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Registrar

Important Information

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Form 33
Rule 16.32

Filed pursuant to Order of Thawley J dated 24 April 2026

Defence to ~~Fourth~~ Fifth Amended Statement of Claim

No. NSD 175 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Greensill Bank AG and another named in the Schedule

First Applicant

Insurance Australia Limited and others named in the ~~Sc~~hedule

First Respondent

To the Applicants' (Greensill Bank AG (**Greensill Bank**) and Dr Michael Frege in his capacity as insolvency administrator for Greensill Bank) Fourth Amended Statement of Claim (**ASOC**) filed 14 April 2025, the Fourth Respondent, Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291) (**TMNF**), says as follows.

Preliminary matters

A. As pleaded further in **Annexure A** to this Defence, the Second Respondent, BCC Trade Credit Pty Ltd (**BCC**), alleges that it was induced to enter into the relevant insurance instruments by reason of non-disclosures and misrepresentations by or on behalf of Greensill Bank, Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Ltd (**GCUK**) (together, the **Greensill Group**) as to the underlying risks being presented to it for trade credit insurance throughout the relevant period. Given the nature of the matters in issue, discovery and compulsory disclosure will be sought by TMNF. In addition, TMNF continues to investigate the circumstances in which the Policy (as that term is defined in paragraph 65(a) of this Defence) and its purported endorsements came to be issued, including but not limited to the conduct of the Greensill Group, and their agents, in procuring the same. Additional facts may come to light as a result of discovery, disclosure

Filed on behalf of (name & role of party) Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), Fourth Respondent

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and further investigation, in which case an amended Defence will be filed at an appropriate future time.

B. Nothing in this pleading should be understood as an affirmation of any of the documents referred to herein, or as a waiver of any rights to argue that those documents are void or voidable. In particular, and without limiting the generality of the foregoing, all references in this pleading to the Policy and to any purported endorsement thereto should be read, where applicable, as though it was followed by the words 'if valid' in parentheses. TMNF does not admit that the Policy and its endorsements are valid, and to the extent that the pleading sets out coverage defences that are based on the wording of the Policy and its endorsements, it should be understood that those defences arise only in the alternative to TMNF's primary position that the Policy and its endorsements are invalid.

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

A. PARTIES

1. TMNF admits paragraph 1 of the ASOC.

2. TMNF admits paragraph 2 of the ASOC.

3. TMNF admits paragraph 3 of the ASOC.

4. TMNF admits paragraph 4 of the ASOC.

5. In response to paragraph 5 of the ASOC, TMNF:

    a. admits subparagraph (a) of the ASOC;

    b. admits subparagraph (b) of the ASOC;

    c. admits subparagraph (c) of the ASOC;

    d. admits subparagraph (d) insofar as it relates to IAL; and

    e. says, in response to subparagraph (d) insofar as it relates to IAGA, that:

        i. on 28 July 2017, Mr Brereton signed a document styled "Individual Authorisation Agreement" (**the IAGA Individual Authorisation Notice**);

        ii. the IAGA Individual Authorisation Notice referred to "BCC Trade Credit Pty Ltd [having] entered into an Authorised Representative Agreement with IAGA" (**the IAGA AAR Agreement**);

iii. it is not aware of the existence of an executed version of the IAGA AAR Agreement;

iv. in the premises, does not know and cannot admit the paragraph insofar as it relates to IAGA;

f. as to subparagraph (e):

i. admits the paragraph insofar as it relates to IAL; and

ii. says, insofar as the paragraph relates to IAGA, that it does not know and therefore cannot admit the paragraph; and

g. admits subparagraph (f) of the ASOC.

6. In response to paragraph 6 of the ASOC, TMNF:

a. says that on 11 March 2016, Mr Brereton entered into a contract of employment with Bond and Credit Company Pty Ltd (**Bond**) (**the Contract of Employment**) and was employed by Bond until 8 July 2020;

b. says that Mr Brereton's role was "Head of Trade Credit", but says that TMNF was not a party to the Contract of Employment, and that Mr Brereton was never an employee of BCC;

c. admits subparagraph (c) of the ASOC;

d. as to subparagraph (d), admits that Mr Brereton had the authority that was conferred on him by the Brereton-CGU Authorisation Agreement;

e. as to subparagraph (e), admits that from 1 August 2017 to 30 June 2019 Mr Brereton was the responsible underwriting officer designated by IAL and an Authorised Representative appointed by CGU under the Brereton-CGU Authorisation Agreement, which was statutorily novated to IAL by virtue of the orders made by this Court on 20 July 2017 under s 17F(1) of the *Insurance Act 1973* (Cth); and

f. as to subparagraph (f), admits that Mr Brereton had the authority that was conferred on him by the Brereton-CGU Authorisation Agreement as statutorily novated to IAL; and

g. otherwise denies the paragraph.

6A. In response to paragraph 6A of the ASOC, TMNF:

a. says that from 11 March 2004, it has held Australian Financial Services Licence (**AFSL**) number 246548;

b. says that from 20 October 2004, it has been registered in Australia as a foreign company (overseas);

c. says that it is in the business of providing non-life insurance; and

d. otherwise admits the paragraph.

6B–6C. TMNF does not plead to paragraphs 6B to 6C of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

B. AGENCY AGREEMENTS BETWEEN BCC AND IAL

B1. Agency arrangements between CGU and BCC

7. TMNF admits paragraph 7 of the ASOC.

8. TMNF admits paragraph 8 of the ASOC.

9. TMNF admits paragraph 9 of the ASOC.

10. In response to paragraph 10 of the ASOC, TMNF:

a. admits subparagraph (a) of the ASOC;

b. admits subparagraph (b) of the ASOC;

c. relies on the terms of the CGU AAR Agreement and the Authorisation Notice for their full terms and effect; and

d. otherwise admits the paragraph.

11. TMNF admits paragraph 11 of the ASOC.

12. TMNF admits paragraph 12 of the ASOC.

13. TMNF admits paragraph 13 of the ASOC.

14. TMNF admits paragraph 14 of the ASOC.

15. In response to paragraph 15 of the ASOC, TMNF:

a. says that BCC's authority to enter into trade credit insurance as CGU's agent was subject to the limitations on that authority contained in the CGU AAR Agreement, including the requirement in clause 2.1(c) that entry into any trade credit insurance be in accordance with the Underwriting Manual; and

b. otherwise admits the paragraph.

16. In response to paragraph 16 of the ASOC, TMNF:

a. says that paragraph 16 is a paraphrase of clause 3.1(a) of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

17. In response to paragraph 17 of the ASOC, TMNF:

a. says that paragraph 17 is a paraphrase of clause 8.1 of the CGU AAR Agreement;

b. says that the amounts that it was permitted to deduct from any payment of Premiums to CGU under clause 8.1 were any amounts due to it under clause 3.1, not only commissions;

c. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

d. otherwise admits the paragraph.

18. In response to paragraph 18 of the ASOC, TMNF:

a. says that paragraph 18 is a paraphrase of clause 4.5(a) of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

19. In response to paragraph 19 of the ASOC, TMNF:

a. says that paragraph 19 is a paraphrase of clause 4.5(b) of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

20. In response to paragraph 20 of the ASOC, TMNF:

a. says that paragraph 20 is a paraphrase of clause 7 of the CGU AAR Agreement;

b. refers to the relevant terms of the CGU AAR Agreement for their full force and effect; and

c. otherwise admits the paragraph.

21. In response to paragraph 21 of the ASOC, TMNF:

a. says that paragraph 21 is a paraphrase of section 2, page 9 of the Underwriting Manual Version 1.0;

b. refers to the relevant terms of the Underwriting Manual Version 1.0 for their full force and effect; and

c. otherwise admits the paragraph.

B2. Transfer of CGU's business to IAL

22. In response to paragraph 22 of the ASOC, TMNF:

a. refers to the order of the Federal Court of Australia made on 20 July 2017, including Annexure A thereto, which contained the terms of the scheme for the transfer of the insurance business of CGU to IAL, for their full terms and effect; and

b. otherwise admits the paragraph.

23. In response to paragraph 23 of the ASOC, TMNF:

a. refers to and repeats paragraph 22 of this Defence;

b. otherwise admits the paragraph.

B3. Agency arrangements between BCC and IAL

24. TMNF admits paragraph 24 of the ASOC.

25. TMNF admits paragraph 25 of the ASOC.

26. In response to paragraph 26 of the ASOC, TMNF:

    a. admits that IAL permitted BCC to act on its behalf pursuant to the CGU AAR Agreement and Authorisation Notice;

    b. relies on the CGU AAR Agreement and Authorisation Notice for their full force and effect; and

    c. otherwise does not know and therefore cannot admit the paragraph.

27. TMNF does not know and therefore cannot admit paragraph 27 of the ASOC.

28. In response to paragraph 28 of the ASOC, TMNF:

    a. relies on the terms of the letter for their full force and effect; and

    b. otherwise admits the paragraph.

29. In response to paragraph 29 of the ASOC, TMNF:

    a. says that the To Whom It May Concern Letter stated that BCC was arranging insurance under an authority provided by IAL and acts as an Authorised Representative of IAGA;

    b. relies on the terms of the letter for their full force and effect; and

    c. otherwise denies the paragraph.

30. In response to paragraph 30 of the ASOC, TMNF:

    a. says that the allegation that the To Whom It May Concern Letter was a “continuing representation” for an unspecified period of time is ambiguous and embarrassing, and liable to be struck out; and

    b. under cover of that objection, denies the paragraph.

31. In response to paragraph 31 of the ASOC, TMNF:

    a. says that paragraph 31 is a paraphrase of section 2, pages 9 and 10 of the Underwriting Manual Version 2.0;

    b. refers to the relevant terms of the Underwriting Manual Version 2.0 for their full force and effect; and

    c. otherwise admits the paragraph.

32. In response to paragraph 32 of the ASOC, TMNF:

    a. says that paragraph 32 is a paraphrase of section 1, pages 8 and 9 of the Underwriting Manual Version 3.0;

    b. refers to the relevant terms of the Underwriting Manual Version 3.0 for their full force and effect; and

    c. otherwise admits the paragraph.

33. TMNF admits paragraph 33 of the ASOC.

34. In response to paragraph 34 of the ASOC, TMNF:

    a. says that paragraph 34 is a paraphrase of the clauses of the IAL AAR Agreement to which it refers;

    b. refers to the relevant terms of the IAL AAR Agreement for their full force and effect; and

    c. otherwise admits the paragraph.

35. In response to paragraph 35 of the ASOC, TMNF:

    a. admits that in the period 9 April 2019 to 30 June 2019, BCC was an authorised representative of IAL for the purposes of Chapter 7 of the Corporations Act;

    b. admits that BCC's authority so to act in that period was regulated by, and subject to the limitations contained in, the IAL AAR Agreement;

    c. denies that the CGU AAR Agreement (as transferred) continued to have effect from 9 April 2019, but says instead that the IAL AAR Agreement superseded and terminated the CGU AAR Agreement from that date onwards;

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    IAL AAR Agreement, cl 20.9(a).

    d. refers to the relevant terms of the instruments pleaded to in paragraph 35 for their full force and effect; and

    e. otherwise admits the paragraph.

36. In response to paragraph 36 of the ASOC, TMNF:

a. says that its authority to issue and vary trade credit insurance as IAL's agent was subject to the limitations on that authority contained in the CGU AAR Agreement and IAL AAR Agreement; and

b. otherwise admits the paragraph.

B4. Agency arrangements between BCC, IAL and Tokio Marine

37. TMNF admits paragraph 37 of the ASOC.

38. In response to paragraph 38 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the PACAO to which it refers;

b. refers to the relevant terms of the PACAO for their full force and effect; and

c. otherwise admits the paragraph.

39. TMNF admits paragraph 39 of the ASOC.

B5. BCC administered trade credit insurance policies as agent for IAL

40. In response to paragraph 40 of the ASOC, TMNF:

a. admits that on and from 1 August 2017, BCC periodically provided IAL with Bordereaux in the form of an Excel spreadsheet providing details of trade credit insurance policies written on behalf of IAL (the **Bordereaux**); and

b. otherwise denies the paragraph.

41. TMNF admits paragraph 41 of the ASOC.

42. TMNF admits paragraph 42 of the ASOC.

43. In response to paragraph 43 of the ASOC, TMNF:

a. says that the allegation is ambiguous and embarrassing in that it does not identify the 'trade credit insurance policies' the subject of the allegation;

b. under cover of that objection:

i. admits that it remitted premiums to IAL in respect of trade credit insurance for which IAL was the named insurer; and

ii. otherwise denies the paragraph.

