (the **Catfoss DBT IPA**), which was for a Facility Amount of GBP 15,300,000 (the **Catfoss DBT Purported SCF Facility**); and

iii. for Noviniti Colchester: The Instalment Payment Agreement between Noviniti Colchester and GCUK dated 27 March 2019, which was originally for a Facility Amount of GBP 8,700,000 (the **Noviniti Colchester Purported SCF Facility**).

75A.7A. [Not used].In respect of the Facility Amount of GBP 15,300,000 under the Catfoss DBT IPA, Catfoss DBT and GCUK intended that:

a. GBP 2,000,000 would be drawn down by Catfoss DBT as a "profit advance" (the **Catfoss DBT Profit Advance**), in circumstances where construction costs were estimated to be in the amount of GBP 13,300,000.

Particulars

i. Greensill Credit Application Report – Amendment – Catfoss DBT Limited dated 30 October 2020 [GBA.0004.0026.3372].

ii. BCC refers to [37(c)] of the Insolvency Affirmation.

b. circa GBP 10,000,000 would be drawn down by Catfoss DBT at the same time as the draw down of the Catfoss DBT Profit Advance to "cover the company's fees to Greensill."

Particulars

i. Greensill Credit Application Report – Amendment – Catfoss DBT Limited dated 30 October 2020 [GBA.0004.0026.3372].

75A.8. [Not used].~~On or around 20 December 2018, GCUK and S44/Catfoss Investments entered into an **Exclusivity and Fee Letter**, which included terms to the following effect:~~

~~a. GCUK agreed to provide (a) a short-term working capital facility of up to two years (the form of which may include but not be limited to an instalment payment facility or a reinvoicing facility) (each a "Working Capital Facility"); and (b) a long-dated lease financing facility of up to thirty years (each a "Lease Facility") in respect of the projects undertaken with NHS trusts including but not limited to Poole Trust, Derby Teaching Hospital NHS Foundation Trust and East Suffolk and North Essex Trust (cl 1; Introduction); and~~

~~b. in consideration for providing the facilities described at 75A.8.a., S44/Catfoss Investments agreed to pay GCUK a structuring fee of GBP 10,400,000 (the **Fee**), payable:~~

~~i. pursuant to drawdowns under the Working Capital Facility (as defined) to be entered into on 20 December 2018 between GCUK and Catfoss DBT; and~~

~~ii. to the extent not paid under that facility, in quarterly instalments of GBP 650,000 for a period of four years with the first such instalment to be paid upon execution of the Exclusivity and Fee Letter (cl 3).~~

75A.9. [Not used].~~On or around 20 December 2018, GCUK, Catfoss DBT and S44/Catfoss Investments entered into a further side letter (the **Catfoss DBT Side Letter**), which contained terms to the following effect:~~

~~a. the Catfoss DBT IPA would be a Working Capital Facility as defined in the Exclusivity and Fee Agreement; and~~

~~b. in consideration of the entry into and/or continuation of the Catfoss DBT IPA and the facilities afforded thereby, Catfoss DBT undertook and covenanted with GCUK that it shall apply an amount in the sum of GBP 10,400,000 in aggregate taken solely from the Drawdown Amounts it receives under the Catfoss DBT IPA to be used by S44/Catfoss Investments to pay the Fee to GCUK under the Exclusivity and Fee Letter (cl 1 and 2).~~

75A.9A. [Not used].~~On 21 December 2018, GCUK released GBP 11,400,000 to Catfoss DBT under the Catfoss DBT IPA, of which "approximately £10 million" was immediately returned by Catfoss DBT to GCUK in pre-payment of the fees due under the Catfoss DBT Side Letter.~~

~~Particulars~~

~~BCC refers to [37(g)] of the Insolvency Affirmation.~~

75A.9B. [Not used].~~Between 29 January 2019 and 3 February 2019, Catfoss DBT drew down a further GBP 1,000,000 under the Catfoss DBT IPA, such that as of 3 February 2019, the whole of the Catfoss DBT Profit Advance had been drawn down by Catfoss DBT.~~

~~Particulars~~

~~BCC refers to [37(h)] of the Insolvency Affirmation.~~

75A.10. [Not used].~~On or around 27 March 2019, GCUK, Noviniti Colchester and S44/Catfoss Investments entered into a further side letter (the **Noviniti Colchester Side Letter**) which provided that the Noviniti Colchester IPA would also be a Working Capital Facility as defined in, and in accordance with, the Exclusivity and Fee Agreement.~~

75A.10A. [Not used].~~In or around September 2019, Greensill sought an increase in the aggregate customer limit in respect of the Noviniti Poole Purported SCF Facility by GBP 1,500,000, with the purpose of allocating the further GBP 1,500,000 as follows:~~

~~a. GBP 343,458 to be paid by GCUK to the Poole Trust as an incentive to increase the tenor on the Proposed Noviniti Poole Underlease Arrangement;~~

~~b. GBP 150,000 to be paid by GCUK as follows:~~

~~i. GBP 87,500 "inducement" to the Poole Trust to enter into "IPU documentation"; and~~

~~ii. GBP 62,500 "inducement" to Noviniti Poole to enter into the "IPU documentation"; and~~

~~c. GBP 1,006,542 to be paid by GCUK to "Catfoss" as a "profit advance", in circumstances where the Noviniti Pool Profit Advance exceeded the profit payable under the Noviniti Pool Purported SCF Facility by c. GBP 300,000.~~

~~Particulars~~

~~Greensill Credit Application Report – Amendment – Noviniti Poole Limited dated 27 October 2020 pp 5-6; 19 [GBA.0004.0026.3374].~~

75A.10B. [Not used].~~In or around September 2019, Greensill sought an increase in the aggregate customer limit in respect of the Purported Noviniti Colchester SCF Facility by GBP 1,500,000 (the **September 2019 Noviniti Colchester Increase**), with the purpose of allocating the further GBP 1,500,000 as follows:~~

a. GBP 364,000 to be paid by GCUK to the East Suffolk and North Essex Trust as a "capital payment" to the East Suffolk and North Essex Trust in return for the East Suffolk and North Essex Trust's agreement to raise the annual rental amount in connection with the Proposed Noviniti Colchester Underlease Arrangement;

b. GBP 150,000 "inducement" to be paid by GCUK to the East Suffolk and North Essex Trust and to Noviniti Colchester to "get the IPU over the line";

c. GBP 141,388 in construction "overrun costs"; and

d. GBP 844,612 to be paid by GCUK to "Catfoss" as a "profit advance."

Particulars

Greensill Credit Application Report – Amendment – Noviniti Colchester Limited dated 30 October 2020 pp 5-6; [GBA.0004.0026.3373].

75A.10C. [Not used].On 6 September 2019, Greensill received confirmation that the Proposed Catfoss DBT Sale and Leaseback Arrangement would not proceed, with the effect that Catfoss DBT would be unable to repay the amounts due to GCUK pursuant to the Catfoss DBT IPA from December 2019 onwards.

Particulars

i. Greensill Credit Application Report – Amendment – Catfoss DBT Limited dated 30 October 2020 p 7 point 5 "Derby Trust will then lease back the space at £510-600k p.a. for 30 years. These cashflows will be monetised by Greensill for expected proceeds of a minimum of £15.9mm which will be used to repay the IPA facility amount" [GBA.0004.0026.3372].

ii. BCC refers to [37(i)] of the Insolvency Affirmation.

75A.10D. [Not used].From December 2019 onwards, Catfoss DBT failed to repay the amounts due to GCUK pursuant to the Catfoss DBT IPA.

Particulars

BCC refers to [37(k)] of the Insolvency Affirmation.

75A.11. [Not used].The effect of the Exclusivity and Fee Letter, the Catfoss DBT Side Letter and the Noviniti Colchester Side Letter was that:

a. the Catfoss DBT / Noviniti Purported SCF Facilities were converted into arrangements whereby GCUK provided Catfoss DBT, Noviniti Poole and Noviniti Colchester with working capital facilities with a term of up to two years; and

b. GCUK did not require Catfoss DBT, Noviniti Poole and Noviniti Colchester to comply with all of the terms of the Catfoss DBT / Noviniti Purported SCF Facilities, including by:

i. not requiring Catfoss DBT, Noviniti Poole or Noviniti Colchester to use the Catfoss DBT / Noviniti Purported SCF Facilities only to discharge liabilities for goods or services supplied to them for the NHS Foundation Trust projects;

ii. not requiring Catfoss DBT, Noviniti Poole or Noviniti Colchester to repay drawdowns on their due dates in accordance with the terms of the relevant Catfoss DBT / Noviniti Purported SCF Facilities;

iii. accepting payment of a fee of GBP 10,400,000 out of the Catfoss DBT Purported SCF Facility;

iv. accepting payment of the Catfoss DBT Profit Advance out of the Catfoss DBT Purported SCF Facility; and

v. allowing amounts to be allocated in the manner pleaded in paragraphs 75A.10A and 75A.10B above.

75A.12. [Not used].The fee of GBP 10,400,000:

a. was commercially unsupportable, unreasonable and excessive;

b. was in excess of any fee that would be negotiated by parties in a bona fide arms' length relationship;

c. was disproportionate to the facility limit of GBP 15,300,000 on the Purported SCF Facility for Catfoss DBT; and

d. was disproportionate to any services provided by GCUK under the Exclusivity and Fee Agreement.

D12.4 [Not used].**Placement of cover for Noviniti Poole, Catfoss DBT and Noviniti Colchester Risks**

Noviniti Poole initial cover

75A.13. [Not used]. On or around 3 and 4 December 2018, Greensill procured BCC to provide insurance cover to Greensill by issuing endorsements under the 2017 90/10 Policies in respect of debt owed by Noviniti Poole to GCUK (the **Noviniti Poole Risks**).

Particulars

The procuring occurred by:

i. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 3 December 2018 with the subject line "Noviniti Poole NHS" and time stamp of 7:48 pm [TOK.001.00119321].

ii. Email from Greg Brereton (BCC) to Lex Greensill (Greensill) dated 4 December 2018 with the subject line "Re: Noviniti Poole NHS" and time stamp of 2:35 am [TOK.001.00040966].

iii. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 4 December 2018 with the subject line "Re: Noviniti Poole NHS" and time stamp of 9:11 pm [TOK.001.00119165].

75A.14. [Not used].On or around 6 December 2018, Greg Brereton signed, and returned to Greensill, Customer Endorsements 44 under the 2017 90/10 Policies in respect of the Noviniti Poole Risks, which provided that:

a. the aggregate customer limit was GBP 5,000,000; and

b. a GBP 5,000,000 deductible applied under the 2017 90/10 Master Policy (but not the 2017 90/10 Parallel Policy).

Catfoss DBT initial cover

75A.15. [Not used].On or around 18 December 2018, Greensill procured BCC to provide insurance cover to Greensill by issuing endorsements under the 2017 90/10 Policies in respect of debt owed by Catfoss DBT to GCUK (the **Catfoss DBT Risks**).

Particulars

The procuring occurred by:

i. Discussion between Lex Greensill (Greensill) and Greg Brereton (BCC) on 15 December 2018 (referenced in the email pleaded at ii. below).

ii. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 18 December 2018 with the subject line "Derby and Burton NHS Foundation Trust" and time stamp of 5:55 pm [TOK.001.00117746].

75A.16. [Not used].On or around 20 December 2018, Greg Brereton signed, and returned to Greensill, Customer Endorsements 63 under the 2017 90/10 Policies in respect of the Catfoss DBT Risks, which provided that:

a. the aggregate customer limit was GBP 12,000,000; and

b. a $10,000,000 deductible applied under the 2017 90/10 Master Policy (but not the 2017 90/10 Parallel Policy).

75A.17. [Not used].On or around 14 January 2019, Greg Brereton signed, and returned to Marsh (as Greensill's agent), Customer Endorsements 63(i) under the 2017 90/10 Policies in respect of the Catfoss DBT Risks, which increased the tenor from 360 days to 365 days.

75A.18. [Not used].On or around 4 February 2019, Greensill procured BCC to increase the insurance cover to Greensill by GBP 3,000,000 in respect of the Catfoss DBT Risks by issuing Customer Endorsements 63(ii) under the 2017 90/10 Policies (**Customer Endorsement 63(ii)**).

Particulars

The procuring occurred by email from Edward Smith (Marsh, acting as Greensill's agent) to Greg Brereton (BCC) dated 4 February 2019 with the subject line "Greensill Catfoss DBT and Primavere Increases" and time stamp of 10:56 pm [TOK.001.00115290].

75A.19. [Not used].On or around 5 February 2019, Greg Brereton signed, and returned to Marsh (as Greensill's agent), Customer Endorsements 63(ii) under the 2017 90/10 Policies in respect of the Catfoss DBT Risks, which provided that:

a. the aggregate customer limit was GBP 15,000,000; and

b. a GBP 10,000,000 deductible applied under the 2017 90/10 Master Policy (but not the 2017 90/10 Parallel Policy).

Renewal of risks under 2019 90/10 Policies

75A.20. [Not used].As pleaded at paragraph 6 of this Annexure, in around March 2019, the 2017 90/10 Policies were in effect renewed as the 2019 90/10 Policies.

75A.21. [Not used].~~On or around 4 March 2019, Marsh (acting as Greensill's agent) procured BCC to renew the insurance cover to Greensill in respect of the Noviniti Poole Risks and Catfoss DBT Risks by issuing Customer Endorsements 16 and Customer Endorsements 34 under the 2019 90/10 Policies.~~

~~Particulars~~

~~The procuring occurred by:~~

~~i. Email from Edward Smith (Marsh, acting as Greensill's agent) to Greg Brereton (BCC) dated 4 March 2019 with the subject line "Re: Greensill Standalone Renewal" and time stamp 8.57 [TOK.001.00113181].~~

~~ii. Email from Edward Smith (Marsh, acting as Greensill's agent) to Greg Brereton (BCC) dated 28 February 2019 with the subject line "Re: Greensill Standalone Renewal" and time stamp 18.09 [TOK.001.00113411].~~

75A.22. [Not used].~~On or around 5 March 2019 and 13 March 2019, Greg Brereton signed, and returned to Marsh (as Greensill's agent), Customer Endorsements 16 under the 2019 90/10 Policies in respect of the Noviniti Poole Risks, which provided that:~~

~~a. the aggregate customer limit was GBP 5,000,000;~~

~~b. an insured percentage of 90% and a maximum limit of liability of GBP 4,500,000 applied under the 2019 90/10 Master Policy (but not the 2019 90/10 Parallel Policy); and~~

~~c. the definition of 'Deductible' in the 2019 90/10 Master Policy was amended so that, if any claim was made under the 2019 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the 10% deductible under cl 3.5 of that policy.~~

75A.23. [Not used].~~On or around 5 March 2019 and 13 March 2019, Greg Brereton signed, and returned to Marsh (as Greensill's agent), Customer Endorsements 34 under the 2019 90/10 Policies in respect of the Catfoss DBT Risks, which provided that:~~

~~a. the aggregate customer limit was GBP 15,000,000;~~

~~b. an insured percentage of 90% and a maximum limit of liability of GBP 13,500,000 applied under the 2019 90/10 Master Policy (but not the 2019 90/10 Parallel Policy); and~~

~~c. the definition of 'Deductible' in the 2019 90/10 Master Policy was amended to read 'The Deductible is GBP 10,000,000 (ten million)'.~~

~~*Noviniti Colchester Risks*~~

75A.24. [Not used].~~On or around 19 and 20 March 2019, Greensill and Marsh (as Greensill's agent) procured BCC to provide insurance cover to Greensill by issuing endorsements under the 2019 90/10 Policies in respect of debt owed by Noviniti Colchester to GCUK (the **Noviniti Colchester Risks**).~~

~~Particulars~~

~~The procuring occurred by:~~

~~i. Email from Edward Smith (Marsh, acting as Greensill's agent) to Greg Brereton (BCC) dated 19 March 2019 with the subject line "Greensill Request – Noviniti Colchester Limited DUNS: 22-374-5580" and time stamp 5:10 am AEDT [TOK.001.00111808].~~

~~ii. Email from Angus Ward (Marsh, acting as Greensill's agent) to Greg Brereton (BCC) dated 19 March 2019 with the subject line "Re: Greensill Request – Noviniti Colchester Limited DUNS: 22-374-5580" and time stamp 11:07 pm AEDT [BCC.0001.0001.2458].~~

~~iii. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 20 March 2019 with the subject line "NHS" and time stamp 6:54 am AEDT [TOK.001.00111714].~~

75A.25. [Not used].~~On or around 28 March 2019, Greg Brereton signed, and returned to Marsh (as Greensill's agent), Customer Endorsements 48 under both of the 2019 90/10 Policies in respect of the Noviniti Colchester Risks, which provided that:~~

~~a. the aggregate customer limit was GBP 8,700,000; and~~

~~b. an insured percentage of 90% and a maximum limit of liability of GBP 7,830,000 applied under the 2019 90/10 Master Policy (but not the 2019 90/10 Parallel Policy); and~~

~~c. the definition of 'Deductible' in the 2019 90/10 Master Policy was amended so that, if any claim was made under the 2019 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the 10% deductible under cl 3.5 of that policy.~~

~~*Further increase of limits and purported extension*~~

75A.26. [Not used].~~On or around 1 October 2019, Greg Brereton signed and returned to Greensill, Customer Endorsements 16(i) under the 2019 90/10 Policies in respect of the Noviniti Poole Risks, which increased the aggregate customer limit by GBP 1,500,000 and provided that:~~

~~a. the aggregate customer limit was GBP 6,500,000;~~

b. an insured percentage was 90% and a maximum limit of liability of GBP 5,850,000 applied under the 2019 90/10 Master Policy (but not the 2019 90/10 Parallel Policy); and

c. the definition of 'Deductible' in the 2019 90/10 Master Policy was amended so that, if any claim was made under the 2019 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the 10% deductible under cl 3.5 of that policy.

75A.27. [Not used].On or around 1 October 2019, Greg Brereton signed and returned to Greensill, Customer Endorsements 48(i) under the 2019 90/10 Policies in respect of the Noviniti Colchester Risks, which increased the aggregate customer limit by GBP 1,500,000 and provided that:

a. the aggregate customer limit was GBP 10,200,000;

b. an insured percentage was 90% and a maximum limit of liability of GBP 9,180,000 applied under the 2019 90/10 Master Policy (but not the 2019 90/10 Parallel Policy); and

c. the definition of 'Deductible' in the 2019 90/10 Master Policy was amended so that, if any claim was made under the 2019 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the 10% deductible under cl 3.5 of that policy.

75A.27A. [Not used].On or around 5 May 2020, Greg Brereton signed and returned Customer Endorsement 34(i) under the 2019 90/10 Master Policy in respect of the Catfoss DBT Risks, which purported to be effective from 1 March 2020 and which provided updated premium terms.

D12.5 [Not used].**Fraudulent non-disclosure in respect of Noviniti Poole, Catfoss DBT and Noviniti Colchester Risks**

75A.28. [Not used].When seeking to procure cover in respect of the Noviniti Poole Risks and Catfoss DBT Risks under the 2017 90/10 Policies, Greensill did not disclose to Greg Brereton or any representative of BCC or IAL:

a. any of the matters the subject of the Catfoss Non-Disclosures (as defined at paragraph 72 above), despite Noviniti Poole and Catfoss DBT being entities related to Catfoss;

b. the nature of the proposed arrangements between GCUK, S44/Catfoss Investments and Catfoss DBT as pleaded at paragraphs 75A.7A to 75A.12 above, including:

i. that the Catfoss DBT / Noviniti Purported SCF Facilities were intended to operate as working capital facilities that GCUK would not require:

1. to be used only to discharge liabilities for goods or services supplied for NHS Foundation Trust projects; and/or

2. to be repaid in accordance with the terms of the Catfoss DBT / Noviniti Purported SCF Facilities;

ii. that GCUK would be paid a fee of GBP 10,400,000 to be paid on the basis set out at paragraph 75A.8 of this Annexure;

iii. that Catfoss DBT would receive the Catfoss DBT Profit Advance; or

iv. the nature of the intended repayment arrangements in respect of the Catfoss BDT / Noviniti Purported SCF Facilities as pleaded at paragraphs 75A.4A, 75A.5A, 75A.6A and 75A.6B above.

c. that the funds being advanced under the Catfoss DBT / Noviniti Purported SCF Facilities were not solely supply chain finance for the relevant NHS Foundation Trust projects but that GCUK intended to continue to advance funds to Noviniti Poole and Catfoss DBT under those facilities for other purposes, including after the relevant NHS Foundation Trust projects had been completed.

75A.29. [Not used].Further, when procuring the issue of the 2019 90/10 Policies, the relevant endorsements under those policies (including procuring cover for the Noviniti Pool Risks, Catfoss DBT Risks and Noviniti Colchester Risks) and the purported entry into the June 2019 Extension Documentation, Greensill did not disclose to Greg Brereton or any representative of BCC or IAL:

a. the matters referred to in paragraph 75A.28 of this Annexure;

b. that Greensill had failed to disclose the matters referred to in paragraph 75A.28 of this Annexure when originally procuring cover for the Noviniti Poole Risks and Catfoss DBT Risks;

c. that GCUK had entered into the Exclusivity and Fee Letter and Catfoss DBT Side Letter to give effect to the arrangements pleaded at paragraphs 75A.8 to 75A.12 of this Annexure;

d. [Deleted];

e. that GCUK was being paid the fee under the Exclusivity and Fee Letter from funds advanced under the Purported SCF Facility for Catfoss DBT for which cover was being sought;

f. that Catfoss DBT was being paid the Catfoss DBT Profit Advance from funds advanced under the Purported SCF Facility for Catfoss DBT for which cover was being sought; and

g. the matters pleaded at paragraphs 75A.10A to 75A.10D above.

75A.30. [Not used].Further, Greensill did not disclose to Greg Brereton or any representative of BCC or IAL in the course of seeking to procure cover in respect of the Noviniti Poole Risks, Catfoss DBT Risks and/or Noviniti Colchester Risks that it had made the Noviniti/Catfoss DBT Misrepresentations (as applicable), as defined at paragraph 75A.33 below.

75A.31. [Not used].The non-disclosures pleaded in paragraphs 75A.28 to 75A.30 of this Annexure (the **Noviniti/Catfoss DBT Non-Disclosures**):

a. were material to the decision to underwrite the Noviniti Poole Risks, Catfoss DBT Risks and Noviniti Colchester Risks;

Particulars

The Noviniti/Catfoss DBT Non-Disclosures bore directly on the risk of Noviniti Poole, Catfoss DBT and/or Noviniti Colchester being unable to repay the amounts advanced to each of them and thus upon the Noviniti Poole, Catfoss DBT and Noviniti Colchester Risks.

b. were deliberate and occurred in circumstances where Greensill knew that the matters would be material to the decision to underwrite the Noviniti Poole Risks, Catfoss DBT Risks and Noviniti Colchester Risks; and

Particulars

i. Lex Greensill, on behalf of Greensill, knew that the matters would be material and acted deliberately on behalf of Greensill not to disclose them.

ii. Deliberate non-disclosure is to be inferred from the significance of the matters that were not disclosed, the nature of Lex Greensill's communications with Greg Brereton (pleaded below) and Lex Greensill's experience in commercial financing and in dealing with underwriters.

c. in the premises, constituted fraudulent non-disclosure.

