# NOTICE OF FILING

**Details of Filing**

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| Registry: | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA |




Registrar

**Important Information**

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

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

Form 17
Rule 8.05(1)(a)

# Further Amended Statement of cross-claim

No. NSD 106 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations National Practice Area

**CREDIT SUISSE VIRTUOSO SICAV-SIF IN RESPECT OF THE SUB-FUND – CREDIT SUISSE (LUX) SUPPLY CHAIN FINANCE FUND**

Applicant

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

Respondents

**MARSH LIMITED**

Cross-claimant

**BCC TRADE CREDIT PTY LTD (ACN 608 296 233)** and others named in the schedule

Cross-respondents

## PARTIES

1. The cross-claimant, Marsh Limited (**Marsh**) is, and was at all material times:

   (a) a company incorporated under the laws of England and Wales and able to sue in its own corporate name and style; and

   (b) a provider of insurance brokerage services, including in relation to trade credit insurance.

2. The first cross-respondent, BCC Trade Credit Pty Ltd (**BCC**):

   (a) is a company incorporated under the laws of Australia on 17 September 2015 and able to be sued in its own corporate name and style;


Filed on behalf of (name & role of party) Marsh Limited, Cross-claimant
Prepared by (name of person/lawyer) ~~Paul Reidy~~Lucas Wilk
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(b) was, at all material times from 1 August 2017 up to and including 30 June 2019, an agent, Authorised Representative for the purposes of Part 7.6 of the *Corporations Act 2001* (Cth) (**Corporations Act**) and a representative, within the meaning of the definition of "representative" in section 9 of the Corporations Act, of Insurance Australia Limited (ACN 000 016 722) (**IAL**) in respect of the arrangement, entry into, binding and administration of insurance policies by IAL;

(c) was, at all material times on and after 1 July 2019, an agent or representative, within the meaning of the definition of "representative" in section 9 of the Corporations Act, of IAL in respect of the arrangement, entry into, binding and administration of insurance policies by IAL; and

(d) was, at all material times on and after 1 July 2019, an agent, Authorised Representative for the purposes of Part 7.6 of the Corporations Act and a representative, within the meaning of the definition of "representative" in section 9 of the Corporations Act, of Tokio Marine & Nichido Fire Insurance Co., Ltd (**TMNF**) in respect of the arrangement, entry into, binding and administration of insurance policies by TMNF.

3. The second cross-respondent, Mr Greg Brereton (**Brereton**), was employed by BCC, or alternatively the Bond and Credit Company Pty Ltd, as BCC's Head of Trade Credit in the period from around July 2016 to on or about 8 July 2020.

4. The third cross-respondent, IAL, is, and was at all material times:

(a) a company incorporated under the laws of Australia and able to be sued in its own corporate name and style; and

(b) in the business of issuing general insurance products in Australia.

5. The fourth cross-respondent, TMNF, is, and was at all material times:

(a) a foreign registered company incorporated under the laws of Japan and able to be sued in its own corporate name and style;

(b) the holder of an Australian Financial Services Licence (licence number 246548);

(c) authorised to underwrite insurance by the Australian Prudential Regulation Authority; and

(d) conducting business in Australia within the meaning of section 5 of the *Competition and Consumer Act 2010* (Cth) (**Competition and Consumer Act**) and section

12AC(1) of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**).

**Particulars**

TMNF became a foreign registered entity in Australia on 18 October 1963 under the name Tokio Marine & Fire Insurance Co Ltd.

On and from 19 October 2004, TMNF was known as Tokio Marine & Nichido Fire Insurance Co., Ltd.

Letter from Tokio Marine Management (Australia) Pty Ltd (**TMMA**) titled 'To Whom It May Concern' dated 21 October 2019 (BCC.0001.0003.4434).

The insurance underwritten by TMNF in Australia was in part carried out by personnel engaged or employed by TMMA, a company incorporated under the laws of Australia, acting at the direction of TMNF, including in relation to the invoicing and receipt of premia payable by GCUK and/or GCPL to TMNF.

