NOTICE OF FILING

Details of Filing

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File Title:	WHITE OAK COMMERCIAL FINANCE EUROPE (NON-LEVERED) LIMITED v INSURANCE AUSTRALIA LIMITED ACN 000 016 722
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

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

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

Form 17 Filed pursuant to Order of Thawley J ~~dated 24 April~~ made on 2 September 2021
Rule 8.05(1)(a)

~~Third~~ Fourth Amended Statement of cross-claim

No. NSD 1039 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

WHITE OAK COMMERCIAL FINANCE EUROPE (NON-LEVERED) LIMITED

Applicant

INSURANCE AUSTRALIA LIMITED and others named in the Schedule

First Respondent

BCC TRADE CREDIT PTY LTD (ACN 608 296 233)

Cross-claimant

GREENSILL CAPITAL (UK) ~~LTD~~ LIMITED (IN ADMINISTRATION) and ~~others~~ another named in the Schedule

First Cross-respondent

PRELIMINARY MATTERS

A. Given the nature of the matters in which issue is joined between the parties, discovery and compulsory disclosure will be sought by the Cross-claimant, BCC Trade Credit Pty Ltd (**BCC**). In addition, BCC continues to investigate the circumstances in which the Policy came to be issued by BCC. Additional issues may come to light as a result of discovery, disclosure and further investigation, in which case an amended statement of cross-claim will be filed at an appropriate future time.

Filed on behalf of (name & role of party) BCC Trade Credit Pty Ltd (ACN 608 296 233), Second Respondent and Cross-claimant
Prepared by (name of person/lawyer) Matt Andrews
Law firm (if applicable) Kennedys (Australasia) Partnership
Tel 02 8215 5999 Fax 02 8215 5988
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Address for service (include state and postcode) L48, 25 Martin Place, Sydney NSW 2000

CLAIMS AGAINST THE CROSS-RESPONDENTS

1. BCC is a company that was duly incorporated according to Australian law and is capable of bringing this cross claim.

Misleading or deceptive conduct

2. As at 22 February 2019, being the date of the issue of Comprehensive Trade Credit Insurance Policy TB-03690 with contract number B0509FINCW1900009 (the **2019 90/10 Parallel Policy**), each of the First~~,~~ and Second ~~and Third~~ Cross-respondents had made the misrepresentations and non-disclosures made prior to this date, as pleaded in Section H of Annexure A to this Amended Statement of Cross-Claim as filed separately in this proceeding on 29 April 2026, pursuant to paragraph 6 of the Court's orders dated 24 April 2026 (the "**Prior Wrongdoing**").

3. At all material times, a reasonable underwriter or agent in the position of BCC:

   a. could be expected to be informed of the Prior Wrongdoing (if those matters existed), because such matters would have been relevant to the decision of the insurer whether to accept the risk, and if so, on what terms, such that s 21 of the *Insurance Contracts Act 1984* (Cth) required the First~~,~~ and Second ~~and Third~~ Cross-respondents to disclose such matters; and

   b. would have assumed, if it was not so informed, that no such matters as the Prior Wrongdoing were known by the First~~,~~ and Second ~~and Third~~ Cross-respondents or their agents to exist.

4. As at 22 February 2019, none of the First~~,~~ and Second ~~and Third~~ Cross-respondents had disclosed the Prior Wrongdoing to BCC (the "**Moral Hazard Non-Disclosure**").

5. In the premises, the Moral Hazard Non-Disclosure:

   a. conveyed a representation that no such matters as the Prior Wrongdoing were known by the First~~,~~ and Second ~~and Third~~ Cross-respondents or their agents to exist; and

   b. was thereby misleading or deceptive, or likely to mislead or deceive.

~~6. Further, each of the customer endorsements referred to in paragraph 46 of the Fourth Amended Statement of Claim in these proceedings (**ASOC**) was submitted in draft by Marsh Ltd and/or Marsh Australia Limited (collectively, **Marsh**), acting on behalf of the Third Cross-respondent and the Second Cross-respondent (and the First Cross-~~

respondent to the extent that a corresponding customer endorsement was being proposed for Comprehensive Trade Credit Insurance Policy TB-03691 with contract number B0509FINCW1900011 (the **2019 90/10 Master Policy**)), to Greg Brereton (**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.001.00113460, TOK.001.00113491, TOK.001.00107372, TOK.001.00107373, TOK.001.00107377, TOK.001.00096093, TOK.001.00096116, TOK.001.00087854, TOK.001.00087855, TMDR.0000002009, TMDR.0000002009.0003, TMDR.0000002009.0005, TMDR.0000002009.0009, TMDR.0000002009.0011, TMDR.0000002009.0015, TMDR.0000002007, TMDR.0000002007.0004, TOK.001.00076472, TOK.001.00076474, TOK.001.00072322, TOK.001.00072323.

