NOTICE OF FILING

Details of Filing

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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.

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

Form NCF1

Sixth ~~Fifth~~ Amended Statement of Claim

Filed pursuant to leave granted by Thawley J on 9 July 2026 ~~5 December 2025~~

No. NSD 1039 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations National Practice Area (Insurance List)

White Oak Commercial Finance Europe (Non-Levered) Limited

Applicant

Insurance Australia Limited ACN 000 016 722 and others listed in the schedule

Respondents

SUMMARY

A1. These proceedings relate to a series of investments made by the Applicant, **White Oak**, in accounts receivable sold to White Oak by Greensill Capital (UK) Ltd (**GCUK**). GCUK is a member of the Greensill Group, which was, before its collapse, in the business of providing supply chain financing to industrial companies and selling or assigning accounts receivable acquired from those companies, or interests in those accounts receivable, to investors.

A2. White Oak's investments were made on the basis that they were insured under a trade credit insurance policy (the **Policy**) held by two other companies in the Greensill Group, Greensill Capital Pty Ltd ACN 154 088 132 (**GCPL**) and Greensill Bank AG (**GBAG**). The Policy was entered into on 13 March 2019 by the Third Respondent, **Brereton**, who was then the Head of Trade Credit at the Second Respondent, **BCC**, a specialist trade credit underwriting firm. BCC was then owned by companies related to the First Respondent,

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the **Insurer**, and Brereton entered into the Policy on behalf of BCC for and on behalf of the Insurer as the Insurer's agent or representative.

A3. On 9 April 2019, BCC was acquired by the Seventh Respondent, **TMMA**, which is the managing agent in Australia of the Sixth Respondent, **TMNF**, a general insurer. However, BCC retained authority to act on the Insurer's behalf in relation to trade credit insurance policies issued prior to BCC's acquisition by TMMA. The parties and other relevant entities, and their relationships, are pleaded in **Parts C and D** below.

A4. Between June 2019 and early July 2020, Brereton, acting on behalf of BCC as the Insurer's agent or representative, entered into a series of endorsements to the Policy. Those endorsements provided, variously, for the extension of the term of the Policy to 1 March 2021, for the types of debts and the identities of the debtors for which coverage was available under the Policy, and for the "loss payees" to whom insured losses could be paid. The Policy made provision for payment to loss payees because its fundamental purpose was to enable the Greensill Group to procure investments from third parties – loss payees – in accounts receivable acquired through its ~~supply chain~~ accounts receivable financing~~e~~ business.

A5. On 29 April 2020, White Oak, GCPL, GBAG and Brereton, on behalf of BCC as the Insurer's agent or representative, entered into a "Loss Payee Endorsement" which, among other things, named White Oak as a loss payee under the Policy and confirmed that the Insurer had no right to rescind or avoid the Policy or its obligations thereunder. On the same day, GBAG executed a deed of power of attorney which conferred on White Oak all of GBAG's rights under the Policy, in relation to any assets acquired by White Oak at any time, and irrevocably appointed White Oak as its attorney for the purposes of protecting White Oak's interests as a loss payee. The Policy, its endorsements, and the power of attorney are pleaded in **Parts G and H** below.

A6. Relying on the Policy and the endorsements, White Oak purchased a number of accounts receivable from GCUK, including, between 10 December 2020 and 25 February 2021, the 29 accounts receivable to which these proceedings relate. White Oak's acquisition of the 29 accounts receivables is pleaded in **Part I** below. The agreements governing the assignment of those receivables to and by GCUK are pleaded in **Parts E and F** below.

A7. In June or early July 2020, before White Oak purchased any of the 29 accounts receivable, TMMA and TMNF discovered that Brereton had, on behalf of BCC, entered into policies or endorsements for the Greensill Group which they regarded as providing insurance in excess of Brereton and BCC's actual authority, and that some of those policies or endorsements had been entered into on behalf of BCC as a representative of the Insurer.

TMMA and TMNF also suspected that the Policy may have been fraudulently procured by the Greensill companies.

A8. TMMA, TMNF and BCC promptly commenced investigations into Brereton's dealings with the Greensill Group for the purposes of determining whether the policies and endorsements Brereton had entered into were valid and binding, and whether those dealings had involved coercion or fraud. In short order, the Greensill Group was notified that BCC and Brereton did not have authority to bind the Insurer, that BCC and TMNF did not necessarily accept that they were "on risk" in relation to the policies and endorsements entered into by Brereton and, on behalf of the Insurer, that the Policy would not be renewed. The Greensill Group repeatedly stated that, in its view, the policies and endorsements entered into by Brereton were binding on the Insurer and TMNF, and invited TMMA and BCC to offer support to their "largest customer". The substance of these matters was known to the Insurer before 10 December 2020.

A9. None of BCC, TMMA, TMNF or the Insurer informed White Oak of their serious concerns about the validity of the Policy and its endorsements or that Brereton's dealings with the Greensill Group were under investigation in circumstances where BCC and the Insurer had a commercial interest in continuing to receive revenue calculated by reference to new investments by White Oak and despite: **(a)** the fact that they had recognised that such matters were sufficiently material to promptly inform GCPL and GBAG; **(b)** the evident commercial purpose of the Loss Payee Endorsement, being to enable Greensill Group's investors to take the benefit of the Policy and take comfort from its validity; and **(c)** the obvious risk that the Greensill Group would not disclose to its investors the concerns about the validity of the Policy and its endorsements in light of the position it had taken. Instead, BCC, TMMA and TMNF sought to work with the Greensill Group to identify alternative insurers to underwrite the risks covered by the Policy.

A10. As such, when White Oak purchased the 29 accounts receivable between 10 December 2020 and 25 February 2021, it was unaware of those matters and made its investments on the faith of the validity of the Policy and endorsements. The events following the discovery by TMMA and TMNF of Brereton's dealings are pleaded in **Part N** below.

A11. To date, White Oak has not received any payment for any of those accounts receivables from the relevant debtors and the Insurer has not made any payment to White Oak in respect of its claims for indemnity under the Policy and the endorsements. In respect of Liberty Commodities Limited (**LCL**), which originally sold the receivables to GCUK and provided various warranties in relation to them (LCL's obligations in relation to the receivables were assigned to White Oak by GCUK and are themselves insured debts under the Policy by reason of the endorsements), White Oak~~, in seeking to mitigate some of its loss,~~ in part mitigation of its loss, has received USD$41,499,961.00 from OneSteel

Manufacturing Pty Ltd and GFG Central Services Ltd in partial satisfaction of White Oak's claim filed in support of the winding-up petition against LCL.

A12. White Oak claims indemnity from the Insurer, either in its own right or as attorney of GBAG, for White Oak's losses in relation to the 29 accounts receivables purchased from GCUK. This claim is pleaded in **Parts J, K and L** below. White Oak also makes a number of further or alternative claims as follows.

A13. ~~If BCC and Brereton did not have authority to bind the Insurer to the Policy and its endorsements (which is denied),~~ White Oak also claims damages from BCC and Brereton for breach of warranty of authority and for misleading and deceptive conduct. This claim is pleaded in **Part M** below.

A14. White Oak also claims damages from BCC, TMMA, TMNF and the Insurer for their respective failures to disclose to White Oak their serious concerns about the validity of the Policy and its endorsements and that Brereton's dealings with the Greensill Group were under investigation. If White Oak had known those matters, it would not have purchased any of the 29 accounts receivables from GCUK. These claims, which include claims for misleading and deceptive conduct, unconscionable conduct and negligence, are pleaded in **Part N** below.

A. Nature of the Dispute

1. The Applicant, as an Insured, or alternatively, Loss Payee and third-party beneficiary under s 48(1) of the *Insurance Contracts Act 1984* (Cth) (the **ICA**), claims an indemnity under a Comprehensive Trade Credit Insurance Policy issued by the First Respondent to GCPL and the Fourth Respondent, GBAG, covering accounts receivables acquired in the policy period 22 February 2019 to 1 March 2021 which remain unpaid.

1AA. In the alternative, White Oak claims an indemnity under the Comprehensive Trade Credit Insurance Policy relying on an irrevocable power of attorney granted in White Oak's favour by GBAG on 29 April 2020.

1A. ~~In the alternative, the~~ The Applicant also claims that, by their conduct in entering into the Policy and its endorsements, the~~ first,~~ second and third respondents engaged in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act *2001* (Cth) (**Corporations Act**) and s 12DA of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**); made representations that were false in a material particular or were materially misleading in contravention of s 1041E of the Corporations Act; ~~and~~ breached warranties of authority under the general law~~.~~; and are liable for the tort of deceit in respect of certain representations concerning their actual authority.

1B. Further or in the alternative, the Applicant claims that, by not disclosing certain matters related to the validity of the Policy and its endorsements, the Insurer, BCC, TMMA and/or TMNF engaged in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act and s 12DA of the ASIC Act and engaged in unconscionable conduct in contravention of ss 12CA and 12CB of the ASIC Act and/or, in respect of TMNF, s 991A of the Corporations Act. Further, that TMMA and/or TMNF were knowingly concerned in BCC's misleading or deceptive conduct or unconscionable conduct for the purposes of s 79 of the Corporations Act.

1C. Further or in the alternative, the Applicant claims that, by not disclosing certain matters related to the validity of the Policy and its endorsements, BCC and Brereton breached their contractual obligations to White Oak arising under the Policy or the Loss Payee Endorsement (defined in paragraph 57 below). Further, that the Insurer, BCC, TMMA and/or TMNF breached the duty of care that they owed to the Applicant.

1D. Further or in the alternative, the Applicant claims that the Insurer is responsible for the conduct of BCC and Brereton referred to in 1A, and/or that TMNF is responsible for the conduct of the BCC and Brereton referred to in 1A in respect to the April Endorsements, for the purposes of ss 917B or 917C of the Corporations Act and are liable to White Oak for any loss or damage it has suffered as a result of that conduct.

1E. Finally, the Applicant claims that the Insurer and TMNF are responsible for the conduct of BCC and Brereton referred to in 1B and 1C for the purposes of ss 917B or 917C of the Corporations Act and are liable to White Oak for any loss or damage it has suffered as a result of that conduct.

B. Issues Likely to Arise

1F. Whether White Oak is an Insured under the Policy.

2. Are the Insured Losses identified in this Sixth ~~Fifth~~ Amended Statement of Claim covered under the terms of the Policy?

3. Specifically, in respect of the Insured Losses, is there for the purposes of the Policy:

   a. an *Asset* owned by White Oak; and

   b. a failure by an *Eligible Customer* to pay an *Eligible Debt,*

   within the meaning of those terms in the Policy?

3A. Whether BCC and/or Brereton ~~were authorised~~ had ostensible authority to enter into the Policy and Endorsements as agent for the Insurer.

3B. Whether BCC and/or Brereton breached warranties of authority.

3C. Whether the first respondent, BCC, Brereton, the sixth and/or seventh respondents engaged in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act and/or s 12DA of the ASIC Act.

3D. Whether the Insurer, BCC and/or Brereton made representations that were false in a material particular or were materially misleading in contravention of s 1041E of the Corporations Act.

3D1A. Whether BCC and Brereton committed the tort of deceit in respect of their representations concerning their actual authority on behalf of the Insurer.

3D1. Whether the first respondent, BCC or the sixth and/or seventh respondents engaged in unconscionable conduct in contravention of ss 12CA and/or 12CB of the ASIC Act, and in respect of the sixth respondent, whether it contravened s 991A of the Corporations Act.

3D2. Whether the sixth or seventh respondents were knowingly concerned in the second respondent's contraventions of the Corporations Act and/or the ASIC Act for the purposes of s 79 of the Corporations Act (as adopted by s 5(2) of the ASIC Act).

3D3. Whether the first or second respondent breached their contractual obligations to White Oak under the Policy or the Loss Payee Endorsement.

3D4. Whether the first, second, sixth or seventh respondents owed a duty of care to the Applicant and breached that duty of care.

3D5. Whether the first or sixth respondents are responsible for the conduct of the second or third respondents and liable to the Applicant for any loss or damage arising from that conduct for the purposes of ss 917A to 917F of the Corporations Act.

3E. The quantum of White Oak's loss or damage arising from one or more of the breaches or contraventions identified in paragraphs 3B to 3D above.

3F. Whether White Oak has standing to bring the proceedings under s 48(1) of the ICA, the Loss Payee Endorsement to the Policy or the power of attorney granted in White Oak's favour by GBAG on 29 April 2020.

C. The Parties

4. The Applicant (**White Oak**) is a company that was duly incorporated according to law in the United Kingdom and is capable of suing and being sued.

5. At all material times, White Oak was in the business of providing capital to support companies with lending solutions.

6. The First Respondent (the **Insurer**) is a company that was duly incorporated according to law in Australia and is capable of suing and being sued.

7. At all relevant times the Insurer was in the business of issuing general insurance products in Australia.

7AA. At all times since at least 28 July 2003, IAL has held an Australian financial services licence issued under s 913B of the Corporations Act, permitting IAL to carry out in Australia the business of issuing and varying policies of general insurance.

D. Other Relevant Entities

Agent of Insurer

7A. BCC, is and was at all material times a company registered under the Corporations Act.

8. From 1 August 2017 until 30 June 2019, BCC was an authorised representative under the AFS License held by IAG Agencies Pty Limited ACN 147 749 139 (**IAG Agencies**), a subsidiary of Insurance Australia Group Limited ABN 60 090 739 923 (**IAG**), and wrote trade credit insurance policies on behalf of the Insurer, also a subsidiary of IAG.

9. [Not used]

9A. From at least 14 July 2016 until 8 July 2020, the third respondent, Mr Greg Brereton (**Brereton**), was employed by Bond & Credit Company Pty Ltd ACN 609 018 840 (**Bond**) as BCC's ~~as its~~ Head of Trade Credit.

9B. From 1 August 2017 until 30 June 2019, Brereton was an authorised representative of the Insurer.

Particulars

1. *"Individual Authorisation Agreement and Authorisation Notice" issued on 28 July 2017 by IAG Agencies in respect of Brereton (IAL.500.008.0852).*
2. *Letter from Brad Robson to Brereton dated 1 July 2019 and entitled "Termination of Individual Authorisation Agreement and Authorisation Notice" (CTRL.0000018972).*

9C. From about 1 August 2017 to about 9 September 2019, BCC was the agent of the Insurer for the purposes permitted in the agreement styled an "Agency & Authorised Representative Agreement" (the **CGU AAR Agreement**):

a. which purposes included (cl 2.1 & 2.6):

i. acting as an authorised representative of the Insurer;

ii. dealing, arranging and issuing Approved Products (being contracts of insurance of the class "Trade Credit Products" and as otherwise agreed between the Insurer and BCC) in accordance with the Underwriting Manual; and

iii. providing Authorised Services, including issuing, negotiating and agreeing the terms of contracts of insurance for Approved Products, as well as dealing in, arranging, issuing, varying and disposing of Approved Products;

b. which included terms that:

i. BCC would collect and remit to CGU premiums received by BCC on account of policies of trade credit insurance issued by BCC on behalf of CGU, net of BCC's commission (cll 3.1, 3.4, 8.1);

ii. BCC would maintain a bordereau of all trade credit insurance policies issued by BCC on behalf of CGU (cl 4.5(a)); and

iii. BCC would provide a copy of the bordereau to CGU within seven business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to trade credit insurance policies issued by BCC on behalf of CGU (cl 4.5(b)).

Particulars

1. *On or about 28 July 2016, CGU Insurance Limited and BCC entered into an agreement styled an "Agency & Authorised Representative Agreement" (BCC.0001.0013.000141).*
2. *Orders made by Gleeson J on 20 July 2017 in NSD1739/2016, and Annexure A to those orders (BCC.0001.0013.004544).*
3. *Letter from Brad Robson (the Insurer) dated 1 August 2017 (IAG.0000030235.0001).*

9D. From about 9 April 2019 to at least 30 June 2019, BCC was the agent of the Insurer for the purposes permitted in the agreement styled "Agency & Authorised Representative Agreement" (**the Insurer AAR Agreement**):

a. which purposes included:

i. acting as an authorised representative of the Insurer;

ii. dealing, arranging and issuing Approved Products (being contracts of insurance of the class "trade credit insurance products" and as otherwise agreed between the Insurer and BCC) in accordance with the Underwriting Manual; and

iii. providing Authorised Services, being the services specified in the Authorisation Notice;

b. which included terms that:

i. BCC would collect and remit to the Insurer premiums received by BCC on account of policies of trade credit insurance issued by BCC on behalf of the Insurer, net of BCC's commission (cll 3.1, 3.3, 8.1);

ii. BCC would maintain a bordereau of all trade credit insurance policies issued by BCC on behalf of the Insurer (cl 4.5(a)); and

iii. BCC would provide a copy of the bordereau to the Insurer within 14 business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to trade credit insurance policies issued by BCC on behalf of the Insurer, in the manner and form requested by the Insurer from time to time (cl 4.5(b)).

Particulars

1. *On 9 April 2019, the Insurer and BCC entered into an agreement styled an "Agency & Authorised Representative Agreement" (BCC.0001.0013.004869).*
2. *The Insurer AAR Agreement cll 2 and 7.1.*
3. *Letter from the Insurer to BCC sent by email on 9 April 2019 (CTRL.0000018982).*

9E. On or around 9 April 2019, the Insurer, the Seventh Respondent, Tokio Marine Management (Australasia) Pty Ltd ACN 001 488 455 (**TMMA**), and Bond ~~& Credit Company Pty Ltd ACN 609 018 840 (**Bond**)~~ entered into an agreement styled the "Policy and Claims Administration Outsourcing Deed" (**PACAO**).

9F. At all material times after about 9 April 2019, BCC was the agent of the Insurer at least for the purpose of performing "Policy administration" services under the PACAO.

9G. Pursuant to the PACAO:

a. the Insurer granted BCC and TMMA (as Administrator) authority:

i. to process on behalf of the Insurer mid-term alterations to trade credit insurance policies arranged by BCC and issued by the Insurer under the CGU AAR Agreement, the Insurer AAR Agreement or an extension thereof on or before 30 June 2019, within the rules set out in the underwriting guidelines in place between the Insurer and BCC; and

ii. to handle on behalf of the Insurer all claims under trade credit insurance policies arranged by BCC and issued by the Insurer on or before 30 June 2019, as prescribed in Schedule 4 of the PACAO; and

b. the Administrator was required to provide the Insurer with Quarterly Reports, including bordereau reports: cl 7, Schedule 1.

Particulars

1. *PACAO clauses 2, 5 and 28 and Schedules 4 and 5 (BCC.0001.0013.008204).*
2. *White Oak relies upon the terms of the PACAO as set out in full.*

9GA. On or about 4 September 2020, the Insurer exercised its "step-in rights" under the PACAO and thereby acknowledged and/or admitted that:

a. BCC and TMMA had the authority on the Insurer's behalf set out in paragraph 9G above; and

b. BCC and TMMA had been exercising that authority.

Particulars

1. *PACAO clause 21.1.*

9H. In the premises, at all material times since about 1 August 2017, BCC has been a "representative" of the Insurer for the purposes of s 910A of the Corporations Act as follows:

a. as an authorised representative of the Insurer during the period 1 August 2017 to 30 June 2019; and

b. as any other person acting on behalf of the licensee or person at all material times after 1 August 2017, for the purposes of the CGU AAR Agreement, the Insurer AAR Agreement and/or the PACAO.

Particulars

1. *Corporations Act, definition in s 910A of "representative", (a)(i), (a)(iv), (b)(iii).*
2. *ASIC Extract for BCC, Australian Financial Services Representative (WOC.0010.0011.0001); (WOC.0010.0011.0002).*

9HA. On and from 1 August 2017, BCC provided bordereaux to the Insurer.

Particulars

1. *From time to time, but at least in respect of each month from September 2016, BCC prepared bordereaux in the form of an excel spreadsheet referred to as a "Written Bordereaux". For each month, more than one version of the Written Bordereaux may have been produced.*
2. *The Written Bordereaux contained, for the relevant month, at least the following information in respect of each policy of insurance referred to in the Written Bordereaux:*
    - *(i) a transaction date and time;*
    - *(ii) policy number;*
    - *(iii) name of the insured;*
    - *(iv) policy term;*
    - *(v) effective date;*
    - *(vi) insured address;*
    - *(vii) industry description;*
    - *(viii) policy currency;*
    - *(ix) deductible;*
    - *(x) insured percentage;*

(xi) *maximum policy limit;*

(xii) *payment frequency;*

(xiii) *premium;*

(xiv) *stamp duty;*

(xv) *brokerage;*

(xvi) *GST; and*

(xvii) *nett payable.*

3. *From time to time, BCC prepared bordereaux in the form of an excel spreadsheet referred to as a "Payment Bordereau".*

4. *The Payment Bordereau contained, for the relevant month, at least the following information in respect of each policy of insurance referred to in the Payment Bordereau:*

(i) *invoice reference;*

(ii) *transaction type;*

(iii) *policy number;*

(iv) *name of the insured;*

(v) *product type;*

(vi) *inception type;*

(vii) *base premium;*

(viii) *levies;*

(ix) *duties;*

(x) *commission;*

(xi) *GST;*

(xii) *remittance; and*

(xiii) *amount banked.*

5. *From time to time, BCC prepared a bordereaux in the form of an excel spreadsheet referred to as a "Claims Bordereaux".*

6. *The Claims Bordereaux contained, for the relevant month, at least the following information in respect of each policy of insurance referred to in the Claims Bordereaux:*

(i) *policy type;*

(ii) *policy number;*

(iii) *claim number;*

(iv) *insured;*

(v) *policy term inception date;*

(vi) *expiry date;*

(vii) *date of loss;*

(viii) *deductible;*

(ix) *insured percentage;*

(x) *payment amount; and*

(xi) paid to date.

9HB. The bordereaux that BCC provided to the Insurer, as described in the particulars to paragraph 9HA above, referred to (or BCC and Brereton otherwise informed the Insurer of):

a. trade credit insurance policies of entities in the Greensill Group;

b. the Policy (as defined at paragraph 38 below);

c. endorsements to the Policy; and

d. trade credit insurance policies TB-03691 and TS-03087 and endorsements to those policies.

9HC. On and from 1 August 2017, the Insurer permitted BCC to collect premiums under policies of trade credit insurance for which the Insurer was named as the Insurer.

9HD. On and from 1 August 2017, BCC remitted premiums to the Insurer in respect of trade credit insurance for which the Insurer was named as the insurer.

Particulars

1. *At all material times until 30 June 2019, pursuant to cl 8 of the CGU AAR Agreement and Insurer AAR Agreement, all premia paid to BCC was collected by BCC as agent of the Insurer and, subject to the amounts due to BCC as commission, held on trust for the Insurer.*
2. *Further or alternatively, at all material times from 30 April 2019, all premia paid to BCC was collected as agent of the Insurer pursuant to cl 3.1 of the PACAO.*
3. *Emails from BCC to the Insurer attaching bordereaux:*

IAL.500.001.0228	*IAL.500.001.0229*	*IAL.500.001.0234*
IAL.500.001.0235	*IAL.500.007.0064*	*IAL.500.007.0065*

9HE. On and from 1 August 2017, the Insurer paid commission to BCC on policies of trade credit insurance for which the Insurer was named as the insurer.

9HF. On and from 1 August 2017, the Insurer permitted BCC:

a. to provide general advice in relation to trade credit insurance on the Insurer's behalf;

b. to deal in, arrange, issue and vary policies of trade credit insurance on the Insurer's behalf;

c. to deal with client monies on the Insurer's behalf;

d. to issue, negotiate and agree the terms of policies of trade credit insurance on the Insurer's behalf; and

e. to act in the management of the Insurer's trade credit insurance business.

Tokio Marine entities

9I. TMMA is the Australian managing agent for the Sixth Respondent, Tokio Marine & Nichido Fire Insurance Co Ltd (**TMNF**).

9J. TMNF is an APRA-regulated general insurer that provides financial services (namely, the issuing of insurance policies) under an Australian Financial Services Licence.

9K. At all times from 1 July 2019, BCC has been the Australian Financial Services Authorised Representative of TMNF and a "representative" of TMNF as that term is defined in s 9 of the Corporations Act and an "authorised representative" within the meaning of s 916A.

9L. At all times since 1 July 2019, Brereton was a "representative" of TMNF as that term is defined in s 9 of the Corporations Act and a "relevant provider" as that term is defined in s 910A.

9M. At all times since at least 1 July 2019, TMNF has held an Australian financial services licence issued under s 913B of the Corporations Act, permitting TMNF to carry out in Australia the business of issuing and varying policies of general insurance.

9N. At all material times from 9 April 2019:

a. TMMA has owned 100% of the shareholding in Bond and 0.01% of the shareholding in BCC; and

b. Bond has owned 99.99% of the shareholding in BCC.