6. The fifth cross-respondent, TMMA, is, and was at all material times:

   (a) a company incorporated under the laws of Australia and able to be sued in its own corporate name and style;

   (b) a wholly owned subsidiary of TMNF; and

   (c) since 20 October 2004, the Australian managing agent of TMNF.

**OTHER RELEVANT ENTITIES**

7. Greensill Capital (UK) Limited (**GCUK**):

   (a) is a company incorporated under the laws of England and Wales; and

   (b) on or about 8 March 2021, applied under section 124 of the *Insolvency Act 1986* (UK) to be wound up on the basis that it was unable to pay its debts for the purposes of section 122(1)(f) of that Act.

8. Greensill Bank AG (**Greensill Bank**):

   (a) is incorporated under the laws of Germany; and

   (b) since on or about 16 March 2021, has been the subject of insolvency proceedings under the German Insolvency Code of 5 October 1994.

9. On or about 16 March 2021, Dr Michael Frege was appointed as an insolvency administrator to Greensill Bank.

10. Greensill Capital Pty Ltd (**GCPL**) is a company incorporated under the laws of Australia.

11. At all material times, Greensill Bank, GCUK and GCPL were part of a group of companies known as the "Greensill Group", some of which provided supply chain financing to industrial companies and other customers.

12. Credit Suisse Virtuoso SICAV-SIF (**Credit Suisse Virtuoso**):

   (a) is a Société Anonyme company incorporated under the laws of Luxembourg; and

   (b) on or about 4 March 2021, terminated the Credit Suisse (Lux) Supply Chain Finance Fund.

**INSURANCE POLICIES ISSUED BY BCC**

13. On or about 15 June 2018, BCC, as agent for or Authorised Representative or representative of IAL, issued to GCPL and Greensill Bank a policy of trade credit insurance titled "Comprehensive Trade Credit Insurance Policy", bearing policy number TB-03690 and unique market reference B0509FINCW1800045, with a policy period of 27 December 2017 to 27 December 2018 (**2018 Policy**).

**Particulars**

The 2018 Policy, as issued, comprised a schedule titled "Risk Details" and policy wording titled "Wording and Clauses".

Email from Brereton to Ewan Berkemeier of Marsh and John Whelan of GCUK dated 15 June 2018 attaching the 2018 Policy executed by Brereton on behalf of BCC (BCC.0001.0004.1356).

Email from scf@greensill-bank.com to Sandra Zech and Dirk Klapschinski of Greensill Bank dated 25 June 2018, attaching the 2018 Policy executed by Brereton on behalf of BCC and Jutta

Baalmann and another on behalf of Greensill Bank on 20 June 2018 (GBA.0004.0020.5934).

14. On or about 17 September 2018, BCC, as agent for or Authorised Representative or representative of IAL, entered into Endorsement 1 in relation to the 2018 Policy which extended the policy period to 1 March 2019.

**Particulars**

Endorsement 1 signed for and on behalf of IAL by BCC as Corporate Authorised Representative of IAL (TOK.001.00124324).

15. On or about 13 March 2019, BCC, as agent for or Authorised Representative or representative of IAL, issued to GCPL and Greensill Bank a policy of trade credit insurance titled “Comprehensive Trade Credit Insurance Policy”, bearing policy number TB-03690 and unique market reference B0509FINCW1900009, with a policy period of 22 February 2019 to 1 March 2020 (**2019 Policy**).

**Particulars**

The 2019 Policy, as issued, comprised a schedule titled "Risk Details" and policy wording titled "Wording and Clauses".

Email from Brereton to Edward Smith and Ewan Berkemeier of Marsh dated 13 March 2019 attaching the 2019 Policy executed by Brereton (BCC.0001.0002.2779).

16. On or about 27 June 2019, BCC, as agent for or Authorised Representative or representative of IAL, entered into Endorsement 18 in relation to the 2019 Policy which extended the policy period to 1 March 2021.

