NOTICE OF FILING

Details of Filing

Document Lodged:	Reply - Form 34 - Rule 16.33
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	7/10/2025 1:55:35 PM AEDT
Date Accepted for Filing:	7/10/2025 1:55:38 PM AEDT
File Number:	NSD602/2023
File Title:	GREENSILL BANK AG & ANOR v INSURANCE AUSTRALIA LIMITED & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

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

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

Form 34
Rule 16.33

Amended Reply

No. NSD 602 of 2023

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

Greensill Bank AG
First Applicant

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

Insurance Australia Limited ACN 000 016 722 and others according to the Schedule
First Respondent

The applicants make the following reply to the defence of the first respondent (**IAL**) filed ~~22 September 2023~~15 July 2025 (the **IAL Defence**), the defence of the second respondent (**BCC**) filed ~~26 September 2023~~16 May 2025 (the **BCC Defence**), ~~and~~ the defence of the third respondent (**Brereton**) filed ~~3 October 2023~~23 June 2025 (the **Brereton Defence**), the defence of the fourth respondent (**TMNF**) filed 16 May 2025 (the **TMNF Defence**), and the defence of the fifth (**Marsh Pty Ltd**) and sixth respondents (**Marsh**) filed 20 June 2025 (the **Marsh Defence**), adopting the defined terms in the Fifth Amended Statement of Claim filed 11 June 2025 (**5ASOC**) unless otherwise indicated:

1. In reply to paragraph 33(a) of the IAL Defence, the applicants:

    a. say that it was a term of the CGU AAR Agreement that it was not terminable for convenience before 28 July 2021 and, after that date, only upon at least 12 months' written notice; and

Particulars

Filed on behalf of (name & role of party)	Greensill Bank AG and Michael C. Frege in his capacity as Insolvency Administrator for Greensill Bank AG, applicants
Prepared by (name of person/lawyer)	Michelle Fox
Law firm (if applicable)	Quinn Emanuel Urquhart & Sullivan
Tel (02) 9146 3666	Fax (02) 9146 3600
Email michellefox@quinnemanuel.com	
Address for service (include state and postcode)	Level 15, 111 Elizabeth Street, Sydney, NSW, 2000

Clause 17.1 of the CGU AAR Agreement.

b. otherwise deny the paragraph.

2. In reply to paragraphs 40(a) and 41 of the IAL Defence, the applicants:

a. say that the iterations of the Bordereau that BCC provided to IAL repeatedly identified that Policy TB-05370 (being the same policy number as the "Master Policy" as defined by Policy 5369) was issued to Greensill Capital Pty Limited;

Particulars

The applicants refer to their particulars provided by letter of 20 October 2023 and rely on at least the iterations of the Bordereau with the document IDs:

~~IAG.0000033021.0001, IAG.0000033021.0001, IAG.0000033022.0001, IAG.0000033024.0001, IAG.0000033035.0001, IAG.0000033036.0001, IAG.0000033043.0001, IAG.0000033048.0001, IAG.0000033050.0001, IAG.0000033051.0001, IAG.0000033056.0001, IAG.0000033060.0002, IAG.0000033065.0001, IAG.0000033081.0001, IAG.0000310981.0001.0002 and IAG.0000296745.0001.0001~~.

IAL.500.001.0173, IAL.500.001.0175, IAL.500.001.0180, IAL.500.001.0202, IAL.500.001.0204, IAL.500.001.0213, IAL.500.001.0218, IAL.500.008.0387, IAL.500.001.0266, IAL.500.001.0233, IAL.500.001.0235, IAL.500.001.0242, BCC.0001.0003.4806, IAL.500.001.0247, BCC.0001.0005.9328, BCC.0001.0005.9317, BCC.0001.0003.4993, BCC.0001.0003.5412, BCC.0001.0005.9217, BCC.0001.0003.5117, BCC.0001.0005.8591.

Further particulars may be provided following discovery.

b. in the premises, say that:

i. IAL was or ought to have been aware of the wording and clauses of Policy TB-05370;

ii. IAL was or ought to have been aware that IAL (through its Corporate Authorised Representative, BCC):

1. had agreed to insure GCUK under Policy TB-05370, being a non-Australian domiciled entity;

2. had agreed to a Maximum Limit of Liability of EUR 2,200,000,000; and/or

Particulars

Schedule 6 of Policy TB-05370.

