NOTICE OF FILING

Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	23/07/2026 2:54:39 PM AEST
Date Accepted for Filing:	23/07/2026 2:54:43 PM AEST
File Number:	NSD1039/2021
File Title:	WHITE OAK COMMERCIAL FINANCE EUROPE (NON-LEVERED) LIMITED v INSURANCE AUSTRALIA LIMITED ACN 000 016 722
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.

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Form 33
Rule 16.32

~~Amended~~ Defence to the ~~Fifth~~ Sixth Amended Statement of Claim

Filed pursuant to leave granted by Thawley J on 21 July 2026.

No. NSD1039 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations National Practice Area

White Oak Commercial Finance Europe (Non-Levered) Limited

Applicant

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

Respondents

To the Applicant's ~~Fifth~~ Sixth Amended Statement of Claim filed 9 July 2026 ~~5 December 2025~~ (**SOC**) the first respondent (**IAL**) says as follows:

SUMMARY

A1. The Applicant (**White Oak**) alleges that Greg Brereton (**Brereton**) and BCC Trade Credit Pty Ltd (**BCC**) acted on behalf of IAL in issuing a "trade credit" insurance policy (referred to as the **2019 Policy**) and related endorsements to Greensill Bank AG (**Greensill Bank**). White Oak claims that it is a "loss payee" under the 2019 Policy, or alternatively an "Insured", and is entitled to indemnity from IAL under the 2019 Policy.

A2. A total of 113 endorsements are or have been relied upon by the **Greensill Applicants**[1] in the **Greensill Proceedings**[2], of which 19 are specifically relied on in this proceeding. The SOC refers to them as "debt endorsements", "customer endorsements" and "loss payee endorsements". These endorsements were written by

[1] The applicants in the various "Greensill Proceedings" (as defined in footnote 2).
[2] NSD1039 of 2021 (White Oak Proceeding), NSD1216 of 2021 (EHG Proceeding), NSD106 of 2022 (Catfoss Renewables Proceeding), NSD110 of 2022 (NMC Health Proceeding), NSD169 of 2023 (Credit Suisse Global Proceedings), NSD173 of 2023 (Atlantic 57 Proceeding), NSD174 of 2023 (Bluestone Proceeding), NSD175 of 2023 (LCL Proceeding) and NSD177 of 2023 (Simec Proceeding).

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BCC and Brereton between 13 March 2019 and 2 July 2020. White Oak is the only Greensill Applicant which alleges that the claims made in these proceedings fall within the scope of the 2019 Policy and endorsements pleaded.

A3. Notably, in light of the acquisition of BCC by Tokio Marine Management (Australasia) Pty Ltd (**TMMA**), which completed on 9 April 2019, there was a transitional period between 9 April and 30 June 2019 during which the authority given by IAL to BCC and Brereton was more limited than the immediately preceding period. TMMA and Bond & Credit Company Pty Ltd (**Bond**) issued public statements about the acquisition in mid-April 2019. BCC provided a copy of these statements to the insurance broker of the **Greensill Group** (being, Greensill Bank, Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Pty Ltd (**GCUK**)), Marsh Pty Ltd and/or Marsh Limited (collectively, **Marsh**), on 15 April 2019. Accordingly, the public, and specifically the Greensill Group, were on notice of the impending change in the licensee on whose behalf BCC and Brereton could act in issuing trade credit insurance.

A4. This proceeding has a factual relationship with Annexure F (concerning Liberty Commodities Limited (**LCL**)) to the Credit Suisse Global Proceeding (NSD 169/2023) ~~and Greensill Bank AG & Anor v Insurance Australia Limited (NSD 175/2023)~~ in that ~~they each~~ it involves underlying debts owed to or by LCL which debts were purportedly endorsed on the 2019 Policy. A range of other factual connections exist between the proceedings (and other Greensill proceedings), including the alleged status of White Oak as a purported "Loss Payee".

A5. Across the various Greensill Proceedings (including proceedings not concerned with White Oak), IAL denies liability on numerous bases. It was not a party to the policies and endorsements, and cannot be sued on them. Even if the policies and endorsements are binding, the SOC does not plead the facts necessary for there to be coverage, and in any event, even on White Oak's pleaded case, their claims fail to meet multiple necessary conditions. On these, and other bases, liability is denied.

A6. The core bases upon which IAL denies liability in this proceeding are set out below.

No authority

A7. *First,* BCC and Brereton did not have any authority from IAL to write the risks the subject of claims in these proceedings. White Oak accepts that BCC and Brereton did not have actual authority from IAL to write those risks; however, it maintains that BCC and Brereton had ostensible authority. BCC and Brereton's authority was, at all

relevant times, limited by specific written authorities and underwriting manuals. The only policies they could enter on behalf of IAL were true trade credit policies using prescribed wording of three kinds – "Trade Credit Insurance Whole of Turnover", "Trade Credit Insurance Multi Buyer" and "Trade Credit Insurance Single Risks" (**Approved Wording**). The endorsements that BCC and Brereton could issue on behalf of IAL were also prescribed and in set terms (**Approved Endorsements**). BCC and Brereton could not issue trade credit policies and endorsements that were not in accordance with the prescribed terms without approval from IAL and its reinsurers (in particular, lead reinsurer Scor Reinsurance Asia-Pacific Pte Ltd (**Scor Re**)). This was known to the entities in the Greensill Group (consisting of Greensill Bank, GCPL and GCUK) purportedly insured under the policies entered into by BCC and Brereton.

A8. The 2019 Policy (pursuant to which claims are made in this proceeding) was outside the scope of BCC and Brereton's written authority in numerous respects, including as follows, such that the policy is not binding on IAL:

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

(b) The risks were not trade credit risks.

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

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

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

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

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

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

A9. Moreover, the purported insureds failed to pay any consideration/premium for the 2019 Policy, such that it is not valid or binding.

A10. The endorsements pleaded in this case and purportedly issued by BCC/Brereton on behalf of IAL pursuant to the 2019 Policy were outside the scope of their authorities and are therefore invalid, of no effect and not binding or enforceable against IAL because, *inter alia*:

(a) They were not Approved Endorsements.

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

(c) The endorsements (including the RPA Debt Endorsement, Customer Endorsement 19, Customer Endorsement 36(i), Customer Endorsement 68, Post 1 July Customer Endorsements, Endorsement 18, and Endorsement 24) purported to operate in favour of an insured not domiciled in Australia, which their authorities did not permit, and/or purported to vastly increase the exposure of IAL beyond the limits as stipulated in the applicable Underwriting Manuals.

(d) Many of the endorsements were entered into after 30 June 2019 after BCC and Brereton's appointment as authorised representatives of IAL ceased. Moreover, as was publicly available, the register maintained by ASIC under section 922A of the *Corporations Act 2001* (Cth) (***Corporations Act***) was updated to record that BCC's and Brereton's status as authorised representatives of IAG Agencies Pty Ltd (**IAGA**) had ceased with effect on 30 June 2019, and that BCC was the authorised representative of Tokio Marine & Nichido Fire Insurance Co Ltd (**TMNF**) from 1 July 2019 onwards. On and from 1 July 2019, TMNF was responsible for the conduct of BCC and Brereton for the purposes of section 917B of the *Corporations Act.*

A11. The Greensill Group knew or ought to have known that BCC/Brereton lacked authority to enter into the 2019 Policy on behalf of IAL. In particular, in late 2017, the Greensill Group (through its insurance broker Marsh) and Alexander 'Lex' Greensill (**Lex Greensill**) sought to negotiate (through BCC) the terms of a policy prepared by the Greensill Group or Marsh with IAL and reinsurer Scor Re. Those terms deviated from the Approved Wording. IAL and Scor Re informed BCC that they disagreed in numerous respects and BCC communicated this to the Greensill Group. In the result,

agreement was not reached, and BCC informed IAL that it would proceed only using Approved Wording. Through this, the Greensill Group knew that policy wordings which deviated from Approved Wording required approval from IAL and Scor Re, and that no such approval had been given. At no point did the Greensill Group seek approval for the 2019 Policy, or any of its purported endorsements, from IAL or Scor Re as required, and at no point did IAL or Scor Re give approval for the 2019 Policy and or any endorsements.

A12. Even if BCC/Brereton had authority to write the endorsements (which IAL denies) those endorsements were inconsistent with numerous terms of the 2019 Policy, and were not of a kind contemplated by it, i.e., they were not permitted by the terms of the 2019 Policy, and are therefore invalid, of no effect and not binding or enforceable against IAL.

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

A13. *Second,* Division 6 of Part 7.6 of the *Corporations Act* does not apply to make IAL responsible for the conduct of BCC/Brereton, including their conduct in entering into the 2019 Policy and endorsements. This is so because, *inter alia*:

(a) White Oak (as a purported loss payee) was not a "client" with respect to the 2019 Policy for the purpose of section 917A(1)(b) of the *Corporations Act*;

(b) The conduct of BCC and Brereton in purportedly entering into the 2019 Policy and endorsements, was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the Corporations Act, nor did they in fact rely on it, or rely on it reasonably and in good faith, as to which IAL repeats paragraph A11.

(c) If White Oak was a "client" with respect to the 2019 Policy and endorsements for the purpose of section 917A(1)(b) of the *Corporations Act* (which IAL denies), then the purported entry into the 2019 Policy was not conduct on which White Oak could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act* for the reasons given in paragraph 41B(i)(ix) of this Defence.

(d) Moreover, White Oak has not pleaded the facts, matters and circumstances said to constitute actual good faith reliance for the purpose of section 917A(1)(c) of the *Corporations Act*. White Oak did not in fact ~~rely and it is not~~

~~known whether it in fact relied~~ in good faith or reasonably on the purported entry into the 2019 Policy and endorsements. IAL relies on the absence of any pleading by White Oak as to the facts, matters and circumstances said to constitute actual good faith reliance, and the matters set out in the document titled "Annexure D" filed in these proceedings (***Annexure D***).

A14. IAL was not informed that BCC and Brereton were issuing policies and endorsements using non-approved wording and non-approved endorsements. In fact:

(a) BCC informed IAL on 2 November 2017 that “We are only going to use our approved wording in accordance with our approved Underwriting Guidelines" [~~TOK.001.00145983~~ IAL.500.011.0555].

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

A15. The Greensill Group (including its agent, Marsh) knew or ought to have known that BCC and Brereton did not have authority to write the risks the subject of these proceedings.

No coverage under the 2019 Policy

A16. *Third,* even if White Oak can establish that IAL is bound by (or otherwise responsible for) the 2019 Policy and the endorsements to it, it faces several insurmountable obstacles in showing that the 2019 Policy covered the claims it now makes.

A17. To the extent that this Defence sets out coverage defences that are based on the wording of the 2019 Policy and its endorsements, those defences arise only in the alternative to IAL’s primary position that the 2019 Policy and its endorsements are not valid and binding. The policy, at a high level, purports to insure “**Loss**” in respect of

"**Assets**" caused by a failure to pay "**Eligible Debts**". There are numerous necessary conditions which must exist before each of those three key concepts – "Loss", "Asset" and "Eligible Debt" – can be said to exist.

A18. For example, before there can be an "Eligible Debt" there must be a debt which meets the six criteria in Schedule 7 of the 2019 Policy at the time the relevant "Asset" derived from one or more Eligible Debts is acquired by the Insured. One of those criteria is that the debt meets the criteria in a "Debt Endorsement". White Oak relies on a particular "Debt Endorsement", which it defines as the RPA Debt Endorsement, in advancing its claim. That "Debt Endorsement" brings with it a host of additional conditions which a debt must meet in order to qualify as an "Eligible Debt". IAL denies that the RPA Debt Endorsement binds it, but White Oak's case depends on the RPA Debt Endorsement.

A19. There are numerous intersections between IAL's defence of lack of authority and the case advanced by White Oak on coverage. White Oak's case on coverage depends on establishing that various "Customer Endorsements" and a particular "Debt Endorsement" were valid, binding on and enforceable against IAL. For example, there is no "Eligible Debt" unless it is owed by a "Customer" which, in turn, is a person endorsed to the policy under a "Customer Endorsement". If there is no valid or effective "Customer Endorsement", there is no "Customer" and no "Eligible Debt".

A20. IAL anticipates that, if the 2019 Policy is (contrary to IAL's position) valid and/or binding on it, in order to resolve the case on coverage, it will be necessary: first, to identify which endorsements to the policy were valid, binding and enforceable; secondly, to construe the policy and endorsements to identify the conditions necessary for coverage; and, thirdly, to identify and understand the underlying transactions to establish whether the conditions are met. The alleged underlying transaction in the present case involves:

(a) a supply or possible supply of goods or services from a supplier (A, LCL) to a purchaser (B, here one of the entities referred to in paragraph 61 of the SOC);

(b) the provision of finance from C (here, GCUK) to A (as purported trade credit finance, to obtain advance cash flow in respect of possible future payment obligations of B);

(c) the assumption of possible future payment obligations by A to C in consideration for the supply of finance by C.

(d) the assignment of rights from A to C, being A's rights (if any) against B to payment in respect of the underlying supply of goods and services;

(e) the assumption of obligations in the nature of guarantees by D (here Liberty Commodities Group Pte Ltd (**Liberty**) and Liberty FE Trade DMCC (**Liberty FE**)) in respect of the payment obligations of A to C;

(f) an assignment by C to E (here, White Oak) of C's rights against A, B and D; and

(g) default of the payment obligations of A, B and D.

A21. In the circumstances of this case, it is alleged that each of A (LCL), B (alleged underlying recipients of supplies from LCL) and D (the guarantors) were "Customers" capable of owing "Eligible Debts". In this case, White Oak expressly pleads that there have been investigations showing that there were in fact no amounts owing from B to A (SOC, paragraph 67) – that is, there was no underlying account receivable.

A22. IAL contends that the SOC falls well short of pleading material facts capable of establishing the multiple steps in the transactional chain which could ground indemnity under the 2019 Policy, even assuming that it, and relevant endorsements, are valid and binding on IAL.

A23. Further, ~~the~~ White Oak's pleaded case ~~(as in other Greensill Proceedings)~~ largely does not address, or address adequately, the conditions necessary for there to be coverage. IAL has done its best in the Defence to expose the propositions which are either implicit in White Oak's case or, if not implicit, are missing and must be established. IAL anticipates that the resolution of the case on coverage will call for a measure of "box-ticking", a task in which IAL says White Oak will fail at multiple levels on the case as pleaded.

A24. The complexity of the endorsements, and the related multiplicity of conditions necessary for there to be coverage, are not matters for which IAL is responsible: IAL did not draft the 2019 Policy or the endorsements; they bear no resemblance to the Approved Wording or the Approved Endorsements; and the 2019 Policy and endorsements were in fact drafted by the purported "Insureds" themselves without approval by or even recourse to IAL.

A25. Once the propositions, implicit in or necessary to White Oak's case, are exposed ~~(as they are in the other Greensill Proceedings)~~, it is apparent that there are significant

gaps throughout White Oak's case. These are identified throughout this Defence. By way of example only:

(a) The "Assets" relied on were first acquired by White Oak after the policy period, which is sufficient to deny coverage;

(b) The alleged "Assets" are not even alleged to have even been acquired or owned by an "Insured", namely Greensill Bank;

(c) The alleged "Assets", in whole or in part, do not meet the description of "Assets" for the purposes of the 2019 Policy;

(d) On the pleaded case, there was often no underlying account receivable (owing from B to A), but the 2019 Policy does not recognise coverage where in reality there was no underlying account receivable (but at most a purported account receivable, or possible future account receivable).

A26. Examples could be multiplied. Many of the problems in White Oak's case arise because the "Asset" in respect of which it seeks indemnity is many steps removed from an underlying, real-world transaction (between A and B) and, in fact, the transactions were financially engineered in such a way that there often need never be any real-world transaction at all. The 2019 Policy and related debt endorsements ultimately require there to be some real-world root to the "Assets" and "Eligible Debts" the subject of the claim.

A27. As noted, White Oak relies on an alleged Debt Endorsement it defines as the **RPA Debt Endorsement**, but which is elsewhere called Debt Endorsement 19(iii). That endorsement has multiple parts, each of which set out numerous conditions before a "debt" will meet the description of being a "Debt". The Statement of Claim does not articulate, with any precision or at all, the basis on which the obligations said to have arisen here meet any of the conditions in those various parts. In the circumstances, IAL has identified necessary conditions for a debt to be an "Eligible Debt", but otherwise not pleaded to them.

A28. There are further coverage defences. By way of example, the 2019 Policy provides that "Assets" acquired after the delivery of a "Stop Asset Acquisition Instruction" are not covered. There is a deemed delivery of such an instruction 10 Business Days after an underlying debt goes into default. In the present case, IAL says that given that the there was a default in payment of the obligations relied upon by White Oak on and

from 10 December 2020, a Stop Asset Acquisition Instruction was issued no later than 24 December 2020, with the result that most of the debts the subject of White Oak's claims could not attach to the 2019 Policy.

A29. Further coverage problems arise because the financing from GCUK to the purported Customers was purportedly in respect of accounts receivable payable to the purported Customers. However, it is apparent from the contemporaneous materials that there never were accounts receivable or even non-fanciful future accounts receivable. Rather, "accounts receivable" were artificially hypothesised, and inserted into funding documents, to create an appearance that GCUK was funding against existing, or reasonably likely future, accounts receivable, when the reality was that there were no existing accounts receivable, and no expectation or real expectation of accounts receivable arising. Rather than GCUK providing funding to "Customers" against real accounts receivable of the "Customers", GCUK created records of the purported accounts receivable itself, and then funded the "Customers" in artificially-created amounts bearing no resemblance to the factual and legal reality. This gives rise to several coverage problems. For example, it deprives the asserted debts of the character of "Eligible Debts", because the debt bore no relationship to an "account receivable".

Fraudulent Misrepresentations and Non-Disclosures

A30. Further, for the reasons set out in Annexure A to IAL's Defence to the SOC, the purported Insureds made fraudulent misrepresentations and non-disclosures relating to (inter alia) the true nature of the arrangements between GCUK and the purported Customers and the character of the risk being insured. As a result, if IAL is bound by the 2019 Policy (which is denied), the 2019 Policy should be avoided in whole or, alternatively, IAL's liability (if any) should be reduced to nil.

Applicant's case fails against IAL at every stage

A31. IAL says that White Oak's case fails at multiple stages. IAL was not a party to the 2019 Policy or the endorsements, and it is not attributed with responsibility for the conduct of BCC and Brereton in relation to them. As pleaded by BCC, the conduct of the Greensill Group would in any event allow the 2019 Policy and endorsements to be avoided. And, even if the policies and endorsements (or some of them) are valid and binding, there is no coverage. The claim is denied, in whole and at each stage.

White Oak's case based on alleged non-disclosures in 2020

A32. White Oak also contends that IAL, BCC, TMMA and TMNF are liable for alleged non-disclosures in 2020 which, it is said, led White Oak to purchase receivables on which it has made a loss. White Oak's case is largely premised on the correctness of its case on authority and Part 7.6 of the *Corporations Act*, which should be rejected. Further, and in any event, the alleged non-disclosures if they occurred were not wrongful, did not cause loss and any loss was brought about by White Oak's contributory negligence.

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

A33. Finally, so far as White Oak asserts an indirect claim against IAL via a deemed responsibility under Division 6 of Part 7.6 of the Corporations Act for contraventions of the *Corporations Act*, the *Australian Consumer Law* (***ACL***) and the *Australian Securities and Investment Commission Act 2001* (Cth) (***ASIC Act***), IAL also advances a concurrent wrongdoer/apportionment defence. The basis of this defence is the proposition that IAL's deemed responsibility is not, and cannot be, greater than that of BCC or Brereton, being the persons for whose conduct IAL is said to be responsible – so, if a concurrent wrongdoer defence is available to BCC or Brereton, it is also available to IAL. A concurrent wrongdoer is a person whose acts or omissions (whether wrongful at law or not) caused the loss the subject of the claim. Here, there were multiple concurrent wrongdoers, including the numerous participants in the transactional chain relied upon as the factual foundation for White Oak's pleaded case, and there is contributory negligence of White Oak.

Reservation and other preliminary matters

A34. Given the nature of the matters in which issue is joined between the parties, discovery and compulsory disclosure will be sought by IAL. In addition, IAL continues to investigate the circumstances in which the 2019 Policy came to be issued by the Third Respondent, Brereton, and/or the Second Respondent, BCC. Additional issues may come to light as a result of discovery, disclosure and further investigation, in which case an amended Defence will be filed at an appropriate future time.

A35. Save where expressly stated to the contrary, this pleading adopts the sub-headings and definitions used in the SOC where appropriate and for convenience only.

A36. Save where expressly stated to the contrary, IAL pleads only to the paragraphs pleaded in the SOC, not to the particulars of the paragraphs pleaded in the SOC.

A. NATURE OF THE DISPUTE

1 Paragraph 1 of the SOC broadly identifies the nature of the dispute, save that IAL denies that White Oak is an Insured or Loss Payee and third party beneficiary and does not know and cannot admit that the alleged accounts receivable remain unpaid.

1AA Paragraph 1AA of the SOC identifies a further dispute. IAL denies that an irrevocable power of attorney entitles White Oak to claim an indemnity under the 2019 Policy.

1A Paragraph 1A of the SOC identifies a further dispute that ~~IAL,~~ BCC and Brereton engaged in misleading or deceptive conduct, or made false or misleading statements, or are liable for the tort of deceit. ~~IAL denies it engaged in any such conduct.~~

1B Paragraph 1B of the SOC identifies a further dispute that IAL, together with BCC, TMMA and/or TMNF engaged in misleading or deceptive conduct. IAL denies it engaged in such conduct. Further, there are allegations of accessorial liability against TMMA and TMNF in relation to the conduct of BCC, which are not pleaded against IAL.

1C Paragraph 1C of the SOC references alternative claims in (a) contract as against BCC and Brereton *vis a vis* White Oak; and (b) in negligence against each of IAL, BCC, TMMA and/or TMNF. IAL denies that it owed any such duty of care to White Oak. In the alternative, if there is such a duty (which is denied) then there was no breach of duty by IAL. To the contrary, it is White Oak that is responsible for its conduct in entering into the transactions by which it purportedly purchased 29 accounts receivable between 10 December 2020 and 25 February 2021, and it was contributorily negligent in failing to undertake adequate investigations and due diligence in relation to BCC and Brereton's authority to act on IAL's behalf.

1D Paragraph 1D of the SOC identifies a further dispute that: (a) IAL is responsible for the conduct of BCC and Brereton in their purporting to enter the 2019 Policy and its endorsements; and (b) TMNF is responsible for the conduct of BCC and Brereton in their purporting to enter **April Endorsements** (as defined in the particulars to paragraph 59(a) of the SOC). IAL's position is that it is not responsible for any of the alleged conduct of BCC and Brereton under sections 917B and 917C of the

Corporations Act, including the alleged conduct in purporting to enter the April Endorsements which occurred after BCC and Brereton ceased as IAL's authorised representatives.

1E Paragraph 1E of the SOC identifies a further dispute that IAL and TMNF are responsible for the conduct of BCC and Brereton referred to in 1B and 1C of the SOC under sections 917B and 917C of the *Corporations Act*. IAL disputes that it is liable for that conduct.

B. ISSUES LIKELY TO ARISE

1F [Not used]

2 The issues identified in paragraphs 1F, 2 and 3 to 3F (inclusive) of the SOC are issues which are likely to arise.

3 There are other issues which are likely to arise, namely:

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

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

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

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

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

(f) whether White Oak has standing; and

(g) whether White Oak is contributorily negligent for its conduct in entering into the transactions by which it purportedly purchased 29 accounts receivable between 10 December 2020 and 25 February 2021.

C. The Parties

4 IAL admits paragraph 4 of the SOC.

5 IAL does not know and cannot admit paragraph 5 of the SOC.

6 IAL admits paragraph 6 of the SOC.

7 IAL admits paragraph 7 of the SOC.

7AA IAL admits paragraph 7AA of the SOC.

D. Other Relevant Entities

Agent of Insurer

7A IAL admits paragraph 7A of the SOC.

8 As to paragraph 8 of the SOC, IAL:

(aa) admits that from 1 August 2017 until 30 June 2019 each of IAL and IAGA was a subsidiary of IAG;

(a) says that on or about 28 July 2016, CGU Insurance Limited (**CGU**) and BCC entered into an agreement styled an "Agency & Authorised Representative Agreement" (**CGU AAR Agreement**);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) says that the CGU AAR Agreement also included the following express terms:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) says that the CGU AAR Agreement included a schedule constituting the "Authorisation Notice Schedule", being the **BCC Authorisation Notice**, which:

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

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

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

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

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

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

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

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

(e) says that on 8 July 2016, CGU and Brereton entered into an “Individual Authorisation Agreement and Authorisation Notice” (**CGU/Brereton Authorisation Agreement**), to which was attached an “Individual Authorisation Notice” (**CGU/Brereton Authorisation Notice**);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) BCC must always act within the authority and terms of the applicable agency agreement in the conduct of its business and underwrite

business within the scope and limits in accordance with Underwriting Manual Version 1.0 (page 8);

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

(A) Whole of Turnover Limit: AUD 50 million subject to the special acceptance stipulation in paragraph 8(g)(viii) of this Defence;

(B) Major Debtors/Multi Buyer Limit: AUD 40 million subject to the special acceptance stipulation in paragraph 8(g)(viii) of this Defence;

(C) Single Risks Limit: AUD 35 million; (page 9)

(viii) BCC's authority is up to AUD 35 million, with policies and buyers with limits up to AUD 50 million for Whole of Turnover policies and up to AUD 40 million for Major Debtors / Multi Buyer policies considered by Special Acceptance by CGU and its reinsurers (page 9);

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

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

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

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

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

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

Version 1.0) with the application of select mandatory endorsements (page 16);

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

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

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

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

(h) says that, on or around 22 July 2016, CGU approved a set of "Policy Endorsement Clauses" (**Approved Endorsements**) for use by BCC in accordance with the terms of the Underwriting Manual Version 1.0 and subsequent versions as referred to below, and says further that:

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

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

Particulars

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

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

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

Particulars

Trade Credit Insurance Whole of Turnover dated October 2016 (Version WOT 1.3) (~~IAG.0001809750.0001.0004~~ IAL.500.011.1310).

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

Particulars

Trade Credit Insurance Multi Buyer dated October 2016 (Version MB 1.3) (~~IAG.0001809750.0001.0003~~ IAL.500.011.1309).

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

Particulars

Trade Credit Insurance Single Risk dated October 2016 (Version SR 1.3) (~~IAG.0001809750.0001.0002~~ IAL.500.011.1308).

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

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

Particulars

Trade Credit Insurance Whole of Turnover dated August 2017 (Version WOT 1.4) (~~IAG.0000022998.0003~~ IAL.500.011.0475).

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

Particulars

Trade Credit Insurance Multi Buyer dated August 2017 (Version MB 1.4) (~~IAG.0000022998.0002~~ IAL.500.011.0474).

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

Particulars

Trade Credit Insurance Single Risk dated August 2017 (Version SR 1.4) (~~IAG.0000022998.0001~~ IAL.500.011.0473).

(k) says that:

(i) on and from 1 August 2017, CGU transferred to IAL (inter alia) its "Insurance Contracts" and its "Business" within the meaning of the Scheme for the Transfer of the Insurance Business of CGU Insurance Limited to Insurance Australia Limited confirmed by the Federal Court of Australia on 20 July 2017;

Particulars

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

(ii) CGU thereby transferred to IAL (inter alia) CGU's rights in relation to the CGU AAR Agreement;

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

Particulars

Letter issued by IAL dated 1 August 2017 (~~IAG.0000030235.0001~~ IAL.500.005.0103)

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

(l) says that:

(i) on or around 28 July 2017, IAGA issued an "Individual Authorisation Agreement and Authorisation Notice" in respect of Brereton (**IAGA/IAL Brereton Authorisation Agreement**);

Particulars

The IAGA/IAL Brereton Authorisation Agreement is in writing. A copy is available for inspection at the offices of the solicitors for IAL.

(ii) says that the IAGA/IAL Brereton Authorisation Agreement attached an “Individual Authorisation Notice”;

(iii) by necessary implication, upon the coming into effect of the IAGA/IAL Brereton Authorisation Agreement (and therefore also the attached Individual Authorisation Notice) on 1 August 2017, the CGU/Brereton Authorisation Agreement (and therefore also the CGU/Brereton Authorisation Notice) came to an end;

(iv) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that Brereton’s status as authorised representative of CGU had ceased with effect on 1 August 2017;

(v) the IAGA/IAL Brereton Authorisation Agreement was an authorisation notice for the purposes of the CGU AAR Agreement and subsequently the IAL AAR Agreement (defined in paragraph 8(p) of this Defence);

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

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

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

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

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

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

a. provide general advice (but not personal advice);

b. deal in, arrange, acquire, issue, vary and dispose of Approved Products;

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

d. issue, negotiate and agree the terms of Insurance Policies for Approved Products;

(page 3)

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

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

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

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

(m) says that IAGA and IAL terminated the IAGA/IAL Brereton Authorisation Agreement with effect from 30 June 2019 and the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that Brereton's status as authorised representative had ceased with effect from 30 June 2019.

Particulars

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Whole of Turnover approved wording Version WOT 1.4 August 2017

Multi Buyers approved wording Version MB 1.4 August 2017

Single Risks approved wording Version SR 1.4 August 2017"

(page 9);

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

(A) Whole of Turnover Limit: AUD 50 million;

(B) Major Debtors / Multi Buyer Limit: AUD 50 million; and

(C) Single Risks Limit: AUD 50 million (page 9);

(ix) BCC's binding authority is up to AUD 50 million, with policies and buyers with limits up to AUD 75 million considered by Special Acceptance (page 9);

(x) BCC's authority in paragraphs 8(o)(viii), 8(o)(ix) and 8(o)(xvii) of this Defence was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons (page 9, page 56) (the **Buyer Group limit v 2.0**);

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

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

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

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

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

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

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

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

(p) says that, on 9 April 2019, IAL and BCC entered into an agreement styled an "Agency & Authorised Representative Agreement" (**IAL AAR Agreement**);

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

Particulars

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

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

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

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

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

Particulars

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

(b) The IAL AAR Agreement contained clause 20.9(a);

(c) BCC and IAL treated the IAL AAR Agreement as governing their relationship as from 9 April 2019; and

(d) IAL alleges the matters in paragraph 8(r) having regard to: (a) the commercial unlikelihood that the parties would have intended the IAL AAR Agreement to operate concurrently with the CGU AAR Agreement; and (b) the circumstances of the transfer of CGU's business to IAL as referred to in paragraph 8(k)(i) of the Defence. IAL also relies on the matters alleged in paragraphs 8(p), 8(q), 8(s), 8(t), 8(w), 8(x), 8(y), 8(z), 8(aa) and 8(bb) of this Defence.

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

Particulars

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

(t) says that:

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

(ii) the IAL AAR Agreement described BCC as "Agent";

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

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

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

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

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

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

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

(G) **Commencement Date**, meaning the date that completion occurs under the Share Sale Deed between IAGA and others (as vendors) and Tokio Marine Management (Australasia) Pty Ltd (**TMMA**) (as purchaser) in relation to BCC, or such other date as may be agreed in writing by IAL and BCC, being, relevantly 9 April 2019;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) any extensions of policy due date.

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

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

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

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

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

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

(iv) BCC was prohibited, except to the extent expressly permitted by the IAL AAR Agreement or authorised in writing by IAL, from entering into any

contract or arrangement, doing any acts, making any representations or incurring any obligations (including accepting any risk) on behalf of IAL or the Insurer (clause 2.3(a));

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

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

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

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

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

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

(viii) the Guidelines (being Underwriting Manual Version 3.0 referred to in paragraph 8(x) of this Defence) were taken to be incorporated into and form part of the IAL AAR Agreement (clause 4.2);

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

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

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

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

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

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

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

(x) says that, on and from 9 April 2019, a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines (Version 3.0)" (**Underwriting Manual Version 3.0**), being the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the IAL AAR Agreement, came into effect and limited BCC's acceptance authority for IAL business effective from that date;

(y) says that the Underwriting Manual Version 3.0 contained (inter alia) the following express terms:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xii) BCC was authorised to bind mid-term policy alterations where IAL is the insurer provided such changes are permitted within Underwriting Manual 3.0 after prudent underwriting judgment is applied, with no extensions of due date permitted (pages 8, 9);

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

(A) Whole of Turnover Limit: AUD50 million;

(B) Major Debtors Limit: AUD50 million;

(C) Single Risks Limit: AUD50 million

(page 10);

(xiv) Maximum Limits of AUD 75 million per Buyer or Buyer Group, with Limits above AUD 50 million and below AUD 75 million referred to the lead Reinsurer, and with IAL having final acceptance authority on those risks (page 9);

(xv) BCC's authority in paragraph 8(y)(xiii), 8(y)(xiv) and 8(y)(xxiv) of this Defence above was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons (page 9, page 57) (the **Buyer Group limit v 3.0**);

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

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

Whole of Turnover approved wording Version WOT 1.4 August 2017

Multi Buyers approved wording Version MB 1.4 August 2017

Single Risks approved wording Version SR 1.4 August 2017"

(page 10);

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

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

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

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

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

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

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

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

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

(xxvi) BCC will continue to manage claims on behalf of IAL under management of TMMA via the Policy & Claims Administration Outsourcing Deed dated 9 April 2019 (**PACAO**) (page 9);

(z) says that on its proper construction, the phrase "mid-term policy alterations" in Underwriting Manual Version 3.0 has the same meaning as "Mid-Term Policy Alterations" referred to in the IAL AAR Agreement referred to in paragraph 8(w) of this Defence;

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

(bb) says that, on 30 June 2019, pursuant to its terms, the IAL AAR Agreement came to an end;

Particulars

IAL AAR Agreement, clause 1.

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

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

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

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

(ee) otherwise, denies paragraph 8 of the SOC.

9 Not Used

9A IAL does not know and cannot admit paragraph 9A of the SOC.

9B IAL admits paragraph 9B of the SOC and says further that between 1 August 2017 and 30 June 2019, Brereton's authority to act on behalf of IAL and IAGA was limited in accordance with the terms of:

(a) the IAGA/IAL Brereton Authorisation Agreement;

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

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

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

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

(f) the Underwriting Manual Version 3.0 between 9 April 2019 and 30 June 2019.

9C As to paragraph 9C of the SOC, IAL:

(a) repeats paragraphs 8(aa) to 8(s) of this Defence;

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

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

(c) as to paragraph 9C(a), repeats paragraph 8(b) of this Defence;

(d) as to paragraph 9C(b)(i), says that it was a term of the CGU AAR Agreement that BCC would collect and remit to CGU (net of commission) premiums received by BCC on account of contracts of "Approved Products" issued by BCC as agent for CGU, net of BCC's commission (clauses 3.1, 3.3, 8.1);

(e) as to paragraph 9C(b)(ii), says that it was a term of the CGU AAR Agreement that BCC will maintain a bordereaux of all "Approved Products" issued by BCC on behalf of CGU (clause 4.5(a));

(f) as to paragraph 9C(b)(iii), says that:

(i) it was a term of the CGU AAR Agreement that BCC would provide a copy of the bordereaux referred to in paragraph 9C(e) of this Defence to CGU within 7 business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to "Approved Products" issued by BCC as agent for CGU (clause 4.5(b));

(ii) it was a term of the CGU AAR Agreement that each monthly bordereaux must include details of all transactions undertaken and monies outstanding, received, refunded or paid during that particular month in relation to Insurance including in respect of each Insurance Policy issued or arranged by BCC on behalf of CGU; and

(g) otherwise, denies paragraph 9C of the SOC.

9D As to paragraph 9D of the SOC, IAL:

(a) repeats paragraph 9C above; and

(b) otherwise, denies paragraph 9D of the SOC.

9E IAL admits paragraph 9E of the SOC and says further that:

(a) it relies on the entire terms of the PACAO for their full meaning and effect;

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

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

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

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

(iv) preparing management reports;

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

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

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

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

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

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

(e) it was a term of the PACAO that, during the term of the PACAO, the Administrator must provide the Services in accordance with the obligations described in clause 5.1(a);

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

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

(h) repeats paragraphs 8(y) and 8(cc) of this Defence; and

(i) says that, on its proper construction, the phrase "mid-term alterations" in the PACAO has the same meaning as "Mid-Term Policy Alterations" referred to in the IAL AAR Agreement referred to in paragraph 8(w) of this Defence.

9F As to paragraph 9F of the SOC, IAL:

(a) repeats paragraph 9E of this Defence;

(b) [Not used] ~~says that it assumes that the authority alleged is actual authority, as distinct from ostensible or apparent authority;~~

(c) says that:

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

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

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

(d) says that, in the event (which is denied) that the PACAO created a relationship of principal-agent as between IAL (as principal) and "the Administrator" (as

agent), any actual authority held by "the Administrator" was subject (inter alia) to:

(i) the Administrator's compliance with Underwriting Manual Version 3.0 for "Trade Credit policies" written on IAL paper on or before 30 June 2019 (clause 5.1; Schedule 5);

(ii) the limitations set out in Schedule 5 in respect of the processing of "mid-term alterations", including:

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

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

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

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

a. issuing premium invoices;

b. following up and collecting outstanding Debtor invoices;

c. allocating of cash receipts in the financial systems;

d. reconciling Trust bank accounts daily;

e. preparing and disseminating monthly Written Bordereaux;

f. preparing and disseminating monthly Payment Bordereaux and make appropriate distributions;

g. investigating and responding to ad hoc queries from the IAL finance team;

h. reconciling reporting systems to bank and Bordereaux reports;

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

Particulars

The notice revoked the power of the Administrator in relation to Claims arising under Trade Credit Policies to (BCC.0001.0005.5871):

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

(b) authorise any payments in connection with Claims;

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

(d) implement strategies for defending Claims;

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

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

(f) says that IAL is unaware of the terms of any delegation made by Bond to BCC; and

(g) otherwise denies paragraph 9F of the SOC.

9G As to paragraph 9G of the SOC, IAL:

(a) repeats paragraphs 9E and 9F of this Defence; and

(b) otherwise, denies paragraph 9G of the SOC.

9GA As to paragraph 9GA of the SOC, IAL:

(a) repeats paragraph 9E and 9F of this Defence; and

(b) otherwise, denies paragraph 9GA of the SOC.

9H As to paragraph 9H of the SOC, IAL:

(a) repeats paragraphs 9E, 9Fand 9G of this Defence;

(b) admits sub-paragraph (a); and

(c) denies sub-paragraph (b).

9HA As to paragraph 9HA of the SOC, IAL:

(a) says that the SOC does not identify the bordereaux pleaded and refers (in particulars) only to 'Written Bordereaux' and 'Claims Bordereaux' prepared from 'time to time' without identifying which bordereaux are relied upon;

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

(ba) refers to and repeats paragraph 9HB(b) of this Defence; and

(c) otherwise, does not know and cannot admit paragraph 9HA of the SOC.

9HB As to paragraph 9HB of the SOC, IAL:

(a) repeats paragraph 9HA of this Defence;

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

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

(ii) only disclosed (relevantly) that “Approved Products”, being trade credit insurance policies, had been issued by BCC to GCPL;

Particulars

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

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

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

(v) did not disclose that Greensill Bank was an insured;

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

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

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

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

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

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

Particulars

The 10 policies that BCC failed to disclose are:

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

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

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

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

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

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

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

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

(i) TB-05369 (being Policy 5369) with an inception date of 26 June 2019;

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

(xii) contained other inaccuracies or omissions; and

Particulars

The inaccuracies or omissions included:

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

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

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

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

(c) otherwise, denies paragraph 9HB of the SOC.

9HC As to paragraph 9HC of the SOC, IAL:

(a) repeats paragraph 9HB of this Defence;

(b) says that the SOC does not identify:

(i) what is meant by the allegation that IAL "permitted" BCC to collect certain premiums; or

(ii) the premiums alleged;

(c) says that, if and to the extent that the allegation is that IAL permitted BCC to collect premiums in respect of the 2019 Policy in circumstances where IAL knew of the existence and terms of the 2019 Policy or endorsements thereto:

(i) that allegation is denied; and

(ii) IAL says further that no premiums were remitted by BCC to IAL in respect of the 2019 Policy or endorsements;

(d) admits that from 1 August 2017, IAL permitted BCC to collect premiums for policies which BCC represented in iterations of the bordereaux as conforming with Approved Products;

(e) says that the premiums that BCC collected for all policies that it purportedly issued on behalf of IAL to GCPL, GCUK and Greensill Bank were not accurately recorded and did not reflect policies purportedly issued at specific points in time in the iterations of the bordereaux it submitted to IAL; and

(f) otherwise, does not know and cannot admit paragraph 9HC of the SOC.

9HD As to paragraph 9HD of the SOC, IAL:

(a) repeats paragraph 9HC of this Defence;

(b) says that the SOC does not identify the premiums referred to;

(c) says that, if and to the extent it is alleged that BCC remitted premiums to IAL in respect of the 2019 Policy or any of the endorsements purportedly issued pursuant to the 2019 Policy:

(i) that allegation is denied;

(ii) in relation to the CGU AAR Agreement and Insurer AAR Agreement:

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

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

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

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

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

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

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

(iii) in relation to the PACAO;

(A) refers to and repeats paragraph 9E of this Defence;

(B) says that:

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

b. there were no terms of the PACAO expressly providing for "the Administrator" to act as agent of IAL;

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

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

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

(da) repeats paragraph 9HB(b) of this Defence and says that the premiums that BCC remitted for all policies that it purportedly issued on behalf of IAL to GCPL, GCUK and Greensill Bank were omitted or not accurately recorded, and did not reflect policies purportedly issued at specific points in time, in the bordereaux it submitted to IAL; and

(e) otherwise, does not know and cannot admit paragraph 9HD of the SOC.

9HE As to paragraph 9HE of the SOC, IAL:

(a) repeats paragraphs 9HB and 9HC of this Defence;

(b) says that the SOC does not identify the commission referred to;

(c) says that, if and to the extent it is alleged that IAL paid commission to BCC in respect of the 2019 Policy or any of the endorsements purportedly issued pursuant to the 2019 Policy, that allegation is denied;

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

(e) otherwise, does not know and cannot admit paragraph 9HE of the SOC.

9HF As to paragraph 9HF of the SOC, IAL:

(a) repeats paragraph 8 of this Defence;

(b) says that the paragraph does not identify:

(i) what is meant by the allegation that IAL "permitted" BCC to engage in the identified conduct;

(ii) with any particularity, the conduct the subject of the alleged permission;

(c) says that, if and to the extent it is alleged that IAL "permitted" BCC to act as its agent in respect of the 2019 Policy and/or purported endorsements thereto, that allegation is denied;

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

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

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

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

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

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

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

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

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

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

(g) otherwise denies paragraph 9HF of the SOC.

Tokio Marine entities

9I IAL admits paragraph 9I of the SOC.

9J IAL admits paragraph 9J of the SOC.

9K IAL admits paragraph 9K of the SOC.