44. In response to paragraph 44 of the ASOC, TMNF:

    a. says that the allegation is ambiguous and embarrassing in that it does not identify the 'trade credit insurance policies' the subject of the allegation;

    b. under cover of that objection:

        i. admits that it received commission in respect of trade credit insurance for which IAL was the named insurer; and

        ii. otherwise denies the paragraph.

45. In response to paragraph 45 of the ASOC, TMNF:

    a. admits that IAL permitted BCC to act on its behalf pursuant to the CGU AAR Agreement, Authorisation Notice and the IAL AAR Agreement;

    b. relies on the CGU AAR Agreement, Authorisation Notice and the IAL AAR Agreement for their full force and effect; and

    c. otherwise does not know and therefore cannot admit the paragraph.

C. Agency arrangements between Greg Brereton, CGU and IAL

C1. Agency arrangements between Greg Brereton and CGU

46. TMNF admits paragraph 46 of the ASOC.

47. In response to paragraph 47 of the ASOC, TMNF:

    a. says that pursuant to the Brereton CGU Authorisation, CGU authorised Mr Brereton to provide and perform the Authorised Financial Services in relation to the Approved Products on behalf of CGU and for that purpose it appointed Mr Brereton as its authorised representative for the purposes of Chapter 7 of the Corporations Act from the Effective Date (being 8 July 2016);

    b. relies on the terms of the Brereton CGU Authorisation for its full terms and effect; and

    c. otherwise admits the paragraph.

48. TMNF admits paragraph 48 of the ASOC.

49. In response to paragraph 49 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the Brereton CGU Authorisation to which it refers;

b. relies on the relevant terms of the Brereton CGU Authorisation for their full force and effect; and

c. otherwise admits the paragraph.

50. In response to paragraph 50 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the Brereton CGU Authorisation and the CGU AAR Agreement to which it refers;

b. relies on the Brereton CGU Authorisation and the CGU AAR Agreement for their full terms and effect; and

c. otherwise admits the paragraph.

51. In response to paragraph 51 of the ASOC, TMNF:

a. admits that CGU authorised Mr Brereton to act on its behalf pursuant to the CGU AAR Agreement and the Brereton CGU Authorisation in the manner authorised by those instruments;

b. relies on the CGU AAR Agreement and Authorisation Notice for their full force and effect; and

c. otherwise admits the paragraph.

52. In response to paragraph 52 of the ASOC, TMNF:

a. says that paragraph 52 is a paraphrase of section 2, page 9 of the Underwriting Manual Version 1.0;

b. refers to the relevant terms of the Underwriting Manual Version 1.0 for their full force and effect; and

c. otherwise admits the paragraph.

C2. Agency arrangements between Greg Brereton, IAL and IAGA

53. TMNF admits paragraph 53 of the ASOC.

54. In response to paragraph 54 of the ASOC, TMNF:

a. says that on 29 January 2016, IAGA (which at that time was named Allied Global Underwriting Pty Ltd) became a wholly owned subsidiary of CGU;

b. says that at all material times until its deregistration on 15 April 2019, CGU was a subsidiary of Insurance Australia Group Limited; and

c. otherwise admits the paragraph.

55. TMNF admits paragraph 55 of the ASOC.

56. TMNF admits paragraph 56 of the ASOC.

57. In response to paragraph 57 of the ASOC, TMNF:

a. says that the Brereton IAGA Authorisation applied only to 'Approved Products' as defined in the IAGA AAR Agreement;

b. refers to and repeats paragraph 5(e) of this Defence and says that it does not know if the IAGA AAR Agreement was executed;

c. will refer to the Brereton IAGA Authorisation for its full terms and effect; and

d. otherwise does not know and therefore cannot admit the paragraph.

58. TMNF does not know and therefore cannot admit paragraph 58 of the ASOC.

59. In response to paragraph 59 of the ASOC, TMNF:

a. refers to and repeats paragraph 57 of this Defence;

b. says that the paragraph is a paraphrase of the clauses of the Brereton IAGA Authorisation to which it refers;

c. relies on the Brereton IAGA Authorisation for its full terms and effect; and

d. otherwise does not know and therefore cannot admit the paragraph.

60. In response to paragraph 60 of the ASOC, TMNF:

a. refers to and repeats paragraph 57 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

61. In response to paragraph 61 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the document styled "Delegated Authority for Head of Trade Credit effective 1st July 2018" (**Delegated Authority**) to which it refers;

b. relies on the Delegated Authority for its full force and effect; and

c. otherwise admits the paragraph.

62. In response to paragraph 62 of the ASOC, TMNF:

a. says that paragraph 62 is a paraphrase of section 2, pages 9 and 10 of the Underwriting Manual Version 2.0;

b. refers to the relevant terms of the Underwriting Manual Version 2.0 for their full force and effect; and

c. otherwise admits the paragraph.

63. TMNF admits paragraph 63 of the ASOC.

64. In response to paragraph 64 of the ASOC, TMNF:

a. as to IAL:

i. admits that IAL authorised Mr Brereton to act on its behalf pursuant to the CGU AAR Agreement (as transferred to IAL) and the Brereton CGU Authorisation (as transferred to IAL) in the manner authorised by those instruments;

ii. relies on the CGU AAR Agreement and Brereton CGU Authorisation for their full terms and effect; and

iii. otherwise does not know and therefore cannot admit the paragraph;

b. as to IAGA:

i. refers to and repeats paragraphs 57 of this Defence; and

ii. otherwise does not know and therefore cannot admit the paragraph.

DA. REGULATORY REQUIREMENTS

DA1. Membership of the German Deposit Protection Fund

64A–64Q. In response to paragraphs 64A to 64Q of the ASOC, TMNF does not know and therefore cannot admit those paragraphs.

DA2. Capital Requirements Regulation (EU) No. 575/2013

64R–64Z. In response to paragraphs 64R to 64Z of the ASOC, TMNF does not know and therefore cannot admit those paragraphs.

D. The Policy

D1. Entry into the Policy

65. In response to paragraph 66 of the ASOC, TMNF:

a. admits that on or about 13 March 2019, Mr Brereton signed a document styled 'Comprehensive Trade Credit Insurance Policy TB-03690' which listed as its parties GCPL, Greensill Bank, and "BCC TRADE CREDIT PTY LTD with its registered office at Level 16, 347 Kent Street, Sydney NSW 2000, CORPORATE AUTHORISED REPRESENTATIVE OF INSURANCE AUSTRALIA LTD (ABN: 11000016722; AFSL: 238 291)" (**the Policy**);

b. says that:

i. the CGU AAR Agreement required policies written by BCC as corporate representative of IAL to be in accordance with the Underwriting Guidelines as in force from time to time;

ii. the policy wording for the Policy was not consistent with the wording specified in the then current Underwriting Guidelines;

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The relevant Underwriting Guidelines (referred to as 'Underwriting Manuals' in the CGU AAR Agreement) at the time the Policy was written was the version dated 13 July 2018 [TOK.001.00129459].

iii. TMNF does not know whether IAL otherwise approved and authorised the wording used by Mr Brereton in underwriting the Policy; and

iv. TMNF does not know whether IAL subsequently ratified and authorised Mr Brereton's actions in executing the Policy on its behalf; and

c. by reason of the matters pleaded in paragraph 65(b) of this Defence, otherwise does not know and therefore cannot admit the paragraph.

[Not used]

66A. In response to paragraph 66A of the ASOC, TMNF:

a. repeats paragraph 65 above;

b. admits that Greensill Bank's representatives signed the Policy on or about 14 March 2019; and

c. otherwise does not admit the paragraph.

66. In response to paragraph 67 of the ASOC, TMNF:

a. admits that "Insured" is defined in the Policy to mean GCPL and Greensill Bank; and

b. otherwise denies the paragraph.

67. In response to paragraph 68 of the ASOC, TMNF:

a. admits that "Insurer" was defined in the Policy to mean IAL;

b. says that by reason of the matters pleaded in paragraph 65 of this Defence, TMNF does not know and therefore cannot admit whether IAL entered into the Policy and/or its purported endorsements by it or Mr Brereton's conduct; and

c. says further that if it is found that:

i. Mr Brereton;

ii. (to the extent that Mr Brereton had authority to bind BCC) BCC; and /or

iii. (to the extent that Mr Brereton and/or BCC had authority to bind IAL) IAL;

entered into the Policy or any purported endorsement thereto (which is not admitted), and IAL or BCC thereby assumed any risk or liability under those instruments, Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into those agreements and/or assumed that risk or liability by reason of the information provided by the Greensill Group when procuring the cover (as pleaded further below) and the misrepresentations and non-disclosures by the Greensill Group pleaded in Annexure A to this Defence (the **Prior Misrepresentations and Non-Disclosures**).

68. TMNF admits paragraph 69 of the ASOC.

69. In response to paragraph 70 of the ASOC, TMNF:

    a. refers to and repeats paragraphs 65 and 68 of this Defence;

    b. says that the original Policy Period of the Policy was 22 February 2019 to 22 February 2020;

    c. relies on the terms of the Policy for their full force and effect; and

    d. otherwise denies the paragraph.

70. TMNF admits paragraph 71 of the ASOC.

71. TMNF admits paragraph 72 of the ASOC.

D2. Key terms of the Policy

72. In response to paragraph 73 of the ASOC, TMNF:

    a. admits subparagraph (a) of the ASOC;

    b. admits subparagraph (b) of the ASOC;

    c. admits subparagraph (c) of the ASOC, save that the definition of 'Claim Form' refers to a 'specimen' rather than a 'pro forma version' being included in Schedule 3;

    d. admits subparagraph (d) of the ASOC, save that the definition of 'Claim Offer Letter' refers to a 'specimen' rather than a 'pro forma version' being included in Schedule 4;

    e. admits subparagraph (e) of the ASOC;

    f. admits subparagraph (f) of the ASOC;

    g. admits subparagraph (g) of the ASOC;

    h. in relation to subparagraph (h) of the ASOC:

        i. says that 'Debt' was defined to mean, as the context requires, a debt of the type described in the relevant 'Debt Endorsement';

        ii. says that 'Debt Endorsement' was defined to mean an endorsement to the policy that describes the nature of a debt that is after the date of such endorsement able to be a 'Debt' for the purpose of the policy, and which may

contain amendments to the terms of the policy in so far as the policy relates to such 'Debts' and 'Assets' derived therefrom;

iii. says that relevant Debt Endorsement relied upon by Greensill Bank in making the claim under the Policy the subject of the proceeding is the document described as 'Debt Endorsement 2(iv)' dated 16 April 2020 (**Debt Endorsement 2(iv)**); and

iv. otherwise denies the paragraph;

i. in relation to subparagraph (i) of the ASOC;

i. refers to and repeats paragraph 73(h) of this Defence; and

ii. otherwise denies the paragraph;

j. admits paragraph 73(j) of the ASOC;

k. in relation to paragraph 73(k) of the ASOC:

i. says that Schedule 7 provided that the Debt was required to meet the following criteria at the time of the acquisition of the relevant Asset by the Insured:

A. the obligor (being the Customer) was not an Affiliate of any of the parties to the Transaction Documents (other than any Origination Documentation);

B. the obligor is not Insolvent, which term was defined to mean in respect of an entity any corporate action, legal proceedings or other procedure or step taken for its winding up, dissolution, liquidation, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, custodian, trustee or similar officer in respect of such entity or all or a substantial part of its revenues and assets (or any analogous procedure or step taken in any jurisdiction); and

C. the debt satisfied any further criteria set out in the relevant Debt Endorsement relating to the Debt;

ii. says that the form of Debt Endorsement appended to the Policy further required that the Eligible Debt arises under a Customer Agreement that is in full force and effect and to the best of the Insured's knowledge, after reasonable due diligence, constitutes the legal, valid and binding obligation

of the Customer enforceable against such Customer in accordance with its terms, subject to no offset, counterclaim, defence or other adverse claim;

iii. in relation to the effect (if any) of Endorsement 23, refers to and repeats what is pleaded in Section D8 of this Defence (below); and

iv. otherwise denies the paragraph;

l. admits subparagraph (l) of the ASOC;

m. admits subparagraph (m) of the ASOC;

n. admits subparagraph (n) of the ASOC;

o. in relation to subparagraph (o) of the ASOC;

i. says that subparagraph (o) is a paraphrase of paragraphs (I) and (III) of the definition of Loss in the Policy;

ii. relies on the definition of Loss for its full force and effect;

iii. in relation to the effect (if any) of Endorsement 23, refers to and repeats what is pleaded in Section D8 of this Defence (below); and

iv. otherwise denies the paragraph;

p. admits subparagraph (p) of the ASOC;

q. admits subparagraph (q) of the ASOC;

r. admits subparagraph (r) of the ASOC;

s. admits subparagraph (s) of the ASOC; and

t. otherwise refers to and repeats paragraph 65 of this Defence, and relies on the terms of the Policy for their full force and effect.