3. had also issued Policy 5369 and that Greensill Capital Pty Limited and Greensill Bank AG were the insureds under Policy 5369; and

Particulars

Schedule 6 of Policy TB-05370.

c. otherwise deny the paragraphs.

3. In reply to paragraphs A6(e), A7, 43, ~~65~~66A(d)(ii)(C), 66A~~5~~(e)(iii)(C), 66A~~5~~(j), 89(f)(iv)-(v), 97(k)(v)-(vi), 165(g)(iv)-(v), ~~and~~ 168(f)(iv)-(vii), 170(b) (as regards the application of 89(f)(iv)-(v) mutatis mutandis to the Debt Endorsement), 177(b) (as regards the application of 97(k)(v)-(vi) mutatis mutandis to the Limit Endorsement), and 179(f)(i) (as regards the application of 168(f)(iv)-(vii) mutatis mutandis to the Collective Endorsements) of the IAL Defence, the applicants:

a. say that Schedule 5 of Policy 5370 provided for the calculation of premium in respect of Assets owned by Greensill Bank (as an Insured Participant) that derived from Debts owed by a Customer that Greensill Bank wished to be insured under a Parallel Policy, such as Policy 5369;

b. say that for each relevant Endorsement issued under Policy 5369, a companion Endorsement was issued under Policy 5370;

c. say that premiums were paid to IAL in respect of Policy 5370 and each Endorsement to Policy 5370;

d. say that premiums are recorded as having been paid to IAL in respect of Policy 5370 and each Endorsement to Policy 5370 in the Bordereau in respect of the Endorsements to Policy 5370, which Endorsements mirrored the Endorsements issued in respect of the Parallel Policy, Policy 5369;

e. say that the premiums paid to IAL in respect of Policy 5370 were paid on the mutual assumption that those premiums formed part of the consideration for IAL's entry into Policy 5369 in reliance on which understanding Greensill Bank proceeded to expose itself to the risk of losses covered by Policy 5369; and

f. in the premises, say that:

i. the premiums collected by BCC and remitted to IAL in relation to Policy 5370 formed part of the consideration and premium for IAL's entry into Policy 5369 (including for the purposes of BCC's authority to enter into Policy 5369); and/or

ii. IAL is estopped from denying the matter pleaded in subparagraph (i) above; and

g. otherwise deny the paragraphs.

4. In reply to paragraph 222(c)(ii) in each of the BCC Defence and TMNF Defence, the applicants:

a. say that if, which is denied, the BCC Authority Representations were not in trade or commerce within the meaning of s 18 of the *Australian Consumer Law* by reason of the operation of s 131A of the *Competition and Consumer Act 2010* (Cth), then BCC's conduct in making the BCC Authority Representations was conduct in trade or commerce within the meaning of s 18 of the *Australian Consumer Law* as applied by:

i. s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

ii. s 28 of the *Fair Trading Act 1987* (NSW);

iii. s 16 of the *Fair Trading Act 1989* (Qld);

iv. s 19 of the *Fair Trading Act 2010* (WA);

v. s 14 of the *Fair Trading Act 1987* (SA);

vi. s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);

vii. s 27 of the *Consumer Affairs and Fair Trading Act 1990* (NT); and/or

viii. s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT),

(severally, or together, the **State Australian Consumer Laws**);

b. otherwise deny the paragraph.

5. In reply to paragraph 224 in each of the BCC Defence and TMNF Defence, the applicants:

   a. refer to and repeat paragraph 4 above;

   b. say further that if, which is denied, in making the BCC Authority Representations, BCC did not engage in conduct in contravention of s 18 of the *Australian Consumer Law* by reason of the operation of s 131A of the *Competition and Consumer Act 2010* (Cth), in making the BCC Authority Representations, BCC engaged in conduct in contravention of s 18 of the *Australian Consumer Law* as applied by the State Australian Consumer Laws;

   c. otherwise deny the paragraph.