Greensill Group of Companies

10. At all material times, GCPL was duly incorporated according to law in Australia.

11. On 9 March 2021, Matthew Byrnes, Philip Campbell-Wilson and Michael McCann, officers at Grant Thornton Australia Limited (**Grant Thornton**), were appointed Joint and Several Administrators of GCPL and on 22 April 2021 were appointed Joint and Several Liquidators.

12. At all material times, the Fourth Respondent, GBAG was duly incorporated according to law in Bremen, Germany.

13. The Fifth Respondent, Dr Michael Frege, is the insolvency administrator of GBAG for the purpose of the German Insolvenzordnung.

14. At all material times, GCUK was duly incorporated according to the laws of England.

15. On 8 March 2021, GCUK entered into insolvency in England and the relevant notice of administrator's appointment was filed on 22 March 2021.

16. At all material times, GBAG, GCPL and GCUK (together the **Greensill Group**) were part of a group that provided supply chain financing and securitising future guarantee cashflows for industrial companies.

17. At all material times, GBAG's main business involved the purchase of receivables from international trade finance transactions through GCUK.

Liberty Group of Companies

18. At all material times, Liberty Commodities Group Pte Ltd (**Liberty**) is a company that was incorporated and registered in Singapore with registration number 201115671N.

19. At all material times, Liberty's principal activity is holding other companies, with a secondary activity of wholesale trading a variety of goods, without a dominant product as the secondary activity.

20. At all material times, Liberty FE Trade DMCC was a company that was incorporated and registered in Dubai with registration number DMCC1075 (**Liberty FE**).

21. At all material times, LCL is a company that was duly incorporated according to law in the United Kingdom.

22. At all material times, both LCL and Liberty FE were wholly owned subsidiaries of Liberty.

Marsh

23. At all material times, Marsh Ltd (**Marsh**), a company incorporated and registered in England and Wales with registration number 1507274, provided insurance broking services to the Greensill Group.

E. The Receivables Purchase Deed and Group Guarantee

24. By Deed executed on 29 October 2018, and as amended and restated on 6 December 2019, GCUK entered into a Receivables Purchase Deed with LCL and Liberty (the **RPA**).

Particulars

1. *The RPA was in writing and was executed on 29 October 2018 (GCU.0004.0020.0283).*
2. *The Deed of Amendment and Restatement was in writing and executed on 6 December 2019 (WOC.0001.0007.2522).*

25. The RPA provided for the sale from time to time by LCL to GCUK of accounts receivable by way of the following process:

a. LCL could submit to GCUK a request in an agreed form (**Request**) that GCUK purchase from LCL certain receivables (**Proposed Receivables**); and

b. if GCUK accepted a Request, LCL would sell to GCUK the right, title or interest in, to and under such Proposed Receivables (**Purchased Receivables**).

Particulars

1. *RPA clause 1.1, definition of "Proposed Receivables", "Purchased Receivables" and "Receivables".*
2. *RPA clause 2, Sale and Purchase.*

26. It was an express term of the RPA that LCL represented and warranted that in respect of any Purchased Receivables sold by LCL to GCUK:

a. The information relating to the Purchased Receivables contained in or attached to the Request was true and correct, including with respect to the invoice or data files provided by LCL.

b. That the Purchased Receivables were **Eligible Receivables**, and accordingly:

i. the Receivables would (amongst other things):

1. be valid, current, in full force and effect and constitute the valid and binding obligations of an account debtor;

2. be payable in an amount not less than the invoice amount identified by the Account Debtor in its Request;

3. relate 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;

4. not be the subject of any dispute; and

5. be sold by LCL in good faith and without any actual intent to hinder, delay, or defraud present or future creditors of LCL;

ii. any invoices or data files, as applicable, provided by LCL with respect to each Purchased Receivable would be complete and correct in all material respects; and

iii. any supporting claim documents including any attestations, contracts or agreements, with respect to each Purchased Receivable would be true, complete and correct in all material respects.

c. LCL was, immediately prior to the sale of each Purchased Receivable, the legal and beneficial owner of that receivable, and that upon GCUK's purchase of the receivable in accordance with the RPA, GCUK would acquire valid beneficial ownership of the Purchased Receivable.

d. No information provided by LCL to GCUK was by omission or otherwise misleading or inaccurate in any material respect as at the date it was provided to GCUK.

Particulars

1. RPA clause 3.1, Schedule 6; RPA Clause 1.1.

27. It was a condition precedent of the RPA that LCL would not submit a Request to GCUK unless LCL's representations and warranties in the RPA, as outlined above in paragraph 26 of this Sixth ~~Fifth~~ Amended Statement of Claim, were true and accurate in all material respects.

Particulars

1. RPA clause 2.2.

27A. It was an express term of the RPA that LCL was responsible for identifying, matching and reconciling all payments it received in respect of Purchased Receivables and for causing all such payments to be directed and deposited into the Buyer's bank account.

Particulars

1. RPA, clauses 5.1(A), 5.3.

28. It was an express term of the RPA that:

a. An **Event of Repurchase** occurred when, amongst other things:

i. any representation or warranty by LCL under the RPA with respect to any Purchased Receivables was incorrect when made or deemed made, including with respect to the purported existence of a Receivable (clause 6.1(A)), or

ii. if LCL failed to perform or observe any other term or covenant under the RPA with respect to the Purchased Receivables (clause 6.1(B)(1)); or

iii. by the Final Settlement Date of an Overdue Receivable, payment in full (for that Purchased Receivable) had not been received by LCL other than due to an AD Insolvency Event which had been notified to the Buyer where:

1. "**AD Insolvency Event**" was defined to mean the occurrence of any of the events set out in the definition of Insolvency Event with respect to an Account Debtor;

2. "**Final Settlement Date**" was defined to mean 28 calendar days after the Payment Date of the relevant Receivable; and

3. "**Overdue Receivable**" was defined to mean a Purchased Receivable for which no payment had been made by the relevant Account Debtor as at the Payment Date but which was not a Repurchased Receivable or Defaulted Receivable, and any Collections or change of status in respect thereto.

b. If an Event of Repurchase occurred, then LCL would immediately:

i. Repurchase at the Repurchase Price all of such Purchased Receivables then outstanding affected by such Event of Repurchase, or

ii. Make payment by way of indemnity of any amount equal to the Repurchase Price of any purported Purchased Receivable that does not exist, and

in either case, such Repurchase Price or amount equal thereto shall be paid in accordance with Section 5 of the RPA (clause 6.1).

b1. LCL agrees to immediately "on demand" indemnify the Buyer from and against any and all claims, taxes, losses, costs, expenses and liabilities arising out of or resulting from (amongst others):

i. the sale to the Buyer of any Receivable which purports to be a Purchased Receivable as to which representations and warranties made in the RPA were not true and correct on the dates made or deemed made (clause 6.2(A));

ii. any Event of Termination (clause 6.2(B));

iii. any failure of a Seller (LCL) to pay any sums payable pursuant to Section 6.1 (clause 6.2(C)); or

iv. any failure of a Seller (LCL) to perform or observe any term, covenant or agreement or in the event of any incorrect representation or warranty under the RPA or any Transaction Document, including but not limited to those set out in Schedule 6 and Schedule 7 of the RPA, where such failure, if capable of remedy, continues for more than ten Business Days after receipt by the relevant Seller (LCL) of notice from the Buyer requiring remedial action to be taken (clause 6.2(D)).

c. GCUK could assign its interest or rights in the RPA and any Purchased Receivables to its affiliates, including GBAG, and any assignee or transferee of any rights that was not a party to the RPA would be entitled to rely upon the RPA as a third-party beneficiary (clause 16.1); and

d. Liberty was jointly and severally obligated with LCL to pay and/or perform any such amount, obligation, term or provision that LCL had under the RPA (clause 2.7).

Particulars

1. *RPA, clauses 6.1 and 6.2 "Events of Repurchase, Indemnities and Set-Off".*
2. *RPA, clause 1.1, definition of "Overdue Receivable".*
3. *RPA, clause 5.8A(4), "Collections".*
4. *RPA, clause 16.1, "Assignment".*

5. RPA, clause 2.7, "Parent Joint and Several Obligations".

29. It was an express term of the RPA that an **Event of Termination** occurred as a result of, amongst other things:

a. a failure by LCL to observe any term of the RPA (including, for example, when an Event of Repurchase arose);

b. a failure by LCL to make payments to GCUK as required under the RPA; or

c. any representation or warranty made by LCL which was in any material respect untrue when made, or consequences of which continued unremedied to the satisfaction of GCUK.

Particulars

1. RPA, clause 1.1 "Event of Termination".

30. It was an express term of the RPA that any amounts owing to GCUK under the RPA would accrue interest from and after the date when due at a rate per annum equal to the Discount Rate (as that term is defined in the RPA), plus 2%, until paid.

Particulars

1. RPA, clause 1.1 and clause 8 "Calculation of Interest".

31. White Oak relies upon the whole of the RPA as if it is set out in this Sixth ~~Fifth~~ Amended Statement of Claim.

32. On 29 October 2018, GCUK, Liberty and Liberty FE executed a deed of guarantee, whereby Liberty and Liberty FE agreed that they would jointly and severally guarantee and indemnify GCUK in relation to any failure by any Seller, Seller Representative, Servicer or Parent to the RPA to observe and perform their obligations under the RPA (the **Group Guarantee**).

32A. It was an express term of the Group Guarantee that if LCL did not perform its obligations under the RPA, including the payment of any monies owing under the RPA (the **Guaranteed Obligations**), Liberty and/or Liberty FE would jointly and severally procure the punctual performance of LCL and make due and punctual payment to GCUK or White Oak (as 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 nominated account by GCUK or White Oak (clause 3.1).

33. Under the RPA (as amended and restated on 6 December 2019), Liberty and Liberty FE agreed that the Group Guarantee would continue in full force and effect and would extend to the liabilities of LCL to GCUK under the RPA (as amended and restated in 2019).

Particulars

1. *RPA, "Background" and clause 5 "Guarantees and Security".*

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

34. On 29 April 2020, White Oak entered into a master assignment agreement (**MAA**) with GCUK with terms to the effect that White Oak could acquire, and have assigned to it, various **Payment Obligations** and all Additional Rights relating thereto.

Particulars

1. *MAA, including clauses 1.2, Definitions of "Additional Rights", "Accounts Receivable" and "Payment Obligation", clause 2, Offer and Acceptance and clause 3, Assignment (BCC.0001.0006.1883).*

35. At all material times, the purchase and assignment of each Payment Obligation and all Additional Rights relating thereto 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, as pleaded above in Section E of this Sixth ~~Fifth~~ Amended Statement of Claim.

Particulars

1. *MAA, including clauses 1.2, Definitions of "Accounts Receivable", "Product Schedule" and "Payment Obligation" and clause 2, Offer and Acceptance.*
2. *MAA Product Schedule, Payment Obligation: Accounts Receivable (Model B).*

36. Further, it was an express term of the MAA that the assignment of a Payment Obligation to White Oak under the MAA included the assignment to White Oak of GCUK's Additional Rights, which included all of GCUK's rights relating to such Payment Obligation, including, but not limited to, (a) if applicable, where the related Accounts Receivable (as defined in the MAA) had been acquired by GCUK, all of GCUK's rights under such Accounts Receivable and (b) all other rights of GCUK under the RPA (insofar as such rights relate to such Payment Obligation).

Particulars

1. *MAA, including clauses 1.2, Definitions of "Additional Rights", "Accounts Receivable", "Product Schedule" and "Payment Obligation" clause 2, Offer and Acceptance and clause 3, Assignment.*
2. *MAA Product Schedule, Payment Obligation: Accounts Receivable (Model B).*

37. White Oak relies upon the whole of the MAA as if it is set out in this Sixth ~~Fifth~~ Amended Statement of Claim.

G. The Insurance Policies

The Proposed Greensill Policy Structure and Proposed Greensill Policy Wording

37A. On or about 15 September 2017, BCC sent to the Insurer a "special acceptance request" in respect of a policy of insurance (the **Greensill Policy Proposal**).

Particulars

1. *Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook, and Andrew McKinnon of the Insurer (amongst others) dated 15 September 2017 (IAL.500.008.0249), attaching:*

    (i) Master Risk Participation (MRPA) Facility – Structure Wording Variation prepared by Brereton and dated 12 September 2017 (IAL.500.008.0250);

    (ii) Master Risk Participation Agreement (MRPA) Questions (IAL.500.008.0251); and

    (iii) Special Acceptance for Liberty Group (formerly ArriumOneSteel) – Master Risk Participation Agreement dated 11 September 2017 (IAL.500.008.0252).

37B. The Greensill Policy Proposal stated the following matters regarding the proposed insurance:

a. the purpose of the policy was to underwrite supply to Liberty Onesteel (MDR) Pte Ltd (the **Liberty Onesteel Transaction**);

b. the purpose of the proposal was to:

    i. present detail on GCUK and their proven trade credit policy status;

    ii. reflect that the policy structure was encompassed within BCC and the Insurer's reinsurance arrangements; and

    iii. highlight the variations to the proposed wording and structure as set out in the proposal documents in order for the Insurer to accept the proposed wording and structure;

c. the proposal was for the Insurer and reinsurers to agree with BCC that the proposed structure was acceptable for BCC's use in order to facilitate trade credit transactions with GCUK in the future, whether for the Liberty Onesteel Transaction or other Australian domiciled transactions; and

d. the "Greensill Capital Trade Credit Policy Structure" was set out in the following terms:

    i. GCUK would acquire the invoice liabilities from each supplier, with GCUK meeting the initial payment commitment to the suppliers by acquiring the ownership of the invoices;

    ii. GCUK would fund these initial outlays via GBAG, and potentially other bankers or funders;

    iii. in order to meet the requirements of the banks, including GBAG, that would fund the initial outlays, the structure of the trade credit insurance policies would be in two conjoined layers, being:

1. the first layer in the form of a master policy that would provide for the terms and structure of the policy between GCUK and the underwriter; and

2. a second but fully aligned layer in the form of a policy that would mirror the credit limits and indemnity terms of the "master policy", but where the aggregate first loss (AFL) is provided for by the master policy and could therefore be written at 100% indemnity (a parallel policy);

iv. commercial premium would be payable under the master policy in respect of the Assets (as defined in the template policies) that were insured under the parallel policies;

Particulars

1. *Schedule 5 of the Proposed Greensill Policy Wording (as defined in [37C] below) for each of the template master and parallel policies.*

v. provided that GCUK and GCPL would be the insureds for the master policy; and

vi. provided that GBAG and GCPL would be the insureds for the parallel policy,

(the **Proposed Greensill Policy Structure**).

37C. On about 15 September 2017, BCC sent to the Insurer a copy of the proposed wording for the master policy, the parallel policy, customer endorsement, loss payee endorsement, and various debt endorsements (the **Proposed Greensill Policy Wording**) with the Greensill Policy Proposal.

Particulars

1. *Loss Payee Endorsement – Endorsement 2 (parallel policy) (BCC.0001.0007.1172).*
2. *Customer Endorsement No 1 (parallel policy) (BCC.0001.0007.1166).*
3. *Endorsement 1 – Debt Endorsement (parallel policy) (BCC.0001.0007.1170).*
4. *Endorsement 1 – Debt Endorsement (master policy) (BCC.0001.0007.1179).*
5. *Master policy (BCC.0001.0007.1185).*
6. *Parallel policy (BCC.0001.007.1176).*

37D. At a time presently unknown to White Oak, but at least at a time before 5 October 2017, the Insurer was aware that Scor Reinsurance Asia-Pacific Pte Ltd (**Scor Re**), the lead re-insurer for the Insurer, received a copy of the Greensill Policy Proposal, including the Proposed Greensill Policy Wording.

Particulars

1. *On 25 September 2017, Scott Newland of BCC sent emails to Ewan Berkemeier of Marsh Pty Ltd first referring to a meeting with Scor Re at 4pm that day, and that Scor Re required further information, and second, a telephone call with Scor Re and IAG, and a collated list of questions would be sent later that evening (BCC.0001.0003.0131).*

2. *Email from Twain Abbott of IAG to Brereton and Toby Guy of BCC dated 5 October 2017, attaching a version of the master policy with comments from Benjamin Gan of Scor Re (BCC.0001.0004.0540).*
3. *Email from Twain Abbott of IAG to Scott Newland and Brereton of BCC, copying Brad Robson of IAL, dated 3 October 2017, stating that "I confirm Scor have provided support for the program… subject to acceptable policy wording, terms and conditions" (IAL.500.007.1114).*
4. *On 5 October 2017, Twain Abbott of IAG sent an email to Scott Newland of BCC, copying Greg Brereton and Toby Guy of BCC, and Brad Robson of IAG, attaching the proposed support for the opportunity, and that with respect to the wording "Base Marsh proposed wording with variations as marked up in the attached" (BCC.0001.0004.0540).*
5. *Further particulars may be provided prior to trial.*

37E. In the period between the receipt by the Insurer of the Greensill Policy Proposal and the Proposed Greensill Policy Wording until approximately 21 November 2017, GCUK, Marsh, Marsh Pty Ltd, BCC, the Insurer and Scor Re continued to negotiate the Greensill Policy Proposal for the Liberty Onesteel Transaction.

Particulars

1. *The particulars to paragraph 37D are repeated.*
2. *The documents referred to below:*

IAL.500.011.0521	*IAL.500.011.0486*	*IAL.500.011.0504*
IAL.500.011.0514	*IAL.500.011.0483*	*IAL.500.011.0505*
IAL.500.011.0506	*IAL.500.011.0536*	*IAL.500.011.0488*
IAL.500.011.0523	*IAL.500.011.0519*	*IAL.500.011.0498*
IAL.500.011.0489	*IAL.500.011.0490*	*IAL.500.011.0016*
IAL.500.011.0556	*IAL.500.011.0501*	*IAL.500.011.0553*
IAL.500.011.0540	*IAL.500.011.0502*	*IAL.500.011.0517*
IAL.500.011.0526	*IAL.500.011.0513*	*IAL.500.011.0497*
IAL.500.011.0500	*IAL.500.011.0551*	*IAL.500.011.0552*
IAL.500.011.0557	*IAL.500.011.0555*	*IAL.500.011.0567*
IAL.500.011.0562	*IAL.500.011.0263*	*IAL.500.011.0274*
IAL.500.011.0431	*IAL.500.011.0527*	*IAL.500.011.0275*
IAL.500.011.0277	*IAL.500.011.0266*	*IAL.500.011.0021*
IAL.500.011.0491	*IAL.500.011.0495*	

3. *Further particulars may be provided prior to trial.*

37F. By reason of the matters pleaded at paragraphs 37A to 37E above, by about October 2017, the Insurer was aware that:

a. GCUK sought to enter into one or more contracts of insurance with BCC on behalf of the Insurer that included the Proposed Greensill Policy Structure and with the Proposed Greensill Policy Wording, or with a structure and wording materially similar to the Proposed Greensill Policy Structure and with the Proposed Greensill Policy Wording; and

b. GCUK required any such contracts of insurance to have the Proposed Greensill Policy Structure and the Proposed Greensill Policy Wording, or a structure and

wording materially similar to the Proposed Greensill Policy Structure and with the Proposed Greensill Policy Wording.

Particulars

1. *The particulars to paragraph 37D above are repeated.*
2. *Further particulars may be provided prior to trial.*

2017 Standalone Policies

37G. On or about 15 June 2018, Brereton executed Comprehensive Trade Credit Insurance Policies TB-03691 (**2017 Master Policy 3691**) and TB-03690 (**2017 Parallel Policy 3690**) for and on behalf of BCC as Corporate Authorised Representative of the Insurer.

Particulars

1. *The unique market references for the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were B0509FINCW1800044 and B0509FINCW1800045 respectively (AGB.0002.0002.0872) and (GBA.0004.0009.4397).*
2. *GCUK and GCPL were insureds under the 2017 Master Policy 3691 in respect of their separate interests.*
3. *GBAG and GCPL were insureds under the 2017 Parallel Policy 3690 in respect of their separate interests.*
4. *Collectively, the 2017 Master Policy 3691 and the 2017 Parallel Policy 3690 are referred to as the **2017 Standalone Policies**.*

37H. GBAG executed and entered into the 2017 Parallel Policy 3690 on or about 20 June 2018.

37I. The 2017 Standalone Policies:

a. are substantially similar in structure and wording to the Proposed Greensill Policy Structure and the Proposed Greensill Policy Wording; and

b. gave effect to the matters pleaded in paragraphs 37A to 37E above.

37J. At a time presently unknown to White Oak, one of either GCPL or GCUK paid an instalment of premia of AUD 149,819.52 and USD 215,200 (excluding broker commission, GST and Stamp Duty) to BCC due under the 2017 Master Policy 3691 and in respect of the 2017 Parallel Policy 3690.

Particulars

1. *The best particulars White Oak can give as to payment is that it was made in September 2018, payment being recorded in the September 2018 payment bordereau (IAL.500.005.0161).*
2. *2017 Master Policy 3691, cl 6.2 and sch 5.*
3. *Closing tax invoices issued by Marsh Pty Ltd to BCC dated 3 July 2018 (BCC.0001.0001.0663), (BCC.0001.0001.0664), (BCC.0001.0001.0665) and (BCC.0001.0001.0666).*

37K. From time to time one of either GCPL or GCUK paid BCC premia under the 2017 Master Policy 3691 in respect of Assets (as defined in the 2017 Master Policy 3691) insured under the 2017 Parallel Policy 3690.

Particulars

1. *The premium reconciliation exercise undertaken by BCC in October 2020 identifies a Gross Written Premium of AUD Equiv. 26,377,972 and Net Premium of AUD Equiv. 22,806,009 being paid between Q3 of 2018 and Q3 of 2020 in respect of the 2017 Master Policy 3691 and the insurance policy entitled "Comprehensive Trade Credit Insurance Policy, Policy Number TB-03691" with unique market reference B0509FICW1900011 executed by Brereton on or about 5 March 2019 and effective from 22 February 2019 (**Master Policy**) ~~(as defined in particular iv. to paragraph 41Ba. below)~~ (BCC.0001.0005.6357) (IAL.500.002.3026).*
2. *Further particulars may be provided prior to trial.*

37L. BCC remitted the premia referred to in paragraphs 37J and 37K to the Insurer.

Particulars

1. *The premia remitted to the Insurer did not include amounts retained by BCC by way of commission or amounts payable in respect of tax obligations.*
2. *The premia remitted to the Insurer were recorded in monthly payment bordereaux, referrable to the applicable insurance that policy premia were being paid under. For the months following execution of the 2017 Master Policy 3691 and prior to execution of the Master Policy ~~(as defined in particular iv. to paragraph 41Ba. below)~~:*
   - *(i) AUD 927,805.18 is recorded as being remitted to the Insurer by BCC in respect of policy "TB-03691" (across three entries) in the September 2018 payment bordereaux (IAL.500.005.0161).*
   - *(ii) AUD 93,391.91 is recorded as being remitted to the Insurer by BCC in respect of policy "TB-03691" in the October 2018 payment bordereaux (IAL.500.006.0148).*
   - *(iii) AUD 1,589,548.70 is recorded as being remitted to the Insurer by BCC in respect of policy "TB-03691" in the February 2019 payment bordereaux (IAL.500.005.0288).*
   - *(iv) AUD 16,263.81 is recorded as being remitted to the Insurer by BCC in respect of policy "TB-03691" in the March 2019 payment bordereaux (IAL.500.001.0159).*
   - *(v) On a monthly basis, BCC remitted to the Insurer amounts due in respect of premia as recorded in the "Virtual Account Data".*
3. *Further particulars may be provided prior to trial.*

37M. From time to time, BCC prepared written and payment bordereaux that referred to the 2017 Master Policy 3691 and contained the information set out in the particulars to paragraph 9HA above in respect of the 2017 Master Policy 3691.

37N. The Insurer:

a. received the premia pleaded in paragraph 37L above;

b. received the written and payment bordereaux pleaded in paragraph 37M above; and

c. failed at all material times:

i. to assert that the policies to which those premia related were not validly issued by or on behalf of IAL and/or that IAL was not entitled to the premia; or

ii. to raise any other objection to the receipt of the premia.

37O. At all material times, the Insurer knew or ought to have known of the matters pleaded in paragraphs 37G to 37N above.