73. In response to paragraph 74 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68 and 73 of this Defence;

b. says that on the proper construction of the Policy, IAL agreed, subject to the terms, conditions and limitations of the policy, to indemnify the Insured for the Insured Percentage of all Losses suffered by the Insured and caused by and resulting from the occurrence of an Insured Cause;

c. says that the terms, conditions and limitations of the Policy included the following:

i. that the Insured acknowledges and agrees that it has a duty to IAL of fair presentation in respect of the policy and the risks insured thereunder (cl 7.1);

ii. that IAL was not liable to indemnify the Insured in respect of any Loss in respect of which the Insured has failed to comply with its obligations under the policy where such failure has a 'Material Policy Impact' (cl 9.7); and

iii. that if the Insured makes any statement, report or Claim, knowing it to be false or fraudulent, or the Insured knowingly conceals any material fact, the policy may be declared void by IAL and all Claims payments hereunder after such false or fraudulent statements reports or Claim shall be forfeited (cl 15.4);

d. relies on the terms of the Policy for their full force and effect; and

e. otherwise denies the paragraph.

74. In response to paragraph 75 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 73 of this Defence;

b. admits that cl 4.1 of the Policy provided that IAL's liability to indemnify the Insured for a Loss shall, subject to the terms, conditions and limitations of the policy, apply only in respect of Assets owned by the Insured (or a Loss Payee) during the Policy Period;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

75. In response to paragraph 76 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 74 of this Defence;

b. admits that cl 4.1 of the Policy contained a term to the effect pleaded in that paragraph;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

76. In response to paragraph 77 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 74 of this Defence;

b. says that cl 10 of the Policy set out the claims procedure for Claims under the policy;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

77. In response to paragraph 78 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 74 of this Defence;

b. says that cl 14 of the Policy set out the relevant addresses for notices under the policy, and nominated BCC's address (attention to Mr Brereton) as the address for service of notices on IAL, unless otherwise notified by IAL;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

78. In response to paragraph 79 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 73 and 74 of this Defence;

b. says that cl 5.5 of the Policy set out when Assets would attach to the policy;

c. relies on the terms of the Policy for their full force and effect; and

d. otherwise denies the paragraph.

D3. BCC had authority to enter into the Policy

(A) Actual authority

79. In response to paragraph 80 of the ASOC, TMNF:

a. refers to and repeats paragraph 65 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph.

(B) Ostensible authority

80A–80BS. TMNF does not plead to paragraphs 80A to 80BS of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

80. In response to paragraph 81 of the ASOC:

a. says that the existence of the alleged ostensible authority depends upon IAL having made a representation to the relevant third party; and

b. in the premises, does not know and therefore cannot admit the paragraph.

(C) Statutory responsibility

81. In response to paragraph 82 of the ASOC, BBC:

a. admits that:

i. from 1 August 2017 to 30 June 2019, BCC was an authorised representative of IAL;

ii. on and from 1 July 2019, BCC continued to administer trade credit insurance products arranged by BCC and issued by IAL pursuant to the PACAO;

b. admits that to the extent BCC was authorised to act as IAL's representative or agent in the circumstances identified in paragraph 82(a) of this Defence, it was a representative of IAL as that term is defined in s 910 of the Corporations Act; and

c. admits that the conduct alleged at paragraph 82 of the ASOC related to the provision of a financial service;

d. denies that Greensill Bank could reasonably be expected to rely on that conduct and did, in fact, rely in good faith on that conduct, by reason of the Prior Misrepresentations and Non-Disclosures; and

e. otherwise does not know and therefore cannot admit the paragraph.

D4. Greg Brereton had authority to enter into the Policy

82. In response to paragraph 83 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65 and 80 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

83. In response to paragraph 84 of the ASOC, TMNF:

    a. refers to and repeats paragraph 80 of this Defence; and

    b. otherwise does not know and therefore cannot admit the paragraph.

84. In response to paragraph 85 of the ASOC, TMNF:

    a. refers to and repeats paragraph 81 of this Defence; and

    b. otherwise does not know and therefore cannot admit the paragraph.

D5. Endorsements 9, 17 and 18 to the Policy

85. In response to paragraph 86 of the ASOC, TMNF:

    a. admits that on or about 13 March 2019, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 9 and which purported to vary the terms of the Policy;

    b. says that the document was not executed by any representative of Greensill Bank or GCPL;

    c. refers to and repeats paragraph 65 of this Defence;

    d. further and alternatively, says that the document was not an 'Endorsement' within the meaning of the Policy and did not validly vary the Policy as:

        i. the policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

        ii. further and alternatively, clause 15.3(a) of the Policy provided that any variation of the policy could only be effected in writing signed by or on behalf of each party, and the document signed on 21 June 2019 was not signed on behalf of GCPL or Greensill Bank (and for the avoidance of doubt, Greensill Bank is hereby notified by this Defence that any authority (if any) that Mr Brereton or BCC had to execute the document has been withdrawn, with the result that the document is no longer open to execution by any other party); and

    e. otherwise denies the paragraph.

86. In response to paragraph 87 of the ASOC, TMNF:

    a. refers to and repeats paragraph 86 of this Defence; and

    b. otherwise denies the paragraph.

87. In response to paragraph 88 of the ASOC, TMNF:

    a. refers to and repeats paragraph 86 of this Defence; and

    b. otherwise denies the paragraph.

88. In response to paragraph 89 of the ASOC, TMNF:

    a. refers to and repeats paragraph 86 of this Defence;

    b. says that paragraph 89 is a paraphrase of the sections of the document styled 'Endorsement 9' to which it relates;

    c. refers to the terms of the document styled 'Endorsement 9' for their full force and effect; and

    d. otherwise denies the paragraph.

89. In response to paragraph 90 of the ASOC, TMNF:

    a. admits that on or about 21 June 2019, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 17 and which purported to extend the policy period;

    b. says that the document was not executed by any representative of Greensill Bank or GCPL;

    b. refers to and repeats paragraphs 65 of this Defence;

    c. further and alternatively, repeats paragraph 86(d) of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 90 of the ASOC; and

    d. otherwise denies the paragraph.

90. In response to paragraph 91 of the ASOC, TMNF:

    a. refers to and repeats paragraph 89 of this Defence;

    b. otherwise does not know and therefore cannot admit the paragraph.

91. In response to paragraph 92 of the ASOC, TMNF:

    a. refers to and repeats paragraph 89 of this Defence; and

    b. otherwise denies the paragraph.

92. In response to paragraph 93 of the ASOC, TMNF:

    a. denies the paragraph;

    b. refers to and repeats paragraphs 89 to 92 of this Defence; and

    c. in the premises, says that if the Policy is valid, it expired on 22 February 2020.

93. In response to paragraph 94 of the ASOC, TMNF:

    a. admits that on or about 27 June 2019, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 18 and which purported to extend the policy period;

    b. says that the document was not executed by any representative of Greensill Bank or GCPL;

    c. refers to and repeats paragraph 65 of this Defence;

    d. further or alternatively, refers to and repeats sub-paragraph 86(d) of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 94 of the ASOC; and

    e. otherwise denies the paragraph.

94. In response to paragraph 95 of the ASOC, TMNF:

    a. refers to and repeats paragraph 93 of this Defence; and

    b. otherwise does not know and therefore cannot admit the paragraph.

95. In response to paragraph 96 of the ASOC, TMNF:

    a. refers to and repeats paragraph 93 of this Defence; and

    b. otherwise denies the paragraph.

96. In response to paragraph 97 of the ASOC, TMNF:

    a. denies the paragraph;

b. refers to and repeats paragraphs 93 to 96 of this Defence; and

c. in the premises, says that if the Policy is valid, it expired on 22 February 2020.

D6. BCC had authority to execute Endorsements 9, 17 and 18

97. In response to paragraph 98 of the ASOC, TMNF:

a. refers to and repeats paragraphs 31 to 36, 65 and 80 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph.

98. In response to paragraph 99 of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 99 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

D7. Greg Brereton had authority to execute Endorsements 9, 17 and 18

99. In response to paragraph 100 of the ASOC, TMNF:

a. refers to and repeats paragraphs 31 to 36, 65 and 83 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph

100. In response to paragraph 101 of the ASOC, TMNF:

a. refers to and repeats paragraph 85 of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 101 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

D8. Endorsement 23 to the Policy

101. In response to paragraph 102 of the ASOC, TMNF:

a. admits that on or about 5 February 2020, Mr Brereton signed a document on behalf of BCC as authorised representative of IAL which was styled as an 'Endorsement' bearing the number 23 and which purported to vary the terms of the Policy;

b. says that the document was not executed by any representative of Greensill Bank or GCPL;

c. refers to and repeats paragraph 65 of this Defence;

d. further or alternatively, refers to and repeats sub-paragraph 86(d) of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 102 of the ASOC; and

e. otherwise denies the paragraph.

102. In response to paragraph 103 of the ASOC, TMNF:

a. refers to and repeats paragraph 102 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

103. In response to paragraph 104 of the ASOC, TMNF:

a. refers to and repeats paragraph 102 of this Defence; and

b. otherwise denies the paragraph.

104. In response to paragraph 105 of the ASOC, TMNF:

a. refers to and repeats paragraph 65 and 102 of this Defence;

b. says that paragraph 105 is a paraphrase of the sections of the document styled 'Endorsement 23' to which it relates;

c. refers to the terms of the document styled 'Endorsement 23' for their full force and effect; and

d. otherwise denies the paragraph.

105. In response to paragraph 106 of the ASOC, TMNF:

a. refers to and repeats paragraph 65 and 102 of this Defence;

b. says that paragraph 106 is a paraphrase of the sections of the document styled 'Endorsement 23' to which it relates;

c. refers to the terms of the document styled 'Endorsement 23' for their full force and effect; and

d. otherwise denies the paragraph.

D9. BCC had authority to execute Endorsement 23

106. In response to paragraph 107 of the ASOC, TMNF:

a. refers to and repeats paragraphs 32 to 36, 65 and 80 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph

107. In response to paragraph 108 of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 108 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

108A. In response to paragraph 108A of the ASOC, TMNF:

a. says that Endorsement 23 was not, and did not purport to be, an endorsement to a policy of insurance issued by TMNF but was an endorsement to a policy of insurance issued by IAL;

b. says that BCC and/or Brereton made a disclosure for the purposes of s 917D(b) and (c) of the Corporations Act when executing the relevant policies and endorsements, by disclosing that BCC was acting not on behalf of TMNF but on behalf of another Licensee, being IAL;

c. denies that Greensill Bank could reasonably be expected to rely on that conduct and did, in fact, rely in good faith on that conduct, by reason of the Prior Misrepresentations and Non-Disclosures; and

d. [Not used]

e. otherwise denies the paragraph.

D10. Greg Brereton had authority to execute Endorsement 23

108. In response to paragraph 109 of the ASOC, TMNF:

a. refers to and repeats paragraphs 32 to 36, 65 and 83 of this Defence; and

b. in the premises, does not know and therefore cannot admit the paragraph

109. In response to paragraph 110 of the ASOC, TMNF:

a. refers to and repeats paragraph 85 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 110 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

110A. In response to paragraph 110A of the ASOC, TMNF:

a. refers to and repeats paragraph 108A of this Defence; and

b. otherwise denies the paragraph.

E. The Liberty Commodities Transactions

E1. Parties to the Transaction

110. TMNF admits paragraph 111 of the ASOC.

111. TMNF admits paragraph 112 of the ASOC.

112. TMNF admits paragraph 113 of the ASOC.

113. TMNF does not know and therefore cannot admit paragraph 114 of the ASOC.

114. TMNF admits paragraph 115 of the ASOC.

E2. Notes program

116A. In respect of paragraphs 116 to 138 of the ASOC, TMNF says generally that:

a. TMNF was not, and is not alleged to be, a party to the documents identified in those paragraphs;

b. Greensill Bank does not allege (and TMNF would not be in a position to admit, in any event) that paragraphs 116 to 138 of the ASOC exhaustively identify the documents that govern the relationship that exists between the parties to those documents; and

c. TMNF will seek disclosure in relation to the matters the subject of paragraphs 116 to 138 of the ASOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced.