9L As to paragraph 9L of the SOC, IAL:

(a) repeats paragraphs 8 and 9B of this Defence;

(b) admits that Brereton was a "representative" of TMNF as that term is defined in s 9 of the Corporations Act;

(c) says that Brereton was authorised to provide general advice (but not personal advice); and

(d) otherwise denies paragraph 9L of the SOC.

9M IAL admits paragraph 9M of the SOC.

9N IAL admits paragraph 9N of the SOC.

Greensill Group of Companies

10 IAL admits paragraph 10 of the SOC.

11 IAL admits paragraph 11 of the SOC.

12 IAL admits paragraph 12 of the SOC.

13 IAL admits paragraph 13 of the SOC.

14 IAL admits paragraph 14 of the SOC.

15 As to paragraph 15 of the SOC, IAL:

(a) says that, on or around 8 March 2021, GCUK applied under section 124 of the *Insolvency Act 1986* (UK) for GCUK to be wound up on the basis that GCUK was unable to pay its debts for the purposes of section 122(1)(f) of the *Insolvency Act 1986* (UK);

(b) admits that there exists a notice of administrator's appointment in respect of GCUK dated 10 March 2021; and

(c) does not know and cannot admit that the notice of administrator's appointment dated 10 March 2021 was filed on or about 22 March 2021.

16 IAL admits paragraph 16 of the SOC, save for the words "and securitising future guarantee cashflows for industrial companies" which IAL cannot admit as it does not know whether the Greensill Group provided those services.

17 IAL does not know and cannot admit paragraph 17 of the SOC.

Liberty Group of Companies

18 IAL admits paragraph 18 of the SOC.

19 IAL does not know and cannot admit paragraph 19 of the SOC.

20 IAL admits paragraph 20 of the SOC.

21 As to paragraph 21 of the SOC, IAL:

(a) admits that LCL is a company that was duly incorporated according to law in the United Kingdom; and

(b) otherwise, does not know and cannot admit paragraph 21 of the SOC.

22 IAL admits paragraph 22 of the SOC, save the allegation that Liberty FE is a wholly-owned subsidiary of Liberty, which IAL does not know and therefore cannot admit.

Marsh

23 As to paragraph 23 of the SOC, IAL:

(a) says that, at all material times, Marsh Ltd was the agent of the Greensill Group for the purpose of the group's dealings with BCC;

(b) says further that Marsh Pty Ltd (ACN 004 651 512) was also an agent of the Greensill Group for the purpose of the group's dealings with BCC, and acted as a sub-broker to Marsh Ltd;

(c) says further that Marsh Pty Ltd was appointed as, and acted as, agent and broker:

(i) on behalf of GCUK and GCPL in respect of policy no. TB-03691;

(ii) on behalf of GCPL and Greensill Bank in respect of the 2019 Policy;

Particulars

Defence filed by White Oak in EWHC proceedings 2023-000294 (**EWHC Marsh Proceedings**) on 28 July 2023 at 10.4(a).

(d) says that neither Marsh Limited or Marsh Pty Ltd (together, **Marsh**) was an agent of IAL or BCC; and

(e) otherwise, admits paragraph 23 of the SOC.

E. The Receivables Purchase Deed and Group Guarantee

24A In respect of paragraphs 24 to 37 of the SOC, IAL says generally that:

(a) IAL was not, and is not alleged to be, a party to the documents identified in paragraphs 24 to 37 of the SOC;

(b) Greensill Bank was not, and is not alleged to be, a party to the documents identified in paragraphs 24 to 37 of the SOC;

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

(d) IAL will seek disclosure in relation to the matters the subject of paragraphs 24 to 37 of the SOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced; and

(e) admissions by IAL as to the existence and terms of agreement and other documents alleged in paragraphs 24 to 37 of the SOC are made subject to the reservation referred to in the preceding subparagraphs.

24 As to paragraph 24 of the SOC, IAL:

(a) repeats paragraph 24A of this Defence;

(b) says that IAL was not, and is not alleged to be, a party to the documents identified in paragraph 24 of the SOC;

(c) says that, at a time presently unknown to IAL, representatives of GCUK, LCL and Liberty appear to have signed a document dated 29 October 2018 and styled a “Receivables Purchase Deed”;

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

(e) says that, at a time presently unknown to IAL, representatives of GCUK, LCL, Liberty and Liberty FE appear to have signed a document dated 6 December 2019 and styled a "Deed of Amendment and Restatement";

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

(g) Liberty FE was also a party to the agreements; and

(h) the RPA was amended on 27 February 2019 and 6 August 2019 and also (as pleaded) on 6 December 2019; and

(i) otherwise, does not know and cannot admit paragraph 24 of the SOC.

25 As to paragraph 25 of the SOC, IAL:

(a) repeats paragraph 24A and 24 of this Defence;

(b) says as to sub-paragraph (a):

(i) the paragraph sets out the general effect of part of clause 2.1(A) of the RPA;

(ii) clauses 2.1(A) and 2.2 of the RPA stipulated a number of preconditions to the making of a "Request";

(iii) says that the subject matter of the request was not "receivables" (in the sense of existing rights to payment) but was instead "Receivables" as defined in the RPA;

(c) says as to sub-paragraph (b):

(i) the paragraph sets out the general effect of part of clause 2.1(B) of the RPA;

(ii) clauses 2.1(b), 2.2 and Sch 3 stipulated a number of preconditions to the effecting of an acceptance;

(iii) a "Proposed Receivable" could include a possible future right (see the definition of "Proposed Receivables" and "Receivables" and the words "hereafter created") and the assignment of any such right did not occur unless and until the right became a present right;

(iv) a "Proposed Receivable" included rights which did not meet the description of being an "account receivable" for the purposes of Part B of Debt Endorsement 2(iv) because a right can be an "account receivable" only if it is a current right, and a possible future right is not an "account receivable";

(v) says that because the "Proposed Receivable" was not an existing right, but was instead a possible future right or a purported right, there was, on the proper construction of the RPA and as a matter of general law, no assignment of the "Proposed Receivable" and such a "Proposed Receivable" did not become a "Purchased Receivable";

(d) refers to the terms of the RPA (as amended and restated) for their full force and effect;

(e) says that the RPA and Amended and Restated RPA provided for LCL, in its capacity as "Seller Representative", to submit to GCUK requests in an agreed form from time to time (a "Request") in relation to "Proposed Receivables" described in the Request and that, if such a Request was accepted by GCUK, GCUK "shall and hereby does purchase, and the relevant Seller shall and hereby does sell to [GCUK], all of the relevant Seller's right, titles and interest (but none of the relevant Seller's underlying obligations to the applicable Account Debtor) in, to and under such Proposed Receivables that [GCUK] has accepted for purchase as of the date of such acceptance" (RPA clause 2.1(a) and (b); Amended and Restated RPA clause 2.1(A) and (B));

(f) says further that any assignment effected under clause 2.1(b) of the RPA and 2.1(B) of the Amended and Restated RPA was, so far as it was an assignment of a bare chose in action, valid and effective only if the chose in action was ancillary to a property right or interest or, alternatively, if the assignee had a genuine commercial interest in taking the assignment and enforcing it for its own benefit;

(g) says further that any assignment effected under clause 2.1(b) of the RPA and 2.1(B) of the Amended and Restated RPA was, so far as it was an assignment of future property:

(i) effective only in equity as an agreement to assign, as and when the property came into existence;

(ii) effective only if the assignment was for value;

(iii) did not give the assignee any higher or better right as against the obligor than the assignor had against the obligor;

(iv) operated to effect any assignment only once the property came into existence; and

(v) effective only if notice was given to the obligor;

(h) says further that the RPA and Amended and Restated RPA defined "**Purchased Receivables**" to mean, after the sale to GCUK of Seller's right, title and interest in, to and under Proposed Receivables pursuant to a Request, "all such Proposed Receivables (together with Related Security, Collections and proceeds with respect thereto), once sold and purchased hereunder (but excluding any Repurchased Receivable)";

(i) says that the only seller under the RPA and Amended and Restated RPA was LCL (RPA and Amended and Restated RPA Sch 10), but additional Sellers could be added under clause 15 of the RPA and Amended and Restated RPA;

(j) says that the RPA and Amended and Restated RPA contained (inter alia) the following the defined terms (RPA clause 1.1, clause 2.3(a); Amended and Restated RPA clause 1.1, clause 2.3(A)):

(i) **Acceptance Date**, meaning, in respect of a Request, the date such Request is accepted by the Buyer in accordance with section 2.1(b);

(ii) **Account Debtor**, meaning each of the customers of any Seller from time to time;

(iii) **Eligible Receivable**, meaning a Receivable that had each of the characteristics or features identified in the definition, including (inter alia):

(A) it is valid, current, in full force and effect and constitutes the valid and binding obligations of an Account Debtor, enforceable in accordance with its terms;

(B) immediately prior to its purported sale to the Buyer, it will be legally and beneficially owned by the relevant Seller, free and clear of any lien, encumbrance or Security Interest other than any Permitted Encumbrance and no competing notice or notice inconsistent with

the transactions contemplated in this Deed remains in effect with respect to the applicable Receivable;

(C) it is payable in an amount not less than its Net Invoice Amount by the Account Debtor identified in the Request;

(D) it relates to payment of consideration for an actual and bona fide sale of tangible moveable goods produced by the relevant Seller in the ordinary course of its business that have been fully rendered or fully delivered as of the Request Date relating thereto; payments thereon are not contingent upon the relevant Seller's fulfilment of any further obligation; and if arising out of the rendition of services, such services have been accepted;

(E) it is not the subject of any Dispute;

(F) it is sold hereunder in good faith and without actual intent to hinder, delay or defraud present or future creditors of the relevant Seller;

(G) it is one under which neither the relevant Seller nor the related Account Debtor is in default in the performance of any of the provisions of the documentation and/or the transactions related thereto;

(H) it is evidenced by paper or electronic invoices or data files in form and substance reasonably satisfactory to the Buyer;

(I) it relates solely to the sale of tangible moveable goods produced by the relevant Seller;

(J) the invoices or data files, as applicable, and the other information provided by the relevant Seller with respect to each such Receivable (including the invoice numbers and unpaid amounts due in respect thereof that comprise the Proposed Receivables on such Request Date contained in the exhibit to the related Request) must be complete and correct in all material respects and all documents, attestations, contracts and agreements relating thereto that have been delivered to the Buyer are true and correct in all material respects;

(K) all information set forth in the invoice or data file, as applicable, and supporting claim documents with respect to such Receivable shall be true, complete and correct in all material respects;

(iv) **Net Invoice Amount**, meaning the amount of the applicable Purchased Receivable shown on the invoice for such Purchased Receivable as the total amount payable by the related Account Debtor including VAT (less (i) any discounts, credits or other allowances shown on such invoice, and (ii) any withholding tax applicable on payment of such Purchased Receivable which has been approved by the Buyer);

(v) **Proposed Receivables**, meaning the "Receivables" proposed by the relevant Seller to the Buyer for purchase hereunder and described (RPA) or identified (Amended and Restated RPA), as the case may be, in the relevant Request;

(vi) **Receivables**, meaning, all accounts, instruments, all right title and interest to receive payment by the relevant Seller from an Account Debtor and any other contract rights (including the right to sue for, seize and retain all proceeds of each Purchased Receivables and any interest due thereon), intangible property and chattel paper, all tax refunds and proceeds of insurance, and all other forms of obligations owing to the relevant Seller by an Account Debtor, whether now existing or hereafter created, together with the Related Security with respect thereto, and with respect to each of the foregoing, all Collections and proceeds thereof;

(vii) **Related Security** with respect to a Receivable was also defined;

(viii) **Remittance Date**, meaning the date on which a payment of the "Initial Purchase Price" is made in respect of a "Purchased Receivable";

(ix) **Request Date**, meaning, in respect of a Request, the date such Request is submitted to the Buyer in accordance with section 2.1(a) of the RPA or 2.1(A) of the Amended and Restated RPA;

(k) otherwise, denies paragraph 25 of the SOC.

26 As to paragraph 26 of the SOC, IAL:

(a) repeats paragraphs 24A, 24 and 25 of this Defence;

(b) as to paragraph 26(a) of the SOC, says that the representations and warranties were given in relation to a "Request" and on the dates identified in clause 3.1 of the RPA;

(c) as to paragraph 26(b) of the SOC, says that:

(i) paragraph 26(b) of the SOC describes at a general level the effect of five (of seventeen) necessary conditions for a "Receivable" to be an "Eligible Receivable";

(ii) as to paragraph 26(b)(i)(3), it was also necessary that the tangible moveable goods have been fully rendered or fully delivered as of the "Request Date" relating thereto;

(d) as to paragraph 26(c) of the SOC, says that:

(i) the sub-paragraph describes at a general level some of the effects of clause 3.1 and Schedule 6 of the RPA;

(ii) item 4 of Sch 6 refers to "Applicable Receivables" nor "Purchased Receivables" (the latter of which is the term used in the SOC);

(e) as to paragraph 26(d) of the SOC, says the paragraph describes at a general level some of the effects of clause 3.1 and Schedule 6 of the RPA;

(f) says that it was an express term of the RPA and Amended and Restated RPA that, in relation to each Request made by the relevant Seller hereunder, the relevant Seller represents and warrants to the Buyer on the date hereof and on each Request Date, Acceptance Date and Remittance Date that the representations and warranties set forth in Schedule 6 hereto and made by the relevant Seller are true and correct (RPA cl 3(a); Amended and Restated RPA cl 3.1);

(g) says that Schedule 6 of the RPA and Amended and Restated RPA set out a list of representations and warranties, including that:

(i) the Receivable Information contained in the exhibit to the Request is true and correct, including without limitation, the relevant invoice or data files, the list of the purchase order numbers, the invoice numbers, and the

unpaid amounts due in respect thereof which comprise the Applicable Receivables (clause 1);

(ii) each "Applicable Receivable", being a Receivable offered for sale in a Request by the relevant Seller under the Deed, is an Eligible Receivable owed by the relevant Account Debtor (clause 3);

(iii) immediately prior to the sale of each Applicable Receivable to the Buyer pursuant to the Deed, the relevant Seller is the legal and beneficial owner of such Applicable Receivable free and clear of any lien, encumbrance or Security Interest other than any Permitted Encumbrance; and upon each purchase of an Applicable Receivable and its Related Security in accordance with the Deed (including in the absence of notice to an Account Debtor), the Buyer shall acquire valid beneficial ownership of such Applicable Receivable and the Collections with respect thereto prior in right to all other Persons (other than the holder of any Permitted Encumbrance) and the assignment of the Applicable Receivable will be enforceable against such Account Debtor, subject only to notice of such assignment being provided to the Account Debtor (clause 4);

(iv) no information at any time furnished in writing (including in electronic form) by the Servicer to the Buyer for purposes of or in connection with any Transaction Document or any transaction contemplated hereby or thereby, including in connection with the purchase by the Buyer of the Applicable Receivables is by omission or otherwise misleading, inaccurate in any material respect as of the date it was furnished or (except as otherwise disclosed to the Buyer in writing at or prior to such time) as of the date as of which such information is dated or certified, or contains any material misstatement of fact or omits to state any material fact necessary to make such information not materially misleading (clause 13); and

(h) otherwise, denies paragraph 26 of the SOC.

27 As to paragraph 27 of the SOC, IAL:

(a) repeats paragraphs 25 and 26 of this Defence;

(b) says that:

(i) it was a term of the RPA and Amended and Restated RPA that a Seller shall not submit a Request unless the relevant Seller's representations and warranties made in the RPA and Amended and Restated RPA with respect to the Proposed Receivables (including the accuracy of the receivable information contained in the annexure to the related Request and that such Proposed Receivables are, in each case, Eligible Receivables) are true and accurate in all material respects, and the relevant Seller's representations and warranties set out in Schedule 6 are true and accurate in all material respects (RPA clause 2.2(ii); Amended and Restated RPA clause 2.2(B));

(ii) that term was a condition of the submission of a Request, not a condition precedent of the RPA or Amended and Restated RPA;

(c) otherwise, denies paragraph 27 of this Defence.

27A As to paragraph 27A of the SOC, IAL:

(a) repeats paragraphs 25 to 27 of this Defence;

(b) says that the provision made in clause 5.3 was expressly subject to contrary provision in the RPA; and

(c) otherwise admits paragraph 27A of the SOC.

28 As to paragraph 28 of the SOC, IAL:

(a) repeats paragraphs 25 to 27 of this Defence;

(b) admits paragraphs 28(a)(i), 28(ii) and 28(b1) of the SOC;

(c) says as to sub-paragraph 28(a)(iii):

(i) the relevant “Event or Repurchase” was that, with respect to “Overdue Receivables”, but excluding those which have already been repurchased by the relevant “Seller”, an “Account Debtor” asserts a “Dispute” with respect to have such “Overdue Receivable” at any time (cl 6.1(B)(4)).

(ii) an “Account Debtor” was deemed to have asserted a “Dispute” or “Dilution” in respect of an “Overdue Receivable” if, as at such “Overdue Receivable’s” “Final Settlement Date”, payment in full has not been

received by “Seller” other than due to an “AD Insolvency Event” with respect to the applicable “Account Debtor” which has been notified to the “Buyer” in writing no later than such “Overdue Receivable’s” “Final Settlement Date” (cl 6.1(B)(4));

(iii) sub-paragraphs 1, 2 and 3 set out the general effect of the three identified defined terms;

(d) says further, as to paragraph 28(a):

(i) paragraph 28(a) of the SOC describes some of the effects of clause 6 the RPA;

(ii) there was an “Event of Repurchase” only if the identified event had occurred and was continuing;

(iii) it refers to the terms of clause 6 of the RPA for their full force and effect;

(e) says further, as to paragraph 28(a)(ii), that the relevant Event of Repurchase under the RPA and Amended and Restated RPA arose where the failure to perform or observe a term or covenant was with respect to "any of" the Purchased Receivables, not "the Purchased Receivables";

(f) says, as to paragraph 28(b):

(i) clause 6(a), dealing with Events of Repurchase, did not refer to making payment to the “Buyer”, or to making payment in accordance with the RPA generally, but the clause instead had the effect that payments were to be made in accordance with clause 5 of the RPA;

(ii) the “Expected Amount” of a “Purchased Receivable” was an amount calculated according to the following equation “Net Invoice Amount * (1 – Loss Rate)”;

(g) says, as to paragraph 28(b)(ii), that, under the RPA and Amended and Restated RPA, the payment by way of indemnity was to be an amount equal to the Repurchase Price of any purported Purchased Receivable "which does not exist";

(h) says as to the chaussette to paragraph 28(b) that, under the RPA and Amended and Restated RPA, the payment was to be made in accordance with "section 5"; and

(i) otherwise, denies paragraph 28 of the SOC.

29 As to paragraph 29 of the SOC, IAL:

(a) repeats paragraphs 25 to 27A of this Defence;

(b) says that, under the RPA and the Amended and Restated RPA, an "Event of Termination" was defined to include the occurrence of:

(i) any of the Seller, the Seller Representative or, if applicable, the Servicer failing to perform or observe any term, covenant or agreement under the RPA or Amended and Restated RPA or any Transaction Document and, except as otherwise provided therein, where one or the other of the circumstances set out in sub-paragraphs (a)(i) and (ii) of the RPA and (A)(1) and (2) of the Amended and Restated RPA of the definition of "Event of Termination" (in clause 1.1) were satisfied;

(ii) any Seller, Seller Representative or Servicer, as applicable, failing to make when due any payment or deposit to be made by it under the RPA or Amended and Restated RPA in the circumstances prescribed in sub-paragraph (b) of the RPA and (B) of the Amended and Restated RPA of the definition of "Event of Termination";

(iii) any representation or warranty made by any Seller, the Seller Representative or the Servicer (or any of their Authorised Officers) under or in connection with the RPA or Amended and Restated RPA, or any Transaction Document, or any information or report delivered by any Seller, the Seller Representative or the Servicer, as applicable, pursuant to the RPA or the Amended and Restated RPA proving to have been incorrect or untrue in any material respect when made or deemed made or delivered where the consequences of the same continue unremedied to the satisfaction of the Buyer (acting reasonably) for ten (10) Business Days after such Person's knowledge, or notice thereof, subject to the carve-out in the last sentence of paragraph (c) (RPA) and (C) (Amended and Restated RPA) of the definition of "Event of Termination" (clause 1.1) ; and

(c) otherwise, denies paragraph 29 of the SOC.

30 As to paragraph 30 of the SOC, IAL:

(a) repeats paragraphs 25 to 29 of this Defence;

(b) says that paragraph 30 of the SOC describes at a general level some of the effects of clause 8 of the RPA;

(c) says that interest was not payable until the expiry of 10 days from the presentation of an invoice therefor (clause 8);

(d) says that it was a term of the RPA and Amended and Restated RPA that amounts due to GCUK thereunder shall accrue interest from and after the date when due at a rate per annum equal to the Discount Rate (as defined in clause 1.1 of the RPA and Amended and Restated RPA), plus 2.0% until paid (clause 8 of the RPA and Amended and Restated RPA); and

(e) otherwise, denies paragraph 30 of the SOC.

31 As to paragraph 31 of the SOC, IAL:

(a) repeats paragraph 25 of this Defence;

(b) otherwise refers to the terms of the RPA and the Amended and Restated RPA, upon which it will also rely for their full force and effect; and

(c) otherwise, does not plead to paragraph 31 of the SOC, which makes no allegation against IAL.

32 As to paragraph 32 of the SOC, IAL:

(a) repeats paragraph 24A of this Defence;

(b) says IAL was not, and is not alleged to be, a party to the document identified in paragraph 32 of the SOC;

(c) says that at a time unknown to IAL, representatives of (inter alia) Liberty and Liberty FE appear to have signed a document styled a “Group Guarantee” dated 29 October 2018;

(d) says that paragraph 32 describes the effect of parts of the Group Guarantee, but that the guarantee was conditional on Liberty FE and Liberty receiving a written demand in respect of “Guaranteed Obligations” and the expiry of 10 Business Days from the receipt of that demand (clause 3.1);

(e) refers to the terms of the Group Guarantee (as defined in paragraph 32 of the SOC) for their full force and effect; and

(f) otherwise, denies paragraph 32 of the SOC.

32A As to paragraph 32A of the SOC, IAL:

(a) says that the Group Guarantee defined "RPA" as "a receivables purchase deed pursuant to which each Seller offers to sell certain receivables to the Buyer, and the Buyer may agree to purchase from the relevant Seller from time to time" (cl 1(a));

(b) says that it was a term of the Group Guarantee that whenever a "Seller" breaches, does not perform its obligations (in any capacity) under, or pay any of the monies, debts and liabilities of any nature from time to time due or owing from or incurred by any of them pursuant to and/or in connection with the RPA (defined as "the Guaranteed Obligations"), each "Guarantor", on a joint and several basis, shall procure the punctual performance of the relevant "Seller" and will make due and punctual payment to GCUK or, where relevant a "Transferee", on demand of the relevant "Guaranteed Obligations" within ten Business Days of receipt of a written demand for the same in the "Buyer's Account" (or such other account as is nominated by GCUK (or where relevant, the "Transferee") from time to time in accordance with the RPA"; and

(c) otherwise, denies paragraph 32A of the SOC.

33 As to paragraph 33 of the SOC, IAL:

(a) repeats paragraph 24A, 24 and 32 of this Defence;

(b) refers to the terms of the Deed of Amendment and Restatement for their full force and effect;

(c) refers to the terms of the Side Letters apparently entered into between LCL and GCUK dated 29 October 2019 (true up), 22 August 2019, and 17 September 2019; and

(d) says that it was a term of the Deed of Amendment and Restatement that, with effect on and from the Effective Date, each of Liberty and Liberty FE confirmed

that the undertaking, guarantee and indemnity created or given by it under the Group Guarantee:

(i) will continue in full force and effect;

(ii) will extend to the liabilities of the Seller, the Seller Representative, the Servicer and the Parent to the Buyer under or in connection with the Amended and Restated RPA; and

(iii) shall not be otherwise affected, or discharged, by the terms of the Deed of Amendment and Restatement or the Amended and Restated RPA (clause 5(A));

(e) otherwise denies paragraph 33 of the SOC.

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

34 As to paragraph 34 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and White Oak appear to have signed a document styled a "Master Assignment Agreement" (**MAA**) dated 29 April 2020;

(b) for the purposes of the MAA, White Oak was defined to be the "Purchaser";

(c) admits that paragraph 34 of the SOC describes at a general level some of the effects of the MAA;

(d) says:

(i) it was a term of the MAA that GCUK may from time to time offer to assign, transfer and sell the whole, but not part of any “Payment Obligation” and all of its “Additional Rights” relating thereto to the “Purchaser” and such “Purchaser” at its sole discretion may agree to purchase such “Payment Obligation” and the “Additional Rights” relating thereto from GCUK (clause 2.1); and

(ii) it was a term of the MAA that each offer of a Payment Obligation and all Additional Rights relating thereto to the Purchaser pursuant to Clause 2.1 in respect of any Business Day shall be made by GCUK delivering an Offer File in respect of such Payment Obligation (and containing the relevant details thereof) to the Purchaser attached to an e-mail from an

Authorised User and password protected at any time before the relevant Cut-Off Offer Time on such Business Day (an "**Offer**") (clause 2.2);

(iii) it was a term of the MAA that an Offer may be accepted by the Purchaser at any time before the relevant Cut-Off Acceptance Time at which time, if not accepted, the Offer will lapse. Acceptance of an Offer shall be effected by the Purchaser (prior to the Offer lapsing) returning the relevant Offer File to GCUK attached to an e-mail from an Authorised User and password protected, marked as "Accepted" (an "**Acceptance**") (clause 2.3);

(iv) it was a term of the MAA that, on the terms and subject to the conditions set forth in the MAA, GCUK hereby sells, transfers, assigns, sets over and otherwise conveys absolutely to the Purchaser, and the Purchaser hereby purchases, all right, title and interest in, to and under each Payment Obligation, and all Additional Rights relating thereto, which are the subject of an Acceptance provided to GCUK in accordance with Clause 2.3, and such sale shall become effective as of the date falling on or before the relevant Cut-Off Settlement Time on which GCUK receives the Purchase Price in respect of such Payment Obligations and Additional Rights (clause 3.1);

(e) says further that:

(i) "**Payment Obligation**" was defined to mean, in respect of any “Offer” or any “Assignment”, a payment obligation owed by the “Relevant Obligor” and having the details and being of the type specified in the relevant “Offer File” (clause 1.2);

(ii) "**Additional Rights**" was defined to mean, in respect of any Payment Obligation, all of GCUK's rights relating to such Payment Obligation, including, but not limited to, (a) if applicable, where the related Accounts Receivable has been acquired by GCUK, all of GCUK's rights under such Accounts Receivable and (b) all other rights of GCUK under the relevant Finance Documentation (insofar as such rights relate to such Payment Obligation), in each case to the extent that such rights are assignable by GCUK;

(iii) "**Accounts Receivable**" was defined to mean, in respect of any Payment Obligation of a relevant type (as described in the Product Schedule

relating thereto), the right or purported right of a Supplier (or GCUK as the transferee of a Supplier) to receive any and all present and future payments of moneys due from the Relevant Obligor or a Related Party as a result of a business relationship or purported business relationship between the Supplier and the Relevant Obligor or a Related Party, whether or not earned by performance, and in relation to which such Payment Obligation is given, as identified in the relevant Offer File by reference to the Invoice Ref;

(iv) "**Product Schedule**" was defined to mean, in respect of the Offer and purchase of any Payment Obligation of a particular type (as identified by its Product Code) pursuant to the MAA, the Schedule to the MMA, describing such type of Payment Obligation and amending, supplementing or modifying the MAA, in respect of any Offer and purchase of Payment Obligations of such type, in the manner specified therein, as may be added to, supplemented and/or amended by notice in writing from GCUK to the Purchaser from time to time;

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

(f) there was no "Payment Obligation" in existence unless there was in fact a payment obligation owed by the "Relevant Obligor";

(g) relies on the terms of the MAA for their full force and effect;

(h) further says that if there was an assignment to White Oak of GCUK's rights or interest in the RPA as alleged on 22 April 2020, this assignment occurred after Brereton and BCC ceased being representatives of IAL for the purposes of section 910A of the *Corporations Act*; and

(i) otherwise denies paragraph 34 of the SOC.

35 As to paragraph 35 of the SOC, IAL:

(a) repeats paragraph 25 to 30 and 34 of this Defence;

(b) says that:

(i) the MAA provided for the purchase and assignment of "Payment Obligations" and "Additional Rights";

(ii) there can be a "Payment Obligation" (and accordingly "Additional Rights") for the purposes of the MAA only if there is an underlying "payment obligation" owed by a Relevant Obligor and having the details and being of the type specified in the relevant Offer File;

(iii) any assignment under clause 3.1 of the MAA was an assignment only of rights, title, and interest in, to or under each Payment Obligation and all Additional Rights relating thereto which was in fact held by GCUK;

(iv) the RPA and Amended and Restated RPA provided for the assignment to GCUK of the relevant Seller's "right, title and interest … in, to and under [certain] Proposed Receivables that [GCUK] has accepted for purchase as of the date of such acceptance";

(v) "Proposed Receivables" within the meaning of the RPA and Amended and Restated RPA, in turn, encompassed "the Receivables proposed by the relevant Seller to the Buyer for purchase hereunder and identified in the relevant Request";

(vi) "Receivables" within the meaning of the RPA and Amended and Restated RPA, in turn, encompassed all accounts, instruments, all right title and interest to receive payment by the relevant Seller from an Account Debtor and any other contract rights (including the right to sue for, seize and retain all proceeds of each Purchased Receivables and any interest due thereon), intangible property and chattel paper, all tax refunds and proceeds of insurance, and all other forms of obligations owing to the relevant Seller by an Account Debtor, whether now existing or hereafter created, together with the Related Security with respect thereto, and with respect to each of the foregoing, all Collections and proceeds thereof;

(vii) "Account Debtor" within the meaning of the RPA and Amended and Restated RPA meant "each of the customers of any Seller from time to time", and thus encompassed a customer whether or not the customer

had any extant "Payment Obligation" (within the meaning of the MAA) to the Seller;

(viii) "Purchased Receivables" within the meaning of the RPA and Amended and Restated RPA encompassed "Proposed Receivables (together with Related Security, Collections and proceeds with respect thereto), once sold and purchased [under the RPA and Amended and Restated RPA] (but excluding any Repurchased Receivable)";

(c) says that, in the premises:

(i) whether a "Payment Obligation" under the MAA could include the purchase and assignment of all GCUK's rights and interests in a "Purchased Receivable" that GCUK had acquired under the RPA or Amended and Restated RPA would depend on precisely what (if anything) GCUK had acquired under the RPA or Amended and Restated RPA from time to time;

(ii) the rights and interests (if any) acquired by GCUK under the RPA or Amended and Restated RPA from time to time would not be a "Payment Obligation" (within the meaning of the MAA) if, for example, there was no underlying "Payment Obligation" (within the meaning of the MAA) of the "Account Debtor" (within the meaning of the RPA and Amended and Restated RPA) because any obligation had been discharged or otherwise did not exist at the time it was purportedly acquired or assigned;

(iii) as a matter of law, the only choses in action assigned or assignable under the MAA were choses in action in respect of "Purchased Receivables" which actually existed;

(d) otherwise denies paragraph 35 of the SOC.

36 As to paragraph 36, IAL:

(a) repeats paragraph 35 of this Defence;

(b) says that the assignment (if any) effected under the MAA included an assignment of GCUK's "Additional Rights" (as defined), which, in respect of any “Payment Obligation” (as defined), included GCUK's "rights relating to such Payment Obligation" including but not limited to the matter described in

sub-paragraph (a) and all other rights of GCUK under the “Finance Documentation” (as defined) insofar as such rights relate to such “Payment Obligation”;

(c) says that the SOC does not identify the basis on which it is alleged that the RPA meets the description of being “Finance Documentation”;

(d) says that the definition of “Additional Rights” expressly excluded from that concept rights which were not assignable by GCUK;

(e) says further that, for the reasons given in paragraph 35 of this Defence, not all "Purchased Receivables" (within the meaning of the RPA and Amended and Restated RPA) are "Payment Obligations" (within the meaning of the MAA); and

(f) otherwise, denies paragraph 36 of the SOC.

37 As to paragraph 37 of the SOC, IAL:

(a) refers to the terms of the MAA for their full force and effect; and

(b) otherwise, does not plead to paragraph 37 of the SOC, which makes no allegation against IAL.

G. The Insurance Policies

The Proposed Greensill Policy Structure and Proposed Greensill Policy Wording

37A IAL admits paragraph 37A of the SOC and says further that it relies on the terms of the Greensill Policy Proposal (as defined and particularised in paragraph 37A of the SOC) for their full force and effect.

37B As to paragraph 37B of the SOC, IAL:

(a) as to paragraph 37B(a):

(i) says that the "special acceptance request" stated that the request "is to cover credit for USD $100M on Liberty Group's Australian assets (the former Arrium) and a credit paper is attached";

(ii) refers to the text of the "special acceptance request"; and

(iii) otherwise, denies the paragraph;

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249]

(b) as to paragraph 37B(b) says that:

(i) the document titled 'Master Risk Participation (MRPA) Facility — Structure Wording Variation' dated 12 September 2017 (MRPA Wording Variation), which was attached to the email dated 15 September 2017 referred to in paragraph 37A of the SOC:

(A) referred to 'Greensill', 'Greensill Capital' and 'Greensill Bank AG' but did not refer in terms to Greensill Capital (UK) Limited or GCUK;

(B) stated that 'Greensill Capital' was 'Bundaberg, Queensland based (ultimate holding company) but is largely a UK domiciled finance house';

(C) stated that BCC sought to present detail on Greensill Capital, and 'their proven trade credit policy status, to reflect that the policy structure is encompassed within our reinsurance arrangements' and to highlight the variations between the proposed Greensill Capital Trade Credit Policy Structure and BCC's MRPA structure;

(D) stated that BCC sought access to the full wording of IAG's trade credit reinsurance wording to ensure that the Greensill wording was compliant as a trade credit policy on a stand alone basis and that the policy wording complied with all conditions of IAG's reinsurance agreement; and

(E) in relation to the choice of jurisdiction, noted that the example policy states United Kingdom but that 'Greensill' had agreed that any policy written would be Australian based and answerable under Australian law;

(ii) refers to the MRPA Wording Variation for its full terms and effect; and

(iii) otherwise denies paragraph 37B(b);

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249] Master Risk Participation (MPRA) Facility – Structure Wording Variation prepared by Greg Brereton and dated 12 September 2017 [IAL.500.008.0250]

(c) as to paragraph 37B(c) of the SOC, IAL:

(i) refers to and repeats paragraphs 37B(b)(i)(A) and 37B(b)(ii) of this Defence;

(ii) says further that the MRPA Wording Variation stated that BCC's proposed outcome was that IAG and its reinsurers agree with BCC that the proposed structure is acceptable for BCC's use in order to facilitate trade credit transactions with 'Greensill Capital' in the future, whether for Liberty based transactions or other Australian domiciled transactions; and

(iii) otherwise denies paragraph 37B(c);

(d) as to paragraph 37B(d) of the SOC, IAL;

(i) refers to and repeats paragraphs 37B(b)(i)(A) and 37B(b)(ii) of this Defence; and

(ii) otherwise denies paragraph 37B(d);

(e) says further that the alleged Proposed Greensill Policy Structure involved GCUK acquiring invoice receivables from suppliers, and did not involve GCUK purportedly acquiring possible future receivables.

37C IAL admits paragraph 37C of the SOC and says further that the documents particularised at paragraph 37C of the SOC were embedded in a document attached to the email pleaded at 37A of the SOC.

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249]

Master Risk Participation (MPRA) Facility – Structure Wording Variation prepared by Greg Brereton and dated 12 September 2017 [IAL.500.008.0250]

37D IAL admits paragraph 37D of the SOC.

37E As to paragraph 37E of the SOC, IAL:

(a) denies paragraph 37E of the SOC;

(b) repeats paragraph 38(h) below;

(c) says further that in around late October 2017 and November 2017, BCC indicated to IAL that it would not be proceeding with proposals from Greensill and would instead use the Approved Wording 1.4; and

Particulars

Email from Scott Newland of BCC to Benjamin Gan of Scor Re, and copied to Greg Brereton, Twain Abbott of IAL, Ian Dearmun of Willis Towers Watson and Aldridge Tan, dated 31 October 2017, stating that BCC "will not be proceeding with the SCF transaction … and will apply our approved policy wording" [BCC.0001.0007.1422]

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Brad Robson of IAL, Toby Guy of BCC and Greg Brereton, dated 1 November 2017, stating "To avoid any confusion or any misunderstanding we are not going to use anything from the SCF. We are only going to use our approved wording in accordance with our approved Underwriting Guidelines." [BCC.0001.0004.0646]

Email from Scott Newland of BCC to Twain Abbott of IAL, dated 2 November 2017, stating "Either way, we are using our approved wordings and not the Greensill MRPA." [BCC.0001.0004.0659]

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Toby Guy of BCC and Brad Robson and Phuong Ly of IAL, dated 6 November 2017, stating that BCC had decided that Scor Re did not have a reasonable grasp of the proposed MRPA wording and that "Accordingly, we reverted to our approved wording …" [BCC.0001.0004.0673]

(d) says further that, IAL did not approve the request for an increased limit because LibertyOne group did not have a sound trading history in support of increasing the limit.

Particulars

Email from Twain Abbott of IAL to Benjamin Gan of Scor Re and Brad Robson of IAL dated 10 November 2017 [IAL.500.007.1259].

37F IAL denies paragraph 37F of the SOC and says further that:

(a) it repeats paragraphs 8, 9HF, 37B, 37C, 37E(c) and 38 of this Defence;

(b) at no stage after 6 November 2017 did BCC communicate to IAL that it would be proceeding with the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording;

(c) at no stage did IAL agree to, or hold out that it adopted, the Proposed Greensill Policy Structure or the Proposed Greensill Policy Wording; and

(d) the documents particularised at paragraph 37D of the SOC do not establish the matters pleaded at paragraph 37F.

37G IAL denies paragraph 37G of the SOC and says further that:

(a) it repeats paragraphs 8, 9B, 9HF and 38 of this Defence;

(b) in respect of the 2017 Master Policy 3691:

(i) White Oak relies on a document with document reference AGB.0002.0002.0872, which IAL understands is alleged to be the "2017 Master Policy 3691";

(ii) if the document is said to be the "2017 Master Policy 3691", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 27th day of December 2017" (page 2);

(B) was signed by Greg Brereton on or about 15 June 2018 (page 51);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800044;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the 2017 Parallel Policy 3690:

(i) White Oak relies on a document with document reference GBA.0004.0009.4397, which IAL understands is alleged to be the "2017 Parallel Policy 3690";

(ii) if the document is said to be the "2017 Parallel Policy 3690", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 27th day of December 2017" (page 2);

(B) was signed by Greg Brereton on or about 15 June 2018 (page 44);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800045;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the 2017 Standalone Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2017 Master Policy 3691 and 2017 Parallel Policy 3690;

(e) in June 2018, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in or around June 2018, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2017 Standalone Policies because:

(i) the 2017 Standalone Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of 2017 Master Policy 3691 and 2017 Parallel Policy 3690 was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were not written on Approved Wording 1.4; and

(B) the wording of the 2017 Standalone Policies had not otherwise been approved by IAL or its reinsurers.

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 Parallel Policy 3690 was $1 (Schedule 5 of the 2017 Parallel Policy 3690), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2017 Parallel Policy 3690 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 Parallel Policy 3690 is not yet known as it is "specified in the Customer Endorsement" (page 1 of 5 of the 2017 Parallel Policy 3690) and that for "any particular Customer will be set out in the relevant Customer Endorsement, or is otherwise the same as the Discretionary Credit Limit written for that Customer" (page 49 of 51 of the 2017 Master Policy 3691), each of which have not been identified;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 Parallel Policy 3690 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any customer endorsements were issued pursuant to the 2017 Standalone Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iii) entering into the 2017 Standalone Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were not a "Trade Credit Product". The 2018 Excess Policies were not written on Approved Wording 1.4.

In respect of the 2017 Master Policy 3691, GCUK, the insured, was not domiciled in Australia.

In respect of the 2017 Parallel Policy 3690, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2017 Parallel Policy 3690 exceeded 90% of Debt. The policy limit of the 2017

Parallel Policy 3690 is not identified. The 2017 Parallel Policy 3690 did not have any minimum excess.

Further, the obligation referred to in paragraph 37G(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were to take effect approximately 175 days prior to its purported entry.

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

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2017 Standalone Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into the 2017 Standalone Policies in the circumstances referred to in paragraph 37G(f) of this Defence;

(ii) the 2017 Standalone Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2017 Standalone Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the 2017 Standalone Policies were not written on Approved Wording 1.4;

(B) the wording of the 2017 Standalone Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 Parallel Policy 3690 was $1 (Schedule 5 of the 2017 Parallel Policy 3690), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2017 Parallel Policy 3690 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 Parallel Policy 3690 is not yet known as it is "specified in the Customer Endorsement" (page 1 of 5 of the 2017 Parallel Policy 3690) and that for "any particular Customer will be set out in the relevant Customer Endorsement, or is otherwise the same as the Discretionary Credit Limit written for that Customer" (page 49 of 51 of the 2017 Master Policy 3691), each of which have not been identified;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 Parallel Policy 3690 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any customer endorsements were issued pursuant to the 2017 Standalone Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iv) entering into the 2017 Standalone Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 37G(f)(iii) of this Defence. Further, the obligation referred to in paragraph 37G(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2017 Master Policy 3691

and 2017 Parallel Policy 3690 were to take effect approximately 175 days prior to its purported entry.

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

(h) it repeats paragraphs 38(g) to 38(i) of this Defence;

(i) in the premises, in June 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2017 Standalone Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2017 Standalone Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2017 Standalone Policies ; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2017 Standalone Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 38(gd) to 38(i) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2017 Standalone Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2017 Parallel Policy 3690;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2017 Parallel Policy 3690; and

(iii) by reason of the matters in paragraphs 37G(j)(i) and 37G(j)(ii) of this Defence, the 2017 Standalone Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2017 Standalone Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

37H IAL denies paragraph 37H of the SOC and repeats paragraph 38 below.

37I IAL denies paragraph 37I of the SOC and says further that:

(a) it repeats paragraph 37G above;

(b) the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording were based on a Master Risk Participation Agreement facility for a supply chain finance transaction;

(c) the 2017 Standalone Policies did not reflect a Master Risk Participation Agreement facility for a supply chain finance transaction; and

(d) the 2017 Standalone Policies were written in respect of an accounts receivables transaction.

Particulars

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others), dated 15 September 2017 with subject 'Master Risk Participation Agreement (MRPA) and Special Acceptance: Liberty Group/Greensill Capital' [IAL.500.008.0249].

Email from Greg Brereton to Ewan Berkemeier of Marsh, dated 19 December 2017 with subject 'RE: Liberty OneSteel AR' [BCC.0001.0003.0360].

