NOTICE OF FILING

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Registrar

Important Information

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

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Form 34
Rule 16.33

Reply

No. NSD 174 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Greensill Bank AG

First Applicant

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

Second Applicant

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

First Respondent

The applicants make the following reply to the amended defence of the first respondent (**IAL**) filed 1 September 2025 ~~1 August 2023~~ (the **IAL Defence**), the defence of the second respondent (**BCC**) filed 16 May 2025 ~~31 July 2023~~ (the **BCC Defence**) ~~and~~ the defence of the third respondent (**Brereton**) filed 23 June 2025 ~~31 July 2023~~ (the **Brereton Defence**), the defence of the fourth respondent (**TMNF**) filed 16 May 2025 (the **TMNF Defence**) and the defence of the fifth (**Marsh Pty Ltd**) and sixth respondents (**Marsh**) filed 20 June 2025 (the **Marsh Defence**), adopting the defined terms in the Sixth Statement of Claim (**6ASOC**) unless otherwise indicated:

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

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

Particulars

Filed on behalf of (name & role of party)	Greensill Bank AG and Michael C. Frege in his capacity as Insolvency Administrator for Greensill Bank AG, applicants
Prepared by (name of person/lawyer)	Michelle Fox
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Clause 17.1 of the CGU AAR Agreement.

b. otherwise deny the paragraph.

2. In reply to paragraphs A5(d), A6, 43, ~~65(d)(ii)(B), 65(e)(iii)(B), 65(k),~~ 66A(d)(ii)(B), 66A(e)(iii)(B), 66A(k), 86(i)(v)-(vi), 90(g)(ii)-(iii), 94(g)(v)-(vi),102(j)(i)-(ii), 143(d) (as regards the application of 146(h)(iv)-(v) and 146(h)(viii)-(ix) mutatis mutandis to Customer Endorsement 7, Customer Endorsement 8, Customer Endorsement 9 and Customer Endorsement 10), 143(e)(i) (as regards the application of 146(h)(iv)-(v) and 146(h)(viii)-(ix) mutatis mutandis to Customer Endorsement 26(i), Customer Endorsement 77, Customer Endorsement 78 and Customer Endorsement 80), 143(f)(viii)(D)-(E), 143(f)(viii)(H)-(I), ~~and~~ 146(h)(iv)-(v), 146(h)(viii)-(ix), and 149(e)(iv)-(v) of the IAL Defence, the applicants:

a. say that Schedule 5 of Policy 3691 provided for the calculation of premium in respect of Assets owned by Greensill Bank (as an Insured Participant) that derived from Debts owed by a Customer that Greensill Bank wished to be insured under a Parallel Policy, such as Policy 3690;

b. say that for each relevant Endorsement issued under Policy 3690, a companion Endorsement was issued under Policy 3691;

c. say that premiums were paid to IAL in respect of Policy 3691 and each Endorsement to Policy 3691;

d. say that premiums are recorded as having been paid to IAL in respect of Policy 3691 and each Endorsement to Policy 3691 in the Bordereaux in respect of the Endorsements to Policy 3691, which Endorsements mirrored the Endorsements issued in respect of the Parallel Policy, Policy 3690;

e. say that the premiums paid to IAL in respect of Policy 3~~9~~691 were paid on the mutual assumption that those premiums formed part of the consideration for IAL's entry into Policy 3~~9~~690 in reliance on which understanding Greensill Bank proceeded to expose itself to the risk of losses covered by Policy 3~~9~~690; and

f. in the premises, say that:

i. the premiums collected by BCC and remitted to IAL in relation to Policy 3~~9~~691 formed part of the consideration and premium for IAL's entry into Policy 3~~9~~690 (including for the purposes of BCC's authority to enter into Policy 3~~9~~690); and/or

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

g. otherwise deny the paragraphs.

3. In reply to paragraph 200(c)(ii) in each of the BCC Defence and TMNF Defence, the applicants:

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

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

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

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

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

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

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

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

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

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

b. otherwise deny the paragraph.

4. In reply to paragraph 202 in each of the BCC Defence and TMNF Defence, the applicants:

a. refer to and repeat paragraph 3 above;

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

c. otherwise deny the paragraph.

5. In reply to paragraphs 219 and 221 of the Brereton Defence, the applicants:

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

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

   c. otherwise deny the paragraphs.