115. TMNF does not know and therefore cannot admit paragraph 116 of the ASOC.

116. TMNF does not know and therefore cannot admit paragraph 117 of the ASOC.

117. In response to paragraph 118 of the ASOC, TMNF:

a. admits that representatives of Hoffman and Citibank signed a document styled "Lagoon Farm: Master Trust Deed" dated 13 October 2017 (the **Master Trust Deed**);

b. says that the signatures on the Master Trust Deed are undated;

c. does not know and therefore cannot admit that the Master Trust Deed or any supplementary deeds or documents were valid, that they were properly executed or that they represented the entire agreement between the parties in relation to the matters they dealt with; and

d. otherwise does not know and cannot admit the paragraph.

118. In response to paragraph 119 of the ASOC, TMNF:

a. refers to and repeats paragraph 118 of this Defence;

b. admits that the Master Trust Deed and Base Memorandum were supplemented over time including by way of the Supplemental Trust Deeds particularised;

c. refers to and repeats paragraph 116A of this Defence; and

d. otherwise does not know and therefore cannot admit the paragraph.

119. TMNF admits paragraph 120 of the ASOC.

120. TMNF admits paragraph 121 of the ASOC.

121. TMNF admits paragraph 122 of the ASOC.

122. In response to paragraph 123 of the ASOC, TMNF:

a. says that paragraph 123 is a paraphrase of the relevant clauses of the Hoffman MAA;

b. refers to the relevant terms of the Hoffman MAA for their full force and effect; and

c. otherwise admits the paragraph.

123. In response to paragraph 124 of the ASOC, TMNF:

a. refers to and repeats paragraph 156 below; and

b. otherwise does not know and therefore cannot admit the paragraph.

E3. Master Assignment Agreement between Greensill Bank and GCUK

124. TMNF admits paragraph 125 of the ASOC.

125. In response to paragraph 126 of the ASOC, TMNF:

a. says that the paragraph does not make grammatical sense;

b. says that the paragraph is a paraphrase of the relevant clauses of the GBAG MAA;

c. refers to the relevant terms of the GBAG MAA for their full force and effect; and

d. otherwise denies the paragraph.

126. In response to paragraph 127 of the ASOC, TMNF:

a. says that paragraph 127 is a paraphrase of the relevant clauses of the GBAG MAA;

b. refers to the relevant terms of the GBAG MAA for their full force and effect; and

c. otherwise admits the paragraph.

E4. Receivables Purchase Agreement

127. In response to paragraph 128 of the ASOC, TMNF:

a. says that the Original RPA (as defined in the ASOC) was entered into between GCUK, LCL, Liberty Commodities Group Pte Ltd (**Liberty Commodities Group**), and from at least the time of the Deed of Amendment and Restatement dated 27 February 2019 onwards, also with Liberty FE Trade DMCC (**Liberty FE**);

b. says that the Original RPA was accompanied by a side letter dated 29 October 2018 executed by GCUK, LCL and Liberty Commodities Group, which set out terms additional to those set out in the Original RPA and which as between the parties prevailed over any conflicting terms of the Original RPA; and

c. otherwise admits the paragraph.

128. In response to paragraph 129 of the ASOC, TMNF:

a. says that paragraph 129 is a paraphrase of the relevant clauses of the RPA;

b. refers to the relevant terms of the RPA for their full force and effect; and

c. otherwise admits the paragraph.

129. In response to paragraph 130 of the ASOC, TMNF:

a. says that paragraph 130 is a paraphrase of the relevant clauses of the RPA;

b. refers to the relevant terms of the RPA for their full force and effect; and

c. otherwise admits the paragraph.

130. In response to paragraph 131 of the ASOC, TMNF:

a. says that paragraph 131 is a paraphrase of the relevant clauses of the RPA;

b. refers to the relevant terms of the RPA for their full force and effect; and

c. otherwise admits the paragraph.

131. In response to paragraph 132 of the ASOC, TMNF:

a. says that paragraph 132 is a paraphrase of the relevant clauses of the RPA;

b. refers to the relevant terms of the RPA for their full force and effect; and

c. otherwise admits the paragraph.

132. In response to paragraph 133 of the ASOC, TMNF:

a. says that paragraph 133 is a paraphrase of the relevant clauses of the RPA;

b. refers to the relevant terms of the RPA for their full force and effect; and

c. otherwise admits the paragraph.

133. In response to paragraph 134 of the ASOC, TMNF:

a. says that paragraph 134 is a paraphrase of the relevant clauses of the RPA;

b. refers to the relevant terms of the RPA for their full force and effect; and

c. otherwise admits the paragraph.

134. In response to paragraph 135 of the ASOC, TMNF:

a. says that paragraph 135 is a paraphrase of the relevant clauses of the RPA;

b. refers to the relevant terms of the RPA for their full force and effect; and

c. otherwise admits the paragraph.

135. In response to paragraph 136 of the ASOC, TMNF:

a. says that paragraph 136 is a paraphrase of the relevant clauses of the RPA;

b. refers to the relevant terms of the RPA for their full force and effect; and

c. otherwise admits the paragraph.

E5. Group Guarantee

136. In response to paragraph 137 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the Group Guarantee to which it refers;

b. refers to the relevant terms of the Group Guarantee for their full force and effect; and

c. otherwise admits the paragraph.

137. In response to paragraph 138 of the ASOC, TMNF:

a. says that the paragraph is a paraphrase of the clauses of the RPA Deed (as defined in the ASOC) to which it refers;

b. refers to the relevant terms of the RPA Deed for their full force and effect; and

c. otherwise admits the paragraph.

E6. Endorsements to the Policy

138. In response to paragraph 139 of the ASOC, TMNF:

a. admits that the documents particularised were purportedly executed by Mr Brereton from time to time on the dates stated in those documents;

b. says that none of the documents referred to at paragraph 139 were valid Customer Endorsements, as Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate, whereas the documents referred to at paragraph 139 did not express a percentage premium rate (but rather a fixed dollar amount of $1);

c. says that, if (which is denied) the Policy is valid, insofar as any document referred to at paragraph 139 of this Defence purported to be a “Customer Endorsement” within the terms of the Policy, it was valid only to the extent that it identified a Customer, and not to the extent that it purported to vary the terms of the Policy or prescribe new terms inconsistent with those in the Policy;

d. denies that any document referred to at paragraph 139, to the extent it was valid, was capable, consistently with the terms of the Policy, of operating retrospectively

so as to be effective from the date from which it purported to be effective (where earlier than the date of execution);

e. says further that each of the purported customer endorsements pleaded in paragraph 139 of the ASOC was submitted in draft by Marsh, acting on behalf of GCPL and Greensill Bank (and GCUK to the extent that a corresponding customer endorsement was being proposed for the Master Policy), to Mr Brereton, with a view to that endorsement being accepted and signed by Mr Brereton on behalf of BCC as authorised representative of IAL;

Particulars

The relevant emails and draft endorsements include:

TOK.001.00107372, TOK.001.00103808, TOK.001.00100171, TOK.001.00096093, TOK.001.00113181, TOK.001.00087854, TOK.001.00076472, TOK.001.00085548, TOK.001.00096668

f. says that each such submission of a proposed customer endorsement constituted a representation by Marsh, made on behalf of Greensill Bank, GCPL and GCUK (**the Greensill Group**), that each customer referred to in the draft customer endorsement was, or was about to become, a customer of LCL;

g. says that the representations pleaded at paragraph 139(f) of this Defence were false at the time that they were made;

Particulars

The letter from Allen & Overy dated 7 May 2021 to Taylor Wessing LLP, as particularised at paragraph 67 of the Amended Statement of Claim in *White Oak Commercial Finance Europe (Non-Levered) Limited v Insurance Australia Limited* (NSD 1039/2021), indicates that, as at 7 May 2021, many of the putative Eligible Customers of LCL either had no amounts owing to LCL or that that they had no recent trade with LCL.

If the customers named in the Customer Endorsements particularised at 139 of the ASOC did not have a trading relationship with LCL in 2021, such that the debts said to be owed by those customers were non-existent debts, it is to be inferred such a practice was deployed by LCL throughout the policy period.

h. says further that, generally, each covering email sent by Marsh on behalf of GCPL and Greensill Bank (and GCUK to the extent that a corresponding customer

endorsement was being proposed for the Master Policy) attaching a proposed customer endorsement (including but not limited to the customer endorsements pleaded at paragraph 139 of the ASOC) also included a statement to the effect that the Greensill Group had confirmed that the customer in question had "NKORL", meaning "no known or reported losses";

i. says that each such statement was a representation that the Greensill Group had in fact considered or reviewed the customer's trading history with LCL in a way that enabled them to confirm that the trading history did not include any defaults by the relevant customer;

j. says that, in the premises of paragraph 139(g) of this Defence, the representations pleaded at paragraph 139(i) of this Defence were false at the time that they were made, as the customers had no trading history with LCL at all;

Particulars

TMNF repeats the particulars to paragraph 139(g) of this Defence.

k. says that if (which is not admitted) IAL is bound by the Policy and the Customer Endorsements:

i. pursuant to s 28(3) of the *Insurance Contracts Act 1984* (Cth) (**ICA**):

A. each of the representations pleaded at paragraph 139(f) and 139(i) (**the Placement Misrepresentations**) was a misrepresentation made to IAL before the customer endorsement to which it related was entered into;

B. IAL would not have entered into each such customer endorsement for the same premium and on the same terms and conditions, or at all, if the true position had been disclosed;

C. accordingly, any right Greensill Bank has to indemnity is reduced to the amount that would place IAL in the position it would have been in had the Placement Misrepresentations not been made, that amount being nil;

ii. had IAL or BCC been aware of the true position as pleaded in subparagraph (g) and (j) of this Defence, it would not have agreed to insure any of the risks presented by the Greensill Group in the customer endorsements referred to

in paragraph 139 of the ASOC, and in particular, it would not have agreed to execute any of those endorsements; and

iii. further or alternatively, pursuant to cl 9.7 of the Policy:

A. the Placement Misrepresentations constituted a failure by Greensill Bank and/or GCPL to comply with its duty of fair presentation pursuant to cl 7.1 of the Policy; and

B. that failure had a 'Material Policy Impact' as defined in Schedule 1 to the Policy in that it:

a. materially increased the likelihood of the alleged Loss claimed by Greensill Bank in this proceeding;

b. materially increased the amount of such Loss;

c. materially decreased the likely amount of any recovery in respect of such Loss; or

d. any combination of the of this Defence, and

C. as such IAL has no liability to indemnify Greensill Bank for the Loss claimed by Greensill Bank in this proceeding; and

l. otherwise denies the paragraph.

139A. In response to paragraph 139A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 139 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

139B. In response to paragraph 139B of the ASOC, TMNF:

a. refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 139 of the ASOC; and

b. otherwise denies the paragraph.

RPA Debt Endorsement

139. In response to paragraph 140 of the ASOC, TMNF:

a. admits that on or around 16 April 2020, Debt Endorsement 2(iv) was signed by Mr Brereton;

b. refers to and repeats paragraphs 65, 68 and 73 of this Defence;

c. further or alternatively, says that Debt Endorsement 2(iv) was not a valid "Debt Endorsement" under the Policy because, on the proper construction of the Policy, the Policy did not authorise the issue of a "Debt Endorsement" that purported to operate retrospectively;

d. says further that if it is found that:

i. Mr Brereton;

ii. (to the extent that Mr Brereton had authority to bind BCC) BCC: and/or

iii. (to the extent that Mr Brereton and/or BCC had authority to bind IAL) IAL;

entered into Debt Endorsement 2(iv) (which is not admitted), and IAL or BCC thereby assumed any risk or liability under the Policy or Debt Endorsement 2(iv), Mr Brereton, BCC and/or IAL (through its agents Mr Brereton and BCC) entered into that endorsement and/or assumed that risk or liability by reason of the Prior Misrepresentations and Non-Disclosures with the consequence pleaded in paragraph 218 of this Defence;

e. says that sub-paragraphs (a) and (b) are paraphrases of the clauses of Debt Endorsement 2(iv) to which they refer;

f. refers to the relevant terms of Debt Endorsement 2(iv) for their full force and effect; and

g. otherwise does not know and therefore cannot admit the paragraph.