37J IAL denies paragraph 37J of the SOC and says further that:

(a) it repeats paragraphs 8, 9HF and 38 of this Defence;

(b) in respect of the 2017 Master Policy 3691, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2); and

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer"; and

(c) in respect of the 2017 Standalone Policies, the SOC pleads no material facts capable of establishing that the amount of AUD 149,819.52 and USD 215,200 was the amount, or an amount, due under the 2017 Master Policy 3691 and in respect of the 2017 Parallel Policy 3690 at any time.

37K IAL denies paragraph 37K of the SOC and says further that:

(a) it repeats paragraphs 8, 9HF, 38 and 37J of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2017 Master Policy 3691 at any time; and

(ii) there were "Assets" insured under the 2017 Parallel Policy 3690 (as alleged in paragraph 37K) at any relevant time.

37L As to paragraph 37L of the SOC, IAL:

(a) repeats paragraphs 37J and 37K above, particularly paragraph 37K(b); and

(b) does not know and therefore cannot admit 37L of the SOC.

37M As to paragraph 37M of the SOC, IAL:

(a) repeats paragraphs 9C, 9HA to 9HD and 37G of this Defence;

(b) says further that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) did not disclose any policies with the policy number "TW-03137" referred to in paragraph 37G of the SOC;

(ii) from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 37G of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 9HB(b)(xi) of this Defence.

(c) otherwise denies paragraph 37M of the SOC.

37N IAL denies paragraph 37N of the SOC and says further that:

(a) in respect of sub-paragraph (a), there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraph (b), IAL repeats paragraph 37M of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 37G to 37M of this Defence.

37O IAL denies paragraph 37O and repeats paragraphs 37G to 37N of this Defence.

The Policy

38 IAL denies paragraph 38 and says further that:

(a) in March 2019, Brereton signed the 2019 Policy and backdated it to 22 February 2019;

(b) the terms of the 2019 Policy were authored by or on behalf of the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2019 Policy;

(c) on 22 February 2019 and in March 2019 and at all material times including between 28 July 2016 and 8 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4 from August 2017;

(iii) relevantly extended only to arranging and issuing products "in accordance with the “Underwriting Manual” and the Manual which, in or around March 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018;

(vii) relevantly extended only to arranging and issuing policies with limits of AUD 50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a maximum credit limit / credit term of 180 days; and

(ix) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit;

(d) the authority given by IAL to BCC did not include an authority to enter into the 2019 Policy and/or to renew or extend 2019 Policy because:

(i) the 2019 Policy was not a “Trade Credit Product” within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of the 2019 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that 2019 Policy was not written on Approved Wording 1.4;

(B) the wording of 2019 Policy had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(D) the "Insured" under the policy need not be a "Seller" for the purposes of each applicable Underwriting Manual and could, for example, be the owner of a "Note";

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2019 Policy was $1 (Schedule 5 of the 2019 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2019 Policy was in excess of that limitation;

(E) issue policies with limits in excess of AUD50 million and the 2019 Policy did not have a limit of AUD50 million or less;

(F) insure credit terms in excess of 180 days and 2019 Policy credit terms exceeded that limitation;

(G) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Policy did not have any minimum excess;

(H) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Policy exceeded 12 months;

(I) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2019 Policy exceeded that limit;

(iii) entering into the 2019 Policy was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The 2019 Policy was not a "Trade Credit Product". The 2019 Policy was not written on Approved Wording. Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2019 Policy exceeded 95% of Debt. The policy limit of the 2019 Policy was not AUD 50 million or less. The Policy Period exceeded 12 months. The credit terms were in excess of 180 days. There was no minimum excess. Policy endorsements exceeded AUD47.5 million in breach of AUD Binder limit..

Further, the obligation referred to in paragraph 38(d)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason where the 2019 Policy was to take effect by almost a month prior to its purported entry.

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

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(e) the authority given by IAL to Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy, because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into the 2019 Policy in the circumstances and on the terms referred to in paragraph 38(d) of this Defence;

(ii) the 2019 Policy was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation because:

(A) the wording of 2019 Policy was not “approved wording” for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Policy was not written on Approved Wording 1.4;

(B) the wording of 2019 Policy had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC authority’s pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton’s authority pursuant to the IAGA/IAL Brereton Authorisation, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2019 Policy was $1 (Schedule 5 of the 2019 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2019 Policy was in excess of that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Policy did not have any minimum excess;

(F) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Policy exceeded 12 months;

(G) insure credit terms in excess of 180 days and the 2019 Policy credit terms exceeded that limitation;

(H) issue policy limits in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2019 Policy exceeded that limit;

(iv) entering into the 2019 Policy was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly;

Particulars

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

Further, the obligation referred to in sub-paragraph 38(e)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason where the 2019 Policy was to take effect by almost a month prior to its purported entry

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

(f) by reason of the matters in paragraphs 38(g) to 38(i) of this Defence, as at 22 February 2019 and March 2019 and at all material times, GCPL and Greensill Bank knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2019 Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2019 Policy; and

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Policy;

Particulars

The particulars under paragraph 38(j) of this Defence.

(g) at all material times from at least September 2017 onwards, Lex Greensill was:

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

(ii) a director of GCPL (of which GCUK and Greensill Bank were wholly owned subsidiaries);

(iii) a director of GCUK;

(iv) the ultimate controlling party of GCUK; and

(v) the beneficial owner of Greensill Bank.

Particulars

IAL relies on GCUK's financial statements for 12 months to 31 December 2019, signed by Lex Greensill on or about 22 May 2020, and Greensill Bank's filings from the German Transparency Register for the period 5 April 2017 to 15 March 2021.

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

(ga) Greensill Bank:

(i) was previously known as NordFinanz Bank and was founded in 1927;

(ii) NordFinanz Bank was acquired by the Greensill Group in 2014, with Lex Greensill changing its name to Greensill Bank AG to include prominently in his own name;

(iii) had GCUK as its majority shareholder (85% or greater) at all material times from no later than 30 October 2014 until approximately 31 December 2018;

(iv) was wholly owned by GCUK at all material times no later than 31 December 2017 until approximately 31 December 2018;

(v) was wholly owned by GCPL on and from approximately 31 December 2018;

(vi) was at all material times part of the Greensill Group set up by Lex Greensill;

(vii) was at all material times a bank regulated by BaFin;

(viii) entered "*Insolvenzverfahren"* on 16 March 2021 which in Germany is a form of court appointed external administration on insolvency and is equivalent to having administrators appointed under Australian law;

(gb) GCUK:

(i) was another company within the Greensill Group;

(ii) was incorporated in England and Wales on 2 July 2012 under the name Greensill Capital Management Company (UK) Limited before changing to its current name on 18 July 2012;

(iii) was upon incorporation and at all material times thereafter, 100% owned by GCPL;

(iv) had, as one of its directors, Lex Greensill, who was appointed from 2 July 2012;

(v) is recorded at UK Companies House as having one active person with significant control: Lex Greensill, who is said to have "significant influence or control over the trustees of a trust";

(vi) was in the business of originating supply chain finance programmes and other financing programmes for companies, and obtaining sources of funding for those programmes (one of those sources being Greensill Bank); and

(vii) entered administration in England and Wales on 8 March 2021;

(gc) GCPL:

(i) was at all material times ultimately controlled by Lex Greensill;

(ii) was at all material times in the period 5 April 2017 to 15 March 2021 beneficially owned by Lex Greensill;

(iii) had as shareholders of its ordinary shares:

(A) the Greensill Corporation Pty Ltd (360,000 shares); and

(B) Peter Greensill Family Co Pty Ltd (168,046 shares),

who were, at all material times, the trustees of the AD Greensill Family Trust (which was named after Lex Greensill, and had as a beneficiary, Lex Greensill) and the Peter Greensill Family Trust respectively. Therefore, at all material times, Lex Greensill had significant influence or control over one or both of the family trusts, and through that had significant influence or control over GCPL (and GCUK);

(iv) had, as one of its directors, Lex Greensill, who was appointed from 4 November 2011;

(gd) at all material times Lex Greensill (through his control of GCPL) exercised controlling influence over the management of Greensill Bank:

(i) at all material times from approximately 30 October 2014, GCPL was the ultimate owner of Greensill Bank (initially, through GCPL's shareholding of GCUK and then, from approximately 31 December 2018, directly);

(ii) from no later than 31 December 2018, GCPL was the sole shareholder of Greensill Bank;

(iii) according to Greensill Bank's own financial statements, GCPL and Greensill Bank (as well as GCUK) formed part of a *Konzern* as a matter of German law (which refers to related or combined enterprises where one or more dependent enterprises are grouped under a controlling enterprise, with control being directly or indirectly exercised by way of greater than 50% of the shares or votes, or any other form of control such as uniform management);

(ge) further GCUK and Greensill Bank's senior management overlapped with each other:

(i) Lex Greensill:

(A) was the CEO of GCUK and a director from the date of incorporation;

(B) exercised and was capable of exercising effective control over both GCUK and Greensill Bank at least because each of those entities was, at all material times, directly or indirectly owned by GCPL, and Lex Greensill beneficially owned and/or controlled GCPL;

(ii) Maurice Thompson:

(A) was both chairman of Greensill Bank's Supervisory Board (from June 2014 to March 2021) and director/chairman of GCUK (from September 2014 to January 2018);

(B) was described by GCUK as part of GCUK's senior management team (according to a GCUK presentation from 2016);

Particulars

Email dated 15 April 2016 from Ewan Berkemeier to Greg Brereton (~~TOK.018.00040865~~ IAL.500.011.0589) with attached presentation (~~TOK.018.00040867~~ IAL.500.011.0591).

(iii) Jason Austin:

(A) was a co-founder of Greensill Group;

(B) was both a member of Greensill Bank's Supervisory Board (from March 2014 to June 2019) and a director of GCUK (from July 2012 to June 2019);

(iv) Greensill Bank's core function was or included to provide funds for GCUK's financing programmes;

(h) between 5 September 2017 and 13 December 2017, there was a series of communications involving (inter alia) the Greensill Group, Lex Greensill, Marsh (being Greensill Group's insurance broker), and BCC, and between BCC, IAL and Scor Re, in the context of negotiating a proposed insurance policy in 2017, in the course of which GCUK, Marsh (as agent for Greensill Group), and Lex Greensill were informed that:

(i) before BCC and Brereton could agree to an insurance policy which departed from approved wording, it was necessary for the departure to be approved by IAL and Scor Re (as a reinsurer of IAL); and

(ii) the insurance policy wording proposed by GCUK was not approved by IAL and Scor Re, and in fact IAL and Scor Re disagreed in numerous respects with the wording proposed by or on behalf of the Greensill Group;

Particulars

Emails with the following document IDs, copies of which are available from the offices of IAL's solicitors:

~~TOK.001.00150008~~, IAL.500.011.0521	~~TOK.001.00149926,~~ IAL.500.011.0486	~~TOK.001.00055991,~~ IAL.500.011.0504
~~TOK.001.00149658,~~ IAL.500.011.0514	~~TOK.001.00055764,~~ IAL.500.011.0483	~~TOK.001.00055641,~~ IAL.500.011.0505
~~TOK.001.00055635,~~	~~TOK.001.00148965,~~	~~TOK.001.00148360,~~

IAL.500.011.0523	IAL.500.011.0536	IAL.500.011.0488
~~TOK.001.00148301,~~	~~TOK.001.00148243,~~	~~TOK.001.00055234~~
IAL.500.011.0523	IAL.500.011.0519	IAL.500.011.0498
~~TOK.001.00148148,~~	~~TOK.001.00148076,~~	IAL.500.011.0016,
IAL.500.011.0489	IAL.500.011.0490	
~~TOK.001.00147819,~~	~~TOK.001.00147840,~~	~~TOK.001.00147725,~~
IAL.500.011.0556	IAL.500.011.0501	IAL.500.011.0553
~~TOK.001.00147624,~~	~~TOK.001.00147584,~~	~~TOK.001.00147557,~~
IAL.500.011.0540	IAL.500.011.0502	IAL.500.011.0517
~~TOK.001.00147276,~~	~~TOK.001.00146906,~~	~~TOK.001.00146518,~~
IAL.500.011.0526	IAL.500.011.0513	IAL.500.011.0497
~~TOK.001.00071342,~~	~~TOK.001.00146111,~~	~~TOK.001.00146082,~~
IAL.500.011.0500	IAL.500.011.0551	IAL.500.011.0552
~~TOK.001.00054324,~~	~~TOK.001.00145983,~~	~~TOK.001.00054310,~~
IAL.500.011.0557	IAL.500.011.0555	IAL.500.011.0567
TOK.001.00145977,	TMDR.0000001161,	TMDR.0000001187,
IAL.500.011.0562	IAL.500.011.0263	IAL.500.011.0274
~~TMDR.0000001333,~~	~~TOK.001.00143552,~~	~~TMDR.0000001304,~~
IAL.500.011.0431	IAL.500.011.0527	IAL.500.011.0275
~~TMDR.0000001159~~,	~~TMDR.0000001186,~~	~~TMDR.0000001135~~
IAL.500.011.0277	IAL.500.011.0266	IAL.500.011.0021
~~TOK.001.00147722,~~	~~TOK.001.00147721.~~	
IAL.500.011.0491	IAL.500.011.0495	

(i) since September 2017, IAL and Scor Re has not communicated to the Greensill Group, Lex Greensill or Marsh Group that the matters referred to in sub-paragraphs 38(h)(i) and 38(h)(ii) had changed;

(j) in the premises, as at 15 December 2017 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2019 Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2019 Policy; and

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Policy;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 38(f) to 38(i) of this Defence. Insofar as the emails referred to in the particulars under paragraph 38(h) were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further particulars may be provided after compulsory production.

(k) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2019 Policy:

(i) the purported insured, Greensill Bank and GCPL failed to pay any premium in respect of the 2019 Policy;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for the 2019 Policy;

(iii) by reason of the matters in paragraphs 38(k)(i) and 38(k)(ii) of this Defence, the 2019 Policy is not valid and binding;

(l) if, which is denied, GCPL and Greensill Bank entered into the 2019 Policy on 22 February 2019, the 2019 Policy expired on 1 March 2020 and was not validly renewed or extended after that date by BCC and Brereton on behalf of IAL; and

(m) it repeats paragraph 41B below.

38A IAL denies paragraph 38A of the SOC and says further that:

(a) it repeats paragraphs 37B, 37C, 37F and 38 above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 37B(d); and

(c) otherwise, denies the paragraph.

38B IAL denies paragraph 38B of the SOC.

39 As to paragraph 39 of the SOC, IAL:

(a) repeats paragraph 38 above;

(b) says that it was a term of the 2019 Policy (if valid and effective, which is denied) that, subject to the terms, conditions and limitations of the 2019 Policy, the Insurer agrees to indemnify the Insured for the Insured Percentage of all Losses suffered by the Insured and caused by or resulting from the occurrence of an Insured Cause (clause 1.1);

(c) says that in respect of the 2019 Policy (if valid and effective, which is denied):

(i) the definitions set out in paragraphs 39(a), (b), (d), (e), (j) and (k) of the SOC accurately identify the effect of some provisions in the 2019 Policy;

(ii) "**Eligible Customer**" was an expression used in the 2019 Policy, but was not defined as a composite expression;

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

(iv) "**Eligible Debt**" was defined to have the meaning set out in Schedule 7 of the 2019 Policy;

(v) contrary to sub-paragraph 39(f) of the SOC, it is not the case that a "Debt" meeting the criteria identified in sub-paragraph (f)(i)-(v) is an "Eligible Debt" as it is also necessary that there be an Asset owned by the Insured and, at the time of acquisition of that Asset, the Debt meets the criteria identified in the preceding sub-paragraph;

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

(vii) "**Direct Asset**" was defined to mean a direct ownership in an Eligible Debt;

(viii) "**Expected Allocation**" was defined to mean, where an Asset is a Direct Asset, the Face Amount of the relevant Eligible Debt, or to the extent only part of an Eligible Debt comprises the Direct Asset, the amount due to the Insured in relation to such Eligible Debt;

Particulars

The definition of "Expected Allocation" was purportedly amended by Endorsement 19(ii) (Liberty Commodities) dated 29 April 2020, such that the "Expected Allocation" in respect of a "Direct Asset" was "the Net Invoice Amount of the relevant Eligible Debt", with "Net Invoice Amount" having the meaning given to it in the RPA. That endorsement was invalid, ineffective and not binding on IAL because BCC had no power or authority to vary the terms of the 2019 Policy in circumstances where the 2019 Policy itself was invalid and ineffective for the reasons set out in this Defence, and also because the endorsement was purportedly issued after the 2019 Policy had expired.

(ix) there was only an "Expected Allocation" if there was in existence an "Asset";

(x) "**Face Amount**" means the amount of a Debt as shown in the File relating thereto inclusive of VAT;

(xi) "**File**" means the file and/or records held by the Servicer in the form from time to time specified in the Transaction Documents relating to each Debt (which may include the Platform);

(xii) "**SPV**" was defined to mean either Lagoon Park Capital SA, or Wickham SA, or Hoffman Sarl (as the case may be), a securitisation company within the meaning of and governed by the Luxembourg Securitisation Act 2004;

(xiii) "**Servicer**" was defined to mean GCUK;

(xiv) "**Transaction Documents**" was defined to mean (1) the 2019 Policy; (2) each deed creating a Participating Trust relating to a Customer; (3) all relevant Origination Documentation; (4) the Master Funded Participation

Agreement; (5) each Information Pack submitted by the Servicer to the Insurer; (6) the Master Trust Deed and the 'Issue Documents' (as defined in the Master Trust Deed); and (7) any assignment agreement entered into between the Insured and the Servicer in relation to the assignment or transfer of Eligible Debts;

(xv) contrary to sub-paragraph 39(h) of the SOC, and having regard to the allegation in paragraph 39(c)(viii) above, the "Expected Allocation" did not invariably include the Net Invoice Amount of any relevant Eligible Debt where Net Invoice Amount has the meaning given to it in the Amended and Restated RPA inter alia because:

(A) the Net Invoice Amount was not invariably shown on the face of the relevant invoice, having regard to the exception in sub-paragraph (ii) of the definition of Net Invoice Amount;

(B) there was an "Expected Allocation" in relation to an Asset only if there was a "Face Amount" and there was a "Face Amount" only if there was a "File" and, in turn, there was a "File" only if there was a file and/or records held by GCUK and that file was in the form from time to time specified in the "Transaction Documents relating to each Debt"; and

(C) there was no “Expected Allocation” and/or “Face Amount” unless there was in fact an amount due and/or an amount of a debt, such that if an invoice purported to record a debt which did not exist there was no “Expected Allocation”;

(d) says, in response to paragraph 39(l) of the SOC that an entity could be a “Loss Payee” only if the entity was endorsed to the 2019 Policy as a Loss Payee pursuant to a valid endorsement issued in accordance with the 2019 Policy;

(e) says that the terms, conditions and limitations of the 2019 Policy (if valid and effective, which is denied) included the following:

(i) that the “Insured” acknowledges and agrees that it has a duty to IAL of fair presentation in respect of the policy and the risks insured thereunder (clause 7.1);

(ii) that IAL was not liable to indemnify the “Insured” in respect of any “Loss” in respect of which the “Insured” has failed to comply with its obligations

under the policy where such failure has a "Material Policy Impact" (clause 9.7);

(iii) that if the "Insured" makes any statement, report or Claim, knowing it to be false or fraudulent, or the "Insured" knowingly conceals any material fact, the policy may be declared void by IAL and all Claims payments hereunder after such false or fraudulent statements, reports or Claims shall be forfeited (clause 15.4); and

(f) otherwise, denies paragraph 39 of the SOC.

40 As to paragraph 40 of the SOC, IAL:

(a) repeats paragraph 38 of this Defence; and

(b) otherwise, denies paragraph 40 of the SOC.

41 IAL denies paragraph 41 and says further:

(a) the terms of Endorsement 18 were authored by or on behalf of the purported "Insured" and at no stage did IAL agree to, or hold out that it adopted, those words;

(b) on 27 June 2019 and at all material times on and after 9 April 2019 until 30 June 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 8(l) and 8(p) to 8(dd) of this Defence;

(c) the amendments purportedly made by Endorsement 18 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(d) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 18 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraph 38 of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) the authority given by IAL under the IAL AAR Agreement to each of BCC and Brereton did not include an authority to enter into Endorsement 18 because:

(A) BCC and Brereton were not authorised to bind mid-term policy alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 18:

a. materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

b. was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

Particulars

Endorsement 18 extended the Policy Period beyond the natural expiry date of the 2019 Policy.

c. if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(iv) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 8(h) of this Defence, and Endorsement 18 was not an Approved Endorsement;

(v) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 18 was not an endorsement of those kinds;

(vi) Endorsement 18 purported to operate in favour of an Insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(vii) BCC and Brereton were not authorised to issue an endorsement resulting in a policy having a total term exceeding 24 months, and Endorsement 18 (if valid and effective, which is denied) had the purported effect of extending the policy term beyond 24 months;

(viii) BCC and Brereton were not authorised to bind renewal insurance policies on behalf of IAL with renewal inception dates after 30 June 2019, including "any extension of policy due date", and Endorsement 18 breached this limit because, prior to Endorsement 18, the Policy had a term expiring after 30 June 2019, and Endorsement 18 had the purported effect of extending and/or renewing the term of the 2019 Policy;

(e) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 18 had been issued; and

(ii) Endorsement 18 had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(f) further, at all material times, the bordereaux disclosed by BCC identified the expiry of Master Policy TB-03691 as 1 March 2020, rather than the extended or purportedly extended term of 1 March 2021;

(g) executing Endorsement 18 was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly; and

Particulars

The matters in paragraphs 41(a) to 41(e) of this Defence.

(h) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 18 because entering into Endorsement 18 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 41(a) to 41(g) of this Defence.

(i) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Endorsement 18 on behalf of IAL.

Particulars

Particulars under paragraph 38(a) to 38(i) of this Defence.

(j) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Endorsement 18:

(i) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 18 was not an endorsement of those kinds;

(ii) Endorsement 18 purported to vary the 2019 Policy, and:

(iii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iv) Endorsement 18 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(v) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 18;

(vi) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 18;

(vii) any power to issue endorsements under the 2019 Policy did not authorise the issuing of endorsements purporting to operate retrospectively, and Endorsement 18 purported to operate retrospectively;

(k) that by reason of the matters in paragraphs 41(a) to 41(j) of this Defence, and each of them individually, Endorsement 18 was invalid, of no effect and not binding on or enforceable as against IAL; and

(l) it repeats paragraph 41B below.

BCC as agent of the Insurer

41A IAL denies paragraph 41A of the SOC and says further that:

(a) it repeats paragraphs 9 and 38 of this Defence;

(b) it refers to, and relies on, the pleadings in paragraphs 8, 41, 46, 47, 52, 54 and 57 of this Defence;

(c) that:

(i) for the reasons outlined in this Defence, IAL did not enter into, and is not bound by, the 2019 Policy or endorsements pleaded in paragraph 41A; and

(ii) if, however, IAL is found to be bound by the conduct of Brereton and/or BCC in entering into the 2019 Policy or any endorsements, it repeats paragraph 232 and IAL hereby relies on those matters in defence of the claims against it.

41B As to paragraph 41B of the SOC, IAL:

(a) repeats paragraphs 8, 9HA, 9HB, 9HC, 9HD, 38, 38A, 38B and 41 of this Defence;

(b) says that on and from 1 July 2019:

(i) BCC did not have any authority from IAL to write new policies or risks, or extend the term or scope of existing policies;

(ii) BCC was authorised to act as the agent and authorised representative of TMNF and provide financial services on behalf of TMNF;

(iii) at all material times, each of BCC and Brereton was a representative of TMNF, and not IAL or IAGA, for the purposes of Division 6 of Part 7.6 of the *Corporations Act*;

(iv) TMNF was responsible for the conduct of each of BCC and Brereton for the purposes of section 917B of the *Corporations Act*;

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

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

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

(iii) Brereton's status as authorised representative of IAGA had ceased with effect on 30 June 2019;

(d) on or about 10 April 2019, TMMA issued a media release by which it announced that it had acquired BCC;

(e) on or about 15 April 2019, Bond & Credit Company issued a market announcement by which it announced that TMMA, a wholly owned subsidiary of TMNF, had acquired the "BCC Trade Credit & Surety businesses" and, in respect of trade credit, from 1 July 2019, all new and renewal business will be undertaken by TMNF under its underwriting guidelines;

(f) on 15 April 2019, BCC provided to Marsh, on behalf of the Greensill Group, the media release and market announcement referred to in paragraphs 41B(d) and 41B(e) of this Defence;

Particulars

Email dated 15 April 2019 from Toby Guy on behalf of BCC to Ewan Berkemeier on behalf of the Greensill Group with attachments (TMDR.0000037501 IAL.500.011.0568, ~~TMDR.0000037501.0001~~ IAL.500.011.0569 and ~~TMDR.0000037501.0002~~ IAL.500.011.0570).

(g) [Not used] ~~says, as to paragraph 41B(a) of the SOC~~:

(i) ~~it repeats paragraphs 8, 9HA, 9HB, 9HC, 9HD and 38 of this Defence;~~

(ii) ~~otherwise denies paragraph 41B(a) of the SOC;~~

(h) denies paragraph 41B(b) of the SOC and says further that the particulars to paragraph 41B(b) do not establish or evidence the existence of ostensible authority;

(i) says, as to paragraph 41B(c) of the SOC:

(i) says that, in particular, as to sub-paragraph 41B(c)(iA):

(A) the SOC does not identify the sub-paragraph of section 769B(1) or section 12GH(2) relied on;

(B) IAL assumes that the allegation is that certain conduct was engaged in by BCC and Brereton as an "agent" of IAL for the purposes of section 769B(1)(a) and section 12GH(2)(a);

(C) it is a condition of the operation of section 769B(1)(a) and section 12GH(2)(a) that the conduct have been engaged in "on behalf of" a body corporate;

(D) it is relevantly a condition of the operation of section 769B(1)(a) and section 12GH(2)(a) that the conduct be engaged in within the scope of the agent's actual or apparent authority;

(E) the particulars to paragraph 41B(c) do not supply a basis for an allegation that the conditions in section 769B(1)(a) and section 12GH(2)(a) were met;

(F) any deeming effected by s 769B(1) was, expressly, confined to a deeming for the purposes of a provision of Chapter 7 or a proceeding under Chapter 7;

(G) any deeming effected by s 12GH(2) was, expressly, confined to a deeming for the purposes of Division 2 of Part 2;

(H) the paragraph is denied;

(ii) that "entry" into a contract is a legal conclusion and not "conduct" to which sections 917A, 917B and 917C of the *Corporations Act* apply;

(iii) it repeats paragraphs 41B(b) to 41B(f) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019 and denies that BCC and/ or Brereton entered into the 2019 Policy or any endorsements on behalf of IAL;

(iv) it says further that:

Part 7.6 of the *Corporations Act* generally, and sections 917A, 917B and 917C in particular, deem a licensee to be responsible for conduct of a representative only if:

a. the conduct is itself a wrong of the representative actionable by the client; and

b. the conduct by itself gives the "client" a remedy against the representative;

(B) mere execution of, or entry into, the 2019 Policy or any of the endorsements referred to in paragraph 41A of the SOC was not a wrong of BCC actionable by White Oak and did not by itself give White Oak a remedy against BCC;

(C) the conduct relied on in the paragraph is therefore not conduct to which sections 917A, 917B and 917C apply;

(D) in the circumstances, the whole of the paragraph is denied, and the balance of this paragraph is further and in the alternative;

(v) admits, in relation to paragraph 41B(c)(iA) of the SOC, that the entry into a policy of general insurance is, subject to paragraph 41B(i)(i) to 41B(i)(iv) of this Defence, conduct that relates to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(vi) denies paragraph 41B(c)(ii) of the SOC and says further that:

(A) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(B) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraph 41A of the SOC was conduct on which a Loss Payee (including White Oak) could reasonably be expected to rely;

(C) the "rel[iance]" referred to in section 917A(1)(b) is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person

could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(D) there is no pleading as to the manner of White Oak's alleged reliance, or linking the actual reliance alleged in paragraph 41B(c)(iii) of the SOC with the reasonable expectation as to reliance alleged in paragraph 41B(c)(ii) of the SOC;

(E) the conduct of BCC and/or Brereton referred to in paragraph 41A of the SOC was not conduct on which a Loss Payee, including White Oak as alleged Loss Payee, could reasonably be expected to rely;

(F) says that any reliance by White Oak on the alleged "conduct" was not reasonable because:

a. White Oak failed to take steps to ascertain, or failed to take reasonable steps to ascertain, that BCC and Brereton were not authorised representatives of IAL such that the 2019 Policy and the Endorsements were not binding on IAL and of no effect;

b. White Oak failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the underlying transactions in respect of LCL receivables pursuant to and in respect of which it purportedly acquired the Payment Obligations;

c. White Oak failed to take reasonable steps to inquire into the existence, nature, creditworthiness and risk associated with the Payment Obligations, including failing to obtain invoices under which the Payment Obligations were alleged owing (see SOC paragraph 61);

d. White Oak failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the authority of BCC to bind IAL after 1 July 2019;

e. White Oak failed to make inquiries or, alternatively independent or adequate inquiries, about the 2019 Policy

and the circumstances in which it was purportedly entered into by the named Insureds;

f. White Oak failed to undertake regulatory searches prior to entering into the MAA with GCUK to satisfy itself that BCC was licensed by IAL to act on its behalf in or about April 2020;

(vii) denies paragraph 41B(c)(iii) of the SOC and says further that:

(A) there is no pleading as to the manner in which White Oak in fact relied on the conduct referred to in paragraph 41A of the SOC or as to the facts, matters and circumstances said to constitute actual good faith reliance;

(B) there is no pleading linking the actual reliance alleged in paragraph 41B(c)(iii) of the SOC with the reasonable expectations as to reliance alleged in paragraph 41B(c)(ii) of the SOC;

(viii) having regard to the matters in paragraphs 41B(i)(vii)(A) and 41B(i)(vii)(B) of this Defence, does not know and therefore cannot admit that White Oak did in fact rely, or rely in good faith on the conduct referred to in paragraph 41A of the SOC, at all or in any relevant respect says further as to 41B(c) of the SOC:

(A) that White Oak was not a “client” with respect to the 2019 Policy for the purpose of section 917A(1) of the *Corporations Act*;

(B) that the "client", if there was one for the purpose of section 917A(1) of the *Corporations Act* (which is denied), was the Insured (being Greensill Bank and GCPL);

(C) that, to the extent that White Oak seeks to rely on Greensill Bank and/or GCPL being the “client” for the purposes of section 917A(1) of the *Corporations Act*, by reason of the matters in paragraphs 38(g) to 38(j) of this Defence:

a. the purported entry by BCC and Brereton into the 2019 Policy and the endorsements pleaded at paragraph 41A of the SOC was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*; and

b. that conduct was not conduct on which Greensill Bank and GCPL in fact relied in good faith for the purposes of section 917A(1)(c) of the *Corporations Act*; ~~and~~

~~c. IAL further reserves the right to rely on section 917D of the *Corporations Act* to the effect that the lack of authority of Brereton and BCC was disclosed to the "client" being Greensill Bank and GCPL if they were the "client" (which is denied);~~

~~Particulars~~

~~Particulars under paragraph 38(h) of this Defence.~~

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

~~IAL also makes this same reservation under section 917D of the Corporations Act in relation to White Oak (in addition to Greensill Bank and GCPL), should additional issues come to light in relation to the disclosures made to them following discovery, compulsory production and evidence.~~

(D) IAL says further that, to the extent that White Oak seeks to rely on Greensill Bank and/or GCPL being the "client" for the purposes of section 917A(1) of the *Corporations Act*, the exception in section 917D is available because:

a. Brereton disclosed to Greensill Bank and/or GCPL that he did not have authority to execute the 2019 Policy, the LCL Endorsement, the Liberty Endorsement and the RPA Debt Endorsement on behalf of IAL;

b. Brereton disclosed his lack of authority prior to his execution of the 2019 Policy, the LCL Endorsement, the Liberty Endorsement and the RPA Debt Endorsement; and

c. the disclosure by Brereton was of such clarity and prominence as Greensill Bank and/or GCPL would reasonably require for the purposes of deciding whether to acquire the relevant financial service.

Particulars

Particulars under paragraph 38(h) of this Defence.

Brereton informed Marsh and GCUK staff that BCC did not have authority to write insurance policies with a maximum limit of liability exceeding A$50 million without express approval of IAL and its reinsurers. Brereton informed Marsh and GCUK staff on at least the following occasions:

(a) Email from Brereton to Edward Smith dated 23 November 2018 with subject 'Re: Greensill/CS request' (GCU.0004.0021.2031);

(b) Verbally at the 'due diligence' meeting held on 13 February 2019.

GCUK and Marsh were informed that, before BCC and Brereton could agree to an insurance policy which departed from approved wording, it was necessary for the departure to be approved by IAL and Scor Re (as a reinsurer of IAL): see paragraph 38(h)(i) of this Defence.

The disclosure by Brereton to Marsh and GCUK is sufficient to act as a disclosure to Greensill Bank and/or GCPL for the purpose of section 917D of the *Corporations Act*, in circumstances where the insurance policies were arranged by Marsh and GCUK.

Greensill Bank and/or GCPL knew that the 2019 Policy, as purportedly amended by the endorsements pleaded in paragraph 41B(i)(viii)(D)a of this Defence, represented a risk that exceeded A$50 million, being the limit of Brereton's authority as disclosed to Marsh and GCUK staff.

(E) IAL says further that, to the extent that White Oak seeks to rely on Greensill Bank and/or GCPL being the "client" for the purposes of section 917A(1) of the *Corporations Act*, the exception in section 917D is available because:

a. BCC disclosed to Greensill Bank and/or GCPL that Brereton did not have authority to execute the 2019 Policy, the LCL Endorsement, the Liberty Endorsement and the RPA Debt Endorsement on behalf of IAL on or after 2 July 2020 by reason of BCC's notifications to Greensill and Marsh of concerns that Brereton had exceeded his delegated authority limits;

b. BCC disclosed the fact in paragraph 41B(i)(viii)(E)a before the client relied on the conduct from 2 July 2020 onwards; and

c. the disclosure by BCC was of such clarity and prominence as Greensill Bank and/or GCPL would reasonably require for the purposes of deciding whether to acquire the relevant assets;

Particulars

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

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

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

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

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

(f) Letter from Toby Guy (TMMA/BCC) on behalf of BCC to GCPL, GBAG and GCUK dated 1 September 2020 (MMC_GCUK08_00022720).

(ix) alternatively to paragraphs 41B(i)(vii) and 41B(i)(viii) of this Defence, that if White Oak was a "client" with respect to the 2019 Policy for the purpose of section 917A(1) of the *Corporations Act* (which is denied):

(A) then the purported entry into the 2019 Policy and the endorsements pleaded in paragraph 41A of the SOC was not conduct on which a Loss Payee, including White Oak, could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*;

(B) ~~does not know and cannot admit~~ otherwise denies that White Oak did in fact rely, or rely in good faith, on the conduct referred to in paragraph 41A of the SOC, at all or in any relevant respect for the purposes of section 917A(1)(c) of the *Corporations Act*;

Particulars

White Oak failed to make independent inquiries, alternatively failed to make adequate inquiries, about the 2019 Policy and circumstances in which it was purportedly entered into by the named Insureds, in circumstances where it admits the existence of trade credit insurance for White Oak's benefit was fundamental to White Oak's decision to invest in LCL Receivables.

High Court of Justice Claim No. CL-2023-000294 in which White Oak has filed proceedings against Marsh Limited in relation to the same Debts alleged to be covered by the 2019 Policy.

White Oak has pleaded (and Marsh has admitted) in the EWHC Marsh Proceedings that White Oak conducted due diligence in respect of the 2019 Policy: Particulars of Claim at [10]; Defence at [10].

White Oak has pleaded in the EWHC Marsh Proceedings that it relied on the conduct of Marsh prior to acquiring alleged accounts receivable arising from alleged sales of goods and services by Liberty Commodities Limited to customers: Particulars of Claim at [10], [29]-[45], [59]; Claim at [5]-[6].

IAL will seek discovery of the communications between White Oak and the representatives of the named Insureds, including Marsh in relation to insurance cover allegedly obtained for the benefit of White Oak.

IAL also relies on paragraph A13 and Annexure D of this Defence.

IAL also relies on the Prior Misrepresentations and Non-Disclosures matters pleaded in Annexure A of IAL's Defence to the SOC.

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

(C) the exception in section 917D of the *Corporations Act* is available because:

a. Brereton disclosed to White Oak that he did not have authority to execute the 2019 Policy, the LCL Endorsement, the Liberty Endorsement and the RPA Debt Endorsement on behalf of IAL;

b. Brereton disclosed his lack of authority prior to his execution of the 2019 Policy, the LCL Endorsement, the Liberty Endorsement and the RPA Debt Endorsement; and

c. the disclosure by Brereton was of such clarity and prominence as White Oak would reasonably require for the purposes of deciding whether to acquire the relevant assets.

Particulars

IAL refers to and repeats the particulars to paragraph 41B(i)(viii)(D) above.

The disclosure by Brereton to Marsh and GCUK is sufficient to act as a disclosure to White Oak for the purpose of section 917D of the Corporations Act, in circumstances where:

(a) the insurance policies were arranged by Marsh and GCUK; and

(b) the Loss Payee Endorsement provided that "it is the Insured's obligation to communicate any relevant information and/or contractual amendments to the Loss Payee…".

White Oak knew that the 2019 Policy, as purportedly amended by the endorsements pleaded in paragraph 41B(i)(ix)(C)a of this Defence, represented a risk that exceeded A$50 million, being the limit of Brereton's authority as disclosed to Marsh and GCUK staff.

(D) the exception in section 917D of the *Corporations Act* is available because:

a. BCC disclosed to White Oak that Brereton did not have authority to execute the 2019 Policy, the LCL Endorsement, the Liberty Endorsement and the RPA Debt Endorsement on behalf of IAL on or after 2 July 2020 by reason of BCC's notifications to Greensill and Marsh of concerns that Brereton had exceeded his delegated authority limits;

b. BCC disclosed the fact in paragraph 41B(i)(ix)(D)a before the client relied on the conduct from 2 July 2020 onwards; and

c. the disclosure by BCC was of such clarity and prominence as Greensill Bank and/or GCPL would reasonably require for the purposes of deciding whether to acquire the relevant assets;

Particulars

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

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

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

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

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

(f) Letter from Toby Guy (TMMA/BCC) on behalf of BCC to GCPL, GBAG and GCUK dated 1 September 2020 (MMC_GCUK08_00022720).

(E) further or in the alternative, the exception in section 917D is available because:

a. on the proper construction of section 917D:

i. where a representative of a financial services licensee engages in conduct when dealing with its, his or her client;

ii. the representative disclosed to that client that certain conduct is not within its, his or her authority in relation to the licensee before the client relied on the conduct;

iii. the clarity and the prominence of the disclosure was such as a person would reasonably require for the purpose of deciding whether to acquire the relevant financial service; and

iv. a third party relies on the conduct of the representative, then "the client" within the meaning of section 917D includes the client referred to in paragraph 41B(i)(ix)(E)a.i;

b. Brereton disclosed to GCUK that he did not have authority to execute the 2019 Policy, the LCL Endorsement, the Liberty Endorsement and the RPA Debt Endorsement on behalf of IAL;

Particulars

IAL refers to and repeats the particulars to paragraphs 41B(i)(viii)(D) and 41B(i)(ix)(C) above.

Brereton informed Marsh and GCUK staff that BCC did not have authority to write insurance policies with a maximum limit of liability exceeding A$50 million without express approval of IAL and its reinsurers. Brereton informed Marsh and GCUK staff on at least the following occasions:

(a) Email from Brereton to Edward Smith dated 23 November 2018 with subject 'Re: Greensill/CS request' (GCU.0004.0021.2031);

(b) Verbally at the 'due diligence' meeting held on 13 February 2019.

c. Brereton disclosed his lack of authority prior to his execution of the 2019 Policy, the LCL Endorsement, the Liberty Endorsement and the RPA Debt Endorsement;

d. the disclosure by Brereton was of such clarity and prominence as GCUK would reasonably require for the purposes of deciding whether to acquire the relevant financial service; and

e. in the premises, to the extent White Oak relied on "conduct" of BCC or Brereton in relation to its client, GCUK, the disclosure by Brereton to GCUK is sufficient to engage the exception in section 917D;

(x) further, that the SOC is deficient in failing to identify, with precision or at all, the content of the "responsib[ility]" alleged in paragraph 41B(c) and, in particular, failing to identify:

(A) whether it is alleged that White Oak has suffered loss and damage, for the purposes of section 917E, as a result of the conduct of BCC and/or Brereton referred to in paragraphs 41A of the SOC;

(B) for the purposes of section 917E, the causal chain between that conduct and any asserted loss and damage, including the counterfactual alleged;

(C) for the purposes of section 917E, what "loss and damage" is relied on;

(D) whether it is alleged that, by reason of section 917F(1), White Oak has the same remedies against IAL that it has against BCC and/or Brereton and, if so, what those remedies are;

(E) for the purposes of section 917F(1), the connection between the "remedies" asserted and the "conduct" relied on;

(xi) in respect of any contention that IAL is responsible for any conduct of BCC and/or Brereton (including any contention that White Oak has remedies against IAL by reason of section 917F(1)) that:

(A) the responsibility deemed by section 917C does not extend to responsibility for conduct and/or causes of action for which BCC/Brereton have a defence as between BCC/Brereton and White Oak;

(B) IAL's responsibility and/or liability to White Oak is no greater than BCC's responsibility and/or liability to White Oak;

(xii) that, on their proper construction, the responsibility deemed by section 917C to exist is responsibility for contraventions of Part 7 of the *Corporations Act* or, alternatively, contraventions of the *Corporations Act*, and is not responsibility for general law wrongs, including breaches of contract;

(xiii) that IAL was not party to any relevant communications or relations between:

(A) BCC and/or Brereton on the one hand, and Greensill Bank/Marsh and/or White Oak on the other;

(B) Greensill Bank/Marsh on the one hand, and White Oak on the other, and

(C) IAL intends to seek discovery bearing on the content of those relations and communications and, ultimately, on the potential application of sections 917A-917E of the *Corporations Act*; ~~and~~

(xiv) further to paragraph 41B(i)(vi) and 41B(i)(ix)(A), in respect of the question of whether there is conduct "on which a third person (the client) could reasonably be expected to rely" for the purposes of s 917A(1)(b) of the Corporations Act:

(A) the question is whether there is conduct on which the client could reasonably be expected to rely by engaging in the actual reliance (or alleged actual reliance) the subject of s 917A(1)(c);

(B) the question of whether the client could reasonably be expected to rely on conduct is to be assessed having regard to:

a. the actual circumstances of the client at the time of the reliance (or alleged reliance), including the knowledge held by the client; or

b. alternatively, the actual circumstances of a person in the client's position at the time of the reliance (or alleged reliance), including the knowledge held by that person;

(C) the reliance, for the purposes of s 917A(1)(c), alleged by White Oak is:

a. entering into the Loss Payee Endorsement; and

b. purchasing the Payment Obligations;

(D) the question is therefore whether, at the time White Oak engaged in the conduct constituting that reliance (or alternatively at the time in which the “conduct” referred to in the chapeau of s 917A(1) was engaged in) and having regard to the matters in 41B(i)(xiv)(B)b, it could have reasonably been expected that White Oak would

engage in that conduct in reliance on the alleged conduct of BCC and/or Brereton;

(E) insofar as the alleged reliance is the acquisition of a Payment Obligation (or Payment Obligations) because of conduct of BCC and/or Brereton (including an alleged representation that BCC and/or Brereton had authority to enter into an insurance policy on behalf of IAL):

a. it is incumbent on White Oak to establish that it could reasonably be expected to rely on that conduct when acquiring the Payment Obligation (or Payment Obligations);

b. in the circumstances of this case, it is incumbent on White Oak to establish that, as at the time it acquired each Payment Obligation, it could reasonably be expected to form the view that the insurance policy was reasonably likely to cover the Payment Obligation and, in particular, reasonably likely to cover foreseeable loss arising from the acquisition of the Payment Obligation (or Payment Obligations);

c. it is not sufficient for White Oak to establish that it was reasonable to expect that White Oak would form the view that BCC and/or Brereton was an agent of IAL and/or that the policy would be binding on IAL;

(F) further or alternatively:

a. the relevant "conduct" is not confined to the matters alleged in paragraph 41A of the SOC and also includes any agreement by Brereton or BCC to the terms of the insurance policy;

b. it is incumbent on White Oak to establish that it could reasonably be expected to rely on that conduct when acquiring the Payment Obligation;

c. in the circumstances of this case, it is incumbent on White Oak to establish that, as at the time it acquired each Payment Obligation, it could reasonably be expected to form the view that the insurance policy was reasonably likely to cover the

Payment Obligation and, in particular, reasonably likely to cover foreseeable loss arising from the acquisition of the Payment Obligations (or Payment Obligations);

d. it is not sufficient for White Oak to establish that it was reasonable to expect that White Oak would form the view that BCC or Brereton was an agent of IAL and/or that the policy would be binding on IAL;

(G) as at the as at the time of the alleged "conduct" referred to in the chapeau to s 917A(1), the actual circumstances of White Oak or, alternatively, a person in White Oak's position included the matters set out in paragraph 235(l) of IAL's Defence and in Annexure D;

(H) as at the time White Oak allegedly:

a. entered into the Loss Payee Endorsement; and

b. acquired the Payment Obligations,

the actual circumstances of White Oak or, alternatively, a person in White Oak's position included the matters set out in in paragraph 235(l) of IAL's Defence and Annexure D;

(I) at all material times, White Oak or, alternatively, a person in White Oak's position, would reasonably, ought reasonably or might reasonably have formed the view that the purported insurance arrangements (including the 2019 Policy and its purported endorsements) did not, or were not reasonably likely to, cover foreseeable loss to White Oak arising from the acquisition of the Payment Obligations;

(J) at all material times, having regard to the matters referred to in paragraphs 41B(i)(xiv)(A) to 41B(i)(xiv)(J) above and including the matters in Annexure D, for the purposes of s 917A(1)(b), "a third person" could "not reasonably be expected to rely" on the alleged conduct of BCC and/or Brereton relied on by the Applicant by, in fact:

a. entering into the Loss Payee Endorsement; and/or

b. acquiring the Payment Obligations or, alternatively each Payment Obligation; and/or

c. in the manner otherwise alleged by White Oak;

(K) in the premises, at all material times, the condition in s 917A(1)(b) was not met; and

(xv) ~~(xiv)~~ otherwise, denies paragraph 41B of the SOC.