**Particulars**

Email from Brereton to Angus Ward and Edward Smith of Marsh dated 27 June 2019 attaching an executed copy of Endorsement 18 (AGB.0002.0004.0521).

Endorsement 18 signed for and on behalf of the Insurer by BCC as Corporate Authorised Representative of IAL (AGB.0002.0004.0522).

17. Marsh provided insurance brokerage services to GCUK and Greensill Bank in relation to the placement of the 2018 Policy and 2019 Policy.

**Particulars**

Marsh refers to and repeats subparagraph 10AC(b) of its Defence to the Catfoss SOC defined in paragraph 19~~18~~ below (**Marsh Catfoss Defence**).

18. IAL entered into a series of Debt Endorsements, Customer Endorsements, Loss Payee Endorsements and other endorsements in relation to the 2019 Policy.

**Particulars**

Marsh refers to and repeats ~~the matters alleged in~~ paragraphs 41 to 43B and sections G.3, G.3A, G.3B and~~,~~ G.4 ~~and G.5~~ of the Marsh Catfoss Defence~~Eighth Amended Statement of Claim dated 7 January 2026 and filed in this proceeding (**Catfoss SOC**)~~.

19. For the purposes of this cross-claim only and without admission, if the allegations pleaded in sections G.3 and G.3A of the Ninth Amended Statement of Claim dated 20 July 2026 and filed in this proceeding (**Catfoss SOC**) are established, Credit Suisse Virtuoso was endorsed as a Loss Payee under the 2019 Policy.

**Particulars**

Marsh refers to and repeats the matters alleged in sections G.3 and G.3A of the Catfoss SOC.

**CLAIMS MADE BY CREDIT SUISSE**

**Claims against Marsh**

20. In this proceeding, Credit Suisse Virtuoso has alleged, relevantly, that:

(a) Marsh made representations regarding BCC's and Brereton's authority to agree the terms of, and enter into, the 2018 Policy and 2019 Policy (including the endorsements referred to in paragraphs 18 and 19 herein) that were materially

misleading, in contravention of section 1041E(1) of the *Corporations Act 2001* (Cth) (**Marsh 1041E Claim**);

**Particulars**

Marsh refers to and repeats the matters alleged in section N.8 of the Catfoss SOC.

(b) Marsh made negligent misstatements regarding BCC's and Brereton's authority to agree the terms of, and enter into, the 2018 Policy and 2019 Policy, in breach of a duty of care that Marsh is said to have owed to Credit Suisse under the law of England and Wales (**Marsh Negligent Misstatement Claim**); and

**Particulars**

Marsh refers to and repeats the matters alleged in sections N.3 and N.4 of the Catfoss SOC.

(c) Marsh:

(i) failed to exercise reasonable skill and care to obtain a policy of trade credit insurance that provided for Credit Suisse as a loss payee and holder of Insured Notes (as defined in subparagraph 106EE(b) of the Catfoss SOC); and

(ii) failed to inform Credit Suisse of certain matters regarding BCC's and Brereton's authority to agree the terms of, and enter into, the 2018 Policy, 2019 Policy and/or new policies of trade credit insurance, or alternatively, failed to cease sending to Credit Suisse the documents referred to in the Catfoss SOC as the "Limit Confirmation Trackers" and "Limit Confirmation Letters",

in breach of a duty of care that Marsh is said to have owed to Credit Suisse under the law of England and Wales (**Marsh Negligence Claims**).

**Particulars**

Marsh refers to and repeats the matters alleged in sections N.3, N.5 and N.7 of the Catfoss SOC.