140A. In response to paragraph 140A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 140 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

140B. In response to paragraph 140B of the ASOC, TMNF:

a. refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 140 of the ASOC; and

b. otherwise denies the paragraph.

140. In response to paragraph 141 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68 and 140 of this Defence;

b. says that the paragraph is a paraphrase of the clause of Debt Endorsement 2(iv) to which it refers;

c. refers to the relevant terms of Debt Endorsement 2(iv) for their full force and effect; and

d. otherwise admits the paragraph.

141. In response to paragraph 142 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68 and 140 of this Defence;

b. says that if, contrary to the of this Defence, Debt Endorsement 2(iv) was a valid "Debt Endorsement" within the meaning accorded to that term by the Policy:

i. the RPA was a "Receivables Purchase Agreement" within the meaning of Part B of Debt Endorsement 2 (iv) only to the extent that the RPA provided for the sale by LCL to GCUK of actual accounts receivable owing at the time of sale from a Customer in respect of goods and/or services provided by LCL or its Affiliate to the Customer;

ii. the RPA was not a "Receivables Purchase Agreement" within the meaning of Part B of Debt Endorsement 2(iv) to the extent that it purported to provide for the sale of non-existent accounts receivable and/or future or expected accounts receivable which were not then owing by a Customer in respect of goods or services provided by LCL or its Affiliate to the Customer (**Non-Existent LCL Receivables**); and

Particulars

Definitions of "Receivables Purchase Agreement(s)" and "Supplier" in Part B of Debt Endorsement 2(iv).

c. otherwise denies the paragraph.

142. In response to paragraph 143 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 68, 140 and 142 of this Defence

b. says that, in the premises, to the extent that the RPA imposed payment obligations on LCL referrable to Non-Existent LCL Receivables, any obligation on LCL under the RPA to repurchase or provide an indemnity payment with respect to any Non-Existent LCL Receivable does not amount to a "Repurchase Event" within the definition of that term given in Part B of Debt Endorsement 2(iv); and

c. otherwise denies the paragraph.

143. In response to paragraph 144 of the ASOC, TMNF:

a. refers to and repeats paragraphs 142 and 143 of this Defence;

b. says that, to the extent that the RPA imposed payment obligations on LCL referrable to Non-Existent LCL Receivables, any amount payable by LCL to GCUK with respect to a Non-Existent LCL Receivable is not a "Debt" within the meaning of Part B of Debt Endorsement 2(iv), and therefore not a "Debt" or "Eligible Debt" covered by the Policy; and

c. otherwise denies the paragraph.

Liberty Customer Endorsement

144. In response to paragraph 145 of the ASOC, TMNF:

a. refers to and repeats paragraph 65, 68, 73 and 139 of this Defence;

b. in the premises, denies that:

i. the instrument entitled "Customer Endorsement 19" had any effectiveness or operation prior to 13 March 2019;

ii. the instrument entitled "Customer Endorsement 19(i)" had any effectiveness or operation prior to 29 January 2020;

iii. the instrument entitled "Customer Endorsement 19(ii)" had any effectiveness or operation prior to 29 April 2020;

c. says that Customer Endorsements 19, 19(i) and 19(ii) were invalid, as Appendix 1 of the Policy required a Customer Endorsement to express a percentage premium rate, whereas Customer Endorsements 19, 19(i) and 19(ii) did not express a percentage premium rate (but rather a fixed dollar amount of $1);

d. says that, if (which is denied) the Policy is valid, insofar as the instruments entitled "Customer Endorsement 19", "Customer Endorsement 19(i)" or "Customer

Endorsement 19(ii)" purported to be a "Customer Endorsement" within the terms of the Policy, they were valid only to the extent that they identified a Customer, and not to the extent that they purported to vary the terms of the Policy or prescribe new terms inconsistent with those in the Policy (including, without limitation, by purporting to provide for the indefinite resetting of the Aggregate Customer Limit and of the Maximum Limit of Liability); and

e. otherwise denies the paragraph.

145A. In response to paragraph 145A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 145 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

145B. In response to paragraph 145B of the ASOC, TMNF:

a. refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the documents referred to in paragraph 145 of the ASOC; and

b. otherwise denies the paragraph.

145. In response to paragraph 146 of the ASOC, TMNF:

a. refers to and repeats paragraph 65, 68 and 145 of this Defence;

b. says that the paragraph is a paraphrase of the clauses of Liberty Endorsements contained to which it refers;

c. refers to the relevant terms of the Liberty Endorsements for their full force and effect; and

d. otherwise admits the paragraph.

LCL Endorsement

146. In response to paragraph 147 of the ASOC, TMNF:

a. admits that on 29 April 2020, Mr Brereton signed a document purportedly on behalf of BCC as authorised representative of IAL styled "Endorsement (Liberty Commodities)", which purported to vary a number of terms in the Policy;

b. admits that the document styled "Endorsement (Liberty Commodities)" contained terms broadly to the effect pleaded;

c. says that this document was not a Customer Endorsement within the meaning of the Policy because it purported to amend the terms of the Policy;

d. says that clause 15.3(a) of the Policy provided that any variation of the Policy could only be effected in writing signed by or on behalf of each party;

e. says that the document signed by Mr Brereton on 29 April 2020 was not signed on behalf of GCPL or Greensill Bank, and therefore was not a valid variation of the Policy;

f. says that Greensill Bank is hereby notified by this Defence that the authority (if any) that Mr Brereton or BCC had to execute the document has been withdrawn, with the result that the document is no longer open to execution;

g. says that any variation would in any event need to be supported by adequate consideration, and this purported variation was not so supported;

h. says that, in the premises, to the extent that the document styled "Endorsement (Liberty Commodities)" purported to vary the Policy, it did not validly do so; and

i. otherwise denies the paragraph.

147A. In response to paragraph 147A of the ASOC, TMNF:

a. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 147 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

147B. In response to paragraph 147B of the ASOC, TMNF:

a. refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the document referred to in paragraph 147 of the ASOC; and

b. otherwise denies the paragraph.

147. In response to paragraph 148 of the ASOC, TMNF:

a. refers to and repeats paragraph 147 of this Defence;

b. admits that the document styled "Endorsement (Liberty Commodities)" contained terms broadly to the effect pleaded; and

c. otherwise denies the paragraph.

148. In response to paragraph 149 of the ASOC, TMNF:

a. refers to and repeats paragraph 147 of this Defence;

b. admits that the document styled "Endorsement (Liberty Commodities)" contained terms broadly to the effect pleaded; and

c. otherwise denies the paragraph.

149. In response to paragraph 150 of the ASOC, TMNF:

a. refers to and repeats paragraph 147 of this Defence;

b. admits that the document styled "Endorsement (Liberty Commodities)" contained terms broadly to the effect pleaded; and

c. otherwise denies the paragraph.

150. In response to paragraph 151 of the ASOC, TMNF:

a. refers to and repeats paragraph 147 of this Defence;

b. says that this document was not a Debt Endorsement within the meaning of the Policy because it purported to amend the terms of the Policy; and

c. otherwise denies the paragraph.

E7. Purchase of Payment Obligations and Notes

GCUK's Purchase of Purchase Receivables from LCL

151. In response to paragraph 152 of the ASOC, TMNF:

a. denies that GCUK purchased any genuine accounts receivable from LCL between 7 December 2020 and 19 February 2021, and says that the debts purportedly purchased by GCUK in this period were Non-Existent LCL Receivables that had been fabricated through the creation of fictitious invoices;

b. says that, in any event, the paragraph does not sufficiently identify the material facts upon which Greensill Bank relies to establish that LCL sold each Receivable to GCUK pursuant to the RPA, including identification of the facts on which Greensill Bank relies to show that GCUK accepted each such request and the date on which it did so, and says that the paragraph is accordingly embarrassing and liable to be set aside;

c. admits that LCL submitted requests for GCUK to purchase the Receivables listed in the table at paragraph 152 except for the following:

Customer	Purchase Request Date	Receivable Amount
Aperam Sourcing SCA	29/01/2021	USD 437,299.33
Aperam Sourcing SCA	29/01/2021	USD 4,259,606.72
Aperam Sourcing SCA	19/02/2021	USD 200,000
Hyundai Glovis Co. Ltd	14/12/2020	USD 3,795,052.24
Outokumpu Oyj	07/12/2020	USD 791,376.67

d. does not know and therefore cannot admit that each purported sale of accounts receivable from LCL to GCUK between December 2020 and February 2021 was effected in a manner consistent with the requirements of the RPA in any event, including because, as to the majority of occasions when LCL submitted a Form of Request to GCUK, there is no evidence that GCUK ever accepted the offer by executing a Buyer Acceptance form (as it in fact did on a minority of occasions); and

e. otherwise denies the paragraph.

Direct assignment

152. In response to paragraph 153 of the ASOC, TMNF:

a. denies that the benefit of the LCL Direct Assignments was assigned to Greensill Bank, validly or at all;

b. says that the assignment of payment obligations by GCUK to Greensill Bank was relevantly governed by the GBAG MAA, which relevantly provided that:

i. GCUK could from time to time offer to assign and sell with full title guarantee the whole, but not part, of any Payment Obligation and all of its Additional Rights in respect thereof to Greensill Bank and that Greensill Bank at its sole direction may agree to purchase such Payment Obligation and the Additional Rights relating thereto from GCUK (cl 2.1);

ii. each offer of a Payment Obligation and its Additional Rights to Greensill Bank pursuant to clause 2.1 in respect of any Business Day shall be made by GCUK delivering an Offer File in respect of such Payment Obligation (and

containing the relevant details thereof) to Greensill Bank attached to an e-mail from an Authorised User and password protected at any time before the relevant Cut-Off Offer Time on such Business Day (an "**Offer**") (cl 2.2);

iii. an Offer could be accepted by Greensill Bank at any time before the relevant Cut-Off Acceptance Time at which time, if not accepted, the Offer will lapse. Acceptance of an offer shall be effected by Greensill Bank (prior to the Offer lapsing) returning the Offer File to GCUK attached to an e-mail from an Authorised User and password protected, marked as "Accepted" (an **"Acceptance"**) (cl 2.3);

iv. "Offer File" was defined to mean, in respect of any Payment Obligation that GCUK proposes to assign to Greensill Bank hereunder, an electronic file or data feed identifying such Payment Obligation, which shall include the following information in respect of such Payment Obligation:

A. Maturity Amount;

B. Currency;

C. Maturity Date;

D. Relevant Obligor;

E. Related Party (if applicable);

F. Intermediary Party (if applicable);

G. Settlement Date;

H. Purchase Price;

I. Identifier;

J. Invoice Ref; and

K. Product Code

in the form set out in Schedule 2 (cl 1.2, definition of "Offer File");

v. "Relevant Obligor" was defined to mean, in respect of any Payment Obligation, each entity that is liable for payment of such Payment Obligation, as identified as such in the Offer File relating to such Payment Obligation (cl 1.2, definition of "Relevant Obligor"); and

vi. "Identifier" was defined to mean, in respect of a Payment Obligation, the unique reference identifying such Payment Obligation and identifiable as such by the Relevant Obligor, as specified in the relevant Offer File (cl 1.2, definition of "Identifier");

c. does not know and therefore cannot admit that cl2.1 to 2.3 of the GBAG MAA were followed, on the basis that:

i. there were prepared from time to time a number of Greensill-branded spreadsheets styled as "Assignment Offer Reports";

ii. it does not appear that the Assignment Offer Reports were emailed from Greensill Bank back to GCUK in accordance with cl 2.3 of the GBAG MAA by way of Acceptance; and

iii. the Assignment Offer Reports do not contain the name of "Relevant Obligor" (being the name of the entity liable for payment of the Payment Obligation) as required by the GBAG MAA;

d. says that the "Assignment Offer Reports" relating to the LCL Direct Assignments failed to identify the underlying payment obligations to which they related in a manner consistent with the requirements of the GBAG MAA, or at all;

e. says further that, as a result, Greensill Bank does not hold an interest in the LCL Direct Assignments, and accordingly cannot have suffered a Loss in respect of those obligations within the meaning of the Policy; and

f. otherwise denies the paragraph.

153. In response to paragraph 154 of the ASOC, TMNF:

a. refers to and repeats paragraph 153 of this Defence; and

b. otherwise denies the paragraph.

154. In response to paragraph 155 of the ASOC, TMNF:

a. refers to and repeats paragraphs 144 and 153 of this Defence; and

b. otherwise denies the paragraph.