42 [Not used]

43 [Not used]

44 [Not used]

45 [Not used]

Customers under the Policy

46 IAL denies paragraph 46 of the SOC and says further that:

(a) it repeats paragraphs 8, 38, 41 and 41B of this Defence;

(b) at all material times, BCC's and Brereton's authority (if any) was confined in accordance with the terms of the CGU AAR Agreement and subsequently the IAL AAR Agreement;

(c) says that BCC and Brereton did not have authority to enter into the 2019 Policy and, therefore, lacked authority to execute or issue Customer Endorsements under it and/or to issue Customer Endorsements under it purportedly binding on IAL;

(d) says that, for each of the reasons set out in paragraph 38 of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton did not have authority to issue endorsements under the 2019 Policy;

(e) on various dates between 13 March 2019 and 2 July 2020, Brereton appears to have signed the "Customer Endorsements" referred to in paragraph 46 of the SOC and backdated them to various dates;

Particulars

(a) Customer Endorsement No 68 appears to have been signed by Brereton on 24 May 2019 and backdated to 14 May 2019;

(b) Customer Endorsement No 73(i) appears to have been signed by Brereton on 1 October 2019 and backdated to 26 September 2019;

(c) Customer Endorsement No 47(v) appears to have been signed by Brereton on 24 February 2020 and backdated to 19 February 2020;

(d) Customer Endorsement No 45(iii) appears to have been signed by Brereton on 24 February 2020 and backdated to 19 February 2020;

(e) Customer Endorsement No 101(i) appears to have been signed by Brereton on24 February 2020 and backdated to 19 February 2020;

(f) Customer Endorsement No 91(iii) appears to have been signed by Brereton on 24 February 2020 and backdated to 19 February 2020;

(g) Customer Endorsement No 90(ii) appears to have been signed by Brereton on 24 February 2020 and backdated to 19 February 2020;

(h) Customer Endorsement No 119 appears to have been signed by Brereton on 26 February 2020 and backdated to 19 February 2020;

(i) Customer Endorsement No 36(i) appears to have been signed by Brereton on 24 May 2020 and backdated to 14 May 2020;

(j) Customer Endorsement No 72(ii) appears to have been signed by Brereton on 25 June 2020 and backdated to 19 May 2020;

(k) Customer Endorsement No 64(iv) appears to have been signed by Brereton on 25 June 2020 and backdated to 19 May 2020;

(l) Customer Endorsement No 111 appears to have been signed by Brereton on 2 July 2020 and backdated to 25 June 2020.

(f) insofar as Brereton appears to have signed Customer Endorsement 19 as referred to in paragraph 46(a) of the SOC between 28 July 2016 and 9 April 2019, it denies that the customer endorsement was valid and effective to bind IAL, and in this regard it says:

(i) the terms of Customer Endorsement 19 were authored by the purported insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(ii) in March 2019, and at all material times between 28 July 2016 and 9 April 2019, BCC and Brereton's authority was confined in the manner described in paragraphs 8(aa) to 8(o), 38 and 41 of this Defence;

(iii) the amendments purportedly made by "Customer Endorsement 19" (if valid):

(A) benefited Greensill Bank;

(B) gave no benefit, commercial or otherwise, to IAL;

(C) had no commercial or other legitimate justification;

(iv) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Customer Endorsement 19 because:

(A) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(B) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Customer Endorsement 19 because it did not have a maximum tenor, and by implication meant credit terms could exceed 180 days, being the maximum credit terms specified in the applicable Underwriting Manual Version 2.0;

(C) for each of the reasons referred to in paragraph 38 of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(D) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to Approved Endorsements referred to in paragraph 8(h) of this Defence, and the Customer Endorsement 19 was not an Approved Endorsement;

(E) Customer Endorsement 19 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer

domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(F) the indemnity limit in Customer Endorsement 19 was 100%, which was above the maximum indemnity limit of 95% of Debt specified in the applicable Underwriting Manual Version 2.0;

(G) the customer limits in the Customer Endorsement 19, alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under the 2019 Policy:

a. exceeded the AUD50 million policy limit specified in the applicable Underwriting Manual Version 2.0;

b. exceeded the Buyer Group limit v 2.0 specified in the applicable Underwriting Manual Version 2.0;

c. exceeded 95% of the AUD Binder Limit (of AUD50 million) for foreign policies specified in the applicable Underwriting Manual Version 2.0;

(v) by reason of the matters in paragraphs 46(b) to 46(f) of this Defence and each of them individually, the "Customer Endorsement" was invalid, of no effect and not binding on or enforceable as against IAL;

(vi) if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute the Customer Endorsement 19:

(A) the Customer Endorsement 19 purported to vary the 2019 Policy;

(B) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(C) Customer Endorsement 19 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(D) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of Customer Endorsement 19;

(E) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for the "Customer Endorsements";

(F) any power to issue Customer Endorsements under the 2019 Policy did not authorise the issuing of Customer Endorsements purporting to operate retrospectively;

(G) as particularised in sub-paragraph 46(e) of this Defence, Customer Endorsement 19 purported to operate retrospectively;

(H) any Customer Endorsements issued under the 2019 Policy must specify a premium rate expressed as a percentage premium rate (Appendix 1 of the 2019 Policy);

(I) Customer Endorsement 19 did not specify a premium rate expressed as a percentage premium rate, rather was a fixed amount expressed as "$1 (one U.S. dollar)";

(J) there must (on the proper construction of the 2019 Policy and, in particular, Schedule 7) be in place a "Debt Endorsement" or "Customer Endorsement" which stipulates, in respect of the debt, a "Maximum Tenor" and Customer Endorsement 19 does not specify a maximum tenor;

(K) none of the entities named alongside "Customer Name" was a "debtor in respect of a Debt" for the purposes of the definition of "Customer" in the 2019 Policy;

(L) by reason of the matters in:

a. paragraphs 46(f)(vi)(A) to 46(f)(vi)(C) of this Defence;

b. paragraphs 46(f)(vi)(D) and 46(f)(vi)(E) of this Defence;

c. paragraphs 46(f)(vi)(F) and 46(f)(vi)(G) of this Defence;

d. paragraphs 46(f)(vi)(H) and 46(f)(vi)(I) of this Defence; and/or

e. paragraph 46(f)(vi)(K) of this Defence,

and each of them, Customer Endorsement 19 is invalid, of no effect and not binding on or enforceable as against IAL;

(vii) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(A) Customer Endorsement 19 had been issued;

(B) Customer Endorsement 19 had been purportedly issued in breach of the CGU AAR Agreement and applicable Underwriting Manual Version 2.0 and was inconsistent with the wording of the Approved Endorsements;

(viii) executing Customer Endorsement 19 was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 46(f)(i) to 46(f)(vii) of this Defence.

(ix) the authority given by IAL to Brereton did not include an authority to enter into Customer Endorsement 19 because entering into Customer Endorsement 19 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 46(f)(i) to 46(f)(viii) of this Defence.

(x) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Customer Endorsement 19 on behalf of IAL.

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 38(g) to 38(i) and 46(e) to 46(f) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 41B(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.

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

(xi) if BCC and/or Brereton purportedly entered into Customer Endorsement 19, IAL repeats paragraph 41B(i) of this Defence;

(xii) if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute Customer Endorsement 19 it operated only prospectively, from the date Brereton signed the Customer Endorsements, and applied only in relation to Assets acquired after that date;

(g) says further that:

(i) if Customer Endorsement 19 was to be a valid and effective endorsement or variation to the 2019 Policy, it was necessary for it to fall within the definition of "Customer Endorsement" in the 2019 Policy;

(ii) an instrument is a "Customer Endorsement" only if it is an endorsement to the 2019 Policy that is substantially in the form of Appendix 1 or such other form as the "Insured" and the "Insurer" may agree from time to time;

(iii) Customer Endorsement 19 was not substantially in the form of Appendix 1;

Particulars

Customer Endorsement 19 for Liberty, Liberty FE and LCL was not substantially in the form of Appendix 1, including because:

(a) it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

(b) it purported to stipulate an Insured Percentage of 100%;

(c) it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(h) insofar as Brereton signed the "Customer Endorsements" referred to as Endorsement No. 36(i) and Endorsement No. 68 in paragraphs 46(b) and 46(c) of the SOC between 9 April 2019 and 30 June 2019, it denies that the customer endorsements were valid and effective to bind IAL, and in this regard says:

(i) it repeats the matters in paragraphs 46(f)(i) to 46(f)(xii) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the "Customer Endorsements" save that references to

'Underwriting Manual Version 2.0' are replaced with 'Underwriting Manual Version 3.0' and references to "Buyer Group Limit v 2.0" are replaced with "Buyer Group Limit v 3.0";

(ii) the authority given by IAL under the IAL AAR Agreement to each of BCC and Brereton did not include an authority to enter into the "Customer Endorsements" because:

(A) BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and the "Customer Endorsements":

a. materially altered the scope of the risk of the Insurer under the 2019 Policy (if valid);

b. was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

c. if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(i) says that:

(i) if the "Customer Endorsements" referred to in sub-paragraph 46(h) were to be valid and effective endorsements or variations to the 2019 Policy, it was necessary for them to fall within the definition of "Customer Endorsement" in the 2019 Policy;

(ii) an instrument is a "Customer Endorsement" only if it is an endorsement to the 2019 Policy that is substantially in the form of Appendix 1 or such other form as the "Insured" and the "Insurer" may agree from time to time;

(iii) the particularised "Customer Endorsements" were not substantially in the form of Appendix 1;

Particulars

Customer Endorsement 36(i) (Aperam Sourcing SCA) was not substantially in the form of Appendix 1, including because:

(a) it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

(b) it purported to stipulate an Insured Percentage of 100%;

(c) it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(j) insofar as Brereton signed the "Customer Endorsements" referred to in paragraphs 46(d) to 46(n) of the SOC on or after 1 July 2019 (collectively, the **Post 1 July 2019 Customer Endorsements**), says that:

(i) it repeats paragraphs 41B(b) to 41B(c) of this Defence;

(ii) the terms of each of the Post 1 July 2019 Customer Endorsements were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(iii) the amendments purportedly made each of by the Post 1 July 2019 Customer Endorsements (if valid):

(A) benefited Greensill Bank;

(B) gave no benefit, commercial or otherwise, to IAL;

(C) had no commercial or other legitimate justification;

(iv) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the Post 1 July 2019 Customer Endorsements because:

(A) the Post 1 July 2019 Customer Endorsements were signed by Brereton on behalf of BCC after BCC ceased to have authority to act for IAL as referred to in paragraphs 41B(b) to 41B(c) of this Defence;

(B) the authority given by IAL to BCC and Brereton did not include an authority to enter into the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(C) for each of the reasons referred to in paragraph 38(c) of this Defence as to why BCC and Brereton did not have authority to

enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(D) the customer limits in the Post 1 July 2019 Customer Endorsements, alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under the 2019 Policy:

a. exceeded the AUD50 million policy limit specified in the applicable Underwriting Manual Version 3.0;

b. exceeded the Buyer Group limit v 3.0 specified in the applicable Underwriting Manual Version 3.0;

c. exceeded 95% of the AUD Binder Limit (of AUD50 million) for foreign policies specified in the applicable Underwriting Manual Version 3.0;

(v) and says that BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and each of the Post 1 July 2019 Customer Endorsements:

(A) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid);

Particulars

It purported to insure a debtor for a substantial liability for a premium payable of only USD1.

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(vi) each of the Post 1 July 2019 Customer Endorsements purported to operate in favour of an Insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(vii) that by reason of the matters in paragraphs 46(j)(i) and 46(j)(iii) to 46(j)(viii) of this Defence, and each of them individually, each of the Post 1 July 2019 Customer Endorsements was invalid, of no effect and not binding on or enforceable as against IAL;

(viii) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute the Post 1 July 2019 Customer Endorsements:

(A) each of the Post 1 July 2019 Customer Endorsements purported to vary the 2019 Policy;

(B) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(C) each of the Post 1 July 2019 Customer Endorsements was not signed by or on behalf of Greensill Bank or GCPL, and was not a valid variation of the 2019 Policy;

(D) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of the Post 1 July 2019 Customer Endorsements;

(E) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for the Post 1 July 2019 Customer Endorsements;

(F) any power to issue Customer Endorsements under the 2019 Policy did not authorise the issuing of Customer Endorsements purporting to operate retrospectively;

(G) as particularised in paragraph 46(e) of this Defence, the Post 1 July 2019 Customer Endorsements purported to operate retrospectively;

(H) any Customer Endorsements issued under the 2019 Policy must specify a premium rate which was expressed as a percentage premium rate (Appendix 1 of the 2019 Policy);

(I) each of the Post 1 July 2019 Customer Endorsements did not specify a premium rate expressed as a percentage premium rate, rather was a fixed amount expressed as "$1 (one U.S. dollar)";

(J) in each case, the entity named alongside "Customer Name" was not a "debtor in respect of a Debt" for the purposes of the definition of "Customer" in the 2019 Policy;

(K) by reason of the matters in:

a. paragraphs 46(j)(viii)(A) to 46(j)(viii)(C) of this Defence;

b. paragraphs 46(j)(viii)(D) and 46(j)(viii)(E) of this Defence;

c. paragraphs 46(j)(viii)(F) and 46(j)(viii)(G) of this Defence;

d. paragraphs 46(j)(viii)(H) and 46(j)(viii)(I) of this Defence; and/or

e. paragraph 46(j)(viii)(J) of this Defence,

each of the Post 1 July 2019 Customer Endorsements is invalid, of no effect and not binding on or enforceable as against IAL;

(ix) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(A) the Post 1 July 2019 Customer Endorsements had been issued;

(B) the Post 1 July 2019 Customer Endorsements had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and were inconsistent with the Approved Endorsements;

(C) executing the Post 1 July 2019 Customer Endorsements was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 46(j)(i) to 46(j)(ix) of this Defence.

(x) the authority given by IAL to Brereton did not include an authority to enter into the Post 1 July 2019 Customer Endorsements because entering into the Post 1 July 2019 Customer Endorsements was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 46(j)(i) to 46(j)(ix) of this Defence.

(xi) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into the Post 1 July 2019 Customer Endorsements on behalf of IAL;

Particulars

Particulars under paragraphs 38(j) and paragraph 41B(f) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 41B(d) of this Defence) that TMMA had acquired BCC on 9 April 2019.

(xii) if BCC and/or Brereton purportedly entered into the Post 1 July 2019 Customer Endorsements, IAL repeats paragraph 41B(i) of this Defence;

(xiii) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute the Post 1 July 2019 Customer Endorsements, it operated only prospectively, from the date Brereton signed each of the Post 1 July 2019 Customer Endorsements, and applied only in relation to Assets acquired after that date;

(k) says that:

(i) if the "Customer Endorsements" referred to in subparagraph 46(j) were to be valid and effective endorsements or variations to the 2019 Policy, it was necessary for them to fall within the definition of "Customer Endorsement" in the 2019 Policy;

(ii) an instrument is a "Customer Endorsement" only if it is an endorsement to the 2019 Policy that is substantially in the form of Appendix 1 or such other form as the "Insured" and the "Insurer" may agree from time to time;

(iii) the particularised "Customer Endorsements" were not substantially in the form of Appendix 1.

Particulars

Customer Endorsement 45(iii) (Cargill, Incorporated) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(B) Customer Endorsement 111(i) (Howmet Aerospace) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(C) Customer Endorsement 101(i) (Marubeni Corporation) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(D) Customer Endorsement 72(ii) (Mitsubishi Corporation International (Europe) PLC) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(E) Customer Endorsement 90(ii) (Mitsui Bussan Metals Co Ltd) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(F) Customer Endorsement 100(i) (Panasonic Corporation) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(G) Customer Endorsement 91(iii) (Posco International Corporation) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(H) Customer Endorsement 119 (Samsung Electronics Co Ltd) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(I) Customer Endorsement 64(iv) (Sumitomo Corporation Europe Limited) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(J) Customer Endorsement 47(v) (Thyssenkrupp Materials Trading GmbH) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

(K) Customer Endorsement 73(i) (Toyota Tsusho Asia Pacific Pte Ltd) was not substantially in the form of Appendix 1, including because:

a. it did not stipulate a premium % rate, but instead purported to stipulate a fixed (USD1) premium;

b. it purported to stipulate an Insured Percentage of 100%;

c. it purported to stipulate a Special Condition which was not an endorsement approved or authorised for the purposes of the Underwriting Manual Version 3.0.

RPA Debt Endorsement

47 IAL denies paragraph 47 and says further that:

(a) it repeats paragraphs 41B(b) to 41B(f) of this Defence;

(b) it admits Debt Endorsement 2(iii) (**RPA Debt Endorsement**) contained the definitions substantially to the effect set out in paragraphs 47(a) and (b) of the SOC;

(c) it denies that the RPA Debt Endorsement contains a definition (or term) to the effect or substantially the effect of paragraph 47(1) of the SOC;

(d) it says that, where a chose in action met the description of being a "Debt" in either of Part A or Part B of the RPA Debt Endorsement, that did not have the effect that the chose in action was a "Debt under the [2019] Policy";

(e) it relies on the terms of RPA Debt Endorsement (if valid and effective, which is denied) for their full force and effect;

(f) on 29 January 2020, Brereton signed RPA Debt Endorsement and backdated it to 22 February 2019;

(g) there is no allegation in paragraph 47 of the SOC that the RPA Debt Endorsement (or any subsequent endorsement) is binding on IAL by reason of apparent authority and, in particular, there is no allegation:

(i) that IAL made a representation or representations;

(ii) those representations were relied on by Greensill Bank, GCPL and/or White Oak;

(iii) that reliance was reasonable;

(h) the terms of RPA Debt Endorsement were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into RPA Debt Endorsement because:

(i) RPA Debt Endorsement was signed by Brereton on behalf of BCC on 29 January 2020, after BCC ceased to have authority to act for IAL as referred to in paragraphs 41B(b) to 41B(c) of this Defence;

(ii) the authority given by IAL to BCC and Brereton did not include an authority to enter into the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(iii) for each of the reasons referred to in paragraph 38 of this Defence as to why BCC and Brereton did not have authority to enter into the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iv) the amendments purported made by RPA Debt Endorsement (if valid and effective, which is denied):

(A) benefited Greensill Bank;

(B) gave no benefit, commercial or otherwise to IAL; and

(C) had no commercial or other legitimate justification;

(v) says that BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment and RPA Debt Endorsement:

(A) materially altered the risk of the insurer under the 2019 Policy (if valid), and did so in a manner not contemplated by the terms of the 2019 Policy;

Particulars

The definition of Debt (and therefore the scope of indemnity) under the 2019 Policy was purportedly expanded.

(B) was not a mid-term alteration within the meaning of that term under the Underwriting Manual Version 3.0 or the PACAO;

Particulars

The matters in paragraph 9F(d)(ii) of this Defence.

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(vi) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL prior to 30 June 2019, that authority was limited to the Approved Endorsements referred to in paragraph 8(h) of this

Defence, and RPA Debt Endorsement was not an Approved Endorsement;

(vii) RPA Debt Endorsement purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(j) that by reason of the matters in paragraphs 47(h) to 47(i) of this Defence, and each of them individually, RPA Debt Endorsement was invalid, of no effect and not binding on or enforceable as against IAL;

(k) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute RPA Debt Endorsement:

(i) RPA Debt Endorsement purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iii) RPA Debt Endorsement was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(iv) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of RPA Debt Endorsement;

(v) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for RPA Debt Endorsement;

(vi) any power under the terms of the 2019 Policy to issue Debt Endorsements under the 2019 Policy did not authorise the issuing of a "Debt Endorsement" or, alternatively, a unilateral "Debt Endorsement" which purported to expand and/or vary the meaning of "Eligible Debt" whether at all, or in a manner which purported to bring within the 2019 Policy debts of the kind purportedly covered by RPA Debt Endorsement;

(vii) any power under the terms of the 2019 Policy to issue Debt Endorsements only authorised the issuing of Debt Endorsements describing the nature of a debt that "is after the date of such endorsement able to be a Debt for the purposes of th[e] Policy" (definition of “Debt Endorsement” in the 2019 Policy) and, therefore, any such power did not

authorise the issuing of Debt Endorsements purporting to operate retrospectively;

(viii) RPA Debt Endorsement purported to operate retrospectively;

(ix) any Debt Endorsements issued under the 2019 Policy must specify a premium rate in an associated Customer Endorsement, which in turn was required to be expressed as a percentage premium rate (Appendix 1 and Appendix 2 of the 2019 Policy);

(x) RPA Debt Endorsement did not specify a premium rate;

(xi) by reason of the matters in:

(A) paragraphs 47(k)(i) to 47(k)(iii) of this Defence;

(B) paragraphs 47(k)(iv) and 47(k)(v) of this Defence;

(C) paragraph 47(k)(vi) and 47(k)(vii) of this Defence;

(D) paragraph 47(k)(viii) of this Defence; and/or

(E) paragraphs 47(k)(ix) and 47(k)(x) of this Defence,

RPA Debt Endorsement is invalid, of no effect and not binding on or enforceable as against IAL;

(l) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) RPA Debt Endorsement had been issued;

(ii) RPA Debt Endorsement had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(m) executing RPA Debt Endorsement was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly.

Particulars

The matters in paragraphs 47(f) to 47(l) of this Defence.

(n) the authority given by IAL to Brereton did not include an authority to enter into RPA Debt Endorsement because entering into the RPA Debt Endorsement was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 47(f) to 47(m) of this Defence.

(o) Greensill Bank knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into the RPA Debt Endorsement on behalf of IAL; and

Particulars

Particulars under paragraph 38 of this Defence. IAL further relies on the matters referred to in sub-paragraphs 41B(d) to 41B(f) of this Defence.

(p) if BCC and/or Brereton purportedly entered into RPA Debt Endorsement, IAL repeats paragraph 41B(i) of this Defence; and

(q) if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute the RPA Debt Endorsement, it operated only prospectively, from the date Brereton signed the RPA Debt Endorsement, and applied only in relation to Assets acquired after that date.

48 As to paragraph 48 of the SOC, IAL:

(a) repeats paragraphs 38 and 47 of this Defence; and

(b) otherwise admits that paragraph 48 accurately identifies the purported general effect of the definition of "Repurchase Event" in the RPA Debt Endorsement (if valid and effective, which is denied).

49 As to paragraph 49 of the SOC, IAL:

(a) repeats paragraphs 38 and 47 of this Defence;

(b) says that "Receivables Purchase Agreement" was defined to mean a receivables purchase agreement entered into between the Servicer and/or an Affiliate of the Servicer or a third party (a 'Buyer') and a Supplier or Suppliers and/or an Affiliate of a Supplier or Suppliers (a 'Seller') pursuant to which a Buyer acquires Debts from one or more Sellers;

(c) refers to the terms of the 2019 Policy, the RPA and the Amended and Restated RPA for their full force and effect (if any); and

(d) otherwise, denies paragraph 49 of the SOC.

50 As to paragraph 50 of the SOC, IAL:

(a) repeats paragraphs 38, 47 and 49 of this Defence; and

(b) refers to the terms of the 2019 Policy, the RPA and the Amended and Restated RPA for their full force and effect (if any); and

(c) otherwise, denies paragraph 50 of the SOC.

51 IAL denies paragraph 51 of the SOC and says further as to the payment or amount pleaded in paragraph 30 of the SOC, which relates to interest payable under the RPA, "Debt" within the meaning of the RPA Debt Endorsement (and/or Debt Endorsement 2(iv)) does not include interest.

Liberty Customer Endorsement

52 IAL denies paragraph 52 and says further that:

(a) it repeats paragraphs 8, 9, 38, 40, 41A, 41B, 46 and 47 of this Defence;

(b) says that by reason of the matters referred to at paragraphs 46(a) to 46(g) of this Defence, Customer Endorsement 19(ii) is invalid, of no effect and not binding on or enforceable as against IAL.

53 As to paragraph 53 of the SOC, IAL:

(a) repeats paragraph 52 of this Defence;

(b) refers to the terms of the Liberty Endorsement for their full force and effect (if any); and

(c) otherwise, denies paragraph 53 of the SOC.

LCL Endorsement

54 IAL denies paragraph 54 and says further that:

(a) it repeats paragraphs 8, 9, 38, 40, 41A, 41B, 46 and 47 of this Defence;

(b) says that by reason of the matters referred to at paragraphs 41B(b) to 41B(c) and 46(a) to 46(h) of this Defence, the LCL Endorsement is invalid, of no effect and not binding or enforceable as against IAL.

(c) says further that if, which is denied, BCC had authority to issue endorsements (whether a Debt Endorsement or a Customer Endorsement or otherwise) on behalf of IAL:

(i) that authority was constrained by the condition referred to in paragraph 54(j)(i) of this Defence and did not extend to the issuing of the LCL Endorsement;

(ii) that authority did not extend to issuing backdated endorsements where the backdating was calculated to avoid constraints on authority and/or where the backdating had the effect of materially varying the risk attaching to the Policy and/or where the endorsement was in the nature of the LCL Endorsement;

Particulars

LCL Endorsement appears to have been signed by Brereton on 29 January 2020 and backdated to the Commencement Date of the 2019 Policy;

(iii) that authority did not extend to the issuing or execution of the LCL Endorsement;

(d) says further that the LCL Endorsement was not a valid endorsement under the Policy because:

(i) any power to issue endorsements under the Policy (whether a Debt Endorsement or a Customer Endorsement or otherwise) did not authorise the issuing of an endorsement to a person purportedly having the effect of extending coverage in respect of a person who was not relevantly a debtor in respect of a "Debt";

(ii) the LCL Endorsement purported to extend coverage in respect of debts which were not "Debts" for the purposes of the 2019 Policy;

(e) says further that if, which is denied, BCC had authority to issue endorsements on behalf of IAL, that authority was constrained by the condition referred to in

paragraph 54(d)(i) of this Defence and did not extend to the issuing of the LCL Endorsement;

(f) says further that if, which is denied, BCC had authority to issue endorsements on behalf of IAL, on the proper construction of the 2019 Policy, an endorsement cannot be issued after the expiry of the policy period and, here, any policy period expired no later than 22 February 2020 or, alternatively 1 March 2020, (or alternatively, 1 March 2021 if Endorsement 18 is valid and effective, which is denied) and the LCL Endorsement was issued after the policy period and is therefore invalid, of no effect and not binding on or enforceable as against IAL;

(g) says further that if, which is denied, BCC had authority to issue and/or execute the LCL Endorsement, it operated only prospectively, on and from 29 April 2020 and applied only in relation to Assets acquired after that date;

(h) says further that if, which is denied, BCC had authority to issue and/or execute the LCL Endorsement, amounts owing under the Group Guarantee were not, and could not be, "Debts" or "Eligible Debts" for the purposes of the 2019 Policy because they did not satisfy the criteria set out in paragraph 39(c)(iv) of this Defence, and the LCL Endorsement did not operate to bring such amounts within the coverage of the 2019 Policy; and

(i) says further that the LCL Endorsement was not a valid “Customer Endorsement” under the 2019 Policy because the purported “Customer” was not a “debtor in respect of a Debt” for the purposes of the definition of “Customer” in the 2019 Policy;

(j) says further if, which is denied, BCC or Brereton had authority to issue debt or customer endorsements on behalf of IAL:

  (i) that authority was constrained by the condition that the endorsement not be issued in breach of the Underwriting Manual Version 3.0, being the applicable version of the Underwriting Guidelines from time to time;

  (ii) the LCL Endorsement was issued in breach of the applicable Underwriting Guidelines because it was not an endorsement which was approved or authorised for the purposes of the Underwriting Manual Version 3.0;

(k) says further that if, which is denied, BCC and/or Brereton had authority to issue endorsements on behalf of IAL:

(i) the LCL Endorsement sought to vary the terms of the Policy;

(ii) the purported Insured, Greensill Bank and GCPL, failed to pay any consideration for the purported variation;

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

(iv) the document signed by Brereton on 29 April 2020 was not signed on behalf of GCPL or Greensill Bank, and therefore was not a valid variation of the Policy;

(l) says that, by reason of paragraphs 54(a) to 54(k) of this Defence, the LCL Endorsement was invalid, of no effect and not binding and enforceable on IAL.

55 As to paragraph 55 of the SOC, IAL:

(a) repeats paragraph 54 of this Defence;

(b) refers to the terms of the LCL Endorsement, the RPA and the Amended and Restated RPA for their full force and effect (if any); and

(c) otherwise, denies paragraph 55 of the SOC.

56 As to paragraph 56 of the SOC, IAL:

(a) repeats paragraph 54 of this Defence; and

(b) otherwise, denies paragraph 56 of the SOC.

Loss Payee Endorsement

57 IAL denies paragraph 57 of the SOC and says further:

(a) it repeats paragraphs 8, 38, 40, 41A, 41B, 46, 47, 52 and 54 of this Defence;

(b) the chapeau to paragraph 57 of the SOC generally describes part of the text of purported Endorsement 24 referred to in paragraph 57 of the SOC (**Loss Payee Endorsement**);

(c) says that by reason of the matters referred to at paragraphs 41B(b) to 41B(c) and 46(a) to 46(h) of this Defence, the Loss Payee Endorsement is invalid, of no effect and not binding or enforceable as against IAL;

(d) says further that if, which is denied, BCC and/or Brereton had authority to issue endorsements (whether a Debt Endorsement or a Customer Endorsement or otherwise) on behalf of IAL:

(i) that authority was constrained by the condition referred to in paragraph 54(j)(i) of this Defence and did not extend to the issuing of the Loss Payee Endorsement;

(ii) that authority did not extend to issuing backdated endorsements where the backdating was calculated to avoid constraints on authority and/or where the backdating had the effect of materially varying the risk attaching to the policy and/or where the endorsement was in the nature of the Loss Payee Endorsement;

Particulars

The Loss Payee Endorsement appears to have been signed by Brereton on 29 April 2020 and backdated to the Commencement Date of the 2019 Policy;

(e) says that BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and the Loss Payee Endorsement:

(i) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

(ii) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

(iii) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(f) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL after 1 July 2019, that authority was limited to the Approved Endorsements referred to in paragraph 8(h) of this Defence, and the Loss Payee Endorsement was not an Approved Endorsement;

(g) says that BCC and Brereton did not have authority to execute the Loss Payee Endorsement on behalf of IAL because BCC and Brereton did not have

authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(h) says further that the Loss Payee Endorsement was not a valid endorsement under the 2019 Policy (if valid and effective, which is denied) because:

(i) any power to issue loss payee endorsements did not authorise the issuing of an endorsement purporting to operate retrospectively, including in respect of Losses not yet suffered;

(ii) to the extent that the Loss Payee Endorsement purported to operate retrospectively it was therefore beyond any power given by the 2019 Policy;

(i) says further that the Loss Payee Endorsement was not a valid endorsement under the 2019 Policy because:

(i) the power under cl 15.3(d) of the 2019 Policy to issue endorsements naming a loss payee was able to be exercised only in respect of a specific Loss which had arisen at the time of the endorsement;

(ii) the Loss Payee Endorsement purported to name White Oak in respect of Losses irrespective of when they arose;

(j) says further that the Loss Payee Endorsement was not a valid endorsement under the 2019 Policy because:

(i) the power under clause 15.3(d) of the 2019 Policy to issue endorsements naming a loss payee could be exercised only after agreement between the Insured and the Insurer;

(ii) the Loss Payee Endorsement was purportedly issued at the instruction of the Insured, and not in respect of some prior agreement between the Insured and the Insurer and otherwise in the absence of agreement between the Insured and Insurer;

(k) says further that if, which is denied, BCC had authority to issue endorsements on behalf of IAL, that authority was constrained by the condition that the relevant endorsement not be issued in breach of the Underwriting Manual, being relevantly Underwriting Manual Version 3, and the Loss Payee

Endorsement was issued in breach of Underwriting Manual Version 3 because it was not approved or authorised;

(l) says further that if, which is denied, BCC and Brereton had authority to issue endorsements on behalf of IAL, that authority did not extend to agreeing the creation of a Loss Payee under clause 15.3(d) of the 2019 Policy;

(m) says further that if, which is denied, BCC had authority to issue endorsements on behalf of IAL, that authority did not extend to agreeing to or facilitating the assignment of rights to a third party and/or to agreeing to the creation of a Loss Payee under clause 15.3(d) of the 2019 Policy;

(n) says further that IAL did not agree to the assignment of the Insured's rights to White Oak;

(o) says further that if, which is denied, BCC and Brereton had authority to issue loss payee endorsements on behalf of IAL:

(i) the Loss Payee Endorsement sought to vary the terms of the 2019 Policy; and

(ii) the purported insured, Greensill Bank and GCPL, failed to pay any consideration for the purported variation;

(p) IAL otherwise relies on the terms of the Loss Payee Endorsement (if valid and effective, which is denied) for their full force and effect;

(q) says that the effect of the Loss Payee Endorsement, if valid and effective (which is denied), was to stipulate an instruction from the “Insured” to the “Insurer” that Claim payments due under the 2019 Policy with respect to any Loss suffered by the Insured arising out of Assets acquired by the Insured from the Loss Payee prior to such Claim Payment shall be paid to the Loss Payee to the extent that the Claim has been accepted by the Insurer with respect to such Assets, and up to a maximum of the amount specified as the maximum amount that would be payable to the Loss Payee in respect of the relevant Customer as at the date on which the Loss Payee last acquired any Asset in respect of which such Loss was suffered;

(r) says that, by reason of paragraphs 57(d) to 57(q) of this Defence, the Loss Payee Endorsement was invalid, of no effect and not binding on or enforceable as against IAL;

(s) at all material times, BCC had not informed IAL and IAL did not know that:

(i) the Loss Payee Endorsement had been issued; and

(ii) the Loss Payee Endorsement had been purportedly issued in breach of the Approved Endorsements and the requirements of the Underwriting Manual Version 3.0; and

(t) it otherwise denies paragraph 57 of the SOC.

58 As to paragraph 58 of the SOC, IAL:

(a) repeats paragraph 57 of this Defence;

(b) says that if, which is denied, BCC had authority to execute the Loss Payee Endorsement on behalf of IAL:

(i) on the proper construction of the 2019 Policy, a Loss Payee cannot be endorsed after the expiry of the policy period and, here, any policy period expired no later than 1 March 2020;

(ii) the Loss Payee Endorsement applies only prospectively on and from 29 April 2020 and applied only in relation to Assets acquired after that date;

(iii) on the proper construction of the 2019 Policy (if valid and effective, which is denied), the only entity which may make a claim is the Insured, and an Insured may do so only in respect of a Loss suffered by the Insured in respect of an Asset owned by it at the time of the Loss;

(c) refers to the terms of the Loss Payee Endorsement for their full force and effect (if any);

(d) says further that:

(i) paragraph 58(b) of the SOC is not an accurate summary of the relevant provision of the Loss Payee Endorsement to which it refers and that provision provides that in any circumstances where the Insured is incapacitated (including but not limited to “as a result of” the Insolvency of the Insured or the loss by the Insured of any regulatory licence, authorisation or consent), White Oak could in principle submit a claim under the 2019 Policy directly to the Insurer;

(ii) the purported Insured, Greensill Bank, is not presently incapacitated, and it has brought other proceedings since 2021 in which it sues on the 2019 Policy;

Particulars

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

(b) Federal Court of Australia proceeding Greensill Bank AG & Anor v Insurance Australia Ltd & Ors (NSD173/2023).

(c) Federal Court of Australia proceeding Greensill Bank AG & Anor v Insurance Australia Ltd & Ors (NSD174/2023).

(d) Federal Court of Australia proceeding Greensill Bank AG & Anor v Insurance Australia Ltd & Ors (NSD175/2023).

(e) Federal Court of Australia proceeding Greensill Bank AG & Anor v Insurance Australia Ltd & Ors (NSD177/2023).

(iii) because White Oak cannot bring the claim directly under the 2019 Policy (as amended by the Loss Payee Endorsement) (if valid and effective, which is denied) unless the Insured is incapacitated, then it likewise has no right to do so under section 48(1) of the *Insurance Contracts Act 1984* (Cth) unless that same condition is satisfied, as section 48(1) only permits claims to be brought "in accordance with the contract", and the 2019 Policy limits White Oak's right to bring a claim so that it arises only where the Insured is incapacitated;

(iv) in the premises, White Oak has no right to sue on the 2019 Policy directly or at all, and White Oak has no standing to bring this proceeding;

(e) otherwise, denies paragraph 58 of the SOC.

58A IAL denies paragraph 58A of the SOC, and says that:

(a) it repeats paragraphs 41B(b) to 41B(f) of this Defence;

(b) there was and is no occasion to imply in a term to the LCL Endorsement to the effect of the LP Implied Good Faith Obligation because (inter alia):

(i) first:

(A) it was an express term of the Loss Payee Endorsement that the endorsement does not modify any rights and obligations defined in relation to the 2019 Policy other than as stated in the Loss Payee Endorsements;

(B) having regard to the express terms of the 2019 Policy, there was and is no occasion to imply in a term to the effect that the Insurer would act in good faith towards White Oak;

(ii) second, the 2019 Policy contained, by statutory implication (see section 13 of the *Insurance Contracts Act 1984* (Cth)), a duty of good faith owed to parties (including third party beneficiaries), but not to third parties, and no further term on that topic should be implied; and

(c) if (which is denied) the Loss Payee Endorsements carries with it the LP Implied Good Faith Obligation, then any such obligation applied only in respect of the terms of the Loss Payee Endorsement, and not the 2019 Policy more broadly (or any endorsement thereto).

59 IAL denies paragraph 59 of the SOC and says further that the SOC does not identify with precision the acts of reliance and/or assert that any such reliance was reasonable or the circumstances which render it reasonable.

59A As to paragraph 59A of the SOC, IAL:

(a) repeats paragraphs 47 to 58 of this Defence; and

(b) otherwise, denies paragraph 59A of the SOC.

59B As to paragraph 59B of the SOC, IAL:

(a) repeats paragraph 59A of this Defence;

(b) otherwise, denies paragraph 59B of the SOC.

59C As to paragraph 59C of the SOC, IAL:

(a) repeats paragraphs 59A and 59B of this Defence;

(b) otherwise, denies paragraph 59C of the SOC.

59D As to paragraph 59C of the SOC, IAL:

(a) repeats paragraphs 59A, 59B and 59C of this Defence;

(b) denies the paragraph;

(c) says that the SOC does not identify the basis (if any) on which it is alleged that the relevant term is implied;

(d) says that there was and is no occasion to imply into the Loss Payee Endorsement or the 2019 Policy the term alleged;

(e) says that:

(i) if there is a term of the Loss Payee Endorsement (or the 2019 Policy) obliging IAL to act in good faith towards White Oak, that obligation applies only to matters the subject of the Loss Payee Endorsement;

(ii) properly construed, the Loss Payee Endorsement relevantly provides for the making of payments to a Loss Payee, but only if and to the extent that there is a payment due under the 2019 Policy with respect to "Loss" suffered by the "Insured" arising out of "Assets" acquired by the "Insured" from the "Insured" from the "Loss Payee" prior to such "Claim", and only if and to the extent that the "Claim" has been accepted by the "Insurer";

(iii) if there is a term of the Loss Payee Endorsement (or the 2019) obliging IAL to act in good faith towards White Oak, that obligation relevantly attaches only to the making of payments to White Oak, and not to the anterior steps which are preconditions to the arising of any obligation to make payments.