**Claims against BCC and Brereton**

21. In this proceeding, Credit Suisse has alleged, relevantly, that BCC and Brereton (as the case may be) engaged in conduct in relation to the 2018 Policy and 2019 Policy (including the endorsements referred to in paragraphs 18 and 19 herein) that:

    (a) [not used]~~was in breach of certain warranties of authority that BCC and Brereton are alleged to have provided to Credit Suisse;~~

    (b) was misleading or deceptive or was likely to mislead or deceive, in contravention of section 12DA of the ASIC Act, sections 1041H and 1041E of the Corporations Act and/or section 18 of Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**);

    (c) involved the commission of the tort of deceit; and

    (d) was in breach of a duty of care that BCC is alleged to have owed to Credit Suisse.

**Particulars**

Marsh refers to and repeats the matters alleged in sections ~~L.2,~~ L.3, L.4, L.5, M.2, and M.3 of the Catfoss SOC.

22. For the purposes of this cross-claim only and without admission, if the allegations pleaded against BCC and Brereton (as the case may be) in sections ~~L.2,~~ L.3, L.4, L.5, M.2, and M.3 of the Catfoss SOC are established, each of BCC and Brereton is liable to Credit Suisse as a joint tortfeasor in respect of the same loss or damage as the loss or damage in respect of which Marsh is alleged to be liable to Credit Suisse.

**Claims against IAL**

23. In this proceeding, Credit Suisse has alleged, relevantly, that IAL engaged in conduct in relation to the 2019 Policy and endorsements that was:

    (a) misleading or deceptive or was likely to mislead or deceive, in contravention of section 1041H of the Corporations Act, section 12DA of the ASIC Act and/or section 18 of the Australian Consumer Law; and

    (b) in breach of a duty of care that IAL is allegedsaid to have owed to Credit Suisse Virtuoso.

**Particulars**

Marsh refers to and repeats the matters alleged in sections M.2~~,~~ ~~M.2A~~ and M.3 of the Catfoss SOC.

24. Marsh refers to and repeats the allegations pleaded against IAL in:

(a) paragraph 102I~~H~~ of BCC's Defence to Catfoss SOC dated 4~~3~~ August~~March~~ 2026 and filed in this proceeding (**BCC Catfoss Defence**); and

(b) subparagraphs 111(g) to (j) of the Marsh Catfoss Defence.

25. For the purposes of this cross-claim only and without admission, if the allegations pleaded against IAL in sections M.2~~, M.2A~~ and M.3 of the Catfoss SOC, paragraph 102I~~H~~ of the BCC Catfoss Defence and/or subparagraphs 111(g) to (j) of the Marsh Catfoss Defence are established, IAL is liable to Credit Suisse as a joint tortfeasor in respect of the same loss or damage as the loss or damage in respect of which Marsh is alleged to be liable to Credit Suisse.

26. Further, by reason of the matters pleaded in subparagraphs 2(b) and (c) herein, and by the operation of sections 917B or 917C, and 917E of the Corporations Act, IAL is responsible for the conduct that is alleged against its agents or representatives, BCC and Brereton, in sections ~~L.2,~~ L.3, L.4, L.5, M.2, and M.3 of the Catfoss SOC and is liable to Credit Suisse in respect of any loss or damage suffered as a result of BCC's and Brereton's conduct.

27A. Further or alternatively, by reason of the operation of section 769B(1) of the Corporations Act and/or section 12GH(2) of the ASIC Act, the conduct of BCC pleaded in sections M.2 and M.3 of the Catfoss SOC was the conduct of IAL, such that IAL is liable to Credit Suisse in respect of any loss or damage suffered as a result of BCC's conduct.

**Particulars**

Marsh refers to and repeats the matters set out in paragraph 106N(a) and/or 106DDA(a) of the Catfoss SOC.

27. Further or alternatively, by the operation of sections 917B or 917C, and 917E, of the Corporations Act and/or the general law, the conduct alleged against BCC and Brereton in sections ~~L.2,~~ L.3, L.4, L.5, M.2, and M.3 of the Catfoss SOC was the conduct of IAL, so as to make IAL jointly liable with BCC and Brereton for that conduct.