6. In reply to paragraphs 241 and 243 of the Brereton Defence, the applicants:

   a. say that if, which is denied, the Brereton Authority Representations were not in trade or commerce within the meaning of s 18 of the *Australian Consumer Law* by reason of the operation of s 131A of the *Competition and Consumer Act 2010* (Cth), then Mr Brereton's conduct in making the Brereton Authority Representations was conduct in trade or commerce within the meaning of s 18 of the *Australian Consumer Law* as applied by State Australian Consumer Laws;

   b. say further that if, which is denied, in making the Brereton Authority Representations Mr Brereton did not engage in conduct in contravention of s 18 of the *Australian Consumer Law* by reason of the operation of s 131A of the *Competition and Consumer Act 2010* (Cth), in making the Brereton Authority Representations, Mr Brereton engaged in conduct in contravention of s 18 of the *Australian Consumer Law* as applied by the State Australian Consumer Laws;

   c. otherwise deny the paragraphs.

7. In reply to paragraphs ~~253~~ A5, A8A, A11A, A25, A26, 66A(f), 66A(g), 66A(h), 66A(i), 83G(o), 83G(q)-(r), 83P(i), 83Y(i), 83AH(i), 83AQ(i), 83AZ(i), 83BI(i), 83BS(i), 89(j), 97(f), 97(o), 165(k), 168(j), 170(b) (as regards the application of 89(j) mutatis mutandis to the Debt Endorsement), 177(b) (as regards the application of 97(f) mutatis mutandis to the Limit Endorsement), 179(f)(i) (as regards the application of 168(j) mutatis mutandis to the Collective Endorsements), 316, 322(q)(i)(A), 322(q)(i)(C)-(E) and Annexure A of the IAL Defence, paragraphs A, 68(c), 85(d), 102A(c), 170A, 170(c), 176A(d), 177(d), 184(j), 179B(a), 180B(a), 184(i), 215(c), 218(a)-(b), 220(a), 221(a), 227(b), 228(a), 228A(b), and 234 to 253 of the BCC ~~Defence~~ and TMNF Defences, ~~and~~ paragraphs 212~~(b) – (e)~~,

234, ~~253~~316, ~~254~~317(c) and ~~255~~ 318 of the Brereton Defence, and paragraphs 83E(a), 83E(d), 295(c), 324(b) and 322(c) of the Marsh Defence (and the remainder of those Defences to the extent that they rely on Annexure A and/or Annexure AA to the BCC Defence or the TMNF Defence or Annexure A to the IAL Defence), the applicants:

a. say that in respect of the placement of insurance (including Policy 5369 and its endorsements), none of GCUK, Greensill Capital Pty Limited (**GCPL**), Lex Greensill, ~~nor~~ John Whelan, Craig Pinnington nor Brett Downes was the agent of Greensill Bank;

a1. say that the communications referred to in paragraphs 66A(g), 83G(o) and 83G(r) of the IAL Defence were not sent by or on behalf of Greensill Bank;

b. say that if, which is not admitted, the Prior Misrepresentations and Non-Disclosures (as defined at paragraph 68(c) in each of the BCC Defence and TMNF Defence) and/or the "Prior misrepresentations and non-disclosures" (as set out in Annexure A to the IAL Defence) (collectively, the **Alleged Misrepresentations and Non-Disclosures**) were made or occurred, then by virtue of s 33 of the *Insurance Contracts Act 1984* (Cth) (**Insurance Contracts Act**):

   i. the only remedies available to IAL (or which would have been available to IAL) in respect of the ~~Prior~~ Alleged Misrepresentations and Non-Disclosures are those under s 28 of that Act (save to the extent that IAL agreed not to use those remedies);

   ii. IAL is not entitled (or would not have been entitled) to rely upon contractual remedies purportedly conferred by Policy 5369 (including in clauses 7.5(b), 9.7 and 15.4) in respect of the ~~Prior~~ Alleged Misrepresentations and Non-Disclosures;

c. deny that s 28 of the Insurance Contracts Act entitles (or would have entitled) IAL to exercise a right under s 28 against Greensill Bank in respect of a non-disclosure or misrepresentation by GCUK or ~~Greensill Capital Pty Limited~~GCPL, including by their officers and employees;

ca. say that if, which is denied, IAL is entitled (or would have been entitled) to avoid Policy 5369 for fraudulent failure to comply with the duty of disclosure or fraudulent misrepresentation, then by virtue of s 31 of the Insurance Contracts Act, the Court should disregard the avoidance and allow the Applicants to

recover the whole or such part of the loss in this proceeding as the court thinks just and equitable in the circumstances, on the basis and to the extent that:

i. it would be (or would have been) harsh and unfair not to do so; and

ii. IAL has not been (or would not have been) prejudiced (or alternatively, such prejudice is minimal or insignificant) by the relevant failure or misrepresentation;

d. say that IAL agreed with each Insured that the Servicer, GCUK, would not be treated as the agent of the Insured in respect of Policy 5369;