6. In reply to paragraphs A4, A7A, A24, A26, 66A(f), 66A(g)(i), 66A(h), 66A(i), 66A(j), 80G(o), 80G(q)-(r), 80P(i), 80Y(i), 80AH(i), 80AQ(i), 80AZ(i), 80BI(i), 86(m), 90(k), 94(k), 102(e), 102(n), 143(d) (as regards the application of 146(l) mutatis mutandis to Customer Endorsement 7, Customer Endorsement 8, Customer Endorsement 9 and Customer Endorsement 10), 143(e)(i) (as regards the application of 146(l) mutatis mutandis to Customer Endorsement 26(i), Customer Endorsement 77, Customer Endorsement 78 and Customer Endorsement 80),143(f)(xii), 146(l), 189(e)(i), ~~and~~ 295(n)(i)(A), 295(n)(i)(C)-(E), ~~231~~ 296 and Annexure A of the IAL Defence, paragraphs A, 68(c), 82(d), 108A(c), 143(f)-(g~~h~~), 146(e), 149(d), 189(f)(ii), 193(c), 198(a), 205(b), 211A(a), 211A(b), and 212 to 230, 231 and Annexure A of each of the BCC Defence and TMNF Defence, ~~and~~ paragraphs 190, 212, 291(a), 292(c), and 293 ~~231, 232(c) and 233~~ of the Brereton Defence, and paragraphs 80E(a), 80E(d), 230C(f), 270(c), 299(d) and 309(d) of the Marsh Defence (and the remainder of those Defences to the extent that they rely on Annexures A to the BCC Defence and the TMNF Defence, or Annexure A of the IAL Defence), the applicants:

   a. say that in respect of the placement of insurance (including Policy 3690 and its endorsements), none of GCUK, Greensill Capital Pty Limited (**GCPL**), Lex Greensill, ~~nor~~ John Whelan, Craig Pinnington nor Brett Downes was the agent of Greensill Bank;

a1. say that the communications referred to in paragraphs 66A(h), 80G(o) and 80G(r) of the IAL Defence were not sent by or on behalf of Greensill Bank;

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

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

   ii. IAL is not entitled (or would not have been entitled) to rely upon contractual remedies purportedly conferred by Policy 3690 (including in clauses 7.5(b), 9.7 and 15.4) in respect of the ~~Prior~~ Alleged Misrepresentations and Non-Disclosures;

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

ca. say that if, which is denied, IAL is entitled (or would have been entitled) to avoid Policy 3690 for fraudulent failure to comply with the duty of disclosure or fraudulent misrepresentation, then by virtue of s 31 of the Insurance Contracts Act, the Court should disregard the avoidance and allow the Applicants to recover the whole or such part of the loss in this proceeding as the court thinks just and equitable in the circumstances, on the basis and to the extent that:

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

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

d. say that IAL agreed with each Insured that the Servicer, GCUK, would not be treated as the agent of the Insured in respect of Policy 3690;

Particulars

The agreement is recorded in clause 7.5(a) of the Wording and Clauses document for Policy 3690.

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

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

g. otherwise deny the paragraphs.

7. In further reply to paragraphs A24, 189(e)(i), ~~and~~ 295(n)(i)(C), 296 and Annexure A ~~231~~ of the IAL Defence, paragraphs A, 68(c), 82(d), 108A(c), 143(f)-(g), 146(e), 149(d), 189(f)(ii), 193(c), 205(b), 211A(a), 211A(b), and 212 to 230, 231 and Annexure A of each of the BCC Defence and TMNF Defence, and paragraphs 190, 212, 291(a), 292(c), and 293 ~~231, 232(c) and 233~~ of the Brereton Defence (and the remainder of those Defences to the extent that they rely on Annexures A to the BCC Defence, TMNF Defence, and IAL Defence), the applicants:

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

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

1. BCC and IAL waived any duty of disclosure that Greensill Bank had in respect of Policy 3690, whether under the terms of Policy 3690 or under the Insurance Contracts Act;

2. Greensill Bank generally did not have knowledge of information provided by GCUK to BCC and IAL, including in GCUK's capacity as "Servicer" under Policy 3690;