Notes

155. In response to paragraph 156 of the ASOC, TMNF:

a. does not know and therefore cannot admit that the benefit of any LCL Purchased Receivables was assigned to Hoffman, validly or at all;

b. accordingly, does not know and therefore cannot admit that the LCL Notes corresponded to or were secured over any LCL Purchased Receivables;

c. says that the assignment of payment obligations by GCUK to Hoffman was relevantly governed by Hoffman MAA, which relevantly provided that:

   i. GCUK could from time to time offer to assign and sell with full title guarantee the whole, but not part, of any Payment Obligation and all of its Additional Rights in respect thereof to Hoffman and that Hoffman at its sole direction may agree to purchase such Payment Obligation and the Additional Rights relating thereto from GCUK (cl 2.1);

   ii. each offer of a Payment Obligation and its Additional Rights to Hoffman pursuant to clause 2.1 in respect of any Business Day shall be made by GCUK delivering an Offer File in respect of such Payment Obligation (and containing the relevant details thereof) to Hoffman attached to an e-mail from an Authorised User and password protected at any time before the relevant Cut-Off Offer Time on such Business Day (an "**Offer**") (cl 2.2);

   iii. an Offer could be accepted by Hoffman at any time before the relevant Cut-Off Acceptance Time at which time, if not accepted, the Offer will lapse. Acceptance of an offer shall be effected by Hoffman (prior to the Offer lapsing) returning the Offer File to GCUK attached to an e-mail from an Authorised User and password protected, marked as "Accepted" (an **"Acceptance"**) (cl 2.3);

   iv. "Offer File" was defined to mean, in respect of any Payment Obligation that GCUK proposes to assign to a Compartment of the Purchaser hereunder, an electronic file or data feed identifying (i) the Compartment of the Purchaser to which the electronic file or data feed is to be delivered and subsequent Offer made, and (ii) such Payment Obligation, which shall include the following information in respect of such Payment Obligation:

      A. Maturity Amount;

      B. Currency;

      C. Maturity Date;

D. Relevant Obligor;

E. Related Party (if applicable);

F. Intermediary Party (if applicable);

G. Settlement Date;

H. Purchase Price;

I. Identifier;

J. Invoice Ref; and

K. Product Code

in the form set out in Schedule 2 (cl 1.2, definition of "Offer File");

v. "Relevant Obligor" was defined to mean, in respect of any Payment Obligation, each entity that is liable for payment of such Payment Obligation, as identified as such in the Offer File relating to such Payment Obligation (cl 1.2, definition of "Relevant Obligor"); and

vi. "Identifier" was defined to mean, in respect of a Payment Obligation, the unique reference identifying such Payment Obligation and identifiable as such by the Relevant Obligor, as specified in the relevant Offer File (cl 1.2, definition of "Identifier");

d. does not know and therefore cannot admit that cll 2.1 to 2.3 of the Hoffman MAA were followed, on the basis that:

i. there were prepared from time to time a number of Greensill-branded spreadsheets styled as "Notes Offer Reports";

ii. it does not appear from the evidence available to TMNF that these Notes Offer Reports were emailed by GCUK in accordance with cl 2.2 of the Hoffman MAA by way of Offer;

iii. it does not appear from the evidence available to TMNF that the Note Offer Reports were emailed from Hoffman back to GCUK in accordance with cl 2.3 of the Hoffman MAA by way of Acceptance;

iv. even if the Note Offer Reports had been so emailed, they do not contain the name of "Relevant Obligor" (being the name of the entity liable for payment of the Payment Obligation) as required by the Hoffman MAA; and

v. the Note Offer Reports do not contain an "Identifier" for the underlying Payment Obligation (being a unique reference identifying such Payment Obligation and identifiable as such by the Relevant Obligor) as required by the Hoffman MAA;

e. says that the "Note Offer Reports" relating to the LCL Purchased Receivables failed to identify the underlying payment obligations to which they related in a manner consistent with the requirements of the Hoffman MAA, or at all;

f. says further that, as a result, Greensill Bank does not hold an interest in the LCL Purchased Receivables, and accordingly cannot have suffered a Loss in respect of those obligations within the meaning of the Policy; and

g. otherwise denies the paragraph.

156A. In response to paragraph 156A of the ASOC, TMNF:

a. refers to and repeats paragraph 156 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

156. In response to paragraph 157 of the ASOC, TMNF:

a. refers to and repeats paragraph 156 of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

157. In response to paragraph 158 of the ASOC, TMNF:

a. refers to and repeats paragraphs 144 and 156 of this Defence and says that the LCL Notes did not constitute Notes for the purposes of the Policy as they were not secured over corresponding LCL Purchased Receivables and therefore were not backed by payment obligations acquired by Hoffman as required by the Master Trust Deed and the Issue Documents; and

b. otherwise denies the paragraph.

E8. Default and Events of Repurchase

158. TMNF does not know and therefore cannot admit paragraph 159 of the ASOC.

159. TMNF does not know and therefore cannot admit paragraph 160 of the ASOC.

160. TMNF does not know and therefore cannot admit paragraph 161 of the ASOC.

Occurrence of Events of Repurchase

161. In response to paragraph 162 of the ASOC, TMNF:

    a. refers to and repeats paragraphs 142, 143 and 144 of this Defence; and

    b. otherwise denies the paragraph.

Notification of Event of Repurchase

162. In response to paragraph 163 of the ASOC, TMNF:

    a. says that the letter dated 5 March 2021 to LCL was sent on GCUK letterhead; and

    b. otherwise admits the paragraph.

163. TMNF admits paragraph 164 of the ASOC.

164. TMNF does not know and therefore cannot admit paragraph 165 of the ASOC.

Failure of LCL, Liberty Commodities Group or Liberty FE to pay Repurchase Price

165. TMNF admits paragraph 166 of the ASOC.

166. TMNF does not know and therefore cannot admit paragraph 167 of the ASOC.

167. TMNF does not know and therefore cannot admit paragraph 168 of the ASOC.

168. TMNF does not know and therefore cannot admit paragraph 169 of the ASOC.

169. In response to paragraph 170 of the ASOC, TMNF:

    a. refers to and repeats paragraph 144 of this Defence; and

    b. otherwise denies the paragraph.

170. TMNF does not know and therefore cannot admit paragraph 171 of the ASOC.

171. In response to paragraph 172 of the ASOC, TMNF:

    a. refers to and repeats paragraphs 139, 140, 142, 143, 144, 145, 146, 151, 152, 153 and 156 of this Defence; and

b. in the premises, denies the paragraph.

E9. Notification and claim by Greensill Bank under the Policy

172. TMNF admits paragraph 173 of the ASOC.

173. TMNF admits paragraph 174 of the ASOC.

174. TMNF admits paragraph 175 of the ASOC.

175. In response to paragraph 176 of the ASOC, TMNF:

a. admits that the claim was submitted within 12 months of 3 March 2021, being the earliest maturity date set out at paragraphs 154 and 157 of the ASOC; and

b. otherwise denies the paragraph.

176. In response to paragraph 177 of the ASOC, TMNF:

a. refers to and repeats paragraphs 139, 140, 142, 143, 144, 145, 146, 151, 152, 153 156 and 172 of this Defence;

b. says that, by reason of Part A, Additional Condition 1 of Debt Endorsement 2(iv), to the extent that there has been an Event of Repurchase in respect of any of the alleged debts (which is not admitted), the alleged debts are excluded from the Policy (and replaced by corresponding Part B debts, if they qualify as such), by reason of the Event of Repurchase that has occurred in respect of each of them;

c. says that none of the alleged debts attached to the Policy, because each of them was purportedly created after 22 February 2020, being the date on which the Policy expired;

d. says that some or all of the alleged debts never attached to the Policy, and therefore could not be the subject of a Loss, because:

i. clause 5.5 of the Policy provided that no Asset or part of any Asset would attach to the Policy to the extent that it breached the limits from time to time in force pursuant to the provisions of clause 5 of the Policy;

ii. by clause 5.1, those limits included the Applicable Limit of Liability, which was relevantly defined to mean the Customer Limit;

iii. the Customer Limit for LCL, Liberty and Liberty FE was, by virtue of the endorsements pleaded to at paragraph 145 of this Defence, USD 5,000,000;

iv. in the premises, if (which is denied), USD 5,000,000 worth of Part B debts owed by LCL, Liberty and Liberty FE had attached to the Policy, clause 5.5 operated to prevent any further debts from those customers attaching to the Policy until those debts had been repaid so as to bring the total of Part B debts owed by LCL, Liberty and Liberty FE below USD 5,000,000;

v. Special Condition 2 to the endorsements pleaded to at paragraph 146 of this Defence did not apply, as it only made special provision for the resetting of customer limits once and to the extent that a Claim had been submitted, rather than at the point in time at which a Part B debt attaches to the Policy;

vi. having regard to paragraph 152 of the ASOC, once a Part B debt had arisen in respect of the earliest payment obligation in that table, only the first USD 5,000,000 of that Debt could have attached to the Policy (if indeed the USD 5,000,000 limit had not already been reached by an earlier payment obligation preceding those at paragraph 152 of the ASOC), and no further Part B debts in respect of the payment obligations in that table attached to the Policy; and

vii. in the premises the Insurer's liability for the debts the subject of the claim the subject of the claim can be no greater than USD 5,000,000;

e. says further and in the alternative that some of the alleged debts never attached to the Policy, because:

i. in the RPA:

A. "Aggregate OPP" was defined to mean "the aggregate of the Outstanding Collections of each Purchased Receivable" (cl 1.1);

B. "Maximum OPP" was defined to mean "USD 527,500,000 unless otherwise agreed between the relevant Seller or Seller Representative and the Buyer in Writing from time to time" (cl 1.1);

C. cl 2.2(G)(1) provided that following the sale and purchase of the Proposed Receivables set forth in the related Request, the Aggregate OPP must not exceed the Maximum OPP (cl 2.2(G)(1));

ii. in the Policy, cl 5.5 provided that an Asset acquired by the Insured (or a Loss Payee) during a Policy Period shall to the extent the Insured wishes it to be insured under the Policy, automatically attach to the Policy and be on risk

under the Policy from the time the Insured (or a Loss Payee) "acquires risk in the Asset pursuant to the Transaction Documents";

iii. to the extent that Greensill Bank (or any Loss Payee) acquired risk in the alleged Assets the subject of the claim in an aggregate amount exceeding USD 527,500,000, that risk was acquired contrary to cl 2.2(G)(1) of the RPA, and as a result, was not, to that extent, "acquire[d] … pursuant to the Transaction Documents" as required by cl 5.5 of the Policy; and

iv. says that, in the premises, to the extent that the total debts originating under the RPA in respect of which claims are made by Greensill Bank (or any Loss Payee) for an amount exceed USD 527,500,000, those debts never attached to the Policy and accordingly are not covered thereby;

f. says further and in the alternative that a Stop Asset Acquisition Instruction prevented some or all of the debts the subject of the claim from attaching to the Policy, because:

i. clause 8.3(a) of the Policy provided that a Stop Asset Acquisition Instruction would automatically be deemed to have been issued where a Customer has failed to pay a Debt on the relevant Due Date and such failure to pay has not been remedied within 10 Business Days;

ii. having regard to Table 6.1 of the Statement of Claim in *Credit Suisse Virtuoso SICAV-SIF – Credit Suisse (Lux) Supply Chain Finance Fund & Anor v Insurance Australia Ltd & Ors* (NSD 169 of 2023), a Part B debt owed by LCL, Liberty and Liberty FE came into existence no later than 1 December 2020 (being the date on which the representation and warranty by LCL under the RPA with respect to the debt from LG International Corp was incorrect when made, in principle constituting an Event of Repurchase – subject to the balance of this Defence);

iii. LCL, Liberty and Liberty FE were required, by virtue of clause 6.1 of the RPA, immediately to make payment by way of indemnity of an amount equal to the Repurchase Price in respect of that debt;

iv. the obligation to make that indemnity payment was a Part B debt owed by LCL, Liberty and Liberty FE, and which attached to the Policy at the time (subject to the balance of this Defence);

v. clause 8.3(a) of the Policy operated to require that Part B debt to be repaid by LCL, Liberty and Liberty FE within 10 Business Days, failing which, a Stop