28. In the premises pleaded in paragraphs 23 to 027 herein, for the purposes of this cross-claim only and without admission, if the allegations pleaded in sections ~~L.2,~~ L.3, L.4, L.5, M.2, and M.3 of the Catfoss SOC are established, IAL is liable to Credit Suisse Virtuoso as a joint tortfeasor in respect of the same loss or damage as the loss or damage in respect of which Marsh is alleged to be liable to Credit Suisse Virtuoso.

**Claims against TMNF and TMMA**

29. In this proceeding, Credit Suisse Virtuoso has alleged, relevantly, that TMNF and TMMA engaged in conduct in relation to the 2019 Policy and endorsements that was:

(a) misleading or deceptive or was likely to mislead or deceive, in contravention of section 1041H of the Corporations Act, section 12DA of the ASIC Act and/or section 18 of the Australian Consumer Law; and

(b) in breach of a duty of care that each of TMNF and TMMA is alleged to have owed to Credit Suisse Virtuoso.

**Particulars**

Marsh refers to and repeats the matters alleged in sections M.2 and M.3 of the Catfoss SOC.

30. Marsh refers to and repeats the allegations pleaded against TMNF and TMMA in:

(a) subparagraphs 102C(v) and 102C(w) of the IAL's Defence to the Ninth~~Seventh~~ Amended Statement of Claim dated 28~~31~~ July 2026~~5~~ and filed in this proceeding (**IAL Catfoss Defence**); and

(b) subparagraphs 112(g) to (i) of the Marsh Catfoss Defence.

31A. For the purposes of this cross-claim only and without admission, if the allegations pleaded against TMNF and TMMA in subparagraph 104C(v) and 102C(w) of the IAL Catfoss Defence and subparagraphs 112(g) to (i) of the Marsh Catfoss Defence are established, TMNF and TMMA are liable to Credit Suisse Virtuoso as a joint tortfeasor in respect of the same loss or damage as the loss or damage in respect of which Marsh is alleged to be liable to Credit Suisse Virtuoso.

31. Further, by reason of the matters pleaded in subparagraph 2(d) herein, and by the operation of sections 917B or 917C, and 917E of the Corporations Act, TMNF is responsible for the conduct that is alleged against its agents and representatives, BCC and Brereton, in sections ~~L.2,~~ L.3, L.4, L.5, M.2 and M.3 of the Catfoss SOC (to the extent

that the conduct occurred after 1 July 2019) and is liable to Credit Suisse Virtuoso in respect of any loss or damage suffered as a result of BCC's and Brereton's conduct.

32A. Further or alternatively, by reason of the operation of section 769B(1) of the Corporations Act and/or section 12GH(2) of the ASIC Act, the conduct of BCC pleaded in sections M.2 and M.3 of the Catfoss SOC was the conduct of TMNF, such that TMNF is liable to Credit Suisse in respect of any loss or damage suffered as a result of BCC's conduct.

**Particulars**

Marsh refers to and repeats the matters set out in paragraph 106N(b) and/or 106DDA(b) of the Catfoss SOC.

32. Further or alternatively, by the operation of sections 917B or 917C, and 917E of the Corporations Act and/or the general law, the conduct alleged against BCC and Brereton in sections ~~L.2,~~ L.3, L.4, L.5, M.2 and M.3 of the Catfoss SOC (to the extent that the conduct occurred after 1 July 2019) was the conduct of TMNF, so as to make TMNF jointly liable with BCC and Brereton for that conduct.

33. In the premises pleaded in paragraphs 29 to 0~~32~~ herein, for the purposes of this cross-claim only and without admission, if the allegations pleaded in sections ~~L.2,~~ L.3, L.4, L.5, M.2 and M.3 of the Catfoss SOC, subparagraphs 102C(v) and 102C(w) of the IAL Catfoss Defence and/or subparagraphs 112(g) to 112(i) of the Marsh Catfoss Defence are established, each of TMNF and TMMA is liable to Credit Suisse Virtuoso as a joint tortfeasor in respect of the same loss or damage as the loss or damage in respect of which Marsh is alleged to be liable to Credit Suisse Virtuoso.