Particulars

1. *The particulars to paragraph 37E above are repeated.*
2. *The Insurer's knowledge may be inferred from:*
   - *(i) ~~the matters in the particulars to 41B.a below~~ [Not Used];*
   - *(ii) the matters pleaded at paragraphs 37A to 37F above; and*
   - *(iii) the matters pleaded at paragraphs 37J to 37N above.*
3. *Further particulars may be provided prior to trial.*

The Policy

38. On or about 13 March 2019, GCPL and GBAG (together, with White Oak, **the Insured**), entered into a Comprehensive Trade Credit Insurance Policy TB-03690, with unique market reference B0509FINCW1900009, with BCC acting for and on behalf of the Insurer (the **Policy**).

Particulars

1. *The Policy was partly in writing and partly implied.*
2. *To the extent that it was in writing, it was comprised of:*
   - *(i) A policy wording and clauses described as "Comprehensive Trade Credit Insurance Policy" dated 22 February 2019 (the **Policy Wording**) (IAL.500.002.0309);*
   - *(ii) A Schedule; and*
   - *(iii) Endorsements to the Policy as effected from time to time.*

38A. The Policy and the Master Policy ~~(as defined in particular iv. to paragraph 41B(a))~~ are substantially similar in structure and wording to the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording, and gave effect to the matters referred to in paragraph 37F above.

38B. At all material times, the Insurer knew or ought to have known of the matters pleaded in paragraphs 37F, 37O and 38-38A above.

Particulars

1. *The Insurer's knowledge may be inferred from the matters pleaded in 37A-37E and 37J to 37N above.*
2. *Further particulars may be provided prior to trial.*

39. The Policy contained express written terms to the effect that the Insurer agreed to indemnify the Insured for the **Insured Percentage** of all **Loss** suffered in respect of an **Insured Cause**, being relevantly, losses suffered where an **Eligible Customer** failed to make payment of an **Eligible Debt** on or before the **Backstop Date**, with any such amount payable by the Insurer to the Insured, or to the extent applicable any **Loss Payee**, where:

    a. ***Insured Percentage*** means, in respect of a ***Customer***, the Insured Percentage as stated in the relevant Customer Endorsement;

    b. ***Customer*** means any 'Customer' endorsed to this Policy under a Customer Endorsement, being a debtor in respect of a Debt and including any successor in title or at law to such debtor;

    c. ***Eligible Customer*** means a Customer and/or a Customer Group in relation to which all the warranties in the 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;

    d. ***Customer Limit*** means, in respect of a Customer, the amount recorded in an Endorsement to this Policy, and which is the Insurer's maximum liability for the aggregate of all Losses insured under the Policy for the Customer;

    e. ***Debt*** means as the context requires, a debt of the type described in the relevant Debt Endorsement;

    f. ***Eligible Debt*** means at any time, any Debt:

        i. the obligor (being the Customer) of which (a) is not an Affiliate of any of the parties to the Transaction Documents (other than any Origination Documentation); (b) is not a government or a governmental subdivision or agency, other than a legal entity that does not benefit from immunity from being sued for non-payment of debt or breach of contract; (c) is a corporate entity and not an individual or sole trader or partnership; (d) is not Insolvent and (e) has a Customer Limit established in accordance with the terms of this Policy;

        ii. in relation to which the Due Date does not exceed the Maximum Tenor;

        iii. which is not outstanding after its Due Date;

        iv. which is denominated and payable only in an Approved Currency; and

        v. which satisfies any further criteria set out in the relevant Debt Endorsement relating to that Debt;

    g. ***Loss*** means:

i. in respect of a Direct Asset owned by the Insured, the amount equal to the difference between:

(a) the Expected Allocation of the Insured in respect of such Asset; and

(b) the amount actually paid by the Customer or on its behalf in respect of such Asset; ~~and~~

ii. in respect of an Asset (which is neither a Direct Asset or a Note) owned by the Insured, the amount equal to the difference between:

(a) the Expected Allocation of the Insured in respect of such Asset, and

(b) the Insured's pro rata pari passu entitlement under the relevant Participant Trust in respect of any amounts actually paid by the Customer or on its behalf to the Trustee in respect of the Eligible Debt from which such Asset is derived; and

iii. in respect of 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), the amount equal to the difference between:

(a) the Expected Allocation of the Insured in respect of such Asset, and

(b) the Insured's entitlement under the Master Trust Deed (including, but not limited to, the benefit of any Mortgaged Property as defined in the Master Trust Deed);

h. ***Expected Allocation*** includes the Net Invoice Amount of the relevant Eligible Debt, where Net Invoice Amount has the meaning given to it in the RPA, being relevantly the amount of the applicable Purchased Receivable as shown on the invoice for such Purchase Receivable;

i. ***Asset*** includes (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; where ***Direct Asset*** means a direct ownership interest in an Eligible Debt;

j. ***Insured Cause*** means the failure of the Customer to make payment of an Eligible Debt on or before the Backstop Date for any reason;

k. ***Backstop Date*** means the day falling forty-five (45) days after the earlier to occur of (i) the Due Date for payment of the Eligible Debt, and (ii) such other date as the

Eligible Debt becomes due and payable under the relevant Origination Documentation; and

l. ***Loss Payee*** means any entity endorsed to the Policy as a Loss Payee.

Particulars

1. Policy Wording, clause 1.1, 3.1, Schedule 1.

40. The Insured paid a Premium pursuant to and in consideration for the Policy.

Particulars

1. *Policy Wording, clause 6, Schedules 1 and 5.*
2. *The Policy had a premium of USD1.00 with the receipt of such payment being acknowledged by the Insurer in Schedule 5 to the Policy Wording.*
3. *Each Customer Endorsement (pleaded in paragraph 46) under the Policy had a premium of USD1.00, with the receipt of such payment being acknowledged by the Insurer in each endorsement.*

41. On 21 June 2019, by Endorsement 18, the Policy period was extended to 1 March 2021 (**Policy Period**).

Particulars

1. Endorsement 18 was executed by BCC for and on behalf of the Insurer and was dated 21 June 2019 (IAL.500.011.0036).

BCC as agent of the Insurer

41A. IAL entered into:

a. the Policy referred to in paragraph 38 above;

b. Endorsement 18 referred to in paragraph 41 above;

c. the Customer Endorsements referred to in paragraph 46 below;

d. the RPA Debt Endorsement referred to in paragraph 47 below;

e. the Liberty Endorsement referred to in paragraph 52 below;

f. the LCL Endorsement referred to in paragraph 54 below; and

g. the Loss Payee Endorsement referred to in paragraph 57 below,

(where the endorsements at (b) to (g) above are **the Endorsements**)

by conduct of BCC and Brereton.

Particulars

1. The Policy and the various Endorsements were executed by Brereton for and on behalf of BCC as agent and Authorised Representative of the Insurer.

41B. The conduct of BCC and Brereton referred to in the previous paragraph was:

a. [Not used].~~within the actual authority of BCC and Brereton; or~~

~~Particulars~~

~~1. White Oak repeats paragraphs 6(a) to 6(g) of its Reply.~~

~~2. White Oak also relies on:~~

~~(i) the Brereton Authorisations pleaded in paragraphs 8(d) and 8(h) of IAL's Defence;~~

~~(ii) the existence and content of the letter from Mr Brad Robson of the Insurer "To Whom It May Concern", dated 1 August 2017;~~

~~(iii) the provision by BCC and/or Brereton of Bordereaux to the Insurer under the CGU AAR Agreement, the Insurer AAR Agreement and the PACAO;~~

*~~(iv) IAL's receipt of premiums and other revenue remitted to it by BCC and/or Brereton, including premium payments for the related insurance policy entitled "Comprehensive Trade Credit Insurance Policy, Policy Number TB-03691" with unique market reference B0509FICW1900011 executed by Brereton on or about 5 March 2019 and effective from 22 February 2019 (the **Master Policy**) and each endorsement to the Master Policy; and~~*

~~(v) IAL's conduct in paying commission and other fees to BCC and/or Brereton.~~

~~3. Further, if the Policy and the Endorsements were not authorised by the CGU AAR Agreement, the Insurer AAR Agreement or the PACAO, it is to be inferred from the conduct of BCC and Brereton in entering into the Policy and the Endorsements, and in representing that they did so as agent and Authorised Representative of the Insurer that the Insurer had conferred actual authority on them by the Insurer in dealings that are presently unknown to White Oak.~~

~~4. In addition, that BCC and Brereton had actual authority to engage in the conduct pleaded at paragraph 41A above is implied by the course of dealing between BCC and Brereton on the one hand and the Insurer on the other hand up to 30 June 2019 during which time (i) BCC and Brereton executed documents of the type referred to at paragraph 41A; and (ii) BCC and Brereton provided bordereaux to the Insurer in respect of policies referred to in such documents.~~

~~5. Additional particulars may be provided following discovery and the filing of a Defence by BCC and Brereton.~~

b. ~~alternatively,~~within the ostensible authority of BCC and Brereton; and

Particulars

1. White Oak repeats paragraphs 6(d) to 6(g) of its Reply.

2. Further:

(i) IAL took no reasonable steps to ensure third parties dealing with BCC and Brereton were informed of the limits or any termination of their authority;

(ii) ~~if BCC and Brereton acted without actual authority,~~ the Insurer failed to take reasonable steps to ensure that BCC and Brereton acted within the scope of their authority, in circumstances where it was reasonable to expect that third parties would deal with BCC and Brereton on the assumption they were acting as authorised agents of IAL, and would suffer loss thereby;

(iii) the matters referred to in paragraph 9HA, and the particulars contained thereto; and

(iv) the matters referred to in paragraphs 38A and 38B, and the particulars contained thereto.

3. Additional particulars may be provided following discovery and the filing of a Defence by BCC and Brereton.

c. conduct:

iA. that was also the conduct of the Insurer by the operation of s 769B(1) of the Corporations Act and/or s 12GH(2) of the ASIC Act;

i. that was, further or in the alternative to (iA) related to the provision of a financial service;

ii. on which a Loss Payee (including White Oak) could reasonably be expected to rely;

iii. on which White Oak did, in fact, rely in good faith when entering into the Loss Payee Endorsement and when purchasing the Payment Obligations referred to in paragraphs 57 and 61 respectively below;

iv. for which the Insurer is responsible, as between the Insurer and White Oak, by the operation of s 917C of the *Corporations Act* (or alternatively, s 917B) of the *Corporations Act*), whether or not BCC and/or Brereton acted within the scope of their authority; and

v. in the further or alternative to (iv), above, to the extent the conduct occurred on or after 1 July 2019, for which TMNF is responsible, or partly responsible, as between TMNF and White Oak, by the operation of ss 917B or 917C of the *Corporations Act* whether or not BCC and/or Brereton acted within the scope of their authority.

Particulars

1. Paragraphs 8, 9H, 9K above are repeated.

42. [Not Used]

43. [Not used]

44. [Not used]

45. [Not used]

Customers under the Policy

46. During the Policy Period, the Insurer entered into the following endorsements, which constituted "Customer Endorsements" for the purposes of the Policy and rendered each entity named below a Customer under the Policy (**Customer Endorsements**):

a. Endorsement No. 19 for Liberty, Liberty FE and LCL dated 13 March 2019;

b. Endorsement No. 36(i) for Aperam Sourcing SCA dated 24 May 2019;

c. Endorsement No. 68 for ArcelorMittal Sourcing SCA dated 24 May 2019;

d. Endorsement No. 45(iii) for Cargill Incorporated dated 24 February 2020;

e. Endorsement No. 111(i) for Howmet Aerospace Inc dated 2 July 2020;

f. Endorsement No. 101(i) for Marubeni Corporation dated 24 February 2020;

g. Endorsement No. 72(ii) for Mitsubishi Corporation International (Europe) Plc dated 25 June 2020;

h. Endorsement No. 90(ii) for Mitsui Bussan Metals Co Ltd dated 24 February 2020;

i. Endorsement No. 100(i) for Panasonic Corporation dated 29 January 2020;

j. Endorsement No. 91(iii) for Posco International Corporation dated 24 February 2020;

k. Endorsement No. 119 for Samsung Electronics Co Ltd dated 26 February 2020;

l. Endorsement No. 64(iv) for Sumitomo Corporation Europe Limited dated 25 June 2020;

m. Endorsement No. 47(v) for Thyssenkrupp Materials Trading GmbH dated 24 February 2020; and

n. Endorsement No. 73(i) for Toyota Tsusho Asia Pacific Pte Ltd dated 1 October 2019.

Particulars

1. The Customer Endorsements were in writing and were executed by Brereton for and on behalf of BCC as agent and Authorised Representative of the Insurer.

RPA Debt Endorsement

47. On 29 January 2020, by Endorsement 2(iii), being a Debt Endorsement to the Policy, the Insurer agreed that effective from 22 February 2019, a Debt under the Policy included an amount payable to GCUK by:

Under Part (A):

1. under an accounts receivable (or a future accounts receivables) which is (or is expected to be) payable by a Customer to a Supplier relating to the provision of goods and/or services by such Supplier to a Customer;

Under Part (B):

a. a Customer under its obligation as seller (or, as the case may be, servicer) under a Receivables Purchase Agreement to repurchase, or provide an indemnity payment,

where in the case of a repurchase or indemnity obligation, it was triggered by one or more Repurchase Event(s), or

b. a Customer under a guarantee given by the Customer to or for the benefit of GCUK guaranteeing the obligations referred to in (a), above (**RPA Debt Endorsement**).

Particulars

1. Endorsement 2(iii) Part (A) and Part (B) was executed by Brereton for and on behalf of BCC as agent and Authorised Representative of the Insurer and was dated 29 January 2020 (IAL.500.011.0048).

48. Repurchase Event was defined in the RPA Debt Endorsement to mean any event described in the relevant Receivables Purchase Agreement which obliged the relevant seller to repurchase or provide an indemnity payment with respect to accounts receivables sold by such Seller pursuant to the Receivables Purchase Agreement.

49. For the purposes of the RPA Debt Endorsement, the reference therein to a Receivables Purchase Agreement refers to the RPA (as amended and restated) pleaded above at Section E.

50. For the purposes of the RPA Debt Endorsement, the reference to a Repurchase Event refers to an Event of Repurchase as that term is defined in the RPA (as amended and restated) as pleaded above in Section E.

51. In the premises, by the RPA Debt Endorsement, a Debt under the Policy included the payment or amount pleaded in paragraphs 28~~7A~~(b), 28(b1), 30 and 32A.

Liberty Customer Endorsement

52. On 29 April 2020, by Endorsement 19(ii) to the Policy, the Insurer agreed that, effective from 1 March 2019, Liberty FE and Liberty were Customers for the purposes of the Policy (**Liberty Endorsement**).

Particulars

1. Customer Endorsement No 19(ii) executed by Brereton for and on behalf of BCC as agent and Authorised Representative of the Insurer dated 24 April 2020 (IAL.500.011.0129).

53. It was an express term of the Liberty Endorsement that:

a. Liberty and Liberty FE were each a Guarantor under the Group Guarantee (pleaded above at paragraph 32) in respect of the RPA (as amended and restated);

b. the Group Guarantee included the Debts described in the RPA Debt Endorsement;

c. the Customer Limit and Maximum Limit of Liability for Liberty FE, LCL and Liberty was USD$5 million, to be reset, each time, at the same level if breached;

d. the Insured Percentage of the Customer Limit was 100%; and

e. for the purposes of any Debt owed by any of Liberty FE, LCL and Liberty, the Policy shall be interpreted as follows:

i. the Maximum Limit of Liability and Customer Limit will, if any Claim is submitted under the Policy for an amount which would result in the Maximum Limit of Liability and/or Customer Limit being exceeded, be automatically, unconditionally and repeatedly reset at the same level up to an amount in aggregate which is at least the amount of such Claim; and

ii. the Maximum Limit of Liability and Customer Limit are non-cancellable, may not be reduced and the obligation of the Insurer to automatically reset such limits is irrevocable.

LCL Endorsement

54. On 29 April 2020, by Endorsement entitled "Liberty Commodities Limited" (the **LCL Endorsement**), the Insurer agreed that effective from 22 February 2019 a Debt under the Policy included a debt acquired by the Insured or the Loss Payee from GCUK, which GCUK had acquired from LCL pursuant to the RPA.

Particulars

1. Endorsement (Liberty Commodities) was executed by Brereton for and on behalf of BCC as agent and Authorised Representative of the Insurer and dated 29 April 2020 (IAL.500.011.0046).

55. By the LCL Endorsement, the Insurer also agreed that the definition of Expected Allocation in the Policy shall be read as including "*the Net Invoice Amount of the relevant Eligible Debt*", where Net Invoice Amount has the meaning given to it in the RPA, being relevantly the amount of the applicable Purchased Receivable as shown on the invoice for such Purchase Receivable.

56. For the purposes of the Policy, the LCL Endorsement constitutes both a Customer Endorsement for LCL as a Customer under the Policy, as well as a Debt Endorsement.

Loss Payee Endorsement

57. On 29 April 2020, by Endorsement 24 to the Policy, the Insurer agreed that effective from 22 February 2019 White Oak was endorsed as a Loss Payee under the Policy (the **Loss Payee Endorsement**).

Particulars

1. The Loss Payee Endorsement was executed by Brereton for and on behalf BCC as agent and Authorised Representative of the Insurer and dated 29 April 2020 (IAL.500.011.0369).

58. It was an express term of the Loss Payee Endorsement that:

a. As a continuing security for the performance by GCPL and GBAG of their obligations to act on the instructions of White Oak to file a Claim with the Insurer where White Oak has suffered a Loss, GCPL and GBAG assigned by way of security all of their rights and interests under the Policy to White Oak to the extent that such rights and interests relate to any Asset acquired by White Oak at any time before, on or after the Loss Payee Endorsement.

b. The Insurer acknowledged and agreed that White Oak could in certain circumstances, such as where GCPL or GBAG was incapacitated due to an event of insolvency, submit a claim under the Policy directly to the Insurer in relation to Assets held by White Oak and White Oak shall in relation to any such claim be subject to the terms of the Policy as if the loss payee were the insured thereunder and (to the extent required to do so in accordance with the terms of the Policy) shall have the ability to transfer the defaulted Asset(s) which are the subject of the Claim directly to IAL.

c. The Insurer agreed to promptly notify White Oak in the event that the Premium under the Policy was not paid by the insured when due.

d. The Insurer confirmed to White Oak that it would have no right to rescind or avoid the Policy or any of its obligations thereunder, and that the Policy will not be invalidated as a result of breach by GCUK of the Master Policy and other matters.

e. The Insurer further confirmed to White Oak that the Insurer would have no right to rescind or avoid the Policy or any of its obligations thereunder, and that the Policy will not be invalidated as a result of the insured not having any insurable interest in the Assets owned by the loss payee at the time a Claim is made by the insured or loss payee relating to such Assets.

58A. It was an implied term of the Loss Payee Endorsement that the Insurer would act in good faith towards White Oak (**LP Implied Good Faith Obligation**).

Particulars

1. The term was implied as a matter of construction or alternatively as a matter of law.

59. In the premises, including the matters pleaded above in paragraphs 8 to 58, White Oak relied upon the Policy including the Endorsements to the Policy in agreeing to be a Loss Payee under the Policy and in purchasing the Payment Obligations referred to in paragraph 61 below.

59A. Further or in the alternative, at all material times following execution of the Loss Payee Endorsement, White Oak was an “Insured” for the purposes of the Policy, with the Policy including the following contracts of insurance:

a. a contract or contracts, on the one hand, between GCPL and GBAG, each in their own capacity as a co-insured or as joint insureds, and IAL, by its agent and corporate representative BCC, as Insurer, insuring Losses related to Assets acquired by GCPL and GBAG during the period of insurance; and

b. a contract, on the other hand, between White Oak, as an Insured for the purposes of the Policy, and IAL, by its agent and corporate representative BCC, as Insurer, insuring Losses related to Assets acquired by White Oak during the period of insurance (the **White Oak Contract**).

Particulars

1. *By or about 29 April 2020, GCPL and GBAG and the Insurer (through BCC) agreed to Endorsement (Liberty Commodities), Customer Endorsement 19(ii), Endorsement 2(iii), and the Loss Payee Endorsement (the **April Endorsements**). Endorsement 2(iii) was executed on 29 January 2020 but was provided to White Oak on or about 29 April 2020 and relied upon by White Oak as part of the relevant endorsements under the Policy.*
2. *The terms of the White Oak Contract were partly express and partly implied. To the extent they were implied, they were implied from one or more of the following:*
   (i) The terms of the April Endorsements;
   (1A) The terms of Endorsement 18;
   (ii) The Policy, including Recitals A, B, sections 7, 9, and 15; and
   (iii) The Master Policy.
3. *At all material times it was intended by White Oak, GCPL and GBAG and the Insurer (through BCC) that, following the April Endorsements, White Oak and not GCPL and GBAG would acquire Assets under the Policy (and not through GCPL and GBAG and therefore be directly liable to any Losses related to those Assets acquired during the period of insurance and that the Policy be treated as a composite policy in respect to White Oak.*
4. *At all material times it was the case that, following the April Endorsements, White Oak and not GCPL and GBAG, acquired Assets under the Policy (and not through GCPL and GBAG) and therefore was or would be directly liable to any Losses related to those Assets acquired during the period of insurance.*
5. *Further and better particulars may be provided following discovery and evidence.*

59B. At all material times, it was an implied term of the White Oak Contract that:

a. BCC and/or the Insurer would deal fairly with White Oak and/or exercise its contractual rights or obligations under the Policy in good faith and for a proper purpose (**Implied Good Faith Obligation**);

Particulars

1. *Implied Good Faith Obligation was implied as a matter of law and or by the operation s 13 of the ICA whether White Oak was an insured or third party beneficiary.*

b. BCC and/or the Insurer would disclose to White Oak material facts relevant to whether the Policy and/or each of the Endorsements was valid and/or authorised by BCC and/or the Insurer (**Implied Disclosure Obligation**); and

c. BCC and/or the Insurer would do what is necessary on its part to enable White Oak to have the benefit of being an Insured under the Policy and not hinder or prevent the fulfilment of the purposes of the express promises made in the Policy and/or each of the Endorsements (**Implied Benefit Obligation**).

59C. In the premises, as an Insured under the Policy (as a composite insurance policy) any fraud engaged in by GCPL, GCUK and/or GBAG (which is not admitted) does not affect White Oak *qua* Insured.

59D. Further or in the alternative to paragraph 59B:

a. as a Loss Payee, White Oak was an indirect beneficiary, or an equitable assignee, under the Policy where a purpose or material purpose of the Loss Payee Endorsement was to confer rights or benefits to White Oak under the Policy; and

b. as such, BCC and the Insurer were obliged to act in good faith towards White Oak (**Indirect Beneficiary Good Faith Obligation**).

H. **Power of Attorney**

60. On 29 April 2020, GBAG executed a document entitled Deed of Power of Attorney (**Power of Attorney**).

Particulars

1. The Power of Attorney was in writing and executed as a deed on 29 April 2020 (WOC.0001.0011.3989).

60A. Under the Power of Attorney, GBAG (among other things):

a. assigned to White Oak all of GBAG's rights and interests under the Policy, to the extent such rights and interests relate to any Note, Asset, Debt or rights relating thereto acquired by White Oak at any time before, on or after the date of the Power of Attorney; and

b. irrevocably and unconditionally appointed White Oak to be its attorney and in GBAG's name to do any act, matter or thing which White Oak in its absolute discretion considered necessary or desirable for the protection, preservation or enjoyment of White Oak's interest rights and timely payment as Loss Payee under the Policy, or which ought to be done by GBAG under the Policy.

Particulars

1. Power of Attorney, clauses 2.4 and 3.1.

60B. Further or in the alternative to White Oak's standing to bring these proceedings in its own right under s 48(1) of the ICA and/or the Loss Payee Endorsement, White Oak relies upon:

a. its standing as an Insured under the White Oak Contract; or, alternatively,

b. the terms of the Power of Attorney and brings these proceedings in the name of GBAG as its attorney.