D12.6 [Not used].~~**Fraudulent misrepresentation in respect of Noviniti Poole, Catfoss DBT and Noviniti Colchester Risks**~~

75A.32. [Not used].~~Between 3 December 2018 and 9 January 2019, Greensill represented to Greg Brereton that:~~

a. ~~the Catfoss DBT / Noviniti Purported SCF Facilities were supply chain finance facilities for the construction of specified NHS Foundation Trust projects;~~

b. ~~the maximum tenor of invoices under the Catfoss DBT / Noviniti Purported SCF Facilities would be between 360 and 365 days; and~~

c. ~~pursuant to the relevant arrangements, Greensill had the right to collect the proceeds of irrevocable payment undertakings (IPUs) provided by the relevant NHS Foundation Trust entities, whereby the Catfoss DBT / Noviniti Purported SCF Facilities operated as a "pass through credit" for those NHS Foundation Trust entities, who had the ultimate obligation to pay.~~

~~**Particulars**~~

i. ~~Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 3 December 2018 with the subject line "Noviniti Poole NHS" and time stamp of 7:48 pm [TOK.001.00119321].~~

ii. ~~Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 18 December 2018 with the subject line "Derby and Burton NHS Foundation Trust" and time stamp of 5:55 pm [TOK.001.00117746].~~

iii. ~~Email from Angus Ward (Marsh, acting as Greensill's agent) to Greg Brereton (BCC) dated 9 January 2019 with the subject line "Greensill – Catfoss DBT Limited" and time stamp of 10:48 pm [TOK.001.00116821].~~

75A.33. [Not used].~~The representations pleaded in paragraph 75A.32 of this Annexure (or such of them as are established) (**Noviniti/Catfoss DBT Misrepresentations**) were continuing representations.~~

75A.34. [Not used].~~The Noviniti/Catfoss DBT Misrepresentations (or such as them as are established) were false and misleading as:~~

a. ~~Greensill intended to, and did in fact, treat the Catfoss DBT / Noviniti Purported SCF Facilities as working capital facilities with a term of up to two years, pursuant to the arrangements pleaded at paragraphs 75A.8 to 75A.12 of this Annexure;~~

~~b. Greensill intended to advance funds pursuant to the Catfoss DBT / Noviniti Purported SCF Facilities for purposes other than supply chain finance and after the relevant NHS Foundation Trust projects had been completed, including for the purpose of paying a GBP 10,400,000 fee to itself (which it did so advance), for the purpose of advancing the GBP 2,000,000 Catfoss DBT Profit Advance to Catfoss DBT;~~

~~c. Greensill did not intend, and did not in fact, require funds advanced under the Catfoss DBT / Noviniti Purported SCF Facilities to be repaid within 360 to 365 days;~~

~~d. the Catfoss DBT / Noviniti Purported SCF Facilities were not intended by Greensill to operate, and did not operate, as "pass through credits" for the NHS Foundation Trust entities, and the NHS Foundation Trust entities did not have the ultimate obligation to pay; and~~

~~e. if the proposed arrangements pleaded at paragraphs 75A.4A, 75A.5A and 75A.6A did not come to fruition, Noviniti Poole, Catfoss DBT and Noviniti Colchester, each of which were SPVs, would not be able to repay GCUK the amounts advanced to each of them pursuant to the Catfoss DBT / Noviniti Purported SCF Facilities.~~

75A.35. [Not used]. ~~Further, Greensill knew that the Noviniti/Catfoss DBT Misrepresentations were:~~

~~a. false and misleading;~~

~~b. material to the decision whether to advance insurance cover in respect of the Noviniti Poole Risks, Catfoss DBT Risks and/or Noviniti Colchester Risks;~~

~~**Particulars**~~

~~The particulars to paragraph 75A.31 of this Annexure are repeated.~~

~~b. in the premises, knowingly false and fraudulent.~~

D12.7 Catfoss/Noviniti NHS Project Misrepresentations

Representations

75AB.1 On or around 3 December 2018, Lex Greensill, on behalf of GCUK, requested that BCC extend insurance cover in respect of financing to be provided by GCUK to Noviniti Poole (**Noviniti Poole Risk**) under the 2018 Master Policy the 2018 Policy.

Particulars

Email from Lex Greensill to Brereton dated 3 December 2018 (BCC.0001.0002.2139).

75AB.2 On or around 18 December 2018, GCUK requested that BCC extend insurance cover in respect of financing provided by GCUK to Catfoss DBT (**Catfoss DBT Risk**).

Particulars

Email from Lex Greensill to Brereton dated 18 December 2018 (BCC.0001.0003.2224).

75AB.3 On or around 19 March 2019, GCUK and Marsh (as Greensill's agent) requested that BCC extend insurance cover in respect of financing provided by GCUK to Noviniti Colchester (**Noviniti Colchester Risk**).

Particulars

a. Email from Edward Smith (Marsh) to Brereton, copying Ewan Berkemeier (Marsh), Angus Ward (Marsh), Alexandre Weiss Bueno (Marsh) and Paul Nash (Marsh), dated 19 March 2019 (BCC.0001.0001.2446).

b. Email from Angus Ward (Marsh) to Brereton and Edward Smith (Marsh), copying Ewan Berkemeier (Marsh), Alexandre Weiss Bueno (Marsh) and Paul Nash (Marsh), dated 19 March 2019 (BCC.0001.0001.2458).

c. Email from Lex Greensill to Brereton dated 19 March 2019 (BCC.0001.0002.2814).

75AB.4 As part of these requests, GCUK (including via Marsh), represented to Brereton, among other matters, that:

a. the financing arrangement in place between GCUK and each of Noviniti Poole, Catfoss DBT and Noviniti Colchester were 'SCF facilities', and which, with respect to Noviniti Poole, involved 'reinvoicing' (**the Catfoss/Noviniti SCF Misrepresentations**);

b. the financing arrangement in place between GCUK and each of Noviniti Poole, Catfoss DBT and Noviniti Colchester had a maximum tenor of either 360 or 365 days (the **Catfoss/Noviniti Duration Misrepresentation**)

c. the facilities were being advanced for the purpose of funding construction costs for building projects associated with hospitals run by the National Health Service (**NHS**) (**NHS Hospital Purpose Misrepresentation**);

d. the relevant NHS Foundation Trusts for the hospitals had provided irrevocable payment undertakings (**IPUs**) that could be relied on by the borrowers to repay the facilities (**NHS IPU Misrepresentation**),

(together, the **Catfoss/Noviniti NHS Project Misrepresentations**).

Particulars

a. The particulars to paragraphs 75AB.1 to 75AB.3 are repeated.

b. The representations were express in the case of each of the Noviniti Poole Risk and the Catfoss DBT Risk. The representations were implied in the case of the Noviniti Colchester Risk from the email from Edward Smith to Brereton (copying Ewan Berkemeier, Angus Ward, Alexandre Bueno and Paul Nash) dated 18 March 2019 (BCC.0001.0001.2446), in which Edward Smith states that the Noviniti Colchester Risk was "*essentially the same as the Noviniti Poole deal*".

75AB.5 The Catfoss/Noviniti NHS Project Misrepresentations were continuing misrepresentations.

75AB.6 The Catfoss/Noviniti NHS Project Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.17, 10A.18, 10A.22A , 10A.22B, 10A.26A and 10A.26B above.

75AB.7 On or around 5 December 2018, Brereton provided GCUK signed copies of Customer Endorsement No 44 which purported, with effect from 5 December 2018, to endorse Noviniti Poole as a Customer under the 2018 Master Policy and the 2018 Policy with:

a. an 'Aggregate Customer Limit' of GBP 5,000,000; and

b. a 'Maximum Tenor' of 360 days.

Particulars

Email from Brereton to John Whelan (Deputy General Counsel) of GCUK and Lex Greensill, copying Sophie Dyke (Insurance Analyst) of GCUK, Brett Downes (Chief Risk Officer) of GCUK and Edward Smith, Ewan Berkemeier, and Julian Macey-Dare of Marsh, dated 5 December 2018 (GCU.0005.0003.3046), attaching signed copies of Customer Endorsement No 44 in relation to the Noviniti Poole Risk in favour of Greensill Bank and GCPL (GCU.0005.0003.3047).

75AB.8 On or around 20 December 2018, Brereton provided GCUK with a signed copy of Customer Endorsement No 63, which purported, with effect from 20 December 2018, to endorse Catfoss DBT as a Customer under the 2018 Master Policy and the 2018 Policy with:

a. an 'Aggregate Customer Limit' of GBP12 million; and

b. a 'Maximum Tenor' of 360 days.

Particulars

Email from Brereton to Edward Smith of Marsh, Lex Greensill and Sophie Dyke of GCUK, copying Julian Macey-Dare and Ewan Berkemeier of Marsh, and John Whelan, Brett Downes and Craig Pinnington of GCUK, dated 20 December 2018 (BCC.0001.0002.2340), attaching a signed copies of Customer Endorsement No 63 in relation to the Catfoss DBT Risk (BCC.0001.0002.2341).

75AB.9 On or around 9 January 2019, Marsh requested that BCC amend the 'Maximum Tenor' of the Customer Endorsement No 63 in respect of the Catfoss DBT Risk from '360' days to '365' days.

Particulars

Email from Angus Ward of Marsh to Brereton, copying Ewan Berkemeier, Edward Smith, Paul Nash and Alexandre Bueno, of Marsh, dated 9 January 2019 (BCC.0001.0002.2408).

75AB.10 On or around 14 January 2019, Brereton provided GCUK (via Marsh) with signed copies of Customer Endorsements No 63(i), which purported, with effect from 20 December 2018, to endorse Catfoss DBT as a Customer under the 2018 Master Policy and the 2018 Policy with:

a. an 'Aggregate Customer Limit' of GBP12 million; and

b. a 'Maximum Tenor' of 365 days.

Particulars

Email from Brereton to Angus Ward of Marsh, copying Ewan Berkemeier, Edward Smith, Paul Nash and Alexandre Bueno, of Marsh, dated 14 January 2019 (BCC.0001.0002.2408), attaching signed copies of Customer Endorsements No 63(i) in relation to the Catfoss DBT Risk (BCC.0001.0002.2409).

75AB.11 On or around 28 February 2019, Edward Smith of Marsh sent an email to GCUK, attaching documents relating to a requested renewal of cover for the Noviniti Poole Risk under the 2019 90/10 Parallel Policy. Also around this time, GCUK confirmed that there were no known or reported losses and instructed Marsh to renew cover under the 2019 90/10 Parallel Policy in respect of a number of risks, including the Noviniti Poole Risk.

Particulars

a. Email from Edward Smith of Marsh to Sophie Dyke (Insurance Analyst) of GCUK, copying Craig Pinnington (Senior Credit Analyst) of GCUK, and the email address, insurance@greensill.com (GCU.0010.0007.4625), attaching an unsigned Customer Endorsement No 16, in respect of the

Noviniti Poole Risk, under the 2019 90/10 Parallel Policy in favour of GCPL and Greensill Bank (GCU.0010.0007.4650).

b. Email from Sophie Dyke of GCUK to Edward Smith of Marsh, copying Craig Pinnington of GCUK, and the email address, insurance@greensill.com (MAR.0004.0001.9422).

75AB.12 On or around 4 March 2019, Edward Smith of Marsh provided Brereton documents relating to the requested renewal of the 2019 90/10 Parallel Policy and renewal of cover for various risks under that policy, including the Noviniti Poole Risk and the Catfoss DBT Risk. The emails stated *'Greensill have confirmed NKORL'* [no known or reported losses] and had given Marsh the order to bind.

Particulars

a. Email from Edward Smith of Marsh to Brereton dated 4 March 2019 (MAR.0006.0001.1950), attaching:

i. an unsigned copy of Customer Endorsement No 16, in respect of the Noviniti Poole Risk, under the 2019 90/10 Parallel Policy in favour of GCPL and Greensill Bank (MAR.0006.0001.1986); and

ii. an unsigned copy of Customer Endorsement No 34 in respect of the Catfoss DBT Risk (MAR.0006.0001.1957).

75AB.13 On or around 13 March 2019, Brereton provided Marsh with a signed copy of Customer Endorsement No 16 which purported, with effect from 1 March 2019, to endorse Noviniti Poole as a Customer under the 2019 90/10 Parallel Policy, with:

a. an 'Aggregate Customer Limit' of GBP 5,000,000; and

b. a 'Maximum Tenor' of 360 days.

Particulars

Email from Greg Brereton to Edward Smith of Marsh dated 13 March 2019 (MAR.0003.0002.0775), attaching a signed copy of Customer Endorsement No 16, in respect of the Noviniti Poole Risk, under the 2019 90/10 Parallel Policy in favour of GCPL and Greensill Bank (MAR.0003.0002.0776).

75AB.14 On or around 13 March 2019, Brereton provided GCUK (via Marsh) with a signed copy of Customer Endorsement No 34, which purported, with effect from 1 March 2019, to endorse Catfoss DBT as a Customer under the 2019 90/10 Parallel Policy with:

a. an 'Aggregate Customer Limit' of GBP15 million; and

b. a 'Maximum Tenor' of 365 days.

Particulars

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier of Marsh, dated 13 March 2019 (MAR.0002.0001.1472), attaching a signed copy of Customer Endorsement No 34 in respect of the Catfoss DBT Risk in favour of Greensill Bank (MAR.0002.0001.1473 at _0013).

75AB.15 On or around 28 March 2019, Brereton provided GCUK with a signed copy of Customer Endorsement No 48, which purported, with effect from 22 March 2019, to endorse Noviniti Colchester as a Customer under the 2019 90/10 Parallel Policy with:

a. an *'Aggregate Customer Limit'* of GBP 8,700,000;

b. an insured percentage of 90% and a maximum limit of liability of GBP 7,830,000 applied under the 2019 90/10 Master Policy (but not the 2019 90/10 Parallel Policy);

c. the definition of '*Deductible'* in the 2019 90/10 Master Policy was amended so that, if any claim was made under the 2019 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the 10% deductible under cl 3.5 of that policy; and

d. a *'Maximum Tenor'* of 365 days.

Particulars

Email from Brereton to Ewan Berkemeier, Angus Ward and Edward Smith of Marsh, copying Alexandre Bueno and Pual Nash of Marsh, dated 28 March 2019 (BCC.0001.0002.2883), attaching a signed copy of Customer Endorsement No 48 in respect of the Noviniti Colchester Risk in favour of Greensill Bank and GCPL (BCC.0001.0002.2884).

75AB.16 On or around 26 September 2019, Sophie Dyke of GCUK sent an email to Marsh stating that '*Greg* [Brereton] *has agreed to increase the limits by GBP 1.5m on each of Noviniti Poole and Noviniti Colchester after a discussion with Lex*' and requested that Marsh *'confirm these increases with Greg and arrange the updated customer endorsements'*. Later that day, GCUK confirmed that there were no known or reported losses with respect to the Noviniti Poole Risk and requested that Marsh *'please bind'*.

Particulars

Emails between Sophie Dyke of GCUK and Angus Ward and Edward Smith of Marsh dated 26 September 2019 to 1 October 2019 (MAR.0002.0001.2203).

75AB.17 On or around 1 October 2019, Brereton provided Marsh with:

a. a signed copy of Customer Endorsement 16(i) to the 2019 90/10 Parallel Policy in respect of the Noviniti Poole Risk which purported, with effect from 27 September 2019, to increase the

'Aggregate Customer Limit' to GBP 6,500,000; and

b. a signed copy of Customer Endorsement 48(i) to the 2019 90/10 Parallel Policy in respect of the Noviniti Colchester Risk which purported, with effect from 27 September 2019, to increase the 'Aggregate Customer Limit' by GBP 1,500,000 to GBP 10,200,000.

Particulars

Email from Brereton to Edward Smith of Marsh, copying Ewan Berkemeier and Angus Ward, dated 1 October 2019 (BCC.0001.0002.4009), attaching signed copies of Customer Endorsement No 48(i) in respect of the Noviniti Colchester Risk and Customer Endorsement No 16(i) in respect of the Noviniti Poole Risk (BCC.0001.0002.4010).

Representations were misleading

75AB.18 The Catfoss/Noviniti SCF Misrepresentations were false and/or misleading because:

a. having regard to the SCF Representation at subparagraph 75.AB.4a above, the concepts of a 'SCF facility' and 're-invoicing' were used by Greensill, and understood by Brereton, as a form of short-term financing referable to genuine underlying invoices that evidence trade;

b. while GCUK represented that the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risks related to an SCF Facility (which, with respect to Noviniti Poole, involved 'reinvoicing') and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact those risks related to financing that was not based on underlying trade of goods or services by the obligors referable to genuine underlying invoices.

Particulars

a. The fact that the Noviniti Poole Facility was not based on the underlying trade of goods or services by Noviniti Poole referable to genuine underlying invoices is evidenced by:

i. the email from David Keeling of GCUK to Lex Greensill, Roland Hartley-Urquhart of GCUK, Danyon Lloyd of GBAG, Myrjam Tschoeke of GCUK, Michael Gilhuley of GCUK and Brett Downes of GCUK, copying others, dated 30 November 2018 (GCU.0005.0003.1246), attaching a document titled 'Relationship Credit Analysis Pack' for the Noviniti Poole Risk dated 29 November 2018 (GCU.0005.0003.1249). The Relationship Credit Analysis Pack states:

A. *'Facility is currently run on Bramid rails. However, there are no underlying invoices. Instead, funds will be drawn as indicated in drawdown schedule below'; and*

B. *'Previously, the obligor had to provide an itemised list of payees with amounts for GC to consider and approve. Weekly reconciliation of bank payments were then completed … **However, following difficulties in facilitating this between both Greensill and Noviniti, the proposal is to remove these requirements to streamline the process'** (emphasis added)*;

ii. emails between Brett Downes (Chief Risk Officer) of GCUK and David Keeling (Senior Risk Officer) of GCUK, copying Miroslav Kněžický (Senior Credit Analyst) of GCUK and Tom Kennedy (Assistant General Counsel) of GCUK dated 3 to 10 October 2018 (GCU.0013.0003.6486). Amongst other things, on 3 October 2018, Brett Downes states: *'Remember here we are trying to make this look like a future AR deal'*; and

iii. email from Myrjam Tschoeke (Managing Director) of GCUK to Brett Downes of GCUK dated 26 October 2018 (GCU.0010.0005.6766). Amongst other things, Myrjam Tschoeke states: *'There is reference to there not being any invoices, but for the upfront reimbursement of development cost, there should be invoices showing that the payments are for the works and cost specified'*.

b. The fact that the Noviniti Colchester Facility was not based on the underlying trade of goods or services by Noviniti Colchester referable to genuine underlying invoices is evidenced by the fact that the Noviniti Colchester Project was completed in November 2019, but GCUK intended to continue advancing funds to Noviniti Colchester for other purposes, even after completion.

i. 'Case Studies: Colchester Hospital', available: https://noviniti.co.uk/casestudies/colchester-hospital/ [accessed 12 June2023]

ii. Emails between David Keeling (Senior Risk Officer), Henry Middleditch (Vice President), Julian Kirk and Miroslav Kněžický (Senior Credit Analyst) of GCUK, dated 20 March 2019 (GCU.0010.0007.9274**)**. Amongst other things, on 20 March 2019 David Keeling states in relation to the proposed Noviniti Colchester Facility: '*Sources and Uses of Funds – need to control this, the group are haemorrhaging money across all entities, money must be filtering to keep Andrew afloat. This is a huge risk ongoing is Andrews survival if you are looking at long term management of these properties.*" and also '*Proposing no payments to the builder… like*

getting a home loan for building a home but giving the money to you not the builder for work.'

c. The fact that the Catfoss DBT Facility was not based on the underlying trade of goods or services by Catfoss DBT referable to genuine underlying invoices is evidenced by:

i. Minutes of Credit Committee meeting held on 19 December 2018 (GCU.0007.0002.3850). The minutes record that:

A. Myrjam Tschoeke (another Credit Committee member) raised a concern that it was unclear what GCUK was funding in relation to the Catfoss DBT Facility, stating: '*Myrjam: Unsure of what we are actually funding? What is net construction cost we are actually funding? With fees being £10m, this is high, is insurer aware of what we are funding?... we are paying £2m to Andrew, and £10m to Greensill. How are we then funding construction?';*

B. Lex Greensill explained that the Catfoss DBT Facility was to be used to pay the profit portion of the deal upfront and that as part of the deal the Catfoss Group had agreed to pay GCUK a GBP 10,000,000, four year exclusive fee to fund these projects; and

C. Lex Greensill stated 'we are looking at taking the fee and using future transactions to fund" and "confirms his belief, this was something he believed was acceptable funding'.

ii. The terms of the Exclusivity and Fee Letter and the Catfoss DBT Side Letter.

75AB.19 The Catfoss/Noviniti Duration Misrepresentation was false and/or misleading because the Catfoss DBT Risk, Noviniti Poole Risk and Noviniti Colchester Risk had no maximum duration or, in the alternative, a duration longer than 360 or 365 days.

Particulars

a. The fact that the funds advanced under Catfoss DBT Facility had no maximum duration or, in the alternative, a duration longer than 360 days is evidenced by:

i. The effect of clause 1 of the Exclusivity and Fee Letter (CSA.0001.0006.1148) was that GCUK agreed to provide:

A. a short-term working capital facility of up to two years; and

B. a long-dated lease financing facility of up to thirty years,

in respect of the NHS D&B Project (amongst other projects), in return for the Structuring Fee which would be paid out of the Catfoss DBT Facility.

ii. Henry Middleditch (Vice President) of GCUK sent Lex Greensill drafts of the Exclusivity and Fee Letter on 23 November 2018 (GCU.0004.0021.2894, GCU.0004.0021.2896) and on 5 December 2018 (GCU.0004.0021.6560, GCU.0004.0021.6563). On 5 December 2018, Lex Greensill sent a draft of the Exclusivity and Fee Letter to Benjamin Foreman (GCU.0005.0003.3912).

iii. Tom Kennedy (Legal Counsel) of GCUK sent Lex Greensill (and others) drafts of the Catfoss DBT Side Letter on 18 December 2018 (GCU.0005.0003.9121, GCU.0005.0003.9129) and on 19 December 2018 (GCU.0005.0003.9634, GCU.0005.0003.9639).

iv. The effect of clauses 1 and 2 of the Catfoss DBT Side Letter (CSA.0001.0006.1153) was that the Catfoss DBT Facility was for purposes that went substantially beyond those of a typical working capital facility, including to enable Catfoss DBT to pay the Structuring Fee.

b. The fact that the funds advanced under Noviniti Poole Facility had no maximum duration or, in the alternative, a duration longer than 360 days is evidenced by:

i. Email from David Keeling of GCUK to Benjamin Foreman, copying Lex Greensill, Andrew Foreman and Brett Downes, Miroslav Kněžický and Tom Kennedy of GCUK, dated 5 October 2018 (GCU.0004.0018.7417), attaching an 'Indicative Terms Sheet' signed by Lex Greensill (GCU.0004.0018.7419) which states: *'Proposed repayment will be via a restructured loan over 20 years repaid by principal and interest repayments of £180k per annum (plus CPI adjustments)'*;

ii. The Credit Analysis Pack for Noviniti Poole dated 26 October 2018 (GCU.0004.0019.9144) which, under the sub-heading 'Deal Summary', states: *'Both roll and facility tenor are 12 months. At the end of the 12 month period, facility will be renegotiated/restricted on a long dated future receivable amortising on a principle and interest basis over proposed 20 year period with repayments of £180k per annum (plus CPI adjustments)'* and, '*If during the initial 12-month period the facility*

is not restructured or repaid, facility will amortise over a period of one year by way of the instalments referred to above'.

iii. The Relationship Credit Analysis Pack for Noviniti Poole dated 29 November 2018 (GCU.0005.0003.1249) which under the subheading 'Existing Facility Recap' states, *'Before the end of the period, the facility is intended to be renegotiated/restructured as a long dated future receivable amortising facility, on a principle and interest basis, over a 30-year period with repayments of 180k per annum (plus RPI adjustments).*'

iv. Microsoft Teams message from Miroslav Kněžický of GCUK to Andrew Kuyk (Chief Credit Officer) of GCUK dated 27 August 2019 (GCU.0012.0004.7034). Amongst other things, Miroslav Kněžický states: *'I have checked if insurance will still cover potential internal rolls but Sophie is not sure and recommended that we discuss this with Brett as well'*

c. The fact that the funds advanced under Noviniti Colchester Facility had no maximum duration or, in the alternative, a duration longer than 365 days is evidenced by:

i. Draft Credit Analysis Pack for Noviniti Colchester dated 4 December 2018 (GCU.0009.0006.2998) which, under the sub-heading 'Proposed Facility', states: '*Tenor: 12 months. At the end of the period, facility will be renegotiated/restructured on a long dated future receivable amortising on a principle and interest basis over proposed 30-year period with repayments of £320k per annum (plus CPI adjustments)*.' and '*Restructuring of the deal to a long-dated monetisation of future receivables will be subject to a separate submission'*.

ii. Email from David Keeling of GCUK to Brett Downes (Chief Risk Officer) of GCUK dated 20 March 2019 (GCU.0010.0007.9261): 'They think it will fly through with Lex eventually, but we are taking 30 year performance risk on Andrew and Ben Foreman… say no more'.

iii. The terms of the Exclusivity and Fee Letter.

d. GCUK's practice of rolling the debts the subject of the Catfoss DBT Risk, the Noviniti Poole Risk and the Noviniti Colchester Risk, without Noviniti Poole, Noviniti Colchester of Catfoss DBT paying principal instalments of those debts from their own resources, is evident from the documents identified immediately above in the particulars to this paragraph 75AB.19 and is further pleaded at Sections E.2, E.3 and E.4 of Annexure B to this defence.