Particulars

The agreement is recorded in clause 7.5(a) of the Wording and Clauses document for Policy 5369.

e. say that if, which is denied, s 28 of the Insurance Contracts Act entitles (or would have entitled) IAL to exercise a right under s 28 against an Insured in respect of a non-disclosure or misrepresentation by GCUK, then IAL agreed not to exercise that right;

f. say that if, which is denied, the duty of disclosure imposed by s 21 of the Insurance Contracts Act on each Insured extended to matters known to the Servicer but not known to the Insured personally, then IAL waived compliance by the Insured with the duty of disclosure to that extent; and

g. otherwise deny the paragraphs.

8. In further reply to paragraphs ~~253~~ A25, 316, 319 and Annexure A of the IAL Defence, paragraphs A, 68(c), 85(d), 102A(c), 170A, 170(c), 176A(d), 177(d), 179B, 180B(a), 184(ji), 215(c), 218(a)-(b), 220(a), 221(a) , 227(b) 228(a), 228A(b), 234 to 252A, 253 and Annexure A in each of the BCC Defence and TMNF Defence ~~and 234 to 253 of the BCC Defence~~ and paragraphs 212, 234, ~~253~~316, ~~254(c)~~ and ~~255~~ 318 of the Brereton Defence (and the remainder of those Defences to the extent that they rely on Annexure A and/or Annexure AA to the BCC Defence, Annexure A and/or Annexure AA to the TMNF Defence or Annexure A of the IAL Defence), the applicants:

a. say that, as alleged in paragraph 7A of Annexure A of the applicants' defence to BCC's statement of cross-claim in proceedings no. NSD 1216/2021, by reason of the matters pleaded in its response to paragraphs 5 and 7 of Annexure A of that defence:

i. Greensill Bank, BCC and IAL have conducted their relationship on the basis of a mutual assumption that:

   1. BCC and IAL waived any duty of disclosure that Greensill Bank had in respect of Policy 5369, whether under the terms of Policy 5369 or under the Insurance Contracts Act;

   2. Greensill Bank generally did not have knowledge of information provided by GCUK to BCC and IAL, including in GCUK's capacity as "Servicer" under Policy 5369;

   3. Greensill Bank would not be ~~liable~~ responsible in respect of any information provided by GCUK to BCC and IAL (absent any fraud by Greensill Bank); and

   4. Greensill Bank would not have any obligation to investigate the information provided by GCUK to BCC and IAL;

ii. BCC and IAL intended for Greensill Bank to conduct itself on the basis of the assumption pleaded in sub-paragraph (i) above;

iii. Greensill Bank will suffer detriment if BCC or IAL is permitted to depart from the assumption pleaded at sub-paragraph (i) above; and

iv. in the premises, IAL, ~~and~~ BCC and TMNF (insofar as it is responsible for the conduct of BCC and Greg Brereton pursuant to s 917B, or alternatively s 917C, of the Corporations Act) are estopped from now departing from the assumption pleaded at sub-paragraph (i) above, including by making the allegations in paragraph ~~253~~A25, 316, 319 and Annexure A of the IAL Defence (insofar as the allegations of fact in that Annexure are relevant to this proceeding and do not allege fraud by Greensill Bank), paragraphs A, 68(c), 85(d), 102A(c), 170A, 170(c), 176A(d), 177(d), 179B, 180B, 184(ji), 215(c) ~~and 234 to 253~~, 227(b), 234 to 252A, 253 and Annexure A and/or Annexure AA in each of the BCC Defence and the TMNF Defence (insofar as the allegations of fact in that Annexure are relevant to this proceeding and do not allege fraud by Greensill Bank) and paragraphs 212, 234, 247, 252, ~~253~~316, ~~254~~317(c) and ~~255~~ 318 of the Brereton Defence (and the remainder of those Defences to the extent that they rely on Annexure A and/or Annexure AA to the BCC Defence, Annexure A and/or Annexure AA to the TMNF Defence or Annexure A of the IAL Defence, insofar as the allegations of fact in those Annexures are relevant to this proceeding and do not allege fraud by Greensill Bank);

b. otherwise deny the paragraphs.