I. Acquisition of Assets under the RPA

61. From 10 December 2020, White Oak paid the following amounts to and acquired the following Payment Obligations from GCUK pursuant to the MAA:

Name of Customer	Date of Acquisition of Payment Obligation	Due Date	Backstop Date	Amount paid by White Oak on acquisition (USD$)
Aperam Sourcing SCA	10/12/2020	25/02/2021	11/04/2021	9,018,502.72
Cargill Incorporated	16/12/2020	3/03/2021	17/04/2021	10,853,352.16
POSCO	17/12/2020	4/03/2021	18/04/2021	6,894,374.74
Mitsubishi Corporation International (Europe) Plc	17/12/2020	4/03/2021	18/04/2021	690,000.36
Cargill Incorporated	23/12/2020	11/03/2021	25/04/2021	14,843,427.93
Cargill Incorporated	29/12/2020	16/03/2021	30/04/2021	6,814,474.77
Mitsui Bussan Metals Co Limited	29/12/2020	16/03/2021	30/04/2021	7,895,070.34
POSCO	29/12/2020	16/03/2021	30/04/2021	5,411,289.99
Marubeni Corporation	30/12/2020	18/03/2021	2/05/2021	6,565,483.48
Mitsubishi Corporation International (Europe) Plc	5/01/2021	23/03/2021	7/05/2021	8,285,835.01
Mitsubishi Corporation International (Europe) Plc	6/01/2021	24/03/2021	8/05/2021	8,191,126.14
Samsung Electronics Co. Ltd	6/01/2021	24/03/2021	8/05/2021	8,383,801.51
Mitsubishi Corporation International (Europe) Plc	7/01/2021	25/03/2021	9/05/2021	4,224,669.29
ThyssenKrupp Materials Trading GmbH	7/01/2021	25/03/2021	9/05/2021	2,128,338.76
Arcelormittal Sourcing SCA	12/01/2021	30/03/2021	14/05/2021	5,068,650.63
Panasonic Corporation	14/01/2021	1/04/2021	16/05/2021	10,384,914.67
POSCO	19/01/2021	6/04/2021	21/05/2021	1,359,087.72
Samsung Electronics Co. Ltd	21/01/2021	8/04/2021	23/05/2021	4,158,396.32

Name of Customer	Date of Acquisition of Payment Obligation	Due Date	Backstop Date	Amount paid by White Oak on acquisition (USD$)
Sumitomo Corporation Europe Limited	26/01/2021	13/04/2021	28/05/2021	2,011,245.64
Mitsubishi Corporation International (Europe) Plc	26/01/2021	19/01/2021	5/03/2021	249,377.63
Aperam Sourcing SCA	2/02/2021	20/04/21	4/06/2021	1,652,159.69
Aperam Sourcing SCA	2/02/2021	*	*	4,654,201.63
Cargill Incorporated	2/02/2021	*	*	1,977,599.15
POSCO	4/02/2021	*	*	3,933,136.68
Toyota Tsusho Asia Pacific Pte Ltd	4/02/2021	*	*	2,923,832.92
Toyota Tsusho Asia Pacific Pte Ltd	4/02/2021	*	*	2,314,849.75
Howmet Aerospace Inc.	17/02/2021	5/05/21	19/06/2021	921,957.65
Howmet Aerospace Inc.	25/02/2021	5/05/21	19/06/2021	471,430.75
Aperam Sourcing SCA	25/02/2021	13/05/21	27/06/2021	426,754.22

***** *Dates of these invoices presently unknown*

62. The Payment Obligations purchased by White Oak were Assets for the purposes of Policy.

Particulars

1. *Policy Wording, Schedule 1.*
2. *Loss Payee Endorsement, LCL Endorsement, Liberty Endorsement, RPA Endorsement.*

63. By reason of the matters pleaded above at paragraph 46, each Customer identified in paragraph 61 was an Eligible Customer for the purposes of the Policy.

Marsh confirmation emails

64. Prior to each acquisition by White Oak of the Payment Obligations pleaded in paragraph 61 above, Marsh advised White Oak that:

a. in respect of the Payment Obligations acquired by White Oak there was sufficient availability for each Eligible Customer Limit to ensure that each account receivable was covered under the Policy; and

b. it acknowledged and agreed that White Oak was relying on the accuracy of the contents of the LCL Rolling Balances limits file provided to White Oak by Marsh.

Particulars

1. *Marsh confirmation emails and attachments dated between 10 December 2020 to 25 February 2021.*

Failure of Eligible Customers to Pay

65. On or about 7 March 2021, White Oak wrote to each of the Eligible Customers identified in paragraph 61 above, advising them that White Oak was an assignee of the debts they owed to LCL, and requesting payment of the debts.

Particulars

1. The Letters were in writing and sent by both post and email to each of the Eligible Customers and each letter attached a notice of assignment and a notice of redirection:

WOC.0004.0001.0001	*WOC.0004.0001.0002*	*WOC.0004.0001.0006*
WOC.0004.0001.0013	*WOC.0004.0001.0014*	*WOC.0004.0001.0018*
WOC.0004.0001.0028	*WOC.0004.0001.0029*	*WOC.0004.0001.0033*
WOC.0004.0001.0040	*WOC.0004.0001.0041*	*WOC.0004.0001.0045*
WOC.0004.0001.0056	*WOC.0004.0001.0057*	*WOC.0004.0001.0061*
WOC.0004.0001.0072	*WOC.0004.0001.0073*	*WOC.0004.0001.0077*
WOC.0004.0001.0084	*WOC.0004.0001.0085*	*WOC.0004.0001.0089*
WOC.0004.0001.0097	*WOC.0004.0001.0098*	*WOC.0004.0001.0102*
WOC.0004.0001.0109	*WOC.0004.0001.0110*	*WOC.0004.0001.0114*
WOC.0004.0001.0131	*WOC.0004.0001.0132*	*WOC.0004.0001.0136*
WOC.0004.0001.0143	*WOC.0004.0001.0144*	*WOC.0004.0001.0148*
WOC.0004.0001.0155	*WOC.0004.0001.0156*	*WOC.0004.0001.0160*
WOC.0004.0001.0168	*WOC.0004.0001.0169*	*WOC.0004.0001.0173*

65A. On or about 13 March 2021, White Oak wrote to LCL and its guarantors, Liberty FE and Liberty, demanding payment for the sum of the outstanding Payment Obligations identified in paragraph 61 pursuant to the terms of the Group Guarantee (**Guarantee Demand**).

Particulars

1. The Guarantee Demand was in writing and was signed on behalf of White Oak (WOC.0004.0003.0015).

66. As at the date of filing this Sixth ~~Fifth~~ Amended 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 Payment Obligation referred to in paragraph 61, giving rise to an Eligible Debt under the Policy (the **Eligible Debts**).

Occurrence of Event of Repurchase and Event of Termination

66A. As at the date of filing this Sixth ~~Fifth~~ Amended Statement of Claim, in respect of each Payment Obligation referred to in paragraph 61, being a Purchased Receivable, either:

a. the Eligible Customers have failed to pay into the Seller Collection Account referred to in cl 5.1(A) of the RPA the full amount due in respect of each Payment Obligation as at the Final Settlement Date; or

b. alternatively, LCL has failed to cause any amounts paid into the Seller Collection Account in respect of each Payment Obligation to be paid to GCUK or White Oak.

66B. As at the relevant Final Settlement Date, in respect of each of the Eligible Customers referred to in paragraph 61, no AD Insolvency Event had been notified to GCUK or White Oak.

67. On or about 7 May 2021, solicitors for Grant Thornton advised White Oak that the administrator's investigations to date indicated that many of the Eligible Customers (identified at paragraph 61, above) either had no amounts owing to LCL or that they had no recent trade with LCL.

Particulars

1. *Letter from Allen & Overy dated 7 May 2021 to Taylor Wessing LLP (WOC.0004.0004.0025).*

68. To the extent that any of the Payment Obligations referred to in paragraph 61 concerned Purchased Receivables that were not Eligible Receivables within the meaning of the RPA, LCL was in breach of its obligations under the RPA outlined in paragraphs 26 and 27, above.

69. By reason of the matters pleaded in paragraph 66A and 66B and/or paragraph 68 above, both an Event of Repurchase and Event of Termination had occurred under the Policy, giving rise to payment obligations under the RPA including as pleaded in paragraphs 28(b), 28(b1) and 30 above.

Notification of Event of Repurchase and Event of Termination

70. In March and April 2021, the administrators for GCUK advised LCL that both an Event of Repurchase and Event of Termination had occurred under the RPA in respect of Purchased Receivables (**Notice of Event of Repurchase**) and requested that LCL immediately repurchase the Purchased Receivables at the relevant Repurchase Price under the RPA.

Particulars

1. *Letters from Grant Thornton UK LLP to LCL, copied to Liberty, Liberty FE and Liberty Steel Group Holdings Pte Ltd dated 18 March 2021, 23 March 2021, 30 March 2021, 9 April 2021, 13 April 2021, 20 April 2021 and 27 April 2021:*

   WOC.0001.0024.1053 WOC.0001.0024.1057 WOC.0001.0024.1060
   WOC.0001.0024.1066 WOC.0001.0024.1069 WOC.0001.0024.1074
   WOC.0001.0024.1079

2. *RPA, clauses 1.1 definition of "Repurchase Price" and 5.6.*

71. The Purchased Receivables the subject of the Notice of Event of Repurchase included all of the Payment Obligations that were purchased by White Oak as pleaded above at paragraph 61.

72. All rights and interests in the Purchased Receivables that were acquired by White Oak, and the subject of the Notice of Event of Repurchase, were assigned to White Oak under the MAA.

73. On 7 March 2021, White Oak advised LCL directly that an Event of Termination had occurred in the RPA in respect of Purchased Receivables (**White Oak Notice of Event of Termination**).

73A. The Notice of Event of Repurchase, the White Oak Notice of Event of Termination or the Guarantee Demand constituted a "demand" notice to LCL for the purposes of clauses 6.2 and 6.2(D) of the RPA and/or under the Group Guarantee.

Failure by LCL, Liberty or Liberty FE to make payment of Repurchase Price

74. As at the date of filing this Sixth ~~Fifth~~ Amended Statement of Claim, neither LCL, Liberty nor Liberty FE has:

a. repurchased at the Repurchase Price under the RPA the Purchased Receivables the subject of the Notice of Event of Repurchase or the White Oak Notice of Event of Termination;

b. made payment by way of indemnity of any amount equal to the Repurchase Price or any purported Purchased Receivable which do not exist, in accordance with the RPA;

b1. immediately following receipt of the Notice of Event of Repurchase, or the White Oak Notice of Event of Termination, indemnified White Oak for its losses arising out of or resulting from any of the matters in clause 6.2, including from White Oak's acquisition of the Payment Obligations as pleaded in paragraph 61, or from the Event of Termination;

b2. remedied its failure to make the required payments or indemnities under clause 6.1 and/or 6.2 within 10 days after receipt of the Notice of Event of Repurchase, or the White Oak Notice of Event of Termination pursuant to clause 6.2(D) of the RPA;

b3. paid the Guaranteed Obligations within 10 days after the date of the Notice of Event of Repurchase, the White Oak Notice of Event of Termination or the Guarantee Demand pursuant to the Group Guarantee (as pleaded in paragraph 32A); or

c. paid interest on amounts due to White Oak as calculated under the RPA.

75. In the premises, and by reason of, *inter alia*, the Loss Payee Endorsement, LCL Endorsement, Liberty Endorsement and the RPA Endorsement, the failure by LCL, Liberty or Liberty FE to make the payment pleaded in paragraph 74 above constitutes a debt which is insured for the purposes of the Policy.

J. Claims on the Policy

76. As an Insured or Loss Payee under the Policy, White Oak has made ten claims on BCC as the corporate authorised representative of the Insurer, in respect of the failure by the Eligible Customers to make payments in respect of the Eligible Debts, as follows (the **Claims**):

Claim Number	**Claim date**	**Name of Supplier**	**Name of Eligible Customer**	**Date of Acquisition of Direct Asset**	**Invoice Due Date**	**Amount of Expected Allocation (at time of claim) ($USD)**
1	8/4/2021	LCL	Aperam Sourcing SCA	10/12/2020	25/02/2021	9,186,848.10
2	8/4/2021	LCL	Cargill Incorporated	16/12/2020	3/03/2021	11,055,948.07
	8/4/2021	LCL	POSCO	17/12/2020	4/03/2021	7,039,156.61
	8/4/2021	LCL	Mitsubishi Corporation International (Europe) Plc	17/12/2020	4/03/2021	704,490.37
3	8/4/2021	LCL	Cargill Incorporated	23/12/2020	11/03/2021	15,123,803.79
4	8/4/2021	LCL	Cargill Incorporated	29/12/2020	16/03/2021	6,941,678.30
	8/4/2021	LCL	Mitsui Bussan Metals Co Limited	29/12/2020	16/03/2021	8,060,866.82
	8/4/2021	LCL	POSCO	29/12/2020	16/03/2021	5,524,927.08
	8/4/2021	LCL	Marubeni Corporation	30/12/2020	18/03/2021	6,705,000.00
5	19/4/2021	LCL	Arcelormittal Sourcing SCA	12/01/2021	30/03/2021	5,163,265.44
	19/4/2021	LCL	Panasonic Corporation	14/01/2021	1/04/2021	10,578,766.41

Claim Number	Claim date	Name of Supplier	Name of Eligible Customer	Date of Acquisition of Direct Asset	Invoice Due Date	Amount of Expected Allocation (at time of claim) ($USD)
	19/4/2021	LCL	Toyota Tsusho Asia Pacific Pte Ltd	4/02/2021		2,975,000.00
	19/4/2021	LCL	Toyota Tsusho Asia Pacific Pte Ltd	4/02/2021		2,355,359.62
6	16/4/2021	LCL	POSCO	19/01/2021	6/04/2021	1,387,628.56
	16/4/2021	LCL	Samsung Electronics Co. Ltd	21/01/2021	8/04/2021	4,236,019.72
	16/4/2021	LCL	POSCO	4/02/2021		4,000,000.00
7	23/4/2021	LCL	Sumitomo Corporation Europe Limited	26/01/2021	13/04/2021	2,053,481.80
	23/4/2021	LCL	Mitsubishi Corporation International (Europe) Plc	26/01/2021	19/01/2021	254,614.56
	23/4/2021	LCL	Aperam Sourcing SCA	2/02/2021		4,734,874.46
	23/4/2021	LCL	Cargill Incorporated	2/02/2021		2,012,317.00
8	29/4/2021	LCL	Aperam Sourcing SCA	2/02/2021	20/04/21	1,683,000.00
9	13/5/2021	LCL	Howmet Aerospace Inc.	17/02/2021	5/05/21	943,470.00

Claim Number	Claim date	Name of Supplier	Name of Eligible Customer	Date of Acquisition of Direct Asset	Invoice Due Date	Amount of Expected Allocation (at time of claim) ($USD)
	13/5/2021	LCL	Howmet Aerospace Inc.	25/02/2021	5/05/21	481,383.18
10	24/5/2021	LCL	Mitsubishi Corporation International (Europe) Plc	5/01/2021	23/03/2021	9,399,819.50
	24/5/2021	LCL	Mitsubishi Corporation International (Europe) Plc	6/01/2021	24/03/2021	9,292,377.54
	24/5/2021	LCL	Samsung Electronics Co. Ltd	6/01/2021	24/03/2021	9,489,221.27
	24/5/2021	LCL	Mitsubishi Corporation International (Europe) Plc	7/01/2021	25/03/2021	4,792,652.61
	24/5/2021	LCL	ThyssenKrupp Materials Trading GmbH	7/01/2021	25/03/2021	2,420,000.00
	24/5/2021	LCL	Aperam Sourcing SCA	25/02/2021	13/05/21	483,022.56

Particulars

1. *The Claims were in writing and were in the form set out in the Policy:*

IAL.500.002.0002 *IAL.500.002.0046* *IAL.500.002.0052*
IAL.500.002.0056 *IAL.500.002.0009* *IAL.500.002.0061*
IAL.500.002.0065 *IAL.500.002.0069* *IAL.500.002.0087*
IAL.500.002.0091

77. On 24 May 2021, as an Insured or Loss Payee under the Policy, White Oak advised BCC, as the corporate authorised representative of the Insurer, that, in respect of the Claims (**Updated Claims**):

a. Interest was also claimed on each Eligible Debt from the Backstop Date;

b. White Oak claimed 100% of the Eligible Debts; and

c. There had been an Event of Repurchase and an Event of Termination for the purposes of the RPA and the Policy, and accordingly, White Oak also relied upon the failure by LCL (or the relevant Guarantors under the Group Guarantee, as pleaded above) to make good its payment obligations under the RPA as a Debt for the purposes of the Policy.

Particulars

1. Email from Ashurst to Marsh dated 24 May 2021 and excel spreadsheet attachment entitled WO Insurance Claim Open Schedule 21 May (WOC.5000.0001.0001) (WOC.5000.0001.0002).

78. On 17 September 2021, White Oak provided to the Insurer claim forms under the Policy which included the Updated Claims pleaded above at paragraph 77.

Particulars

1. *The Updated Claims were in writing and were on the form provided by BCC as the corporate authorised representative of the Insurer.*
2. *Ashurst email to BCC dated 17 September 2021 (BCC.0001.0006.1880) (BCC.0001.0006.1886).*

79. Both the Claims and the Updated Claims were in respect of Losses (the **Insured Losses**) made in respect of Assets owned by White Oak as an Insured or Loss Payee under the Policy and were derived from the Eligible Debts caused by an Insured Cause under the Policy, where the Insured Cause included:

a. the failure of the Eligible Customers to make payment of the Eligible Debts; and/or

b. the failure of LCL, Liberty or Liberty FE to make payment as pleaded above in paragraph 74.

Particulars

1. *Policy Wording, clauses 1.1, 3.1, Schedule 1.*
2. *Loss Payee Endorsement, LCL Endorsement, RPA Endorsement and the Liberty Endorsement.*
3. *Paragraphs 66 to 66B and 74 above and the particulars contained therein are repeated.*

80. The Claims were submitted to the Insurer within the time requirement under the Policy to lodge a Claim, being 12 months after the Due Date of the Eligible Debt.

Particulars

1. Policy Wording, clause 10.3.

81. In the premises pleaded in paragraphs 76 to 80, the Insurer has an obligation to indemnify White Oak under the Policy up to the Insured Percentage of the Insured Loss.

K. Breach of Policy by Insurer

82. In April to June 2021, in response to the Claims made by White Oak, as pleaded above, solicitors for the Insurer wrote to White Oak and amongst other things requested further information in respect of the Claims.

Particulars

1. *Letters from Clyde & Co to Ashurst dated 19 March 2021, 26 March 2021, 01 April 2021, 09 April 2021, 29 April 2021, 30 April 2021, 07 May 2021, 12 May 2021, 27 May 2021, and 04 June 2021:*

WOC.0010.0013.0061	*WOC.0010.0013.0069*	*WOC.0010.0013.0027*
WOC.0010.0013.0009	*WOC.0010.0013.0044*	*WOC.0010.0013.0035*
WOC.0010.0013.0018	*WOC.0010.0013.0053*	*WOC.0010.0013.0001*
WOC.0010.0013.0078		

83. On 17 September 2021, solicitors for White Oak provided a detailed explanation of the Claims including all reasonably available information in response to the Insurer's requests as pleaded above at paragraph 82.

Particulars

1. *Letter from Ashurst to Clyde & Co dated 17 September 2021.*

84. As at the date of filing this Sixth ~~Fifth~~ Amended Statement of Claim, the Insurer has neither confirmed that White Oak is entitled to be indemnified, nor indemnified White Oak, under the Policy.

85. In the premises pleaded in paragraphs 76 to 83, the Insurer has all the information necessary to know that it is obliged to indemnify White Oak under the Policy.

86. In the premises, the Insurer has failed within a reasonable time to indemnify White Oak under the Policy.

87. The Insurer's failure to indemnify White Oak under the Policy is wrongful and in breach of the terms of the Policy.

L. Loss or damage

88. As a result of the Insurer's breach or breaches of contract under the Policy, White Oak has suffered loss or damage equivalent to the amount payable to it by the Insurer in respect of the Claims under the Policy.

M. Claims against BCC~~,~~ & Brereton ~~& the Insurer~~

89. [Not used].

90. The allegations made in the balance of this Section are pleaded further or in the alternative to the allegations pleaded against the Insurer above, if and to the extent that White Oak is unable to recover the amount of its loss from the Insurer under the Policy.

91. By its Defence, the Insurer denies that BCC and Brereton had actual or ostensible authority to enter into the Policy or the Endorsements as its agent or otherwise on its behalf.

92. ~~If (which is denied)~~ BCC and Brereton had no actual ~~or ostensible~~ authority to enter into the Policy or ~~one or more~~ any of the Endorsements as the Insurer's agent or otherwise on its behalf~~, White Oak pleads as follows~~.

Particulars

1. *White Oak relies on paragraphs 8(a)–(bb), 9B, 38(a)–(e), 41(d) and 41B(b)(i) of the Insurer's defence filed in this proceeding on 1 May 2026.*
2. *The Affidavit of Bradley Forbes Robson sworn on 13 February 2026, [72], [75], [85], [92]-[93], [112], [119], [121], [126]-[128], [141], [163]-[166].*
3. *The Affidavit of Twain Abbott affirmed on 13 February 2026, [33]-[36], [47], [49]-[52], [57]-[70], [200], [243]-[270], [334]-[340], [344], [373]-[374].*

92A. Brereton had no actual authority to execute the Policy or any of the Endorsements on behalf of BCC.

Particulars

1. *White Oak relies on paragraphs 8(a)–(bb), 9B, 38(a)–(e), 41(d) and 41B(b)(i) of the Insurer's defence filed in this proceeding on 1 May 2026.*
2. *The Affidavit of Bradley Forbes Robson sworn on 13 February 2026, [72], [75], [85], [92]-[93], [112], [119], [121], [126]-[128], [141], [163]-[166].*
3. *The Affidavit of Twain Abbott affirmed on 13 February 2026, [33]-[36], [47], [49]-[52], [57]-[70], [200], [243]-[270], [334]-[340], [344], [373]-[374].*

Knowledge of BCC & Brereton

93. ~~At all material times,~~ BCC and Brereton knew the terms of the Master Policy and the Policy (**Policies**) from at least the date that Brereton executed those policies.

Particulars

1. *Brereton's knowledge of the Policies is to be inferred form the fact that he signed them.*

94. At all material times, BCC and Brereton knew the ~~Policy~~Policies provided that any Loss under ~~the Policy~~those Policies may be paid, after agreement with the Insured, to a Loss Payee, if agreed by the Insurer and evidenced by an endorsement to the ~~Policy~~Policies.

Particulars

1. *Policy Wording, clauses 1.1, 15.3(d).*
2. *Master Policy, clauses 1.1, 15.4(d).*

95. From time to time during the Policy Period, BCC and Brereton entered into and executed Loss Payee endorsements under the ~~Policy~~Policies, including the Loss Payee Endorsement referred to in paragraph 57 above.

96. At all material times, BCC and Brereton each knew and understood each of the following matters, being that:

a. GCUK, GCPL and/or GBAG intended to sell or assign some or all of the Assets the subject of the ~~Policy~~Policies to one or more Loss Payees;

ba. by executing the Policies and the endorsements thereto, BCC and Brereton represented that those documents were executed by BCC in its capacity as Corporate Authorised Representative of the Insurer and within the actual authority conferred upon it by the Insurer in that capacity;

bb. to third parties (including, without limitation, prospective acquirers of such Assets), it would appear from the Policies that they were:

i. executed with the actual authority of the Insurer; and

ii. therefore, binding on the Insurer;

bc. to third parties (including, without limitation, prospective acquirers of such Assets), it would appear from each of the endorsements to the Policies executed by Brereton that the endorsements, and the Policies were:

i. executed with the actual authority of the Insurer; and

ii. therefore, binding on the Insurer because BCC had such actual authority;

bd. to third parties (including, without limitation, prospective acquirers of such Assets), it would appear from the Policies and the endorsements thereto that the cover the subject of the Policies would, according to their terms, operate in specified circumstances to the benefit of persons endorsed as Loss Payees under the Policies;

be. the acquirers or potential acquirers of such Assets included, or might include, White Oak;

bf. the manner and capacity in which BCC and Brereton executed or purported to execute the Policies (and the endorsements thereto), would facilitate the insureds under the Policies representing to third parties (including, without limitation, prospective acquirers of Assets) that the Policies was binding on and enforceable against the Insurer;

b. potential acquirers of Assets or ~~those~~ Loss Payees would or would likely rely on the ~~Policy~~Policies and endorsements thereto, including their own Loss Payee endorsement, in purchasing or otherwise investing in Assets the subject of the ~~Policy~~Policies; and

ca. potential acquirers of Assets or Loss Payees would not, or would likely not, acquire Assets under the Policies if:

i. Brereton did not have actual authority from the Insurer to execute the Policies (and endorsements thereto) on its behalf; or

ii. there was a real question as to whether Brereton and BCC had actual authority from the Insurer to execute the Policies (and endorsements thereto) on its behalf; or

iii. the Insurer was not, or may not, be bound by the Policies by reason of the circumstance that BCC and Brereton lacked, or may have lacked, actual authority to execute the Policies (and endorsements thereto);

and those potential acquirers or Loss Payees knew or suspected those matters;

cb. if:

i. Brereton and BCC did not have actual authority from the Insurer to execute the Policies (and endorsements thereto) on its behalf; and/or

ii. there was a real question as to whether Brereton and BCC had actual authority from the Insurer to execute the Policies (and endorsements thereto) on its behalf; and/or

iii. the Insurer was not bound by the Policies because BCC lacked such actual authority;

there was a likelihood that third parties (including potential acquirers of Assets or Loss Payees) would be misled or deceived by Brereton's actions in executing the Policies and endorsements thereto purportedly for BCC as Corporate Authorised Representative of the Insurer; and

c. potential acquirers of Assets or ~~those~~ Loss Payees would or would likely rely on the manner and capacity in which BCC and Brereton executed or purported to execute the ~~Policy~~Policies and endorsements thereto, including their own Loss Payee endorsement, in purchasing or otherwise investing in Assets the subject of the ~~Policy.~~Policies.