7. By each such submission of a proposed customer endorsement (with the exception of Endorsement No. 19), Marsh, on behalf of the First, Second and Third Cross-respondents, represented that each customer referred to in the draft customer endorsement was, or was about to become, or was reasonably expected by the Cross-respondents to become, a customer of Liberty Commodities Limited (UK) (LCL) (**the LCL Customer Representations**).

8. Generally each covering email sent by Marsh on behalf of the Cross-respondents attaching a proposed customer endorsement (including but not limited to the customer endorsements pleaded at paragraph 46 of the ASOC) also included a statement to the effect that the First, Second and Third Cross-respondents had confirmed that the customer in question had "NKORL", meaning "no known or reported losses".

9. On 15 January 2019, the First, Second and Third Cross-respondents represented to BCC that before:

   a. approving a funding limit for any customer of a client (or any increase in funding limit for such a customer); and

   b. requesting insurance limits from BCC for the customer (or any increased insurance limits for the customer) based on approved funding limits,

it was a requirement and the practice of the First, Second and Third Cross-respondents to conduct a credit review of the customer, including a review of the customer's trading history with the client.

Particulars

Email from Craig Pinnington on behalf of the First, Second and Third Cross-respondents to Greg Brereton on behalf of BCC and others dated 15 January 2019, and its attachments.

10. At no time between 15 January 2019 and the date of submission to BCC of each of the proposed customer endorsements pleaded in paragraph 6 above did any of the First, Second or Third Cross-respondents retract, withdraw or otherwise qualify the representation pleaded in paragraph 9 above.

10A. The 2019 90/10 Master Policy was issued on or about 22 February 2019. At no time prior to 22 February 2019 did any of the First, Second or Third Cross-respondents rectify the Moral Hazard Non-Disclosure by disclosing the Prior Wrongdoing to BCC, or retract, withdraw or otherwise qualify the LCL Customer Representations, the representation pleaded in paragraph 8 above which was made by Marsh on behalf of the First, Second and Third Cross-respondents or the representation pleaded in paragraph 9 above.

11. By reason of the matters pleaded in paragraphs 6 to 10A above, upon the submission to BCC of each of the proposed customer endorsements pleaded in paragraph 6 above, Marsh, on behalf of the First, Second and Third Cross-respondents, represented to BCC (the **LCL Customer History Representations**):

a. that to the best of the knowledge of the First, Second and Third Cross-respondents, the customer had a trading history with LCL;

b. that a credit review had been performed on the proposed customer, including its trading history with LCL, and that that the approved funding limit for the customer was based on that review; and

c. that the First, Second and Third Cross-respondents had in fact reviewed the customer's trading history with LCL in a manner that was sufficient to provide a reasonable basis for it to confirm that that trading history did not include any defaults by the relevant customer.

12. At all material times in relation to each entity referred to in a draft customer endorsement submitted to BCC as pleaded in paragraph 6 above:

~~a. the entity was not a customer of LCL, nor was it about to become, or reasonably expected by the First, Second and Third Cross-respondents to become, a customer of LCL;~~

~~b. none of the First, Second and Third Cross-respondents had performed a credit review of the entity which included a review of the entity's trading history with LCL sufficient to provide a reasonable basis for the funding limit assigned or the insurance limit requested for the entity; and~~

~~c. either:~~

~~i. none of the First, Second and Third Cross-respondents had reviewed the entity's trading history with LCL in a manner that was sufficient to provide a reasonable basis for it to confirm that that trading history did not include any defaults by the relevant customer; or, alternatively,~~

~~ii. the First, Second and/or Third Cross-respondents had reviewed the customer's trading history and therefore were aware that the customer had no trading history with LCL, and that there was no reasonable basis to confirm that that trading history did not include any defaults by the relevant customer.~~

~~13. In the premises, the LCL Customer Representations and LCL Customer History Representations were misleading or deceptive, or likely to mislead or deceive.~~

14. The conduct of the First~~,~~ and Second ~~and Third~~ Cross-respondents in making the Moral Hazard Non-Disclosure ~~and the LCL Customer Representations and LCL Customer History Representations~~ was conduct:

a. in relation to a financial service within the meaning of s 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**);

b. in trade or commerce within the meaning of s 18 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **ACL**); or

c. in trade or commerce and in relation to financial services within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

d. in this jurisdiction within the meaning of s 5 of the *Corporations Act* and s 5 of the *ASIC Act* and within Australia for the purposes of the ACL.