75AB.20 The NHS Hospital Purpose Misrepresentation was false and/or misleading because the funding advanced to Noviniti Poole, Catfoss DBT and Noviniti Colchester was to be used for purposes unrelated to the NHS hospital projects, including:

a. to pay profit advances to the Catfoss Group;

Particulars

a. Credit Application Report – Catfoss DBT Limited dated 19 December 2018 (GCU.0005.0004.8291), which states:

i. *'Derby Trust has paid for the project directly but would like to be re-financed at the project's completion by selling the space to Catfoss for a set year term for a consideration equal to the Total Development Cost (£13.3mm)'* (at _0004); and

ii. *'The funds raised under the IPA facility will be used as a profit advance to Catfoss and Greensill, relating to the fees anticipated under the re-financing (proceeds raised from 30 years of Derby Trust lease payments, net of the sale amount of the space to the Obligor by the Derby Trust for an amount equal to the costs of construction incurred by the Derby Trust, as well as to cover Catfoss's fees of GBP 10 million to Greensill'* (at _0009).

b. Email from David Keeling to Brett Downes on 20 December 2018 (GCU.0010.0006.4730), recording an "OFF RECORD" summary of a call with the "Catfoss set up team". Mr Keeling says they are going to fund GBP 12,000,000 the following day "*without any CP's met*" with GBP 2,000,000 as a profit advance and GBP 10,000,000 for GCUK's fees. Mr Downes responds "*I know mate this is not cool. Let's debrief but Lex is going to cop it from CC*".

c. Email from David Keeling of GCUK to Lex Greensill, Brett Downes of GCUK, Myrjam Tschoeke of GCUK, Roland Hartley-Urquhart of GCUK, Michael Gilhuley of GCUK and Danyon Lloyd of Greensill Bank dated 9 January 2019 (GCU.0007.0002.3850), which contains the Credit Committee's minutes of meeting for 19 December 2018. The meeting minutes record: *'Lex explained [the Catfoss DBT] deal to CC, difference to the Colchester deal is construction is already progressed and being funded by the NHS trust, the trust is paying the build, so we take no build risk outside releasing the profit portion of the deal up front, being £2m'*. This email was subsequently forwarded to Henry Middleditch of GCUK on 10 January 2019 (GCU.0009.0006.8690).

b. to pay the Structuring Fee to GCUK, which was to be wholly funded from the Catfoss DBT Facility;

Particulars

a. Email from Benjamin Foreman of Catfoss DBT to Lex Greensill dated 13 November 2018 (GCU.0004.0020.5963), in relation to Catfoss Group funding requirements referring to the intention to draw funds, including a "*GBP 1 million advance profit on Derby NHS Deal [and] GBP 1 million advance profit on Burton NHS Deal"*. Benjamin Foreman states that Catfoss DBT and GCUK would *'work on putting the Derby NHS facility in place of £1.0m and the Burton NHS facility of £1.0m in place (£2.0m total) over the coming weeks, to be used as follows:*

£750k to go back into the Poole build cost Pot

£750k modular cash flow

£500k to group cash flow

Total passed to group within the above will be £1.0m and will leave £750k cash flow in the Modular business.'

b. Credit Application Report – Catfoss DBT Limited dated 19 December 2018 (GCU.0005.0004.8291), which states:

   i. 'Proposed is a £15.3mm uncommitted Instalment Payment Agreement (IPA) bridge facility for ("Obligor") that will be used as a profit advance (£2mm) to and cover the company's fees to Greensill, and will hold it for the benefit of Greensill until such a time as they are remitted as per the terms of the fee letter' (at _0004);

   ii. '£15.3mm uncommitted Instalment Payment Agreement facility for Catfoss DBT Limited, £2mm of which as a profit advance and the remainder to re-finance the construction costs of Derby Trust at completion of construction as well as to pay Catfoss' fees to Greensill' (at _0004); and

   iii. 'The funds raised under the IPA facility will be used both as a profit advance to Catfoss and Greensill, relating to the fees anticipated under the re-financing… as well as to cover Catfoss' fees of £10mm to Greensill.' (at _0004).

c. Email from David Keeling of GCUK to Lex Greensill, Brett Downes of GCUK, Myrjam Tschoeke of GCUK, Roland Hartley-Urquhart of GCUK, Michael Gilhuley of GCUK and Danyon Lloyd of Greensill Bank dated 9 January 2019 (GCU.0007.0002.3850), which contains the Credit Committee's minutes of meeting for 19 December 2018. The meeting minutes record:

i. the following exchange between Lex Greensill and Myrjam Tschoeke in respect of the Catfoss DBT Risk:

'Myrjam: Unsure of what we are actually funding? What is net construction cost we are actually funding? With fees being £10m, this is high, is insurer aware of what we are funding? Also could insurers insure completion to cover delay etc?

Lex: Construction cost is £13m, we have sought approval for £15m. The £13m will be used to repay NHS trust who is paying construction and requires refinancing. Fee is not considered disproportionate based on the entire pipeline of transactions modelled over 4 years being £250m (north). Based on this level of potential finance £10m is considered reasonable.

Myrjam: Not disputing fee, however we are paying £2m to Andrew, and £10m to Greensill. How are we then funding construction?

Lex: We are doing a number of these transactions, from the first one we are looking at taking the fee and using future transactions to fund. Also, risk is that we do not fund any future transaction.

Myrjam: I still do not understand from a sources and uses of funds, how do we fund the construction? Myrjam repeated this question twice, and questioned the insurers understanding and the investors.

Lex: The £10m in fees needs to be spread over time across transactions. Lex confirmed his belief, this was something he believed was acceptable funding. Lex confirmed we did not seek completion insurance, this was accepted by Lex, however to be considered, and not as a condition.

Myrjam: Still unsure on the £10m fee, on basis also that if we bundle £50m, then recommends that we look at a market read on if this is able to be placed.

Lex: Lex confirmed/reiterated, transactions conducted previously we understand where they are priced for long dated transactions. Spoken to Lloyds also, who own Scottish Widows who have provided guidance on expected pricing'; and

ii. the following note: *'Myrjam — approved, however wanted discussion outlined on the minutes*.'

d. Email from David Keeling of GCUK to Brett Downes of GCUK dated 20 December 2018 (GCU.0010.0006.4730), in which David Keeling states: *'I am on a call right now with "Catfoss set up team"… they are going to fund £12m*

tomorrow for Derby without any CP's met, this is processing right now with ops/legal/Henry. £2m, profit advance and £10m for our fees, to solicitor (Steve M from Catfoss).'

e. Clause 3 of the Exclusivity and Fee Letter (CSA.0001.0006.1148).

c. to make payments to Andrew Foreman and other entities in the Catfoss Group, including to address the Catfoss Liquidity Issues.

Particulars

a. Document entitled 'Business overview on behalf of Greensill Credit Committee' for the Catfoss Group of companies dated 15 June 2016, prepared in response to *'a request for Due Diligence information'* by Brett Downes (Chief Risk Officer) of GCUK (GCU.0014.0001.4952) that states:

i. 'The Catfoss Group of Companies seeks Greensill Capital's assistance in the Re-financing of the Trading Businesses known as Catfoss Modular and Portable Buildings, Catfoss Cabin Hire and Catfoss Cabin Hire Contracts and the buyback of Marcol's 50% shareholding at the fixed price of £750,000'; and

ii. 'Catfoss Modular and Portable Buildings (CMPB), Catfoss Cabin Hire (CCH) and Catfoss Cabin Hire Contracts (CCHC) is owned 50% with Marcol Industrial (Catfoss) LLP'.

b. Email from David Keeling of GCUK to Brett Downes (Chief Risk Officer) of GCUK, Miroslav Kněžický (Senior Credit Analyst) of GCUK, and Tom Kennedy (Assistant General Counsel) of GCUK dated 10 October 2018 in respect of the Noviniti Poole risk (GCU.0013.0003.6486). Amongst other things, David Keeling states *'The first payment includes £330k straight to Catfoss Manufacturing. How do we know this is just this transaction when they are cash strapped working on other transactions and sales'*.

c. Email from Benjamin Foreman (Catfoss) to Brett Downes (Chief Risk Officer) of GCUK and David Keeling (Senior Risk Officer) of GCUK, copying Lex Greensill, Miroslav Kněžický (Senior Credit Analyst) of GCUK, Ian Roundell (Catfoss) and Neil Hobday (Greensill) dated 15 October 2018 (GCU.0004.0019.2860) which attached, amongst other things, a schedule of *'Assets, Liabilities and Income for Andrew Patrick Foreman'* (GCU.0004.0019.2861). In that schedule, *'Marcol Loan*' is listed as a liability under the sub-heading *'Catfoss Group*' for £750,000.

d. Emails between Lex Greensill and Benjamin Foreman dated 20 November 2018, copying Brett Downes, Miroslav Kněžický and Barnaby Lynch (CFO) of GCUK (GCU.0004.0021.3884). Amongst other things, Lex Greensill

states that *'the components of the draw will be: • Marcol Share Option repurchase ~£760k • Marcol 10% deposit to repurchase site £70k • Poole project next instalment ~£750k • Catfoss Modular working capital ~£250k • Catfoss Group working capital ~£250k*'. On 21 November 2018, Brett Downes sends a further email to Benjamin Foreman stating, *'see below the potential funding we can make available this week … 1. Marcol £760,000 (provided they provide us with evidence of the payout so that we can confirm use of funds); and 2. Marcol 10% purchase of site £70,000 (provide the use is confirmed)*'. On 26 November 2018, Bejamin Foreman responds to Lex Greensill and states *'Thank you for the funds that came over to enable us to satisfy the Marcol commitment'*.

e. Email from Brett Downes of GCUK to Lex Greensill dated 20 November 2018 (GCU.0004.0021.0252). Amongst other things, Brett Downes states: *'I have to say that we can't agree to the drawings below for a number of reasons, least of all this was not approved under the current Poole facility. The Poole facility was approved very specifically for funding of the NHS building and not lifestyle for the Foreman's. Having said that we did specifically mention in the approval wording below that this Marcol purchase could be made*'.

f. Email from Miroslav Kněžický of GCUK to Brett Downes and David Keeling of GCUK (GCU.0009.0006.0259) dated 20 November 2018. Miroslav Kněžický states: '*I understand that we will be buying out Marcol*'. Miroslav Kněžický then emails David Keeling alone and states: *'Remember when I told you that my work is just a joke when it comes to Catfoss and that they will always get what they want regardless the risk?'*. David Keeling responds: *'It is... and you AR head clown! Sir Ronald McDonald'.*

g. Email from Chris Tinsley (Senior Credit Analyst) of GCUK to David Keeling (Senior Risk Officer) of GCUK (GCU.0013.0004.1064) in relation to Noviniti Poole on 29 November 2018 stating: *'We've put all this money out the door already and we don't even know if they've broken ground yet(!) because we don't have a Quant Surveyor or even a condition for a staff inspection'.*

h. Emails between David Keeling, Henry Middleditch, Miroslav Kněžický and Brett Downes of GCUK dated 20 March 2019 (GCU.0010.0007.9274) in which David Keeling states:

   i. in an email to Henry Middleditch: '*Sources and Uses of Funds – need to control this, the group are haemorrhaging money across all entities, money must be filtering to keep Andrew afloat. This is a huge risk ongoing is Andrews survival if you are looking at long term management of these properties.*'

ii. in an email to Brett Downes: '*Brett, summary follows, I mentioned I would need to get you involved if this was urgent because of other matters with the group which I did not go into*.'

iii. in an email to Miroslav Kněžický: '*henry is off the planet. Proposing no payments to the builder... like getting a home loan for building a home but giving the money to you not the builder for work*.'

i. Email from Miroslav Kněžický of GCUK to David Keeling of GCUK dated 2 April 2019 and titled: 'Final Credit Approval: Noviniti Colchester Limited £8.7m' (GCU.0013.0005.2606). Miroslav Kněžický states: '*So you think they are going to use that money settle Renewables outstandings? That money would naturally be then missing somewhere again and the spinning of plates would continue'*.

j. Emails between Henry Middleditch and David Keeling of GCUK, copying Miroslav Kněžický and Stephen Fleming of GCUK, dated 26 September 2019 and titled '*CRL'* (GCU.0010.0010.5218). On 26 September 2019 Henry Middleditch states: '*This will be taken out of other deals (Colchester) or others in the pipeline. Agree this is far from ideal but is part of the larger plan as I understand it'*. David Keeling responds to this email and states: '*Just to confirm I am talking about the Newcastle Waste Catfoss business*'.

k. Credit Application Report - Noviniti Colchester dated 22 October 2019 (GCU.0009.0011.9441), under 'Uses of Profit Advance (Wider Context)' states: '*The following breakdown was provided at the request of the credit committee to give oversight on how the two profit advances provided under the Poole and Colchester facilities were being used to cover expenses incurred at the Renewables site*.'

l. Internal GCUK Memorandum titled 'Catfoss – Risk exposure and ECL provisioning' dated 5 February 2020 (GCU.0009.0013.3863) relating to Noviniti Colchester, Noviniti Poole, Catfoss DBT and Catfoss Renewables, which states: *'£844k of the £1.5m increase in facility was paid to Catfoss Investments to cover expenses and GC interest for Catfoss Renewables'* and p.12 '*Payment to Catfoss as a profit advance to be taken out of their share of the uplift [i]on refinancing (currently estimated at £1.348mm). Profit advance required to support the stability of Catfoss and other group projects (including upcoming and already paid interest payments for the Renewables project)*'.

m. A version of the above Memorandum was circulated internally within GCUK (GCU.0009.0013.4619) including between Henry Middleditch and Miroslav Kněžický of GCUK under an email dated 7 February 2020

(GCU.0009.0013.4618), in which Henry Middleditch states that the Memorandum has been: '*Seen and approved by Lex'*.

75AB.21 The NHS IPU Misrepresentation was false and/or misleading because, at the time the Catfoss DBT Risk was placed, the University Hospitals of Derby and Burton NHS Foundation Trust (**NHS D&B Trust**) had not, in fact, provided IPUs to the borrowers or GCUK, or agreed to provide IPUs to the borrowers or GCUK.

Particulars

Catfoss DBT and the NHS D&B Trust were to enter into a sale and leaseback arrangement at completion of the NHS D&B Project, whereby Catfoss DBT would purchase from the NHS D&B Trust the completed development and then lease it back to the NHS D&B Trust over a 30-year period. This arrangement was required to be in place to facilitate the repayment of the Catfoss DBT IPA. That this arrangement had not yet been entered into at the time of requesting insurance cover is evidenced by the following:

a. Email from Henry Middleditch to Lex Greensill, copying Barnaby Lynch of GCUK dated 4 December 2018 (GCU.0004.0021.6527), in which Henry Middleditch identifies that any IPU or other arrangement was yet to be implemented: *'I would add that it sounded like Derby might benefit from a different type of facility than the IPA being proposed, where the Trust gives an IPU (given the construction is done and it won't be being bought out by a lease facility)?'*

   'It can be inferred from this email that GCUK knew that the arrangement had not been entered into at the time of requesting insurance cover in respect of the Catfoss DBT Risk.

b. Credit Application Report – Catfoss DBT Limited dated 19 December 2018 (GCU.0005.0004.8291 at _0006), which states that the proposed 'Deal Structure' was as follows: *'Derby Trust has paid for the project directly but would like to be re-financed at the project's completion by selling the space to Catfoss for a set year term for a consideration equal to the Total Development Cost (£13.3mm). Derby Trust will then lease back the space at £510-600k p.a. for 30 years. These cashflow will be monetised by Greensill for expected proceeds of a minimum of £15.9mm which will be used to repay the IPA facility amount.'*

c. That the arrangements were not entered into prior to requesting insurance cover is evidenced by the following documents after this time:

   i. Greensill presentation titled 'Lease Financing Structuring Proposal' dated February 2019 (GCU.0014.0001.7945), which states: 'They

are also looking to refinance a project at Derby & Bruton, the structure for which is still under discussion, but will resemble this as closely as possible.'

ii. Email from Henry Middleditch of GCUK to Brett Downes of GCUK, copying Barnaby Lynch of GCUK and Julian Kirk of GCUK, dated 11 March 2019 (GCU.0009.0007.8994), in which Henry Middleditch states, with respect to the Catfoss DBT Risk: '*Unlike the other sites, Catfoss has not yet entered into a sale and lease back with the Trust… Under the [proposed] lease arrangement, the Trust enters into a 30 year lease back arrangement. The Trust is happy to provide an IPU (to Catfoss in the first instance as Greensill will not be financing the lease directly?).'*

Knowledge of falsity of representations

75AB.22 Lex Greensill knew the matters set out in paragraph 75AB.18 to 75AB.21 above.

Particulars

The knowledge of Lex Greensill as to the Catfoss/Noviniti NHS Project Misrepresentations is to be inferred from his involvement in GCUK's dealings with Noviniti Poole, Catfoss DBT and Noviniti Colchester and from his direct involvement in correspondence with BCC associated with the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk as demonstrated by:

a. his knowledge of and involvement in preparing the Exclusivity and Fee Letter and Catfoss DBT Side Letter (see GCU.0005.0003.3912, GCU.0004.0021.6560, GCU.0004.0021.6563, GCU.0004.0021.2894, GCU.0004.0021.2896);

b. his involvement in the request for cover in respect of the Noviniti Poole Risk (BCC.0001.0002.2139);

c. the Credit Analysis Pack for Noviniti Poole dated 26 October 2018 (GCU.0004.0019.9144 at .0004), which identifies Lex Greensill as the 'Sponsor';

d. the Relationship Credit Analysis Pack for Noviniti Poole dated 29 November 2018 (GCU.0005.0003.1249), which identifies Lex Greensill as the 'GC Relationship Owner' as well as both a member of the 'Deal Team' and the 'Sponsor' of the application;

e. the document titled 'Credit Application Report – Catfoss DBT Limited' dated 19 December 2018, which identifies Lex Greensill as the 'GC Relationship Owner' (GCU.0005.0004.8291);

f. the minutes of meeting in respect of the Credit Committee's meeting on 19 December 2018 (GCU.0007.0002.3850);

g. the Credit Application Report for Noviniti Colchester dated 25 March 2019 (GCU.0009.0008.3977), which identifies Lex Greensill as the '*GC Relationship Owner*';

h. the Credit Application Report for Noviniti Colchester dated 26 September 2019 (GCU.0010.0010.5210) and several subsequent versions of the report, including (GCU.0009.0011.9441), (GCU.0009.0020.9584), (GCU.0009.0020.9584) and (GCU.0009.0021.7485), which identify Lex Greensill as part of the '*Facility Team*'.

i. otherwise, the particulars to paragraphs 75AB.18 to 75AB.21 above.

75AB.23 The knowledge of Lex Greensill of the matters set out in paragraphs 75AB.18 to 75AB.21 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.25, 10A.26A and 10A.26B above.

75AB.24 The knowledge of Lex Greensill of the matters set out in paragraphs 75AB.18 to 75AB.21 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.20, 10A.22A and10A.22B above.

75AB.25 Further and in the alternative to paragraphs 75AB.22 to 75AB.24 above, Brett Downes (Chief Risk Officer) of GCUK knew of the matters set out in 75AB.18 to 75AB.21 above.

Particulars

The BCC/Parties refer to the particulars to paragraphs 75AB.18 to 75AB.21 above.

The knowledge of Brett Downes is to be inferred from:

a. his direct involvement in dealings with Noviniti Poole and the Noviniti Poole Facility, including: GCU.0013.0003.6486, GCU.0010.0005.6766, GCU.0009.0005.3302, GCU.0004.0018.7417, GCU.0004.0019.2860, GCU.0004.0021.3884, GCU.0004.0021.0252, GCU.0009.0006.0259, GCU.0013.0003.6486;

b. the Credit Analysis Pack for Noviniti Poole dated 26 October 2018 (GCU.0004.0019.9144) and Relationship Credit Analysis Pack for Noviniti Poole dated 29 November 2018 (GCU.0005.0003.1249), each of which identify Brett Downes as responsible for approving 'Structure / Security / Tenors';

c. his direct involvement in the dealings of the Catfoss DBT Facility, including the following items: GCU.0007.0002.3850, GCU.0009.0007.8994, GCU.0010.0006.4730 and GCU.0009.0007.8994; and

d. his senior position within GCUK as Chief Risk Officer.

Brett Downes' knowledge is otherwise to be inferred as he was a person of substantial commercial experience in the insurance industry and the misrepresentations bore directly on the risk of Noviniti Poole, Catfoss DBT and Noviniti Colchester being unable to repay the amounts advanced to them and thus upon the nature of the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk.

75AB.26 The knowledge of Brett Downes of GCUK of each of the matters identified in paragraphs 75AB.18 to 75AB.21 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

75AB.27 The knowledge of Brett Downes of GCUK of the matters identified in paragraphs 75AB.18 to 75AB.21 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and 10A.22B above.

Knowledge of materiality of representations

75AB.28 Each of the matters referred to in paragraphs 75AB.18 to 75AB.21 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk, Noviniti Colchester Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex's Greensill knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Noviniti Poole being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

75AB.29 Further, or in the alternative to paragraph 75AB.28 above, each of the matters referred to in paragraph 75AB.18 to 75AB.21 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole, Catfoss DBT or Noviniti Colchester.

75AB.30 The knowledge of Lex Greensill of the matters set out in paragraphs 75AB.28 and 75AB.29 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.25, 10A.26A and 10A.26B above.

75AB.31 The knowledge of Lex Greensill of the matters set out in paragraphs 75AB.28 and 75AB.29 10A.283 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.20, 10A.22A and 10A.22B above.

75AB.32 Further and in the alternative to paragraph 75AB.28 above, each of the matters referred to in paragraphs 75AB.18 to 75AB.21 above were matters:

a. which Brett Downes of GCUK knew was material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk, Noviniti Colchester Risk; or

b. alternatively to subparagraph (a), in respect of which Brett Downes was wilfully blind or

recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes was copied into the relevant correspondence with Brereton and BCC associated with the placement of insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk, and Noviniti Colchester Risk including BCC.0001.0001.1379. Brett Downes' knowledge is otherwise to be inferred as they were persons of substantial commercial experience in the insurance industry and the misrepresentations bore directly upon the nature of the Noviniti Poole Risk, Catfoss DBT Risk, and Noviniti Colchester Risk.

75AB.33 Further, or in the alternative to paragraph 75AB.28 above, each of the matters referred to in paragraph 75AB.18 to 75AB.21 above was a matter which a reasonable person in the position of Brett Downes could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole, Catfoss DBT or Noviniti Colchester.