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

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

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

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

iv. in the premises, IAL, ~~and~~ BCC and TMNF (insofar as it is responsible for the conduct of BCC and Greg Brereton pursuant to s 917B, or alternatively s 917C, of the Corporations Act) are estopped from now departing from the assumption pleaded at sub-paragraph (i) above, including by making the allegations referred to in paragraphs A24,189(e)(i), 295(n)(i)(C), 296, and Annexure A ~~231~~ of the IAL Defence (insofar as the allegations of fact in that Annexure are relevant to this proceeding and do not allege fraud by Greensill Bank), paragraphs A, 68(c), 82(d), 108A(c), 143(f)-(g), 146(e), 149(d), 189(f)(ii), 193(c), 205(b), 211A(a), 211A(b), and 212 to 230, 231 and Annexure A of each of the BCC Defence and the TMNF Defence (insofar as the allegations of fact in those Annexures are relevant to this proceeding and do not allege fraud by Greensill Bank), and paragraphs 190, 212, 291(a), 292(c), and 293 ~~231, 232(c) and 233~~ of the Brereton Defence (and the remainder of those Defences to the extent that they rely on Annexures A to the BCC Defence, TMNF Defence and IAL Defence, insofar as the allegations of fact in that Annexure are relevant to this proceeding and do not allege fraud by Greensill Bank);

b. otherwise deny the paragraphs.

7A. In further reply to paragraphs 230B(g)-(h), 230B(o)-(p), 230B(w)-(x), 230B(ee)-(ff), 230B(ll)-(mm), 230B(rr)-(ss), 230B(xx)-(yy) and 230B(eee)-(fff) of the Marsh Defence, the applicants:

a. deny that:

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

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

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

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

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

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

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

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

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

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

d. further or alternatively, say that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. otherwise deny the paragraphs.

7B. In further reply to paragraph 230C(f) of the Marsh Defence, the applicants:

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

b. otherwise deny the paragraphs.

7C. In reply to paragraph 254(d) of the Marsh Defence, the applicants:

a. say that, after 4 August 2020, Marsh continued to represent to Greensill Bank that BCC had authority to execute Policy 3690; and

Particulars

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

2. Greensill Bank further relies on the Trackers sent by Marsh to Greensill Bank after this date, including those pleaded in [262C]-[262N] of the 6ASOC.

3. Further particulars may be provided prior to trial.

b. otherwise deny the paragraph.

7D. In answer to paragraphs 262B(b), 262O(b) and 262Q(b) of the Marsh Defence, the applicants:

a. do not know and cannot admit whether:

i. the content of the Trackers was provided to Marsh by GCUK;

ii. each Tracker was sent to Greensill Bank as and when Marsh was instructed or authorised to do so by GCUK;

b. deny that Marsh's role in sending the Trackers to Greensill Bank was limited to informing Greensill Bank whether, on the basis of information provided to Marsh by GCUK, the financial amount of the proposed transaction fell within the customer limits stipulated under the terms of the relevant policy of insurance and any corresponding endorsements;

c. say that Marsh's role in sending the Trackers was to:

i. confirm to Greensill Bank that Marsh had applied its own independent judgment and satisfied itself that the cover set out in the Trackers was correct; and

ii. provide Greensill Bank with independent confirmation of cover, separate from GCUK;

d. say that Marsh represented to Greensill Bank that:

i. each Tracker was binding and effective regarding the allocation of limits from the date it was sent by Marsh to Greensill Bank;

ii. the limits communicated by Marsh to Greensill Bank were valid from the date they were communicated; and

e. otherwise deny the paragraphs.

7E. In answer to paragraphs 262Q(c) to 262Q(e) of the Marsh Defence, the applicants:

a. as to sub-paragraph 262Q(c), say that:

i. the document particularised at paragraph 262Q(c) of the Marsh Defence was a draft that was never published within Greensill Bank in this form;

ii. otherwise deny the sub-paragraph;

b. as to sub-paragraph 262Q(d), say that:

i. Greensill Bank only had access to BCC's electronic insurance portal in relation to the Liberty OneSteel Policy, not any other policy; and

ii. otherwise deny the sub-paragraph;

c. say that Greensill Bank relied on the Trackers in the circumstances identified at sub-paragraphs 7D.c and 7D.d above; and

d. otherwise deny the paragraphs.

7F. In answer to paragraph 309(c) of the Marsh Defence, the applicants:

a. deny that a reasonable person in the position of Greensill Bank would have taken the steps pleaded at paragraph 309(c)(ii) of the Marsh Defence;

b. say the purpose of the Trackers was for Marsh to provide independent confirmation to Greensill Bank of the matters pleaded at paragraph 309(c)(ii) of the Marsh Defence; and

c. otherwise deny the paragraph.