H. Power of Attorney

60 As to paragraph 60 of the SOC, IAL:

(a) repeats paragraphs 57 to 58A inclusive of this Defence; and

(aa) refers to and repeats the matters set out in paragraph 60A(a) of Greensill Bank's Amended Defence filed in this proceeding on 31 July 2023;

(b) says that by deed of power of attorney dated 29 April 2020 and apparently executed by Greensill Bank, in circumstances where White Oak suffered a loss under a trade credit insurance policy in relation to which White Oak is named as Loss Payee, Greensill Bank appointed White Oak as its power of attorney to do in Greensill Bank's name any act, matter or thing which White Oak

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considers necessary or desirable for the protection, preservation or enjoyment of White Oak's interest as a Loss Payee under the policy;

(c) denies that White Oak had any interest as Loss Payee under the 2019 Policy (if valid and effective, which is denied);

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

(e) says that for the reasons in the preceding sub-paragraphs, the power of attorney dated 29 April 2020 has no apparent application to the acts taken (or purportedly taken) by White Oak in connection with this proceeding;

(f) relies as necessary on the power of attorney dated 29 April 2020 for its full force and effect (if any); and

(g) otherwise, denies paragraph 60 of the SOC.

60A As to paragraph 60A of the SOC, IAL:

(a) repeats paragraph 60 of this Defence;

(b) as to paragraph 60A(a) of the SOC, says that paragraph 60A(a) describes at a general level some of the effects of clause 2.4 of the power of attorney;

(c) as to paragraph 60A(b) of the SOC, says that paragraph 60A(b) describes at a general level some of the effects of clause 3.1 of the power of attorney;

(d) refers to the terms of the power of attorney for their full force and effect; and

(e) otherwise, denies paragraph 60A of the SOC.

60B As to paragraph 60B of the SOC, IAL:

(a) repeats paragraphs 59A to 60A of this Defence; and

(b) otherwise denies paragraph 60B of the SOC.

H.0 Introduction to Coverage Issues

60C Paragraphs 61 to 81 of the SOC are directed to issues of "coverage" that is whether the 2019 Policy (and endorsements), if valid and effective (which IAL denies), respond to the Claim.

60D In response to the whole of paragraphs 61 to 81 of the SOC, IAL says:

(a) White Oak's case on coverage depends on propositions as to the proper construction of 2019 Policy, endorsements (or purported endorsements) thereto and underlying instruments and agreements as between (inter alia) GCUK, LCL and White Oak;

(b) the SOC largely does not articulate with precision, or at all, the constructional propositions which underpin White Oak's case and, to a large extent, the White Oak case pleads ultimate conclusions, rather than the material facts warranting such conclusions;

(c) in pleading this Defence, IAL has, where possible, sought to expose the underlying and implicit constructional propositions which underpin White Oak's case;

(d) further, in pleading this Defence, IAL has, where possible, sought to identify possible constructions of 2019 Policy, the endorsements relied on and the underlying instruments, with a view to alleging in each case that, on the hypothesised construction, there is no coverage;

(e) IAL was not a party to 2019 Policy, the endorsements or any of the underlying instruments pleaded by White Oak, does not know the circumstances in which they were entered into (if at all), does not know all of the facts comprising the factual matrix in which they are to be construed and does not know whether the instruments relied on by White Oak identify, or identify exhaustively, the legal relations of the parties to them;

(f) in the circumstances, where IAL asserts below a construction of the 2019 Policy, an endorsement or an underlying instrument, it does so on the basis that it does not admit that construction or that the relevant document is what it is alleged to be by White Oak, but is instead identified for the purposes of advancing an argument to the effect that if the instrument was valid and binding and bore the alleged construction (which is not admitted), then the pleaded consequences follow;

(g) for the avoidance of doubt, where it advances a construction below, that construction is not admitted, but is instead advanced for the purposes of identifying why, on the hypothesised construction, there is no coverage;

(h) IAL will seek disclosure in relation to the matters the subject of paragraphs 61 to 81 of the SOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced; and

(i) admissions by IAL as to the existence and terms of agreements and other documents alleged in paragraphs 61 to 81 of the SOC are made subject to the reservation referred to in the preceding subparagraphs.

60E Except where identified otherwise, the allegations in paragraphs 61 and following of this Defence proceed on the assumption, which is denied, that the 2019 Policy (and alleged endorsements thereto) are valid, effective and binding and enforceable against IAL.

60F In response to the whole of paragraphs 61 to 81 of the SOC, IAL says that the following are necessary conditions of White Oak's entitlement (if any) to indemnity:

(a) there must be an "Asset" or "Assets" (the 2019 Policy clause 1.1, clause 3.1; definition of "Loss");

(b) there must be an "Eligible Debt" (the 2019 Policy clause 1,1, clause 3.1; definition of "Insured Cause");

(c) there must be a failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date" (the 2019 Policy clause 1.1, clause 3.1; definition of "Insured Cause");

(d) there must be a "Loss" or "Losses" suffered by the "Insured", which are caused by or result from the occurrence of the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date" (the 2019 Policy clause 1.1);

(e) the "Loss" or "Losses" must be quantified in accordance with 2019 Policy(if valid and effective, which is denied);

(f) so far as indemnity is sought by White Oak, White Oak must be a "Loss Payee" and the conditions under Endorsement 24 must be met (the 2019 Policy clause 1.1; Endorsement 24;).

E.0.1 "Asset"

60G In respect of the condition that there be an "Asset" or "Assets", IAL says the following:

(a) White Oak alleges that the "Assets" were "Payment Obligations" (SOC, paragraphs 61 and 62);

(b) the 2019 Policy provides for three, and only three, kinds of "Assets" (Schedule 1, definition of "Asset");

(c) if an asset does not meet the description of one or more of the kinds of "Assets" identified in Schedule 1, then it is not an "Asset";

(d) the SOC does not articulate with precision which kind of "Asset" the Payment Obligations are alleged to be (see SOC 62);

(e) however, having regard to paragraph 39(i) of the SOC, IAL understands White Oak's case to be that the Payment Obligations to be either:

  (i) a "Direct Asset"; and/or

  (ii) an indirect beneficial ownership interest in an "Eligible Debt" acquired by virtue of a participation in the "Trust Property" held subject to the relevant "Participant Trust";

(f) so far as White Oak's case is that the Payment Obligations meet the description in paragraph 60G(e)(i), White Oak does not articulate (inter alia) the source and nature of:

  (i) the indirect beneficial ownership interest;

  (ii) the participation;

  (iii) the "Trust Property";

  (iv) the "Participant Trust";

(g) in the premises, IAL will not further plead to the hypothesis that the Payment Obligations met the description in paragraph 60G(e)(i);

(h) White Oak also refers at paragraph 74 of the SOC to payment obligations arising in respect of asserted obligations of LCL, Liberty and Liberty FE;

(i) in respect of the obligations referred to at paragraph 74 of the SOC:

  (i) White Oak does not assert that they are, or gave rise to, "Assets";

  (ii) White Oak does not identify which, if any, kind of "Asset" they are;

(iii) White Oak does not identify the basis, if any, on which the obligations are said to give rise to "Assets";

(j) in the circumstances, IAL will not further plead to the hypothesis that the obligations referred to at paragraph 74 of the SOC were, or gave rise to, "Assets";

(k) so far as White Oak's case is that the Payment Obligations meet the description in paragraph 60G(e)(i), IAL understands White Oak's case to be generally as follows:

(i) LCL was or might be owed obligations by "Account Debtors", with those actual or possible future obligations being described as "Receivables" and "Proposed Receivables" under the RPA;

(ii) LCL and GCUK were parties to the RPA, being an agreement under which LCL had agreed, in certain circumstances, to assign "Proposed Receivables" to GCUK;

(iii) LCL assigned or purportedly assigned to GCUK certain "Receivables", which the SOC defines as the "Purchased Receivables" (SOC, paragraphs 25, 71);

(iv) White Oak and GCUK were parties to the MAA, being an agreement under which GCUK had agreed, in certain circumstances, to assign "Payment Obligations" to White Oak (SOC, paragraphs 34, 35);

(v) the rights constituting the Purchased Receivables were "Payment Obligations" (SOC, paragraphs 61, 71);

(vi) between 10 December 2020 and 25 February 2021, GCUK assigned to White Oak GCUK's interest in the Purchased Receivables (SOC, paragraphs 61);

(vii) the Purchased Receivables, or White Oak's rights in them, were "Direct Assets" for the purposes of the 2019 Policy;

(l) says that an asset is a "Direct Asset" only if it is a direct ownership interest in an "Eligible Debt";

(m) says that for the Payment Obligations or White Oak's rights (if any) in them to be a "Direct Asset", it is necessary that:

(i) the underlying obligations (if any) said to be owed by the alleged "Customers" (**Account Debtors**) (referred to in paragraph 61 of the SOC) (be "Eligible Debts", which in turn requires that those obligations meet, at material times, each of the conditions in Schedule 7 of the 2019 Policy;

(ii) White Oak's interest in those obligations be in the nature of a "direct ownership interest";

(n) an asset is an "Asset" only if it is derived from an "Eligible Debt" (the 2019 Policy, clause 3.1; Schedule 7);

(o) there can be an entitlement to an indemnity in respect of a Loss suffered in relation to an "Asset" only if the "Asset" was:

(i) owned by the "Insured" at the time "Loss" was suffered (the 2019 Policy, clause 3.1; definition of "Claim", Sch 1; Schedule 7);

(ii) owned by the "Insured" at the time of the "Insured Cause" (the 2019 Policy, clause 3.1; Schedule 7);

(iii) owned by the "Insured" during the "Policy Period" or, alternatively, by the "Insured" or a "Loss Payee" during the "Policy Period" (the 2019 Policy, clause 4.1);

(iv) owned by the "Insured" immediately prior to the making of a "Claim" (the 2019 Policy, clause 3.1; definition of "Claim", Sch 1; definition of "Loss");

(p) there is no allegation that any of the "Assets" were ever owned by an Insured;

(q) the "Policy Period" started no earlier than 22 February 2019 and ended no later than 22 February 2020 or, alternatively, 1 March 2020 or, in the further alternative, 1 March 2021 (Endorsement 18 – if valid and effective, which is denied) and, in the premises, there can be an entitlement to an indemnity in respect of an "Asset" only if the "Asset" was owned by an "Insured" (or alternatively by an "Insured" or a "Loss Payee") during the relevant "Policy Period";

(r) IAL denies that Endorsement 18 was valid and effective to bind IAL or extend the end of the Policy Period of the 2019 Policy (if valid and effective, which is denied) to 1 March 2021 (as to which, IAL refers to and repeats paragraph 41 of this Defence);

(s) White Oak alleges (which is not admitted) that it acquired the Payment Obligations between 10 December 2020 and 25 February 2021 and does not make any allegations that the Payment Obligations were acquired by Greensill Bank or GCPL at all;

(t) in the event that the Payment Obligations were (as alleged) acquired by White Oak between 10 December 2020 and 25 February 2021, but the "Policy Period" had expired prior to the time of acquisition, and were not acquired by Greensill Bank or GCPL at any time during the Policy Period or at all, then the purported "Insured", namely Greensill Bank or GCPL, did not own the "Asset" during the "Policy Period" and there is no coverage under the 2019 Policy;

(u) the SOC does not allege any material facts capable of establishing any one of the necessary conditions for the Payment Obligations (or White Oak's interest in them) to be "Direct Assets" and does not, for example:

(i) address any of the conditions in Schedule 7 of the 2019 Policy;

(ii) address any of the conditions in the Debt Endorsement relied on (if any);

(v) says that the Payment Obligations were not "Direct Assets" in the hands of White Oak because White Oak's interest in the Purchased Receivables was:

(i) mediated via assignments or purported assignments of interests in underlying rights from LCL to GCUK and, in turn, from GCUK to White Oak;

(ii) not a direct ownership interest;

(w) it puts White Oak to proof on each element necessary to establish that the Payment Obligations or any other assets relied on are "Assets";

(x) it denies that the Payment Obligations were "Direct Assets";

(y) it denies that the Payment Obligations are "Assets".

E.0.2 "Eligible Debt"

60H In respect of the condition that there be an "Eligible Debt", IAL says the following:

(a) White Oak does not articulate, with precision or at all, either the "Eligible Debts" it relies on or the circumstances which render them "Eligible Debts";

(b) in circumstances where White Oak's case is not articulated, IAL pleads as best it can below, but reserves the right to supplement its defence and case if and when White Oak articulates a proper case;

(c) as best IAL understands White Oak's case, the "Eligible Debts" relied on by White Oak are:

(i) the asserted Payment Obligations referred to at paragraphs 61 and 62 of the SOC (see SOC, paragraphs 61, 62, 66);

(ii) the asserted obligations of LCL, Liberty and Liberty FE referred to at paragraphs 28, 29, 30 and 32 of the SOC, being (see SOC 75):

(A) the obligation of LCL, in the event of an "Event of Repurchase", to repurchase "Purchased Receivables" and make payment of an amount described as the Repurchase Price (paragraph 28 of the SOC);

(B) the obligation of LCL, in the event of an "Event of Termination", to repurchase "Purchased Receivables" and make payment of an amount described as the Repurchase Price (paragraph 29 of the SOC);

(C) the obligation of LCL to pay interest on amounts owing under the RPA (paragraph 30 of the SOC)

(D) the obligation of Liberty and Liberty FE to indemnify GCUK under the Group Guarantee in the event of certain defaults of LCL (paragraph 32 of the SOC);

(d) so far as White Oak's case is based on the Payment Obligations:

(i) White Oak asserts that, upon the failure to pay each of the Payment Obligations, an "Eligible Debt" arose (paragraph 66 of the SOC);

(ii) White Oak otherwise does not identify any basis upon which each such obligation was an "Eligible Debt";

(e) so far as White Oak's case is based on the asserted obligations referred to in paragraph 60H(c) of this Defence:

(i) White Oak does not assert that any "Assets" were derived from those obligations, and unless there is an "Asset" derived from the relevant "Eligible Debt", there is no coverage;

(ii) White Oak relies non-exhaustively on the "Loss Payee Endorsement", the "LCL Endorsement", the "Liberty Endorsement" and the "RPA Endorsement" (being RPA Debt Endorsement) for the contention that those obligations are "Eligible Debts" (paragraph 75 of the SOC), but does not otherwise identify any basis on which those asserted debts are "Eligible Debts";

(f) in order for a debt to be an "Eligible Debt", the following conditions must be satisfied, and must be satisfied at the time the Asset is acquired by the "Insured", or alternatively by the "Insured" or a "Loss Payee":

(i) the obligor must be a "Customer", being a "Customer" endorsed to the 2019 Policy under a "Customer Endorsement", who is a debtor in respect of a "Debt" (the 2019 Policy Schedule 7; definition of "Customer");

(ii) the obligor must be an "Eligible Customer" (the 2019 Policy, clause 3.1);

(iii) the obligor must be not an "Affiliate" of any of the parties to the "Transaction Documents" (other than any "Origination Documentation") (the 2019 Policy, Schedule 7);

(iv) the obligor must be a "corporate entity" (the 2019 Policy, Schedule 7);

(v) the obligor must be not "Insolvent" (the 2019 Policy, Schedule 7), which includes circumstances in which any corporate action, legal proceedings or other procedure or step is taken for (inter alia) winding up, administration or reorganisation;

(vi) the obligor must have a "Customer Limit" (the 2019 Policy, Schedule 7);

(vii) the "Customer Limit" must be established in accordance with the terms of the 2019 Policy (the 2019 Policy, Schedule 7);

(viii) the debt must have a "Due Date", being a date stated in the "Platform" (being an electronic platform used by GCUK from time to time into which details of "Suppliers" and/or "Customers", "Debts", "Due Dates" and other related information is recorded) as the date by which payment of the "Debt" by the "Customer" is required to be made (the 2019 Policy, Schedule 7; definition of "Due Date" and definition of "Platform");

(ix) the "Due Date" must not exceed the "Maximum Tenor", being a period set out in a relevant "Debt Endorsement" or "Customer Endorsement" (the 2019 Policy, Schedule 7; definition of "Maximum Tenor");

(x) the debt must not be outstanding after its "Due Date" (the 2019 Policy, Schedule 7);

(xi) there must (on the proper construction of the 2019 Policy and, in particular, Schedule 7) be in place a "Debt Endorsement" or "Customer Endorsement" which stipulates, in respect of the debt, a "Maximum Tenor";

(xii) the debt must be denominated and payable only in an "Approved Currency" (the 2019 Policy, Schedule 7);

(xiii) the debt must satisfy any further criteria set out in the relevant Debt Endorsement relating to the Debt (the 2019 Policy, Schedule 7);

(g) so far as White Oak relies on the Loss Payee Endorsement, either as a "Debt Endorsement" for the purposes of Schedule 7, or as an instrument evidencing or establishing that the Payment Obligations are "Eligible Debts";

(i) the Loss Payee Endorsement is not a "Debt Endorsement" within the meaning of the 2019 Policy (and in this respect repeats paragraphs 57 and 58 of this Defence);

(ii) the Loss Payee Endorsement does not, in terms or effect, describe the nature of any debts that may, after the date of the endorsement or otherwise, be able to be "Debts" for the purposes of the 2019 Policy;

(iii) the Loss Payee Endorsement does not, in terms or effect, refer to any of the asserted "Customers" said to have owed the Payment Obligations;

(iv) the Loss Payee Endorsement is irrelevant to the question of whether any of the Payment Obligations are "Eligible Debts";

(h) so far as White Oak relies on the LCL Endorsement as a "Debt Endorsement" for the purposes of Schedule 7:

(i) the LCL Endorsement is not a "Debt Endorsement" within the meaning of the 2019 Policy (and in this respect repeats paragraphs 54 to 56 of this Defence);

(ii) the LCL Endorsement does not, in terms or effect, describe the nature of any debts that may, after the date of the endorsement or otherwise, be able to be "Debts" for the purposes of the 2019 Policy;

(iii) the LCL Endorsement does not, in terms or effect, refer to any of the asserted "Customers" said to have owed the Payment Obligations;

(iv) the LCL Endorsement, in terms, does not vary, alter, waive or change any of the terms, limits or conditions of the 2019 Policy except as set out in it;

(v) the LCL Endorsement is irrelevant to the question of whether any of the Payment Obligations are "Eligible Debts";

(i) so far as White Oak relies on the Liberty Endorsement as a "Debt Endorsement" for the purposes of Schedule 7:

(i) the Liberty Endorsement is not a "Debt Endorsement" within the meaning of the 2019 Policy (and in this respect repeats paragraphs 52 to 54 of this Defence);

(ii) the Liberty Endorsement refers to Part B of RPA Debt Endorsement, but otherwise does not, in terms or effect, describe the nature of any debts that, after the date of the endorsement or otherwise, be able to be "Debts" for the purposes of the 2019 Policy;

(iii) the Liberty Endorsement does not, in terms or effect, refer to any of the asserted "Customers" said to have owed the Payment Obligations, but instead refers to the "Customers" as Liberty FE and Liberty Commodities Group;

(iv) the Liberty Endorsement, in terms, does not vary, alter, waive or change any of the terms, limits or conditions of the 2019 Policy except as set out in it;

(v) the Liberty Endorsement is irrelevant to the question of whether any of the Payment Obligations are "Eligible Debts";

(j) in circumstances where White Oak does not articulate, with any precision or at all, the basis (if any) on which it is said that any of the obligations it relies on are "Eligible Debts" by reason of any of the Loss Payee Endorsement, LCL Endorsement or Liberty Endorsement, IAL will not further plead to those endorsements;

(k) so far as White Oak relies on the RPA Debt Endorsement as a "Debt Endorsement":

(i) the RPA Debt Endorsement has two parts, A and B;

(ii) White Oak refers to each of the Parts (see SOC 47), but does not identify which part it relies on;

(iii) White Oak does not plead any circumstances which are said to bring any debts within the descriptions in either Part A or B;

(l) if the RPA Debt Endorsement is valid and effective (which is denied, as to which IAL repeats paragraph 47 of this Defence), the following are necessary conditions for a debt to satisfy the criteria in Part A of that endorsement:

(i) there must be a "Debt";

(ii) the "Debt" must be "originated in an accounts receivable purchase program";

(iii) the program must be one in which "Debts" are due in relation to the provision of goods and/or services by a "Supplier" to a "Customer";

(iv) there must be an account receivable (which, for the purposes of Part A of the RPA Debt Endorsement is purportedly deemed to include a right to a future accounts receivable);

(v) the account receivable must be, or expected to be, payable by a "Customer" to a "Supplier";

(vi) the account receivable must relate to the provision of goods and/or services by the "Supplier" to the "Customer";

(vii) there must be a “Customer”, being a person who, relevantly:

(A) is endorsed to the 2019 Policy;

(B) is endorsed to the 2019 Policy under a “Customer Endorsement”;

(C) is a debtor in respect of a “Debt”;

(viii) there must be a “Supplier”, being a person that has provided goods and/or services to the “Customer” and in relation to which a “Debt” is created;

(m) if, and to the extent that Part A of the RPA Debt Endorsement is relied on:

(i) the Additional Conditions in clauses 1 and 2 of Part A apply;

(ii) those Additional Conditions include a term to the effect that where a “Repurchase Event” occurs in relation to a “Debt”, “Losses” arising directly from the non-payment of such “Debt” by the applicable “Customer” shall be excluded from cover under the 2019 Policy;

(iii) “Repurchase Event” is defined in Part A;

(n) in circumstances where White Oak does not articulate, with any precision or at all, the basis (if any) on which it is said that any of the obligations it relies on meet the description in Part A of the RPA Debt Endorsement, IAL will not further plead to Part A;

(o) if the RPA Debt Endorsement is valid and effective (which is denied, as to which IAL repeats paragraph 47 of this Defence), the following are necessary conditions for a debt to satisfy the criteria in Part B of that endorsement:

(i) there must be a “Debt”;

(ii) the “Debt” must be "originated in an accounts receivable purchase program”;

(iii) the program must be one in which “Debts” are due from a “Customer”;

(iv) there must be a “Servicer”;

(v) the program must be one in which "Debts" are due from:

(A) a person who is either a "Seller", or GCUK in its capacity as "Servicer", or "Underlying Seller" in relation to its obligations relating to certain accounts receivable; or

(B) alternatively, a guarantor of one or more "Sellers", or GCUK in its capacity as "Servicer" or "Underlying Seller's" obligations in relation not certain accounts receivable;

(vi) there must be an amount payable to the "Servicer" (being GCUK, see definition of "Servicer" in the 2019 Policy);

(vii) there must be a "Customer", being a person who:

(A) is endorsed to the 2019 Policy under a "Customer Endorsement";

(B) is a debtor in respect of a "Debt";

(viii) there must be a "Supplier", being a person that has provided goods and/or services to a "Customer" and "in relation to which an accounts receivable is created";

(ix) there must be an underlying account receivable, which arises in relation to the provision of goods and services from "Supplier" to "Customer";

(x) there must be a "Receivables Purchase Agreement", being an agreement:

(A) meeting the description of being a receivables purchase agreement;

(B) entered into between the "Servicer" (ie GCUK) (and/or an "Affiliate" of GCUK or a third party (described as a "Buyer") and a "Supplier" (and/or an "Affiliate" of a "Supplier") or "suppliers" (described as a "Seller");

(C) pursuant to which a "Buyer" acquires accounts receivable;

(D) pursuant to which a "Buyer" acquires accounts receivable with recourse from one or more "Sellers";

(xi) the amount must be payable in the circumstances described in either Part A or Part B of the definition of "Debt";

(xii) as to subparagraph (i) of the definition of “Debt”:

(A) the amount must be payable by a “Customer” under its obligation as “Seller”, or “Underlying Seller” (or as the case may be, “servicer”) under a “Receivables Purchase Agreement”);

(B) the obligation of the “Customer” must be an obligation to repurchase or provide an indemnity payment or make a payment of collections with respect to accounts receivable sold by the “Seller” pursuant to the “Receivables Purchase Agreement”;

(C) so far as the obligation of the “Customer” is an obligation to repurchase or provide an indemnity, the obligation must be one which is triggered by one or more “Repurchase Events”;

(xiii) as to sub-paragraph (ii) of the definition of “Debt”:

(A) there must be obligations owed by “Customer” of the kind described in sub-paragraph (i) of the definition of “Debt”;

(B) the amount must be payable by a “Customer”;

(C) the amount must be payable under a guarantee given by the “Customer”;

(D) the guarantee must be given to or for the benefit of “Servicer” (ie GCUK);

(E) the guarantee must guarantee the obligations referred to in sub-paragraph (i) of the definition of “Debt”;

(p) further that:

(i) on the proper construction of Part B of the RPA Debt Endorsement, there was not a “Debt” unless there was in existence, at all material times, as between a “Customer” and a third party:

(A) an existing account receivable;

(B) alternatively, an existing account receivable or a certain or, alternatively, probable future account receivable;

(C) alternatively, an existing account receivable or a future account receivable in respect of which there was a reasonable expectation

(on the part of the "Customer" and the person acquiring the account receivable or, alternatively, the "Customer" or, alternatively, the person acquiring the account receivable) or, alternatively, expectation (on the part of the "Customer" and the person acquiring the account receivable or, alternatively, the "Customer" or, alternatively, the person acquiring the account receivable) that it was likely to come into existence;

(ii) at all material times, in respect of each or, alternatively, most or, alternatively, some of the Payment Obligations relied on by White Oak, the "accounts receivable" the subject of the alleged sales from LCL to GCUK referred to in paragraph 25 of the SOC:

(A) were in amounts bearing no relationship to any existing, likely or reasonably expected future rights as between LCL and a third party;

(B) were in amounts and/or in respect of third parties which were inserted in documents by GCUK and not LCL;

(iii) at all material times, in respect of each or, alternatively, most or, alternatively, some of the Payment Obligations relied on by White Oak:

(A) there was no existing account receivable;

(B) there was no certain future account receivable;

(C) there was no probable future account receivable;

(D) there was no reasonable expectation (on the part of LCL and/or GCUK) that a future account receivable would come into existence;

(E) there was no expectation (on the part of LCL and/or GCUK) that a future account receivable would come into existence;

(q) it says further that the Payment Obligations did not satisfy the conditions in Schedule 7 of the 2019 Policy because:

(i) in order to be an "Eligible Debt", the debt must meet the description in Schedule 7 of the 2019 Policy at the time the relevant "Asset" is acquired by the "Insured" or, in the alternative, at the time the relevant "Asset" is acquired by any applicable "Loss Payee";

(ii) one of the conditions in Schedule 7 is that the debt must not be outstanding after its "Due Date";

(iii) the "Due Date", in respect of a "Debt", is the date stated in the "Platform" as the date by which payment of the "Debt" by the "Customer" is required to be made;

(iv) on White Oak's pleaded case, Liberty and Liberty FE guaranteed the obligations of LCL under the RPA (SOC, paragraph 32A);

(v) on White Oak's pleaded case, and having regard to the terms of the RPA, LCL represented and warranted (see SOC, paragraph 26; RPA clause 3; Schedule 6(b)) on each "Request Date", being the date on which LCL submitted a "Request" under clause 2.1(a) of the RPA, that each "Applicable Receivable" was an "Eligible Receivable" owed by the relevant "Account Debtor";

(vi) on White Oak's pleaded case, it was a term of the RPA that an "Event of Repurchase" occurs when (inter alia) any representation or warranty by LCL with respect to any "Purchased Receivables" was incorrect when made (SOC, paragraph 28);

(vii) on White Oak's pleaded case, it was a term of the RPA that if an "Event of Repurchase" occurred, then LCL would repurchase all the "Purchased Receivables" then outstanding affected by the "Event of Repurchase" (SOC, paragraph 28);

(viii) an "Event of Repurchase" occurred upon the submission of each "Request" in respect of each alleged sale because, at the time of the submission of each such "Request":

(A) each or, alternatively, most or, alternatively, some of the "accounts receivable" the subject of the purported "Request" were sold or purportedly sold:

a. there was not in existence an existing account receivable owed to LCL the subject of the purported request;

b. there was not in existence a certain or, alternatively, probable future account receivable owed to LCL the subject of the purported request;

c. there was not in existence a reasonable expectation (on the part of LCL and/or GCUK) or, alternatively, an expectation (on the part of LCL and/or GCUK) as to the existence of a future account receivable owed to LCL the subject of the purported request;

(B) at the time, each "Applicable Receivable" was not an "Eligible Receivable" owed, at that time, by the relevant "Account Debtor";

(ix) upon the making of each "Request" in respect of each alleged sale:

(A) LCL became immediately liable to repurchase all the "Purchased Receivables" then outstanding affected by the "Event of Repurchase", being all outstanding "Purchased Receivables" as between LCL and GCUK or, alternatively, those "Purchased Receivables" the subject of the purported "Request";

(B) further, Liberty and Liberty FE became immediately liable under the Group Guarantee to repurchase all those "Purchased Receivables";

(x) on White Oak's pleaded case, at all material times:

(A) LCL did not discharge any obligation to repurchase the "Purchased Receivables" (SOC, paragraph 74);

(B) Liberty FE and Liberty did not discharge any obligation to repurchase the "Purchased Receivables" (SOC, paragraph 74);

(C) Liberty FE and Liberty have not discharged its obligation to guarantee LCL's obligation/s to repurchase the "Purchased Receivables";

(xi) at all material times:

(A) the debts of LCL, Liberty FE and Liberty Commodities Group referred to in paragraph (ix) were outstanding after their due date;

(B) it is to be inferred that each such debt was also outstanding after its "Due Date" within the meaning of the 2019 Policy;

(xii) at the time that White Oak acquired the Payment Obligations (as pleaded in paragraph 61 of the SOC), the alleged Payment Obligations were outstanding after their "Due Date";

(r) that:

(i) the "warranties" referred to in the definition of "Eligible" included the warranties given by the "Insured" in the "Proposal" (the 2019 Policy, clause 7.3);

(ii) the "Proposal" is the document in the form contained in Schedule 2 and submitted by the "Insured" to the "Insurer" in order to obtain the insurance (the 2019 Policy, definition of "Proposal", Schedule 1);

(iii) the "Proposal" form in Schedule 2 contains two warranties which are an integral part of the "Proposal" and, on the proper construction of the 2019 Policy, must be given by the "Insured" to the "Insurer"; and

(iv) on the proper construction of the 2019 Policy and/or in order to give business efficacy to the 2019 Policy, if there was no "Proposal" submitted by the "Insured" to the "Insurer", then (relevantly) there was and could be no "Eligible Customer" in respect of the policy;

(s) it denies that the obligations or debts referred to in sub-paragraph 60H(c) of this Defence are "Eligible Debts" because:

(i) it is a necessary condition of there being an "Eligible Debt" that the obligor is a "Customer";

(ii) none of LCL, Liberty or Liberty FE was a "Customer" within the meaning of the 2019 Policy;

(t) it denies that the Payment Obligations were capable of being "Eligible Debts" and/or otherwise the subject of coverage under the 2019 Policy because:

(i) it is a condition of a debt being an "Eligible Debt" or, further or alternatively, there being coverage in respect of the debt, that it is owed by an "Eligible Customer";

(ii) the "Eligible Customers" relied on by the Applicants are those entities referred to in paragraph 61 of the SOC; and

(iii) the entities referred to in paragraph 61 of the SOC were not "Eligible Customers" because, at all material times, no "Proposal" at all, or no "Proposal" containing the required warranties, was submitted to the "Insurer" (as to which IAL refers to paragraph 60H(p) of this Defence);

(u) in circumstances where White Oak does not articulate, with any precision or at all, the basis (if any) on which it is said that any of the obligations it relies on meet the description in Part B of the RPA Debt Endorsement, IAL will not further plead to Part B;

(v) it puts White Oak to proof on each necessary condition for the Payment Obligations and other obligations on which it relies to be "Debts" and "Eligible Debts"; and

(w) it denies that the Payment Obligations and other obligations on which White Oak relies were "Debts" and "Eligible Debts".

E.0.3 Failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date"

60I In respect of the condition that there be a failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date", IAL says the following:

(a) White Oak alleges that this condition is satisfied because (allegedly):

(i) each of the alleged "Customers" referred to in paragraph 61 of the SOC allegedly failed to pay GCUK or White Oak the "Expected Allocation" on or before the "Backstop Date" (SOC, paragraph 66);

(ii) LCL, Liberty Commodities Group or Liberty FE failed to meet their alleged payment obligations (SOC, paragraph 74);

(b) so far as White Oak relies on an asserted failure by "Customers" referred to in paragraph 66 of the SOC to pay an "Expected Allocation":

(i) "Expected Allocation" is an expression used in the 2019 Policy to regulate rights between the "Insured" and "Insurer", and it is not an expression which affects or describes the content of the underlying rights and obligations (if any) between a debtor and a creditor (including those alleged debtors referred to in SOC, paragraph 61);

(ii) the relevant question is whether the alleged "Customers" referred to in paragraph 61 of the SOC have failed to make payment of an "Eligible Debt" by the "Backstop Date", not whether they have failed to pay an "Expected Allocation";

(c) it puts White Oak to proof of the failure to pay, including the existence of the obligation to pay and an asserted failure to pay by the "Backstop Date"; and

(d) otherwise does not know and cannot admit that the condition identified in the chapeau to paragraph 60I of this Defence is satisfied.

E.0.4 "Loss caused by "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date",

60J In respect of the condition that there must be a "Loss" or "Losses" suffered by the Insured, which is or are caused by or result from the occurrence of the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date", IAL says the following:

(a) whether there is a "Loss" is determined by reference to the character of the "Asset" and, relevantly, whether it is a "Direct Asset";

(b) as best IAL understands White Oak's case, it is that the Payment Obligations were, or gave rise to, "Direct Assets" (SOC, paragraph 61);

(c) White Oak has not otherwise identified, at all or with any precision, any other kind of "Asset" it relies on;

(d) where the "Asset" is a "Direct Asset", each of the following is a necessary condition of there being a "Loss" suffered by the Insured which is caused by or result from the failure of a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date":

(i) each of the conditions identified in paragraph 60G(o) of this Defence;

(ii) the "Asset" must be owned by the Insured at the time:

(A) of the "Insured Cause"; ~~and~~

(B) the "Loss" was suffered; and

(C) at which indemnity is sought;

(iii) the "Asset" must be owned by the "Insured" immediately prior to the making of a "Claim" (the 2019 Policy, clause 3.1; definition of "Claim", Sch 1; definition of "Loss'');

(iv) the "Asset" must be owned by the "Insured", alternatively by the "Insured" or a "Loss Payee", during the "Policy Period";

(v) the Insured must have an "Expected Allocation" in respect of the "Direct Asset" (2019 Policy definition of "Loss");

(vi) the amount actually paid by the "Customer" or on its behalf in respect of the "Direct Asset" must be less than the "Expected Allocation";

(e) White Oak does not plead any material facts establishing:

(i) the matters in paragraph 60J(d) of this Defence;

(ii) that the asserted "Loss" (being, the difference between the "Expected Allocation" and the amount actually paid by the "Customer" or on its behalf in respect of the "Direct Asset") was caused by or resulted from the occurrence of the Insured Causes relied on, which appear to be those alleged in paragraph 61 of the SOC;

(iii) that in the counterfactual world where the relevant Insured Causes did not occur, the "Loss" would not have been suffered;

(iv) that having regard to the definition of "Expected Allocation" in the LCL Endorsement:

(A) there were "Eligible Debts";

(B) there was a "Net Invoice Amount" (as defined in the RPA);

(C) having regard to the definition of "Net Invoice Amount" in the RPA:

a. there was a "Purchased Receivable" within the meaning of the RPA;

b. there was an amount of the applicable "Purchased Receivable" shown on the invoice for the "Purchased Receivable" as the total amount payable by the related "Account Debtor" including VAT (less deductions identified in the definition of "Net Invoice Amount");

(D) alternatively, if the LCL Endorsement was not valid or effective, that having regard to the definition of "Expected Allocation" in the 2019 Policy:

a. there were "Eligible Debts";

b. there was a "Face Amount" of the relevant "Eligible Debts", which in turn means that there was:

i. a "File";

ii. a file and/or records held by GCUK in the form from time to time specified in the "Transaction Documents" relating to the relevant "Eligible Debts" from which the "Direct Assets" are derived (2019 Policy, definition of "File");

c. alternatively, if only part of the "Eligible Debt" comprised the "Direct Asset", there was an amount due to the "Insured" in relation to the "Eligible Debt";

(f) it puts White Oak to proof of all material facts necessary for the existence of a "Loss"; and

(fa) White Oak does not own the Payment Obligations in respect of which indemnity is sought or, alternatively, some of the Payment Obligations in respect of which indemnity is sought (see paragraph 88C(h) below); and

(g) it denies that there was a "Loss" or "Losses", because of the matters pleaded in paragraphs 60F to 60J of this Defence.

E.0.5 "Loss" quantified in accordance with the 2019 Policy

60K In respect of the condition that the "Loss" or "Losses" must be quantified in accordance with 2019 Policy, IAL repeats paragraph 60J of this Defence.

I. Acquisition of Assets under the RPA

61 In answer to paragraph 61 of the SOC, IAL repeats paragraph 35 of this Defence and otherwise does not know and therefore cannot admit paragraph 61 of the SOC.

62 As to paragraph 62 of the SOC, IAL:

(a) repeats paragraphs 8, 38, 39, 47 to 58A, 60G, 61 and 67 of this Defence;

(b) says further that, on the proper construction of the 2019 Policy (if valid and effective, which is denied), the only Assets in respect of which a Loss may be claimed are Assets derived from Debts comprising receivables generated by a Supplier referred to in a valid Debt Endorsement and owed by a Customer, and arising under the Transaction Documents defined in the 2019 Policy, and the Assets alleged by White Oak are not Assets of this kind;

(c) says further that, at all material times, IAL did not consent to the coverage under the 2019 Policy extending to Assets acquired under the MAA; and

(d) otherwise, denies paragraph 62 of the SOC.

63 As to paragraph 63 of the SOC, IAL:

(a) repeats paragraphs 46, 61 and 62 of this Defence; and

(b) otherwise, denies paragraph 63 of the SOC.

Marsh confirmation emails

64 As to paragraph 64 of the SOC, IAL:

(a) refers to and repeats paragraph 23 of this Defence;

(b) says that, at all material times, Marsh had no authority to make representations on behalf of IAL or BCC in any respect, including in respect of the matters the subject of paragraphs 64(a) and (b) of the SOC; and

(c) otherwise, denies paragraph 64 of the SOC.

Failure of Eligible Customers to Pay

65 IAL does not know and cannot admit paragraph 65 of the SOC.

65A As to paragraph 65A of the SOC, IAL:

(a) repeats paragraph 61 of this Defence;

(b) says that the Guarantee Demand demanded payment of "Assigned Receivables", specified in Schedule 1 to the Guarantee Demand as totalling USD 161,656,982.25;

(c) says that the Guarantee Demand refers to an "Original Demand", being a notice of assignment dated 7 March 2021 from White Oak to LCL; and

(d) otherwise, does not know and cannot admit paragraph 65A of the SOC.

66 As to paragraph 66 of the SOC, IAL:

(a) repeats paragraphs 8, 47, 52, 54, 57, 60H to 60J, 62 and 63 of this Defence;

(b) repeats, in particular, paragraph 60E of this Defence;

(c) does not know and cannot admit paragraph 66 of the SOC insofar as it alleges that, as at the date of filing the Statement of Claim, the Eligible Customers have failed to pay (at all or in part) GCUK or White Oak the Expected Allocation on or before the relevant Backstop Date for each alleged Payment Obligation; and

(d) otherwise, denies paragraph 66 of the SOC.

Occurrence of Event of Repurchase and Event of Termination

66A As to paragraph 66A of the SOC, IAL:

(a) says that the SOC does not plead material facts establishing, or capable of establishing that:

(i) there were “Eligible Customers”;

(ii) there was a “Seller Collection Account”;

(iii) there was an amount due in respect of “Payment Obligations” at all, or as at a “Final Settlement Date”; and

(b) otherwise, does not know and cannot admit paragraph 66A of the SOC.

66B As to paragraph 66B of the SOC, IAL:

(a) repeats paragraph 66A of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 66B of the SOC.

67 As to paragraph 67 of the SOC, IAL:

(a) repeats paragraphs 35, 36, 39, 60G, 60H, 61 and 66 of this Defence;

(b) says that, if a debt said to be an "Eligible Debt" does not exist and is not a "debt", then it is not an "Eligible Debt";

(c) otherwise, does not know and cannot admit paragraph 67 of the SOC.

68 As to paragraph 68 of the SOC, IAL:

(a) repeats paragraph 67 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 68 of the SOC.

69 As to paragraph 69 of the SOC, IAL:

(a) repeats paragraphs 67 and 68 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 69 of the SOC.

Notification of Event of Repurchase and Event of Termination

70 IAL admits paragraph 70 of the SOC, save that IAL says that the letter dated 18 March 2021 particularised therein did not contain a notice requesting that LCL immediately repurchase Purchased Receivables.

71 As to paragraph 71 of the SOC, IAL:

(a) repeats paragraphs 35, 36, 39, 61 and 67 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 71 of the SOC.

72 As to paragraph 72 of the SOC, IAL:

(a) repeats paragraph 71 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 72 of the SOC.

73 IAL admits paragraph 73 of the SOC.

73A As to paragraph 73A of the SOC, IAL:

(a) says that clause 6.2(D) of the RPA does not refer to a "demand" and it does not understand what is meant by an allegation that the relevant documents constituted a "demand" for the purposes of that clause;

(b) says that:

(i) it was an express term of the RPA that a notice, consent or communication under the RPA was effective only if it was prepared, addressed and given in accordance with clause 16.17 of the RPA;

(ii) it was an express term of the Group Guarantee that a notice, consent or communication given under the guarantee was effective only if it was prepared addressed and given in accordance with clause 16.17 of the RPA (see clause 3.15);

(iii) on the proper construction of the RPA and Group Guarantee, a "demand" (for the purposes of the chapeau to clause 6.2) or a "notice" (for the purposes of clause 6.2(D)) or a "demand" (for the purposes of clause 3.1 of the Group Guarantee) was effective only if it was prepared, addressed and given in accordance with clause 16.17 of the RPA;

(iv) on the proper construction of the RPA, in order for a notice, consent or communication to be given to LCL, it was necessary to send the notice, consent or communication to james.waterman@libertyhouse.uk;

(v) the Notices of Event of Repurchase were not sent to james.waterman@libertyhouse.uk;

(c) refers to the Notices of Event of Repurchase for their full force and effect; and

(d) otherwise, denies paragraph 73A of the SOC.

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

74 As to paragraph 74 of the SOC, IAL:

(a) repeats paragraph 73A of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 74 of the SOC.

75 As to paragraph 75 of the SOC, IAL:

(a) repeats paragraphs 35, 36, 39, 47 to 58A, 60D to 60G, 61, 67 and 74 of this Defence;

(b) repeats in particular paragraph 60F of this Defence;

(c) otherwise, denies paragraph 75 of the SOC.

J. Claims on the Policy

76 As to paragraph 76 of the SOC, IAL:

(a) repeats paragraphs 8, 59A to 59C and 60 to 60B of this Defence;

(b) denies that White Oak is an Insured or otherwise entitled to make a claim under the Policy; and

(c) otherwise, does not know and cannot admit paragraph 76 of the SOC.