75AB.34 The knowledge of Brett Downes of the matters set out in in paragraphs 75AB.32 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

75AB.35 The knowledge of Brett Downes of the matters set out in paragraphs 75AB.32 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and 10A.22B above.

Misrepresentations were fraudulent

75AB.36 In the premises of paragraphs 75AB.1 to 75AB.3575AB.35 above:

a. Greensill misrepresented the Noviniti Poole Risk, the Catfoss DBT Risk and the Noviniti Colchester Risk;

b. the misrepresentation was knowingly false and fraudulent; and

c. the misrepresentation was known to be material to the decision whether to extend insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk.

75AB.37 If Greensill had not made the Catfoss/Noviniti NHS Project Misrepresentations, insurance cover would not have been issued in respect of the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk at all or, in the alternative, on the same terms in which it purportedly was written.

75AB.38 By reason of the matters pleaded in paragraphs 75AB.18 to 75AB.21 above, IAL is entitled to avoid the Noviniti Poole, Catfoss DBT and Noviniti Colchester Endorsements.

Innocent misrepresentation

75AB.39 In the alternative to the matters pleaded in paragraphs 75AB.36 to 75AB.38 above, by reason of the matters pleaded in paragraphs 75AB.18 to 75AB.21, 75AB.28 and 75AB.32 above, IAL is entitled to reduce its liability under the Noviniti Poole, Catfoss DBT and Noviniti Colchester Endorsements to zero (or such other amount as the court may determine would place IAL in the same position as if the Catfoss/Noviniti NHS Project Misrepresentations had not occurred).

D12.8 Catfoss/Noviniti NHS Project Non-disclosures

Knowledge of underlying matters

75AB.40 At the time of requesting insurance cover for the Noviniti Poole Risk and Catfoss DBT Risk under the 2018 Master Policy and the 2018 Policy, Lex Greensill knew:

a. GCUK had made the Catfoss Renewables Inception Misrepresentations and had not disclosed the matters referred to in paragraph 75.47 when requesting cover for the Catfoss Renewables Risk.

Particulars

The BCC/TM Parties repeat the particulars to paragraphs 75.17 to 75.20 and 75.47 above.

b. the Catfoss Group Matters, including that:

i. GCUK had entered into the Side Deals; and

ii. the Catfoss Liquidity Issues had not been resolved;

Particulars

The BCC/TM Parties repeat the particulars to paragraphs 75.7 to 75.16 above.

c. that the Noviniti Poole Facility and Catfoss DBT Facility would be used to:

i. pay profit advances to the Catfoss Group;

ii. pay the Structuring Fee to GCUK; and

iii. to make payments to Andrew Foreman and other entities in the Catfoss Group, including to address the Catfoss Liquidity Issues.

Particulars

a. The particulars to paragraph 75AB.20 above are repeated.

b. Email from David Keeling of GCUK to Brett Downes, Miroslav Kněžický and Tom Kennedy (Assistant General Counsel) of GCUK dated 10 October 2018 (GCU.0013.0003.6486). Amongst other things, David Keeling states: *'Brett, I think we need to see the building contract also if there is one even. The first payment includes £330k straight to Catfoss Manufacturing. How do we know this is just this transaction when they are cash strapped working on other transactions and sales.'*

75AB.41 At the time the insurance cover for the Noviniti Poole Risks and Catfoss DBT Risks was purportedly renewed under the 2019 90/10 Parallel Policy, Lex Greensill knew:

a. that he had made the Catfoss/Noviniti NHS Project Misrepresentations when initially requesting cover for the Noviniti Poole Risks and Catfoss DBT Risks;

b. the matters referred to in paragraphs 75AB.4041, 75.47 and 75.48 above;

c. on 21 December 2018, GPB 11,400,000 of the Catfoss DBT Facility had been drawn down with:

i. approximately GPB 2,000,000 being paid to Catfoss DBT as a profit advance; and

ii. approximately GBP 10,400,000 being paid to GCUK as pre-payment of the Structuring Fee under the Exclusivity and Fee Letter.

Particulars

a. Email from David Keeling to Lex Greensill, Roland Hartley-Urquhart, Danyon Lloyd of GBAG, Myrjam Tschoeke, Brett Downes and Michael Gilhuley, copying others, dated 19 December 2019 (GCU.0005.0004.0106). Under the '*Deal Review'* section for the Catfoss DBT Facility, David Keeling states: '*Proposal is for a £15.3m uncommitted IPA bridge facility, £2m of this amount is a profit advance with the remainder being used to refinance the construction costs of the NHS Derby Trust (hospital). The advance will also enable the payment of the group fees to Greensill. Legal, construction and funding schedules are not yet available and will be CP's under the proposed approval*.'

b. Email from Tom Kennedy (GCUK) to Steven Millward (Schofield Sweeney), Andrew Foreman and Benjamin Foreman (Catfoss Group) Lex Greensill and Henry Middleditch (GCUK), dated 19 December 2018 (GCU.0005.0003.9784 at 0003). Tom Kennedy writes '*Steven please find attached the PAUF file and illustrative drawdown calculation as*

requested. I understand it's been agreed that Catfoss will be drawing down £2m this week, so the numbers in the attached reflect that.'

c. Email from David Keeling to Brett Downes dated 20 December 2018 (GCU.0010.0006.4730), recording an "OFF RECORD" summary of a call with the "Catfoss set up team". David Keeling states they are going to fund GBP 12,000,000 the following day "*without any CP's met*" with GBP 2,000,000 as a profit advance and GBP 10,000,000 for GCUK's fees. Mr Downes responds "*I know mate this is not cool. Let's debrief but Lex is going to cop it from CC*".

d. Email from Benjamin Foreman (Catfoss Group) to Lex Greensill, Henry Middleditch (GCUK) and others at GCUK dated 21 December 2018 (GCU.0004.0022.2473) under which a '*PAUF request'* is submitted in relation to drawdown under the Catfoss DBT Facility effective 21 December 2018. Attached to the email are the signed '*PAUF authorisation letter'* (GCU.0004.0022.2474) and '*PAUF file*' (GCU.0004.0022.2476).

e. The terms of the Exclusivity and Fee Letter and the Catfoss DBT Side Letter.

d. between 29 January 2019 and 3 February 2019, a further GPB 1,000,000 had been drawdown under the Catfoss DBT Facility.

Particulars

a. Email from Benjamin Foreman (Catfoss Group) to Lex Greensill, Henry Middleditch, David Keeling and others on 28 January 2019 (GCU.0004.0023.2489) in which Benjamin Foreman states 'can you please process the agreed next milestone drawdown from Catfoss DBT Ltd, for £1,000,000 in total. If you can send the prepared PAUF & PAUF Authorisation letter, I will action and return'.

b. Email from Henry Middleditch to Lex Greensill dated 28 January 2019 (GCU.0005.0005.4675), under which Henry Middleditch asks Lex Greensill: 'Are you happy to proceed with these drawdowns.

Poole: £995,430.22

Derby: £1,000,000'

c. Email from Deborah Medforth (Catfoss) to Henry Middleditch and Benjamin Foreman dated 31 January 2019 (GCU.0005.0005.6947), copying Lex Greensill and others, attaching a signed PAUF Authorisation Letter and PAUF File for Catfoss DBT (GCU.0005.0005.6949).

d. Email from Benjamin Foreman to Henry Middleditch dated 2 February 2019 (GCU.0005.0005.7533), copying Lex Greensill, Brett Downes and others, attaching a signed PAUF Authorisation Letter and PAUF file for Catfoss DBT (GCU.0005.0005.7535; GCU.0005.0005.7534).

75AB.42 At the time of requesting insurance cover in respect of the Noviniti Colchester Risk under the 2019 90/10 Parallel Policy, Lex Greensill knew:

a. the matters referred to in paragraphs 75AB.4040, 75AB.4141, 75.47 and 75.48 above;

b. that he had not disclosed the matters referred to in paragraphs 75AB.4040, 75AB.41, 75.47 and 75.48 when initially requesting cover or renewing the Catfoss Renewables Risk, Noviniti Pool Risk and Catfoss DBT Risk;

c. that, contrary to the NHS IPU Representation, the Catfoss Liquidity Issues had still not been resolved, and had in fact worsened;

Particulars

a. The BCC/TM Parties repeat the particulars to paragraphs 75AB.4040 ,75AB.4141 above.

b. Email from David Keeling of GCUK to Brett Downes (Chief Risk Officer) of GCUK dated 20 March 2019 (GCU.0010.0007.9261): '*They think it will fly through with Lex eventually, but we are taking 30 year performance risk on Andrew and Ben Foreman… say no more'*.

c. Emails between David Keeling, Henry Middleditch, Miroslav Kněžický and Brett Downes of GCUK dated 20 March 2019 (GCU.0010.0007.9274) in which David Keeling states:

i. in an email to Henry Middleditch: '*Sources and Uses of Funds – need to control this, the group are haemorrhaging money across all entities, money must be filtering to keep Andrew afloat. This is a huge risk ongoing is Andrews survival if you are looking at long term management of these properties*.'

ii. in an email to Brett Downes: '*Brett, summary follows, I mentioned I would need to get you involved if this was urgent because of other matters with the group which I did not go into*.'

iii. in an email to Miroslav Kněžický: '*henry is off the planet. Proposing no payments to the builder... like getting a home loan for building a home but giving the money to you not the builder for work*.'

d. that GCUK had executed the S44 Exclusivity and Fee Letter, by which GCUK agreed to provide a short-term working capital facility of up to two years and a long-dated lease financing facility

of up to thirty years in respect of the Noviniti Colchester Construction Project (amongst other projects).

Particulars

S44 Exclusivity and Fee Letter (CSA.0001.0006.1148).

75AB.43 At the time of requesting an increase in the customer limit for the Noviniti Poole Risk and Noviniti Colchester Risks under the 2019 90/10 Parallel Policy, Lex Greensill knew:

a. the matters referred to in paragraphs 75AB.4040, 75AB.4141 and 75AB.4242 above

b. that he had not disclosed the matters referred to in paragraphs 75AB.4040, 75AB.4141, 75.48 and 75AB.4242 above, when initially requesting cover or renewing the Catfoss Renewables Risk, Noviniti Poole Risk, Catfoss DBT Risk or Noviniti Colchester Risk;

c. that, contrary to the NHS IPU Representation, the Poole Hospital NHS Foundation Trust and the East Suffolk and North Essex NHS Foundation Trust had not, in fact, provided IPUs to the borrowers or GCUK, or were unlikely to agree to provide IPUs to the borrowers or GCUK, in respect of the Noviniti Poole and Noviniti Colchester Risks;

Particulars

a. Email from Henry Middleditch (GCUK) to Benjamin Foreman (Catfoss Group) copying Neil Hobday, Vesna Vladusic, Julian Kirk and James Hosking (GCUK) dated 17 May 2019 (GCU.0010.0008.8015). Henry Middleditch states: '*Getting the NHS to agree to the IPU will be key as this is the cleanest structure easily. Anything else would require the NHS guaranteeing Catfoss which puts complexity and Catfoss risk into the structure'.*

b. Email from Vesna Vladusic of GCUK to Henry Middleditch of GUCK, Lex Greensill dated 24 May 2019 (GCU.0005.0011.2722). Under the heading *'Catfoss – Poole*', Vesna Vladusic states: '*Ben anticipates that they may push back on providing an IPU on top of the Lease Agreement so we may need to consider alternatives … We are still pushing for the IPU approach'*;

c. Email from Vesna Vladusic of GCUK to Henry Middleditch of GCUK and Lex Greensill dated 31 May 2019 (GCU.0005.0011.2722). Under the heading 'Poole', Vesna Vladusic states: *'NHS will be unable to enter into the IPU in time. Therefore we will need to rely on the lease document and ensure that cash received under the lease are assigned to the Buyer and paid through a segregated account'*;

d. Microsoft Teams message from Miroslav Kněžický (Senior Credit Analyst) of GCUK to Andrew Kuyk (Chief Credit Officer) of GCUK dated 27 August 2019 (GCU.0012.0004.7034). Miroslav Kněžický states: *'I think it would be sensible to give Brett a heads up regarding Noviniti and Colchester as well - especially now when maturity is approaching and NHS IPU still seems far away'; and*

e. Credit Application Report – Noviniti Colchester dated 26 September 2019 (GCU.0010.0010.5205, relevantly attaching GCU.0010.0010.5210) p. 5: *'£150K agreed by Lex as the inducement to get the IPU over the line and onto GC rails'*, '*IPU documentation reviewed by Trust Board for approval whose outstanding comments are focused on aligning IPU document and lease agreement'*, and p. 12 '*The Trust have been presented with the IPU documentation (was not included at the outset of the facility). We are nearing final agreement on these, albeit we do not have direct access to the Trust (being handled via Ben Foreman)*'. Subsequent iterations of the Credit Application Report for Noviniti Colchester dated 22 October 2019 (GCU.0009.0011.9441), 19 January 2021 (GCU.0009.0020.9584), 2 February 2021 (GCU.0009.0021.3927) and 12 February 2021 (GCU.0009.0021.7485) also each include the above wording.

f. Email from Ricardo Oliveira to the Credit Committee, including Lex Greensill and Brett Downes, containing the Credit Committee Meeting Minutes from 27 September 2019 (GCU.0005.0017.1903). The meeting minutes record that Henry Middleditch '*pointed out that, we have not agreed IPU from the trusts yet and that this is still being clarified'. The meeting minutes also record: Roland: Where are we with IPU, as the profit we are advancing is partially based on the fact that we will receive IPU, is there enough profit in the deal based on a down side case of not getting IPU? Lex Confirmed that we are certain there will be IPU from NHS trusts'.*

d. that the increased limits of GBP 1,500,000 for the Noviniti Poole Facility and Noviniti Colchester Facility (total of GBP 3,000,000) were to be used to:

ii. pay incentives or inducements to relevant NHS Trusts, Noviniti Poole and Noviniti Colchester for those NHS Trusts to enter into IPUs;

iii. pay "profit advances" totalling GBP 1,851,154 to support the stability of the Catfoss Group and assist Catfoss Renewables to meet its interest obligations under the Catfoss Renewables Facility.

Particulars

a. Email from Miroslav Kněžický of GCUK to David Keeling of GCUK dated 2 April 2019 with the subject line: 'RE: Final Credit Approval: Noviniti

Colchester Limited £8.7m' (GCU.0013.0005.2606). Miroslav Kněžický states: '*So you think they are going to use that money settle Renewables outstandings? That money would naturally be then missing somewhere again and the spinning of plates would continue'*

b. Emails between Henry Middleditch and David Keeling of GCUK, copying Miroslav Kněžický and Stephen Fleming of GCUK, dated 26 September 2019 and titled '*CRL'*. On 26 September 2019 Henry Middleditch states: '*Agreed Poole will dip into our profit by c.300k. This will be taken out of other deals (Colchester) or others in the pipeline. Agree this is far from ideal but is part of the larger plan as I understand it'*. David Keeling responds to this email and states: '*Just to confirm I am talking about the Newcastle Waste Catfoss business*'.

c. Email from Henry Middleditch to Lex Greensill dated 25 September 2019 (GCU.0005.0016.4700) in which Henry Middleditch states (amongst other things) that in respect of Noviniti Colchester and Noviniti Poole: '*The profit advances would be taken out of Catfoss's share of the re-fi and are required to support the business today'*. In response to this email, Lex Greensill emails Henry Middleditch on 25 September 2019 (GCU.0005.0016.4840) and states: '*Looks good, Henry. You have my full support*.'

d. The Agenda of the Credit Committee Meeting dated 27 September 2019 which was circulated by Craig Pinnington via email on 26 September 2019 to Lex Greensill and the other Credit Committee members, including Brett Downes (GCU.0005.0016.5598).

e. Greensill Credit Application Report – Amendment – Noviniti Colchester Limited dated 26 September 2019 (GCU.0005.0016.5602), which was considered by the Credit Committee for approval of the increase in limit (GCU.0005.0017.1903). The first page records the '*Facility Team'* as including Lex Greensill, Henry Middleditch and Miroslav Knezicky, Tom Kennedy and Will Brown.

f. Greensill Credit Application Report – Amendment – Noviniti Poole Limited dated 26 September 2019 (GCU.0005.0016.5601), which was considered by the Credit Committee for approval of the increase in limit (GCU.0005.0017.1903). The first page records the '*Facility Team'* as including Lex Greensill, Henry Middleditch and Miroslav Knezicky, Tom Kennedy and Will Brown.

g. Email from Ricardo Oliveira to the Credit Committee, including Lex Greensill and Brett Downes, containing the Credit Committee Meeting

Minutes from 27 September 2019 (GCU.0005.0017.1903) that records discussion of *'inducement funds'* being paid to *'Noviniti and NHS'* to obtain IPUs and the payment of a *'profit advance payment… to support the wider group' and to support 'the interest payment by Catfoss Renewables'*.

h. Internal GCUK Memorandum titled 'Catfoss – Risk exposure and ECL provisioning' dated 5 February 2020 (GCU.0009.0013.3863), which states: p.1 *'£844k of the £1.5m increase in facility was paid to Catfoss Investments to cover expenses and GC interest for Catfoss Renewables'*, p.1 '*this revenue of £246k will not be recognised in 2019, given continued uncertainty over other group companies, particularly Catfoss Renewables'*, and p.3 *'Conclusion Approx. £600k of revenue for origination discount and £400k for interest due on Catfoss Renewables has not been recognised as at June 2019 due to uncertainty over the timing of their recoverability given the shorter term cash flow issues across the group, as well as the timing of the invoicing being subsequent to the year end*.' A version of this Memorandum was circulated internally within GCUK (GCU.0009.0013.4619) including between Henry Middleditch and Miroslav Kněžický of GCUK under an email dated 7 February 2020 (GCU.0009.0013.4618), in which Henry Middleditch states that the Memorandum has been: '*Seen and approved by Lex'*.

75AB.44 The knowledge of Lex Greensill of the matters in paragraphs 75AB.4040 to 75AB.4343 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

75AB.45 The knowledge of Lex Greensill of the matters in paragraphs 75AB.40 to 75AB.43 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, 10A.22A and 10A.22B above.

75AB.46 Further and in the alternative to paragraph 75AB.4040 above, at the time the insurance cover was requested for the Catfoss DBT Facility, Danyon Lloyd (Chief Executive Officer of Greensill Bank) knew that the funds advanced under the Catfoss DBT Facility would be used for purposes other than the NHS hospital project, including to:

a. pay profit advances to the Catfoss Group;

b. pay the Structuring Fee to GCUK; and

c. make payments to Andrew Foreman and other entities in the Catfoss Group.

Particulars

The knowledge of Danyon Lloyd is to be inferred from:

a. His senior position as Chief Executive Officer of Greensill Bank, meaning he was a person with substantial commercial experience in the insurance industry and the misrepresentations bore directly upon the risk of Catfoss DBT being unable to repay the amounts advanced to them and thus upon the nature of the Catfoss DBT Risk;

b. His awareness and involvement in matters relating to the Catfoss DBT Facility, including:

i. The Credit Application Report for Catfoss DBT dated 19 December 2018 (GCU.0005.0004.8291).

ii. The Minutes of the Credit Committee Meeting dated 19 December 2018 which were circulated following the meeting by David Keeling by email on 9 January 2019 to Danyon Lloyd and the other Credit Committee members (GCU.0007.0002.3850). The Minutes record that Catfoss DBT was '*Approved on a unanimous basis'*.

iii. Email from David Keeling to Danyon Lloyd and others dated 11 January 2019 (GCU.0005.0004.8290) in which David Keeling states: '*I can confirm FINAL APPROVALS have been obtained from Credit Committee for Catfoss DBT Limited, for £15.3m*' and in respect of insurance confirmation, states: '*Insurance to be arranged as a CP, with likelihood it will be provided by TBCC under a 90-10 policy*'.

iv. Email from Scott Newby to the Risk Committee, including Danyon Lloyd, dated 21 January 2019 (GCU.0012.0003.5037), attaching the 'Risk Committee pack' for the 23 January 2019 Risk Committee Meeting (GCU.0012.0003.5038). The 'Risk Committee pack' includes the 'Chief Risk Officer Report - December 2018' which states: *"TBCC Exposure: The largest insurer exposure continues to be TBCC. This grew again in December as we have added new cover Nokia America AR, Liberty Commodities AR, Catfoss DBT Limited and increased the Bluestone AR facility".*

Further particulars may be provided after completion of discovery by GCUK and GCPL.

75AB.47 The knowledge of Danyon Lloyd of the matters set out in paragraph 75AB.4646 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.25A above.

75AB.48 Further and in the alternative to paragraph 75AB.4141 above, at the time the insurance cover for Catfoss DBT was purportedly renewed under the 2019 90/10 Parallel Policy Danyon Lloyd (Chief Executive Officer of Greensill Bank) knew that, on 21 December 2018, GBP 11,400,000 of the Catfoss DBT Facility had been drawn down, including with approximately: (i) GBP 10,400,000 being paid to GCUK as pre-payment of the Structuring Fee.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 75AB.46 above.

75AB.49 The knowledge of Danyon Lloyd of the matters set out in paragraphs 75AB.4848 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.25A above

75AB.50 Further or in the alternative to paragraphs 75AB.4040 to 75AB.4343 above, Brett Downes (Chief Risk Officer) of GCUK knew each of the matters set out in paragraphs 75AB.4040 to 75AB.4343 above.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 75AB.4040 to 75AB.4343.

75AB.51 The knowledge of Brett Downes of the matters in paragraphs 75AB.4040 to 75AB.4343 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

75AB.52 The knowledge of Brett Downes of the matters in paragraphs 75AB.4040 to 75AB.4343 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and10A.22B above.

Knowledge of materiality

75AB.53 Each of the matters referred to in paragraphs 75AB.4040 to 75AB.4343 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole Risk, Catfoss DBT Risk or Noviniti Colchester Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Noviniti Poole, Catfoss DBT or Noviniti Colchester being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

75AB.54 Further, or in the alternative to paragraph 75AB.5353 above, each of the matters referred to in paragraph 75AB.4040 to 75AB.4343 above was a matter which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole, Catfoss DBT or Noviniti Colchester.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 75AB.5353 above.

75AB.55 The knowledge of Lex Greensill of the matters set out in paragraphs 75AB.5353 and 75AB.5454 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

75AB.56 The knowledge of Lex Greensill of the matters set out in paragraphs 75AB.5353 and 75AB.5454 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.22A and 10A.22B above.

75AB.57 Each of the matters referred to in paragraphs 75AB.4646 and 75AB.4848 above were matters:

a. which Danyon Lloyd knew were material to the decision whether to extend or renew insurance cover in respect of the Catfoss DBT Risk; or

b. alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

a. a person with substantial commercial experience in dealing with credit risks in the finance industry;

b. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

c. a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 10A.11 and 10A.12.a.ii. above); and

d. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the Catfoss DBT Risk.

75AB.58 Further, or in the alternative to paragraph 75AB.5757 above, each of the matters referred to in paragraphs 75AB.4646 and 75AB.4848 above was a matter which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Catfoss DBT Risk.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 75AB.5757 above.

75AB.59 The knowledge of Danyon Lloyd of the matters set out in paragraphs 75AB.4657 and 75AB.4858 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25A above and Danyon Lloyd's position as CEO of Greensill Bank.

75AB.60 Further and in the alternative to paragraph 75AB.5353 above, each of the matters referred to in paragraphs 75AB.4040 to 75AB.4343 above were matters:

a. which Brett Downes (Chief Risk Officer of GCUK) knew was material to the decision of whether to accept or renew the Noviniti Poole Risk, Catfoss DBT Risk or Noviniti Colchester Risk; or

b. alternatively to paragraph (a), in respect of which Brett Downes was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Brett Downes's knowledge is to be inferred as he was a person with substantial commercial experience in the insurance industry and the non-disclosures bore directly on the risk of Noviniti Poole, Catfoss DBT or Noviniti Colchester being unable to repay the amounts advanced to it and thus upon the Noviniti Poole Risk, the Catfoss DBT Risk and the Noviniti Colchester Risk.