8A. In further reply to paragraphs 252B(g)-(h), 252B(o)-(p), 252B(w)-(x), 252B(ee)-(ff), 252B(ll)-(mm), 252B(rr)-(ss), 252B(xx)-(yy) and 252B(eee)-(fff) of the Marsh Defence, the applicants:

a. deny that:

i. Greensill Bank is a party to or bound by any of the 2014, 2015, 2016, 2017, 2018, 2019, 2020 or 2021 Retainers between GCUK and Marsh;

ii. GCUK had actual or apparent authority to enter into any of the 2014, 2015, 2016, 2017, 2018, 2019, 2020 or 2021 Retainers between GCUK and Marsh, or to accept any of Marsh's 2013, 2015, 2016 or 2017 Terms of Engagement, on behalf of Greensill Bank;

iii. GCUK or Lex Greensill accepted Marsh's 2013, 2015, 2016 or 2017 Terms of Engagement on behalf of, or as agent for, Greensill Bank;

iv. GCUK or Lex Greensill acted on behalf of, or as agent for, Greensill Bank in relation to the provision of broking services by Marsh and Marsh Pty Ltd to Greensill Bank;

b. say that only members of the management board of Greensill Bank had the power to represent Greensill Bank in its business affairs or day-to-day management;

c. say that Marsh knew or ought to have known of the matter at subparagraph b. above, at all material times, because:

i. at all material times, the authorised representatives of Greensill Bank were publicly identified in Greensill Bank's filing with the Register of Companies at the Bremen Local Court and were known to Marsh because Marsh possessed an English translation of Greensill Bank's filing in its KYC file and, accordingly, had actual notice of its contents;

ii. each parallel insurance policy under which Greensill Bank was an insured:

1. was signed and executed by members of Greensill Bank's management board or Greensill Bank's authorised representatives, and not by any director or officer of GCUK;

2. expressly disavowed that GCUK was an agent of Greensill Bank in respect of those policies;

d. further or alternatively, say that:

i. by email dated 18 April 2018, Mr Macey-Dare of Marsh provided Greensill Bank with a draft of the 2018 Marsh GBAG Letter of Engagement;

ii. on 27 April 2018, the 2018 Marsh GBAG Letter of Engagement was executed by Jutta Baalmann and Markus Nunnerich as COO and CRO of Greensill Bank, respectively, not by any director or officer of GCUK;

iii. on and from 18 April 2018, alternatively 27 April 2018, Marsh knew or should have known that:

1. the 2018 Marsh GBAG Letter of Engagement constituted the "agreement" with Greensill Bank pursuant to which Marsh agreed "to supply the Services set out below";

2. the 2018 Marsh GBAG Letter of Engagement governed the relationship between Marsh and Greensill Bank "for an exclusive period of 12 months" from 1 March 2018 to 1 March 2019;

3. in circumstances where the 2018 Marsh GBAG Letter of Engagement exclusively governed the relationship between Greensill Bank and Marsh from 1 March 2018 to 1 March 2019, GCUK did not have authority to bind Greensill Bank to a separate retainer between GCUK and Marsh covering the same period as the 2018 Marsh GBAG Letter of Engagement;

e. by reason of the matters set out at sub-paragraphs a. to d. above:

i. say that at all material times, alternatively by no later than 18 or 27 April 2018, Marsh knew or should have known that GCUK did not have authority to bind Greensill Bank to the terms of a separate retainer between GCUK and Marsh;

ii. further or alternatively, by no later than 18 or 27 April 2018, Marsh:

1. was put on inquiry as to whether Greensill Bank had authorised GCUK to enter into retainers with Marsh for or on behalf of Greensill Bank;

2. failed to make such inquiries as a reasonable person would make in the circumstances, or any inquiries, to verify GCUK's authority to act on behalf of Greensill Bank (or to obtain satisfactory responses to any such inquiries);