15. By making the Moral Hazard Non-Disclosure, ~~the LCL Customer Representations and the LCL Customer History Representations,~~ the First~~,~~ and Second ~~and Third~~ Cross-respondents each engaged in conduct in contravention of s 1041H of the Corporations Act, s 18 of the ACL and s 12DA of the ASIC Act.

16. Had the Prior Wrongdoing, or any material part of it, been disclosed to BCC at or about 4-6 (in the case of the 2019 90/10 Master Policy) or 13 March 2019 (in the case of the 2019 90/10 Parallel Policy), then BCC would not have executed or issued the 2019 90/10 Master Policy and 2019 90/10 Parallel Policy as corporate authorised representative of IAL.

~~17. Had BCC been aware, at or about the time of each customer endorsement, that:~~

~~a. the customer was not, and was not expected by LCL or the Cross-respondents to be, a customer of LCL, or;~~

~~b. the Cross-respondents had not reviewed the trading history of the customer with LCL, or alternatively were aware that there was no such trading history~~

~~then BCC would not have executed and issued the customer endorsement to which it related.~~

18. If BCC is liable to the Applicant by reason of the matters pleaded in the Amended Statement of Claim in this proceeding (**SOC**)[1] relying on BCC's execution or issuance of the 2019 90/10 Parallel Policy and the customer endorsements for the LCL facility, that liability and any associated costs and expenses will constitute loss or damage suffered because of the contravening conduct of the First~~,~~ and Second ~~and Third~~ Cross-respondents pleaded above.

19. Accordingly, BCC is entitled by action under s 236 of the ACL, s 1041I of the *Corporations Act*, and/or s 12GF of the *ASIC Act*, to recover from the First~~,~~ and Second ~~and Third~~ Cross-respondents any amount it is ordered to pay the Applicant in these proceedings, and any associated costs and expenses.

Deceit

20. At the time of the Moral Hazard Non-Disclosure, the First~~,~~ and Second ~~and Third~~ Cross-respondents knew that the matters not disclosed were required to be disclosed to BCC as

[1] For the avoidance of doubt, references to the allegations in other pleadings in this Statement of Cross-claim include references to those pleadings as subsequently amended from time to time, as the case may be.

corporate authorised representative of IAL or, in the alternative, were reckless as to whether such matters were required to be disclosed to BCC.

21. At all material times, the First~~,~~ and Second ~~and Third~~ Cross-respondents knew and intended that BCC would act in reliance on the completeness of the disclosures made by them in entering into the 2019 90/10 Master Policy and 2019 90/10 Parallel Policy as corporate authorised representative of IAL.

22. In the premises, the First~~,~~ and Second ~~and Third~~ Cross-respondents are liable to pay BCC damages in an amount equal to the total amount (if any) that BCC is held liable to pay the Applicant in these proceedings, and any associated costs and expenses.

Date: ~~1 May~~ 2 September 2026

Signed by Matt James Andrews
Lawyer for the Cross-claimant
~~By his partner, Raylee Joy Hartwell~~

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

Certificate of lawyer

I, ~~Raylee Joy Hartwell~~ Matt James Andrews, certify to the Court that, in relation to the Amended Statement of Cross-Claim filed on behalf of the Cross-claimant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~1 May~~ 2 September 2026

Signed by ~~Raylee Joy Hartwell as partner of~~
Matt James Andrews, Lawyer for the Cross-claimant

Schedule

No. NSD 1039 of 2021

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

Respondents

Second Respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Third Respondent:	Greg Brereton
Fourth Respondent:	Greensill Bank AG
Fifth Respondent:	Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG
Sixth Respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Seventh Respondent:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)

~~**GREENSILL BANK CROSS-CLAIM**~~

~~First Cross-claimant:~~	~~Greensill Bank AG~~
~~Second Cross-claimant:~~	~~Dr Michael C. Frege in his capacity as Insolvency Administrator of Greensill Bank AG~~

~~Cross-respondent:~~	~~Insurance Australia Limited (ACN 000 016 722)~~

BCC CROSS-CLAIM

Cross-claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent	Greensill Capital (UK) Limited <u>(In Administration)</u>
~~Second Cross-respondent:~~	~~Greensill Bank AG~~
~~Third~~ <u>Second</u> Cross-respondent:	Greensill Capital Pty Limited (In Liquidation) (ACN 154 088 132)

BCC/TMNF/TMMA 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)
Third Cross-claimant:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Cross-respondent:	Insurance Australia Limited (ACN 000 016 722)

IAL CROSS-CLAIM

Cross-claimant:	Insurance Australia Limited (ACN 000 016 722)
First Cross-respondent:	Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Second Cross-respondent:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Third Cross-respondent:	BCC Trade Credit Pty Ltd (ACN 608 296 233)