75AB.61 Further, or in the alternative to paragraph 75AB.6060 above, each of the matters referred to in paragraphs 75AB.4040 to 75AB.4343 above was a matter which a reasonable person in the position of Brett Downes could be expected to know were material to the decision whether to extend or renew insurance cover in respect of the Noviniti Poole, Catfoss DBT or Noviniti Colchester.

Particulars

The BCC/TM Parties refer to the particulars to paragraph 75AB.60 above.

75AB.62 The knowledge of Brett Downes of the matters in paragraphs 75AB.6060 and 75AB.6161 above can be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.26A and 10A.26B above.

75AB.63 The knowledge of Brett Downes of the matters in paragraphs 75AB.60 and 75AB.6161 above can be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.22A and 10A.22B above.

Breach of duty of disclosure

75AB.64 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraphs 75AB.40 to 75AB.43 above before the cover was placed or renewed for, or limits extended for, the Noviniti Poole Risk, the Catfoss DBT Risk or the Noviniti Colchester Risk.

75AB.65 Greensill's failure to disclose the matters referred to in paragraphs 75AB.40 to 75AB.43 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of the matters pleaded in paragraphs 75AB.4040 to 75AB.6363 above.

Fraudulent non-disclosure

75AB.66 By reason of the matters pleaded in paragraphs 75AB.4040 to 75AB.6363 above, Greensill's failure to disclose the matters referred to in paragraphs 75AB.4040 to 75AB.4343 above was fraudulent.

75AB.67 The cover for the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk would not have been issued if the matters referred to in paragraphs 75AB.4040 to 75AB.4343 above had been disclosed.

75AB.68 In the alternative to the allegation in paragraph 75AB.6666 above, the cover for the Noviniti Poole Risk, Catfoss DBT Risk and Noviniti Colchester Risk would not have been issued or renewed on the same terms if the matters referred to in paragraphs 75AB.4040 to 75AB.4343 had been disclosed.

75AB.69 By reason of the matters pleaded in paragraphs 75AB.6666 to 75AB.6868 75AB.67above, IAL is entitled to avoid the Noviniti Poole, Catfoss DBT and Noviniti Colchester Endorsements.

Innocent non-disclosure

75AB.70 In the alternative to the matters pleaded in paragraphs 75AB.6666 to 75AB.6969 above, and by reason of the matters referred to in paragraphs 75AB.4040 to 75AB.4343 above as pleaded in paragraphs 75AB.6464, 75AB.6565, 75AB.6767 and 75AB.6868 above, IAL is entitled to reduce its liability under the Noviniti Poole, Catfoss DBT and Noviniti Colchester Endorsements to zero (or such other amount as the court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D13 LIBERTY FRANCE

75A.36. [Not used].~~At all material times for the purposes of the Liberty France Risks, Liberty France Aluminium Holdco (**Liberty France**) was a company incorporated under the laws of the United Kingdom.~~

75A.37. [Not used].~~At all material times for the purposes of the Liberty France Risks, Liberty France:~~

~~a. was a non-operational holding company; and~~

~~b. was part of a group of companies known as the "Gupta Family Group Alliance" or "GFG Alliance", associated with Mr Sanjeev Gupta.~~

75A.38. [Not used].~~At all material times for the purposes of the Liberty France Risks, Aluminium Dunkerque SAS was a company incorporated under the laws of France.~~

75A.39. [Not used].~~At all material times for the purposes of the Liberty France Risks, Westford Limited, subsequently known (from around 2019) as Westford Trade Services Limited (Westford), was a company incorporated under the laws of Hong Kong.~~

75A.40. [Not used].~~At all material times for the purposes of the Liberty France Risks, Westford was an entity that:~~

~~a. purported to be a commodities trading house that provided trade finance lending; and~~

~~b. had a close business relationship with the "Gupta Family Group Alliance" or "GFG Alliance" and/or Sanjeev Gupta.~~

~~Particulars~~

~~The relationship between Westford and the "GFG Alliance" is demonstrated by the following facts:~~

~~i. the personal guarantee provided by Sanjeev Gupta and dated 17 April 2020, which guaranteed debts incurred by Westford; and~~

~~ii. the arrangements between GCUK, Westford and Liberty House entered into in around August 2020, which arrangements involved Westford drawing down on its facility with GCUK to notionally make a US$40,000,000 loan to Liberty House, which money was then held by GCUK as collateral for debts owed by the "GFG Alliance" to GCUK.~~

~~Further particulars may be provided following discovery.~~

D13.1 [Not used].~~**Liberty France facility**~~

75A.41. [Not used].~~On or around 15 January 2019, GCUK purported to enter into a supply chain finance facility with Liberty France (the **Liberty France Purported SCF Facility**).~~

~~**Particulars**~~

~~The purported supply chain finance arrangements were recorded in a purported supplier agreement between Liberty France and Westford dated 21 September 2018 (the **Westford Supplier Agreement**) and a Customer Agreement between Liberty France and GCUK dated 15 January 2019 (the **Liberty France Customer Agreement**).~~

75A.42. [Not used].~~The only purported supplier under the facility referred to at paragraph 75A.41 above was Westford.~~

D13.2 [Not used].~~**Placement of cover for Liberty France Risks**~~

75A.43. [Not used].~~On or around 14 and 15 September 2018 and 10 January 2019, Greensill procured BCC to provide insurance cover to Greensill by issuing endorsements under the 2017 and 2019 90/10 Policies in respect of debt owed by Liberty France and/or Aluminium Dunkerque SAS to GCUK (the **Liberty France Risks**).~~

~~**Particulars**~~

~~The procuring occurred by:~~

~~i. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 14 September 2018 with the subject line "Aluminium Dunkerque, Atlantic 57 and Catfoss" and time stamp of 4:28 pm [TOK.001.00125059].~~

~~i. Statements made by Lex Greensill (Greensill) to Greg Brereton (BCC) in a discussion that took place on 15 September 2018.~~

~~ii. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 15 September 2018 time stamp 4:42pm [TOK.001.00125040].~~

~~iii. Email from John Whelan (Greensill) to Greg Brereton (BCC) dated 15 September 2018 with the subject line "Re: Aluminium Dunkerque, Atlantic 57 and Catfoss" and time stamp 9:18pm [TOK.001.00125040].~~

iv. Email from Lex Greensill (Greensill) to Greg Brereton (BCC) dated 10 January 2019 with the subject line "Aluminium Dunkirk" and time stamp of 4:28 pm [TOK.001.00116723].

75A.44. [Not used].On or around 17 September 2018, Greg Brereton signed, and returned to Greensill, Customer Endorsements 29 under the 2017 90/10 Policies in respect of Aluminium France Industries (UK) Limited (the then UK holding company of Aluminium Dunkerque SAS) and Aluminium Dunkerque SAS, which provided that:

e. the aggregate customer limit was USD 60,000,000; and

f. the Maximum Tenor was "180 days from the date the Insured acquires the Debt".

75A.45. [Not used].On or around 12 October 2018, Greg Brereton signed, and returned to Greensill, Customer Endorsements 29(i) under the 2017 90/10 Policies in respect of Aluminium France Industries (UK) Limited and Aluminium Dunkerque SAS, which provided that:

a. the aggregate customer limit was USD 75,000,000;

b. an insured percentage of 66.67% and a maximum limit of liability of USD 50,000,000 applied under the 2017 90/10 Master Policy (but not the 2017 90/10 Parallel Policy);

c. if any claim was made under the 2017 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the relevant deductible (as detailed therein) under cl 3.5 of the Master Policy; and

d. the Maximum Tenor was "180 days from the Insured acquires the Debt".

75A.46. [Not used].On or around 11 January 2019, Greg Brereton signed, and returned to Greensill:

a. Customer Endorsements 29(ii) under the 2017 90/10 Policies in respect of Aluminium France Industries (UK) Limited and Aluminium Dunkerque SAS, which provided that the aggregate customer limit was USD 0.

b. Customer Endorsements 64 under the 2017 90/10 Policies in respect of the Liberty France Risks, which provided that:

i. the aggregate customer limit was USD 75,000,000;

ii. an insured percentage of 66.67% and a maximum limit of liability of USD 50,000,000 applied under the 2017 90/10 Master Policy (but not the 2017 90/10 Parallel Policy);

iii. if any claim was made under the 2017 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the deductible (as detailed therein) under cl 3.5 of the Master Policy; and

iv. the Maximum Tenor was "180 days from the date the Insured acquires the debt".

75A.47. [Not used].On or around 13 March 2019, Greg Brereton signed, and returned to Greensill, Customer Endorsements 35 under the 2019 90/10 Policies in respect of the Liberty France Risks, which provided that:

a. the aggregate customer limit was USD 75,000,000;

b. an insured percentage of 66.67% and a maximum limit of liability of USD 50,000,000 applied under the 2019 90/10 Master Policy (but not the 2019 90/10 Parallel Policy);

c. if any claim was made under the 2019 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the 33.33% deductible under cl 3.5 of the Master Policy; and

d. the Maximum Tenor was "180 days from the date the Insured acquires the debt".

The GFG Long Term Financing Arrangements

75A.47A. [Not used].From at least around 2018, Greensill and Sanjeev Gupta entered into an arrangement whereby GCUK agreed to provide long term financing to group of companies known as the "Gupta Family Group Alliance" or "GFG Alliance associated with Mr Sanjeev Gupta (the **GFG Companies**) in respect of all financing provided, or to be provided in the future, by GCUK to those companies (the **GFG Long Term Financing Arrangements**).

Particulars

Defence of Sanjeev Gupta in proceedings CL-2023-00136 in the High Court of Justice (UK), dated 2 August 2024, para 27

Sanjeev Gupta's third witness statement dated 22 August 2022 in Case No. CR-2021-000622 in the UK Insolvency and Companies Court (**LCL Winding-Up Proceedings**), para 16-17, 27, 30, 32, 34, 36-41

~~Sanjeev Gupta's fourth witness statement dated 31 October 2022 in the LCL Winding-Up Proceedings, para 13-24~~

75A.47B. [Not used].~~Pursuant to the GFG Long Term Financing Arrangements, in around the first quarter of 2020, Greensill and Sanjeev Gupta agreed that if GCUK no longer wished to advance further funds to any of the GFG Companies in respect of existing facilities in place with any of the GFG Companies, it would not seek repayment of funds already made available except on three-years' notice.~~

~~**Particulars**~~

~~The particulars to paragraph 75A.47A above are repeated.~~

D13.3 [Not used].~~**Fraudulent non-disclosure in respect of Liberty France Risks**~~

75A.48. [Not used].~~When seeking to procure cover in respect of the Liberty France Risks under the 2019 90/10 Policies, Greensill did not disclose to Greg Brereton or any representative of BCC or IAL the matters that were the subject of the Liberty Group Fraud Non-Disclosure, the matters pleaded above in respect of the GFG Long Term Financing Arrangements or the matters pleaded at paragraphs 75A.37.b. or 75A.40 to 75A.42 above, including:~~

~~a. the existence of the Westford Supplier Agreement;~~

~~b. that the Liberty France Risks related to debts purportedly owed by Liberty France to Westford, and assigned to GCUK pursuant to the Westford Supplier Agreement;~~

~~c. that Westford was the only purported supplier under the Liberty France Customer Agreement; and~~

~~d. that Westford was a close business associate of the "GFG Alliance" group of companies, of which Liberty France was part, and/or Sanjeev Gupta,~~

~~(together, the **Liberty France Non-Disclosures**).~~

75A.49. [Not used].~~The Liberty France Non-Disclosures:~~

~~a. were material to the decision to underwrite the Liberty France Risks;~~

~~**Particulars**~~

~~The Liberty France Non-Disclosures bore directly on the risk of Liberty France being unable to repay the amounts advanced to it and thus upon the Liberty France Risks.~~

b. were deliberate and occurred in circumstances where Greensill knew that the matters would be material to the decision to underwrite the Liberty France Risks; and

Particulars

i. Lex Greensill, on behalf of Greensill, knew that the matters would be material and acted deliberately on behalf of Greensill not to disclose them.

ii. Deliberate non-disclosure is to be inferred from the significance of the matters that were not disclosed, the nature of Lex Greensill's communications with Greg Brereton (pleaded above) and Lex Greensill's experience in commercial financing and in dealing with underwriters.

c. in the premises, constituted fraudulent non-disclosure.

D13.4 [Not used].**Fraudulent misrepresentation in respect of Liberty France Risks**

75A.49A. [Not used].On or around 14 and 15 September 2018 and 10 January 2019, Greensill represented to Greg Brereton that the maximum tenor under the Liberty France Purported SCF Facility would be 180 days.

Particulars

Paragraph 75.43 above, and its particulars, are repeated.

75A.49B. [Not used].The representation pleaded in paragraph 75A.49A (the **Liberty France Maximum Tenor Misrepresentation**) was a continuing representation.

75A.49C. [Not used].The Liberty France Maximum Tenor Misrepresentation was false or misleading because:

a. Greensill intended to, and did in fact, treat the Liberty France Purported SCF Facility as a long term financing facility pursuant to the GFG Long Term Financing Arrangements.

Particulars

The particulars to paragraph 75A.47A above are repeated.

b. Greensill did not intend, and did not in fact, require funds advanced under the Liberty France Purported SCF Facility to be repaid within 180 days.

75A.49D. [Not used].Greensill knew that the Liberty France Maximum Tenor Misrepresentation was:

a. false or misleading;

~~b. material to the decision whether to advance cover in respect of the Liberty France Risks; and~~

~~**Particulars**~~

~~i. The nature of the lending under the Liberty France Purported SCF Facility, in particular the true nature of the credit risk assumed by Greensill and relevant insureds, was a significant matter in assessing whether the relevant should be bound.~~

~~ii. The Liberty France Maximum Tenor Misrepresentation also bore directly on the integrity and trustworthiness of the Greensill entities as insureds.~~

~~c. in the premises, knowingly false and fraudulent.~~

76. [~~Deleted~~ Not used].

77. [~~Deleted~~ Not used].

78. [~~Deleted~~ Not used].

D13.5 Policy and Endorsements

78A.1 In Federal Court of Australia proceeding no. NSD169/2023, the applicants allege that Liberty France Aluminium Holdco Ltd (**Liberty France**) was endorsed as a customer under the 2019 90/10 Parallel Policy by means of Customer Endorsement No 35 dated 13 March 2019, alleged to be effective 1 March 2019 (the **Liberty France Endorsement**).

Particulars

a. Sixth Amended Statement of Claim in proceeding no. NSD169/2023 dated 24 December 2025 at paragraph 130.

b. Customer Endorsement 35 (CSA.0001.0008.3181).

c. 2019 90/10 Parallel Policy (CSA.0001.0001.3171).

78A.2 At all material times, Liberty France was a company incorporated under the laws of the United Kingdom.

78A.3 At all material times, Liberty France:

a. was a non-operational holding company; and

b. was part of a group of companies known as the "Gupta Family Group Alliance" or "GFG Alliance", associated with Mr Sanjeev Gupta.

78A.4 At all material times, Aluminium Dunkerque SAS (**Aluminium Dunkerque**) was a company

incorporated under the laws of France.

78A.5 At a time presently unknown to the BCC/TM Parties but in or around December 2018, the Liberty Group acquired Aluminium Dunkerque from Rio Tinto, and became a wholly owned subsidiary of Liberty France.

Particulars

Media release by Liberty Steel Group titled 'Liberty completes acquisition of Aluminium Dunkerque' and dated 14 December 2018: Liberty completes acquisition of Aluminium Dunkerque - LIBERTY Steel Group (accessed 4 February 2026).

News release by Rio Tinto titled 'Rio Tinto completes sale of Dunkerque aluminium smelter' and dated 14 December 2018: Rio Tinto completes sale of Dunkerque aluminium smelter | Global (accessed 4 February 2026).

78A.6 At all material times, Westford Limited, (formerly known as Westford Trade Services Limited) (**Westford**), was a company incorporated under the laws of Hong Kong.

D13.6 Liberty France Misrepresentations and No Default Misrepresentation

The Representations

78A.7 Between about 11 to 15 September 2018, Greensill inquired with BCC about the provision of insurance cover with respect to financing provided by GCUK to Aluminium Dunkerque and/or its then holding company, Aluminium France Industries (UK) Limited (**AFI UK**) (**AD Facility**) (which was soon to be sold by Rio Tinto to the Liberty Group later that year).

Particulars

(a) Email from Lex Greensill to Brereton dated 11 September 2018 with the subject line "Aluminium Dunkerque" (GCU.0005.0001.8862) and attachments, including a document titled "Aluminium Dunkerque CAP 11 September 2018" (GCU.0005.0001.8863), which referred to the AD Facility as a *"SCF facility*" with "*tenors up to 180 days*" for Aluminium Dunkerque "*to support the financing of their working capital"* and stated further *"The facility currently being proposed is an SCF programme with Rio Tinto Marketing PTE as the supplier, discounting* [Aluminium Dunkerque's] *payables".*

(b) Email from Lex Greensill to Brereton dated 14 September 2018 with the subject line "Aluminium Dunkerque, Atlantic 57 and Catfoss" (BCC.0001.0002.1575), in which Lex Greensill stated that whilst the customer under the AD Facility would be AFI UK (the former holding company of Aluminium Dunkerque), it would be "*a condition subsequent to closing that Aluminium Dunkerque would guarantee the facility or accedes* [sic] *on a joint and several liability basis within 7 days of closing with Rio*

Tinto". The stated reason for this proposed structure was so that the facility did not run afoul of French government laws regarding financial assistance for acquisitions.

(c) Statements made by Lex Greensill to Brereton in discussions that took place on or around 12 and 15 September 2018.

(d) Emails from Lex Greensill and John Whelan (GCUK) to Brereton dated 15 September 2018 with subject line 'Re: Aluminium Dunkerque, Atlantic 57 and Catfoss' (BCC.0001.0002.1577).

78A.8 As part of this request, Greensill represented to Brereton, among other matters, that:

a) the AD Facility was a 'SCF facility' with maximum 'tenors of up to 180 days' (the **AD SCF Misrepresentation**); and

b) Rio Tinto was, post-sale, going to operate as a supplier to Aluminium Dunkerque with the financing provided under the AD Facility to involve discounting Aluminium Dunkerque's payables (the **Supplier Misrepresentation**).

(together, the **AD Facility Misrepresentations**).

Particulars

The particulars to paragraphs 78A.7 are repeated.

Document titled "Aluminium Dunkerque CAP 11 September 2018" (GCU.0005.0001.8863), which referred to the AD Facility as a 'SCF facility' with 'tenors up to 180 days' for Aluminium Dunkerque 'to support the financing of their working capital', and stated further *"The facility currently being proposed is an SCF programme with Rio Tinto Marketing PTE as the supplier, discounting* [Aluminium Dunkerque's] *payables"*.

78A.9 The AD Facility Misrepresentations were continuing misrepresentations.

78A.10 The AD Facility Misrepresentations were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.20, 10A.21, 10A.22A, 10A.22B, 10A.25, 10A.25A, 10A.26A and 10A.26B above.

78A.11 On or around 17 September 2018, Brereton provided Greensill with a signed copy of Customer Endorsement No 29, which purported, with effect from 17 September 2018, to endorse AFI UK and Aluminium Dunkerque as Customers under the 2017 90/10 Policies, with:

a. an Aggregate Customer Limit of USD60,000,000; and

b. a Maximum Tenor of '180 days from the date the Insured acquires the Debt'.

Particulars

Email from Brereton to John Whelan (GCUK) and Ewan Berkemeier (Marsh), copied to Lex Greensill and Brett Downes (GCUK) (among others), dated 17 September 2018 (AGB.0003.0001.0002) and attaching signed copies of Customer Endorsement 29 in relation to the AD Facility (AGB.0003.0001.0003, pages 1 and 2).

78A.12 Between about 6 to 8 October 2018, Greensill and Marsh requested that Brereton increase the insurance limit with respect to the AD Facility from USD60million to USD75million.

Particulars

(a) Email from Edward Smith (Marsh) to Brereton dated 6 October 2018 with the subject line “Greensill – Aluminium Dunkerque” (GCU.0004.0018.7650), in which Mr Smith states 'Greensill have confirmed NKORL [no known or report losses] and have given us the order to bind'.

(b) Email from Lex Greensill to Brereton dated 6 October 2018 with the subject line “FW: Greensill – Aluminium Dunkerque” (GCU.0004.0018.7728).

(c) Email exchange between Brett Downes and Brereton dated 8 October 2028, with the subject lines 'Are you free for a quick chat on Aluminiun Dunkirk [sic]” and "Aluminiun Dunkirk [sic] - temporary insurance"(GCU.0004.0018.8361).

78A.13 Between about 8 to 10 October 2018, Brereton confirmed to Greensill that an increase in the insurance limit to USD75million could only be on the basis of a reduced 66% indemnity percentage.

Particulars

(a) Email from Brereton to Brett Downes dated 6 October 2018 with the subject line “Re: Greensill – Aluminium Dunkerque” (BCC.0001.0002.1774), stating “*could we indemnify at 66% until I can endeavour to get the ok to ride to higher level?*”.

(b) Email from Brereton to Brett Downes (GCUK) and Ewan Berkemeier (Marsh) dated 8 October 2018 with the subject line “Re: Greensill Priority items for today”, (BCC.0001.0002.1782) stating “*In respect of Aluminium Dunkerique* [sic] *I shared some correspondence with Brett last evening indicating I could agree $75 million at 66% indemnity, until such time as I could arrange the approvals to spike the commitment further…*” .

(c) Email exchange between Brereton and Ewan Berkemeier (Marsh) (among others) dated 10 October 2018 (AGB.0002.0001.0387).

78A.14 On or around 12 October 2018, Brereton provided Greensill (via Marsh) with signed copies of

Customer Endorsements No 29(i), which purported, with effect from 17 September 2018, to endorse AFI UK and Aluminium Dunkerque as Customers under the 2017 90/10 Policies with:

(a) an Aggregate Customer Limit of USD75,000,000;

(b) an insured percentage of 66.66% and a maximum limit of liability of USD 50,000,000 applied under the 2017 90/10 Master Policy (but not the 2017 90/10 Parallel Policy);

(c) the condition that if any claim was made under the 2017 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the relevant deductible (as detailed therein) under cl 3.5 of the Master Policy; and

(d) a Maximum Tenor of '180 days from the date the Insured acquires the Debt'.

Particulars

Email from Brereton to Ewan Berkemeier and Edward Smith (both of Marsh) with subject line "Re: Greensill Priority items for today" dated 11 October 2018 (BCC.0001.0002.1816), attaching signed copies of Customer Endorsements No 29(i) in relation to the AD Facility (BCC.0001.0002.1817).

78A.15 In or around late December 2019 to January 2019, following the sale from Rio Tinto, the final organisation structure for Aluminium Dunkerque had been decided and the ultimate holding company was to be Liberty France rather than AFI UK (as originally intended). In light of this, GCUK proposed to replace the existing AD Facility with a new facility between GCUK and Liberty France (**Liberty France Facility**). It was intended that Aluminium Dunkerque would accede to the new Liberty France Facility shortly after its commencement. The original AD Facility would be terminated and repaid in full contemporaneously with the establishment of the new facility.

Particulars

(a) Email from Simon Nasta (Group General Counsel at Wyelands Capital) to Lex Greensill (among others) dated 24 December 2018 and with the subject line 'Aluminium Dunkirk - Novation Agreement' (GCU.0005.0004.4214), stating: "*In India we briefly discussed potentially moving the existing corporate facility up a level in the Dunkerque corporate structure in order not to cause any danger of a breach under the BR Mezz facility. On that basis and ahead of the drawdown date under the BR Mezz facility please find attached a draft novation agreement in relation to the Greensill facility*".