3. therefore cannot rely on GCUK's alleged apparent authority to enter a retainer with Marsh on behalf of Greensill Bank;

f. say further that if, which is denied, Greensill Bank is bound by any or all of the 2014, 2015, 2016, 2017, 2018, 2019, 2020 or 2021 Marsh Retainers, or to any of the 2013, 2015, 2016 or 2017 Terms of Engagement:

i. Marsh's 2013, 2015, 2016 and 2017 Terms of Engagement constituted written standard terms of business for the purposes of section 3 of the *Unfair Contract Terms Act 1977* (UK) (**Unfair Contract Terms Act**);

ii. Marsh and Marsh Pty Ltd bear the onus of proving that the limitation of liability clause in the 2013, 2015, 2016 and 2017 Terms of Engagement satisfies the requirement of reasonableness under sections 2 and 3 of the Unfair Contract Terms Act;

iii. without prejudice to Greensill Bank's position that Marsh and Marsh Pty Ltd bear the onus of establishing reasonableness, Greensill Bank denies that any of the 2013, 2015, 2016 or the 2017 Terms of Engagement limited the liability of Marsh or Marsh Pty Ltd as pleaded in the Marsh Defence;

g. say further that if, which is denied, any or all of the 2014, 2015, 2016, 2017, 2018, 2019, 2020 or 2021 Marsh Retainers, or the 2013, 2015, 2016 or 2017 Terms of Engagement, limit the liability of Marsh or Marsh Pty Ltd to Greensill Bank, then such provisions are not enforceable if and to the extent they purport to exclude or limit the effect of s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and/or s 1014H(1) Corporations Act; and

h. otherwise deny the paragraphs.

8B. In further reply to paragraph 252C(f) of the Marsh Defence, the applicants:

a. deny that Greensill Bank entered into the 2018 Marsh GBAG Retainer for and on behalf of GCUK; and

b. otherwise deny the paragraphs.

8C. In reply to paragraph 279(d) of the Marsh Defence, the applicants:

a. say that, after 4 August 2020, Marsh continued to represent to Greensill Bank that BCC had authority to execute Policy 5369; and

Particulars

1. MAR.0003.0003.5484, GBA.0004.0004.3715, GBA.0004.0026.9265, AGB.0002.0001.3899, GBA.0004.0004.1492, AGB.0002.0001.4076.

2. Greensill Bank further relies on the Trackers (as defined in paragraph 262A of the Bluestone 6ASOC dated 12 June 2025 in NSD 602/2023) sent by Marsh to Greensill Bank after this date.

3. Further particulars may be provided prior to trial.

b. otherwise deny the paragraph.

9. In answer to paragraphs 89(f)(ii)-(iii), 97(k)(iii)-(iv), 165(g)(ii)-(iii), ~~and~~ 168(f)(ii)-(iii) and 170(b) (as regards the application of 89(f)(ii)-(iii) mutatis mutandis to the Debt Endorsement), 177(b) (as regards the application of 97(k)(iii)-(iv) mutatis mutandis to the Limit Endorsement), 179(f)(i) (as regards the application of 168(f)(i)-(iii) mutatis mutandis to the Collective Endorsements) of the IAL Defence and paragraphs 89(d)(ii), 97(d)(ii), 176A(c)(ii) and 177(c)(ii) in each of the BCC Defence and TMNF Defence, the applicants:

a. say that clause 15.3(a) of Policy 5369 stated that a variation to Policy 5369 by way of Endorsement was not required to be in writing signed by or on behalf of each party in order to comprise a valid variation of Policy 5369;

b. say that each of Endorsement 2, Endorsement 3, Limit Endorsement, the Delta HoldCo Customer Endorsements and the Further Delta HoldCo Customer Endorsements were variations to Policy 5369 by way of Endorsement, and each of them were signed on behalf of BCC and IAL;

c. say further that, to the extent that clause 15.3(a) of Policy 5369 purported to require a variation of Policy 5369 to be in writing signed by or on behalf of each party, it was ineffective; and

d. otherwise deny the paragraphs.

10. In answer to paragraph ~~255~~318(a) to (g) of the IAL Defence, the applicants say that:

a. the Delta IPUs are not 'repurchase obligation' type Debts covered under Policy 5369; and

b. to the extent the matters alleged are established they do not give rise to any failure by any of the Delta HoldCos to pay a Debt of the kind pleaded in subparagraph (a) above on the relevant Due Date; and

c. otherwise deny the subparagraphs.