Particulars

~~*Email from Julian Macey-Dare (Marsh) to Brereton and Scott Newland (BCC) among others dated 27 September 2017 (CSA.0001.0002.1248).*~~

~~*Email from Mr Julian Macey-Dare (Marsh) to Brereton (BCC) and others at 2:22 am on 28 September 2017 (IAL.500.011.0489).*~~

~~*Email from Ewan Berkemeier (Marsh Sydney) to Scott Newland (BCC) dated 9 November 2017 attaching 'Greensill Capital Overview' (CMS.007.001.0450; CMS.007.001.0454).*~~

~~*Email from John Whelan (GCUK) to Brereton, Julian Macey-Dare (Marsh), Ewan Berkemeier (Marsh Sydney), Scott Newland (BCC) and others dated*~~

~~*12 December 2017 (CMS.007.001.0509; CMS.007.001.0591; CMS.007.001.0592).*~~

~~*Email from John Whelan (GCUK) to Julian Macey-Dare (Marsh) and others dated 15 February 2018 forwarded to Brereton on 19 February 2018 (CMS.007.001.1817).*~~

~~*Email from Lex Greensill to Brereton, Edward Smith (Marsh), Ewan Berkemeier (Marsh Sydney) and others dated 9 April 2019 (GBA.0004.0031.7815).*~~

~~*This knowledge is to be inferred from the terms of the Policy and its objective commercial purpose.*~~

~~*This knowledge is also to be inferred from the terms of the Loss Payee Endorsement and its objective commercial purpose.*~~

1. *Brereton's knowledge is to be inferred from:*
   i. *Brereton's awareness of the Loss Payee Endorsements, which is to be inferred from the fact that he signed them;*
   ii. *the objective commercial purpose of the Loss Payee Endorsements is to provide Loss Payees with benefits under the Policies, which benefits are described in:*
      A. *the email from Julian Macey-Dare (Marsh) to Brereton dated 27 September 2017 (IAL.500.011.0489);*
      B. *the email from John Whelan to Brereton and others dated 13 December 2017 (CMS.007.001.0509) and the attachments to the same (CMS.007.001.0591 and CMS.007.001.0592); and*
      C. *the email exchange between John Whelan and PwC dated 8 February 2018, and forwarded to Brereton on 19 February 2018 (CMS.007.001.1817);*
   iii. *the email exchange between Lex Greensill and Brereton and others on 26 February 2019 (MMC_GCUK08_00005094); and*
   iv. *the email from Brereton to Lex Greensill dated 9 April 2019 and Lex Greensill's response (GBA.0004.0031.7815).*
2. *Brereton's knowledge is to be attributed to BCC.*
3. *Additional particulars may be provided following further discovery and evidence.*

97. When BCC and Brereton entered into and executed the Policies and the Loss Payee Endorsement referred to in paragraph 57 above, they each knew and understood each of the following matters, being that:

aa. at least some of the Policies and the Loss Payee Endorsements (or the representations therein) would, or would likely, be transmitted to Loss Payees, including White Oak;

a. GCUK, GCPL and/or GBAG intended to sell or assign some or all of the Assets the subject of the ~~Policy~~Policies to White Oak;

b. Loss Payees, including White Oak, would or would likely rely on the ~~Policy~~Policies and any endorsements thereto, including the Loss Payee Endorsement ~~referred to in~~

~~paragraph 57~~, in purchasing or otherwise investing in Assets the subject of the ~~Policy~~Policies; and

c. White Oak would or would likely rely on the manner and capacity in which BCC and Brereton executed or purported to execute the ~~Policy~~Policies and endorsements thereto, including their own Loss Payee endorsement, in purchasing or otherwise investing in Assets the subject of the ~~Policy~~Policies*.*

Particulars

1. White Oak repeats the particulars to paragraph 96 above.

97A. BCC and Brereton knew of:

a. the existence and terms of:

i. the CGU AAR Agreement in force between 1 August 2017 to 9 April 2019 referred to in paragraph 9C above;

ii. the PACAO referred to in paragraph 9E above;

iii. the BCC Authorisation Notice referred to in paragraph 8(c) of the Insurer's Defence;

iv. the Insurer AAR Agreement in force between 9 April 2019 to at least 30 June 2019 referred to in paragraph 9D above;

v. the CGU/Brereton Authorisation Agreement referred to in paragraph 8(e) of the Insurer's Defence;

vi. the CGU/Brereton Authorisation Notice referred to in paragraph 8(e) of the Insurer's Defence;

vii. the "Individual Authorisation Agreement and Authorisation Notice" in respect of Brereton referred to in the particulars to paragraph 9B above;

viii. the Delegated Authority for Head of Business Unit of Trade Credit Effective 1st July 2017 (BCC.0001.0007.2654);

ix. the Delegated Authority for Head of Business Unit of Trade Credit Effective 1st July 2018 (BCC.0001.0007.2655);

x. the Underwriting Manual Version 1.0 referred to in paragraph 8(g) of the Insurer's Defence;

xi. the Approved Endorsements referred to in paragraph 8(h) of the Insurer's Defence;

xii. the Approved Wording 1.3 referred to in paragraph 8(i) of the Insurer's Defence;

xiii. the Approved Wording 1.4 referred to in paragraph 8(j) of the Insurer's Defence;

xiv. the Underwriting Manual Version 2.0 referred to in paragraph 8(o) of the Insurer's Defence;

xv. the email from Brereton to Andrew Ross and others dated 24 July 2019 (BCC.0001.0007.6213); and

xvi. the email dated 30 May 2020 from Brereton to Mark Callahan and others (BCC.0001.0003.5715),

(together, the **Authority Documents**) from around the time that each of those documents came into existence; and

b. at the time of executing the Policies (and the endorsements thereto), that BCC and Brereton did not have actual authority as was necessary to make an agreement on the terms of the Policies and/or the endorsements.

Particulars

1. *In addition to Brereton's admissions (particularised below), Brereton's knowledge is to be inferred from the terms of the Authority Documents insofar as they were in force at the time that any particular Policy or endorsement was executed and Brereton's position as Head of Trade Credit at BCC, as well as the following documents:*
   i. *email from Twain Abbott (CGU) to Brereton dated 10 February 2017 (IAL.500.007.1396);*
   ii. *email from Scott Newland to Brereton and Toby Guy dated 1 June 2018 (and earlier email in that chain) (BCC.0001.0007.2227);*
   iii. *the draft Underwriting Manual Version 1.0 (BCC.0001.0007.1929), which records track changes from Brereton; and*
   iv. *email from Brereton to Scott Newland and Toby Guy dated 2 July 2019 and attachment (BCC.0001.0007.5992; BCC.0001.0007.5993).*
2. *Brereton's knowledge is also to be inferred from his later admissions that he knowingly acted outside his authority in signing policies and endorsements relating to the Greensill Group, and his actions in concealing the extent of that conduct, as recorded in the following documents:*
   i. *email from Mark Callahan to Toby Guy dated 2 July 2020 (TMA.0001.0008.1014);*
   ii. *email from Toby Guy to Matt Barron and Mark Callahan dated 5 July 2020 (TMA.0001.0008.1053);*
   iii. *email from Mark Callahan to Barry Cook and others dated 7 July 2020 (TMA.0001.0008.1111);*
   iv. *notes of meeting between Matt Barron, Toby Guy, Greg Brereton and Craig James on 6 July 2020 (including the admissions of Brereton recorded therein) (TMA.SUB.00000021_0001);*

v. *final Status Report: Risk Management Incident dated 24 July 2020 (TMA.SUB.00000027_0001); and*

vi. *Screenshot from the CIS Database (as defined in paragraph 97B below) illustrating that Brereton modified the CIS Database to nominate himself, rather than Marsh, as the broker for the Master Policy and then cancelled that policy (BCC.0001.0016.0153).*

3. *Brereton's knowledge is to be attributed to BCC.*

97B. Brereton failed to record the existence and terms of all of the Policies and their endorsements on the Credit Insurance Suite Database (**CIS Database**) which BCC used to administer policies on behalf of the Insurer, and to report to the Insurer about those policies in bordereaux.

Particulars

1. *That Brereton did not upload the Policy or its endorsements to the CIS Database is to be inferred from the absence from BCC's discovery of CIS Database entries for the Policy, and is also evidenced by the following documents:*

i. *Notes of meeting between Matt Barron, Toby Guy, Brereton and Craig James on 6 July 2020 (including the admissions of Brereton recorded therein (TMA.SUB.00000021_0001);*

ii. *Email from Dilek Izciler to Murray Ironfield dated 3 July 2020 (BCC.0001.0005.2592);*

iii. *Email from Toby Guy to Benjamin Le Forestier dated 5 July 2020 (TMA.0001.0007.0081); and*

iv. *Email from Benjamin Le Forestier to Toby Guy dated 6 July 2020 (TMA.0001.0007.0127).*

97C. At least at the time that the Policies and the endorsements thereto were executed, BCC and Brereton knew that:

a. the existence and terms of all of the Policies and the endorsements thereto were not known to the Insurer;

Particulars

1. *Brereton's knowledge is to be inferred from:*

i. *Brereton's position as Head of Trade Credit at BCC;*

ii. *the fact that Brereton failed to record the existence and terms of the Policy and its endorsements on the CIS Database which BCC used to administer policies on behalf of the Insurer, and to report to the Insurer about those policies in bordereaux as pleaded above in paragraph 97B; and*

iii. *a screenshot from the CIS Database illustrating that Brereton modified the database to nominate himself, rather than Marsh, as the broker for the Master Policy and then cancelled that policy (BCC.0001.0016.0153).*

2. *Brereton's knowledge is to be attributed to BCC.*

b. in the premises of paragraphs 96, 97, 97A and 97C(a) above, Brereton's actions in executing the Policies and the endorsements thereto were likely to:

i. mislead third parties (including, without limitation, prospective acquirers of Assets and Loss Payees) that BCC and Brereton had actual authority to bind the Insurer to the Policies (and the endorsements thereto) when that was not the case; and

ii. cause or facilitate Assets being promoted to possible acquirers for sale or investment on a false basis, being that the Assets were supported by cover under the Policies executed with the actual authority of the Insurer; and

c. further, or in the alternative, in the premises of 97A and 97C(a) above:

i. if a claim was made by the Insured or a Loss Payee under the Policies and/or the endorsements thereto, it was likely the Insurer would decline to indemnify on the ground that the Policies and/or the endorsements thereto were not binding or enforceable against it; and

ii. if the Insurer declined to indemnify the Insured or a Loss Payee on the ground that the Policy and/or the endorsements thereto were invalid and unenforceable, the Loss Payee(s) would suffer a loss.

Particulars

1. White Oak refers to and repeats paragraph 97 above and the particulars contained therein.

Breach of Warranty of Authority

98. BCC and Brereton entered into and executed:

a1. the Master Policy;

a. the Policy referred to in paragraph 38 above;

b. Endorsement 18 referred to in paragraph 41 above;

c. the Customer Endorsements referred to in paragraph 46 above;

d. the RPA Debt Endorsement referred to in paragraph 47 above;

e. the Liberty Endorsement referred to in paragraph 52 above;

f. the LCL Endorsement referred to in paragraph 54 above; and

g. the Loss Payee Endorsement referred to in paragraph 57 above,

(together, **BCC/Brereton Documents**) on or about the dates they bear.

99. By its conduct in entering into and executing each of the BCC/Brereton Documents, BCC:

a. Represented that it was the agent of the Insurer;

b. Induced GCPL, GBAG and White Oak to enter into the agreement recorded in each of the BCC/Brereton Documents with BCC as agent for the Insurer; and

c. Warranted to GCPL, GBAG and to White Oak, that BCC was authorised to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent,

(together, **BCC's Warranties of Authority**).

Particulars

1. BCC's Warranties of Authority were express and implied by:

i. BCC's execution (via signature and stamp) of each of the BCC/Brereton Documents.

ii. Express statements in the execution block of each of the BCC/Brereton Documents that it was signed "for and on behalf of [BCC], Corporate Authorised Representative of Insurance Australia Ltd".

iii. Express statements in the Policy Wording that BCC was the "Corporate Authorised Representative of Insurance Australia Ltd" (pp. 1, 2, 16 and 44).

iv. Policy Wording, clause 14.1.

v. Customer Endorsement 19, Debt Endorsement 19(ii), Endorsement 2(iii), the Loss Payee Endorsement and the LCL Endorsement were expressly issued by BCC as "Corporate Authorised Representative of Insurance Australia Ltd".

vi. BCC's conduct in causing the BCC/Brereton Documents to be sent to GCPL and GBAG and/or Marsh.

100. By his conduct in entering into and executing each of the BCC/Brereton Documents, Brereton:

a. Represented that BCC was the agent of the Insurer;

b. Induced GCPL, GBAG and White Oak to enter into the agreement recorded in each of the BCC/Brereton Documents with BCC as agent for the Insurer;

c. Warranted to GCPL, GBAG and to White Oak, that BCC was authorised to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent; and

d. Warranted to GCPL, GBAG and to White Oak, that Brereton was authorised to execute each of the BCC/Brereton Documents on behalf of BCC,

(together, **Brereton's Warranties of Authority**).

Particulars

1. BCC's Warranties of Authority were express and implied by:

i. Brereton's conduct in signing and stamping each of the BCC/Brereton Documents.

ii. Particulars i to v under paragraph 99 above are repeated.

iii. Brereton's conduct in causing the BCC/Brereton Documents to be sent to GCPL, GBAG and/or Marsh.

101. Induced by and relying upon BCC's Warranties of Authority and Brereton's Warranties of Authority, White Oak:

a. ~~Entered into the MAA referred to in paragraph 34 above;~~[Not used]

b. ~~Entered into the Loss Payee Endorsement referred to in paragraph 57 above; and~~[Not used]

c. Paid the amounts and acquired the Payment Obligations referred to in paragraph 61 above.

102. If, which is denied, BCC was not authorised to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent, then BCC breached BCC's Warranties of Authority.

103. If, which is denied:

a. BCC was not authorised to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent; and/or

b. Brereton was not authorised to execute each of the BCC/Brereton Documents on behalf of BCC,

Brereton breached Brereton's Warranties of Authority.

104. By reason of BCC's and Brereton's breaches of their respective Warranties of Authority, White Oak has suffered loss and damage.

Particulars

1. White Oak has lost the benefit of the Policy; that is, the amount which would have been payable to White Oak by the Insurer in respect of the Claims under the Policy.

Misleading or Deceptive Conduct

105. By its conduct in entering into and executing each of the BCC/Brereton Documents, BCC represented to ~~White Oak that~~:

aa. White Oak; and, or alternatively,

ab. a class of persons that included, at least, the Insureds, potential acquirers of Assets, Loss Payees and Marsh,

that:

a. BCC was the agent of the Insurer;

b. ~~BCC was the Corporate Authorised Representative of the Insurer;~~[Not used]

c. BCC ~~was authorised~~ had actual authority to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent; and

d. accordingly, each of the BCC/Brereton Documents was binding on the Insurer because BCC had such actual authority,

~~e. BCC and the Insurer had no right to rescind or avoid the BCC/Brereton Documents except in accordance with the terms of those documents,~~

(together, **BCC's Actual Authority Representations**).

Particulars

1. *The particulars to paragraph 99 above are repeated.*
2. *BCC's Actual Authority Representations included, for the avoidance of doubt, that BCC was acting within the terms of its agency, and within its authority limits from the Insurer, by making an agreement on the terms of each of the documents.*

106. By his conduct in entering into and executing each of the BCC/Brereton Documents, Brereton represented to ~~White Oak that~~:

aa. White Oak; and, or alternatively,

ab. to a class of persons that included, at least, the Insureds, potential acquirers of Assets, Loss Payees and Marsh,

that:

a. BCC was the agent of the Insurer;

b. ~~BCC was the Corporate Authorised Representative of the Insurer;~~[Not used]

c. BCC ~~was authorised~~ had actual authority to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent;

d. Brereton ~~was authorised~~ had actual authority to execute each of the BCC/Brereton Documents on behalf of BCC; and

e. accordingly, each of the BCC/Brereton Documents was binding on the Insurer because BCC and Brereton had such actual authority~~; and/or~~

~~f. BCC and the Insurer had no right to rescind or avoid the BCC/Brereton Documents except in accordance with the terms of those documents~~,

(together, **Brereton's Actual Authority Representations**).

Particulars

1. *The particulars to paragraph 100 above are repeated.*
2. *Brereton's BCC Actual Authority Representations included, for the avoidance of doubt, that BCC was acting within the terms of its agency, and within its*

authority limits from the Insurer by making an agreement on the terms of each of the documents.

3. *Brereton's Actual Authority Representations included, for the avoidance of doubt, that Brereton was acting within the terms of his agency, and within his authority limits from the Insurer, by making an agreement on the terms of each of the documents.*

~~106A. At the time BCC and Brereton entered into and executed each of the BCC/Brereton Documents as well as the Master Policy, the Insurer represented that:~~

a. ~~BCC and Brereton had authority to enter the BCC/Brereton Documents as well as the Master Policy; and/or~~

b. ~~the Insurer believed, on reasonable grounds, that BCC and Brereton had authority to enter on the Insurer's behalf into the Policy and the Master Policy,~~

~~(the **Insurer's Representations**).~~

~~**Particulars**~~

~~*The matters pleaded in paragraphs 41B.a-b, 37G-37N, 38A, and the particulars thereto are repeated.*~~

107. BCC's Actual Authority Representations~~,~~ and Brereton's Actual Authority Representations ~~and the Insurer's Representations~~ were:

a. continuing representations; and

b. not withdrawn or corrected at any material time.

108. The conduct of BCC in making BCC's Actual Authority Representations and the conduct of Brereton in making Brereton's Actual Authority Representations ~~and the conduct of the Insurer in making the Insurer's Representations~~ was conduct:

a. in relation to a financial service within the meaning of s 1041H of the Corporations Act; and/or

b. [Not used].

c. in trade or commerce and in relation to financial services within the meaning of s 12DA of the ASIC Act.

109. ~~If, which is denied,~~ In the premises pleaded in paragraph 92 above, BCC ~~was~~ did not ~~authorised~~ have actual authority to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent, ~~then~~and:

a. BCC's Actual Authority Representations were misleading or deceptive, or likely to mislead or deceive; and

b. ~~By~~by making BCC's Actual Authority Representations, BCC engaged in conduct which contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act.

110. ~~If, which is denied~~ In the premises pleaded in paragraphs 92 and 92A above:

a. BCC ~~was~~ did not ~~authorised~~ have actual authority to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent; and/or

b. Brereton ~~was~~ did not ~~authorised~~ have actual authority to execute each of the BCC/Brereton Documents on behalf of BCC,

~~Then~~and, therefore:

a. Brereton's Actual Authority Representations were misleading or deceptive, or likely to mislead or deceive; and

b. ~~By~~ by making Brereton's Actual Authority Representations, Brereton engaged in conduct which contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act.

~~110A If which is denied:~~

~~a. BCC was not authorised to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent; and/or~~

~~b. Brereton was not authorised to execute each of the BCC/Brereton Documents on behalf of BCC,~~

~~then:~~

~~c. the Insurer's~~ Representations ~~were misleading or deceptive, or likely to mislead or deceive; and~~

~~d. by making the Insurer's Representations, the Insurer engaged in conduct which contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act.~~

111. Each of BCC's Actual Authority Representations~~,~~ and Brereton's Actual Authority Representations ~~and the Insurer's Representations~~ induced White Oak to:

a. ~~Enter into the MAA referred to in paragraph 34 above;~~[Not used].

b. ~~Enter into the Loss Payee Endorsement referred to in paragraph 57 above; and~~[Not used].

c. Pay the amounts and acquire the Payment Obligations referred to in paragraph 61 above.

Particulars

White Oak acted upon the representations by acquiring the Payment Obligations, in circumstances where the representations conveyed that BCC

and Brereton were acting within their actual authority from the Insurer, which representations deterred further inquiry into BCC and Brereton's authority, and, without which, White Oak would have made further inquiry into BCC and Brereton's authority to bind the Insurer before entering into the MAA and Loss Payee Endorsement, and/or acquiring the Payment Obligations.

i. White Oak relies on:

A. Affidavit of David Hackett affirmed 5 December 2024 at [39]-[41];

B. Affidavit of Andre Hakkak affirmed 4 December 2024 at [24]-[25];

C. Affidavit of Darius Mozaffarian affirmed 4 December 2024 at [21];

D. Affidavit of Steven Ruth affirmed 4 December 2024 at [18]-[20]; and

E. Affidavit of Barbara McKee sworn 6 December 2024 at [18]-[20].

111A. But for BCC's ~~Representations, Brereton's~~ Actual Authority Representations and ~~the Insurer's~~ Brereton's Actual Authority Representations, White Oak would not have:

a. ~~entered into the MAA referred to in paragraph 34 above;~~[Not used].

b. ~~entered into the Loss Payee Endorsement referred to in paragraph 57 above; and~~[Not used].

c. paid the amounts and acquired the Payment Obligations referred to in paragraph 61 above.

Particulars

White Oak refers to and repeats the particulars to paragraph 111 above.

112. In the premises, if and to the extent that White Oak is unable to recover the amount of its loss from the Insurer under the Policy, then White Oak has suffered loss or damage by the contravening conduct of BCC and Brereton ~~and the Insurer~~ pleaded in paragraphs 109 and 110 ~~and 110A~~ above.

Particulars

1. *White Oak's loss is the amount of USD142,707,342.25, which is the total amount paid by White Oak to acquire the Payment Obligations referred to in paragraph 61 above, less the amounts received by White Oak from any third parties in respect of those Payment Obligations (**Recoveries**), plus interest ~~and any costs incurred to recover the sums spent to acquire those Payment Obligations (**Recovery Costs**), less any amount received by White Oak in respect of the Payment Obligations.~~*

Section 1041E Claim

113. ~~If, which is denied, BCC was not authorised to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent, then:~~ In the premises pleaded in paragraphs 92 and 93 to 97C above:

a. BCC's Actual Authority Representations were false in a material particular or materially misleading;

b1. BCC's Actual Authority Representations were likely to induce persons in Australia to apply for financial products, or alternatively, to acquire financial products;

b. ~~A~~at the time BCC's Actual Authority Representations were made, BCC ought reasonably to have been aware of the scope and limits of its authority (if any) to make an agreement on behalf of the Insurer as its agent;

c. BCC ought reasonably to have known that BCC's Actual Authority Representations were false in a material particular or materially misleading at the time they were made~~; and~~, or alternatively, did not care whether the BCC's Actual Authority Representations were true or false at the time they were made; and

d. ~~B~~by making BCC's Actual Authority Representations, and by failing to correct those representations at any material time, BCC engaged in conduct which contravened s 1041E of the Corporations Act.

114. ~~If, which is denied~~ In the premises pleaded in paragraphs 92 to 97C above:

a. ~~BCC was not authorised to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent; and/or~~ [Not used]

b. ~~Brereton was not authorised to execute each of the BCC/Brereton Documents on behalf of BCC,~~ [Not used]

~~then:~~

c. Brereton's Actual Authority Representations were false in a material particular or materially misleading;

d1. Brereton's Actual Authority Representations were likely to induce persons in Australia to apply for financial products, or alternatively, to acquire financial products;

d. ~~A~~at the time Brereton's Actual Authority Representations were made Brereton knew or ought reasonably to have been aware of the scope and limits of:

i. BCC's actual authority (if any) to make an agreement on behalf of the Insurer as its agent; and

ii. Brereton's actual authority (if any) to execute documents on behalf of BCC;

e. Brereton knew or ought reasonably to have known that Brereton's Actual Authority Representations were false in a material particular or materially misleading at the time they were made, or alternatively, did not care whether Brereton's Actual Authority Representations were true or false at the time they were made; and

f. ~~By~~by making Brereton's Actual Authority Representations, and by failing to correct those representations at any material time, Brereton engaged in conduct which contravened s 1041E of the Corporations Act.

Particulars

1. As to Brereton's knowledge, White Oak refers to and repeats paragraphs 93 to 97C above, and the particulars contained therein.