(b) Email response from Lex Greensill to Mr Nasta dated 2 January 2019 (GCU.0005.0004.4029), proposing instead to "sign a new Customer Agreement with the entity you propose (and create new payment obligations

for us to purchase under that agreement). This would include Aluminium Dunkirk as a co-obligor or guarantor (as originally envisaged)" and "We use the proceeds of this transaction to repay the outstanding payment obligations due under the existing Customer Agreement (and then we terminate the old facility)."

(c) Email from Lex Greensill to Brereton dated 10 January 2019 with the subject line "Aluminium Dunkirk" (BCC.0001.0001.1560).

78A.16 On or around 10 January 2019, Greensill informed Brereton of the matters pleaded in paragraph 78A.15 above, and requested that new customer endorsements were signed in order to give effect to the final structure. As part of that update, Greensill also stated:

(a) Liberty House Group Pty Ltd would be providing a performance guarantee; and

(b) it was intended that Aluminium Dunkerque would accede to the Liberty France Facility 'shortly after its commencement'.

Particulars

Email from Lex Greensill to Brereton dated 10 January 2019 (BCC.0001.0001.1560; BCC.0001.0001.1561; BCC.0001.0001.1562).

78A.17 On or around 10 January 2019, Marsh provided Brereton with drafts of 'NIL' Customer Endorsements 29(ii) and Customer Endorsements 64 and requested that he return signed copies of the endorsements.

Particulars

Email from Edward Smith (Marsh) to Lex Greensill and Brereton copying John Whelan, Brett Downes, Julian Macey-Dare, Ewan Berkemeier, and Sophie Dyke, dated 10 January 2019 with the subject line "Re: Aluminium Dunkirk" and attaching drafts of 'NIL' Customer Endorsement 29(ii) and Customer Endorsement 64 (GCU.0005.0004.7259; GCU.0005.0004.7260; GCU.0005.0004.7261; GCU.0005.0004.7262; GCU.0005.0004.7263), stating "*I have also attached nil endorsements for 29(ii) for GCUK and GB as well. For the GCUK End 64, I have noted that that premium will be offset with what has already been paid for End 29 which is going to be cancelled so we won't invoice for any additional here as the period of cover and limits are the same*".

78A.18 On or around 11 January 2019, Brereton provided Greensill (and Marsh) with signed copies of:

(a) the 'NIL' Customer Endorsements No 29(ii) under the 2017 90/10 Policies to account for the termination of the AD Facility; and

(b) new Customer Endorsements No 64 under the 2017 90/10 Policies in respect of Liberty France and Aluminium Dunkerque (being the replacement Liberty France Facility).

Particulars

Email from Brereton to Edward Smith (Marsh) and Lex Greensill dated 11 January 2019 with the subject line “Re: Aluminium Dunkirk” attaching document titled “endorsement varied 11012019' (BCC.0001.0002.2397; BCC.0001.0002.2398).

78A.19 On or around 1 March 2019, Greensill (through its broker, Marsh) requested that BCC extend insurance cover under the 2019 90/10 Master Policy and 2019 90/10 Parallel Policy in respect of debt owed by Liberty France and/or Aluminium Dunkerque (**Liberty France Risk**) (**Renewal Request**). As part of that Renewal Request, Marsh stated that '*Greensill have confirmed NKORL* [no known or reported losses] *and have given us the order to bind*'.

Particulars

(a) Email from Edward Smith (Marsh) to Brereton dated 1 March 2019 the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0633), attaching a copy of the document styled "Customer Endorsement 35" in respect of the 2019 90/10 Master Policy (AGB.0002.0001.0670).

(b) Email from Edward Smith (Marsh) Brereton dated 1 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0682), attaching a copy of the document styled "Customer Endorsement 35" in respect of the 2019 90/10 Parallel Policy (AGB.0002.0001.0727).

78A.20 On 13 March 2019, Brereton provided Greensill (via Marsh) with signed copies of Customer Endorsements No 35, which purported, with effect from 1 March 2019, to endorse Liberty France as a Customer under the 2019 90/10 Master Policy and 2019 90/10 Parallel Policy, with:

a. an Aggregate Customer Limit of USD75,000,000;

b. an insured percentage of 66.67% and a maximum limit of liability of USD 50,000,000 under the 2019 Master 90/10 Policy (but not the 2019 90/10 Parallel Policy);

c. the condition that if any claim was made under the 2019 90/10 Parallel Policy, GCPL and GCUK would be responsible for the payment of the 33.33% deductible under cl 3.5 of the 2019 90/10 Master Policy; and

d. a Maximum Tenor of '180 days from the date the Insured acquires the debt'.

Particulars

(a) Email of Edward Smith (Marsh) to Brereton dated 1 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0633), attaching

Customer Endorsement No 35 in respect of the 2019 90/10 Master Policy (AGB.0002.0001.0670).

(b) Email of Edward Smith (Marsh) to Brereton dated 1 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0682), attaching Customer Endorsement No 35 in respect of the 2019 90/10 Parallel Policy (AGB.0002.0001.0727).

(c) Email from Edward Smith (Marsh) to Brereton dated 4 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0740), attaching Customer Endorsement No 35 in respect of the 2019 90/10 Parallel Policy (AGB.0002.0001.0767).

(d) Email from Edward Smith (Marsh) to Brereton dated 4 March 2019 with the subject line 'Re: Greensill Standalone Renewal' (AGB.0002.0001.0854) and Customer Endorsement No 35 in respect of the 2019 90/10 Master Policy (AGB.0002.0001.0906).

(e) Email from Brereton to Edward Smith (Marsh) dated 13 March 2019, including Ewan Berkemeier (Marsh), with the subject line 'Re: Greensill Standalone Renewal' (BCC.0001.0002.2781) and attaching a document with various executed customer endorsements under the 2019 90/10 Parallel Policy, including the Liberty France Risk (BCC.0001.0002.2782, page 15).

78A.21 By reason of the matters pleaded in paragraphs 78A.7 to 78A.16 above, including the AD Facility Misrepresentations, at all material times prior to Brereton signing and returning to Greensill the Liberty France Endorsement on 13 March 2019, Greensill represented to Brereton that:

a. the Liberty France Facility was to be on the same terms and of the same nature as the AR Facility (but with Liberty France as the Customer rather than AFI UK and/or Aluminium Dunkerque), such that the new facility was:

b. a 'supply chain facility'; and

i. for short-term lending with maximum tenors of up to 180 days,

(the **Liberty France SCF Misrepresentation**);

c. Rio Tinto was still intended to operate as a supplier to Aluminium Dunkerque with the financing provided under the supply chain facility to involve discounting Aluminium Dunkerque's payables (the **Rio Tinto Supplier Misrepresentation**),

(collectively, the **Liberty France Misrepresentations**).

78A.22 Further, or in the alternative, by reason of the matters pleaded in paragraphs 78A.16 and 78A.19 above, prior to Brereton signing and returning the Liberty France Endorsement on 13 March 2019,

Greensill represented to Brereton that there had been no defaults or non-payments under the AD Facility and/or the Liberty France Facility (**No Default Misrepresentation**).

Particulars

(a) This representation was partly express and party implied.

(b) In so far as it was express, particulars (i) to (iv) of paragraph 78A.19 are repeated. In each of the correspondence referred to at those paragraphs, Greensill (through its broker Marsh) represented to Brereton that it had confirmed there were 'NKORL' , meaning 'no known or reported losses'.

(c) In so far as it was implied, it was implied by the fact that at no time prior to the Renewal Request, or signing of the documents referred to in paragraph 78A.20 above, was Brereton told of any defaults or non-payments under the AD Facility and/or the Liberty France Facility.

78A.23 The Liberty France Misrepresentations and the No Default Misrepresentation were representations made by GCUK, Greensill Bank and GCPL (alternatively, one or more of them).

Particulars

The BCC/TM Parties refer to the particulars in paragraphs 10A.20, 10A.21, 10A.22A, 10A.22B, 10A.25, 10A.25A, 10A.26A and 10A.26B above.

Representations were misleading

78A.24 The Liberty France SCF Misrepresentation was false and/or misleading because:

(a) having regard to the SCF Representation at paragraph 10A.27 above the concept of an 'SCF facility' was used by Greensill, and understood by Brereton, as a form of short-term financing referable to genuine underlying invoices that evidence trade;

(b) while Greensill represented that the AD Facility and/or the Liberty France Facility related to an SCF Facility with 'tenors of up to 180 days' and relatedly, a form of short-term financing referable to genuine underlying invoices that evidence trade, in fact:

i. the facilities related to financing facilities with no maximum duration or, in the alternative, a duration longer than 180 days;

ii. Greensill considered the Liberty France Facility was more akin to a 're-invoicing deal due to the single supplier (Westford) providing consumables'; and

iii. Greensill did not intend, or alternatively did not maintain a continuing satisfaction, that the financing facilities be based on the underlying trade of goods or services by Liberty France and/or Aluminium Dunkerque;

Particulars

The fact that the facilities had no maximum duration or, alternatively, a duration longer than 180 days is evidenced by, or can otherwise be inferred from:

a. the matters pleaded at subparagraphs 78A.24(d), 78A.24(e) and 78A.(b)(d) below, and the particulars thereto;

b. defence of Sanjeev Gupta in proceedings CL-2023-020136 in the High Court of Justice (UK), dated 2 August 2024, para 27.

c. Sanjeev Gupta's third witness statement dated 22 August 2022 in Case No. CR-2021-000622 in the LCL Winding-Up Proceedings, para 16-17, 27, 30, 32, 34, 36-41.

d. Sanjeev Gupta's fourth witness statement dated 31 October 2022 in the LCL Winding-Up Proceedings, para 13-24.

The fact the Greensill considered the Liberty France Facility was not an SCF facility is evidenced by, or can otherwise be inferred from at least the following:

a. to be a 're-invoicing facility' rather than supply chain finance is evidenced in the minutes of the Greensill Credit Committee held on 21 September 2018 (GCU.0004.0018.2948), attended by Lex Greensill, Brett Downes, Roland Hartley-Urquhart, Myrjam Tschoeke, Mike Gilhuley and Danyon Lloyd, which describe the Liberty France Facility as a *'re-invoicing deal due to the single supplier (Westford) providing consumables'*;

b. email from Craig Pinnington to Vesna Vladusic and Lewis Protheroe copying Henry Middleditch dated 5 March 2019 (GCU.0013.0004.9766), which states: "*If we get the SCF they* [Liberty] *already have running with* AD [Aluminium Dunkerque] *acceding to it then we could start actually running it as an SCF facility once some of the existing maturities clear*".

The fact that the facilities were not based on underlying invoices evidencing trade of goods or services, or alternatively that it was not intended by GCUK that the invoices would relate to the trade of goods or services, may be inferred from:

c. the particulars to subparagraph 78A.24(c) below; and

d. the matters alleged in paragraph 78A.25 below, and the particulars thereto.

(c) funds borrowed from GCUK under the AD Facility and/or the Liberty France Facility were used for purposes other than supply chain finance, including to discharge maturities owed by Simec and Westford to GCUK and to buy back other notes;

Particulars

(a) Email from Lex Greensill to Sanjeev Gupta (GFG) dated 20 September 2018 with the subject line 'RE: AD and SIMEC' (GCU.0005.0002.0321), in which Lex states: 'Monday 24 October – We are going to do an initial draw down under the Aluminium Dunkirk SCF facility such that the net proceeds are $30mm. These proceeds will not be paid to Westford or Liberty House Group, but will be retained by Greensill and discharge the $30mm maturity due by SIMEC on Monday 24 October'.

(b) Email from Craig Pinnington to Barnaby Lynch, Liz Boyes and Patrick Davis (GCUK) dated 20 September 2018 with the subject line 'RE: RCAP Aluminium France Industries UK- aluminium Dunkerque - 18 September 2018 LB Comments.docx' (GCU.0010.0005.0595), in which Mr Pinnington states: 'As I understand it, the first $30m is being used to repay the SIMEC amounts currently in HIF, then the next $30m will be to fund this acquisition, so we should expect $60m to be in use pretty much continuously, as they will presumably draw down again once these mature'.

(c) Email from Brett Downes to Barnaby Lynch and Craig Pinnington (all Greensill) dated 20 September 2018 with the subject line 'RE: Aluminium Dunkirk' (GCU.0009.0005.0121), in which Brett states: 'Yep. Westford is the supplier on both trades and the beneficiary is Liberty House Group, however the cash in the first trade will be retained by us and used to payoff SIMEC. I don't think we can put this last piece in the RCAP. I am not sure how to deal with it'.

(d) Emails between Lex Greensill and Sanjeev Gupta dated on or around 2 October 2018 (GCU.0004.0018.4823) with the subject line 'Re: Westford', in which Lex states: 'Please ensure that my team are not told that you are using the AD cash to fund the Westford maturity.' , and Sanjeev replies: 'Won't sir, in fact won't tell mine either'.

(e) The additional USD15million funding (when the AD Facility limit was increased from USD60,000,000 to USD75,000,000) was used to "buy back [GCUK's] uninsured GFG related positions from the CS HIF", as indicated in an email from Lex Greensill to Barnaby Lynch, Valerie Kirkaldy, Liz

Boyes and John Luu, including Brett Downes and Robert Hough dated 8 October 2018 with the subject line 'FW: HIF GFG' (GCU.0013.0003.6173).

(d) from at least around 2018, Greensill and Sanjeev Gupta entered into an arrangement whereby GCUK agreed to provide long term financing to group of companies known as the "Gupta Family Group Alliance" or "GFG Alliance" associated with Mr Gupta in respect of all financing provided, or to be provided in the future, by GCUK to those companies (the **GFG Long Term Financing Arrangements**).

Particulars

a. Defence of Sanjeev Gupta in proceedings CL-2023-00136 in the High Court of Justice (UK), dated 2 August 2024, para 27.

b. Sanjeev Gupta's third witness statement dated 22 August 2022 in Case No. CR-2021-000622 in the UK Insolvency and Companies Court (**LCL Winding-Up Proceedings**), para 16-17, 27, 30, 32, 34, 36-41.

c. Sanjeev Gupta's fourth witness statement dated 31 October 2022 in the LCL Winding-Up Proceedings, para 13-24.

(d) pursuant to the GFG Long Term Financing Arrangements, in around the first quarter of 2020, Greensill and Sanjeev Gupta agreed that if GCUK no longer wished to advance further funds to any of the GFG Companies in respect of existing facilities in place with any of the GFG Companies, it would not seek repayment of funds already lent except on three years' notice.

Particulars

The particulars to subparagraph 78A.24(d) above are repeated.

78A.25 The Supplier Misrepresentation was false and/or misleading because:

a) the sole 'supplier' under the AD Facility and/or the Liberty France Facility was, or was at all times intended to be, Westford;

Particulars

The fact that Rio Tinto was not a supplier and Westford was (or was intended to be) the sole supplier is evidenced by:

a. the supplier agreement dated 21 September 2018 between GCUK and Westford, provided in support of the Liberty France claim under the 2019 90/10 Parallel Policy (**Supplier Agreement**);

b. the fact that no supplier agreement with Rio Tinto has been provided;

c. the PAUFs submitted in respect of the facilities only identified Westford as supplier (GCU.0009.0016.9803; GCU.0009.0021.0032);

d. email from Vicky Burch to the Greensill Credit Risk Team (among others) dated 27 September 2018 (GCU.0005.0002.1961), confirming approval of the 'new SCF facility' for AFI UK and Aluminium Dunkerque by the Greensill Credit Committee and attaching a document titled 'CAP Aluminium Dunkerque – vCC 19 September 2018' (GCU.0005.0002.1962), which refers to Westford being "*set up as the supplier under the program*" (see page 2);

e. email from Craig Pinnington to Roland Hartley-Urquhart, Lex Greensill, Danyon Lloyd, Brett Downes and the Greensill Credit Risk Team (among others) dated 20 September 2018 (GCU.0005.0002.0246), attaching a 'Credit Analysis Pack' and 'Relationship Credit Analysis Pack' in support of a request for a "*US$60m SCF facility […] initially to Aluminium France Industries UK Ltd, with Aluminium Dunkerque SAS to accede within 14 days. Max roll tenors 180 days, and sole supplier Westford Trade Services under the programme*", (GCU.0005.0002.0247; GCU.0005.0002.0248).

f. the Credit Application Report submitted to the Greensill Credit Committee on 16 January 2019 in respect of the new Liberty France Facility, which states: "*Westford Trade* Services […] *will be set up as the supplier under the program*" (GCU.0009.0006.9826; GCU.0009.0006.9827).

b) Westford was an entity that:

i. purported to be a commodities trading house that provided trade finance lending;

ii. had a close business relationship with the GFG Alliance and/or Sanjeev Gupta;

Particulars

The relationship between Westford and the GFG Alliance is demonstrated by at least the following facts:

a. In November 2016, Hande Elmener (Westford) sent an email to Lex Greensill (among others) dated 22 November 2016 (GCU.0001.0006.6555) in which Westford, at Mr Gupta's request, sent to Lex Greensill a draft Heads of Agreement (GCU.0001.0006.6555) to facilitate Greensill's investment in Westford;

b. the personal guarantee provided by Sanjeev Gupta and dated 17 April 2020 (BCC.0001.0006.4376);

c. the arrangements between GCUK, Westford and Liberty House (another GFG Alliance entity) entered into in around August 2020, which arrangements involved Westford drawing down in its facility with GCUK to notionally make a US$40,000,000 loan to Liberty House, which money was then held by GCUK as collateral for debts owed by the "GFG Alliance" to GCUK.

c) Westford did not have a genuine commercial business relationship with Aluminium Dunkerque, AFI UK or Liberty France.

Particulars

The absence of a genuine commercial business relationship is evident, or to be inferred, from at least the following facts:

a. The 'invoices' identified in the PAUFs were originated within Greensill (who determined the amount and maturity date for the invoices), and were not genuine invoices for goods or services supplied by Westford to Aluminium Dunkerque, AFI UK or Liberty France. For example:

i. On 19 September 2018, Patrick Davis (GCUK) sent an email to Ian Bryan and Chris Lockhart (both GCUK), copied to others at Greensill (GCU.0004.0018.1632), which stated: "*Can you please draw up a mock PO file (backwards calculate the gross) for 10 PO's staggered up to the max 180 day tenor (they are looking for maturities in the 155-180 bracket so split these every couple of days)…If you can get the file back to me in the next hour or so, so that I can circulate for approval and confirm maturity staggering that would be great*" and sent a further email on the same date in response to a draft PO file, stating "*Those figures look too round for me, we need to have a net settlement of 30mm – which means the gross PO lines will need to be slightly larger than agg. 30mm*". The "invoices" referred to in the PAUF included future dated invoices;

ii. On 19 September 2018, Barnaby Lynch sent an email to Lex Greensill, among others, with the subject line 'RE: Aluminium Dunkirk', attaching what was described as a "mock PO" for the Aluminium Dunkerque transaction based on an assumption of 10 invoices and notes "*we intend to then send this to WTS* [Westford Trade Services] *(or to Liberty?) on Friday for confirmation/submission*" (GCU.0005.0001.9846).

iii. On 21 September 2018, Patrick Davis sent an email to Chris Lockhart and Ian Bryan to create the PO file and the PAUF to be used for the trade on the following Monday (GCU.0004.0018.1632).

b. Further to the above, the PAUF submissions with respect to the Liberty France Facility, including those dated 30 July 2020 and 15 January 2021, refer to invoices with future dates and identifies Westford as the sole supplier (GCU.0009.0016.9803), (GCU.0009.0021.0032).

c. In an email exchange between various representatives of Greensill and GFG Alliance entities over the course of 19 and 20 September 2018 with the subject line "Re: Aluminium Dunkirk [sic]", Brett Downes (CRO of Greensill) states: "*I am a little sketchy as to how or who we pay the first US$30m to in the sense of a supplier. I know it is not going to be Westford, or is it*?". In a subsequent email in the chain (on 20 September 2018 at 13:27), Barnaby Lynch sent an email (including Craig Pinnington) in which he stated "*One thing that is not clear to me is what receivables Westford are actually selling to LHG? Do either of you have any clarity on this? I will ask Lex if not*". Mr Downes responded "*Yep. Westford is the supplier on both trades and the beneficiary is Liberty House Group, however the cash in the first trade will be retained by us and used to payoff SIMEC. I don't think we can put this last piece in the RCAP. I am not sure how to deal with it*." (GCU.0009.0005.0121).

d. When first provided with a draft of the Supplier Agreement on 20 September 2018, Hande Elmener (Westford) wrote to Barnaby Lynch to seek clarification, stating "*I just want to understand the structure for my own sake. For example what are these receivables that I'm to be selling to you*". The response from Mr Lynch was "*Copying Jay in as the underlying trade is a matter between yourselves and Liberty House Group*" (GCU.0005.0002.0322).

e. On 5 March 2019, Craig Pinnington sent an email to Vesna Vladusic and Lewis Protheroe, copying Henry Middleditch, with the subject line 'Re: Aluminium Dunkirk – New Facility' in which he stated "*Me and Henry were on a call with Liberty House group today, and there was someone on from Aluminium Dunkerque basically enquiring if they could get an SCF facility in place. Seems to be a lot of left hand not knowing what the right is doing there. If we get the SCF they already have running with* AD [Aluminium Dunkerque] *acceding to it then we could start actually running it as an SCF facility once some of the existing maturities clear*" (GCU.0013.0004.9766).

78A.26 The No Default Misrepresentation was false and/or misleading because:

(a) by March 2019, there was a trend of late payments by Liberty under their financing programmes with GCUK (including, specifically, the Liberty France Risk), and that this was a continuation of a broader trend of late payments for a number of months; and

Particulars

Email from Henry Middleditch to Lex Greensill dated 7 March 2019 with subject title 'Liberty Late Payments' (GCU.0004.0024.4664), in which he states:

> *There has been a trend in the last few months of Liberty paying late under their programmes. I think it may be worth making Sanjeev aware of this before it becomes the norm. At this point, I believe it to be predominately an operational issue and a lagging factor of the year end liquidity pressures.*
>
> *We currently have the following outstanding all due to be paid today, but some 2 days late now.*
>
> *Liberty Aluminium Holdco Ltd – USD 3,132,918.54 – Due to CS*
>
> *[…]*
>
> *I have explained to them that the nature of the notes distribution means that timely payment is essential.*

(b) by at least early March 2019, GCUK was funding maturities or "topping up" the Liberty France Facility and/or rolling maturities that fell due; and

(c) further, the GFG Liquidity Issues, GFG Defaults and GFG Top Up Practice.

Particulars

The particulars to paragraph 10A.33G are repeated.

GCUK had a practice of permitting Liberty France to draw on the Liberty France Facility in order to cover payment obligations without Liberty France in fact repaying any amount to GCUK from its own resources, which effectively extended the term of the finance GCUK provided to Liberty France. This practice is further pleaded at Section C.7 of Annexure B to this defence.

Knowledge of falsity of representations

78A.27 Lex Greensill knew each of the matters pleaded in paragraphs 78A.24 to 78A.26 above.

Particulars

(a) Lex Greensill was a key proponent of the facility and was involved from early proposals for an SCF programme for Rio Tinto (when Aluminium Dunkerque

was owned by Rio). See, for example, the email from Myrjam Tschoeke to Vesna Vladusic, Craig Pinnington, David Keeling, the Greensill Credit Risk Team and Brett Downes (all Greensill) dated 30 August 2018 with time stamp 6:54am (UTC) and title 'RE: Scope Request – Aluminium Dunkerques Societe Actions Simplifiee' (GCU.0013.0003.2393);

(b) in the Credit Analysis Pack and Relationship Credit Analysis Pack submitted to Greensill Credit Committee on or around 13 September 2018 for a "*US$30M SCF facility to Aluminium Dunkerque with maximum roll tenor of 180 days and sole supplier Rio Tinto Marketing PTE*", Lex Greensill is identified as the 'Relationship Owner' (GCU.0005.0001.9246), (GCU.0005.0001.9247), (GCU.0005.0001.9248).