11. In answer to paragraph 184(k) in each of the BCC Defence and TMNF Defence, the applicants:

a. say that clause 3 of the IPA Supplementary Letters confirmed an interest rate of zero from 20 May 2020 meaning that ceasing to pay interest did not constitute a failure by the Delta HoldCos to make payment of a debt owing to GCUK;

b. alternatively, say that, to the extent that ceasing to pay interest to GCUK under the Delta IPAs was a failure by a Customer to repay a Debt (which is denied), the failure to pay interest:

i. was not in relation to a 'repurchase obligation' type Debt covered under Policy 5369;

ii. did not constitute a failure to pay a Debt which was covered under Policy 5369; and

c. otherwise deny the paragraph.

12. In answer to paragraph ~~255~~318(h)(i) to (ii) of the IAL Defence, paragraph 184(l) in each of the BCC Defence and TMNF Defence and to the extent that the IAL Defence relies on paragraph 81(g)(i) of BCC's defence in NSD 1039/2021 (**BCC White Oak Defence**), the applicants say that:

a. Liberty OneSteel (Primary) UK Limited (**Liberty OneSteel**) was not a Customer under Policy 5369;

b. Liberty OneSteel was not included in any Customer Group Limit recorded in an Endorsement under Policy 5369;

c. Liberty OneSteel did not have a 'repurchase obligation' type Debt covered under Policy 5369;

d. to the extent that the defaults alleged at paragraph 184(j)(i) of the BCC Defence are established, they would not constitute a failure to pay a Debt which was covered under Policy 5369; and

e. otherwise deny the paragraphs.

13. In answer to paragraph 184(m)(i) in each of the BCC Defence and TMNF Defence, the applicants say that:

    a. Liberty Commodities Limited (**LCL**) was not a Customer under Policy 5369;

    b. LCL was not included in any Customer Group Limit recorded in an Endorsement under Policy 5369;

    c. LCL did not have a 'repurchase obligation' type Debt covered under Policy 5369;

    d. to the extent that BCC's allegations at paragraphs 404(g) of BCC's defence in NSD 169/2023 (**BCC CS Global Defence**) are established, they do not constitute a failure to pay a Debt which was covered under Policy 5369; and

    e. otherwise deny the paragraphs.

14. In answer to paragraph ~~255~~318(h)(iii) of the IAL Defence (insofar as it relies on paragraph 81(i)(iii) of the BCC White Oak Defence) and in relation to paragraph 184(m)(ii) in each of the BCC Defence and TMNF Defence, the applicants:

    a. say that the relevant debts owed by Liberty House Group Pte Limited (**Liberty House**) to GCUK were irrevocable and unconditional payment undertakings under a Customer Agreement (**Liberty House IPUs**);

    b. say that the Liberty House IPUs were not a 'repurchase obligation' type Debt covered under Policy 5369;

    c. say that to the extent that the matters alleged by BCC at paragraphs 477(d) of the BCC CS Global Defence are established:

        i. they do not give rise to any failure by a Customer or any member of the applicable Customer Group to pay a Debt on the relevant Due Date because each such Debt was extinguished or set off by the Due Date; or

        ii. any failure to pay by the relevant Due Date was remedied within 10 Business Days after the Due Date; and

        iii. to the extent any failure to pay the Liberty House IPUs did give rise to a failure to pay (which is denied), it did not constitute a failure to pay a Debt which was covered under Policy 5369; and

    d. otherwise deny the paragraphs.

15. In answer to paragraph ~~255~~318(h)(iii) of the IAL Defence (insofar as it relies on paragraph 81(i)(ii) of the BCC White Oak Defence) and in relation to paragraph 184(m)(iii) in each of the BCC Defence and TMNF Defence, the applicants say that:

a. Liberty MDR Treasury Company UK Ltd (**Liberty TCUK**) was not a Customer under Policy 5369;

b. Liberty TCUK was not included in any Customer Group Limit recorded in an Endorsement under Policy 5369;

c. Liberty TCUK did not have a 'repurchase obligation' type Debt covered under Policy 5369;

d. to the extent that BCC's allegations at paragraphs 525(f) of the BCC CS Global Defence are established, they did not constitute a failure to pay a Debt which was covered under Policy 5369; and

e. otherwise deny the paragraphs.