77 As to paragraph 77 of the SOC, IAL:

(a) repeats paragraphs 8, 23(d), 59A to 59C and 60 to 60B of this Defence;

(b) denies that White Oak is an Insured or otherwise entitled to make a claim under the Policy; and

(c) otherwise, does not know and cannot admit paragraph 77 of the SOC.

78 As to paragraph 78 of the SOC, IAL:

(a) admits that, on 17 September 2021, White Oak's legal representatives, Ashurst Australia, sent a letter to Clyde & Co as lawyers for IAL, attaching a number of documents;

(b) refers to the terms of that letter for their full force and effect;

(c) repeats paragraphs 76 to 77 of this Defence; and

(d) otherwise, does not know and cannot admit paragraph 78 of the SOC.

79 As to paragraph 79 of the SOC, IAL:

(a) repeats paragraphs 8, 35 to 36, 38 to 39, 40, 47 to 58A, 61, 62, 67 and 74 of this Defence;

(b) repeats in particular paragraphs 60D to 60J of this Defence; and

(c) otherwise, denies paragraph 79 of the SOC.

80 IAL does not know and cannot admit paragraph 80 of the SOC.

81 In response to paragraph 81 of the SOC, IAL:

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

(b) says that, by reason of Part A, Additional Condition 1 of the RPA Debt Endorsement, to the extent that there has been an Event of Repurchase in respect of any of the debts the subject of the ten claims pleaded at paragraph 76 of the SOC (which is not admitted), those debts are excluded from the 2019 Policy (and replaced by corresponding Part B debts), by reason of the Event of Repurchase that has occurred in respect of each of them;

(c) says that some of the alleged debts never attached to the 2019 Policy, because:

(i) clause 5.5 of the 2019 Policy provided that no Asset or part of any Asset would attach to the 2019 Policy to the extent that it breached the limits from time to time in force pursuant to clause 5 of the 2019 Policy;

(ii) by clause 5.1 of the 2019 Policy, those limits included the Applicable Limit of Liability, which was relevantly defined to mean the Customer Limit;

(iii) the Customer Limit for LCL, Liberty and Liberty FE was, by virtue of the Liberty Customer Endorsement (if valid), USD 5,000,000;

(iv) in the premises, if (which is denied) USD 5,000,000 worth of Part B debts owed by LCL, Liberty and Liberty FE had attached to the 2019 Policy, clause 5.5 of the 2019 Policy operated to prevent any further debts from those customers attaching to the 2019 Policy until those debts had been repaid so as to bring the total of Part B debts owed by LCL, Liberty and Liberty FE below USD 5,000,000;

(v) Special Condition 2 to the Liberty Customer Endorsement did not apply, as it only made special provision for the resetting of customer limits once and to the extent that a Claim had been submitted, rather than at the point in time at which a Part B debt attaches to the 2019 Policy;

(vi) having regard to the table at paragraph 61 of the SOC, once a Part B debt had arisen in respect of the earliest payment obligation in that table, only the first USD 5,000,000 of that debt could have attached to the 2019 Policy (if the USD 5,000,000 limit had not already been reached by an earlier payment obligation preceding those in the table at paragraph 61 of the SOC), and no further Part B debts in respect of the payment obligations in the table in paragraph 61 of the SOC attached to the 2019 Policy;

(vii) in the premises, the Insurer's liability for the debts the subject of this claim, the debts claimed in proceeding NSD169 of 2023 and the debts claimed in proceeding NSD175 of 2023 can be no greater than USD 5,000,000 in the aggregate;

(d) says further and in the alternative that a Stop Asset Acquisition Instruction prevented some or all of the debts the subject of the claims pleaded in paragraph 76 of the SOC from attaching to the 2019 Policy, because:

(i) clause 8.3(a) of the 2019 Policy provided that a Stop Asset Acquisition Instruction would automatically be deemed to have been issued to the "Insured" where a Customer has failed to pay a Debt on the relevant Due Date and such failure to pay has not been remedied within 10 Business Days;

(ii) having regard to the table at paragraph 61 of the SOC, on the pleaded case, a "Debt" owed by LCL, Liberty and Liberty FE came into existence no later than 10 December 2020 (being the date on which the representation and warranty by LCL under the RPA with respect to the debt from Aperam Sourcing SCA was made, in principle constituting an Event of Repurchase, subject to paragraphs 68 and 69 of this Defence);

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

(iv) clause 8.3(a) of the 2019 Policy operated to require such a Part B debt to be repaid by LCL, Liberty and Liberty FE within 10 Business Days, failing which, a Stop Asset Acquisition Instruction would automatically be deemed to have been issued to the "Insured";

(v) LCL, Liberty and Liberty FE failed to repay that Part B debt within 10 Business Days after the "Due Date" (within the meaning of clause 8.3(a) of the 2019 Policy) (that is, by 24 December 2020 at the latest);

(vi) a Stop Asset Acquisition Instruction therefore was issued no later than 24 December 2020, with the result that no further debts acquired by White Oak or, alternatively, Greensill Bank, thereafter attached to the 2019 Policy;

(e) says further that:

(i) at all material times:

(A) Liberty OneSteel (Primary) UK Ltd (**Liberty OneSteel**) was an "Affiliate" of each of the Customers because the ultimate parent

company of Liberty OneSteel and each of the Customers is Liberty Steel Group Holdings Pte Ltd; and

(B) Liberty OneSteel and the Customers were part of a "Customer Group" for the purposes of the 2019 Policy;

(ii) in the event that the allegations in paragraphs 81(g)(i) and 81(h)(iii) of the Defence filed by BCC in these proceedings are correct and in the further event that the obligations of Liberty OneSteel referred to in paragraph 81(g)(i) were repurchase obligation type Debts, then it relies on clause 8.3(b) of 2019 Policy in respect of any "Assets" acquired after the period described in clause 8.3(a); and

(iii) says further that, in the event that the allegations in paragraph~~s~~ 81(i) of the Defence filed by BCC in these proceedings are correct and in the further event that the entities referred to in that paragraph were in a "Customer Group" which included the Customers and the debts which those entities failed to pay were repurchase obligation type Debts, then it relies on clause 8.3(b) of the 2019 Policy in respect of any "Assets" acquired after each applicable period as described in clause 8.3(a).

(f) says that, in any event, there is no Loss within the meaning of the 2019 Policy, because:

(i) the definition of Loss has three limbs, which relevantly required:

(A) a Direct Asset owned by the Insured;

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

(C) an Asset (which is a Note) owned by the Insured immediately prior to the payment of a Claim (which for the avoidance of doubt shall also include the Expected Allocation of the Insured in respect of each Asset acquired by the Insured from a Loss Payee after the occurrence of the Insured Cause but prior to payment of such Claim);

(ii) on White Oak's pleaded case, the Assets the subject of the claims pleaded in paragraph 76 of the SOC are Direct Assets which are not owned by the "Insured" under the 2019 Policy, being Greensill Bank and

GCPL, but instead are owned by White Oak (assuming that White Oak acquired those assets and did so validly, which is not admitted);

(iii) although the document styled "Endorsement (Liberty Commodities)" purported to amend the first limb of the definition of Loss in the 2019 Policy, such that it would include a loss where a Direct Asset was owned by a Loss Payee rather than the Insured at the time of the claim, for the reason pleaded at paragraphs 54 to 56 of this Defence, that document had no legal effect, and was not effective to vary the definition of Loss in the 2019 Policy; and

(g) further or alternatively, if (which is denied) the 2019 Policy and the relevant endorsements were validly issued and / or were binding on IAL and there was a "Loss" as defined in the 2019 Policy, IAL refers to and repeats paragraph~~s~~ 232 of this Defence, relies upon the matters pleaded in Annexure A of IAL's Defence to the SOC, and says that:

(i) that Loss is not recoverable by reason of the matters pleaded in Annexure A of IAL's Defence to the SOC;

(ii) further or alternatively, IAL does not know what steps GCPL and/or Greensill Bank and/or White Oak has taken to mitigate Loss (if any), and reserves its right to allege that any indemnity payment should be reduced pursuant to clause 10.7 of the 2019 Policy following discovery and disclosure in this proceeding; and

(h) otherwise, denies paragraph 81 of the SOC.

81A In further answer to White Oak's claim, IAL:

(a) repeats paragraph 39(e) of this Defence;

(b) says that the matters in paragraph 81(d) of this Defence were material information which ought to have been delivered by GCUK to IAL in response to the requests referred to in paragraph 82 of the SOC but was not; and

(c) says that each of the matters in paragraph 81(d) of this Defence constituted a "Material Policy Impact" as defined by the 2019 Policy, such that IAL has no liability to indemnify White Oak or Greensill Bank for the loss claimed in the proceeding.

K. Asserted Breach of Policy by Insurer

82 IAL admits paragraph 82 of the SOC and refers to the text of the particularised letters as if set out in full herein.

83 IAL refers to the contents of the letter of 17 September 2021 as if set out in full herein and otherwise denies paragraph 83 of the SOC.

84 As to paragraph 84 of the SOC, IAL admits that it has not indemnified White Oak under the 2019 Policy nor confirmed that White Oak is entitled to be indemnified under the 2019 Policy, but says that White Oak is not entitled to indemnity under the 2019 Policy.

85 IAL denies paragraph 85 of the SOC.

86 IAL denies paragraph 86 of the SOC.

87 As to paragraphs 87 of the SOC, IAL:

(a) repeats paragraph 81 of this Defence; and

(b) otherwise, denies paragraph 87 of the SOC.

L. Loss or Damage

88 IAL denies paragraph 88 of the SOC and says further that:

(a) White Oak bears the onus of establishing that it has suffered "Loss" which is "caused by or resulting from the occurrence of an Insured Cause" within the meaning of clause 1.1 of the Policy, including the onus of establishing the relevant causal connection;

(b) any loss White Oak has suffered is reduced by any amount received by White Oak in respect of the alleged Payment Obligations;

Particulars

Any loss White Oak has suffered is reduced by at least the following amounts (the ***Recovered Amounts***):

A. amounts received or to be received under the LCL Settlement Agreement referred to in paragraph 88C(c) below, including the amount of USD $41.5 million received as referred to in the affidavit of Rehana Box affirmed 13 April 2021 at [40]; and

B. amounts received under the settlement agreement between White Oak and Marsh Ltd dated 18 May 2025, the terms of which are confidential and not repeated here. Further confidential particulars will be provided.

88A In further answer to the claim, IAL:

(a) says that, under the 2019 Policy (if valid and effective, which is denied), the "Insurer" has or may have contractual rights of subrogation under clause 12.1, being rights exercisable against any person or organisation the subject of otherwise involved in "Loss" (clause 12.1);

(b) says that, under the 2019 Policy, payment of a "Claim" under the policy is subject to and conditional upon the receivables, insurance proceeds or other sources of recovery to which the "Insurer" shall be subrogated in relation to that "Loss" not being subject to any lien, security interest or other third party claim superior to that of the "Insurer" created or granted by the "Insured" or, alternatively, by the "Insured" or a "Loss Payee" (clause 12.2);

(c) says that it reserves its right to rely on clause 12.2 in the event that the "Loss" the subject of the claim is subject to liens or other interests or claims referred to in clause 12.2.

88B In further answer to the claim, IAL says:

(a) that it was an express term of the 2019 Policy that the "Insured" shall ensure that, following the occurrence of an event that may reasonably be expected to result in a "Loss" under the 2019 Policy, it shall, by exercising the "Insured's" rights under the "Transaction Documents", act reasonably and prudently to prevent and mitigate "Losses" at all times and, in doing so, the "Insured" shall act as would a reasonable and prudent owner of the "Eligible Debt(s)" in question without assuming that any "Loss" may be covered under the 2019 Policy (clause 10.7(a));

(b) that it was an express term of the 2019 Policy that, in the event of the "Insured's" failure to mitigate "Loss" in accordance with clause 10.7, the "Insurer" is not obliged to indemnify the "Insured" to the extent that a "Loss" would reasonably be expected to have been lower but for the failure to mitigate in accordance with clause 10.7(a) (2019 Policy clause 10.7(d));

(c) in the event that the Insureds have settled, or purported to settle, any of the purported "Eligible Debts" relied on, then, depending on (inter alia) the terms of any agreement, the circumstances in which it is entered into and the information known to the Insured, it reserves the right to assert that any agreement between the Insured and the purported "Customer" was entered into in breach of the duty in clause 10.7(a) and/or that there should be a reduction in any indemnity under clause 10.7(c);

(d) if (which is denied) to the extent that any loss White Oak has suffered is not reduced by the Recovered Amounts such loss was not "Loss" "caused by or resulting from the occurrence of an Insured Cause" within the meaning of clause 1.1 of the Policy, but rather by a failure by White Oak to take reasonable steps to ensure that the Recovered Amounts operated to reduce its "Loss" under the Policy, such that the requisite causal chain was broken; and

Particulars

See paragraph 88C below.

If White Oak did not bargain with LCL for LCL to acquire all or, alternatively, some of the Payment Obligations or otherwise on the basis that there were no Payment Obligations, then White Oak did not act reasonably. White Oak instead acted voluntarily and independently in a manner calculated to ensure that the "Loss" was not reduced.

(e) White Oak is precluded from recovering any loss alleged to have been suffered under the Policy to the extent of and in the amount of the Recovered Amounts, by operation of the rule against double satisfaction;

Particulars

White Oak accepts that the Recovered Amounts are properly characterised as amounts recovered by it "in respect of the Payment Obligations", and that in respect of those amounts it had "already been made whole": letters from Ashurst to Kennedys dated 13 April 2026.

Properly characterised, the Recovered Amounts involve amounts recovered in respect of the same loss as that loss purportedly claimed by the Applicant under the Policy.

88C In further answer to White Oak's claim, IAL says:

(a) it is White Oak's case that it is, and at all material times has been, the owner of the Payment Obligations referred to at paragraph 61 of the SOC;

Particulars

SOC [61], [62], [72], [79].

Asset Coverage Schedule row 11.

(b) in the event that White Oak does not own the Payment Obligations, there is no entitlement to indemnity under the Policy in respect of those Payment Obligations;

Particulars

Policy, definition of "Loss".

(c) on 25 January 2024, White Oak, on the one hand, and LCL, Liberty FE and Liberty Commodities, on the other, entered into an agreement styled a Settlement Agreement (the **LCL Settlement Agreement**);

(d) the LCL Settlement Agreement was subsequently varied by agreements on 12 July 2024, 4 November 2024 and 21 February 2025 (the **LCL Settlement Agreement Variations**);

Particulars

See Deed of Variation dated 21 February 2025, Recital (vi).

(e) the LCL Settlement Agreement referred to and incorporated a "Petition Debt", which was described in a "**Petition**";

(f) the Petition:

(i) asserted that LCL owed to White Oak a sum of £161,656,982.25 plus interest of £38,782,342 (cl 12);

(ii) asserted that that obligation had arisen because:

(A) there had been "Events of Repurchase" under and for the purposes of the RPA in respect of the Payment Obligations (cl 12);

(B) as a result, LCL was obliged to immediately repurchase the Payment Obligations or make payment by way of indemnity for any of the Payment Obligations which did not exist (cl 12(c)(i));

(iii) stated that it was supported by two witness statements of Nicholas Moser (**Moser Statements**), dated 26 June 2023 and 13 October 2023, each of which contain Exhibits setting out the circumstances in which LCL's obligations (or alleged obligations) had arisen;

Particulars

White Oak has refused, despite request, to produce the Exhibits to the Moser Statements.

(g) the LCL Settlement Agreement Variations record that, by 21 February 2025:

(i) LCL had made payments to White Oak;

(ii) the balance of the Petition Debt that remained outstanding was USD $58,500,000;

(h) read in the context of the Petition Debt and the Moser Affidavits, the effect of the Settlement Agreement, together with the Settlement Agreement Variations and the payments made by LCL, was:

(i) White Oak agreed to settle the Petition Debt, at least to the extent of the amounts paid to it by LCL;

(ii) LCL agreed to repurchase the Payment Obligations:

(A) in full;

(B) alternatively, in an amount reflecting the amounts paid by LCL to White Oak from time to time, the quantum of which is known to White Oak, but on the face of the Settlement Agreement Variations is in an amount of £200,439,234 less USD $58,500,000;

(iii) further, or alternatively, if and to the extent that LCL made payments to White Oak and did not repurchase the Payment Obligations (or some of them), that was so only if and to the extent that the Payment Obligations did not exist;

(i) if and to the extent that LCL has repurchased the Payment Obligations, White Oak does not own the Payment Obligations, does not own Assets for the purposes of the Policy and cannot obtain indemnity in respect of them;

(j) if and to the extent that the Payment Obligations did not or do not exist, there are no Assets, White Oak did not acquire any Assets comprising the Payment Obligations, and White Oak cannot obtain indemnity in respect of them;

(k) alternatively, if, on the proper construction of the Settlement Agreement, White Oak agreed to obtain a right to receive sums of money from LCL in respect of the Petition Debt, but did not bargain with LCL for LCL to repurchase the Payment Obligations or otherwise to make an indemnity payment on the basis that there were no Payment Obligations, then:

(i) White Oak failed to exercise its rights under the Transaction Documents to act reasonably and prudently to prevent, mitigate and minimise Losses at all times, contrary to cl 10.7(a) of the Policy;

Particulars

(A) White Oak's case is that:

a. the RPA is a "Transaction Document": White Oak Coverage Schedule row 112;

b. White Oak's case is that it acquired GCUK's rights under the RPA: eg White Oak Coverage Schedule row 11, Petition Debt cl 9;

c. therefore, it was entitled to exercise rights under the RPA, including its right to require LCL to repurchase the Payment Obligations or, alternatively, make payment by way of indemnity;

(B) in accordance with White Oak's case, at all times, White Oak was entitled under the RPA to require that LCL:

a. repurchase at the Repurchase Price all of the Payment Obligations which existed (RPA cl 6.1);

b. further, or alternatively, make payment by way of indemnity of an amount equal to the Repurchase Price of

any of the Payment Obligations which did not exist (RPA cl 6.1);

(C) in the event that, under the Deed of Settlement and Settlement Agreement Variations, interpreted against the background of the Petition and the Moser Witness Statements, White Oak did not exercise the rights mentioned in (B), but instead bargained to receive substantial payments from LCL without one or the other of the consequences in cl 6.1 flowing, White Oak did not act reasonably and prudently to prevent, mitigate and minimise Losses;

(D) there is no legitimate commercial explanation for the Deed of Settlement and the Settlement Agreement Variations failing to involve an exercise of the rights under cl 6.1 of the RPA other than that White Oak was seeking to obtain double recovery in respect of the same "loss", once from LCL and then once from the Respondents in this proceeding; and

(E) it is to be inferred that White Oak structured the Deed of Settlement and the Settlement Agreement Variations in the manner it did in order to maximise "Loss", rather than to prevent, mitigate and minimise "Loss".

(ii) in the event that Policy is otherwise binding on IAL and would otherwise respond to the Losses, IAL's obligation to indemnify is to be reduced to the extent that the "Loss" would reasonably be expected to have been lower but for White Oak's failure to mitigate (Policy cl 10.7(d)); and

(iii) by structuring the Deed of Settlement and the Settlement Agreement Variations in order to maximise "Loss", rather than to prevent, mitigate or minimise "Loss", White Oak breached its obligation to act reasonably and prudently to prevent, mitigate and minimise Losses at all times, contrary to cl 10.7(a) of the Policy;

Particulars

White Oak's failure to act reasonably and prudently to prevent, mitigate and minimise Losses at all times can be inferred from the following matters:

(a) White Oak's failure to bargain with LCL for LCL to repurchase the Payment Obligations;

(b) White Oak approached its negotiations with LCL and the GFG entities in a manner calculated to maximise its claim under the Policy. This may be inferred from, inter alia, the Deed of Settlement and Settlement Agreement Variations, if they bear the meaning ascribed to them by White Oak; and

(c) White Oak pursued new financing deals with the GFG Alliance in the period 1 March 2021 to October 2022 in a manner designed to preserve or increase Losses under the Policy, instead of taking steps to minimise Losses under the Policy.

Further particulars may be provided following disclosure.

(I) further, or alternatively:

(i) any sums received by White Oak from LCL under or for the purposes of the Settlement Agreement and Settlement Agreement Variations were amounts actually paid by a Customer or on its behalf in respect of the Payment Obligations within the meaning of cl (I)(b) of the definition of "Loss" in the Policy;

Particulars

(A) The circumstances in which payments were made by LCL, or otherwise under or for the purposes of the Settlement Agreement and the Settlement Agreement Variations, are known to White Oak.

(B) The "Customer" by whom the payments were made was, at least, LCL.

(C) Further, or alternatively, on the proper construction of the Settlement Agreement and the Settlement Agreement Variations, construed in the context of the Petition, the Moser Statements and the RPA, the payments were made by LCL on behalf of those "Customers" who owed or purportedly owed the Payment Obligations (if and to the extent they were "Customers").

(D) The payments made by LCL were, in all the circumstances, "in respect of" the Payment Obligations, those being circumstances known to White Oak, but which include:

a. the fact that LCL's obligations under the RPA were derived from and defined by reference to the alleged Payment Obligations;

b. the fact that LCL's obligations under the RPA, once discharged, led to it repurchasing the Payment Obligations or otherwise accepting that they did not exist;

(ii) in the premises, White Oak's "Loss" is to be reduced to the extent it received payments from LCL under the Settlement Agreement or the Settlement Agreement Variations.

M. Claims against BCC & Brereton

89 [Not used]

90 IAL does not plead to paragraph 90 which makes no allegation of fact.

91 IAL does not plead to paragraph 91 which makes no allegation of fact.

92 IAL ~~does not plead to~~ admits paragraph 92 of the SOC ~~which makes no allegation of fact~~.

92A IAL admits paragraph 92A of the SOC.

Knowledge of BCC & Brereton

93 ~~IAL does not know and cannot admit paragraph 93 of the SOC~~ Save to repeat that, for the reasons set out in paragraphs 8 to 9HF, 38, 41, 41B and 46 to 60B of this Defence, it denies that BCC or Brereton was an agent of IAL for the purposes of engaging in the conduct described in paragraph 98 of the SOC, or otherwise had ostensible authority from IAL to engage in that conduct, IAL does not know and cannot admit paragraphs 93 to 104 of the SOC, which do not make allegations against it.

94 [Blank] ~~IAL does not know and cannot admit paragraph 94 of the SOC.~~

95 [Blank]~~IAL denies paragraph 95 of the SOC on the basis that any endorsements executed by BCC and/or Brereton were not endorsements under the 2019 Policy.~~

96 [Blank]~~IAL does not know and cannot admit paragraph 96 of the SOC and says that the documents particularised in paragraph 96 of the SOC are capable of communicating (inter alia):~~

(a) [Blank] ~~there were "contracts" between underlying "Buyers" and "Suppliers" (see CSA.0001.0002.1248);~~

(b) [Blank] ~~Greensill entered into contracts with the Buyer and its Suppliers (see CSA.0001.0002.1248)~~;

(c) [Blank] ~~there was an actual sale of receivables and only upon the actual sale of receivables did an irrevocable payment undertaking arise (see CSA.0001.0002.1248); and~~

(d) [Blank] ~~The process included the "Buyer" approving the "Supplier's invoice" (CSA.0001.0002.1248)~~.

97 [Blank] ~~IAL does not know and cannot admit paragraph 97 of the SOC.~~

97A [Blank]

97B [Blank]

97C [Blank]

Alleged breach of Warranty of Authority

98 [Blank]~~IAL does not know and cannot admit paragraph 98 of the SOC.~~

99 [Blank]~~IAL does not know and cannot admit paragraph 99 of the SOC.~~

100 [Blank]~~IAL does not know and cannot admit paragraph 100 of the SOC~~.

101 [Blank]~~IAL does not know and cannot admit paragraph 101 of the SOC.~~

102 [Blank]~~IAL does not know and cannot admit paragraph 102 of the SOC.~~

103 [Blank]~~IAL does not know and cannot admit paragraph 103 of the SOC.~~

104 [Blank]~~IAL does not know and cannot admit paragraph 104 of the SOC.~~

Alleged misleading or deceptive conduct

105 Save to repeat that, for the reasons set out in paragraphs 8 to 9HF, 38, 41, 41B, 46 to 60B and 90 to 104 of this Defence, it denies that BCC or Brereton was an agent for the purposes of engaging in the alleged conduct described at paragraph 105 of the SOC, or otherwise had ostensible authority from IAL to engage in that conduct, IAL does not know and cannot admit paragraphs 105 to 111A of the SOC, which do

not make allegations against it. ~~IAL does not know and cannot admit paragraph 105 of the SOC.~~

106 [Blank] ~~IAL does not know and cannot admit paragraph 106 of the SOC.~~

106A [Blank] ~~In answer to paragraph 106A of the SOC, IAL:~~

(a) ~~repeats paragraphs 9HA, 37G to 37N, 38A, 38B and 41B;~~

(b) ~~says that the paragraph does not identify the person or persons to whom the representations were allegedly made;~~

(c) ~~says that BCC and Brereton entering into and executing each of the BCC/Brereton Documents and the Master Policy is conduct of BCC or Brereton (not IAL);~~

(d) ~~says that at all material times:~~

(i) ~~IAL did not communicate, to White Oak or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and~~

(ii) ~~the wording and structure of the Policy and the Master Policy were not communicated to IAL; and~~

(e) ~~otherwise denies the paragraph~~.

107 [Blank] ~~In answer to paragraph 107 of the SOC, IAL:~~

(a) ~~denies the paragraph insofar as it concerns the "Insurer's Representations"; and~~

(b) ~~otherwise does not know and cannot admit paragraph 107 of the SOC.~~

108 [Blank] ~~In answer to paragraph 108 of the SOC, IAL:~~

(a) ~~denies the paragraph insofar as it concerns the "Insurer's Representations";~~

(b) ~~in respect of the "Insurer's Representations", refers to and repeats paragraphs 106A and 107 of this Defence; and~~

(c) ~~otherwise does not know and cannot admit paragraph 108 of the SOC.~~

109 [Blank] ~~IAL does not know and cannot admit paragraph 109 of the SOC.~~

110 [Blank] ~~IAL does not know and cannot admit paragraph 110 of the SOC.~~

110A [Blank] ~~IAL denies paragraph 110A and refers to and repeats paragraphs 8(a), 9HF(d) and 38 of this Defence.~~

111 [Blank] ~~As to paragraph 111 of the SOC, IAL:~~

(a) ~~says that there is no identification of the individual or individuals who were allegedly induced by the "Insurer's Representations";~~

(b) ~~denies the paragraph insofar as it concerns the "Insurer's Representations"; and~~

(c) ~~otherwise does not know and cannot admit paragraph 111 of the SOC.~~

111A [Blank] ~~As to paragraph 111A of the SOC, IAL:~~

(a) ~~says that the allegation does not identify who at White Oak was responsible for making the decisions which, allegedly, would not have been made but for the alleged conduct;~~

(b) ~~denies the paragraph insofar as it concerns the "Insurer's Representations"; and~~

(c) ~~otherwise does not know and cannot admit paragraph 111A of the SOC.~~

112 IAL denies paragraph 112 and says further that White Oak suffered no loss or damage for the following reasons:

(a) on 27 March 2020, White Oak was incorporated for the purpose of purchasing receivables originated by GCUK;

(b) at all relevant times, White Oak's only investment activity was purchasing purported receivables originated by GCUK;

Particulars

White Oak's financial statements for the period from 27 March 2020 through 31 December 2020.

(c) White Oak required funding from its related entities in order to invest in the purported receivables originated by GCUK;

Particulars

Affidavit of David Bruce Hackett affirmed 5 December 2024 at paragraph 22.

(d) one or more of White Oak's related entities (***Funding Entities***) funded White Oak for the sole purpose of purchasing purported receivables originated by GCUK;

Particulars

Affidavit of David Bruce Hackett affirmed 5 December 2024 at paragraph 28.

Affidavit of Andrew Amin Hakkak affirmed 4 December 2024 at paragraph 19.

Email from Todd Chesla dated 16 April 2020 (WOC.0001.0004.1314).

(e) but for the alleged contraventions, White Oak would not have sought or received any funds from the Funding Entities;

(f) further or in the alternative to sub-paragraph (e), but for the alleged contraventions, White Oak would not have been incorporated;

(g) loss is determined by comparing the position of White Oak with its position if the alleged contraventions of BCC and Brereton had not occurred;

(h) in the premises of sub-paragraphs (e) and/or (f), but for the alleged contraventions of BCC and Brereton:

(i) the Funding Entities would not have provided any funds to White Oak;

(ii) White Oak would therefore not have received any of the funds it in fact received; and

(iii) White Oak would be no worse off than as a result of the alleged contraventions of BCC and Brereton;

(i) in the alternative, White Oak has suffered no loss or damage because, if the alleged representation had not been made:

(i) the underlying credit risk of the Payment Obligations would have been covered by a different insurer;

(ii) White Oak would have purchased the Payment Obligations; and

(iii) any insurance policy issued by a different insurer would not have responded to any claims made by White Oak in relation to the Payment Obligations;

(j) in the further alternative, White Oak has suffered no loss or damage because, if the alleged representation were true, White Oak was still not entitled to indemnity.

Particulars

IAL repeats paragraph 81 of this Defence.

~~As to paragraph 112 of the SOC, IAL:~~

(a) ~~denies the paragraph insofar as it concerns the alleged contravening conduct of IAL;~~

(b) ~~refers to and repeats paragraphs 109 to 111A of this Defence;~~

(c) ~~says further that, to the extent IAL is liable for the loss or damage as alleged at paragraph 112 of the SOC (which is denied), it refers to and repeats paragraph 235 of this Defence; and~~

(d) ~~otherwise does not know and cannot admit paragraph 112 of the SOC.~~

Section 1041E Claim

113 ~~IAL does not know and cannot admit paragraph 113 of the SOC~~ Save to repeat that, for the reasons set out in paragraphs 8 to 9HF, 38, 41, 41B, 46 to 60B and 90 to 111 of this Defence, it denies that BCC or Brereton had ostensible authority from IAL to make an agreement in terms of any of the documents referred to in paragraph 98 of the SOC, IAL does not know and cannot admit paragraphs 113 to 115 of the SOC, which do not make allegations against it.

114 [Blank] ~~IAL does not know and cannot admit paragraph 114 of the SOC.~~

114A [Blank] ~~IAL denies paragraph 114A and refers to and repeats paragraphs 8(a), 9HF(d) and 38.~~

115 [Blank] ~~As to paragraph 115 of the SOC, IAL:~~

(a) ~~says that there is no identification of the individual or individuals who were allegedly induced by the "Insurer's Representations";~~

(b) ~~denies the paragraph insofar as it relates to the "Insurer's Representations"; and~~

(c) ~~otherwise does not know and cannot admit paragraph 115 of the SOC.~~

116 IAL denies paragraph 116 says further that White Oak suffered no loss or damage for the reasons set out in paragraph 112. ~~As to paragraph 116 of the SOC, IAL:~~

(a) ~~denies the paragraph insofar as it concerns the alleged contravening conduct of IAL;~~

(b) ~~refers to and repeats paragraph 114A of this Defence;~~

(c) ~~otherwise does not know and cannot admit paragraph 116 of the SOC.~~

Deceit

116A Save to repeat that, for the reasons set out in paragraphs 8 to 9HF, 38, 41, 41B, 46 to 60B and 90 to 116 of this Defence, it denies that BCC or Brereton had ostensible authority from IAL to make an agreement in terms of any of the documents referred to in paragraph 98 of the SOC, IAL does not know and cannot admit paragraphs 116A to 116D of the SOC.

116B [Blank]

116C [Blank]

116D [Blank]

116E IAL denies paragraph 116E says further that White Oak suffered no loss or damage for the reasons set out in paragraph 112.

M1. Liability for conduct

117 As to paragraph 117 of the SOC, IAL:

(a) repeats paragraph 41B of this Defence and, in particular, the allegations in paragraph 41B concerning the proper construction of Part 7.6 of the *Corporations Act*;

(b) says that the "conduct" the subject of paragraph 117 is not defined, but it is assumed that the "conduct" referred to is the alleged entry into and execution of various documents referred to in paragraph 98 of the SOC;

(c) says that the financial service the subject of the allegation in paragraph 117(a) is not identified;

(d) denies paragraphs (b) and (c) and says further that:

(i) there is no pleading as to the manner of White Oak's alleged reliance, or linking the alleged reliance with the reasonable expectation as to reliance referred to in paragraph (b);

(ii) the conduct of BCC and/or Brereton was not conduct on which a loss payee (including White Oak) could reasonably be expected to rely;

(iii) any reliance by White Oak on the alleged "conduct" was not reasonable because of the matters set out in paragraph 41B(i)(vi)(F) of this Defence; and

(da) insofar as White Oak alleges that the "conduct" the subject of paragraph 117 was conduct on which a third person (including a loss payee and/or White Oak) could reasonably be expected to rely, further relies upon the matters pleaded in Annexure D;

(db) insofar as White Oak alleges that it relied upon the "conduct" the subject of paragraph 117 "in good faith", further relies upon the matters pleaded in Annexure D;

(dc) denies paragraph (d);

(dd) says that if, which is denied, the allegation in paragraph 117(d) of the SOC is true, then:

(i) at all material times:

(A) IAL was "responsible" within the meaning of section 917B of the Corporations Act for the conduct engaged in by BCC and/or Brereton pleaded in paragraphs 93 to 116E of the SOC, including "BCC's Actual Authority Representations" and "Brereton's Actual Authority Representations" alleged in paragraphs 105 and 106 of the SOC;

(B) on White Oak's case, which is denied, GCPL and/or GBAG was induced by that conduct to enter into each of the instruments referred to at paragraph 98 of the SOC (as alleged in paragraph 99(b) of the SOC);

(C) alternatively, on White Oak's case, which is denied, White Oak was induced by BCC's Actual Authority Representations and Brereton's

Actual Authority Representations to acquire the Payment Obligations (as alleged in paragraph 111(c) of the SOC);

(D) IAL was bound by or otherwise responsible for the instruments referred to at paragraph 98 of the SOC;

(ii) any representations in fact made by BCC and/or Brereton to the effect that IAL was bound by, responsible for or otherwise stood behind the instruments referred to at paragraph 98 of the SOC were not false, misleading or deceptive;

(iii) paragraphs 109 and 110 of the SOC are incorrect; and

(e) otherwise, denies paragraph 117 of the SOC.

N. Claim arising from events in 2020

118 IAL does not plead to paragraph 118 of the SOC, which does not make any allegation against it.

N1. Events in 2020

119 IAL does not know and cannot admit paragraph 119 of the SOC.

120 IAL does not know and cannot admit paragraph 120 of the SOC.

121 As to paragraph 121 of the SOC, IAL:

(a) says that the paragraph sets out the general effect of parts of the particularised email;

(b) refers to the text of the particularised email for its full force and effect; and

(c) otherwise, does not know and cannot admit paragraph 121 of the SOC.

122 IAL does not know and cannot admit paragraph 122 of the SOC.

123 IAL does not know and cannot admit paragraph 123 of the SOC.

124 As to paragraph 124 of the SOC, IAL:

(a) refers to the text of the Crowe Report for its full force and effect; and

(b) otherwise, denies paragraph 124 of the SOC.

125 IAL does not know and cannot admit paragraph 125 of the SOC.

125A IAL does not know and cannot admit paragraph 125A.

126 IAL does not know and cannot admit paragraph 126 of the SOC.

127 IAL does not know and cannot admit paragraph 127 of the SOC.

128 As to paragraph 128 of the SOC, IAL:

(a) refers to the contents of the particularised letter for their full force and effect; and

(b) otherwise, does not know and cannot admit paragraph 128 of the SOC.

129 As to paragraph 129 of the SOC, IAL:

(a) refers to the contents of the particularised letter for their full force and effect; and

(b) otherwise, does not know and cannot admit paragraph 129 of the SOC.

130 As to paragraph 130 of the SOC, IAL:

(a) refers to the contents of the particularised letter for their full force and effect; and

(b) otherwise, does not know and cannot admit paragraph 130 of the SOC.

131 As to paragraph 131 of the SOC, IAL:

(a) refers to the contents of the particularised letter for their full force and effect; and

(b) otherwise, does not know and cannot admit paragraph 131 of the SOC.

132 IAL does not know and cannot admit paragraph 132 of the SOC.

133 IAL does not know and cannot admit paragraph 133 of the SOC.

133A In relation to paragraph 133A of the SOC, IAL:

(a) refers to and repeats paragraphs 133 and 176 of this Defence; and

(b) otherwise, denies paragraph 133A of the SOC.

Particulars

IAL notes that the allegation in paragraph 133A of the SOC is particularised in correspondence from White Oak's solicitors dated 8 December 2025.

N2. BCC's knowledge

134 IAL does not know and cannot admit paragraph 134 of the SOC.

135 IAL does not know and cannot admit paragraph 135 of the SOC.

136 IAL does not know and cannot admit paragraph 136 of the SOC.

137 IAL does not know and cannot admit paragraph 137 of the SOC.

138 IAL does not know and cannot admit paragraph 138 of the SOC.

139 IAL does not know and cannot admit paragraph 139 of the SOC.

140 IAL does not know and cannot admit paragraph 140 of the SOC.

N3. TMMA and TMNF's knowledge

141 IAL does not know and cannot admit paragraph 141 of the SOC.

142 IAL does not know and cannot admit paragraph 142 of the SOC.

143 IAL does not know and cannot admit paragraph 143 of the SOC.

144 IAL does not know and cannot admit paragraph 144 of the SOC.

145 IAL does not know and cannot admit paragraph 145 of the SOC.

146 IAL does not know and cannot admit paragraph 146 of the SOC.

147 IAL does not know and cannot admit paragraph 147 of the SOC,

148 IAL does not know and cannot admit paragraph 148 of the SOC.

149 IAL does not know and cannot admit paragraph 149 of the SOC.

150 IAL does not know and cannot admit paragraph 150 of the SOC.

151 IAL does not know and cannot admit paragraph 151 of the SOC.

152 IAL does not know and cannot admit paragraph 152 of the SOC.

153 IAL does not know and cannot admit paragraph 153 of the SOC.

154 IAL does not know and cannot admit paragraph 154 of the SOC.

155 IAL does not know and cannot admit paragraph 155 of the SOC.

N4. The Insurer's knowledge

156 As to paragraph 156 of the SOC, IAL:

(a) repeats paragraphs 8, 9, 9C to 9H, 9F, 37A to 37O, 38 to 38B, 41, 41A and 41B of this Defence;

(b) says, in respect of particular (i):

(i) paragraph 9F of this Defence is repeated;

(ii) there is no identification of the clause or clauses of the PACAO pursuant to which the authority was allegedly conferred;

(iii) no terms of the PACAO (including no terms in Schedule 5) confer, or purportedly confer, on BCC authority in any of the activities described in paragraph 156;

(c) in respect of the first particular (ii), refers to the terms of the letter from Clyde & Co dated 1 March 2021 for their full force and effect;

(d) says, in respect of the second particular (ii):

(i) paragraph 41B of this Defence is repeated;

(ii) this particular provides no support for the allegation in paragraphs (a) and (d);

(iii) the conferral of actual authority to enter into a policy or endorsement does not (and did not in this case), by implication, carry with it actual authority to communicate with third parties about the policy and endorsements, and any conferral of actual authority in this case did not carry with it authority to make the communications alleged in paragraphs 156(b), (c) and (d);

(iv) it is wrong in law, having regard to the nature of apparent authority, to speak of apparent authority being "implicitly carried";

(v) there is no properly articulated case of apparent authority and, for example, there is no identification of a representation by IAL which was reasonably relied on by White Oak (or anyone);

(e) says, in respect of particular (iii):

(i) there is no articulation of the steps which IAL should have taken but did not take;

(ii) the particular does not support the existence of ~~actual or~~ apparent authority;

(iii) there is no contention that White Oak in fact believed that BCC had authority, on behalf of IAL, to engage in the conduct referred to in paragraph 156;

(f) says, as to sub-paragraph (a):

(i) in engaging in the alleged conduct, BCC was acting as the agent for and/or under the control of TMMA and not IAL;

(ii) there is no occasion to discern a relationship of agency as between BCC and IAL in circumstances where BCC was acting as the agent for, and under the control of, TMMA;

(iii) nothing in the PACAO conferred, expressly or impliedly, actual authority on BCC to engage in the conduct referred to on behalf of IAL;

(iv) there is no proper allegation that BCC had apparent authority to engage in the conduct referred to in paragraph (a) on behalf of IAL and, for example, there is no identification of a representation by IAL or reasonable reliance by White Oak (or anyone);

(v) the paragraph is denied;

(g) says, as to paragraph (b):

(i) paragraph 120 of this Defence is repeated;

(ii) the communication referred to at particular (ii) of paragraph 120 of the SOC (which referred to the oral communication referred to in particular (i) of paragraph (ii)) was expressly sent by “Tokio Marine HCC” from a “tmhcc.com” email address;

(iii) the communications referred to in particulars (i) and (ii) of paragraph 120 of the SOC were on the face of the email by Mark Callahan on behalf of TMMA and/or TMNF, and not in his capacity as a director of BCC;

(iv) the SOC does not disclose any basis for the allegation that the conversation referred to in particular (iii) of paragraph 120 of the SOC was in BCC's capacity (if any) as agent of IAL;

(v) there is no proper allegation that BCC had apparent authority to engage in the conduct referred to in paragraph (b) on behalf of IAL and, for example, there is no identification of a representation by IAL or reasonable reliance by White Oak (or anyone);

(vi) the paragraph is denied;

(h) says, as to sub-paragraphs (c) and (d):

(i) paragraphs (a) to (g) above are repeated;

(ii) the sub-paragraphs are denied;

(i) says that there is no allegation in paragraph 156 that TMMA was, to any extent, the agent of IAL; and

(j) otherwise, denies paragraph 156 of the SOC.

157 IAL admits paragraph 157 of the SOC.

158 IAL admits paragraph 158 of the SOC.

159 IAL admits paragraph 159 of the SOC.

160 IAL admits paragraph 160 of the SOC.

161 IAL denies paragraph 161 of the SOC.

162 As to paragraph 162 of the SOC, on the assumption that the reference to Endorsement – Liberty Commodities corresponds to the endorsement referenced in paragraph 54 of the SOC, IAL admits the paragraph.

163 IAL admits paragraph 163 of the SOC.

164 IAL denies paragraph 164 of the SOC.

165 IAL denies paragraph 165 of the SOC.

166 IAL denies paragraph 166 of the SOC.

167 IAL denies paragraph 167 of the SOC.

168 IAL denies paragraph 168 of the SOC.

169 As to paragraph 169 of the SOC, IAL:

(a) says that the term "malfeasance" is capable of bearing a variety of meanings and the plea is ambiguous; and

(b) otherwise, denies paragraph 169 of the SOC.

170 As to paragraph 170 of the SOC, IAL:

(a) admits that before 10 December 2020, IAL received a copy of the letter referred to in the particulars of paragraph 170 of the SOC;

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

(c) otherwise denies paragraph 170 of the SOC.