8. In answer to paragraphs 86(g), 86(i), 90(e), 94(e), 94(g), 102(h)(vi), 143(d) (as regards the application of 146(h) mutatis mutandis to Customer Endorsement 7, Customer Endorsement 8, Customer Endorsement 9 and Customer Endorsement 10), 143(e)(i) (as regards the application of 146(h) mutatis mutandis to Customer Endorsement 26(i), Customer Endorsement 77, Customer Endorsement 78 and Customer Endorsement 80), 143(f)(viii), ~~and~~ 146(h) and 149(d) (as regards the application of 102(h)(vi) mutatis

mutandis to Debt Endorsement 2(iv)) of the IAL Defence and paragraphs 86(d)(ii), 90(c), 94(d) and 102(d) of the BCC Defence and TMNF Defence, the applicants:

a. say that clause 15.3(a) of Policy 3690 said that a variation to Policy 3690 by way of Endorsement was not required to be in writing signed by or on behalf of each party in order to comprise a valid variation of Policy 3690;

b. say that each of Endorsement 9, Endorsement 17, Endorsement 18, Endorsement 23, and each of the Post 1 July 2019 Supplier Customer Endorsements were variations to Policy 3690 by way of Endorsement, and each of them were signed on behalf of BCC and IAL;

c. say further that, to the extent that clause 15.3(a) of Policy 3690 purported to require a variation of Policy 3690 to be in writing signed by or on behalf of each party, it was ineffective; and

d. otherwise deny the paragraphs.

9. In reply to paragraphs A21(c), 110D(o), 110G(d)(vi), 114C(d)(i), and 114D(c) ~~and 159(d)(ii)~~ of the IAL Defence, the applicants say:

a. on or around 13 October 2017, Hoffman and Citibank NA, London Branch, entered into a deed titled "Lagoon Farm: Master Trust Deed" (**13 October 2017 MTD**);

b. on or around 13 December 2017, John Whelan on behalf of GCUK sent an email to Greg Brereton of BCC, copied to (amongst others) Scott Newland of BCC and Ewan Berkemeier, Julian Macey-Dare and Edward Smith of Marsh, which:

i. attached a copy of the 13 October 2017 MTD; and

ii. said that the 13 October 2017 MTD was the document under which notes forming part of the Lagoon Farm global note programme would be issued;

c. on or around 13 December 2017, Markus Alder of Greensill Bank:

i. downloaded and saved onto Greensill Bank's computer system documents relating to the proposed issue of Notes by Hoffman, including the 13 October 2017 MTD;

ii. sent an email to Greensill Bank's supply chain finance team with the subject heading (in German) "Documents Intranet Links for Hoffman SPV", saying that he had downloaded documents and providing links to folders on Greensill Bank's computer system containing those documents, which documents included the 13 October 2017 MTD;

d. on or around 18 May 2018, Ewan Berkemeier of Marsh sent (on behalf of GCUK) an email to Greg Brereton of BCC, copied to Julian Macey-Dare and Edward Smith of Marsh, which:

   i. attached a memorandum on the Lagoon Farm note programme dated 9 January 2018;

   ii. attached an Insurance Information Pack dated 27 February 2018;

   iii. attached a copy of the 13 October 2017 MTD;

e. the Insurance Information Pack and memorandum attached to Mr Berkemeier's email of 18 May 2018 said that Hoffman would be an issuer of notes under the Lagoon Farm note programme;

f. the Insurance Information Pack attached to Mr Berkemeier's email of 18 May 2018 said that the 13 October 2017 MTD, also attached to the email, was the Master Trust Deed under which notes forming part of the Lagoon Farm global note programme would be issued;

g. the intention of the parties, objectively ascertained, at the time of entry into Policy 3690 was that, for the purpose of Policy 3690, the "Master Trust Deed" applicable to Hoffman was the master trust deed to which Hoffman was a party that had been provided to BCC, which was the 13 October 2017 MTD;

h. to the extent that the definition of "Master Trust Deed" in Policy 3690 suggests that TMF Luxembourg SA was a party to the Master Trust Deed applicable to Hoffman, that is an obvious mistake that may be corrected as a matter of construction;

i. further, from the time of entry into Policy 3690, Greensill Bank adopted the assumption that, for the purpose of Policy 3690, the "Master Trust Deed" applicable to Hoffman was the 13 October 2017 MTD;

Particulars

The best particulars the applicants can currently provide are that the adoption of that assumption is to be inferred from the facts pleaded at sub-paragraph (c) above. Further particulars may be provided following discovery, subpoenas and evidence.

j. from the time of entry into Policy 3690, IAL adopted the assumption that, for the purpose of Policy 3690, the "Master Trust Deed" applicable to Hoffman was the 13 October 2017 MTD;