~~114A. If, which is denied:~~

~~a. BCC was not authorised to make an agreement on the terms of each of the BCC/Brereton Documents on behalf of the Insurer as its agent; and/or~~

~~b. Brereton was not authorised to execute each of the BCC/Brereton Documents on behalf of BCC,~~

~~then:~~

~~c. the Insurer's Representations were false in a material particular or materially misleading;~~

~~d. at the time the Insurer's Representations were made the Insurer ought reasonably to have been aware of the scope and limits of BCC's authority (if any) to make an agreement on behalf of the Insurer as its agent;~~

~~e. the Insurer ought reasonably to have known that the Insurer's Representations were false in a material particular or materially misleading at the time they were made; and~~

~~f. by making the Insurer's Representations, and by failing to correct those representations at any material time, the Insurer engaged in conduct which contravened s 1041E of the Corporations Act.~~

115. Each of BCC's Actual Authority Representations~~,~~ and Brereton's ~~Representations and the Insurer's~~Actual Authority Representations induced White Oak to:

a. ~~Enter into the MAA referred to in paragraph 34 above;~~ [Not used].

b. ~~Enter into the Loss Payee Endorsement referred to in paragraph 57 above; and~~[Not used].

c. Pay the amounts and acquire the Payment Obligations referred to in paragraph 61 above.

Particulars

White Oak acted upon the representations by acquiring the Payment Obligations, in circumstances where the representations conveyed that BCC and Brereton were acting within their actual authority from the Insurer, which representations deterred further inquiry into BCC and Brereton's authority, and, without which, White Oak would have made further inquiry into BCC and

Brereton's authority to bind the Insurer before entering into the MAA and Loss Payee Endorsement, and/or acquiring the Payment Obligations.

i. White Oak relies on:

A. Affidavit of David Hackett affirmed 5 December 2024 at [39]-[41];

B. Affidavit of Andre Hakkak affirmed 4 December 2024 at [24]-[25];

C. Affidavit of Darius Mozaffarian affirmed 4 December 2024 at [21];

D. Affidavit of Steven Ruth affirmed 4 December 2024 at [18]-[20]; and

E. Affidavit of Barbara McKee sworn 6 December 2024 at [18]-[20].

115A. But for BCC's Actual Authority Representations and Brereton's Actual Authority Representations, White Oak would not have paid the amounts and acquired the Payment Obligations referred to in paragraph 61 above.

Particulars

White Oak refers to and repeats the particulars to paragraph 115 above.

116. In the premises, if and to the extent that White Oak is unable to recover the amount of its loss from the Insurer under the Policy, then White Oak has suffered loss or damage by the contravening conduct of BCC, Brereton and the Insurer pleaded in paragraphs 113~~,~~ to 114 ~~and 114A~~ above.

Particulars

1. *White Oak's loss is the amount of USD142,707,342.25, which is the total amount paid by White Oak to acquire the Payment Obligations referred to in paragraph 61 above, less any Recoveries, plus interest ~~and Recovery Costs, less any amount received by White Oak in respect of the Payment Obligations~~.*

Deceit

116A. In the premises pleaded in paragraphs 92 and 93 to 97C above:

a. BCC's Actual Authority Representations were false;

b. at the time that BCC's Actual Authority Representations were made, BCC knew of, or was recklessly indifferent as to, the scope and limits of its actual authority to make an agreement on behalf of the Insurer as agent;

c. at the time that BCC's Actual Authority Representations were made, BCC knew that BCC's Actual Authority Representations were false, or was recklessly indifferent as to whether or not they were true; and

d. at the time that BCC's Actual Authority Representations were made, BCC intended that a class of persons including, at least, potential acquirers of Assets and Loss

Payees under the Policies and/or the endorsements thereto, of which White Oak was one, would rely on BCC's Actual Authority Representations when purchasing Assets.

Particulars

1. *White Oak refers to and repeats paragraphs 93 to 97C above and the particulars contained within.*
2. *As to Brereton's and BCC's knowledge of the absence of any actual authority, White Oak refers to and repeats paragraphs 93 to 97C above and the particulars contained within.*
3. *Brereton's knowledge, or lack thereof, is to be attributed to BCC.*

116B. In the premises pleaded in paragraphs 92 to 97C above:

a. Brereton's Actual Authority Representations were false;

b. at the time that Brereton's Actual Authority Representations were made, Brereton knew of, or was recklessly indifferent as to, the scope and limits of:

i. BCC's actual authority to make an agreement on behalf of the Insurer as agent; and

ii. Brereton's actual authority to execute documents on behalf of BCC;

c. at the time that Brereton's Actual Authority Representations were made, Brereton knew that those representations were false, or was recklessly indifferent as to whether or not they were true;

d. at the time that Brereton's Actual Authority Representations were made, Brereton intended that a class of persons including, at least, potential acquirers of Assets and Loss Payees under the Policies and/or the endorsements thereto, of which White Oak was one, would rely on those representations when purchasing Assets.

Particulars

1. *White Oak refers to and repeats paragraphs 93 to 97C above and the particulars contained within.*
2. *As to Brereton's and BCC's knowledge of the absence of any actual authority, White Oak refers to and repeats paragraphs 93 to 97C above and the particulars contained within.*
3. *Brereton's knowledge, or lack thereof, is to be attributed to BCC.*

116C. White Oak received and ultimately acted upon BCC's Actual Authority Representations and Brereton's Actual Authority Representations.

Particulars

1. *White Oak received the representations including by receiving the Policies and the endorsements thereto in the form signed by Brereton, as occurred in the case of:*

i. *the Master Policy;*

ii. *the Policy as referred to in paragraph 38 above;*

iii. *Endorsement 18 as referred to in paragraph 41 above;*

iv. *Endorsements 19, 36(i), 68, 45(iii), 111(i), 101(i), 72(ii), 90(ii), 100(i), 91(iii), 119, 64(iv), 47(v), 73(i) as referred to in paragraph 46 above;*

v. *The RPA Debt Endorsement as referred to in paragraph 47 above;*

vi. *The Liberty Endorsement as referred to in paragraph 52 above;*

vii. *The LCL Endorsement as referred to in paragraph 54 above; and*

viii. *The Loss Payee Endorsement as referred to in paragraph 57 above,*

2. *For the avoidance of doubt, White Oak acted upon the representations by acquiring the Payment Obligations, in circumstances where the representations conveyed that BCC and Brereton were acting within their actual authority from the Insurer, which representations deterred further inquiry into BCC and Brereton's authority, and, without which, White Oak would have made further inquiry into BCC and Brereton's authority to bind the Insurer before entering into the MAA and Loss Payee Endorsement, and/or acquiring the Payment Obligations.*

i. *White Oak relies on:*

A. *Affidavit of David Hackett affirmed 5 December 2024 at [39]-[41];*

B. *Affidavit of Andre Hakkak affirmed 4 December 2024 at [24]-[25];*

C. *Affidavit of Darius Mozaffarian affirmed 4 December 2024 at [21];*

D. *Affidavit of Steven Ruth affirmed 4 December 2024 at [18]-[20]; and*

E. *Affidavit of Barbara McKee sworn 6 December 2024 at [18]-[20].*

116D. But for the representations referred to in paragraph 116C (or one or more of them), White Oak would not have paid the amounts and acquired the Payment Obligations referred to in paragraph 61 above.

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 116C above.*

116E. In the premises, if and to the extent that White Oak is unable to recover the amount of its loss from the Insurer under the Policy, then White Oak has suffered loss and damage by the conduct of BCC and Brereton pleaded at paragraphs 116A to 116D above.

Particulars

1. *White Oak's loss is the amount of USD142,707,342.25, which is the total amount paid by White Oak to acquire the Payment Obligations referred to in paragraph 61 above, less any Recoveries, plus interest.*

M1. Liability for conduct

117. Further or in the alternative to paragraph 92, the conduct engaged in by BCC~~,~~ and/or Brereton ~~and/or the Insurer~~ pleaded in paragraphs 93 to 116E was conduct:

a. that related to the provision of a financial service;

b. on which an insured or a loss payee (including White Oak) could reasonably be expected to rely;

c. on which White Oak did, in fact, rely in good faith when entering into the Loss Payee Endorsement and/or the White Oak Contract and when purchasing the Payment Obligations referred to in paragraphs 57, 59A and 61 respectively; and

d. ~~in respect of the conduct engaged in by BCC and/or Brereton,~~ for which the Insurer is responsible, as between the Insurer and White Oak, by the operation of ss 917B or 917C of the *Corporations Act*, whether or not BCC and/or Brereton acted within the scope of their authority; or

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 41B.*
2. *Sections 917A to 917F of the Corporations Act.*

e. in the further or in the alternative to (d), above, and in respect to BCC and/or Brereton's conduct during the period 1 July 2019 to 1 March 2021, for which TMNF is responsible, or partly responsible, as between TMNF and White Oak by operation of ss 917B or 917C of the *Corporations Act*, whether or not BCC and/or Brereton acted within the scope of their authority.

Particulars

1. *White Oak refers to and repeats paragraph 9K.*
2. *Sections 917A to 917F of the Corporations Act.*

N. Claims arising from events in 2020

118. The allegations made in the balance of this Section are pleaded further or in the alternative to the allegations pleaded against Brereton, BCC and the Insurer above.

N1. Events in 2020

119. By June or July 2020, TMMA, TMNF and BCC (to the extent that BCC did not already know this information, which is not admitted) had discovered:

a. that Brereton had, on behalf of BCC, executed or agreed to insurance policies or endorsements which TMMA, TMNF and BCC regarded as providing insurance in excess of limits set out in internal policy documents or underwriting guidelines;

b. that some of those policies or endorsements had been executed or agreed to by Brereton on behalf of BCC as, or purportedly as, agent for the Insurer; and

c. that the insureds under some of those policies or endorsements were one or more of the members of the Greensill Group.

Particulars

1. *Documents with the following document IDs, copies of which are available from the offices of White Oak's solicitors:*

TMA.0001.0006.0235	*TMA.0001.0006.0204*	*TMA.0001.0007.0015*
TMA.0001.0007.0097	*TMA.0001.0006.0189*	*TMA.0001.0007.0559*
TMA.0001.0006.0338	*TMA.0001.0001.0435*	*TMA.0001.0007.0152*
TMA.0001.0007.0143	*TMA.0001.0007.0140*	*TMA.0001.0006.0181*
TMA.0001.0001.0266	*TMA.0001.0008.1008*	*TMA.0001.0007.0271*
TMA.0001.0001.0436	*TMA.0001.0008.1807*	*TMA.0001.0017.0005*

2. *Further and better particulars may be provided following discovery and evidence.*

120. On 2 and 3 July 2020, TMMA, on behalf of TMNF and BCC, notified Marsh that:

a. BCC and Brereton did not have authority to write insurance policies or endorsements on behalf of the Insurer;

b. BCC and Brereton's authority to do so had ended on the original expiration dates of any policies previously written by BCC or Brereton on behalf of the Insurer;

c. all existing limits for Greensill buyers had been set to nil in TMNF's, TMMA's and/or BCC's policy systems;

d. Brereton's authority to bind risk on TMNF was reduced from 1 June 2020, with no new exposures to be bound and no extensions to be granted to the Greensill Group; and

e. BCC and/or TMMA would be reviewing all policies with the Greensill Group.

Particulars

1. *The notifications were made by:*
   i. *voice message to Angus Ward, Marsh, on 2 July 2020 from Mark Callahan (a director of TMMA and BCC and Executive Vice President of Tokio Marine HCC);*
   ii. *email dated 2 July 2020 from Mark Callahan (in his capacity as director of TMMA as managing agent of TMNF and/or in his capacity as a director of BCC on behalf of BCC) to Ewan Berkemeier (Marsh), Flavia Pritchard (Marsh), Edward Smith (Marsh), Angus Ward (Marsh), copied to Toby Guy (Chief Executive Officer of TMMA and a director of BCC) (TMA.0001.0004.0264); and*
   iii. *conversation between Toby Guy and Julian Macey-Dare (Marsh) on 3 July 2020.*
2. *Further and better particulars may be provided following discovery and evidence.*

121. On or around 3 July 2020, Marsh:

a. advised TMMA and BCC that, in its view, any breaches by Brereton of the limits of his actual authority were **internal** matters for the insurer;

b. Marsh would work with TMMA and BCC to provide evidence of contractually bound or offered placements for Greensill, noting that many of the placements constituted non-cancellable contracts and limits;

c. referred to BCC and/or TMMA recognising that the documentation they had reviewed was "clear" with "full offer and acceptance and liability on your part as Insurer";

d. implied that, in its view, the policies and endorsements executed or agreed to by Brereton, on behalf of BCC, were binding on the named insurers under those policies and endorsements; and

e. welcomed TMMA and BCC's strong commitment to support Greensill as their "largest customer" as well as valuing support for Marsh "as their largest broker".

Particulars

1. Email dated 3 July 2020 from Julian Macey-Dare to Toby Guy copied to Mark Callahan, Scott Newland, Andrew Kennedy, Chris Blake, Ewan Berkemeier and Edward Smith (MAR.0004.0003.8481).

122. On or around 7 July 2020, TMMA instructed Findex (Aust) Pty Ltd ACN 006466351 (t/a Crowe Australasia) (**Crowe**) to conduct an investigation in relation to potential breaches by Brereton of the limits of his underwriting authority and/or BCC's authority.

123. On or around 24 July 2020, Crowe provided TMMA with a final status report in relation to its investigation (the **Crowe Report**).

Particulars

1. Report prepared by Crowe entitled Final Status Report, Risk Management Incident, dated 24 July 2020 (TMA.0001.0008.1807).

124. The Crowe Report stated, among other things, that:

a. Brereton had bound or purported to bind the Insurer to provide insurance against risks of a value that exceeded internal limits set for BCC and/or Brereton;

b. certain policies or endorsements entered into or agreed to by Brereton were not recorded in the internal systems maintained by BCC;

c. Brereton had knowingly operated outside of BCC's internal procedures to avoid BCC's governance and internal controls;

d. most of the policies or endorsements written for Marsh and the Greensill Group appeared to have been stamped with BCC's corporate stamp; and

e. Brereton might have been subject to undue influence or coercion in his dealings with Marsh and the Greensill Group.

Particulars

1. *Report prepared by Crowe entitled Final Status Report, Risk Management Incident, dated 24 July 2020, upon which White Oak relies in full.*

125. In late July 2020, BCC and TMMA commenced further investigations into the dealings between Brereton and the Greensill Group, including the Policy and the endorsements thereto executed or agreed by Brereton between June 2019 and July 2020 (the **BCC Investigations**).

Particulars

1. *Emails or documents with the following document IDs: TMA.0001.0006.0232 TMA.0001.0007.0271.*

125A. On or around 30 July 2020, TMNF made notifications to the Australian Securities Investment Commission and the Australian Prudential Regulatory Authority informing them that there had been a breach of its minimum capital requirement as a consequence of "a breach of the underwriting limits by two rogue underwriters within the BCC business", and that "[i]t is possible that fraud has occurred".

Particulars

1. *Emails or documents with the following document IDs and their unredacted versions:*

   TMA.0001.0007.1673 TMA.0001.0007.1674 TMA.0001.0007.1675 TMA.0001.0008.6084

126. One of BCC and TMMA's purposes in conducting the BCC Investigations was to assist in determining the exposure of one or more of BCC, the Insurer and/or TMNF in respect to the Policy and any endorsements executed or agreed by Brereton between June 2019 and July 2020.

127. One of BCC and TMMA's purposes in conducting the BCC Investigations was to assist in determining whether the dealings between Brereton and the Greensill Group, including in relation to the Policy and its endorsements, had involved the commission of fraud or some other crime.

128. On or around 4 August 2020, BCC notified the Greensill Group:

a. of the BCC Investigations including, specifically, into endorsements issued in relation to the Policy;

b. that the BCC Investigations were continuing;

c. that BCC did not admit it was on risk in relation to endorsements entered into or agreed by Brereton in relation to the Policy between June 2019 and July 2020;

d. that upon completion of the BCC Investigations, BCC would be in a position to inform the Greensill Group about its position in relation to documents signed by Brereton during the period June 2019 to July 2020; and

e. by implication, that it was possible that BCC and/or the Insurer would ultimately take the position that it was not bound by any endorsements entered into or agreed by Brereton in relation to the Policy between June 2019 and July 2020.

Particulars

1. Letter signed by Toby Guy dated 4 August 2020 and addressed to GCPL, GCUK and GBAG, and copied to Marsh (TMA.0001.0007.1875) (TMA.0001.0007.1876).

129. On or around 7 August 2020, Marsh, on behalf of the Greensill Group, informed BCC and TMMA that both Marsh and the Greensill Group considered that BCC was bound by all transactions that Brereton had entered into or agreed to on behalf of BCC as, or purportedly as, agent for the Insurer.

Particulars

1. Letter dated 7 August 2020 from Ewan Berkemeier to Toby Guy sent by email to Joaquim Smith and Seigo Ishimaru, copied to Julian Macey-Dare, Edward Smith and GBAG (TMA.0001.0008.2627).

130. On or around 28 August 2020, TMMA informed GCPL, GCUK and GBAG that whilst the BCC Investigations were continuing, TMMA's preference was to work with the Greensill Group to assist it to identify alternative insurers to underwrite the risks under the Policy and the documentation the subject of the BCC Investigations.

Particulars

1. Letter dated 28 August 2020 from Mark Callahan to Mr Lex Greensill, Mr Nunnerich and the Company Secretary of GCUK (TMA.0001.0008.3836).

131. On or around 1 September 2020, BCC informed the Greensill Group:

a. that the Policy would not be renewed and that it would otherwise expire on 1 March 2021;

b. at the conclusion of the BCC Investigations, TMNF and BCC would be in a position to determine their position in respect to the Policy or any endorsements, including with respect to cancelling or avoiding the Policy; and

c. by implication, that it was possible that TMNF, the Insurer or BCC would ultimately take the position that it was not bound by the Policy or any endorsements to the Policy.

Particulars

1. Letter signed by Toby Guy on behalf of BCC dated 1 September 2020 and addressed to GCPL, GCUK and GBAG (TMA.0001.0007.2819) (TMA.0001.0007.2820).

132. In or about September 2020, BCC told the Greensill Group that BCC had concerns that the Policy had been fraudulently obtained.

Particulars

1. Affidavit of Matt James Andrews affirmed 27 June 2023 at [12(e)].

2. *Further and better particulars may be provided following discovery and evidence.*

133. During the period from June 2020 to February 2021, instead of disclosing any of the matters pleaded in paragraph 176 below to White Oak, TMMA sought to work with Marsh and/or the Greensill Group:

a. to assist them to identify alternative insurers to underwrite the risks covered by the Policy and the other documentation the subject of the BCC Investigations;

b. to negotiate or manage down the exposure of TMMA and TMNF under the documentation the subject of the BCC Investigations; and

c. thereby to avoid creating losses or potential losses for TMMA and TMNF.

133A. The Insurer knew of, and/or was involved in, TMMA's attempts to negotiate with the Greensill Group, as set out in paragraph 133 above, to protect TMMA's and/or the Insurer's interests without disclosing any of the matters pleaded in paragraph 176 below to White Oak.

Particulars

1. *IAL.500.009.1069 TMA.0001.0004.2081 TMA.0001.0004.2084.*
2. *Further particulars may be provided following the conclusion of discovery and evidence.*

N2. BCC's knowledge

134. At all material times, BCC knew of the Crowe Report and its contents.

Particulars

1. *It can be inferred that BCC had knowledge of the Crowe Report by reason of:*
   i. *TMMA acting in its own capacity and on behalf of BCC; and*
   ii. *the Crowe Report being distributed to representatives of BCC, namely Toby Guy (who, at all material times, was the CEO of TMMA and a director of Bond and BCC), Mark Callahan (who, at all material times, was a director of TMMA, Bond and BCC), and Joaquim Smith (who, at all material times, was the Compliance Manager at TMMA and a director of Bond and BCC).*
2. *Further and better particulars may be provided following discovery and evidence.*

135. Prior to 10 December 2020 and at all material times thereafter, BCC held a suspicion that the dealings between Brereton and the Greensill Group, including in relation to the Policy and its endorsements, had involved the malfeasance, or the commission of fraud or some other crime.

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 132.*

136. Prior to 10 December 2020, BCC knew that several loss payee endorsements had been issued under the Policy.

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 96.*
2. *Loss payee endorsements were issued under the Policy (and during the Policy Period) to: GAM International Management Limited; AEPF III 10 S.a.r.l.; Stichting Shell Pensioenfonds; Shell Pensions Trust; GBM Banca S.p.A; Credit Suisse Funds 2 SICAV – Credit Suisse Supply Chain Finance Investment Grade Fund; Credit Suisse Nova (Lux) Supply Chain Finance High Income Fund; Credit Suisse Virtuoso SICAV-SIF – Credit Suisse (Lux) Supply Chain Finance Fund; Flekar SPV S.a.r.l. (Compartment Wallaby); Morgan Stanley & Co. International PLC; and Vodafone Finance Ltd:*

IAL.500.011.0290	*IAL.500.011.0366*	*IAL.500.011.0438*
IAL.500.011.0437	*IAL.500.011.0436*	*IAL.500.011.0435*
IAL.500.011.0041	*IAL.500.011.0443*	*IAL.500.011.0441*
IAL.500.011.0440	*IAL.500.011.0439*	

3. *BCC had agreed (on behalf of the Insurer) to pay out a claim amount in the sum of USD 34,998,726 within 15 days from 19 June 2020 directly to a loss payee under the Policy, as stated in letter from BCC, on behalf of the Insurer, to GBAG dated 19 June 2020 (BCC.0001.0001.7005).*

137. Prior to 10 December 2020, BCC knew that the business of the Greensill Group involved:

a. the provision of various forms of working capital facilities to its clients and that under such arrangements Greensill acquired accounts receivables; and

b. selling accounts receivables purchased by the Greensill Group, or interests in those accounts receivables, to investors.

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 96.*
2. *Further, this knowledge can be inferred from:*
   - *i. BCC's knowledge of the terms of the Policy and the Endorsements and their commercial objectives;*
   - *ii. the fact that GBAG and GCPL were insured under the Policy and GCUK was insured under the Master Policy;*
   - *iii. the publicly available nature of information about the Greensill Group's business activities (for example, and without limitation:*

     https://web.archive.org/web/20200529043554/https:/www.greensill.com/about (WOC.0010.0009.0001); https://web.archive.org/web/20200529060150/https:/www.greensill.com/what-we-do (WOC.0010.0009.0008); https://web.archive.org/web/20180921091243/http:/www.greensill.com/about) (WOC.0010.0009.0013);
   - *iv. BCC's control over or ability to access proposal and inception communications with Marsh and/or the Greensill Group;*
   - *v. the provision of annual information packs by the Greensill Group to BCC, as referred to in the letter pleaded in paragraph 129 above; and*

vi. BCC's knowledge of the other loss payee endorsements issued under the Policy as pleaded in paragraph 136.

3. Further and better particulars may be provided following discovery and evidence.

138. In the premises pleaded in paragraphs 119 to 132, prior to 10 December 2020 and at all material times thereafter, BCC knew that there was a material possibility:

a. that the Policy and endorsements thereto had not been executed within the actual authority of BCC to bind the Insurer;

b. that the Policy and endorsements thereto had not been executed within the ostensible authority of BCC to bind the Insurer; and

c. as such, that the Insurer may not be bound by the Policy and endorsements may not pay any claim made on the Policy and endorsements.

139. In the premises pleaded in paragraphs 121 and 129, prior to 10 December 2020 and at all material times thereafter, BCC knew that the Greensill Group's stated position was that the Policy and any endorsements executed by Brereton between June 2019 and July 2020 on behalf of BCC were binding on it and the insurer.

140. In the premises of paragraphs 94 to 97, 119 to 132 and 134 to 139, prior to 10 December 2020 and at all material times thereafter, BCC knew or ought reasonably to have known that Marsh and/or the Greensill Group might not inform any loss payees under the Policy, including White Oak, of one or more of the matters pleaded in paragraph 176.

Particulars

1. BCC's knowledge is inferred, or ought reasonably to be inferred, from knowledge of the matters pleaded at paragraphs 94 to 97, 119 to 132 and 134 to 136.

N3. TMMA and TMNF's knowledge

141. In:

a. instructing Crowe to conduct its investigation and receiving the Crowe Report;

b. commencing and conducting the BCC investigations;

c. corresponding with Marsh and the Greensill Group about Brereton and BCC's underwriting activities, as pleaded at paragraphs 120, 121, 129 and 130; and

d. engaging in the conduct pleaded at paragraph 133,

TMMA was acting in its capacity as managing agent of TMNF.