Asset Acquisition Instruction would automatically be deemed to have been issued;

vi. that Part B debt was not repaid within 10 Business Days (that is, by 15 December 2020 at the latest);

vii. a Stop Asset Acquisition Instruction was issued no later than 15 December 2020, with the result that thereafter, no further debts from LCL, Liberty or Liberty FE attached to the Policy; and

viii. as a result, no Part B debts arising after the date of the deemed Stop Asset Acquisition Instruction were capable of attaching to the Policy, with the result that any Part B debts arising after 15 December 2020 at the latest did not attach to the Policy;

g. says further that, in the premises of paragraphs 94 to 97 of this Defence, none of the alleged debts set out at paragraph 152 of the ASOC was covered by the Policy, as the Policy expired on 22 February 2020, and each of those alleged debts came into existence after that date;

h. says further, or alternatively, that if the Policy and the relevant endorsements were validly issued and there was a "Loss" as defined in the Policy, then:

i. that loss is not recoverable by reason of the Prior Misrepresentations and Non-Disclosures as pleaded in paragraph 218 of this Defence and/or by reason of the Placement Misrepresentations as pleaded in paragraph 139 of this Defence; and

ii. further or alternatively, TMNF does not know what steps GCPL and Greensill Bank have taken to mitigate Loss (if any), and reserves its right to allege that any indemnity payment should be reduced pursuant to cl 10.7 of the Policy following discovery and disclosure in this proceeding;

i. says further, or alternatively, that if the Policy and the relevant endorsements were validly issued and there was a "loss" as defined in the Policy, then that loss is not recoverable because:

i. for a period of four months commencing by no later than December 2019, Liberty OneSteel (Primary) UK Pty Ltd, defaulted in repaying amounts owing by it to GCUK (**the Liberty Seaview Defaults**);

ii. at the time that each subsequent risk relating to an entity in the same corporate group as Liberty OneSteel (Primary) UK Pty Ltd (**a Liberty Risk**) was presented to Brereton and/or BCC, the Greensill Group failed to disclose that the Liberty Seaview Defaults had occurred (**the Liberty Seaview Defaults Non-Disclosure**);

iii. in the premises, pursuant to s 28(3) of the ICA, any right Greensill Bank has to indemnity that depends upon an endorsement purportedly executed in or after December 2019 in relation to a Liberty Risk is reduced to the amount that would place IAL in the position it would have been had the Liberty Seaview Defaults Non-Disclosure not been made, that amount being nil; and

iv. had IAL or BCC been aware that the Liberty Seaview Defaults had occurred, it would not have agreed to insure any Liberty Risk; and

v. further or alternatively, pursuant to cl 9.7 of the Policy, Greensill Bank and/or GCPL has failed to comply with its duty of fair presentation and those failures together or separately had a 'Material Policy Impact' such that IAL has no liability to indemnify Greensill Bank for the loss claimed in the proceedings;

j. says further and in the alternative that, by reason of the Liberty Seaview Defaults, a Stop Asset Acquisition Instruction (the **Liberty Seaview Stop Asset Acquisition Instruction**) prevented any of the debts the subject of the claims pleaded at paragraph 152 of the ASOC from attaching to the Policy, because:

i. the Liberty Seaview Defaults occurred by no later than December 2019;

ii. clause 8.3(a) of the Policy operated to require Liberty OneSteel (Primary) UK Ltd to remedy its failure to repay the Debts the subject of the Liberty Seaview Defaults within 10 Business Days, failing which, a Stop Asset Acquisition instruction would automatically be deemed to have been issued in respect of Liberty OneSteel (Primary) UK Ltd and to all other members of the same Customer Group (**the Liberty Customer Group**);

iii. the Debts the subject of the Liberty Seaview Defaults were not repaid by Liberty OneSteel (Primary) UK Ltd within 10 Business Days (that is, by 14 January 2020 at the latest);

iv. the Liberty Seaview Stop Asset Acquisition Instruction was issued by no later than 14 January 2020 to Liberty OneSteel (Primary) UK Ltd and to the Liberty Customer Group, with the result that thereafter, no further debts from any member of the Liberty Customer Group, including Simec Group Limited

(**Simec**), Speciality Steel UK Limited (**SSUK**), Liberty Commodities Limited (**LCL**), Liberty MDR Treasury Company UK Ltd (**Liberty TCUK**), Liberty France Aluminium Holdco and Liberty House Group Pte Ltd (**Liberty House**) attached to the Policy;

v. as a result, no debts arising after the date of the Liberty Seaview Stop Asset Acquisition Instruction in respect of a customer in the Liberty Customer Group were capable of attaching to the Policy, with the result that any such alleged debts arising after 14 January 2020 at the latest did not attach to the Policy; and

vi. in the premises, none of the alleged debts set out at paragraph 152 of the ASOC attached to the Policy, as each of them post-dated the Liberty Seaview Stop Asset Acquisition Instruction;

k. says further and in the alternative that further Stop Asset Acquisition Instructions prevented any of the debts the subject of the claims pleaded in the ASOC from attaching to the Policy, with the effect that they did not attach to the Policy, as follows:

i. a Stop Asset Acquisition Instruction in relation to defaults by SSUK, which was issued by no later than 22 June 2020 to SSUK and to the Liberty Customer Group, as pleaded at paragraph 714(e) of BCC's Defence in proceeding NSD 175 of 2023 (**BCC's CS Global Defence**);

ii. a Stop Asset Acquisition Instruction in relation to defaults by Liberty TCUK, which was issued by no later than 24 December 2020 to TCUK and to the Liberty Customer Group, as pleaded at paragraph 525(f) of BCC's CS Global Defence;

iii. a Stop Asset Acquisition Instruction in relation to defaults by Liberty House, which was issued by no later than 10 March 2020 to Liberty House and to the Liberty Customer Group, as pleaded at paragraph 447(d) of BCC's CS Global Defence; and

iv. a Stop Asset Acquisition Instruction in relation to defaults by Simec, which was issued by no later than 12 February 2021 to Simec and to the Liberty Customer Group, as pleaded at paragraph 643(d). of BCC's CS Global Defence; and

v. in the premises, none of the alleged debts set out at paragraph 152 of the ASOC attached to the Policy, as each of them post-dated the Stop Asset Acquisition Instructions at (i) to (iv) of this Defence;

l. says that it does not know the extent to which Greensill Bank has made recoveries in respect of any alleged debts the subject of the claim, but says that any loss claimable by Greensill Bank will be reduced by the amount of any such recoveries;

m. says further:

i. TMNF does not know the nature of the insurance arrangements that exist between Greensill Bank and Zurich, and will seek disclosure in relation to this matter at an appropriate point in the proceedings, reserving its right to amend its Defence upon a review of any documents produced; and

ii. to the extent the alleged debts the subject of the claim are also the subject of insurance provided by Zurich, any Loss suffered by Greensill Bank in respect of such debts may be reduced; and

n. in the premises, denies the paragraph.

F. CLAIMS

F1. Breach of the Policy by Insurer

177. In response to paragraph 178 of the ASOC, TMNF:

a. admits that IAL has not paid to Greensill Bank the amount pleaded in paragraph 177 of the ASOC; and

b. otherwise denies the paragraph.

178. TMNF denies paragraph 179 of the ASOC.

F1A. Misleading or deceptive conduct by IAL

179A–179AM. TMNF does not plead to paragraphs 179A to 179AM of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

F2. Claims against BCC

Breach of Warranty of Authority

179. In response to paragraph 180 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 86–110, 139, 140, 145 and 147 of this Defence;

b. insofar as the allegation concerns the Policy and the relevant endorsements:

i. does not know and therefore cannot admit whether Greensill Bank knew, or ought to have known, that Mr Brereton lacked authority to enter into the Policy and the relevant endorsements; and

ii. in the premises, does not know and therefore cannot admit whether Mr Brereton made the representations alleged or gave the BCC Warranties of Authority on behalf of BCC; and

c. further or alternatively, if BCC did give the BCC Warranties of Authority in respect of any of the documents (which is not admitted), then:

i. it only did so by reason of the Prior Misrepresentations and Non-Disclosures which were fraudulent for the reasons pleaded further in Annexure A; and

ii. TMNF notes that BCC has, by its defence in this proceeding, avoided and rescinded any collateral contract between it and Greensill Bank containing the BCC Warranties of Authority on the basis it entered into the contract by reason of Greensill Bank's fraudulent non-disclosures and misrepresentations for the reasons pleaded further in Annexure A.

180. In response to paragraph 181 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 177 and 179 of this Defence; and

b. otherwise denies the paragraph.

181. TMNF denies paragraph 182 of the ASOC.

182. In response to paragraph 183 of the ASOC, TMNF:

a. says that, on 2 and 3 July 2020 , BCC and TMMA notified Greensill Bank's lead broker, Marsh Limited and/or Marsh Pty Ltd (**Marsh**), of concerns regarding Brereton's authority (**July Marsh Notifications**);

Particulars

i. Voice message from Mark Callahan (Executive Vice President of TMHCC and Director of TMMA) to Angus Ward (Marsh) on around 2 July 2020.

ii. Email from Mark Callahan to Angus Ward and others dated 2 July 2020 with subject line, "BCC on behalf of Tokio Marine" (CSA.0001.0015.0008).

iii. Phone conversation between Toby Guy (CEO of TMMA and Director of TMMA/BCC) and Julian Macey-Dare (Marsh) on around 3 July 2020.

b. repeats paragraphs 6B and 6C of the ASOC and says that the July Marsh Notifications were received by Marsh as agent for Greensill Bank;

c. says that, on 4 August 2020, BCC notified Greensill Bank that:

i. BCC had become aware that Brereton had sought to bind BCC to limits in relation to customers of the Greensill Group in circumstances where the customer limit was in excess of his delegated authority;

ii. as a result, BCC had commenced an investigation in relation to the dealings between the Greensill Group and Brereton;

iii. the investigation would consider the endorsements issued in relation to the Policy as well as all of Brereton's dealings with the Greensill Group in which he had acted outside the scope of his delegated authority;

iv. BCC and the Bond & Credit Company did not admit that they were on risk in relation to the documents under investigation; and

v. BCC would be in a position to inform the Greensill Group as to its position in relation to the documents under investigation upon the completion of the investigation;

Particulars

i. Letter from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 4 August 2020 (CSA.0001.0008.0327) (**4 August 2020 Letter**).

d. says that, by further letters dated 11 and 21 August 2020 (**11 and 21 August 2020 Letters**), BCC notified Greensill Bank that:

i. the investigation was continuing;

ii. BCC and the Bond & Credit Company did not admit that they were on risk in relation to the documents under investigation; and

iii. BCC and the Bond & Credit Company expressly reserved their rights;

Particulars

i. Letters from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 11 August 2020 (but sent on 14 August 2020) regarding Trade Credit Insurance Policy Numbers:

A. TW-06229 and TW-06230 (TMA.0001.0007.2353);

B. TW-06094 and TW-06095 (TMA.0001.0007.2352); and

C. TW-06165 and TW-06166 (TMA.0001.0007.2337).

ii. Letters from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 21 August 2020 regarding Trade Credit Insurance Policy Numbers:

A. TB-05370 and TB-05369 (TMA.0001.0007.2410);

B. TW-05411 and TW-05412 (TMA.0001.0007.2411);

C. TW-05782 and TW-05783 (TMA.0001.0007.2412);

D. TW-06259 and TW-06260 (TMA.0001.0007.2409); and

E. TW-06632 and TW-06633 (TMA.0001.0007.2413).

e. says that, on 28 August 2020, TMMA notified Greensill Bank that:

i. the investigation was continuing; and

ii. TMMA expressly reserved its rights, and specifically, any premium paid or right exercised under any of the documents under investigation was without prejudice to the right to either cancel, avoid, or pursue any other remedies pursuant to those documents once the investigation had been concluded;

Particulars

i. Letter from Mark Callahan to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) and copied to Marsh dated 28 August 2020 (CSA.0001.0015.0006) (**28 August 2020 Letter**).

f. says that, on 1 September 2020, BCC notified Greensill Bank that:

i. the investigation was continuing; and

ii. TMNF and BCC reserved all rights in relation to the documents under investigation, including rights to cancel, avoid, or otherwise pursue remedies pursuant to those documents;

Particulars

i. Letter from Toby Guy to GCPL, GCUK and GBAG (addressed to its director, Markus Nünnerich) dated 1 September 2020 (MMC_GCUK08_00022720) (**1 September 2020 Letter**).

g. says that each of the LCL Notes and LCL Direct Assignments referred to in paragraph 183 of the ASOC were allegedly acquired by Greensill Bank after receipt of:

i. the July Marsh Notifications;

ii. the 4 August 2020 Letter;

iii. the 11 and 21 August 2020 Letters;

iv. the 28 August 2020 Letter; and

v. the 1 September 2020 Letter

(together, the **BCC/TMMA Authority Notifications**);

h. denies that Greensill Bank's acquisition of the LCL Notes and LCL Direct Assignments after receipt of the BCC/TMMA Authority Notifications was in reliance upon the BCC Warranties of Authority or the BCC Authority Representations; and

g. otherwise denies the paragraph.