16. In answer to paragraph ~~255~~318(h)(iii) of the IAL Defence (insofar as it relies on paragraph 81(i)(iv) of the BCC White Oak Defence) and in relation to paragraph 184(m)(iv) in each of the BCC Defence and TMNF Defence, the applicants:

a. say that Simec Group Limited (**Simec**) was not a Customer under Policy 5369;

b. say that Simec was not included in any Customer Group Limit recorded in an Endorsement under Policy 5369;

c. say that Simec owed unconditional irrevocable payment undertakings to GCUK under a Customer Agreement (**Simec IPUs**);

d. say that the Simec IPUs were not a 'repurchase obligation' type Debt covered under Policy 5369;

e. say that, to the extent that the matters alleged by BCC at paragraphs 643(d) of the BCC CS Global Defence (which is also relied on at paragraph 81(i)(iv) of the BCC White Oak Defence) are established:

i. they do not give rise to any failure by a Customer or any member of the applicable Customer Group to pay a Debt on the relevant Due Date because each such Debt was extinguished or set off by the Due Date; or

ii. any failure to pay by the relevant Due Date was remedied within 10 Business Days after the Due Date; and

iii. to the extent any failure to pay the Simec IPUs did give rise to a failure to pay (which is denied), it did not constitute a failure to pay a Debt which was covered under Policy 5369; and

f. otherwise deny the paragraphs.

17. In answer to paragraph ~~255~~318(h)(iii) of the IAL Defence (insofar as it relies on paragraph 81(i)(i) of the BCC White Oak Defence) and in relation to paragraph 184(m)(v) in each of the BCC Defence and TMNF Defence, the applicants say that:

    a. Speciality Steel UK Limited (**SSUK**) was not a Customer under Policy 5369;

    b. SSUK was not included in any Customer Group Limit recorded in an Endorsement under Policy 5369;

    c. SSUK did not have a 'repurchase obligation' type Debt covered under Policy 5369;

    d. to the extent that BCC's allegations at paragraphs 714(e) of the BCC CS Global Defence are established, they did not constitute a failure to pay a Debt which was covered under Policy 5369; and

    e. otherwise deny the paragraphs.

18. In relation to the whole of Annexure~~s~~ A and AA to the BCC Defence, Annexures A and AA of the TMNF Defence and Annexure A to the IAL Defence, the applicants say:

    a. each of IAL, BCC and TMNF has indicated that they ~~it~~ intend~~s~~ to seek leave to amend Annexure A ~~to BCC's statement of cross-claim in proceedings no. NSD1216/2021 (**EHG Annexure A**)~~; and

    b. if such leave is granted, the applicants intend and reserve the right to amend this reply accordingly. ~~the applicants will be required to file a defence to BCC's amended statement of cross-claim in proceedings no. NSD1216/2021 that will plead to the EHG Annexure A in its amended form; and~~

    ~~c.~~ [not used]~~on that basis, the applicants intend and reserve the right to rely by way reply to Annexure A to the BCC Defence in these proceedings on the matters to be pleaded by the applicants in response to the EHG Annexure A in its amended form~~.

19. The applicants otherwise join issue with the allegations in each of the IAL Defence, the BCC Defence, ~~and~~ the Brereton Defence, the TMNF Defence and the Marsh Defence.

Date: 7 October 2025



Signed by Michelle Fox
Lawyer for the Applicants

This amended pleading was prepared by Quinn Emanuel Urquhart & Sullivan and settled by Nicholas Bender, Kate Lindeman and Kunal Sharma of counsel.

Certificate of lawyer

I, Michelle Fox, certify to the Court that, in relation to the reply filed on behalf of the Applicants, 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: 7 October 2025



Signed by Michelle Fox
Lawyer for the Applicants

Schedule

No. NSD 602 of 2023

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

Respondents

Second Respondent:	BCC Trade Credit Pty Ltd
Third Respondent:	Greg Brereton
Fourth Respondent:	Tokio Marine & Nichido Fire Insurance Co Ltd
Fifth Respondent:	Marsh Pty Ltd
Sixth Respondent:	Marsh Limited