171 IAL denies paragraph 171 of the SOC.

172 IAL denies paragraph 172 of the SOC.

173 As to paragraph 173 of the SOC, IAL denies the paragraph and says further:

(a) that the allegation in paragraph 173 does not follow from either or both of the allegations in paragraphs 171 and 172;

(b) that no particulars are supplied of the existence of knowledge or suspicion or constructive knowledge or suspicion, and there is no proper allegation of the existence of knowledge or suspicion or constructive knowledge or suspicion;

(c) that:

(i) it was an express term of the Loss Payee Endorsement that it was the Insured's obligation, as distinct from the Insurer's obligation, to communicate any relevant information to White Oak; and

(ii) in the premises, White Oak bargained for the Insured, not IAL, to be the person who communicated relevant information to White Oak.

174 As to paragraph 174 of the SOC, IAL:

(a) says, in respect of sub-paragraph (a):

(i) BCC was not the agent of IAL, and there is no basis in the pleading for an allegation that BCC was relevantly the agent of IAL;

(ii) the paragraph is denied; and

(b) admits sub-paragraph (b).

175 As to paragraph 175 of the SOC, IAL:

(a) repeats paragraphs 156 to 173 of this Defence;

(b) says that White Oak does not plead any material facts capable of establishing IAL had constructive knowledge of the matters alleged in paragraphs 156 to 174 of the SOC; and

(c) otherwise, denies paragraph 175 of the SOC.

N4A. Waiver/election

175A As to paragraph 175A of the SOC, IAL:

(a) refers to and repeats paragraphs 9HA to 9HB, 37A to 38B, and 156 to 175 of this Defence;

(b) says that:

(i) clause 15.3(b) of the 2019 Policy provided that any waiver by the Insurer of any of its rights under the 2019 Policy shall not extend beyond its express terms and any time or indulgence allowed by the Insurer to the Insured in respect of any right of the Insurer shall not prejudice or affect the exercise of that or any other rights of the Insurer;

(ii) there is no articulation of the express terms of any alleged waiver; and

(c) denies paragraph 175A of the SOC.

N5. Non-disclosure to White Oak

176 As to paragraph 176 of the SOC, IAL:

(a) admits that it did not inform White Oak of any of the matters referred to in paragraph 176 of the SOC; and

(b) otherwise, does not know and cannot admit paragraph 176 of the SOC.

177 IAL does not know and cannot admit paragraph 177 of the SOC.

N6. Misleading or Deceptive Conduct

178 As to paragraph 178 of the SOC, IAL repeats paragraphs 105 to 116 and 120 to 175 of this Defence.

179 As to paragraph 179 of the SOC, IAL:

(a) repeats paragraph 105 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 179 of the SOC.

180 ~~As to paragraph 180 of the SOC, IAL~~[Not used]:

(a) ~~repeats paragraphs 8, 9, 38, 41, 41A, 41B, 106A and 107 of this Defence; and~~

(b) ~~otherwise, denies paragraph 180 of the SOC.~~

181 As to paragraph 181 of the SOC, IAL:

(a) repeats paragraph<u>s 8, 9, 38, 41, 41A and 41B</u> ~~180~~ of this Defence; <u>and</u>

~~(ab) denies the paragraph insofar as it concerns the "Insurer's Representations"; and~~

(b) otherwise, does not know and cannot admit paragraph 181 of the SOC.

182 As to paragraph 182 of the SOC, IAL:

(a) repeats paragraphs 105 to 116 and 120 to 175 of this Defence;

(b) says that the paragraph is deficient and embarrassing in rolling up numerous allegations without proper articulation;

(c) does not know and cannot admit the paragraph so far as it is directed to the knowledge or constructive knowledge of TMMA, TMNF and BCC; and

(d) otherwise, denies paragraph 182 of the SOC.

183 As to paragraph 183 of the SOC, IAL:

(a) repeats paragraphs 119 to 175 of this Defence;

(b) says that the matters in paragraphs 119 to 175 of the SOC do not, and cannot, provide circumstances giving rise to the alleged reasonable expectation on the part of White Oak or a person in White Oak's position because:

(i) the matters in paragraphs 119 to 175 are directed to the alleged knowledge and conduct of persons other than White Oak;

(ii) what White Oak, or a person in White Oak's position, could reasonably expect turns on the knowledge and conduct of White Oak (or the person in White Oak's position);

(c) says that there is no proper articulation of a case that White Oak in fact expected, or reasonably expected, any particular matter;

(d) says that if (which is not admitted) White Oak expected that IAL would inform it as soon as reasonably practicable if any matter existed that materially qualified or raised a material doubt about the accuracy of BCC's Actual Authority Representations ~~or the "Insurer's Representations",~~ that expectation was not reasonable, including because of White Oak's express bargain via the Loss Payee Endorsement that relevant matters would be communicated to it by the Insured; and

(e) otherwise denies paragraph 183 of the SOC.

184 As to paragraph 184 of the SOC, IAL:

(a) repeats paragraphs 180 to 183 of this Defence;

(b) says that the paragraph is deficient and embarrassing so far as it refers to "the matters in paragraph 182" in circumstances where paragraph 182 refers to numerous matters, which are not separately or comprehensibly identified and addressed in paragraph 184;

(c) says that the paragraph is deficient in rolling up allegations in respect of BCC, IAL, TMMA and TMNF without separately (and relevantly) making allegations as to what was known to IAL; and

(d) otherwise, denies paragraph 184 of the SOC.

185 As to paragraph 185 of the SOC, IAL:

(a) repeats paragraph 176 of this Defence;

(b) says that:

(i) the question of whether a particular matter materially qualified or raised a material doubt about the accuracy of the alleged BCC's Actual Authority Representations ~~and the "Insurer's Representations"~~ turns on:

(A) the knowledge of the person who was allegedly aware of and relied on the representations which, here is White Oak;

(B) communications between White Oak and, inter alia, the Insured;

(ii) there is no allegation, or proper allegation, as to what White Oak was aware of from time to time; and

~~(ba) denies the paragraph insofar as it concerns the "Insurer's Representations"; and~~

(c) otherwise does not know and cannot admit paragraph 185 of the SOC.

186 As to paragraph 186 of the SOC, IAL:

(a) repeats paragraphs 176 and 185 of this Defence;

(b) does not know and cannot admit the paragraph so far as it alleges that BCC, TMMA and TMNF made representations; and

(c) otherwise, denies paragraph 186 of the SOC.

187 As to paragraph 187 of the SOC, IAL:

(a) repeats paragraphs 163, 176 and 179 to 185 of this Defence;

(b) does not know and cannot admit the paragraph so far as it alleges that BCC, TMMA and TMNF engaged in conduct which was misleading or deceptive, or likely to mislead or deceive; and

(c) otherwise, denies paragraph 187 of the SOC.

188 As to paragraph 188 of the SOC, IAL:

(a) repeats paragraph 187 of this Defence; and

(b) otherwise, denies paragraph 188 of the SOC.

189 As to paragraph 189 of the SOC, IAL:

(a) repeats paragraphs 187 and 188 of this Defence;

(b) does not know and cannot admit the paragraph so far as it alleges that BCC, TMMA and TMNF contravened section 1041H of the *Corporations Act* or section 12DA of the *ASIC Act*; and

(c) otherwise, denies paragraph 189 of the SOC.

190 As to paragraph 190 of the SOC, IAL:

(a) repeats paragraph 176 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 190 of the SOC.

191 As to paragraph 191 of the SOC, IAL:

(a) repeats paragraph 189 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 191 of the SOC.

192 As to paragraph 192 of the SOC, IAL:

(a) repeats paragraphs 189 to 191 of this Defence;

(b) says that the SOC does not articulate a proper counterfactual or any counterfactual at all and, for example, does not identify:

(i) what would have happened in respect of payment obligations acquired or purportedly acquired by White Oak from GCUK prior to the acquisition of the Payment Obligations relied on and which were superseded or replaced by the Payment Obligations (**the Prior Payment Obligations**);

Particulars

White Oak acquired or purportedly acquired payment obligations from GCUK other than the Payment Obligations relied on by White Oak in the proceedings. Those other payment obligations were assigned asset codes, including A00002627306, A00002637317, A00002639155, A00002639156, A00002650315, A00001655433, A00002659981, A00002660119, A00002674338, A00002674699, A00002675701, A00002677038, A00002678035, A00002684953, A00002687520, A00002697822, A00002704140, A00002659980, A00002760143 (**the Corresponding Assets**).

The Corresponding Assets substantially correspond, in maturity date and amount, to the settlement date and amount of the Payment Obligations. It is open to infer that the Payment Obligations comprised a rolling over of the Corresponding Assets in the sense that, upon the Corresponding Assets coming up for maturity, there was no “repayment” of the amount the subject of each Corresponding Asset, but there was instead the creation of substitute or extended finance.

In the event that, but for the alleged wrongs, the Prior Payment Obligations would not have been satisfied, White Oak would to that extent not have suffered loss because of the alleged wrongs.

(ii) White Oak's financial exposure in respect of the Prior Payment Obligations, including whether White Oak would have suffered a loss (or the same loss) if the Prior Payment Obligations had not been rolled over as an incident of the acquisition of the purported "Assets" now relied on by White Oak; and

(c) otherwise, denies paragraph 192 of the SOC.

193 As to paragraph 193 of the SOC, IAL:

(a) repeats paragraphs 41B, 105 and 183 of this Defence and the matters pleaded in Annexure D;

(b) repeats paragraphs 41B(b) to 41B(c) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019; and

(c) denies the paragraph.

194 IAL does not plead to paragraphs 194 to 201 of the SOC, which do not make any allegations against it.

195 [Blank]

196 [Blank]

197 [Blank]

198 [Blank]

199 [Blank]

200 [Blank]

201 [Blank]

N7. Good faith and other implied terms

202 As to paragraph 202 of the SOC, IAL

(a) repeats paragraphs 58A, 59B, 59D, 119 to 133 and 176 of this Defence; and

(b) otherwise, denies paragraph 202 of the SOC.

203 As to paragraph 203 of the SOC, IAL:

(a) repeats paragraph 202 of this Defence; and

(b) otherwise, denies paragraph 203 of this SOC.

204 IAL does not know and cannot admit paragraph 204 of the SOC.

205 As to paragraph 205 of the SOC, IAL:

(a) repeats paragraphs 192, 203 and 204 of this Defence;

(b) says that it is not apparent what is meant by the allegation that loss or damage was suffered "as a result of each of the conduct pleaded in paragraph 203";

(c) says that no counterfactual or proper counterfactual is alleged; and

(d) otherwise, denies paragraph 205 of the SOC.

N8. Unconscionable conduct

206 IAL does not know and cannot admit paragraph 206 of the SOC.

207 IAL does not know and cannot admit paragraph 207 of the SOC.

208 As to paragraph 208 of the SOC, IAL:

(a) repeats paragraphs 8 to 9HF, 41B, 106A, 156 and 206 of this Defence;

(b) says that there is no claim for compensation for loss arising from a contravention of sections 12CA or 12CB of the *ASIC Act* or section 769B(1) of the *Corporations Act*;

(c) says, as to sub-paragraph (a):

(i) it is not apparent what is meant by the allegation that TMMA and/or BCC were "acting as [IAL's] representative under the PACAO";

(ii) there is no allegation, or proper allegation, that any of the conduct (if any) described in paragraph 206 was within the actual authority of TMMA and/or BCC under the PACAO;

(iii) [not used];

(iv) the SOC does not identify the sub-paragraph of section 769B(1) or section 12GH(2) relied on;

(v) IAL assumes that the allegation is that certain conduct was engaged in by BCC and Brereton as an "agent" of IAL for the purposes of section 769B(1)(a) and section 12GH(2)(a);

(vi) sections 769B(1)(a) and 12GH(2)(a) apply only where conduct is engaged in "on behalf of" a body corporate, by an "agent" of the body corporate and within the scope of the agent's actual or apparent authority;

(vii) there is no allegation, or proper allegation, that any of the conduct (if any) described in paragraph 206 met any of the conditions in section 769B(1)(a) or section 12GH(2)(a);

(viii) the sub-paragraph is denied; and

(d) otherwise, does not know and cannot admit paragraph 208 of the SOC.

N9. Negligence

Duty of care

209 As to paragraph 209 of the SOC, IAL:

(a) repeats paragraphs 38 to 59D and 119 to 177 of this Defence; and

(b) otherwise does not plead to paragraph 209 of the SOC which makes no allegation against it.

210 As to paragraph 210 of the SOC, IAL:

(a) denies the allegations against IAL; and

(b) otherwise does not know and cannot admit paragraph 210 of the SOC.

211 As to paragraph 211 of the SOC, IAL:

(a) repeats paragraphs 136, 147, 149, 161, 163 and 210 of this Defence;

(b) denies the allegations against IAL; and

(c) otherwise does not know and cannot admit paragraph 211 of the SOC.

212 As to paragraph 212 of the SOC, IAL:

(a) repeats paragraphs 209 to 211 of this Defence;

(b) says that paragraph ~~209~~ 210 of the SOC does not specify, with any precision ~~or at all~~, "loss or damage";

(c) says that White Oak was not vulnerable to economic loss in respect of the Payment Obligations, including because:

(i) at all material times, it was able to assess, and/or had assumed responsibility, for assessing the soundness of the Payment Obligations;

(ii) it was able to bargain for, and did bargain for (including via the Loss Payee Endorsement), contractual protections in respect of the economic loss;

(iii) it voluntarily assumed (at least via the Loss Payee Endorsement) the risk that Greensill Bank and GCPL would not communicate to it relevant information concerning:

(A) the authority (or absence of authority) of BCC and Brereton;

(B) the risk of the Payment Obligations; and

(d) otherwise denies paragraph 212 of the SOC.

213 As to paragraph 213 of the SOC, IAL:

(a) repeats paragraphs 212 of this Defence;

(b) denies the allegations against IAL; and

(c) otherwise does not know and cannot admit paragraph 213 of the SOC.

214 As to paragraph 214 of the SOC, IAL:

(a) repeats paragraph 212 of this Defence;

(b) denies the allegations against IAL; and

(c) otherwise, does not know and cannot admit paragraph 214 of the SOC.

215 As to paragraph 215 of the SOC, IAL:

(a) repeats paragraphs 138 and 212 of this Defence;

(b) denies the allegations against IAL; and

(c) otherwise, does not know and cannot admit paragraph 215 of the SOC.

216 As to paragraph 216 of the SOC, IAL:

(a) repeats paragraphs 210 and 212 ~~and 215~~ of this Defence;

(b) [Not used] ~~says that paragraph 215 of the SOC does not plead any loss or damage, and so the paragraph is embarrassing;~~

(c) denies the allegations against IAL; and

(d) otherwise, does not know and cannot admit paragraph 216 of the SOC.

217 As to paragraph 217 of the SOC, IAL:

(a) repeats paragraphs 209 to 216 of this Defence;

(b) denies the allegations against IAL; and

(c) otherwise, does not know and cannot admit paragraph 217 of the SOC.

218 As to paragraph 218 of the SOC, IAL:

(a) repeats paragraph 217 of this Defence;

(b) denies the allegations against IAL; and

(c) otherwise, does not know and cannot admit paragraph 218 of the SOC.

Breach of duty

219 As to paragraph 219 of the SOC, IAL:

(a) says that the paragraph does not identify a proper risk of harm for the purposes of s 5B of the *Civil Liability Act 2002* (NSW) ; and

(b) otherwise, denies paragraph 219 of the SOC.

220 As to paragraph 220 of the SOC, IAL:

(a) repeats paragraph 219 of this Defence;

(b) says that there is no allegation, or proper allegation, that the alleged tort was relevantly regulated by the *Civil Liability Act 2002* (NSW);

(c) denies the allegations against IAL; and

(d) otherwise, does not know and cannot admit paragraph 220 of the SOC.

221 IAL does not plead to paragraph 221 of the SOC which makes no allegation against it.

222 IAL does not plead to paragraph 222 of the SOC which makes no allegation against it.

223 IAL does not plead to paragraph 223 of the SOC which makes no allegation against it.

224 IAL denies paragraph 224 of the SOC.

224A IAL does not plead to paragraph 224A of the SOC which makes no allegation against it.

224B As to paragraph 224B, IAL:

(a) denies the allegations against IAL; and

(b) does not plead to the allegation against TMNF.

225 IAL does not plead to paragraph 225 of the SOC which makes no allegation against it.

226 IAL does not plead to paragraph 226 of the SOC which makes no allegation against it.

227 IAL does not plead to paragraph 227 of the SOC which makes no allegation against it.

228 IAL denies paragraph 228 of the SOC.

Causation

229 As to paragraph 229 of the SOC, IAL:

(a) says that the allegation of causation does not attach to each of the breaches alleged against IAL; and

(b) otherwise, does not know and cannot admit paragraph 229 of the SOC.

Damage

230 As to paragraph 230 of the SOC, IAL:

(a) repeats paragraphs 192 and 229 of this Defence;

(b) says that no counterfactual is properly alleged;

(c) denies the allegations against IAL; and

(d) otherwise, does not know and cannot admit paragraph 230 of the SOC.

O. The Relief Sought

231 As to paragraph 231 of the SOC, IAL admits that White Oak seeks the relief sought in the ~~Fifth~~ Sixth Amended Originating Process and denies White Oak's entitlement to any of the relief sought against IAL.

P. Further Answer

232 In further answer to the whole of the SOC~~,~~:

(a) IAL repeats the matters pleaded at Annexure A in IAL's Defence to the SOC;

(b) IAL says if, which is denied, IAL is bound by the 2019 Policy and/or the pleaded endorsements, then:

(i) pursuant to clause 15.4 of the 2019 Policy or s 28(2) of the *Insurance Contracts Act 1984* (Cth) (***Insurance Contracts Act***), the 2019 Policy and any endorsements under that policy are liable to be avoided by IAL and IAL hereby avoids them;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.

(ii) further or alternatively pursuant to section 28(3) of the *Insurance Contracts Act*, if the 2019 Policy and pleaded endorsements are not avoided, the right to indemnity of Greensill Bank and/or White Oak is reduced to the amount that would place IAL in the position it would have been had the matters pleaded by IAL in Annexure A to its Defence to the SOC not occurred, that amount being nil;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.

(c) IAL says further, or alternatively, pursuant to clause 9.7 of the 2019 Policy, each of Greensill Bank and GCPL failed to comply with its duty of fair presentation and those failures together or separately had a "Material Policy

Impact" such that IAL has no liability to indemnify Greensill Bank or White Oak for the loss claimed in these proceedings.

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.

233 In further answer to the whole of the SOC, if:

(a) which is denied, IAL is bound by the 2019 Policy and/or the pleaded endorsements then White Oak does not have standing to make any claim under the 2019 Policy for the following further reasons:

(i) on its proper construction, the Loss Payee Endorsement (if valid and effective, which is denied):

(A) only required IAL to make Claim payments to White Oak with respect to Loss suffered by the Insured arising out of Assets acquired by the Insured from White Oak and only to the extent that the Claim (made by the Insured) has been accepted by IAL with respect to such Asset, and IAL has not accepted any such Claim with respect to the Claimed Amount;

(B) did not effect an assignment of the benefit of the 2019 Policy to White Oak, or otherwise give White Oak the right to make a claim under the 2019 Policy;

(ii) further or alternatively, clause 15.3(c) of the 2019 Policy provided that no party may assign or transfer any of its rights and/or obligations under or in connection with the 2019 Policy except with the written consent of the other party, and IAL never provided such consent;

(iii) further or alternatively, White Oak is not entitled to recover from IAL pursuant to section 48(1) of the Insurance Contracts Act, as:

(A) any right pursuant to section 48(1) of the Insurance Contracts Act must be exercised in accordance with the contract and is subject to the terms of the contract, which terms prohibited assignment without consent and otherwise provided for a Loss Payee to receive payment where a claim had otherwise been made by the Insured and accepted by IAL;

(B) further or alternatively, White Oak is not a third party beneficiary as defined in s 11 of the Insurance Contracts Act, as it is not specified or referred to in the 2019 Policy as a person to whom the benefit of insurance cover provided by the contract extends.

(b) further, or alternatively, any right of White Oak to be indemnified or to recover its alleged loss is to be reduced if and to the extent White Oak has avoided the alleged loss the subject of its claim, including by recovering amounts from Marsh in the EWHC Marsh Proceedings.

234 In further answer to White Oak's claim, IAL says that:

(a) it was an express term of the 2019 Policy (if valid and effective, which is denied) that the Insurer shall be deemed to have delivered a "Stop Asset Acquisition Instruction" to the "Insured" in relation to "Assets" arising from a "Customer" or if applicable a "Customer Group", where the "Customer" or any member of the applicable "Customer Group" has failed to pay a "Debt" on the relevant "Due Date" and such failure to pay has not been remedied within 10 "Business Days" after the "Due Date" (2019 Policy clause 8.3(a));

(b) upon the deemed delivery of a "Stop Asset Acquisition Instruction", an "Asset" (arising from the applicable "Customer" or "Customer Group") acquired after the deemed delivery of the "Stop Asset Acquisition Instruction" shall attach to the 2019 Policy;

(c) it repeats paragraph 81(d) of this Defence;

(d) in the event that the Payment Obligations were, in whole or in part, acquired by White Oak after the deemed issue of a Stop Asset Acquisition Instruction in respect of the relevant class of Payment Obligations, there is no coverage in respect of those Payment Obligations.

235 In further answer to the SOC, insofar as IAL is liable for any loss and damage suffered by White Oak, which is denied, IAL says:

(a) first, in respect of IAL's alleged responsibility under Division 6 of Part 7.6 of the *Corporations Act*:

(i) White Oak asserts that IAL is responsible for certain conduct of BCC and/or Brereton under Division 6 of Part 7.6 (SOC, paragraphs 117, 193);

(ii) it repeats paragraphs 41(c) to 41(j) and 41B of this Defence, including the allegations as to the deficiencies in White Oak's pleading based on Division 6 of Part 7.6;

(iii) the responsibility deemed by Division 6 of Part 7.6 does not extend to responsibility for conduct and/or causes of action for which BCC and/or Brereton have a defence as between BCC/Brereton and White Oak;

(iv) further, IAL's responsibility and/or liability to White Oak under Division 6 of Part 7.6 is no greater than any responsibility and/or liability of BCC and/or Brereton to White Oak;

(v) the causes of action relevantly alleged against BCC and Brereton include contraventions of:

(A) section 1041H of the *Corporations Act* (SOC, paragraphs 105 to 112 and, in respect of BCC only, paragraphs 179 to 189), in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 1041I of the *Corporations Act*;

(B) section 12DA of the *ASIC Act* in respect of alleged misleading or deceptive conduct (SOC, paragraphs 105 to 112 and, in respect of BCC only, paragraphs 179 to 189) said to give rise to a cause of action for loss or damage under section 12GF of the *ASIC Act*;

(C) section 12CA and 12CB of the ASIC Act (SOC, paragraphs 206 to 208) in respect of alleged unconscionable conduct said to give rise to a cause of action for loss or damage under s12GF of the ASIC Act;

(D) under the general law for breach of duty of care (SOC, paragraphs 221 and 225) said to give rise to a cause of action in damages;

(b) secondly, in respect of liability alleged directly against IAL, White Oak asserts that IAL is directly liable for breach of a general law duty of care (SOC paragraph 228) and, possibly, contraventions of section 1041H of the *Corporations Act* and s 12DA of the *ASIC Act* (SOC paragraphs 110A, 189, 193) and ss 12CA and/or 12CB of the *ASIC Act* (SOC paragraphs 207, 208);

(c) thirdly, the loss said to have arisen because of the contraventions and breaches referred to in sub-paragraphs (a) and (b) is the amount (plus interest) that White Oak allegedly paid to acquire the "Payment Obligations" or, alternatively, the amount (plus interest) that White Oak allegedly paid to acquire the "Payment Obligations" after the first breach (SOC, paragraphs 112, 192, 230);

(d) fourthly, causes of action under each of section 1041I of the *Corporations Act*, section 12GF of the *ASIC Act* and (on the pleaded case, which is to the effect that the *Civil Liability Act 2002* (NSW) applies) for breach of a general law duty of care are subject to relevantly analogous proportionate liability regimes, set out in, relevantly, Part 7.10, Division 2A, of the *Corporations Act*, Part 2, Division 2, Subdivision GA of the *ASIC Act* and Part 4 of the *Civil Liability Act 2002* (NSW);

(e) fifthly, in respect of the each of the proportionate liability regimes, White Oak's claims described in paragraphs (a), (b), (c) and (d) above (**the Apportionable Claims**) are "apportionable claims" for the purposes of the proportionate liability regimes;

(f) sixthly, under each of the relevant proportionate liability regimes, a "concurrent wrongdoer" in relation to a claim is a person who is one of two or more persons whose acts or omissions (or act or omission) caused independently of each other or jointly, the damage or loss that is the subject of the claim (*Corporations Act* section 1041L(3); *ASIC Act* section 12GP(3); *Civil Liability Act 2002* (NSW) section 34(2));

(g) seventhly, under each of the relevant proportionate liability regimes, in any proceedings involving an apportionable claim:

(i) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the Court considers just having regard to the extent of the defendant's responsibility for the damage or loss; and

(ii) the Court may give judgment against the defendant for not more than that amount,

(*Corporations Act* section 1041N(1); *ASIC Act* section 12GR(1); *Civil Liability Act 2002* (NSW) section 35(1));

(h) eighthly, under each of the relevant proportionate liability regimes, in apportioning responsibility between defendants in the proceeding:

(i) the Court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(ii) the Court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings,

(*Corporations Act* section 1041N(3); *ASIC Act* section 12GR(3); *Civil Liability Act 2002* (NSW) s 35(3));

(i) ninthly, says further that, in respect of each of the Apportionable Claims under the *ASIC Act* and the *Corporations Act*, in the event that the loss or damage on which White Oak sues was partly a result of White Oak's failure to take reasonable care, the damages that white Oak may recover are to be reduced to the extent that the court thinks just and equitable having regard to White Oak's share in the responsibility for the loss or damage (*ASIC Act* section 12GF(1B); *Corporations Act* section 1041I(1B));

Particulars

There is no allegation that there was an intention to cause loss or damage or that the loss or damage was caused fraudulently.

(j) tenthly, says that White Oak's claim under the general law for breach of a duty of care in negligence is subject to general law principles concerning contributory negligence including, if (as alleged by White Oak), the *Civil Liability Act 2002* (NSW) applies, the principles in Division 8 of Part 1A;

(k) eleventhly, says that on the assumption, which is not admitted, that the claimed loss was loss or damage suffered because of the alleged contraventions, then:

(i) the Applicant, White Oak, was contributorily negligent as set out in paragraph 235(l) of this Defence; and

(ii) there were "concurrent wrongdoers" as set out in paragraphs 235(l) to 235(v) of this Defence (**Concurrent Wrongdoers**),

in respect of that loss, such that:

(iii) the liability of BCC and/or Brereton should be limited under the relevant proportionate liability regimes, and any responsibility of IAL for the

conduct of BCC and/or Brereton under section 917B or 917C of the *Corporations Act* for the conduct yielding that liability should be correspondingly reduced; and

(iv) the direct liability of IAL (if any) should be correspondingly reduced;

White Oak

(l) says that:

(i) White Oak failed to exercise reasonable care and was contributorily negligent, including because:

(A) it failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the underlying transactions in respect of LCL receivables pursuant to and in respect of which it purportedly acquired the Payment Obligations;

(B) it failed to take reasonable steps to inquire into the existence, nature, creditworthiness and risk associated with the Payment Obligations, including failing to obtain invoices under which the Payment Obligations were alleged owing (SOC, paragraph 61);

(C) it failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the authority of BCC to bind IAL after 1 July 2019;

(D) it failed to make independent inquiries, alternatively failed to make adequate inquiries, about the 2019 Policy and circumstances in which it was purportedly entered into by the named Insureds;

(E) it failed to undertake regulatory searches prior to entering into the MAA with GCUK to satisfy itself that BCC was authorised by IAL to act on its behalf in or about April 2020;

(EA) the matters pleaded in Annexure D;

(F) Further or alternative to (A) to (EA) above, White Oak failed to ensure that White Oak Global Advisors, LLC (**WOGA**) undertook any, or adequate, investigations and/or due diligence into:

a. the underlying transactions in respect of LCL receivables pursuant to and in respect of which it purportedly acquired the Payment Obligations;

b. the existence, nature, creditworthiness and risk associated with the Payment Obligations, including failing to obtain invoices under which the Payment Obligations were allegedly owing;

c. the authority of BCC to bind IAL after 1 July 2019;

d. the 2019 Policy and circumstances in which it was purportedly entered into by the named Insureds; and/or

e. BCC's authority to act on IAL's behalf in or about April 2020;

(ii) in the premises:

(A) the damages that White Oak may recover in relation to the loss or damage the subject of the Apportionable Claims is to be reduced to the extent to which the Court thinks just having regard to White Oak's share in the responsibility for the loss or damage (*Corporations Act* section 1041(1B); *ASIC Act* section 12GF(1B)) and the Court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent (*Corporations Act* section 1041N(3); *ASIC Act* section 12GR(3);

(B) the damages available to White Oak should be reduced in accordance with the common law principles applicable to contributory negligence;

WOGA

(la) says that:

(iii) WOGA was a concurrent wrongdoer because:

(A) WOGA assumed a responsibility to White Oak with respect to the management of the investment in the assets White Oak purchased from GCUK;

(B) WOGA knew, or ought to have known, that there was a material risk that, if it did not take reasonable precautions in relation to the

management of White Oak's investment, White Oak would suffer loss or damage;

Particulars

WOGA's knowledge can be inferred from the materials considered by the WOGA Investment Committee referred to at paragraphs 31 to 33 of the affidavit of David Hackett affirmed 5 December 2025.

The precautions that a reasonable person in the position of WOGA would have taken are those which IAL alleges, at paragraph 235(Ia)(i)(D) of this Defence, that WOGA did not take.

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

(D) WOGA engaged in the following acts or omissions:

a. failing to undertake, or alternatively failing to undertake adequate, investigations and/or due diligence into the underlying transactions in respect of LCL receivables pursuant to and in respect of which White Oak purportedly acquired the Payment Obligations;

b. failing to take reasonable steps to inquire into the existence, nature, creditworthiness and risk associated with the Payment Obligations, including failing to obtain invoices under which the Payment Obligations were alleged owing (SOC, paragraph 61);

c. failing to undertake, or alternatively failing to undertake adequate, investigations and/or due diligence into the authority of BCC to bind IAL after 1 July 2019; and/or

d. failing to make independent inquiries, or alternatively failing to make adequate inquiries, about the 2019 Policy and circumstances in which it was purportedly entered into by the named Insureds; and/or

e. failing to undertake regulatory searches prior to entering into the MAA with GCUK to satisfy itself that BCC was authorised by IAL to act on its behalf in or about April 2020;

f. the matters pleaded in Annexure D;

(E) by reason of WOGA's acts and omissions pleaded in paragraph 235(la)(i)(D) of this Defence, WOGA breached that duty to White Oak;

(F) WOGA's acts and omissions caused the loss the subject of the claim; and

(iv) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to (inter alia) the following matters:

(A) WOGA's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim; and

(B) the matters set out in paragraph 235(la)(i) of this Defence;

Greensill Bank

(m) says that:

(i) Greensill Bank, was a concurrent wrongdoer because:

(A) it engaged in acts or omissions, including:

a. failing to undertake or alternatively failing to undertake adequate, investigations and/or due diligence into the transactions pursuant to and in respect of which it purportedly acquired the LCL Direct Assignments and the LCL Notes, in circumstances where it knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into the 2019 Policy, and its purported endorsements), and, had it done so, the damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

Particulars

IAL refers to the matters in paragraphs 38(g) to 38(k) and 41B(b) to 41B(f) of this Defence.

IAL may provide further particulars after discovery.

b. on the pleaded case (which is not admitted) it engaged in acts or omissions, including (inter alia):

   i. agreeing to enter into the 2019 Policy (SOC, paragraph 38) on the pleaded terms, alternatively agreeing to enter into the 2019 Policy when it knew the facts referred to in paragraphs 38(g) to 38(k) of this Defence; and

   ii. entering into or agreeing to enter into various endorsements thereto; and

c. further, Greensill Bank engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

d. further, at all material times Greensill Bank knew or ought to have known that:

   i. BCC's authority on behalf of IAL before 30 June 2019 was limited to underwriting trade credit insurance and the 2019 Policy and its endorsements were not trade credit insurance products;

   ii. BCC's authority on behalf of IAL to issue Approved Products was subject to Special Acceptance requirements including that any non-approved wording was expressly approved by IAL and Scor Re;

   iii. Scor Re and IAL had not approved the terms of the 2019 Policy;

   iv. since September 2017, IAL and Scor Re had not communicated to the Greensill Group, Lex Greensill or

Marsh that the matters referred to in paragraphs 38(g) to 38(j) of this Defence had changed;

v. that BCC's authority was not unlimited and as at February 2019 was limited to $50 million any one Policy subject to Special Acceptance approval by IAL and Scor Re;

vi. in the premises, at all material times, Greensill Bank knew, or ought reasonably to have known, that:

A. before BCC and Brereton could agree to the 2019 Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

B. IAL and Scor Re did not approve of the wording and structure of the 2019 Policy; and

C. IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy or any policy or endorsement which was not an Approved Product;

(B) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Policy;

(C) Greensill Bank was recklessly indifferent to BCC's underwriting authority;

(D) the acts or omissions of Greensill Bank caused the loss the subject of the claim (inter alia) because they caused the 2019 Policy and related endorsements on the terms set out in them to come into existence and, in the event that the existence of the 2019 Policy and entry into related endorsements caused any (or all) of the conduct of GCUK referred to in paragraph 235(o) of this Defence, then those acts or omissions caused the loss the subject of the claim;

(E) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

a. Greensill Bank's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

b. Greensill Bank's misrepresentations and non-disclosures were misleading or deceptive; and

c. the matters set out in paragraphs 235(m)(i)(A) to 235(m)(i)(D) of this Defence;

LCL and Liberty FE and the entities referred to in paragraph 61 of the SOC

(n) says that:

(i) each of the entities referred to in paragraph 61 of the SOC, LCL and Liberty FE was a "concurrent wrongdoer" because:

(A) it is a necessary element of White Oak's case that, by reason of an "Insured Cause", the "Insured" has failed to receive its "Expected Allocation" (2019 Policy clause 3.1);

(B) the alleged "Insured Cause" is the alleged failures by the entities referred to in paragraph 61 of the SOC or, alternatively Liberty, LCL or Liberty FE to make certain payments (SOC, paragraphs 66, 74);

(C) the loss alleged by white Oak is the alleged "Expected Allocation" of the Payment Obligations (SOC, paragraph 66);

(D) it is therefore a necessary element of White Oak's case that the loss for which it claims was caused, in whole or in part, by the acts or omissions of LCL, Liberty FE and/or the entities referred to in paragraph 61 of the SOC;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to (inter alia) the following matters:

(A) on White Oak's pleaded case, each of LCL, Liberty FE and the entities referred to in paragraph 61 of the SOC was subject to voluntarily-assumed legal obligations to pay certain amounts;

(B) on White Oak's pleaded case, it was the voluntarily-assumed legal obligations of those entities which gave rise to the loss on which white Oak now sues;

(C) it is not alleged that BCC and/or Brereton knew and/or ought to have been aware of any facts, matters or circumstances indicating that LCL, Liberty FE or the entities referred to in paragraph 61 of the SOC would or might commit the alleged failure to pay; and

(D) on White Oak's pleaded case, had the alleged failure to pay not occurred, the loss the subject of the claim would not have been suffered;

GCUK

(o) says further that:

(i) GCUK is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted) it engaged in acts or omissions, including:

a. it entered into the "Original RPA" on the terms alleged (SOC, paragraph 28);

b. it entered into the "RPA" on the terms alleged (SOC, paragraphs 25 to 30);

c. it entered into the "Group Guarantee" on the terms alleged (SOC, paragraph 32);

d. it entered into the MAA on the terms alleged (SOC, paragraphs 34, 35 and 36);

e. from 10 December 2020 to 25 February 2021, it agreed to assign the Payment Obligations to the Applicant under the MAA on the terms alleged (SOC, paragraph 61);

f. the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(B) the acts or omissions of GCUK caused the loss the subject of the claim (inter alia) because:

a. on the case expressly or impliedly pleaded by White Oak, as a result of GCUK's acts or omissions:

i. the instruments under which the alleged "Eligible Debts" arose were formed;

ii. there were "Eligible Debts" capable of giving rise to the "Insured Causes" relied on;

iii. as a result of the alleged "Insured Causes", there have been "Losses" which are the subject of the claim (note clause 1.1 of the 2019 Policy and SOC, paragraph 66);

b. had the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC not been made, then the damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) GCUK failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the parties to the transaction (SOC, paragraph 26), the MAA between White Oak and GCUK (SOC, paragraph 34), the Receivables Purchase Agreement (SOC, paragraph 24) and the Group Guarantee (SOC, paragraph 32) the insurance arrangements, and the authority of BCC to bind IAL;

(B) GCUK did not operate as a reasonably prudent lender in (i) its provision of finance to LCL and (ii) in failing to procure and/or enforce adequate security for the alleged debts;

(C) GCUK has not taken steps, alternatively has not taken adequate steps, to recover payments from the Account Debtors as referred to in the SOC;

(D) GCUK has not taken steps, alternatively has not taken adequate steps, to enforce:

a. the Group Guarantee from Liberty Commodities Group and Liberty FE ;

b. a “Group Guarantee” which appears to have been signed on or about 29 October 2018 by Sanjeev Gupta and an Attorney of GCUK, representatives of Liberty FE, Liberty Steel and GCUK (IAL.500.011.1296);

c. a “Group Guarantee” which appears to have been signed on or about 11 February 2021 by Sanjeev Gupta and Jonathon Lane, representatives of Liberty Steel Group and GCUK (IAL.500.002.2033);

d. a “Personal Guarantee” which appears to have been signed on or about 17 April 2020 by Sanjeev Gupta, in his personal capacity, and Alexander Greensill, representative of GCUK (IAL.500.002.4376);

e. a “Specific security deed” which appears to have been signed on or about 1 March 2021 by Sanjeev Gupta and representatives of Liberty Holdings Australia Ltd, Liberty Onesteel (MDR) UK Limited Company No 10932936 and GCUK;

f. a “Security Agreement” which appears to have been signed on or about 29 October 2018 by Sanjeev Gupta on behalf of Liberty Commodities Limited and by representatives of GCUK;

g. a “Debenture” which appears to have been signed on or about 13 February 2021 by Sanjeev Gupta and Jonathan Lane;

(E) the misrepresentations and non-disclosures made by GCUK were misleading or deceptive;

(F) the matters set out in paragraphs 38(g) to 38(j) of this Defence;

(G) further, at all material times GCUK knew or ought to have known of the matters pleaded in paragraphs 38(g) to 38(j) of this Defence;

(H) GCUK was recklessly indifferent to BCC's underwriting authority; and

(I) the matters set out in paragraph 235(m)(i)(A)d of this Defence;

GCPL

(p) says further that:

(i) GCPL is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted) it engaged in acts or omissions, including (inter alia):

a. agreeing to enter into the 2019 Policy (SOC, paragraph 38) on the pleaded terms, alternatively agreeing to enter into the 2019 Policy when it knew the facts referred to in paragraph 235(m)(i)(A)d of this Defence;

b. entering into or agreeing to enter into various endorsements thereto;

(B) further, GCPL engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(C) the acts or omissions of GCPL caused the loss the subject of the claim (inter alia) because:

a. they caused the 2019 Policy and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of the 2019 Policy and entry into the related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in sub-paragraph 235(o) of this Defence;

ii. White Oak to acquire the Payment Obligations (SOC, paragraph 61);

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the matters set out in paragraphs 38(g) to 38(j) of this Defence;

(B) at all material times GCPL knew or ought to have known of the matters pleaded in paragraphs 38(g) to 38(j) of this Defence;

(C) GCPL was recklessly indifferent to BCC's underwriting authority;

(D) GCPL's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(E) GCPL's misrepresentations and non-disclosures were misleading or deceptive; and

(F) the matters set out in paragraph 235(m)(i)(A)d of this Defence;

Lex Greensill

(q) says further that:

(i) Lex Greensill is a concurrent wrongdoer in that:

(A) he engaged in acts or omissions constituted by (inter alia) the exercise of control and decision-making authority over Greensill Bank, GCPL and GCUK, and conduct on behalf of those entities;

Particulars

IAL repeats paragraphs 38(g) to 38(ge) of this Defence.

Evidence of Lex Greensill to Treasury Committee, Ordered by the House of Commons on 11 May 2021.

(B) because of Lex Greensill's acts or omissions:

a. Greensill Bank engaged in the conduct pleaded in paragraph 235(m) of this Defence;

b. GCUK engaged in the conduct pleaded in paragraph 235(o) of this Defence; and

c. GCPL engaged in the conduct pleaded in paragraph 235(p) of this Defence; and

for the reasons set out in those paragraphs, thereby caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) at all material times Lex Greensill knew or ought to have known of the matters pleaded in paragraph 235(m)(i)(A)d of this Defence;

(B) the matters set out in paragraphs 235(m), 235(o) and 235(p) of this Defence concerning apportionment to GCUK, Greensill Bank and GCPL; and

(C) Lex Greensill and the Greensill Group were recklessly indifferent to BCC's underwriting authority;

(D) Lex Greensill's central role across the entirety of the events the subject of the SOC;

The Guarantors

(r) says further that:

(i) each of the following persons and/or entities is a **Guarantor**:

(A) LCL;

(B) Liberty Commodities Group;

(C) Liberty Holdings Australia Ltd;

(D) Liberty FE;

(E) Liberty Onesteel (MDR) UK Ltd;

(F) Liberty Steel Group Holdings Pte Ltd (**Liberty Steel Group**); and

(G) Sanjeev Gupta;

Particulars

On or about 29 October 2018, Sanjeev Gupta, Jonathon Lane and an Attorney of GCUK, representatives of Liberty FE, Liberty Commodities Group, Liberty Steel and GCUK, appear to have signed a document styled "Group Guarantee" (IAL.500.002.2039).

On or about 29 October 2018, Sanjeev Gupta and an Attorney of GCUK, representatives of Liberty FE, Liberty Steel and GCUK, appear

to have signed a document styled "Group Guarantee" (IAL.500.011.1296).

On or about 17 April 2020, Sanjeev Gupta, in his personal capacity, and Alexander Greensill, representative of GCUK, appear to have signed a document styled "Personal Guarantee" (IAL.500.002.4376).

On or about 11 February 2021, Sanjeev Gupta and Jonathon Lane, representatives of Liberty Steel Group and GCUK, appear to have signed a document styled "Group Guarantee" (IAL.500.002.2033).