183. In response to paragraph 184 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 183, 177 and 179 of this Defence;

b. otherwise denies the paragraph; and

c. says further that if BCC breached any BCC Warranties of Authority (which is denied), Greensill Bank has not suffered any loss as:

i. it was not entitled to be indemnified by IAL for the reasons pleaded in paragraphs 172 and 177 of this Defence; and

ii. further or alternatively, the Greensill Group (including Greensill Bank) could not have obtained insurance coverage on the same or similar terms to the Policy from another insurer, had full disclosure been provided to the insurer.

184A. In response to paragraph 184A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 180 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 180 of the ASOC to the extent it occurred on or after 1 July 2019.

Misleading or Deceptive Conduct

184. In response to paragraph 185 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 177 and 179 of this Defence;

b. admits that Marsh included a signature block on each of the instruments to the effect that Mr Brereton was signing (purportedly) on behalf of BCC as authorised representative of IAL;

c. does not know and cannot admit whether Mr Brereton's conduct in signing those documents was understood by Greensill Bank as a representation by BCC that it had authority to enter into the instruments on behalf of IAL; and

d. in the premises, does not know and therefore cannot admit whether the representations alleged was made.

185. In response to paragraph 186 of the ASOC, TMNF:

a. refers to and repeats paragraphs 183 and 184 of this Defence;

b. says that any representation made impliedly by virtue of the signature block on the instruments was a representation that, at the time the document was signed, BCC had authority; and

c. otherwise denies the paragraph.

186. In response to paragraph 187 of the ASOC, TMNF:

a. refers to and repeats paragraphs 184 and 185 of the Defence; and

b. otherwise denies the paragraph;

c. in the alternative, says that if it made the BCC Authority Representations (which is not admitted):

i. admits that the BCC Authority Representations were conduct in relation to a financial service within the meaning of s 1041H of the Corporations Act or in trade or commerce in relation to financial services within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

ii. denies that the BCC Authority Representations were in trade or commerce within the meaning of s 18 of the Australian Consumer Law, by reason of operation of s 131A of the *Competition and Consumer Act 2010* (Cth) (**Competition and Consumer Act**).

187. TMNF denies paragraph 188 of the ASOC.

188. TMNF denies paragraph 189 of the ASOC.

189. TMNF denies paragraph 190 of the ASOC.

190. In response to paragraph 191 of the ASOC, TMNF:

a. repeats paragraph 183 above; and

b. otherwise denies the paragraph.

191. In response to paragraph 192 of the ASOC, TMNF:

a. denies the paragraph; and

b. says further that Greensill Bank could not reasonably have relied on the BCC Authority Representations (if made) in circumstances where it had induced BCC to enter into the relevant instruments by reason of the Prior Misrepresentations and Non-Disclosures.

192. In response to paragraph 193 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 183 and 183 to 191 of this Defence; and

b. otherwise denies the paragraph.

193AA. In further response to paragraphs 185 to 193 of the ASOC, to the extent that Greensill Bank has suffered loss by reason of any alleged contravening conduct by TMNF (which is denied), TMNF says that:

a. the claims are apportionable claims for the purposes of s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the Competition and Consumer Act;

b. Greensill Bank was contributorily negligent because it failed to undertake, or alternatively failed to undertake adequate, investigations and/or due diligence into the transactions referred to in the ASOC;

Particulars

Greensill Bank failed to undertake adequate, investigations and/or due diligence into each of the transactions referred to in the ASOC.

TMNF will seek discovery of the communications between Greensill Bank and the GCPL, GCUK and Lex Greensill in relation to the circumstances in which Greensill Bank acquired notes referrable to the transactions pleaded in the ASOC, related due diligence (if any) undertaken by Greensill Bank, and Greensill Bank's internal controls in relation to the notes they acquired.

c. LCL is a concurrent wrongdoer, as its acts or omissions in not repaying any debts owed by it (if any such debts existed, which is not admitted) to GCUK or to Greensill Bank caused the damage or loss the subject of the claim;

d. GCUK is a concurrent wrongdoer as its acts or omissions in not recovering payments from LCL referred to at subparagraph (b) of this Defence caused the damage or loss the subject of the claim;

e. if (which is denied) Greensill Bank believed that the notes which it acquired as pleaded in the ASOC were supported by insurance cover for the debts underlying the notes:

i. each of Lex Greensill, GCPL and GCUK is a concurrent wrongdoer on the basis that each of them misled Greensill Bank to hold such a belief in breach of a duty to Greensill Bank to exercise reasonable skill and care in his or its dealings with Greensill Bank relating to the notes; and

Particulars

TMNF was not privy to the communications between Greensill Bank and the representatives of GCPL, GCUK and Lex Greensill in relation to insurance cover allegedly obtained for the benefit of Greensill Bank. TMNF will seek discovery of those communications and may provide further particulars thereafter.

ii. each of Lex Greensill, GCPL and GCUK is a concurrent wrongdoer on the basis that he or it misled Greensill Bank by failing to disclose that they had made the Prior Misrepresentations and Non-Disclosures pleaded in Annexure A to this Defence and that it was likely that the insurance purportedly obtained in support of the notes acquitted by Greensill Bank was liable to be avoided accordingly;

e1. if the matters pleaded by GBAG at paragraphs [6B], [6C] and [218] to [277] of its Statement of Claim are established, then:

i. Marsh Pty Ltd is a concurrent wrongdoer for the reasons alleged in those paragraphs;

ii. Marsh Ltd is a concurrent wrongdoer because it:

A. provided the Marsh Broking Services (either together with or through Marsh Pty Ltd);

B. engaged in the same conduct constituting the Marsh Authority Representations (as pleaded at paragraphs [241] to [242]);

C. engaged in the same conduct constituting the Marsh Validity Representations (as pleaded at paragraphs [246] to [247]); and

D. in the premises, is liable to GBAG for the same contraventions and/or tortious conduct as pleaded against Marsh Pty Ltd at [252] to [271]; and

f. in the premises, the liability of TMNF to the Applicants in relation to their claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of TMNF's responsibility for the damage or loss, and the court may give judgment against TMNF for not more than that amount, pursuant to s 1041N of the Corporations Act, s 12GR of the ASIC Act or s 87CD of the Competition and Consumer Act.

193A. In response to paragraph 193A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 185 to 187 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 185 to 187 of the ASOC to the extent it occurred on or after 1 July 2019.

Section 1041E Claim

193. TMNF denies paragraph 194 of the ASOC.

194. TMNF denies paragraph 195 of the ASOC.

195. In response to paragraph 196 of the ASOC, TMNF:

a. says that the allegation is embarrassing as it does not allege each of the elements of a contravention of s 1041E of the Corporations Act; and

b. otherwise denies the paragraph.

196. In response to paragraph 197 of the ASOC, TMNF:

a. refers to and repeats paragraphs 183 and 191 of this Defence; and

b. denies the paragraph.

197. In response to paragraph 198 of the ASOC, TMNF:

a. refers to and repeats paragraphs 65, 183 and 183 to 191 of this Defence; and

b. otherwise denies the paragraph.

198A. In response to paragraph 198A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 194 to 196 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications; and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 194 to 196 of the ASOC to the extent it occurred on or after 1 July 2019.

F3. Claims against Greg Brereton

199-217A. In response to paragraphs 199 to 217A (save for paragraphs 203A, 212A and 217A, which are pleaded to below) of the ASOC, TMNF:

a. refers to and repeats paragraphs 179 to 197 of this Defence;

b. says that, for the reasons pleaded in paragraph 179 of this Defence, if Mr Brereton gave the Brereton Warranties of Authority, he is entitled to avoid or rescind any collateral contract between him and Greensill Bank containing those warranties on the basis he entered into the contract by reason of the Prior Misrepresentations and Non-Disclosures; and

c. otherwise does not know and therefore cannot admit the paragraphs, there being no allegations against TMNF.

203A. In response to paragraph 203A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 199 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications); and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraph 199 of the ASOC to the extent it occurred on or after 1 July 2019.

212A. In response to paragraph 212A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 204 to 206 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications); and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 204 to 206 of the ASOC to the extent it occurred on or after 1 July 2019.

217A. In response to paragraph 217A of the ASOC, TMNF:

a. as to subparagraphs (a) to (d):

i. refers to and repeats paragraph 82 of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 213 to 215 of the ASOC;

i1. denies that Greensill Bank could reasonably be expected to rely on that conduct or did, in fact, rely in good faith on that conduct, from 2 July 2020 onwards, by reason of the BCC/TMMA Authority Notifications); and

ii. otherwise does not know and therefore cannot admit the subparagraph;

a1. as to subparagraph (e), does not plead to the subparagraph, which contains no allegation against it; and

b. as to subparagraph (f), refers to and repeats paragraph 108A of this Defence, which paragraph applies mutatis mutandis to the conduct pleaded in paragraphs 213 to 215 of the ASOC to the extent it occurred on or after 1 July 2019.

F4. Claims against Marsh Limited and Marsh Pty Ltd

217B–277. TMNF does not plead to paragraphs 217B to 277 of the ASOC to the extent those paragraphs make no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against TMNF.

G. Prior Misrepresentations and Non-Disclosures

218. In further answer to the entirety of the claim, TMNF says that if the Policy and relevant endorsements were validly entered into on behalf of IAL by BCC (which is not admitted) then Greensill Bank has not suffered any loss or damage by reason of the matters alleged against TMNF, because, by reason of the Prior Misrepresentations and Non-Disclosures by and on behalf of the insureds alleged in Annexure A:

a. pursuant to cl 15.4 of the Policy or s 28(2) of the ICA, the 2019 90/10 Policies (as defined in paragraph 4 of Annexure A to this Defence) and any endorsements under the policies are liable to be avoided;

b. further or alternatively, pursuant to s 28(3) of the ICA, if the Policy and endorsements are not avoided, any right Greensill Bank has to indemnity is reduced to the amount that would place IAL in the position it would have been had the Prior Misrepresentations and Non-Disclosures not been made, that amount being nil;

c. further or alternatively, pursuant to cl 9.7 of the Policy, Greensill Bank and/or GCPL had failed to comply with its duty of fair presentation and those failures together or separately had a 'Material Policy Impact' such that IAL has no liability to indemnify Greensill Bank for the loss claimed in the proceedings.

Date: 1~~6~~ May ~~2025~~ 2026



Signed by Matt James Andrews
Lawyer for the Fourth Respondent
By his partner, Raylee Joy Hartwell

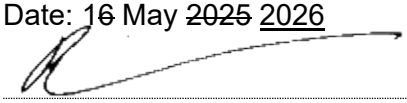
This pleading was prepared by Peter Braham SC, Justin Williams SC, James Hutton, Julie Granger, Jerome Entwisle, Daniel Reynolds, ~~Kellie Dyon~~ Christopher Beshara and Stephen Thomson of counsel.

Certificate of lawyer

I, ~~Matt James Andrews~~ Raylee Joy Hartwell, certify to the Court that, in relation to the defence filed on behalf of the Fourth Respondent, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and
(b) each denial in the pleading; and
(c) each non admission in the pleading.

Date: 1~~6~~ May ~~2025~~ 2026



Signed by Raylee Joy Hartwell as partner of
Matt James Andrews, Lawyer for the Fourth
Respondent

Schedule

No: NSD 175 of 2023

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

Second Applicant	Dr Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Second Respondent	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Third Respondent	Greg Brereton
Fourth Respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)

BCC CROSS-CLAIM

Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent:	Greensill Capital (UK) Ltd
Second Cross-respondent:	Greensill Bank AG
Third Cross-respondent:	Greensill Capital Pty Ltd (In Liquidation)

BCC/TMNF FIRST CROSS-CLAIM

First Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Second Cross-claimant:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
First Cross-respondent:	Marsh Pty Ltd (ACN 004 651 512)
Second Cross-respondent:	Marsh Limited

BCC/TMNF SECOND CROSS-CLAIM

First Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Second Cross-claimant:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

IAL CROSS-CLAIM

Cross-claimant:	Insurance Australia Limited (ACN 000 016 722)
First Cross-respondent:	Marsh Limited
Second Cross-respondent:	Marsh Pty Ltd (ACN 004 651 512)
Third Cross-respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Fourth Cross-respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)