(c) The knowledge of Lex Greensill can otherwise be inferred from:

i. His membership of the Credit Committee which assessed and approved the facility; and

ii. the fact that he was a recipient or sender of emails particularised in paragraphs 78A.24 to 78A.26 above.

Further particulars may be provided after completion of discovery by GCUK.

78A.28 The knowledge of Lex Greensill of the matters set out in paragraphs 78A.24 to 78A.26 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25 above.

78A.29 The knowledge of Lex Greensill of the matters set out in paragraphs 78A.24 to 78A.26 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20A above

78A.30 Further and in the alternative to paragraph 78A.27 above, another officer and employee of GCUK, Craig Pinnington (Senior Credit Analyst), knew the matters set out in paragraphs 78A.24 to 78A.26 above (or some of them).

Particulars

(a) The knowledge of Craig Pinnington is to be inferred from the fact that he was a recipient or sender of emails particularised in paragraphs 78A.14 to 78A.21 above.

(b) The knowledge of Craig Pinnington is otherwise to be inferred from his involvement of in dealings with risks involving the GFG Alliance, and specifically the Aluminium Dunkerque facility.

Further particulars may be provided after completion of discovery by GCUK.

78A.31 The knowledge of Craig Pinnington of the matters identified in paragraph 78A.30 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.26A and 10A.26B above

78A.32 The knowledge of Craig Pinnington of the matters identified in paragraph 78A.30 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.22A and 10A.22B above.

78A.33 Further and in the alternative to paragraphs 78A.27 and 78A.30 above, Danyon Lloyd knew the matters set out in paragraphs 78A.24 to 78A.26 above.

Particulars

The knowledge of Danyon Lloyd is to be inferred from his involvement within GCUK's Credit Committee, in addition to the following documents:

a. Email from Vicky Birch to (among others) the Greensill Credit Risk Team, including Danyon Lloyd, on 27 September 2018 with the subject line 'GFG ALLIANCE - ALUMINIUM FRANCE INDUSTRIES UK LTD - APPROVED - FRIDAY 21ST SEPTEMBER 2018', confirming approval of the "new SCF facility" for Aluminium France Industries UK Limited and Aluminium Dunkerque SAS by the Greensill Credit Committee and attaching a copy of the 'CAP Aluminium Dunkerque – vCC 19 September 2018', (GCU.0005.0002.1961), (GCU.0005.0002.1962).

b. Minutes of the Greensill Credit Committee held on 21 September 2018 (GCU.0004.0018.2948), attended by Lex Greensill, Brett Downes, Roland Hartley-Urquhart, Myrjam Tschoeke, Mike Gilhuley and Danyon Lloyd.

c. Email from Craig Pinnington to (among others) Roland Hartley-Urquhart, Lex Greensill, Danyon Lloyd, Brett Downes and the Greensill Credit Risk Team (all Greensill) dated 20 September 2018 with the subject line 'Credit Approval- Aluminium Dunkerque/Aluminium France Industries UK, A GFG

Alliance' attaching a Credit Analysis Pack and Relationship Credit Analysis Pack for Aluminium Dunkerque SAS (GCU.0005.0002.0246), (GCU.0005.0002.0247) and (GCU.0005.0002.0248).

d. Email from David Keeling to Lex Greensill, Brett Downes, Danyon Lloyd and other members of the Greensill Credit Committee and Greensill personnel dated 28 March 2019 (GCU.0005.0008.2406)

e. Email from Brett Downes to David Keeling, Danyon Lloyd, Lex Greensill, Michael Gilhuley, Myrjam Tschoeke and Roland Hartley-Urquhart dated 29 March 2019 with the subject 'RE: GREENSILL CAPITAL – CREDIT COMMITTEE MEETING – AGENDA Friday 29th of March 2019' (GCU.0005.0008.2824).

The knowledge of Danyon Lloyd is otherwise to be inferred from his involvement of in dealings with risks involving the GFG Alliance, including the following items:

a. Email from Alan Parks to Lex Greensill copying Danyon Lloyd and others (all Greensill) dated 24 October 2016 with time stamp 3:33pm (UTC) and title 'EOD Balances' (GCU.0001.0005.8527) which states "*$1m due in from GB tomorrow to cover SIMEC"*

b. Email from Al Eadie to Brett Downes and others copying Danyon Lloyd and others (all Greensill) dated 27 February 2019 with time stamp 10:00am (UTC) and title 'Liquidity' (GCU.0004.0024.1878) which states "*Given GCUK balance sheet is being spanked by GFG currently we should be careful committing to any GCUK funding of assets this week*."

c. Danyon Lloyd's receipt of GCUK's EOD balance reports from at least October 2016 (GCU.0001.0005.6408) which from around November 2018 included a "key movements" summary (GCU.0004.0022.4265, GCU.0005.0007.5625). This summary detailed amongst other things, top ups or payments made by GCUK. from on or around 18 March 2019, the EOD balance reports included a dedicated "top up's" section which recorded the amount of money paid by GCUK to cover a maturity (GCU.0005.0007.7015).

d. Email from Alan Parks to Lex Greensill, copying Danyon Lloyd (amongst others) dated 8 March 2019 with the subject line 'EOD Balances', which stated '$6.2M Aluminium France Paid to Redemption, due back to GCUK T+2'. (GCU.0005.0007.2819)

Danyon Lloyd's knowledge is to further be inferred from the fact that he was copied on GCUK's EOD balance reports from at least October 2016 (GCU.0001.0005.6408),

which from around November 2018 included a "key movements" summary which recorded, amongst other things, top ups or payments made by GCUK (e.g. GCU.0004.0022.4265; GCU.0005.0007.5625) from on or around 18 March 2019, the EOD balance reports included a dedicated "top up's" section which recorded the amount of money paid by GCUK to cover a maturity (GCU.0005.0007.7015). These reports regularly detailed the position in relation to the Aluminium Dunkerque facility (see, eg, GCU.0004.0024.5463 GCU.0005.0007.2819).

Further particulars may be provided after completion of discovery by GCUK.

78A.34 The knowledge of Danyon Lloyd of the matters identified in paragraph 78A.33 above is to be attributed to Greensill Bank.

Knowledge of materiality of representations

78A.35 Each of the matters referred to in paragraphs 78A.24 to 78A.26 above were matters:

(a) which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty France Risk; or

(b) alternatively to (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty France being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

78A.35A Further or in the alternative to 78A.35 above, each of the matters referred to in paragraphs 78A.24 to 78A.26 above were matters which a reasonable person in the position of Lex Greensill could be expected to know was material to the decision whether to extend insurance cover in respect of the Liberty France Risk.

Particulars

The BCC/TM Parties refer to the particulars in 78A.35 above

78A.36 The knowledge of Lex Greensill of the matters set out in paragraph 78A.24 to 78A.26 is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25 above.

78A.37 The knowledge of Lex Greensill of the matters set out in paragraphs 78A.24 to 78A.26 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20 above

78A.38 Further and in the alternative to paragraph 78A.24 to 78A.26 above, each of the matters in paragraphs 78A.24 to 78A.26 above were matters:

(a) which Craig Pinnington (Senior Credit Analyst of GCUK) knew were material to the decision whether to extend or renew insurance cover in respect of the Liberty France Risk; or

(b) alternatively to subparagraph (a), in respect of Craig Pinnington was wilfully blind or recklessly indifferent to the possibility that his were material to that decision.

Particulars

Craig Pinnington's knowledge is to be inferred by virtue of their position and experience in placing insurance on behalf of Greensill.

78A.38A Further or in the alternative to 78A.38 above, each of the matters referred to in paragraphs 78A.24 to 78A.26 above were matters which a reasonable person in the position of Craig Pinnington could be expected to know was material to the decision whether to extend insurance cover in respect of the Liberty France Risk.

Particulars

The BCC/TM Parties refer to the particulars in 78A.38 above

78A.39 The knowledge of Craig Pinnington of the matters set out in in paragraph 78A.38 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.26A and 10A.26B above.

78A.40 The knowledge of Craig Pinnington of the matters set out in paragraph 78A.38 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to the particulars to paragraphs 10A.22A and 10A.22B above.

78A.41 Further and in the alternative to paragraph 78A.35 and 78A.38 above, each of the matters in paragraphs 78A.24 to 78A.26 above (or some of them) were matters:

a) which Danyon Lloyd knew were material to the decision whether to extend or renew insurance cover in respect of the Liberty France Risk; or

b) alternatively to subparagraph (a), in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that this were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

a. a person with substantial commercial experience in dealing with credit risks in the finance industry;

b. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

c. was a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs 10A.10 and [12(a)(ii)] above).

78A.41A Further or in the alternative to 78A.41 above, each of the matters referred to in paragraphs 78A.24 to 78A.26 above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know was material to the decision whether to extend insurance cover in respect of the Liberty France Risk.

Particulars

The BCC/TM Parties refer to the particulars in 78A.41 above

78A.42 The knowledge of Danyon Lloyd of the matters set out in in paragraph 78A.38 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25A above.

Misrepresentations were fraudulent

78A.43 In the premises of paragraphs 78A.24 to 78A.26, 78A.27, 78A.37 and 78A.42 above:

a) Greensill misrepresented the risk presented by the Liberty France Risk;

b) the misrepresentation was knowingly false and fraudulent; and

c) the misrepresentation was known to be material to the decision whether to extend insurance cover with respect to the Liberty France Risk.

78A.44 If Greensill had not made the misrepresentations in paragraphs 78A.24 to 78A.26 above, insurance cover would not have been issued in respect of the Liberty France Risk at all or, in the alternative, on the same terms in which it purportedly was written.

78A.45 By reason of the matters pleaded in paragraphs 78A.24 to 78A.44 above, IAL is entitled to avoid the Liberty France Endorsement.

Innocent misrepresentation

78A.46 In the alternative to the matters pleaded in paragraphs 78A.43 to 78A.45 above, by reason of the matters pleaded in paragraphs 78A.24 to 78A.26 and 78A.44 above, IAL is entitled to reduce its liability under the Liberty France Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

D13.7 Liberty France Non-Disclosures

Knowledge of underlying matters

78A.47 At the time of requesting insurance cover was requested and purportedly provided for the Liberty France Risk, Lex Greensill knew:

a) the matters referred to in paragraphs 78A.24 to 78A.26 above;

Particulars

The BCC/TM Parties repeat the particulars to paragraphs 78A.24 to 78A.26 above.

b) that there had been a history of non-payment under the AD Facility and Liberty France Facility;

Particulars

The BCC/TM Parties repeat the particulars to paragraph 78A.26 above.

c) that there were concerns about future default and/or repayment under the Liberty France Facility; and

Particulars

(a) Email from Brett Downes to Lex Greensill, Liz Boyes and Craig Pinnington dated 4 January 2019 (GCU.0007.0002.3765), in which Brett Downes had expressed a concern to Lex Greensill, among others, about the risk of non-payment of the Aluminium Dunkerque facility, stating: “This is the one I

really worry about repaying in a couple of months' time as I see this sitting on our balance sheet forever which is not good. This will be permadebt."

(b) Email from Craig Pinnington and Vesna Vladusic dated on 26 March 2019 with the subject line 'RE: Liberty Aluminium Dunkerque' (GCU.0013.0005.1753), stating: "*Are you free this morning for a call on Aluminium Dunkerque? We are looking to place it on the Watchlist at credit committee this Friday as there looks to be material doubt as to getting repaid, as the actual cash-generating unit isn't acceding (or certainly not in any meaningful form) and the holdco doesn't have the cash to repay*."

(c) Email from Craig Pinnington to Vesna Vladusic and Liz Boyes dated 26 March 2019, with the subject line 'Liberty Aluminium Dunkerque', (GCU.0005.0008.0452) stating: "*Given the issues on this account and that we probably cannot get repaid from the expected primary source of repayment, this is going to be added to the GC Watchlist at the credit committee this Friday...I know for now we are doing rolls by putting ourselves in as customer but this is only a temporary solution. Waiting 5 years for the senior lending facility to expire is also not a realistic option"*.

d) the Liberty Group Fraud Non-Disclosure, which implicated Liberty France and Sanjeev Gupta (who was personal Guarantor of the Liberty France facility risk) in prior dishonest and fraudulent conduct.

Particulars

a. Email from Michel Degen (Credit Suisse) to Lex Greensill and David Solo (Senior advisor to the Greensill Board and ex-CEO of GAM) dated 11 December 2018, with time stamp 2:17pm and title 're: Important', (CSA.5000.0002.1866), attaching Diligence Report (CSA.5000.0002.1867).

b. Personal Guarantee of Sanjeev Gupta (GFG), dated 17 April 2020 and signed by Lex Greensill (BCC.0001.0006.4376).

e) the GFG Liquidity Issues Non-Disclosure, the GFG Defaults Non-Disclosure and the GFG Top Up Practice Non-Disclosure;

Particulars

The knowledge of Lex Greensill is evident from the emails particularised at paragraph at 10A.33G

Knowledge of materiality

78A.48 Each of the matters referred to in paragraph 78A.47 above were matters:

a. which Lex Greensill knew were material to the decision whether to extend insurance cover in respect of the Liberty France Risk; or

b. alternatively to subparagraph (a), in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of Liberty France being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

78A.49 Further or in the alternative to paragraph 78A.48 above, each of the matters referred to in paragraph 78A.38 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision whether to extend insurance cover in respect of the Liberty France Risk.

Particulars

The BCC/TM Parties refer to the particulars of subparagraph 78A.48(b) above

78A.50 The knowledge of Lex Greensill of the matters set out in paragraphs 78A.48 and 78A.49 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25 above.

78A.51 The knowledge of Lex Greensill of the matters set out in paragraphs 78A.48 and 78A.49 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20 above

Lex was the Relationship Owner for the transaction and is identified as such in the Credit Analysis Pack and Relationship Credit Analysis Pack submitted to Greensill

Credit Committee on or around 13 September 2018, Lex Greensill is identified as the 'Relationship Owner' (GCU.0005.0001.9246, GCU.0005.0001.9247, GCU.0005.0001.9248).

Breach of duty of disclosure

78A.52 Greensill did not disclose to Brereton or any representative of BCC or IAL any (or all) of the matters referred to in paragraph 78A.47 above before the cover was placed or renewed for the Liberty France Risk.

78A.53 Greensill's failure to disclose the matters referred to in paragraph 78A.52 above breached the duty of disclosure under section 21 of the Insurance Contracts Act, by reason of each of the matters pleaded in paragraphs 78A.47 to 78A.49 above.

Fraudulent non-disclosure

78A.54 By reason of the matters pleaded in paragraphs 78A.47 to 78A.49 above, Greensill's failure to disclose the matters referred to in paragraph 78A.47 above was fraudulent.

78A.55 The cover for the Liberty France Risk would not have been issued if the matters referred to in in paragraph 78A.47 above had been disclosed.

78A.56 In the alternative to the allegation in paragraph 78A.55 above, the cover for the Liberty France Risk would not have been issued or renewed on the same terms if the matters referred to in paragraph 78A.47 above had been disclosed.

78A.57 By reason of the matters pleaded in paragraphs 78A.54 to 78A.56 above, IAL is entitled to avoid the Liberty France Endorsement.

Innocent non-disclosure

78A.58 In the alternative to the matters pleaded in paragraphs 78A.47 to 78A.57 above, and by reason of the matters pleaded in paragraphs 78A.47 to 78A.49 above, IAL is entitled to reduce its liability under the Liberty France Endorsement to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

4 ONGOING INVESTIGATIONS

79. The BCC/TM Parties give notice that:

a. it is aware that Greensill and/or Lex Greensill are subject to numerous ongoing criminal and regulatory investigations and proceedings in relation to the conduct of its supply chain and accounts receivables financing business;

Particulars

i. The UK Financial Conduct Authority's investigation into GCUK (as well as Greensill Capital Securities and Mirabella Advisers).

ii. BaFin's investigation into Greensill Bank's management for suspected balance sheet manipulation.

iii. The criminal complaint filed by Switzerland's economic affairs secretariat in relation to "Greensill Capital" following which Zurich's public prosecutor's office opened criminal proceedings.

iv. The UK Serious Fraud Office's investigation in relation to the financing and conduct of the business of companies within the Gupta Family Group Alliance, including its financing arrangements with GCUK.

v. The UK Financial Reporting Council's investigation into Saffery Champness for its audit of GCUK.

vi. The UK Insolvency Service's investigation into a number of former Greensill executives, including Lex Greensill, and related director disqualification proceedings.

b. it intends to monitor closely all such investigations and continue to carry out its own investigations to the extent possible; and

c. it intends to seek leave to amend its pleadings to plead further instances of fraudulent non-disclosure or misrepresentation if and when such instances are sufficiently substantiated.

E NON-DISCLOSURE OF EARLIER FRAUDULENT MISREPRESENTATIONS AND NON-DISCLOSURES

80. Section G of this Annexure lists each policy document that is relied upon by the Greensill Applicants in the Greensill Proceedings.

81. Section H of this Annexure lists, in chronological order, each occasion on which Greensill made a fraudulent misrepresentation or fraudulently breached the duty of disclosure.

82. Greensill knew, or alternatively ought reasonably to have known, at the time of entering into each policy document listed in Section G, that each earlier matter listed in Section H was material to

the decision of BCC and Greg Brereton whether to accept each risk listed in Section G and, if so, the terms on which to do so.

83. Greensill did not disclose any of the earlier matters in Section H before any of the policy documents listed in Section G was issued.

84. Greensill's failures to disclose the earlier matters referred to in Section H, by reason of the matters pleaded in paragraph 82 above, breached the duty of disclosure under section 21 of the Insurance Contracts Act.

85. Greensill's breaches of the duty of disclosure, other than those in relation to Kerry Ireland were fraudulent.

Particulars

a. ~~c.~~ Lex Greensill, on behalf of Greensill, knew that the matters would be material and acted deliberately on behalf of Greensill not to disclose them.

b. ~~d.~~ Deliberate non-disclosure is to be inferred from the significance of the matters that were not disclosed, the nature of Lex Greensill's communications with Greg Brereton (pleaded above) and Lex Greensill's experience in commercial financing and dealings with underwriters.

86. Each Policy and Endorsement listed in Section G:

a. would not have been issued; or

b. in the alternative, would not have been issued on the same terms,

if the earlier matters referred to in Section H had been disclosed.

87. By reason of the matters pleaded in paragraphs 80 to 86 above, IAL is entitled:

a. to avoid each policy document listed in Section G, or, in the alternative,

b. is entitled to reduce its liability under each such policy document to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

E1 Non-Disclosure of Moral Hazard

88. Lex Greensill had a propensity to be dishonest in his dealings with insurers.

Particulars

Lex Greensill's propensity to dishonesty in his dealings with insurers is evidenced by, and to be inferred from, the fraudulent non-disclosures and misrepresentations pleaded in Section H, to the extent they arise from the conduct or knowledge of Lex Greensill.

89. Greensill had a propensity to be dishonest in their dealings with insurers.

Particulars

Greensill's propensity to be dishonest in their dealings insurers is to be inferred from the fraudulent non-disclosures and misrepresentations pleaded in Section H.

The BCC/TM Parties further rely on the knowingly false statements made by the Management Board of GBAG (including Danyon Lloyd) to GBAG's s D&O insurers, as found in ruling of the Cologne Higher Regional Court (OLG) on 11 February 2026 (**Cologne Judgment**).

90. Prior to the entry of each policy document listed in Section G, each of the matters referred to in paragraphs 88 and 89 above were matters:

a. Lex Greensill knew were material to the decision of Greg Brereton and BCC whether to accept the relevant risk and, if so, the terms on which to do so; or

b. alternatively to subparagraph a., in respect of which Lex Greensill was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Lex Greensill's knowledge is to be inferred from the following:

(a) The matters pleaded at paragraph 9 above;

(b) Lex Greensill had extensive experience with the placement of insurance and dealings with insurers in the course of Greensill's business;

(c) Lex Greensill was deliberate and intentional in the manner in which the GCUK financing facilities would be described to insurers (for example, GCU.0009.0001.0013); and

(d) The matters misrepresented or not disclosed bore directly on the risk of GCUK's customers being unable to repay the amounts advanced to it and therefore upon the nature of the risk to be insured.

~~as he was a person of substantial commercial experience in the insurance industry.~~

91. Further or in the alternative to paragraph ~~89~~ 90 above, each of the matters referred to in paragraphs 88 and 89 above were matters which a reasonable person in the position of Lex Greensill could be expected to know were material to the decision of Greg Brereton and BCC whether to accept the relevant risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 90 above.

92. The knowledge of Lex Greensill of the matters set out in paragraphs 88 and 89 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraphs 10A.25, 10A.26A and 10A.26B above.

93. The knowledge of Lex Greensill of the matters set out in paragraphs 88 and 89 above is to be attributed to GCPL.

Particulars

The BCC/TM Parties refer to paragraphs 10A.20, ~~and~~ 10A.22A and 10A.22B.

93A. Prior to the entry of each policy document listed in Section G, the matters referred to in paragraph 89 above were matters:

a. Danyon Lloyd knew were material to the decision of Greg Brereton and BCC whether to accept the relevant risk and, if so, the terms on which to do so; or

b. alternatively to subparagraph a., in respect of which Danyon Lloyd was wilfully blind or recklessly indifferent to the possibility that they were material to that decision.

Particulars

Danyon Lloyd's knowledge is to be inferred as he was:

a. a person with substantial commercial experience in dealing with credit risks in the finance industry;

b. the Chief Executive Officer of a regulated financial institution that utilised credit insurance for risk mitigation purposes;

c. a Designated Credit Officer (DCO) of the Credit Committee of GCUK (as described at paragraphs [11] and [12(a)(ii)] above); and

d. attended meetings of the Risk Committee of GCPL from time-to-time (GCU.0009.0002.6419; GCU.0017.0001.2201; GCU.0017.0001.3747; GCU.0013.0004.6579), and the non-disclosures bore directly on the nature of the risk to be insured.

93B. Further or in the alternative to paragraph 93A above, the matters referred to in paragraph 89 above were matters which a reasonable person in the position of Danyon Lloyd could be expected to know were material to the decision of Greg Brereton and BCC whether to accept the relevant risk.

Particulars

The BCC/TM Parties refer to the particulars in paragraph 93A above.

93C. The knowledge of Danyon Lloyd of the matters set out in paragraphs 89 above is to be attributed to Greensill Bank.

Particulars

The BCC/TM Parties refer to paragraph 10A.25A above.

Breach of duty of disclosure

94. Greensill did not disclose to Greg Brereton or any representative of BCC or IAL the matters referred to in paragraphs 88 and 89 above before each of the policy documents listed in Section G was entered into.

95. Greensill's failure to disclose the matters referred to in paragraphs 88 and 89~~88~~ above breached the duty of disclosure under section 21 of the Insurance Contracts Act, in the premises of the matters pleaded in paragraphs 91 to 94 above.

Fraudulent non-disclosure

96. By reason of the matters pleaded in paragraphs to 94 to ~~94~~ 94 above Greensill's failure to disclose the matters referred to in paragraphs 88 and 89 above was fraudulent.

97. Each policy document listed in Section G:

a. would not have been issued; or

b. in the alternative to a., would not have been issued on the same terms,

if either of the matters referred to paragraphs 88 and 89 above had been disclosed.

98. By reason of the matters pleaded in paragraphs 96 and 97 above, IAL is entitled to avoid each policy document listed in Section G.

Innocent non-disclosure

99. In the alternative to paragraph 98 above, and by reason of the matters pleaded in paragraph 97 above, IAL is entitled to reduce its liability under each policy document listed in Section G to nil (or such other amount as the court may determine would place IAL in the same position as if the duty of disclosure had been complied with).