(ii) each of the Guarantors referred to in paragraph 235(r)(i) of this Defence is a concurrent wrongdoer because:

(A) each engaged in acts or omissions, including the failure to pay amounts in respect of the asserted "Eligible Debts" the subject of the claim pursuant to their obligations as guarantors;

(B) the Guarantors' acts and omissions, including their failure to pay, caused (on the pleaded case, which is not admitted) the debts not to be paid, the failure to pay the payment obligations, the Insured Cause and the loss the subject of the claim;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the fact that the Guarantors were the subject of voluntarily assumed legal obligations to discharge the debts;

Marsh

(s) says further that:

(i) Marsh, being each of Marsh Pty Ltd and Marsh Ltd, are concurrent wrongdoers because:

(A) each engaged in acts or omissions, including (inter alia):

a. setting up BCC as an approved underwriting agent on the Marsh billing system;

b. acting as the broker of Greensill Bank and GCPL;

c. sending the confirmation emails as alleged by White Oak in paragraph 64 of the SOC;

d. making misrepresentations as to the utilisation available in the 2019 Policy (SOC, paragraph 64); and

Particulars

High Court of Justice Proceeding number CL-2023-00294 filed 30 May 2023 between the Applicant and Marsh Limited.

(B) they participated in the negotiations for the insurance instruments (including the 2019 Policy and all endorsements purportedly issued) and took other steps (not presently known to IAL, but which will be the subject of requests for compulsory production) which caused or contributed to Greensill Bank and GCPL's purported entry into the 2019 Policy and/or the pleaded endorsements thereto;

(C) those acts or omissions caused the loss the subject of the claim because:

a. they caused Greensill Bank and GCPL to purportedly enter into the 2019 Policy and related endorsements on the terms set out in them;

b. in the event that Greensill Bank and GCPL's purported entry into the 2019 Policy and related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in sub-paragraph 235(o) of this Defence;

ii. White Oak to acquire the Payment Obligations from GCUK;

then those acts or omissions caused the loss the subject of the claim; and

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) Marsh's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) Marsh knew, or ought reasonably to have known, that BCC was only permitted to underwrite trade credit insurance and the 2019 Policy was not trade credit insurance;

(C) Marsh knew, or ought reasonably to have known, that:

a. before BCC and Brereton could agree to the 2019 Policy and any endorsements issued pursuant to that policy, it was necessary for IAL and Scor Re to agree to their terms and structure;

b. IAL and Scor Re did not approve of the wording and structure of the 2019 Policy or any of the endorsements issued pursuant to that policy as pleaded by White Oak in the SOC;

c. IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy or any of the endorsements issued pursuant to that policy as pleaded by White Oak in the SOC;

d. BCC and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA; and

e. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

(D) at the time of first setting up BCC as an approved underwriting agency Marsh ought to have obtained, and reasonably satisfied itself of, the terms of the CGU AAR Agreement confirming the existence, duration of agreement and related limits to ensure that it was aware of the limitations on BCC's authority;

(E) Marsh failed to ensure that its employees and representatives were aware of and understood the terms of any agency agreement between IAL and BCC, and the limitation on BCC's authority;

(F) Marsh failed to ensure that its employees and representatives were aware of and understood the terms of any authority arrangement between IAL and Brereton, and the limitation on Brereton's authority;

(G) Marsh failed to review on an annual basis the ongoing authority of BCC including the terms on which it was permitted to underwrite Approved Products on behalf of IAL;

(H) Marsh failed to obtain any or any proper confirmation or verification of BCC's authority to underwrite on behalf of IAL the LOS Policy, Policy TW-03137, Policy TS-03088, Policy TS-03087, the 2019 Policy, Policy TB-03691, Policy TB-04271, Policy TB-04278, Policy TB-04584, TB-05370, Policy TB-05369, Policy TW-03456, Policy TW-03457, Policy TW-05411 and Policy TW-05412 in circumstances where the combined limits of the identified Policies were in excess of any other insurers underwriting trade credit insurance in the Australian market and in circumstances where BCC was a start-up underwriting agency; and

(I) Marsh facilitated the execution of Endorsements 17 and 18 to purportedly extend the policy period of the 2019 Policy in circumstances when Marsh knew from 15 April 2019 (as to which, see paragraph 41B of this Defence above) and before the execution of Endorsement 18 that BCC did not have authority to extend existing insurance arrangements issued on behalf of IAL;

TMNF

(t) says further that:

(i) TMNF was a concurrent wrongdoer because on and from 1 July 2019:

(A) it engaged in acts or omissions, including (inter alia):

a. failing to ensure that its authorised representatives, BCC and Brereton, acted within the scope of what TMNF authorised them to do;

b. failing to ensure that BCC and Brereton did not purport to enter into the endorsements referred to in subparagraph (B) below in respect of the 2019 Policy on behalf of IAL on and from 1 July 2019;

c. failing to ensure that BCC provided bordereaux to IAL that contained complete and accurate information in respect of endorsements issued by BCC and Brereton on and from 1 July 2019;

(B) the acts and omissions of BCC and Brereton in purporting to enter the instruments on behalf of IAL, were engaged in (on the pleaded

case) as agent and authorised representative of TMNF, being the entry of:

a. each of the Post 1 July Customer Endorsements (SOC paragraphs 46(d) to 46(n));

b. RPA Debt Endorsement 2(iii) dated 29 January 2020 (SOC, paragraph 47);

c. the Liberty Endorsement dated 29 April 2020 (SOC, paragraph 52);

d. the LCL Endorsement dated 29 April 2020 (SOC, paragraph 54); and

e. the Loss Payee Endorsement dated 29 April 2020 (SOC, paragraph 57);

(ii) those acts and omissions caused the loss the subject of the claim because:

(A) they caused BCC and/or Brereton to purportedly enter into the related endorsements to the 2019 Policy referred to in paragraph 235(t)(i)(B) of this Defence;

(B) in the event that Greensill Bank and GCPL's entry into the 2019 Policy and related endorsements caused any (or all) of the conduct of GCUK referred to in sub-paragraph 235(o) of this Defence, then those acts or omissions caused the loss the subject of the claim;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the acts or omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) TMNF knew, or ought reasonably to have known, that:

a. IAL had not given authority to BCC and Brereton to enter into the 2019 Policy nor any of the endorsements issued pursuant to that policy as pleaded by White Oak in the SOC;

b. BCC and Brereton's authority to write new policies or risks, or extend the term or scope of existing policies, on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA;

c. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

The Administrators

(u) says further that:

(i) each of TMMA and Bond (together, the **Administrators**) was a concurrent wrongdoer because:

(A) each engaged in acts or omissions including (inter alia):

a. providing administration services to IAL under the PACAO;

b. failing to provide those services with due care and skill;

(B) those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the PACAO did not confer a general authority on Bond or BCC as Bond's delegate to act as IAL's agent to administer trade credit insurance policies issued by IAL on or before 30 June 2019, as pleaded in paragraph 9E(f) of this Defence;

(B) it was a term of the PACAO after 9 April 2019 that Bond, or BCC as Bond's delegate, was not permitted to write new business or renewals on IAL paper (Schedule 5, clause 2);

(C) it was a term of the PACAO that Bond would prepare and disseminate monthly Written and Paid Bordereaux and reconcile reporting systems to bank and bordereaux reports (Schedule 5, clause 2.1);

(D) it was a term of the PACAO that Bond would deliver administration services with due skill and care, efficiently and fairly (clause 5.1);

(E) it was a term of the PACAO the Bond would ensure that it properly supervised its staff (including Brereton) in relation to the provision of services (clause 5.1(c));

(F) there were further restrictions on the Administrators as stipulated in the PACAO, for which IAL repeats the matters pleaded in paragraph 9E of this Defence;

(G) the authority of BCC and Brereton was confined at all material times on and after 9 April 2019 until 30 June 2019, in the manner described in paragraphs 8(l) and 8(p) to 8(dd) of this Defence, a matter known by the Administrators;

(H) BCC and Brereton purported to issue endorsements after 9 April 2019 which were not Approved Endorsements and were outside of the authority referred to in the preceding sub-paragraph, including:

a. each of the Post 1 July Customer Endorsements (SOC, paragraphs 46(d) to 46(n));

b. Debt Endorsement 2(iii) dated 29 January 2020 (SOC, paragraph 47);

c. the Liberty Endorsement dated 29 April 2020 (SOC, paragraph 52);

d. the LCL Endorsement dated 29 April 2020 (SOC, paragraph 54); and

e. the Loss Payee Endorsement dated 29 April 2020 (SOC, paragraph 57);

(I) the acts or omissions of the Administrators were of substantial causal significance to the arising of the loss the subject of the claim;

(J) the Administrators knew, or ought reasonably to have known, that:

a. IAL had not given authority to BCC and Brereton to enter into the 2019 Policy nor any of the endorsements issued pursuant to that policy as pleaded by White Oak in the SOC;

b. IAL had only authorised BCC and Brereton to issue Approved Products and the 2019 Policy was not an Approved Product;

c. BCC and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA; and

d. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

BCC and Brereton

(v) in the event that it is established that BCC and Brereton engaged in the misleading or deceptive conduct pleaded in paragraphs 105 to 112 of the SOC, BCC and Brereton were concurrent wrongdoers such that IAL's liability in relation to the Apportionable Claims is limited to an amount reflecting the proportion of the loss and damage claimed that is just, having regard to the extent of BCC's and Brereton's responsibility for the loss or damage suffered, pursuant to section 87CD of the *Competition and Consumer Act 2010* (Cth), section 1041N of the *Corporations Act* and section 12GR of the *ASIC Act*;

Reservation

(w) says further, in relation to the whole of paragraphs 235(a) to 235(v) of this Defence:

(i) it was not a party to the transactions the subject of the SOC (including the 2019 Policy, the endorsements thereto, and the various underlying transactional documents said to have given rise to claims under the 2019 Policy) which gave rise to the alleged loss and damage in respect of which White Oak sues;

(ii) it does not know the circumstances in which the alleged loss arose, the identities of those who caused or contributed to the alleged loss and the role and culpability of those who did so; and

(iii) it intends to pursue compulsory production and, following compulsory production and the development of evidence in the proceedings:

(A) it may become apparent that there are additional persons meeting the description of being a "concurrent wrongdoer";

(B) it may become appropriate to supplement or vary the circumstances identified in paragraphs 235(i) to 235(t) of this Defence.

236 In further response to the Applicant's claims pleaded against it in the SOC, IAL pleads the facts alleged in the document titled "Annexure B to Defences to IAL", which is filed in these Proceedings on 30 April 2026.

Date: ~~1 May~~ 23 July 2026



Signed by Malcolm Stephens, solicitor on record

This pleading was prepared by Malcolm Stephens, lawyer, settled by S Finch, DFC Thomas, D Hume, M Ellicott, C Ernst, N Wootton and H Cooper of Counsel.

Certificate of lawyer

I, Malcolm Stephens certify to the Court that, in relation to the defence filed on behalf of the First Respondent, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: ~~1 May~~ 23 July 2026



Signed by Malcolm Stephens, solicitor on record

Schedule

Respondents

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

ANNEXURE D

This Annexure D has been prepared for the purposes of supplementing the defence filed by IAL in the White Oak Proceeding (NSD 1039 of 2021) (**Proceeding**). It adopts the terms defined in IAL's defence in the Proceeding, save where the document expressly provides otherwise.

A. DENIAL OF GOOD FAITH RELIANCE

1. In the Proceeding, White Oak pleads that it relied in good faith on the conduct of BCC and Brereton when entering into the Loss Payee Endorsement and when acquiring the Payment Obligations (as those terms are defined in White Oak's pleading).

Particulars

Refer to paragraphs 41B(c)(iii), 117(c) and 193(d)(iii) of White Oak's Sixth Amended Statement of Claim in the Proceeding.

2. IAL denies that White Oak relied at all, or in good faith, on the conduct of BCC and Brereton when entering into the Loss Payee Endorsement and when acquiring the Payment Obligations. IAL pleads this denial on the basis of:
   (a) the absence of any pleading or evidence by White Oak as to the facts, matters and circumstances said to constitute actual good faith reliance; and
   (b) the matters set out in the balance of this Annexure D.

3. For the avoidance of doubt, nothing in this Annexure D is intended:
   (a) to limit in any way the facts, matters or evidence IAL may rely upon in answer to the allegations made by White Oak (which are denied) that, but for the conduct of BCC and Brereton, White Oak would not have acquired the relevant Payment Obligations and that White Oak has suffered loss or damage by the conduct of BCC and Brereton; or
   (b) to assume any onus or burden on the part of IAL to disprove such allegations made by White Oak, which remain facts in issue on which White Oak bears the onus of proof.

4. The matters pleaded in Section B were matters known by White Oak (or, where applicable, conduct engaged in by White Oak) when it entered into the Loss Payee Endorsements and acquired the Payment Obligations, except to the extent that all of the supporting particulars post-date such acquisition or entry.

B. MATTERS KNOWN TO WHITE OAK

5. White Oak knew, or alternatively should have known, that there were credible allegations that implicated Mr Gupta and entities associated with Mr Gupta (including Liberty Commodities Limited) in fraudulent conduct.

Particulars

IAL refers to section D.

6. White Oak knew, or alternatively should have known, that:
   (a) there was a real possibility GCUK was acting dishonestly in its dealings with BCC and Brereton in relation to its financing facilities;
   (b) at least some of the invoices against which GCUK was financing facilities were not based on the underlying trade of goods or services;
   (c) at least in some cases, GCUK was lending against alleged receivables which did not exist;
   (d) the risk of lending against non-existent receivables, or invoices which were not based on the underlying trade of goods and services, could be mitigated by it verifying the receivables the subject of the Payment Obligations; and

   nevertheless decided not to verify the receivables the subject of the Payment Obligations prior to acquiring the Payment Obligations.

Particulars

IAL refers to section E.

7. White Oak and Mr Greensill misled Mr Brereton in response to his inquiry about LCL's trade with Trafigura Pte Ltd (**Trafigura**).

Particulars

IAL refers to section F.

8. White Oak knew, or alternatively should have known, of matters that would preclude, or seriously prejudice, its entitlement to indemnity under the Policy.

Particulars

IAL refers to section G.

9. At the time White Oak executed the Loss Payee Endorsement and acquired the Payment Obligations, it believed the following matters with respect to the Policy:

(a) the Policy identified the premium payable by the insured to be $1;

Particulars

2019 Policy, Schedule 5.

(b) the Policy had relatively limited exclusions in comparison to comparable policies;

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615]

(c) the policy would cover fraud by LCL; and

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615]

(d) the limit applicable to LCL under the Policy would reset to whatever aggregate amount was required to cover any claim, such that there was in substance no limit applicable to LCL.

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615]

10. White Oak knew, or alternatively should have known, that White Oak's status as a loss payee may limit its right to claim under the Policy, and nevertheless decided not to enter into a policy proposed by GCUK pursuant to which it would be the named insured.

Particulars

IAL refers to section H.

11. White Oak knew, or alternatively should have known, that no reasonable insurer would agree to insure the risk in respect of which White Oak seeks indemnity in the Proceeding had they known the matters known by White Oak which are pleaded above at paragraphs 5 to 7 and 9 of this Annexure.

12. White Oak took no steps to ensure that BCC, Brereton or IAL were aware of the matters pleaded above in paragraphs 5 to 7 of this Annexure.

13. White Oak acted to conceal certain of the matters of which it was aware from BCC and Brereton.

Particulars

IAL refers to section F.

14. In the premises of paragraphs 5 to 13 above, White Oak did not rely at all, or in good faith, on the conduct of BCC and Brereton when entering into the Loss Payee Endorsement and when acquiring the Payment Obligations.

C. RELEVANT ENTITIES AND INDIVIDUALS WITHIN THE WHITE OAK GROUP

15. At all material times, White Oak:
    (a) was a company whose principal activity was asset-based lending in the United Kingdom;
    (b) was ultimately financed by investment funds, including the White Oak Yield Spectrum Fund V, managed by its affiliate entity, WOGA; and
    (c) was required to seek the approval of the
        i. White Oak UK Approval Committee; and
        ii. WOGA Investment Committee
        in order to make potential investments.

Particulars

Witness Statement of Thomas Kevin Otte dated 6 March 2025, filed in the EWHC Marsh Proceedings [WOC.0010.0015.0046].

Affidavit of Andre Amin Hakkak affirmed on 4 December 2024, filed in this Proceeding.

Affidavit of David Hackett affirmed on 5 December 2024, filed in this Proceeding.

16. On 28 April 2020, being the date upon which the WOGA Investment Committee resolved to enter into the Loss Payee Endorsement and acquire the Payment Obligations:

(a) the members of the White Oak UK Approval Committee were:

i. Andre Hakkak;

ii. Barbara McKee; and

iii. Tom Otte, and

(b) the members of the WOGA Investment Committee were:

i. David Hackett;

ii. Susan George;

iii. Darius Mozaffarian;

iv. Andre Hakkak; and

v. Barbara McKee.

Particulars

Witness Statement of Thomas Kevin Otte dated 6 March 2025 filed in the EWHC Marsh Proceedings [WOC.0010.0015.0046]

Screenshot of Salesforce for Investment Committee Meeting dated 28 April 2020 [WOC.0007.0003.0006].

Affidavit of David Hackett affirmed on 5 December 2024.

D. ALLEGATIONS AGAINST MR GUPTA

17. On or around 12 March 2020, White Oak was informed by Simon Grenfell that it needed to be “very careful” when dealing with Mr Gupta and Mr Greensill, and that White Oak should take steps to ensure:

(a) that the accounts receivables that White Oak was purchasing were legitimate; and

(b) that the underlying trades existed.

Particulars

Affidavit of Simon Grenfell affirmed on 19 February 2026, [31].

18. From at least as early as 26 April 2020, three days before White Oak was purportedly endorsed as loss payee under the Policy, White Oak had set up media alerts for the following terms:
    (a) "Greensill Capital fraud";
    (b) "Liberty Steel lawsuit";
    (c) "Liberty Steel bankruptcy";
    (d) "Liberty Steel fraud";
    (e) "GFG Alliance fraud";
    (f) "liberty commodities limited LAWSUIT";
    (g) "Liberty Commodities Limited bankruptcy"; and
    (h) "Liberty Commodities Limited fraud".

Particulars

Project Irish News Run dated 26 April 2020 [WOC.0001.0004.4424].

19. On at least 26 April 2020, as a result of the search terms pleaded above at paragraph 18, White Oak was sent links to various articles, including articles which stated that:
    (a) Mr Gupta was the subject of criminal charges in India associated with the attempted take-over of a bankrupt car parts maker;
    (b) Mr Gupta's businesses relied heavily upon opaque and unconventional financing linked to working capital and supply chains that could be expensive;
    (c) Mr Gupta's bank, Wyelands, had been the subject of questions in the United Kingdom Parliament; and
    (d) Mr Gupta had been associated with a scandal within GAM, a Swiss Fund Manager.

Particulars

Project Irish News Run dated 26 April 2020 [WOC.0001.0004.4424], which served the following articles:

1. Reuters, "Court questions funding for Liberty House bid for steelmaker Ascometal", (27 January 2018, https://www.reuters.com/article/business/court-questions-funding-for-liberty-house-bid-for-steelmaker-ascometal-idUSKBN1FF2GU/);
2. Live Mint, "Is Liberty House's Sanjeev Gupta facing a crisis of credibility in India?", (23 August 2018,

https://www.livemint.com/Companies/r3eFnaa0jrkKxtKD0p2gHI/Is-Liberty-Houses-Sanjeev-Gupta-facing-a-crisis-of-credibil.html);

3. Financial Times, “Asset Management: inside the scandal that rocked GAM”, (19 March 2019, https://www.ft.com/content/56e5b0ba-39ed-11e9-b856-5404d3811663?syn-25a6b1a6=1);
4. City AM, “Greensill denies reports of false statement over bonds sold by steel tycoon Gupta”, (7 July 2019, https://www.cityam.com/greensill-issued-false-statement-on-bonds-sold-by-steel-tycoon-sanjeev-gupta/);
5. Reuters, “Exclusive: Greensill issued false statement on bonds sold by metals tycoon Gupta”, (8 July 2019, https://www.reuters.com/article/world/exclusive-greensill-issued-false-statement-on-bonds-sold-by-metals-tycoon-gupta-idUSKCN1U20C8/);
6. Financial Times, “Sanjeev Gupta faces Indian court battle over aborted takeover”, (16 October 2019, https://www.ft.com/content/cc46cd1e-ef49-11e9-bfa4-b25f11f42901?syn-25a6b1a6=1);
7. Financial Times, “How Sanjeev Gupta’s empire is fuelled by opaque financing“ (27 September 2019, https://www.ft.com/content/e8e2d33c-dfb3-11e9-b112-9624ec9edc59?syn-25a6b1a6=1);
8. The Times, “Revealed: Sanjeev Gupta’s stake in controversial finance firm Greensill Capital”, (13 July 2019, https://www.thetimes.com/world/australasia/article/revealed-sanjeev-guptas-stake-in-controversial-finance-firm-greensill-capital-gtqvjm8dl);
9. Live Mint, “Lenders angry with Sanjeev Gupta for taking Liberty with top bids” (20 August 2019, https://www.livemint.com/companies/news/lenders-angry-with-sanjeev-gupta-for-taking-liberty-with-top-bids-1566241379660.html);
10. The Guardian, “Trouble at the mill: Sanjeev Gupta on Whyalla and its 'fundamental problems” (19 October 2019, https://www.theguardian.com/australia-news/2019/oct/19/journalists-are-annoying-sanjeev-gupta-on-whyalla-and-its-fundamental-problems);
11. Financial Times, “Sanjeev Gupta draws scrutiny over Wyelands Bank loans”, (24 February 2020, https://www.ft.com/content/2f3bde1e-4e4f-11ea-95a0-43d18ec715f5?syn-25a6b1a6=1); and
12. Financial Times, “The workings of Sanjeev Gupta’s empire” (27 February 2020, https://www.ft.com/content/5f279604-5719-11ea-a528-dd0f971febbc?syn-25a6b1a6=1)’

20. On 18 June 2020, Mr Hakkak circulated an email to the WOGA Investment Committee members which confirmed that he had spoken with Mr Gupta, who had accepted that he had been “a bit cute” in his business dealings.

Particulars

Email from A Hakkak to WOGA Investment Committee members dated 18 June 2020 [WOC.0001.0010.1851].

21. On 22 July 2020, Ms George circulated an email to the WOGA Investment Committee members in which she confirmed she was voting against an increase in White Oak's investment in the GCUK facility, including because of "the Liberty association".

Particulars

Email from Susan George to WOGA Investment Committee members dated 22 July 2020 [WOC.0010.0021.0001]

22. In the premises of the matters contained at paragraphs 17 to 21 of this Annexure, White Oak knew, or alternatively should have known, that there were credible allegations (including from an individual with direct knowledge of such matters) that implicated Mr Gupta and entities associated with Mr Gupta (including LCL) in fraudulent conduct.

E. RECEIVABLES DID NOT EXIST

23. IAL repeats and relies upon the matters contained at paragraph 235(I)(i) of the defence filed by IAL in the Proceeding.

24. By at least 6 February 2020, White Oak was aware of the importance of having oversight into how GCUK applied cash received from obligors in respect of Payment Obligations purchased by White Oak.

Particulars

Email exchange between Kenneth Wendler and WOGA Investment Committee dated 6 February 2020 [WOC.0001.0006.9785].

25. As at 19 February 2020, White Oak remained aware of the importance of having oversight into how GCUK applied cash received from obligors in respect of Payment Obligations purchased by White Oak.

Particulars

Email exchange between Phillip Neal and Steven Ruth dated 19 February 2020 [WOC.0001.0007.0501].

Email exchange between Phillip Neal and Steven Ruth dated 20 February 2020 [WOC.0001.0007.0507].

26. On 20 February 2020, White Oak raised concerns with Mr Greensill about loose cash controls at the seller level, to which Mr Greensill responded that, although the seller controls could be tighter, the insurance was “bulletproof”.

Particulars

WhatsApp exchange between Mr Otte and Mr Greensill dated 20 February 2020 [WOC.0002.0001.0028]

27. On 20 February 2020, White Oak raised with Mr Gupta whether it could engage Demica as a back-up servicer, to which Mr Gupta responded that he "sincerely recommend we keep it simple for now and get it going".

Particulars

WhatsApp exchange between Mr Otte and Mr Gupta dated 20 February 2020 [WOC.0002.0001.0200]

28. As at 12 March 2020, White Oak’s position was that it would not enter into the Loss Payee Endorsement and acquire Payment Obligations unless certain procedures were in place, which would include invoice verification, eligibility reports and reconciliations of cash collections on those Payment Obligations purchased by White Oak, with the assistance of Demica, a back-up servicer that was to verify the receipt of monies.

Particulars

Project Irish – Screener dated 12 March 2020 [WOC.0001.0007.2416]

WOGA Investment Committee Memo – Project Irish – Update to Underwriting Process [WOC.0001.0003.3068].

Transcript of EWHC Marsh Proceedings, Day 2, T64:19-T65:3 [CSA.0001.0011.8890]

29. As at 17 March 2020, White Oak was aware that there were inconsistencies between the financial information provided by GCUK and LCL and the level of funding alleged

to have been provided by GCUK to LCL in respect of Payment Obligations which were supported by a supply of goods or services.

Particulars

Email exchange between Phillip Neal and James Waterman dated 17 March 2020 [WOC.0001.0001.0565]

30. On 17 March 2020, White Oak was informed by Mr Grenfell of the importance of verifying the Payment Obligations to ensure that they were for materials actually supplied and, as at that date, White Oak's position was that it would not acquire any Payment Obligations which were not verified.

Particulars

Email from Mr Grenfell to Mr Otte dated 17 March 2020 [WOC.0001.0012.3192]

Email Mr Otte to Mr Neal and Mr Schapiro dated 17 March 2020 [WOC.0001.0012.3199]

Email from Mr Neal to Mr Otte and Mr Schapiro dated 17 March 2020 [WOC.0001.0003.1374]

Transcript of the EWHC Marsh Proceedings, Day 3, T7:10-18 [CSA.0001.0011.8891]

31. On 18 March 2020, White Oak placed a memo before the WOGA Investment Committee which stated that:

(a) Greensill did not verify the receivables the subject of the Payment Obligations; and

(b) LCL deserved a 25% verification level.

Particulars

WOGA Investment Committee memo dated 18 March 2020 [WOC.0001.0001.4167]

32. As at 23 March 2020, White Oak remained concerned as to the lack of verification.

Particulars

Email from Mr Hakkak to Diane Altieri dated 19 March 2020 [WOC.0001.0009.7138]

Email from Diane Altieri to Paul Thomson dated 19 March 2020 [WOC.0001.0009.7118].

Email exchange between Kenneth Wendler and Steven Ruth dated 21 March 2020 [WOC.0001.0012.5292]

Email from Mr Neal to Mr Wendler dated 23 March 2020 [WOC.0001.0007.1255]

33. As at 26 March 2020, White Oak was aware that:

(a) not performing verification on the receivables the subject of the Payment Obligations exposed White Oak to a risk of fraud;

Particulars

Email exchange between Kenneth Wendler and Steven Ruth dated 21 March 2020 [WOC.0001.0012.5292].

Email exchange between Vanessa Bertrand-Smith and Diane Altieri et al dated 26 March 2020 [WOC.0001.0003.2971]

(b) White Oak wished to be able to show its investors that it had some visibility into the cash collection in respect of Payment Obligations;

Particulars

Email from Diane Altieri to Becci Rogers et al dated 25 March 2020 [WOC.0001.0009.7708 at 7711].

(c) GCUK, however, would not be providing the information that White Oak required in respect of cash collections; and

Particulars

Email from Becci Rogers to Diane Altieri et al dated 25 March 2020 [WOC.0001.0009.7708].

WhatsApp exchange between Mr Otte and Mr Greensill dated 25 March 2020 [WOC.0002.0001.0039].

(d) it was making a commercial decision in not pressing for controls of the kind contained at paragraph 28 of this Annexure.

Particulars

Transcript of the EWHC Marsh Proceedings, Day 2, T196:1-14 [CSA.0001.0011.8890].

34. On 23 April 2020, White Oak made an investment recommendation to the WOGA Investment Committee seeking approval to proceed with entry into the Loss Payee Endorsement and acquisition of the Payment Obligations, in which it noted that GCUK did not perform any verification procedures, and did not track historical dilution rates on the LCL receivables which would become the Payment Obligations.

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615].

35. As at 24 April 2020, White Oak was aware that by purchasing the Payment Obligations it was providing an unsecured loan aligned to the value of the Payment Obligations.

Particulars

Email from P Thompson to D Altieri and V Bertrand-Smith dated 24 April 2020 [WOC.0001.0008.3896].

36. In the period between 30 May 2020 and 10 June 2020, White Oak purchased Payment Obligations involving an account debtor, Trafigura, in the sum of $20,918,609.54.

Particulars

Email from Jacob Schapiro to Phillip Neil and Simon Grenfell dated 10 June 2020 [WOC.0001.0005.8045].

Breakdown of White Oak purchases as at 19 June 2020 [WOC.0001.0005.8405].

37. In or about late June 2020, White Oak became aware from Mr Grenfell that Trafigura did not have any "accounts receivable" arrangement with LCL, as it paid for any materials purchased from LCL at the time, or soon after, they were purchased.

Particulars

Email from Mr Schapiro to Mr Neal and Mr Grenfell dated 10 June 2020 [WOC.0001.0005.7774]

Email from Simon Grenfell to Tom Otte dated 19 June 2020 [WOC.0011.0007.0001]

Affidavit of Simon Grenfell affirmed on 19 February 2026, [39].

38. On 7 July 2020:

(a) GCUK requested that White Oak purchase two Trafigura receivables;

Particulars

Email from Paul Thompson to Diane Altieri and Tom Otte dated 7 July 2020 [WOC.0001.0007.7068]

(b) White Oak rejected GCUK's offer to purchase the Trafigura receivables;

Particulars

Email from Paul Thompson to Rosie Cavanagh and Becci Miller dated 7 July 2020 [WOC.0001.0021.1324]

(c) when GCUK enquired as to why White Oak did not accept the offer, Mr Otte responded to request confirmation that GCUK had invoices to support the receivables;

Particulars

Email from Tom Otte to Becci Miller dated 7 July 2020 [WOC.0001.0021.1324]

(d) in response, GCUK voided the offer to purchase the Trafigura receivables and offered receivables originated from a different account debtor;

Particulars

Email from Becci Miller to Tom Otte and Paul Thompson dated 7 July 2020 [WOC.0001.0021.1324]

(e) Mr Otte and Mr Greensill had a telephone conversation relating to the Trafigura receivable;

Particulars

Email from Tom Otte to Diane Altieri dated 8 July 2020 [WOC.0001.0021.2508]

(f) Sean Marshall emailed Paul Thompson with the subject line "Trafigura" and wrote that "[White Oak had] been sold an absolute pup there".

Particulars

Email from Sean Marshall to Paul Thompson dated 7 July 2020 [WOC.0009.0050.7150]

39. It was not White Oak's usual practice, when considering GCUK's offers to purchase Payment Obligations, to request copies of supporting invoices.

Particulars

White Oak's usual practice for purchasing Payment Obligations from GCUK is described in the affidavit of Paul Thompson dated 6 December 2024 at paragraphs 18 to 25.

40. As at 7 July 2020, White Oak was aware that the payment terms for the Payment Obligations in respect of Trafigura were not capable of supporting an “accounts receivable” arrangement with LCL.

Particulars

IAL refers to and repeats paragraph 38 and 39 above.
Email exchange between Paul Thomson and Tom Otte dated 8 July 2020 [WOC.0001.0007.8834].

White Oak's knowledge may also be inferred from the fact that it ceased acquiring Payment Obligations in respect of Trafigura from 7 July 2020 and subsequently removed Trafigura as an approved account debtor.

41. On 10 July 2020, the White Oak UK Credit Committee approved the removal of Trafigura as an approved account debtor, such that White Oak would no longer purchase Payment Obligations owed by Trafigura.

Particulars

Credit memo to White Oak UK Credit Committee dated 10 July 2020 [WOC.0001.0007.7441]

42. IAL refers to and repeats paragraph 21 above.

43. As at 29 January 2021, White Oak remained aware that it did not have any operational or fraud oversight in respect of the Payment Obligations, and that "[s]ome of the players have sketchy reputations".

Particulars

Email from S Ruth to the WOGA Investment Committee dated 29 January 2021 [WOC.0001.0006.7000]

44. In the premises of the matters pleaded at paragraph 23 to 43, White Oak knew, or alternatively ought to have known, that:

(a) there was a real possibility GCUK had not provided full and accurate disclosure to BCC and Brereton in relation to its financing facilities with the Liberty group, including LCL;

(b) at least some of the invoices against which GCUK was providing finance to LCL were not based on the underlying trade of goods or services;

(c) at least in some cases, GCUK was lending against alleged receivables which did not exist; and

(d) the risk of lending against non-existent receivables, or invoices which were not based on the underlying trade of goods and services, could be mitigated by it verifying the receivables the subject of the Payment Obligations.

45. Notwithstanding the matters in paragraph 44 above, White Oak decided not to verify the receivables the subject of the Payment Obligations.

46. In the premises of paragraphs 23 to 42, White Oak knew, or ought to have known, that:
    (a) the matters in paragraph 44 made the Payment Obligations risks that were unattractive to a prudent underwriter of trade credit insurance, with the consequence that it was likely that an underwriter with full knowledge of those characteristics would not have underwritten the risks; and
    (b) GCUK had an incentive not to make full and accurate disclosure to BCC and IAL because the terms of the Policy purported to insulate GBAG and GCPL, as co-insureds, from any inaccuracy or omission in the information provided by GCUK to IAL, on which basis Mr Greensill had described the insurance to White Oak as "bulletproof".

47. White Oak did not make any, or reasonable, inquiries as to whether GCUK had provided full and accurate disclosure to BCC and the Insurer of the matters in paragraph 44 above and the true nature of the risks of non-payment of the Payment Obligations.

48. In the premises, it is to be inferred that White Oak refrained from making the inquiries referred to in paragraph 47 above because White Oak either:
    (a) was aware that full and accurate disclosure of such matters had likely not been made to BCC and the Insurer; or
    (b) alternatively, was recklessly indifferent to whether full and accurate disclosure of such matters had not been made to BCC and IAL.

F. WHITE OAK AND MR GREENSILL MISLED BCC AND BRERETON

49. Despite having the knowledge pleaded at paragraph 44 of this Annexure, on 25 June 2020, White Oak and Mr Greensill represented to BCC and Brereton that:
    (a) LCL had a practice of requesting early settlement of invoices with Trafigura, including invoices the subject of Payment Obligations; and
    (b) upon receipt of the early settlement funds, LCL would then hold those funds and use them for the period up until the due date of the invoice, and any "buffer" period, rather than forwarding them to GCUK's collection account.

Particulars

Email exchange between Mr Otte and Mr Greensill dated 25 June 2020 [WOC.0001.0012.4229].

Email exchange between Mr Otte and Mr Greensill dated 26 June 2020 [WOC.0001.0012.0043]

50. The purpose of both White Oak and Mr Greensill in making the representations pleaded at paragraph 49 of this Annexure was to cause BCC and Brereton to reaffirm cover under the Policy.

Particulars

Email exchange between Paul Thompson and Tom Otte dated 8 July 2020 [WOC.0001.0021.2403]

51. The representations pleaded at paragraph 49 were false.

Particulars

IAL refers to and repeats paragraph 40 and 44 above.

52. White Oak knew, or ought to have known, the representations pleaded at paragraph 49 were false.

Particulars

IAL refers to and repeats paragraph 40 and 44 above.

53. In the premises of paragraphs 49 to 51, Mr Brereton confirmed cover under the Policy on the basis of the false representations pleaded at paragraph 49 above.

G. CONCERNS REGARDING INSURANCE COVERING CERTAIN GCUK FACILITIES

54. IAL repeats and relies upon the matters contained at 39(b)-(e) of the defence filed by IAL in the Proceeding.

55. On 20 April 2020, White Oak received advice from Lockton on the Policy, including with respect to the reporting obligations and stop asset acquisition provisions it contained.

Particulars

"Trade Credit Insurance Review – Project Irish" prepared by Lockton dated 20 April 2020 [WOC.0001.0004.1889].

56. On 22 April 2020, White Oak sought specific advice from Lockton as to whether the Policy would cover fraud committed by LCL or GCUK.

Particulars

Email from J Paulson JR to H Hepburn and M Georgescu dated 22 April 2020 [WOC.0001.0015.1226].

57. In the premises of the matters pleaded at paragraphs 24 to 33, and 56, as at 22 April 2020, White Oak was concerned about the possibility of fraud being committed by LCL or GCUK, and the impact that this might have on its ability to claim under the Policy.

58. Notwithstanding White Oak's concerns about these matters, it proceeded with the transaction and to acquire the Payment Obligations.

59. On 25 April 2020, White Oak sought from GCUK, but GCUK declined to provide:

(a) confirmation that GCUK would provide to White Oak copies of all insurance reporting packages actually submitted to insurers for compliance;

(b) a representation from GCUK prior to every White Oak purchase of Payment Obligations that:

i. GCUK was up-to-date on insurance reporting;

ii. both LCL and current account debtors being offered were not on GCUK's "Watch List"; and

iii. no debtors were more than 10 days past due;

(c) an amendment to clause 9.7 of the Policy so as to include the following at the end of the second section:

…or any failure by the Servicer to provide any information or material to the Insurer.

Particulars

Email exchange between Richard Kohn (Goldberg Kohn) and John Whelan dated 25 April 2020 [WOC.0001.0004.2462].

60. White Oak did not request, and did not receive, a copy of GCUK's monthly insurance reporting under cl 9.3(a) of the Policy, or of GCUK's "Watch List", as that term is defined in the Policy.

61. On 27 April 2020, White Oak was advised by Lockton that the items contained at paragraph 59(a) and (b) were important to verify White Oak's interest in the Policy and that proceeding with the transaction notwithstanding GCUK's unwillingness to provide those items was a "commercial decision" for White Oak.

Particulars

Email exchange between Richard Kohn (Goldberg Kohn) and John Whelan dated 25 April 2020 [WOC.0001.0004.2462].

62. White Oak was aware that there was a risk that it would suffer a shortfall in the event that it became necessary to claim under the Policy but did not take any steps to hedge or mitigate that risk.

Particulars

Deed of Indemnity granted by GCUK in favour of White Oak dated 29 April 2020 [WOC.0001.0007.2519]

Witness Statement of Thomas Kevin Otte dated 6 March 2025 in the EWHC Marsh Proceedings [WOC.0010.0015.0046]

Transcript of the EWHC Marsh Proceedings, Day 3, T19:7-8 [CSA.0001.0011.8891].

63. In the premises of the matters pleaded at paragraphs 54 to 62 of this Annexure, White Oak knew, or alternatively should have known, that there was a prospect that:

(a) GCUK was not up-to-date on insurance reporting;

(b) both LCL and current account debtors being offered were on GCUK's "Watch List" as that term is defined in the Policy; and

(c) there were debtors that were more than 10 days past due,

and that such matters would impact coverage under the Policy.

64. IAL repeats and relies upon the matters contained at paragraphs 40 and 49 of this Annexure and says that, as at 7 July 2020, White Oak had knowledge that any loss arising from the alleged Trafigura Payment Obligations, which it knew were not capable of supporting an "accounts receivable" arrangement with LCL, was not covered under the Policy.

Particulars

Email exchange between D Altieri and P Thompson dated 7 July 2020 [WOC.0001.0021.2411].

65. Despite having the knowledge referred to at paragraph 64, White Oak took no steps to verify that other Payment Obligations were not affected by the same or similar matters affecting the Trafigura Payment Obligations.

66. In the premises of paragraphs 54 to 65, White Oak knew, or alternatively should have known, of matters that would preclude, or seriously prejudice, its entitlement to indemnity under the Policy.

H. CHARACTERISATION AS LOSS PAYEE

67. As at 10 February 2020, White Oak was aware that if it were merely a loss payee under an insurance policy, that status might impact its ability to, and the manner in which it might, claim under the policy.

Particulars

Email from Donnie DiCarlo (BPL Global) to Phillip Neal dated 10 February 2020 [WOC.0001.0006.9792].

68. On 20 April 2020, White Oak received advice from Lockton on the Policy observing the need for compliance with the Policy by an insured was a customary risk when White Oak was a loss payee only, rather than the Insured under the Policy.

Particulars

"Trade Credit Insurance Review – Project Irish" prepared by Lockton dated 20 April 2020 [WOC.0001.0004.1889].

69. On 23 April 2020, White Oak placed a memo before the WOGA Investment Committee that mischaracterised the advice given by Lockton in respect of the proposal that it be loss payee in that:

(a) the memo placed before the WOGA Investment Committee stated that Lockton "feels 'Loss Payee' should provide [White Oak] with sufficient rights"; and

(b) Lockton had not, in fact, provided that advice.

Particulars

Investment Recommendation – Credit Memo – Project Irish dated 23 April 2020 [WOC.0001.0003.9615].

"Trade Credit Insurance Review – Project Irish" prepared by Lockton dated 20 April 2020 [WOC.0001.0004.1889].

70. On 28 April 2020, the WOGA Investment Committee approved entry into the Loss Payee Endorsement on the proviso that White Oak would execute a side letter with GCUK that GCUK would use its best efforts to provide White Oak with its own insurance policy within 90 days of White Oak's initial purchase of Payment Obligations.

Particulars

Investment Committee Meeting – Project Irish – Update and Funding Approval Request [WOC.0001.0006.9601].

Transcript of the EWHC Marsh Proceedings, Day 2, T115:14-25, T116:1-25 [CSA.0001.0011.8890].

71. On 5 May 2020, White Oak reiterated to GCUK the importance of White Oak becoming an insured under the Policy, rather than a loss payee.

Particulars

Email from Mr Otte to Becci Miller dated 5 May 2020 [WOC.0001.0008.7093].

72. On 6 May 2020, GCUK provided White Oak with a draft policy whereby it was proposed that White Oak be the insured under a policy of insurance to be issued by BCC.

Particulars

Email from John Whelan to Mr Otte dated 6 May 2020, with attachments [WOC.0001.0012.3959, WOC.0001.0012.3960, WOC.0001.0012.3965, WOC.0001.0012.3967, WOC.0001.0012.3968]

73. On 6 May 2020, Mr Gupta and Mr Otte exchanged a WhatsApp message whereby Mr Gupta stated as follows:

Getting u your insurance policy in your own name.. now u better get me that billion

Particulars

WhatsApp exchange between Mr Gupta and Mr Otte dated 6 May 2020 [WOC.0001.0001.0245]

74. In the premises of paragraphs 67 to 73, White Oak:

(a) knew, or alternatively should have known, that White Oak's status as a loss payee may limit its right to claim under the Policy; and

(b) nevertheless decided not to enter into a policy proposed by GCUK pursuant to which it would be the named insured.

Particulars

Email exchange between Mr Whelan and Rehana Box (Ashurst) dated 23 May 2020 [AGB.0002.0010.0373].

WhatsApp exchange between Mr Greensill and Mr Otte dated 26 May 2020 [WOC.0002.0001.0051].

Transcript of the EWHC Marsh Proceedings, Day 3, T30:8-14 [CSA.0001.0011.8891].

Credit memo to White Oak UK Credit Committee dated 10 July 2020 [WOC.0001.0007.7441]