**CLAIMS FOR CONTRIBUTION**

34. For the purposes of this cross-claim only, and without admission:

(a) if Marsh is held to be liable to Credit Suisse Virtuoso in respect of the Marsh 1041E Claim (which is denied);

(b) if any or all of the Marsh Negligent Misstatement Claim and Marsh Negligence Claims are held not to be an "apportionable claim" within the meaning of s 34 of the *Civil Liability Act 2002* (NSW) (**CLA**) (which is denied); or

(c) if Marsh is held to be liable to Credit Suisse Virtuoso in respect of any or all of the Marsh Negligent Misstatement Claim and Marsh Negligence Claims (which is denied),

then, in the premises pleaded in paragraphs 20 to 33 herein, and pursuant to section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW), Marsh is entitled to recover contribution from BCC, Brereton, IAL, TMNF and TMMA in such amount as may be found by the Court to be just and equitable, having regard to the extent of BCC's, Brereton's, IAL's, TMNF's and TMMA's responsibility for the loss and damage suffered by Credit Suisse Virtuoso.

35. Further or alternatively, for the purposes of this cross-claim only, and without admission:

(a) if Marsh is held to be liable to Credit Suisse Virtuoso in respect of the Marsh 1041E Claim (which is denied);

(b) if any or all of the Marsh Negligent Misstatement Claim and Marsh Negligence Claims are held not to be an "apportionable claim" within the meaning of s 34 of the CLA (which is denied); or

(c) if Marsh is held to be liable to Credit Suisse Virtuoso in respect of any or all of the Marsh Negligent Misstatement Claim and Marsh Negligence Claims (which is denied),

then, in the premises pleaded in paragraphs 20 to 33 herein:

(d) the conduct of BCC, Brereton, IAL, TMNF and TMMA caused the same loss and damage to Credit Suisse Virtuoso as that allegedly caused by Marsh in respect of the Marsh 1041E Claim, Marsh Negligent Misstatement Claim and/or Marsh Negligence Claims;

(e) BCC, Brereton, IAL, TMNF and TMMA are co-ordinately liable with Marsh to Credit Suisse Virtuoso in respect of any such loss or damage; and

(f) Marsh is entitled to recover contribution from BCC, Brereton, IAL, TMNF and TMMA in equity in respect of any liability Marsh is held to have to Credit Suisse Virtuoso in respect of the Marsh 1041E Claim, Marsh Negligent Misstatement Claim and/or Marsh Negligence Claims.

Date: ~~23~~ 14~~March~~ August 2026

Signed by ~~Paul Reidy~~Lucas Wilk
Lawyer for the Cross-claimant

This pleading was prepared by I Ahmed SC, R A Jedrzejczyk, ~~and~~ A Hammond and Christopher Chiam of counsel.

## Certificate of lawyer

I, ~~Paul Reidy~~Lucas Wilk, certify to the Court that, in relation to the Statement of Cross-claim filed on behalf of the Cross-claimant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 14~~23~~ August~~March~~ 2026

Signed by ~~Paul Reidy~~Lucas Wilk
Lawyer for the Cross-claimant

**SCHEDULE**

No. NSD 106 of 2022

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations National Practice Area

Greensill Bank AG

**Second Respondent**

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

**Third Respondent**

BCC Trade Credit Pty Ltd

**Fourth Respondent**

Greg Brereton

**Fifth Respondent**

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)

**Sixth Respondent**

Tokio Marine & Nichido Fire Insurance Co., Ltd (ARBN 000 438 291)

**Seventh Respondent**

Marsh Limited

**Eighth Respondent**

**CROSS CLAIM**

Greg Brereton

**Second Cross-Respondent**

Insurance Australia Limited (ACN 000 016 722)

**Third Cross-Respondent**

Tokio Marine & Nichido Fire Insurance Co., Ltd (ACN 000 438 291)

**Fourth Cross-Respondent**

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)

**Fifth Cross-Respondent**