Particulars

The best particulars the applicants can currently provide are that it may be inferred from the email sent to BCC by Mr Whelan on 13 December 2017 (pleaded above), the email sent to BCC by Mr Berkemeier on 18 May 2018 (pleaded above) and a further email sent by Mr Berkemeier on 19 November 2020 to Oenone Ritman of CGU, copied to Chris Blake of BCC, and from the absence of any relevant response by BCC to those emails, that IAL's agent, BCC, adopted the assumption. Further particulars may be provided following discovery, subpoenas and evidence.

k. from the time of entry into Policy 3690, both Greensill Bank and IAL conducted their relationship on the basis of the mutual assumption that, for the purpose of Policy 3690, the "Master Trust Deed" applicable to Hoffman was the 13 October 2017 MTD;

Particulars

The best particulars the applicants can currently provide are the particulars to sub-paragraphs (i) and (j) above. Further particulars may be provided following discovery, subpoenas and evidence.

l. from the time of entry into Policy 3690, each of Greensill Bank and IAL knew or intended that the other would act on the assumption that, for the purpose of Policy 3690, the "Master Trust Deed" applicable to Hoffman was the 13 October 2017 MTD;

Particulars

The best particulars the applicants can currently provide are the particulars to sub-paragraphs (i) and (j) above. Further particulars may be provided following discovery, subpoenas and evidence.

m. if IAL were permitted now to depart from the assumption that, for the purpose of Policy 3690, the "Master Trust Deed" applicable to Hoffman was the 13 October 2017 MTD, then Greensill Bank would suffer detriment;

Particulars

If (which is denied) it is a term of Policy 3690 that a note issued by Hoffman cannot be a "Note" for the purpose of Policy 3690 unless issued pursuant to a master trust deed to which TMF Luxembourg SA is also a

party, then Greensill Bank would suffer detriment because the Bluestone ~~Atlantic 57~~ Notes would not be Assets insured under Policy 3690.

n. in the premises, IAL is estopped from denying that, for the purpose of Policy 3690, the "Master Trust Deed" applicable to Hoffman was the 13 October 2017 MTD;

o. further, it is a term of Policy 3690, implied by s. 13 of the Insurance Contracts Act, that each of IAL and Greensill Bank is required to act towards the other, in respect of any matter arising under or in relation to Policy 3690, with the utmost good faith; and

p. in the premises, IAL's denial that the 13 October 2017 MTD is the "Master Trust Deed" applicable to Hoffman for the purpose of Policy 3690 is a breach by IAL of its obligation of utmost good faith and IAL may not rely on its own breach of contract in order to defend Greensill Bank's claim under Policy 3690.

10. In reply to paragraph 145(b) of the BCC Defence and TMNF Defence, the applicants say that the Suppliers referred to were Account Debtors within the meaning of the RPA.

11. In reply to paragraphs ~~192B(f) and (g)~~ 292(d), (h) and (i) of the IAL Defence, the applicants say that:

a. the matters alleged at paragraph 292(e), (f) and (g) ~~192B(e)(i)-(v)~~ would not, if established, give rise to any failure to pay a Debt on the relevant Due Date as alleged in those sub-paragraphs ~~paragraph 192B(e)~~;

b. the matter alleged at paragraph ~~192B(e)~~ 292(g)(vi) is pleaded with insufficient particularity for the applicants to reply to it save to say that, if established, its effect on the Debts referred to in paragraph ~~192B(e)~~ 292(g) would depend on the terms and basis upon which the Bluestone Guarantor Obligations were funded by GCUK; and

c. otherwise denies the subparagraphs.

12. In reply to paragraph 292 of the IAL Defence and paragraphs 189(e)(iii) of the BCC Defence and TMNF Defence, the applicants say that, if the matters alleged by IAL in paragraph 292 of the IAL Defence and BCC and TMNF in paragraph 189(e)(ii) are established:

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

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

13. In relation to the whole of Annexure A to each of the IAL Defence, BCC Defence and TMNF Defence:

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

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

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

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

Date: 7 October 2025



Signed by Michelle Fox
Lawyer for the Applicants

This amended pleading was prepared by Quinn Emanuel Urquhart & Sullivan and settled by Nicholas Bender, Christopher Mitchell, Nicholas Lennings and Ghassan Kassisieh of counsel.

Certificate of lawyer

I, Michelle Fox, certify to the Court that, in relation to the reply filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 7 October 2025



Signed by Michelle Fox
Lawyer for the Applicants

Schedule

No. NSD 174 of 2023

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

Respondents

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