142. At all material times, TMNF knew of the Crowe Report and its contents.

Particulars

1. It can be inferred that TMNF had knowledge of the Crowe Report by reason of:

i. TMMA acting as managing agent of TMNF, and the knowledge of TMMA is to be attributed to its principal, TMNF, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act; and

ii. the Crowe Report being distributed to representatives of TMNF, including Seigo Ishimaru.

2. Further and better particulars may be provided following discovery and evidence.

143. At all material times TMMA and TMNF knew the matters pleaded in paragraphs 128 to 132.

Particulars

1. White Oak refers to and repeats the particulars to paragraphs 128 to 132 from which it can be inferred that TMMA and TMNF knew the matters therein referred to by reason of one or more of:

i. the knowledge of BCC is to be attributed to its principal, TMMA, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act;

ii. TMNF is imputed with the knowledge of its managing agent (including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act); and

iii. the knowledge of TMMA's CEO, Toby Guy can be attributed to TMMA; and other senior officers or employees being involved in the relevant correspondence.

144. Prior to 10 December 2020 and at all material times thereafter, TMMA held a suspicion that the dealings between Brereton and the Greensill Group, including in relation to the Policy and its endorsements, had involved malfeasance, or the commission of fraud or some other crime.

Particulars

1. White Oak refers to and repeats the particulars to paragraph 132, together with the fact that directors and senior officers of TMMA were also directors of BCC.

2. The investigation of that suspicion was a purpose of the BCC Investigations.

3. Further and better particulars may be provided following discovery and evidence.

145. Prior to 10 December 2020 and at all material times thereafter, TMNF knew that TMMA held the suspicion pleaded in paragraph 144.

Particulars

1. The knowledge of BCC is to be attributed to its principal, TMMA, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act. The knowledge of TMMA is to be attributed to its principal, TMNF, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act.

2. Further or alternatively, TMNF obtained its knowledge through senior officers or employees of TMNF attending as members of TMMA's Audit Committee and/or TMMA Board of Directors in which the BCC Investigations were discussed.

3. *Further and better particulars may be provided following discovery and evidence.*

146. In the premises pleaded in paragraphs 119 to 140 and 141 to 143, prior to 10 December 2020 and by no later than 25 February 2021, TMMA and TMNF knew the terms of the Policy, the Master Policy and the insureds under those policies.

Particulars

1. *White Oak refers to and repeats the particulars to paragraphs 119 to 140 and 141 to 143.*
2. *TMNF has the same knowledge as its managing agent, TMMA.*
3. *Further or alternatively, TMNF obtained its knowledge through senior officers or employees of TMNF attending as members of TMMA's Audit Committee and/or TMMA Board of Directors in which the Policy was discussed.*
4. *Further and better particulars may be provided following discovery and evidence.*

147. Prior to 10 December 2020 or alternatively by no later than 25 February 2021, TMMA and TMNF knew the terms of the Loss Payee Endorsement.

Particulars

1. *White Oak refers to and repeats particulars to paragraph 137.*
2. *TMMA and TMNF's knowledge of all endorsements under the Policy, including the Loss Payee Endorsement, can be inferred from:*
   i. *communications with Marsh and the Greensill Group about policy documentation on 2 and 3 July 2020 including that pleaded at paragraph 121, referring to Toby Guy recognising that the documentation reviewed is "clear" with "full offer and acceptance and liability on your part as Insurer", and an offer to "provide you with documentation requested";*
   ii. *communications with board members of TMMA referring to BCC reviewing all insurance policies, communications and agreements involving Brereton to confirm what is/is not in TMMA's systems;*
   iii. *the BCC Investigations and work being undertaken by TMMA, BCC and others, including Crowe, in respect to the endorsements executed or entered into by Brereton on behalf of BCC during the period June 2019 to July 2020, which period relevantly included the April 2020 Endorsements;*
   iv. *the knowledge of BCC is to be attributed to its principal, TMMA, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act; and*
   v. *the knowledge of TMMA is to be attributed to its principal, TMNF, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act.*
3. *Further and better particulars may be provided following discovery and evidence.*

148. Prior to 10 December 2020, TMMA and TMNF knew the terms of Endorsement 18.

Particulars

1. *White Oak refers to and repeats particulars to paragraph 147.*
2. *But for Endorsement 18, the Policy would have expired in March 2020. The reasonable inference from the matters pleaded in paragraphs 119 to 141, including the communications with Marsh and the Greensill Group is that TMMA considered that the Policy was still on foot or purportedly still on foot by reason of the terms of Endorsement 18.*

149. Prior to 10 December 2020, TMMA and TMNF knew that several loss payee endorsements had been issued under the Policy.

Particulars

1. *White Oak refers to and repeats particulars to paragraph 147.*
2. *White Oak refers to and repeats particulars to paragraph 136.*

150. Prior to 10 December 2020, TMMA and TMNF knew that the business of the Greensill Group involved:

a. the provision of various forms of working capital facilities to its clients and that under such arrangements Greensill acquired accounts receivables; and

b. selling accounts receivables purchased by the Greensill Group, or interests in those accounts receivables, to investors.

Particulars

1. *This knowledge can be inferred from:*
   - i. *TMMA and TMNF's knowledge of the terms of the Policy and the Endorsements and their commercial objectives;*
   - ii. *the fact that GBAG and GCPL were insured under the Policy and GCUK was insured under the Master Policy;*
   - iii. *the publicly available nature of information about the Greensill Group's business activities (for example, and without limitation:*

     https://web.archive.org/web/20200529043554/https:/www.greensill.com/about (WOC.0010.0009.0001);
     https://web.archive.org/web/20200529060150/https:/www.greensill.com/what-we-do (WOC.0010.0009.0008);
     https://web.archive.org/web/20180921091243/http:/www.greensill.com/about) (WOC.0010.0009.0013);
   - iv. *TMMA and TMNF's access to proposal and inception communications with Marsh and/or the Greensill Group through BCC;*
   - v. *the provision of annual information packs by the Greensill Group to BCC, as referred to in the letter pleaded in paragraph 129 above;*
   - vi. *TMMA and TMNF's knowledge of the other loss payee endorsements issued under the Policy as pleaded in paragraph 149;*
   - vii. *the knowledge of BCC is to be attributed to its principal, TMMA, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act; and*

viii. the knowledge of TMMA is to be attributed to its principal, TMNF, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act.

2. Further and better particulars may be provided following discovery and evidence.

151. Prior to 10 December 2020, TMMA and TMNF knew:

a. that White Oak was a loss payee under the Policy; and

b. that loss payees under the Policy relied upon or may rely upon the Policy in acquiring accounts receivable, or interests in those accounts receivables, from the Greensill Group in the manner pleaded in paragraph 149.

Particulars

1. White Oak refers to and repeats the particulars to paragraph 149.

152. In the premises pleaded in paragraphs 119 to 140 and 141 to 143, prior to 10 December 2020 and at all material times thereafter, TMNF and TMMA knew that there was a material possibility:

a. that the Policy and endorsements thereto had not been executed within the actual authority of BCC to bind the Insurer;

b. that the Policy and endorsements thereto had not been executed within the ostensible authority of BCC to bind the Insurer; and

c. as such, that the Insurer may not be bound by the Policy and endorsements may not pay any claim made on the Policy and endorsements.

Particulars

1. White Oak refers to and repeats particulars to paragraphs 119 to 140, 141 to 143, and 147.

153. In the premises pleaded in paragraphs 119 to 140 and 141 to 143, prior to 10 December 2020 and at all material times thereafter, TMMA and TMNF knew that the Greensill Group's stated position was that the Policy and the endorsements thereto entered into by Brereton between June 2019 and July 2020 on behalf of BCC were binding on the insurer.

154. In the premises of paragraphs 144, 145 and 153, prior to 10 December 2020 and at all material times thereafter, TMMA and TMNF knew or suspected or ought reasonably to have known or suspected that Marsh and the Greensill Group might not inform any loss payees under the Policy, including White Oak, of one or more of the matters pleaded in paragraphs 120, 128, 130 and 132.

155. Further or in the alternative to paragraphs 141 to 154, if TMMA and or TMNF did not have actual knowledge of the matters pleaded therein, it had constructive knowledge of those matters.

Particulars

1. White Oak refers to and repeats the particulars to paragraphs 141 to 154.

N4. The Insurer's knowledge

156. In:

a. investigating the conduct engaged in by Brereton on behalf of BCC as agent, or purportedly as agent, for the Insurer, as pleaded in paragraphs 125 to 127;

b. giving Marsh the notification pleaded at paragraph 120;

c. informing the Greensill Group of the matters pleaded at paragraph 131; and

d. not disclosing any of the matters pleaded at paragraph 176 to White Oak,

BCC was acting within its actual or apparent authority as agent for the Insurer.

Particulars

1. *BCC's role as agent of the Insurer under the PACAO, including in relation to the Policy and the Endorsements (as pleaded at paragraph 9F);*
2. *the Insurer's admission that BCC's letter of 1 September 2020 was sent on its behalf in the Letter from Clyde & Co, on behalf of the Insurer, to Herbert Smith Freehills, on behalf of the Greensill Group, dated 1 March 2021 (MAR.0006.0001.5588);*
3. *the Insurer's conferral on BCC of ~~actual or~~ apparent authority to enter into the Policy and the Endorsements on its behalf (as pleaded and particularised at paragraph~~s 41B.a and~~ 41B.b), which implicitly carried with it ~~actual or apparent~~ authority to communicate with third parties about the Policy and the Endorsements on the Insurer's behalf; ~~and~~*
4. *the Insurer's failure to take reasonable steps to communicate to third parties other than Marsh or the Greensill Group that BCC did not have continuing authority to act as its agent in relation to the Policy and the Endorsements, in circumstances where it was reasonable to expect that other third parties, such as White Oak, would continue to assume that BCC had that authority;*
5. *the Insurer's~~ conduct in making the Insurer's Representations, as well as the~~ conduct referred to in paragraphs 9C to 9H, 37A to 37O and 38A to 38B above and the particulars contained therein, which had the effect of holding out BCC as the Insurer's agent; and*
6. *further and better particulars may be provided following discovery and evidence.*

157. Prior to 10 December 2020 or alternatively by no later than 25 February 2021, the Insurer knew of the Policy and the Master Policy.

Particulars

1. *~~Brereton Defence filed 31 July 2023 at [41B];~~ t<u>T</u>he Insurer Defence filed 1 <u>May 20261</u> ~~August 2023~~ at [8(dd)].*
2. *Letter from Clyde & Co to Ashurst dated 30 October 2023 at [4], [11] and [12] (WOC.0009.0079.0001).*
3. *Greensill Capital Pty Ltd & Ors v BCC Trade Credit Pty Ltd & Ors [2021] NSWSC 167 at [36]-[37].*
4. *The bordereaux provided to IAL by BCC throughout the relevant period (including from 1 July 2019 onward when BCC provided the bordereaux to IAL in its capacity as Administrator of the PACAO alongside TMMA) listed policies in the name of GCPL.*

IAL.500.001.0275	*IAL.500.001.0267*	*IAL.500.001.0055*
IAL.500.001.0108	*IAL.500.005.0217*	*IAL.500.001.0104*
IAL.500.001.0191	*IAL.500.001.0271*	*IAL.500.001.0234*
IAL.500.009.2891	*IAL.500.007.0028*	*IAL.500.001.0228*
IAL.500.009.0107	*IAL.500.007.0064*	*IAL.500.007.0040*
IAL.500.001.0099	*IAL.500.001.0277*	*IAL.500.001.0097*
IAL.500.001.0094	*IAL.500.001.0112*	*IAL.500.001.0084*
IAL.500.001.0073	*IAL.500.001.0082*	*IAL.500.001.0252*
IAL.500.001.0302	*IAL.500.001.0292*	

5. *The knowledge of BCC and/or TMMA of matters affecting the 2019 Policy and endorsements thereto is to be attributed to the Insurer by reason of the matters pleaded in paragraph 156 in respect of BCC, and/or because TMMA and BCC were acting as the Insurer's representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(3) of the ASIC Act.*
6. *Further and better particulars may be provided following discovery and evidence.*

158. Prior to 10 December 2020 the Insurer knew of Endorsement 18 or knew that BCC had entered into an endorsement which extended or purported to extend the Policy Period to 1 March 2021.

Particulars

1. *Letter from Clyde & Co to Ashurst dated 30 October 2023 at [4], [11] and [12].*
2. *The letter pleaded at paragraph 130, which refers to Endorsement 18 and its purported effect, was sent by BCC in its capacity as authorised representative of the Insurer in respect of the Policy.*
3. *Greensill Capital Pty Ltd & Ors v BCC Trade Credit Pty Ltd & Ors [2021] NSWSC 167 at [36]-[37].*
4. *The knowledge of BCC and/or TMMA of this matter is to be attributed to the Insurer by reason of the matters pleaded in paragraph 156 in respect of BCC, and/or because TMMA and BCC were acting as the Insurer's representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(3) of the ASIC Act.*
5. *Further and better particulars may be provided following discovery and evidence.*

159. Prior to 10 December 2020 the Insurer knew of Endorsement 19(ii).

Particulars

1. *White Oak refers to and repeats particulars to paragraphs 156 to 158.*
2. *The Insurer's knowledge of the Endorsements, including Endorsement 19(ii) can be inferred from:*
   i. *the Insurer's knowledge of the Policy and the Master Policy;*
   ii. *the Insurer's knowledge of the BCC Investigations, including investigation reports, which considered inter alia the policies and endorsements entered into by Brereton relating to the Greensill Group;*
   iii. *the absence of any communications by the Insurer's agent, BCC, with Marsh or the Greensill Group about the existence or location of the Endorsements;*
   iv. *that in all the circumstances BCC or TMMA disclosed to the Insurer the communications with Marsh and the Greensill Group about the Policy, including that pleaded at paragraph 121; and*
   v. *Greensill Capital Pty Ltd & Ors v BCC Trade Credit Pty Ltd & Ors [2021] NSWSC 167 at [36]-[37].*
3. *The knowledge of BCC and/or TMMA of this matter is to be attributed to the Insurer by reason of the matters pleaded in paragraph 156 in respect of BCC, and/or because TMMA and BCC were acting as the Insurer's representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(3) of the ASIC Act.*
4. *Further and better particulars may be provided following discovery and evidence.*

160. Prior to 10 December 2020 the Insurer knew of Endorsement 2(iii).

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 159.*

161. Prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew of the Loss Payee Endorsement.

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 159.*

162. Prior to 10 December 2020 the Insurer knew of Endorsement – Liberty Commodities.

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 159.*

163. Prior to 10 December 2020, the Insurer knew that several loss payee endorsements had been issued under the Policy.

Particulars

1. *White Oak refers to and repeats particulars to paragraph 159.*
2. *White Oak refers to and repeats particulars to paragraph 136.*
3. *The Insurer had agreed to pay out a claim amount in the sum of USD 34,998,726 directly to a loss payee under the Policy; see letter from BCC, on behalf of the Insurer, to GBAG dated 19 June 2020.*

164. Prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew that the business of the Greensill Group involved the provision of various forms of working capital facilities to its clients and that under such arrangements the Greensill Group acquired accounts receivables.

Particulars

1. *White Oak refers to and repeats the particulars to paragraphs 156 to 162.*
2. *This knowledge can be inferred from the Insurer's knowledge of the terms of the Policy, knowledge of the Endorsements, the objective commercial purpose of the Policy and the Endorsements, the fact that GBAG and GCPL were insured under the Policy and GCUK was insured under the Master Policy, the publicly available nature of information about the Greensill Group's business activities (for example, and without limitation:*

   https://web.archive.org/web/20200529043554/https:/www.greensill.com/about (WOC.0010.0009.0001);
   https://web.archive.org/web/20200529060150/https:/www.greensill.com/what-we-do (WOC.0010.0009.0008);
   https://web.archive.org/web/20180921091243/http:/www.greensill.com/about) (WOC.0010.0009.0013),

   and the communications *particularised by the Insurer in its Defence to paragraph [38](h) which outlined the nature of Greensill Group's business activities and the type of insurance policies sought by Greensill, including the role of third party funders in their business structure, such as the email from Mr Julian Macey-Dare to Brereton and others at 2:22 am on 28 September 2017.*
3. *Affidavit of Guy Narburgh affirmed 1 March 2021 at [12]-[16].*
4. *Further and better particulars may be provided following discovery and evidence.*

165. Prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew that the facilities referred to in paragraph 164 were funded by the Greensill Group relying upon, *inter alia*, parties who are, or who would reasonably be expected to be insureds, loss payees, third party beneficiaries or assignees under the Policy.

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 161 and 164.*

166. Prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew that loss payees or assignees under the Policy, including White Oak, relied upon the existence and validity of the Policy and the Endorsements in providing funding to the Greensill Group in the manner pleaded in paragraph 165.

Particulars

1. *White Oak refers to and repeats the particulars to paragraph 163.*

167. Prior to 10 December 2020 the Insurer knew:

a. that between June 2019 and July 2020 Brereton had, on behalf of BCC, executed or agreed to policies or endorsements as agent, or purportedly as agent, for the Insurer;

b. that in doing so, Brereton had bound or purported to bind the Insurer to provide insurance against risks of a value that exceeded internal limits set by the Insurer for BCC and/or Brereton;

c. that in doing so, Brereton had deliberately circumvented BCC's ordinary internal procedures for entering into insurance policies and endorsements; and

d. the insureds under some of those policies or endorsements were one or more of the members of the Greensill Group.

Particulars

1. *It can be inferred from all the circumstances pleaded in paragraphs 119 to 132 that BCC informed the Insurer of these matters.*
2. *Further, BCC's and/or TMMA's knowledge of this matter is to be attributed to the Insurer by reason of the matters pleaded in paragraph 156 in respect of BCC, and/or because TMMA and BCC were acting as the Insurer's representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(3) of the ASIC Act.*
3. *The bordereaux provided to IAL by BCC throughout the relevant period (including from 1 July 2019 onward when BCC provided the bordereaux to IAL in its capacity as Administrator of the PACAO alongside TMMA) listed policies in the name of GCPL.*
4. *The bordereaux (including from 1 July 2019 onward) included insurance policies held by GCPL which were listed as variously having no maximum limit, or maximum policy limits of USD 158 million, EUR 1.6 billion, AUD 1.2 billion and AUD 400 million (IAG.0000033051.0001).*
5. *Further and better particulars may be provided following discovery and evidence.*

168. Prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew of the matters pleaded in paragraphs 119 and 128.

Particulars

1. *The notification pleaded in paragraph 119 was referred to in the letter from Marsh to BCC dated 7 August 2020, which was referred to in the letter sent by BCC to the Greensill Group on 1 September 2020 on behalf of the Insurer. It can be inferred that the notification or its contents were disclosed to the Insurer by BCC at or around that time, if not earlier.*
2. *It can be inferred from all the circumstances pleaded in paragraphs 119 to 132 that the Insurer was shown the letter from Toby Guy to the Greensill Group dated 4 August 2020 at or around that date.*
3. *Alternatively, it can be inferred that BCC informed the Insurer of the matters in the 4 August 2020 letter from BCC's capacity as authorised representative of the Insurer in respect to the Policy.*
4. *Further, BCC's and/or TMMA's knowledge of its purposes is to be attributed to the Insurer by reason of the matters pleaded in paragraph 156 in respect of BCC, and/or because TMMA and BCC were acting as the Insurer's*

representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(3) of the ASIC Act.

169. Prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew:

a. of the purpose of the BCC Investigations pleaded at paragraph 127; and

b. that BCC and/or TMMA suspected that the dealings between Brereton and the Greensill Group, including in relation to the Policy and its endorsements, had involved malfeasance, or the commission of fraud or some other crime.

Particulars

1. *It can be inferred from all the circumstances, including those pleaded in Section N1 and referred to in the particulars to paragraph 168, that BCC or TMMA informed the Insurer of these matters at or around the time the Insurer was informed of the existence of the BCC Investigations.*
2. *Further or in the alternative, that BCC and/or TMMA suspected the dealings between Brereton and the Greensill Group to have involved malfeasance or the commission of fraud or some other crime was inferred by the Insurer from the purpose pleaded at paragraph 127.*
3. *Further, BCC's and/or TMMA's knowledge of its purposes is to be attributed to the Insurer by reason of the matters pleaded in paragraph 156 in respect of BCC, and/or because TMMA and BCC were acting as the Insurer's representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(3) of the ASIC Act.*
4. *Further and better particulars may be provided following discovery and evidence.*

170. Prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew that BCC had informed the Greensill Group that it would not be able to determine its position on whether it was bound by the Policy and any endorsements to the Policy until the BCC Investigations had concluded.

Particulars

1. *It can be inferred from all the circumstances pleaded in paragraphs 119 to 132, and from the fact that the letter was sent on behalf of the Insurer, that the Insurer was shown the letter from Toby Guy to the Greensill Group dated 1 September 2020.*
2. *Further, BCC's and/or TMMA's knowledge of its purposes is to be attributed to the Insurer by reason of the matters pleaded in paragraph 156 in respect of BCC, and/or because TMMA and BCC were acting as the Insurer's representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(3) of the ASIC Act.*
3. *Further and better particulars may be provided following discovery and evidence.*

171. In the premises pleaded in paragraphs 156 to 166, prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew that that there was a material possibility:

a. that the Policy and endorsements thereto had not been executed within the actual authority of BCC to bind the Insurer;

b. that the Policy and endorsements thereto had not been executed within the ostensible authority of BCC to bind the Insurer; and

c. as such, that the Insurer may not be bound by the Policy and endorsements may not pay any claim made on the Policy and endorsements including by any loss payees.

172. Prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew that the Greensill Group's stated position was that the Policy and the endorsements thereto entered into by Brereton between June 2019 and July 2020, on behalf of BCC and as agent or purportedly as agent for the Insurer, were binding.

Particulars

1. *The Insurer's knowledge can be inferred from the fact that the letter pleaded at paragraph 130 was sent by BCC in its capacity as authorised representative of the Insurer in respect to the Policy.*
2. *Further, the knowledge of BCC and/or TMMA of this matter is to be attributed to the Insurer by reason of the matters pleaded in paragraph 156 in respect of BCC, and/or because TMMA and BCC were acting as the Insurer's representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(3) of the ASIC Act.*

173. In the premises pleaded in paragraph 171, prior to 10 December 2020 and by no later than 25 February 2021, the Insurer knew or suspected or ought reasonably to have known or suspected that Marsh and/or the Greensill Group might not inform any loss payees under the Policy, including White Oak, of one or more of the matters pleaded in paragraphs 120, 128, 130 and 132 of this Sixth ~~Fifth~~ Amended Statement of Claim.

Particulars

1. *The Insurer's knowledge is inferred from knowledge of the matters pleaded at paragraph 172.*

174. Further, prior to 10 December 2020 and by no later than 25 February 2021, the Insurer:

a. had not asked BCC (as its agent) to take reasonable steps to ensure that any loss payees under the Policy, including White Oak, were informed of one or more of the matters pleaded in paragraphs 120, 128, 130 and 132; and

b. had not been provided with any information to demonstrate that any loss payees under the Policy, including White Oak, were informed of one or more of the matters pleaded in paragraphs 120, 128, 130 and 132.

175. Further or in the alternative to paragraphs 156 to 173, if the Insurer did not have actual knowledge of the matters pleaded therein, it had constructive knowledge of those matters.

Particulars

1. White Oak refers to and repeats the particulars to paragraphs 156 to 173.

N4A. Waiver/election

175A. By reason of:

a. the Insurer's knowledge as pleaded in paragraphs 9HA to 9HB, 37A to 38B, and 156 to 175 above and the particulars contained therein;

b. the Insurer's continued receipt of premia; and

Particulars

1. Paragraphs 9HA to 9HB and 37J to 37M above and the particulars contained therein are repeated.

c. the Insurer's failure to rescind, or refuse cover in respect of, the Policy,

the Insurer waived any rights to avoid or rescind the Policy and/or elected to affirm the Policy.