F AVOIDANCE

100. In these proceedings ~~BCC~~IAL deny that the policy documents referred to in Section G are valid and binding on IAL.

101. The allegations of misrepresentation and non-disclosure in this Annexure are premised on the basis that, contrary to ~~BCC~~IAL's denial, one or more of the policy documents would be binding on IAL but for any right to avoid.

102. [Not used].

103. For the avoidance of doubt, it is the BCC/TM Parties' contention that, if and in so far as the Court finds that GCUK and/or GCPL, but not Greensill Bank, made a misrepresentation or breached the duty of disclosure, IAL is entitled:

    a. to avoid the policy as against GCUK, GCPL and Greensill Bank; or

    b. in the alternative, to reduce its liability to Greensill Bank to nil (or such other amount as the Court may determine would place IAL in the same position as if the duty of disclosure had been complied with or the misrepresentation had not been made).

G SCHEDULE OF POLICIES AND ENDORSEMENTS

104. The policies and endorsements purportedly issued by BCC to Greensill, as pleaded by the Greensill Applicants as a basis for coverage in each of the Greensill Proceedings, are as follows:

Item #	**Policy TB-03690 (B0509FINCW1900009)**		
1.	Customer Endorsement No 27	17 September 2018	Catfoss
2.	Customer Endorsement No 63(ii)	5 February 2019	CS Global
3.	Customer Endorsement No 7(i)	5 March 2019	Bluestone

4.	2019 Parallel 90.10 Policy	13 March 2019	Catfoss, EHG, CS Global, A57, Bluestone, LCL, Simec, White Oak
5.	Endorsement 9	13 March 2019	CS Global, A57, Bluestone, LCL, Simec, Catfoss, White Oak
6.	Debt Endorsement 1	13 March 2019	Catfoss, EHG, CS Global, A57, Simec
7.	Loss Payee (Virtuoso) Endorsement 3	13 March 2019	EHG, Catfoss, CS Global
8.	Customer Endorsement No 19	13 March 2019	CS Global, LCL, White Oak
9.	Customer Endorsement No 10	13 March 2019	CS Global, Bluestone
10.	Customer Endorsement No 5	13 March 2019	CS Global, Bluestone
11.	Customer Endorsement No 8	13 March 2019	CS Global, Bluestone
12.	Debt Endorsement 2	13 March 2019	CS Global, Bluestone
13.	Loss Payee (Nova) Endorsement 6	13 March 2019	CS Global
14.	Customer Endorsement No 34	13 March 2019	CS Global
15.	Customer Endorsement No 35	13 March 2019	CS Global
16.	Customer Endorsement No 12	13 March 2019	CS Global
17.	Customer Endorsement No 21	13 March 2019	CS Global
18.	Customer Endorsement No 9	13 March 2019	CS Global
19.	Customer Endorsement No 7	13 March 2019	CS Global
20.	Customer Endorsement No 11	13 March 2019	CS Global
21.	Customer Endorsement No 44	13 March 2019	CS Global
22.	Customer Endorsement No 16	13 March 2019	CS Global
23.	Customer Endorsement No 20	13 March 2019	LCL
24.	Customer Endorsement No 3	13 March 2019	Catfoss

25.	Customer Endorsement No 5	13 March 2019	Bluestone
26.	Customer Endorsement No 9	13 March 2019	Bluestone
27.	Customer Endorsement No 37	13 March 2019	EHG
28.	Customer Endorsement No 4	13 March 2019	A57
29.	Customer Endorsement No 2	13 March 2019	Simec
30.	Customer Endorsement No 48	27 March 2019	CS Global
31.	Customer Endorsement No 54	4 April 2019	CS Global
32.	Customer Endorsement No 2(i)	24 April 2019	CS Global, Simec
33.	Customer Endorsement No 26(i)	21 May 2019	CS Global, Bluestone
34.	Customer Endorsement No 68	24 May 2019	CS Global, LCL, White Oak
35.	Customer Endorsement No 36(i)	24 May 2019	LCL, White Oak
36.	Customer Endorsement No: _Guarantor/Seller Repurchase Obligation	10 June 2019	CS Global
37.	Endorsement Speciality Steel UK Limited/(SSUK)	10 June 2019	CS Global
38.	Customer Endorsement No 80	11 June 2019	CS Global, Bluestone
39.	Customer Endorsement No 77	11 June 2019	CS Global, Bluestone
40.	Customer Endorsement No 78	11 June 2019	CS Global, Bluestone
41.	Customer Endorsement No 76	11 June 2019	CS Global
42.	Customer Endorsement No 75	11 June 2019	CS Global
43.	Contract Changes – Extension Endorsement 18	21 June 2019	Catfoss, EHG, CS Global, A57, Bluestone, LCL, Simec, White Oak
44.	Contract Changes – Extension Endorsement 17	21 June 2019	EHG, CS Global, A57, Bluestone, LCL, Simec, White Oak
45.	Customer Endorsement No 69(i)	28 June 2019	CS Global, LCL

46.	Customer Endorsement No 81(i)	28 June 2019	CS Global
47.	Customer Endorsement No 89	28 June 2019	CS Global
48.	Customer Endorsement No 99	14 August 2019	CS Global, LCL
49.	Customer Endorsement No 24(ii)	4 September 2019	CS Global, Bluestone
50.	Customer Endorsement No 23(ii)	4 September 2019	CS Global
51.	Customer Endorsement No 37(i)	4 September 2019	EHG
52.	Customer Endorsement No 37(ii)	17 September 2019	EHG
53.	Customer Endorsement No 74(i)	23 September 2019	CS Global, LCL
54.	Customer Endorsement No 60(ii)	1 October 2019	CS Global, LCL
55.	Customer Endorsement No 66(ii)	1 October 2019	CS Global, LCL
56.	Customer Endorsement No 61(ii)	1 October 2019	CS Global, LCL
57.	Customer Endorsement No 83(i)	1 October 2019	CS Global, LCL
58.	Customer Endorsement No 48(i)	1 October 2019	CS Global
59.	Customer Endorsement No 103	1 October 2019	CS Global
60.	Customer Endorsement No 94(ii)	1 October 2019	CS Global
61.	Customer Endorsement No 16(i)	1 October 2019	CS Global
62.	Customer Endorsement No 73(i)	1 October 2019	White Oak
63.	Customer Endorsement No 63(ii)	1 October 2019	LCL
64.	Customer Endorsement No 105	1 October 2019	LCL

65.	Customer Endorsement No 112	25 October 2019	CS Global
66.	Customer Endorsement No 114	25 October 2019	CS Global
67.	Customer Endorsement No 92(i)	25 October 2019	CS Global
68.	Debt Endorsement 2(iii)	29 January 2020	CS Global, White Oak, Bluestone
69.	Customer Endorsement No 19(i)	29 January 2020	CS Global, LCL
70.	Customer Endorsement No 100(i)	29 January 2020	LCL, White Oak
71.	Customer Endorsement No 2(ii)	31 January 2020	CS Global, Simec
72.	Amendment to the definition of Loss – Endorsement 23	5 February 2020	Catfoss, CS Global, A57, Bluestone, LCL, Simec
73.	Customer Endorsement No 28(ii)	12 February 2020	CS Global, Bluestone
74.	Customer Endorsement No 79(i)	12 February 2020	CS Global, Bluestone
75.	Customer Endorsement No 46(iii)	24 February 2020	CS Global, LCL
76.	Customer Endorsement No 45(iii)	24 February 2020	CS Global, White Oak
77.	Customer Endorsement No 90(ii)	24 February 2020	CS Global, White Oak
78.	Customer Endorsement No 47(v)	24 February 2020	CS Global, White Oak
79.	Customer Endorsement No 95(ii)	24 February 2020	CS Global
80.	Customer Endorsement No 91(iii)	24 February 2020	White Oak
81.	Customer Endorsement No 101(i)	24 February 2020	White Oak

82.	Customer Endorsement No 45(iii)	24 February 2020	LCL
83.	Customer Endorsement No 119	26 February 2020	White Oak
84.	Customer Endorsement No 122	16 March 2020	CS Global
85.	Customer Endorsement No 27(ii)	14 April 2020	CS Global, Bluestone
86.	Customer Endorsement No 71(i)	14 April 2020	CS Global, Bluestone
87.	Customer Endorsement No 29(iii)	14 April 2020	CS Global, Bluestone
88.	Debt Endorsement 2(iv)	16 April 2020	CS Global, Bluestone, LCL
89.	Customer Endorsement No 54(i)	16 April 2020	CS Global
90.	Endorsement (Liberty MDR) Version 2 – Liberty MDR Treasury Company UK Ltd	16 April 2020	CS Global
91.	Endorsement (Liberty Commodities)	29 April 2020	CS Global, LCL, White Oak
92.	Customer Endorsement No 19(ii)	29 April 2020	CS Global, LCL, White Oak
93.	Loss Payee Endorsement 24	29 April 2020	White Oak
94.	Customer Endorsement No 127	13 June 2020	CS Global
95.	Customer Endorsement No 64(iv)	25 June 2020	CS Global, White Oak
96.	Customer Endorsement No 72(ii)	25 June 2020	LCL, White Oak
97.	Customer Endorsement No 138	25 June 2020	CS Global
98.	Customer Endorsement No 139	2 July 2020	CS Global
99.	Customer Endorsement No 136	2 July 2020	CS Global
100.	Customer Endorsement No 135	2 July 2020	CS Global

101.	Customer Endorsement No 111(i)	2 July 2020	White Oak
102.	Contract Changes – Extension Endorsement 1	-	Catfoss
Policy TB-05369 (B0509FINCW1900040)			
103.	Debt Endorsement 1	25 June 2019	Liberty Delta
104.	Endorsement 2	25 June 2019	Liberty Delta
105.	Customer Endorsement No 1	25 June 2019	Liberty Delta
106.	Customer Endorsement No 2	25 June 2019	Liberty Delta
107.	Customer Endorsement No 3	25 June 2019	Liberty Delta
108.	Customer Endorsement No 4	25 June 2019	Liberty Delta
109.	Liberty Delta Parallel Policy	26 June 2019	Liberty Delta
110.	Customer Endorsement No 1(i)	17 July 2019	Liberty Delta
111.	Customer Endorsement No 3(i)	17 July 2019	Liberty Delta
112.	Customer Endorsement No 4(i)	17 July 2019	Liberty Delta
113.	Collective Endorsement	17 July 2019	Liberty Delta
114.	Customer Endorsement No 2(i)	31 July 2019	Liberty Delta
115.	Collective Endorsement	18 August 2019	Liberty Delta
116.	Collective Endorsement	5 September 2019	Liberty Delta
117.	Collective Endorsement	2 October 2019	Liberty Delta
118.	Customer Endorsement No 1(ii)	20 November 2019	Liberty Delta
119.	Customer Endorsement No 2(ii)	20 November 2019	Liberty Delta
120.	Customer Endorsement No 3(ii)	20 November 2019	Liberty Delta

121.	Customer Endorsement No 4(ii)	20 November 2019	Liberty Delta
122.	Collective Endorsement	20 November 2019	Liberty Delta
123.	Customer Endorsement No 1(iii)	19 December 2019	Liberty Delta
124.	Customer Endorsement No 2(iii)	19 December 2019	Liberty Delta
125.	Customer Endorsement No 3(iii)	19 December 2019	Liberty Delta
126.	Customer Endorsement No 4(iii)	19 December 2019	Liberty Delta
127.	Collective Endorsement	19 December 2019	Liberty Delta
128.	Claims Endorsement 3	10 January 2020	Liberty Delta
129.	Collective Endorsement	24 February 2020	Liberty Delta
130.	Limit Endorsement 3	-	Liberty Delta
Policy TS-03088 (B0509FINCW1900008)			
131.	2019 NMC Parallel Policy	1 March 2019	NMC
132.	Loss Payee Endorsement 3	1 March 2019	NMC
133.	Debt Endorsement 1	6 March 2019	NMC
134.	Limit Endorsement 8	6 March 2019	NMC
135.	Customer Endorsement No 4	6 March 2019	NMC
136.	Contract Changes – Extension Endorsement 9	26 February 2020	NMC
137.	Contract Changes – Extension Endorsement 10	15 April 2020	NMC

138.	Contract Changes – Extension Endorsement 11	15 May 2020	NMC
139.	Contract Changes – Extension Endorsement 12	16 June 2020	NMC

H SCHEDULE OF MISREPRESENTATIONS AND NON-DISCLOSURES

Item #	Date	Misrepresentation/Non-disclosure	Paragraphs
~~1.~~ 1.	30 May 2018	~~Misrepresentations in respect of the Bluestone insured risk~~ Bluestone SCF Facility Misrepresentation in respect of the Bluestone Single Obligor insured risk	~~[40] and [45]~~ [53A.108a]
2.	30 May 2018	Bluestone Invoices Misrepresentation in respect of the Bluestone Single Obligor insured risk	[53A.108b]
3.	30 May 2018 to 13 March 2019	Non-disclosures in respect of the Bluestone Single Obligor insured risk	[53A.141], [53A.144], [53A.147], [53A.149], [53A.152], [53A.168]
~~2.~~ 4.	28 August 2018 to 30 January 2020	Simec Financing ~~Arrangements~~ Misrepresentations in respect of the Simec Risk	~~[**Error! Reference source not found.**.353]~~ [10A.369A]
~~3.~~ 5.	3 September ~~28 August~~ 2018 to 30 January 2020	The Simec No Default Misrepresentation ~~Non-disclosures~~ in respect of the Simec Risk	~~[10A.384], 10A.367], [10A.391]~~ [10A.396C]

Item #	Date	Misrepresentation/Non-disclosure	Paragraphs
6.	4 September 2018 to 30 January 2020	Non-Disclosures in respect of the Simec Risk	[10A.384] to [10A.384B]
~~4.~~ 7.	29 August 2018 to 2 July 2020	Non-disclosures in respect of the LCL Risk	[10A.242], [10A.256]
~~5.~~ 8.	11 to ~~17~~ 21 September 2018	Misrepresentations in respect of the Catfoss Renewables insured risk (Catfoss Renewables Inception Misrepresentations)	~~[74]~~ [75.20]
~~6.~~ 9.	11 September 2018 to ~~1 May 2019~~ 20 December 2018	Non-disclosures in respect of the Catfoss Renewables insured risk	~~[72]~~ [75.16], [75.47], [75.72]
10.	11 September 2018 to 13 March 2019	Non-disclosures and misrepresentation in respect of the Liberty France insured risk, including the AD Facility Misrepresentations (which includes the AD SCF Misrepresentation and the Supplier Misrepresentation), Liberty France Misrepresentations (which includes the Liberty France SCF Misrepresentation and the Rio Tinto Supplier Misrepresentation) and the No Default Misrepresentation.	[78A.7] [78A.8] [78A.21] [78A.22]
~~7.~~ 11.	12 September 2018	A57 Purpose Misrepresentation and Guarantor Representation in respect of the Atlantic 57 Risk	[10A.266], [10A.270], and [10A.270A]
~~8.~~	~~12 to 21 September 2018~~	~~Non-disclosures in respect of the Atlantic 57 Risk~~	~~[10A.293]~~
~~9.~~	~~14 September 2018 to 10 January 2019~~	~~Non-disclosures and misrepresentation in respect of the Liberty France insured risk~~	~~[75A.48], [75A.49A], [75A.49B]~~

Item #	Date	Misrepresentation/Non-disclosure	Paragraphs
~~10.~~ 12.	18 September 2018 to ~~3 December 2018~~ 10 April 2020	~~Misrepresentations in respect of the Bluestone insured risk~~ Bluestone AR Facility Misrepresentation in respect of the Bluestone Multi-Obligor insured risk	~~[41], [42], [43], [44] and [45]~~ [53A.10(a)]
13.	18 September 2018 to 10 April 2020	Bluestone Multi-Obligor Genuine Customer Misrepresentation in respect of the Bluestone Multi-Obligor insured risk	[53A.10(b)]
14.	18 September 2018 to 3 December 2019	Bluestone Non-Payment Risk Misrepresentation in respect of the Bluestone Multi-Obligor insured risk	[53A.11]
15.	1 October 2018 to 2 July 2020	The Westford Financing Misrepresentations in respect of the Westford Risk	[10A.123B]
~~11.~~	~~3 December 2018~~	~~Non-disclosures in respect of the Bluestone insured risk~~	~~[33(b)] and [39]~~
~~12.~~ 16.	3 December 2018 to ~~9 January~~ 19 March 2019	Misrepresentations in respect of the Noviniti Poole, Catfoss DBT and Noviniti Colchester insured risks	~~[75A.32] – [75A.34]~~ [75AB.4] to [75AB.5], [75AB.18] to [75AB.21]
~~13.~~ 17.	3 ~~to 4~~ December 2018 to 18 December 2018	~~Non-disclosures in respect of the Noviniti Poole, insured risk~~ Non-Disclosures in respect of the Noviniti Poole, and Catfoss DBT insured risks	~~[75A.28] – [75A.31]~~ [75AB.40] and [75AB.64]
~~14.~~	~~7 December 2018~~	~~Non-disclosures in respect of the Bluestone insured risk~~	~~[33(b)] and [39]~~
~~15.~~ 18.	11 December 2018	Liberty Group Fraud Non-Disclosure	[10A.47]

Item #	Date	Misrepresentation/Non-disclosure	Paragraphs
~~16.~~	~~18 December 2018 to 4 March 2019~~	~~Non-disclosures in respect of the Noviniti Poole and Catfoss DBT insured risks~~	~~[75A.31]~~
~~17.~~	~~In or around February 2019~~	~~Future Accounts Receivable Representation~~	~~[10A.32]~~
~~18.~~ 19.	28 February 2019 to 17 September 2019	Non-disclosures in respect of the Atlantic 57 Risk	[10A.293], [10A.295A] and [10A.296], [10A.301]
20.	28 February 2019 to 4 March 2019	A57 Repayment Representation in respect of the Atlantic 57 Risk	[10A.273A]
21.	28 February 2019	Non-Disclosure in respect of the Noviniti Poole, and Catfoss DBT insured risks	[75AB.39] and [75AB.62]
~~19.~~	~~5 March 2019~~	~~Non-disclosures in respect of the Bluestone insured risk~~	~~[33(c)] and [39]~~
22.	13 March 2019	Non-disclosures in respect of the Catfoss Renewables insured risk	[75.48] and [75.72]
~~20.~~ 23.	13 March 2019 to 14 April 2020	Non-disclosures in respect of the Bluestone Multi-Obligor insured risk	~~[33(c)] and [39]~~ [53A.78], [53A.81], [53A.84] and [53A.97]
~~21.~~ 24.	13 March 2019	LCL Genuine Customer Misrepresentations in respect of the LCL Risk	[10A.2020]

Item #	Date	Misrepresentation/Non-disclosure	Paragraphs
25.	13 March 2019 to 2 July 2020	GFG Liquidity Issues Non-Disclosure, GFG Defaults Non-Disclosure and GFG Top Up Practice Non-Disclosure	[10A.33O], [10A.33P] and [10A.33Q]
~~22.~~ 26.	19 ~~to 20~~ March 2019	Non-disclosures in respect of the Noviniti Colchester insured risk	~~[75A.29] – [75A.31]~~ [75AB.42] and [75AB.64]
~~23.~~ 27.	2 to 8 April 2019	SSUK Future AR Facility Misrepresentation in respect of SSUK Risk	[10A.70], [10A.71], and [10A.78]
28.	2 to 8 April 2019	The SSUK Purpose Misrepresentation in respect of SSUK Risk	[10A.71A], [10A.71B]
~~24.~~ 29.	9 April 2019	SSUK Account Debtor Representations in respect of SSUK Risk	[10A.72] to [10A.75] and [10A.79]
~~25.~~	~~8 April 2019 to 10 June 2019~~	~~Non-disclosures in respect of the SSUK Risk~~	~~[10A.102]~~
~~26.~~ 30.	16 May 2019 to 25 February 2020	LCL Genuine Trades Misrepresentations in respect of the LCL Risk	~~[10A.205]~~ [10A.204A]
~~27.~~	~~21 May 2019 to 11 June 2019~~	~~Non-disclosures in respect of the Bluestone insured risk~~	~~[33(d)], [33(e)] and [39]~~
31.	10 June 2019	Non-disclosures in respect of the SSUK Risk	[10A.32], [10A.33G], [10A.34] to [10A.47],[10A.78] -[10A.78A], [10A.79] and [10A.102(a)] to [10A.102(c)]

Item #	Date	Misrepresentation/Non-disclosure	Paragraphs
~~28.~~ 32.	20 June 2019	Liberty Delta Misrepresentations in respect of the Liberty Delta Risk	[10A.315], [10A.316], [10A.319B] and [10A.320] to [10A.322A]
~~29.~~ 33.	20 to 25 June 2019	Non-disclosures in respect of the Liberty Delta Risk	[10A.335]
~~30.~~	~~4 September 2019~~	~~Non-disclosures in respect of the Bluestone insured risk~~	~~[33(g)] and [39]~~
~~31.~~ 34.	26 September 2019	LCL Customer Creditworthiness Misrepresentations in respect of the LCL Risk	[10A.208]
35.	26 September 2019 to 1 October 2019	Non-Disclosure in respect of the Noviniti Poole and Noviniti Colchester insured risk	[75AB.43], [75AB.64]
~~32.~~ 36.	30 January 2020	Simec Customer Endorsement 2(ii) Misrepresentations in respect of the Simec Risk	[10A.367]
~~33.~~	~~12 February 2020~~	~~Non-disclosures in respect of the Bluestone insured risk~~	~~[33(h)] and [39]~~
~~34.~~ 37.	11 to 15 March 2020	Misrepresentations in respect of the Liberty House Risk, including the Liberty House Aggregate Customer Limit Misrepresentation, the Liberty House Facility Misrepresentation and the Liberty House No Default Misrepresentation	[10A.149], [10A.150], [10A.152], [10A.154], [10A.154B] and [10A.154C]
~~35.~~ 38.	11 to 15 March 2020	Non-disclosures in respect of the Liberty House Risk	[10A.176]
39.	6 April 2020 to 27 May 2020	Bauer Repayment Misrepresentation	[10A.444(a)(ii)] and [10A.447(a)] to (g)]

Item #	Date	Misrepresentation/Non-disclosure	Paragraphs
40.	6 April 2020	Bauer Notes Tenor Misrepresentation	[10A.444(b)] and [10A.447(a)] to (g)]
41.	6 April 2020	Bauer Financial Position Non-Disclosure	[10A.476]
~~36.~~	~~14 April 2020~~	~~Non-disclosures in respect of the Bluestone insured risk~~	~~[33(i)] and [39]~~
~~37.~~ 42.	15 April 2020	~~Liberty Group Fraud Non-Disclosure in respect of the Liberty TCUK Risk~~ The Liberty TCUK Future AR Misrepresentation in respect of the Liberty TCUK Risk	~~[10A.510]~~ [10A.48V]
43.	16 April 2020	Non-Disclosures in respect of the Liberty TCUK Risk	[10A.51], [10A.51A]
~~38.~~ 44.	28 April 2020	LCL Short-term Financing Misrepresentation in respect of the LCL Risk	[10A.211]
~~39.~~ 45.	5 to 28 May 2020	Kerry Ireland Misrepresentations in respect of Kerry Ireland Risk	[10A.406]
~~40.~~ 46.	12 May 2020 to 25 June 2020	Non-disclosures in respect of the Kerry Ireland Risk	[10A.426] to [10A.433]
47.	28 May 2020	Bauer SCF Misrepresentation	[10A.450]
~~41.~~ 48.	~~18 June 2020 to~~ 2 July 2020	Non-disclosures in respect of the Westford Risk	~~[10A.130]~~ [10A.123M], [10A.130]