N5. Non-disclosure to White Oak

176. At no material time did any of BCC, TMMA, TMNF or the Insurer inform White Oak of any of the following matters:

a. that in entering into the Policy and some or all of the endorsements thereto, Brereton had not complied with BCC's ordinary internal procedures for entering into insurance policies and endorsements;

b. that BCC and TMMA were concerned that Brereton and BCC did not have, or may not have had, actual authority to enter insurance policies or endorsements as agent for the Insurer;

c. that BCC and TMMA had informed the Greensill Group that Brereton and BCC did not have actual authority to enter into insurance policies or endorsements as agent for the Insurer;

d. that BCC and TMMA had commenced, were conducting or had conducted the BCC Investigations;

e. that a purpose of the BCC Investigations was to assist BCC and TMMA to determine whether BCC, the Insurer and/or TMNF were bound by the Policy and the endorsements thereto entered into or agreed by Mr Brereton between June 2019 and July 2020;

f. that a purpose of the BCC Investigation was to assist BCC and TMMA to determine whether the dealings between Brereton and the Greensill Group, including in relation to the Policy and the endorsements thereto, had involved malfeasance, or the commission of fraud or some other crime;

g. that BCC and TMMA in fact suspected that the dealings between Brereton and the Greensill Group, including in relation to the Policy and its endorsements, had involved the malfeasance, or the commission of fraud or some other crime;

h. that BCC had informed the Greensill Group that it did not necessarily accept that it was on risk in relation to endorsements entered into or agreed by Mr Brereton in relation to the Policy between June 2019 and July 2020;

i. that BCC, on behalf of the Insurer, had informed the Greensill Group that it would not be able to determine its position on whether it was bound by the Policy and any endorsements to the Policy until the BCC Investigation had concluded; and/or

j. that there was a material possibility that the Policy and endorsements had not been executed within the actual or ostensible authority of BCC to bind the Insurer and/or that BCC and/or the Insurer may not be bound by the Policy and endorsements and may not pay any claim made on the Policy and endorsements.

177. None of the matters in paragraph 176 were disclosed to White Oak by Marsh or the Greensill Group at any material time.

N6. Misleading or Deceptive Conduct

178. White Oak refers to and repeats paragraphs 105 to 116 and 120 to 174.

179. As pleaded in paragraph 105 above, by executing the BCC/Brereton Documents, and in particular the Loss Payee Endorsement, BCC made BCC's Actual Authority Representations to White Oak.

180. ~~BCC's Representations were also made by the Insurer in addition to the Insurer's Representations.~~[Not used].

~~**Particulars**~~

~~*White Oak refers to and repeats paragraphs 41B and 106A and the particulars thereto.*~~

181. BCC's Actual Authority Representations ~~and the Insurer's Representations~~ were:

a. continuing representations; and

b. not withdrawn or corrected at any material time.

182. At all material times, by reason of the matters pleaded in sections N2, N3 and N4 each of the Insurer, TMMA, TMNF and BCC knew or ought reasonably to have known the matters pleaded in paragraph 176.

183. In the premises pleaded in paragraphs 119 to 174, the circumstances were such as to give rise to a reasonable expectation on the part of White Oak, or a reasonable person in White Oak's position, that one or more of BCC, the Insurer, TMMA or TMNF 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 ~~Representations and the Insurer's~~Actual Authority Representations.

184. The circumstances in which the reasonable expectation of disclosure by one or more of BCC, the Insurer, TMMA or TMNF as pleaded in paragraph 182 arose included the following:

a. without disclosure of any of the matters in paragraph 182, BCC's ~~Representations and the Insurer's~~Actual Authority Representations were wrong or was in a material respect likely to be wrong;

b. one or more of the matters in paragraph 182 meant that BCC's ~~Representations and the Insurer's~~Actual Authority Representations were wrong or were in a material respect likely to be wrong;

c. the material or significant role of loss payees to the Policy having regard to the objective commercial purposes of the Policy and the Endorsements;

d. BCC, TMMA and TMNF (through its managing agent TMMA) undertaking or assuming a role in the BCC Investigations and a duty to advise Marsh and/or the Greensill Group about the BCC Investigations and their concerns in respect to the Policy as pleaded in 120, 128, 130 and 132;

e. Marsh and/or the Greensill Group's stated position in respect to the validity of the Policy as pleaded in paragraphs 121 and 129;

f. the absence of any reference in correspondence sent by Marsh that it was acting on behalf of or in the interests of loss payees or third party beneficiaries under the Policy and/or White Oak;

g. the Crowe Report stating that Brereton might have been subject to undue influence or coercion in his dealings with Marsh and the Greensill Group;

h. a legitimate expectation that if BCC, TMMA, TMNF and/or the Insurer held any suspicions or concerns that the dealings between Brereton and the Greensill Group in relation to the Policy and its endorsements had involved malfeasance, or the commission of fraud or some other crime, that was a serious matter that would be disclosed to loss payees as soon as reasonably practicable; and

i. BCC and TMMA having concerns that the Policy may have been fraudulently obtained as pleaded in paragraph 132 above.

185. Each of the matters pleaded in paragraph 176 (Non-Disclosure to White Oak) materially qualified or raised a material doubt about the accuracy of ~~the~~ BCC's Actual Authority

Representations ~~and the Insurer's Representations,~~ because each of those matters materially qualified or raised material doubts as to whether:

a. the BCC/Brereton Documents had been executed with the actual authority of the Insurer; and

b. the BCC/Brereton Documents were binding upon the Insurer because BCC had such actual authority.

186. By not disclosing any of those matters each of BCC, TMMA, TMNF and the Insurer represented to White Oak that it and its agents did not know of any matters that materially qualified or raised a material doubt about ~~the~~ BCC's ~~Representations and the Insurer's~~ Actual Authority Representations.

187. By each of BCC, the Insurer, TMMA and TMNF not disclosing the matters pleaded in paragraph 176 in the circumstances pleaded in paragraphs 179 to 185, they each engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

188. That conduct was:

a. in relation to a financial service within the meaning of ss 991A or 1041H of the Corporations Act; and

b. in trade or commerce and in relation to financial services, within the meaning of s 12DA, 12CA and/or 12CB of the ASIC Act.

189. In the premises, each of BCC, the Insurer, TMMA and TMNF engaged in conduct that contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act.

190. If any of BCC, the Insurer, TMMA or TMNF had disclosed one or more of the matters in paragraph 176 to White Oak, it would not have:

a1. ~~entered into the Policy and/or the Endorsements, or purchased any Payment Obligations; or~~ [Not used];

a. ~~alternatively,~~ relied upon the validity or enforceability of the Policy and/or the Endorsements; and

b. purchased or continue to purchase Payment Obligations as pleaded at paragraph 61.

191. By reason of the contravening conduct, White Oak:

a1. ~~entered into the Policy and/or Endorsements, and purchased Payment Obligations; or~~[Not used];

a. ~~alternatively,~~ relied upon the validity or enforceability of the Policy and/or the Endorsements; and

b. purchased or continued to purchase Payment Obligations as pleaded at paragraph 61.

192. In the premises White Oak suffered loss or damage by the contravening conduct pleaded in paragraph 189 and 191.

Particulars

1. *White Oak's loss is the amount of USD142,707,342.25, which is the total amount paid by White Oak to acquire the Payment Obligations referred to in paragraph 61 above, less any Recoveries, plus interest ~~and Recovery Costs, less any amount received by White Oak in respect of the Payment Obligations~~.*
2. *Further and better particulars may be provided following discovery and evidence.*

193. Further or in the alternative to paragraphs 189 or 191, the conduct of BCC in making BCC's Actual Authority Representations and/or not disclosing one or more of the matters in paragraph 183:

a. was also the conduct of the Insurer by the operation of s 769B(1) of the Corporations Act and/or s 12GH(2) of the ASIC Act, because it was within BCC's actual or ostensible authority as the Insurer's agent; ~~and~~

Particulars

1. *In relation to the making of BCC's Representations, White Oak repeats the particulars to paragraph 41B.*
2. *In relation to the nondisclosure, White Oak repeats the particulars to paragraph 156.*

b. was also conduct and/or knowledge, which is to be attributed to BCC's principal, TMMA, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act;

c. was also conduct and/or knowledge of TMMA, which is to be attributed to its principal, TMNF, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act;

d. further, was conduct:

i. that related to the provision of a financial service;

ii. on which an insured, loss payee or third party beneficiary (including White Oak) could reasonably be expected to rely;

iii. on which White Oak did, in fact, rely in good faith when purchasing or continuing to purchase the Payment Obligations referred to in paragraph 61 respectively;

iv. for which the Insurer is responsible, as between the Insurer and White Oak, by operation of s 917C of the *Corporations Act* (or alternatively, s 917B) of the

Corporations Act), whether or not BCC acted within the scope of its authority; and

v. in respect to BCC's conduct during the period 1 July 2019 to 1 March 2021, for which TMNF is responsible, or partly responsible, as between TMNF and White Oak, by operation of s 917C of the *Corporations Act* (or alternatively, s 917B) of the *Corporations Act*), whether or not BCC acted within the scope of its authority.

Particulars

1. White Oak repeats paragraphs 9H and 9K.

Ancillary liability of TMMA and/or TMNF

194. At all times between when Brereton/BCC executed the April 2020 Endorsements and 25 February 2021:

a. BCC was the authorised representative of TMNF; and

b. BCC and TMMA were Administrators of the Policy for the Insurer under the PACAO.

195. TMMA was responsible for the decision to commence, and for giving instructions in relation to the conduct of, the Crowe investigation pleaded at paragraph 122 above and the BCC Investigations.

196. From July 2020 to at least 25 February 2021, BCC's positions on the Policy and the Endorsements had been determined by TMMA and TMNF, including to inform Marsh, but not Loss Payees, of the concern that the Policy and Endorsements were executed beyond Brereton's authority on behalf of the Insurer.

197. From July 2020 to at least 25 February 2021, all correspondence about the Policy and the Endorsements by or on behalf of BCC with Marsh and the Greensill Group was directed or controlled by TMMA and TMNF.

198. In the premises pleaded at paragraphs 141 to 154, TMMA and TMNF knew each of the essential facts which give rise to the contraventions by BCC of s 1041H of the Corporations Act and s 12DA of the ASIC pleaded at paragraph 189.

199. TMMA and TMNF did not inform White Oak, and did not cause BCC to inform White Oak, of any of the matters in paragraph 176.

200. In the premises, TMMA and TMNF, have been knowingly concerned in the contraventions by BCC of s 1041H of the Corporations Act and s 12DA of the ASIC Act pleaded at paragraph 189 within the meaning of s 79(c) of the Corporations Act.

201. In the premises, TMMA and/or TMNF is liable to White Oak for the loss or damage it has suffered by reason of contravening conduct pleaded in paragraph 189 and 191.

N7. Good faith and other implied terms

202. In the premises pleaded in paragraphs 119 to 132, the Implied Good Faith Obligation, the Implied Disclosure Obligation, the LP Implied Good Faith Obligation and/or the Indirect Beneficiary Good Faith Obligation required each of BCC and the Insurer to inform White Oak of one or more of the matters pleaded at paragraph 176 above within a reasonable time after becoming aware of them.

203. By not disclosing each of those matters to White Oak, BCC and the Insurer breached the Implied Good Faith Obligation, the Implied Disclosure Obligation, the LP Implied Good Faith Obligation and/or the Indirect Beneficiary Good Faith Obligation.

204. If BCC or the Insurer had informed White Oak of any or all of the matters pleaded at paragraph 176 above, White Oak would:

a. not have relied upon the validity or enforceability of the Policy and/or the Endorsements; and

b. not have purchased, or immediately ceased to make any further purchases of, the Payment Obligations pleaded at paragraph 61 above.

205. In the premises, White Oak has suffered loss or damage as a result of each of the conduct pleaded in paragraph 203.

Particulars

1. *White Oak's loss is the amount of USD142,707,342.25, which is the total amount paid by White Oak to acquire the Payment Obligations referred to in paragraph 61 above, less any Recoveries, plus interest ~~and Recovery Costs, less any amount received by White Oak in respect of the Payment Obligations~~.*
2. *Alternatively, White Oak's loss is the total amount paid by White Oak to acquire the Payment Obligations referred to in paragraph 61 above, less any Recoveries, plus interest ~~and Recovery Costs, less any amount received by White Oak in respect of the Payment Obligations~~, that were acquired after the date on which BCC, TMMA, TMNF and/or the Insurer first breached the Implied Good Faith Obligation, the Implied Disclosure Obligation and/or the Implied Benefit Obligation as applicable.*
3. *Further and better particulars may be provided following discovery and evidence.*

N8. Unconscionable conduct

206. Further or in the alternative, in the premises pleaded in paragraphs 119 to 132, it would be unconscionable for TMMA, BCC and TMNF to fail to inform White Oak of the matters in paragraph 176 in circumstances where:

a. TMMA, on behalf of TMNF and BCC, notified Marsh on 2 July 2020 of its concerns as pleaded in paragraph 120 above, including about whether BCC and Brereton had authority to enter into the Policy on behalf of the Insurer;

b. BCC and/or TMMA suspected that the dealings between Brereton and the Greensill Group, including in relation to the Policy and its endorsements, had involved malfeasance, or the commission of fraud or some other crime;

c. they were aware of the existence of loss payees, such as White Oak, and that they would or may rely upon the Policy, as pleaded above in paragraphs 96, 97 and 151;

d. BCC, TMMA and TMNF sought to work with the Greensill Group and Marsh to avoid creating losses or potential losses for TMMA and TMNF, rather than disclosing the matters more broadly, as pleaded in paragraph 133; and

e. they collected the premiums charged by BCC to members of the Greensill Group on behalf of the Insurer during the Policy Period in circumstances where they knew the matters in Section N2 above and, because of those matters, knew that BCC or the Insurer considered, or that there was a material risk that BCC or the Insurer would consider, that the Policy was invalid and/or unenforceable.

207. By reason of the matters in paragraph 206:

a. TMMA, BCC and TMNF engaged in conduct in relation to a financial product, being the Policy, which was unconscionable, contrary to sections 12CA and/or 12CB of the ASIC Act; and

b. TMNF engaged in conduct in relation to the provision of a financial service, being the Policy, that was unconscionable, contrary to s 991A of the Corporation Act.

208. Further or in the alternative to paragraph 207, BCC's and/or TMMA's conduct as pleaded in paragraph 206 was also the conduct of:

a. the Insurer, as TMMA and/or BCC were acting as the Insurer's representative under the PACAO and by operation of s 769B(1) of the Corporations Act and/or s 12GH(2)~~(3)~~ of the ASIC Act, and in respect of BCC, as the Insurer's agent (by reference to paragraphs 41B~~, 106A~~ and 156 above and the particulars therein); and

b. TMNF, as:

i. BCC's conduct and/or knowledge is to be attributed to BCC's principal, TMMA, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act; and

ii. TMMA's conduct and/or knowledge is to be attributed to its principal, TMNF, including by operation of s 769B of the Corporations Act and s 12GH of the ASIC Act.

Particulars

1. In relation to the non-disclosure, White Oak repeats the particulars to paragraph 156.

N9. Negligence

Duty of care

209. White Oak repeats paragraphs 38 to 59D, and 119 to 177 above.

210. Further and alternatively, at all material times, it was reasonably foreseeable to BCC, TMMA, TMNF and/or the Insurer that:

a. White Oak, as an insured under the Policy or, alternatively, as a loss payee might rely on the Policy and the Endorsements, and the manner and capacity in which BCC and/or Brereton had executed or purported to execute those documents, in acquiring insured or purportedly insured assets under the Policy; and

b. if any claims for losses made by or on behalf of White Oak, as an insured or, alternatively, as a loss payee under the Policy were denied by BCC, the Insurer or TMNF on the basis that:

i. Brereton or BCC had not been authorised to enter into those agreements; and/or

ii. the Policy had been obtained by malfeasance or fraud,

then White Oak would suffer loss or damage by reason of the denial of its claims.

211. Further and alternatively, at all material times BCC, TMMA, TMNF and the Insurer knew, or ought reasonably to have known, the identity of White Oak as a loss payee endorsed under the Policy.

Particulars

1. White Oak repeats the particulars to paragraphs 136, 147, 149, 161 and 163.

212. Further and alternatively, White Oak was vulnerable in relation to the loss or damage pleaded in paragraph 210~~209~~ by reason of one or more of the following matters:

a. it was reasonable for White Oak to deal with Brereton and BCC on the assumption that Brereton and BCC were acting as authorised agents of the Insurer and that the Policy and the Endorsements were valid and enforceable according to their terms;

b. the terms or scope of BCC or Brereton's authority or delegations from the Insurer in respect to the Policy or any of its endorsements were not publicly available;

c. in turn, any non-compliance by Brereton or BCC with the limits on their authority was a matter which, of its nature, would not be apparent to a third party;

d. White Oak's reliance upon the apparent validity of the Policy and the Endorsements in deciding or continuing to purchase Payment Obligations;

e. White Oak could not know:

i. that there were concerns that Brereton had been subject to undue influence or coercion in entering into the Policy (as pleaded above in paragraph 124.e);

ii. that BCC, TMMA and TMNF had concerns that the Policy had been obtained by fraud (as pleaded in paragraphs 134, 135, 142 to 144);

iii. that TMNF, TMMA and BCC were conducting an investigation of the circumstances surrounding the entry by Brereton, on behalf of BCC and as or purportedly as authorised agent of the Insurer, into the Policy and the endorsements thereto;

iv. that in the event a claim was made under the Policy it was possible BCC, the Insurer and/or TMNF would take the position that they were not bound by the Policy or any of the endorsements thereto; and/or

v. the approach taken by Marsh and/or the Greensill Group in respect to the validity of the Policy as communicated to TMMA, TMNF and BCC,

without being informed of those matters, directly or indirectly, by BCC, TMNF, TMMA, the Insurer, Marsh or the Greensill Group.

213. Further and alternatively, at all material times, BCC, TMMA, TMNF and/or the Insurer knew or ought reasonably to have known about White Oak's vulnerability under the Policy as pleaded in paragraph 212.

214. Further and alternatively, at all material times, it was reasonably foreseeable to a reasonable person in the position of BCC, TMMA, TMNF and/or the Insurer that White Oak was vulnerable in the manner pleaded in paragraph 212.

215. Further and alternatively, at all material times, each of BCC, TMMA, TMNF and/or the Insurer had direct control over the foreseeable risk of loss or damage and the extent of that loss or damage because they knew the matters pleaded in paragraph 138 and it was within their power or control to communicate some or all of those matters to White Oak.

216. Further and alternatively, at all material times, White Oak was reliant upon BCC, TMMA, TMNF and/or the Insurer by virtue of the control each of them had over the loss or damage pleaded in paragraph 210~~215~~.

217. In the premises, by reason of all or some of the facts and circumstances pleaded in paragraphs 209 to 216, BCC, TMMA, TMNF and the Insurer owed a duty of care to White Oak.

218. At all material times, the scope of the duty of care owed by BCC, TMMA, TMNF and/or the Insurer to White Oak included to:

a. take reasonable care to avoid the loss and damage to White Oak of the kind pleaded in paragraph 210.b;

b. disclose to White Oak matters material to the validity or enforceability of the Policy and the endorsements thereunder; and

c. have in place adequate supervision and monitoring systems to ensure the relevant officers and staff understood and complied with the relevant authority limits and guidelines.

Breach of duty

219. At all material times, there was a risk that White Oak would suffer loss or damage if White Oak acquired the Payment Obligations where there was reason to think there was a question or controversy as to the authority of Brereton or BCC to enter into and the endorsements thereto, including loss or damage in the form of:

a. non-payment of insurance proceeds under the Policy; and/or

b. delayed payment of insurance proceeds under the Policy,

(the **Risk of Harm**).

220. At all material times, the Risk of Harm was:

a. foreseeable to BCC, TMMA, TMNF and/or the Insurer, within the meaning of s 5B(1)(a) of the *Civil Liability Act 2002* (NSW) (**CLA**); and

b. not insignificant, within the meaning of s 5B(1)(b) of the CLA.

221. In the premises, a reasonably prudent person in the position of BCC would have taken the precaution against the Risk of Harm for the purposes of s 5B(1)(c) of the CLA of notifying White Oak that if it made or continued to make payments to GCUK to acquire account receivables then it might not be able to rely on the Policy and any endorsements thereto, or the manner and capacity in which BCC and Brereton had executed or purported to execute those documents.

222. In the premises, a reasonably prudent person in the position of TMMA would have taken the following precautions against the Risk of Harm for the purposes of s 5B(1)(c) of the CLA:

a. identified White Oak as a Loss Payee (if it did not know White Oak's identity, which is denied); and

b. notified White Oak that if it made or continued to make payments to GCUK to acquire account receivables then it might not be able to rely on the Policy and any endorsements thereto, or the manner and capacity in which BCC and Brereton had executed or purported to execute those documents.

223. In the premises, a reasonably prudent insurer in the position of TMNF would have taken the following precautions against the Risk of Harm for the purposes of s 5B(1)(c) of the CLA:

a. identified White Oak as a Loss Payee (if it did not know White Oak's identity, which is denied); and

b. notified White Oak that if it made or continued to make payments to GCUK to acquire account receivables then it might not be able to rely on the Policy and any endorsements thereto, or the manner and capacity in which BCC and Brereton had executed or purported to execute those documents; or

c. caused TMMA as its managing agent or BCC as its authorised representative to notify White Oak that if it made or continued to make payments to GCUK to acquire account receivables then it might not be able to rely on the Policy and any endorsements thereto, or the manner and capacity in which BCC and Brereton had executed or purported to execute those documents.

224. In the premises, a reasonably prudent insurer in the position of the Insurer would have taken the following precautions against the Risk of Harm for the purposes of s 5B(1)(c) of the CLA:

a. identified White Oak as a Loss Payee, if it did not know White Oak's identity (which is denied);

b. notified White Oak that if it made or continued to make payments to GCUK to acquire account receivables then it might not be able to rely on the Policy and any endorsements thereto, or the manner and capacity in which BCC and Brereton had executed or purported to execute those documents; or

c. caused BCC, as its agent and/or representative, to notify White Oak that they might not be able to rely on the Policy and any endorsements thereto, or the manner and capacity in which BCC and Brereton had executed or purported to execute those documents.

224A. In the premises, a reasonably prudent person in the position of BCC and TMMA would have:

a. supervised and monitored compliance with the relevant authority limits or guidelines by its officers and staff; and

b. ensured that its officers and staff were aware of and understood its authority limits or guidelines.

224B. In the premises, a reasonably prudent insurer in the position of TMNF and the Insurer would have:

a. supervised and monitored compliance with the relevant authority limits or guidelines by its agents and/or authorised representatives; and

b. ensured that its agents and/or authorised representatives were aware of and understood its authority limits or guidelines.

225. In failing to take the precautions pleaded at paragraphs 221 and 224A above, BCC breached the duty of care it owed to White Oak.

226. In failing to take the precautions pleaded at paragraphs 222 and 224A above, TMMA breached the duty of care it owed to White Oak.

227. In failing to take some or all of the precautions pleaded at paragraphs 223 and 224B above, TMNF breached the duty of care it owed to White Oak.

228. In failing to take some or all of the precautions pleaded at paragraphs 224 and 224B above, the Insurer breached the duty of care it owed to White Oak.

Causation

229. If the Insurer, TMMA, TMNF and/or BCC had notified White Oak that if it made or continued to make payments to GCUK to acquire account receivables then it might not be able to rely on the Policy and any endorsements thereto, or the manner and capacity in which BCC and Brereton had executed or purported to execute those documents, then White Oak would not have purchased, or would immediately ceased to make any further purchases of, the Payment Obligations pleaded at paragraph 61 above.

Damage

230. As a result of the breach of duty of care by BCC, TMMA, TMNF or the Insurer, White Oak suffered loss or damage.

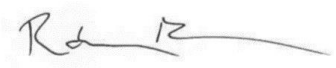
Particulars

1. *White Oak's loss is the amount of USD142,707,342.25, which is the total amount paid by White Oak to acquire the Payment Obligations referred to in paragraph 61 above, <u>less any Recoveries,</u> plus interest ~~and Recovery Costs, less any amount received by White Oak in respect of the Payment Obligations~~.*
2. *Alternatively, White Oak's loss is the total amount paid by White Oak to acquire the Payment Obligations referred to in paragraph 61 above, <u>less any Recoveries</u>, plus interest ~~and Recovery Costs, less any amount received by White Oak in respect of the Payment Obligations~~, that were acquired after the date on which the Insurer, TMNF or BCC first failed to notify White Oak in accordance with their duty of care.*

O. The Relief Sought

231. White Oak seeks the relief outlined in the Sixth ~~Fifth~~ Amended Originating Process.

Date: 9 July 2026 ~~5 December 2025~~



Signed by Rehana Box

Lawyer for the Applicant

This amended pleading was prepared by Rehana Box and Rani John, lawyers, and by Julian Sexton, Tom O'Brien, Jocelyn Jaffray, ~~and~~ Harry Rogers and Katrina Woodforde of counsel.

Certificate of lawyer

I, Rehana Box, certify to the Court that, in relation to the Sixth ~~Fifth~~ Amended Statement of Claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 9 July 2026 ~~5 December 2025~~



Signed by Rehana Box

Lawyer for the Applicant

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