Party: Applicant
Witness: Paul David Copley
Statement No: 1
Exhibit: "PDC1"
Date: 29 January 2015

No. 7942 of 2008

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

WITNESS STATEMENT OF

PAUL DAVID COPLEY

I, **Paul David Copley** of PricewaterhouseCoopers LLP ("**PwC**") of 7 More London Riverside, London, SE1 2RT say as follows:

1. I am a partner in the firm of PwC of the above address and am one of the joint administrators (the "**Joint Administrators**") of Lehman Brothers International (Europe) (in administration) ("**LBIE**").

2. I make this statement in relation to the application for directions issued on 12 June 2014 on behalf of the Joint Administrators pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 (the "**Application**") and further to paragraph 4 of the Order of the Honourable Mr Justice David Richards dated 21 November 2014 (the "**November Directions Order**").

3. There is now produced and shown to me marked "**PDC1**" a paginated bundle of documents and correspondence, to which I shall refer. Save where otherwise stated, page references in this statement are to the contents of this exhibit. References to a "Rule" are to a provision of the Insolvency Rules 1986. Unless otherwise defined, capitalised terms have

the meaning given to them in the Application or, to the extent not defined in the Application, the meaning given to them in the Lomas Witness Statements (as defined in paragraph 5 below).

4. Save where otherwise stated, this witness statement is made from facts and matters that are within my own knowledge. Nothing that I say in this witness statement is intended to be a waiver of any privilege to which LBIE and/or the Joint Administrators are entitled and no such privilege is waived.

5. Certain background and further evidence relevant to the Application is set out in the ninth, tenth and eleventh witness statements of Anthony Lomas dated 11 June 2014 ("**Lomas 9**"), 25 July 2014 ("**Lomas 10**") and 31 October 2014 ("**Lomas 11**") respectively (together, the "**Lomas Witness Statements**"). In this witness statement, I address specifically the statements referred to and attributed to me in the Respondents' evidence concerning Currency Conversion Claims. I do not repeat in this witness statement the matters already set out in the Lomas Witness Statements. In particular, I do not address the issue of Statutory Interest and the amendment of the CDDs expressly to preserve a creditor's right thereto, which topics are addressed in detail in Section E of Lomas 10, the contents of which I agree with.

6. I have also read each of the Respondents' position papers and further evidence, including paragraph 34(2) of the Senior Creditor Group's Position Paper, in which the Senior Creditor Group set out their own assertions as to the relevant factual matrix for the purposes of question 34 of the Application.

(A) CONTENT AND PURPOSE OF THE WITNESS STATEMENT

7. In making this witness statement, I draw on my own involvement in, and management of, Project Canada, as well as on information provided to me by the wider LBIE and PwC teams working on the Administration and through discussions with Mr Lomas.

8. Following the filing of Lomas 10 on 25 July 2014, I understand that there has been a debate between the Senior Creditor Group and Wentworth in respect of a request from the Senior Creditor Group that I should file evidence in relation to statements I made regarding the intended impact of releases contained in the CDDs on creditors' claims for Statutory Interest and Currency Conversion Claims (relevant to questions 34 to 36 of the Application).

9. On 31 October 2014, the Senior Creditor Group filed the first witness statement of Andrea Zambelli dated 31 October 2014 ("**Zambelli 1**"), the purpose of which, it is said, is to supplement the evidence given in Lomas 9 and Lomas 10 with respect to the effect of the release language in the CDDs on Currency Conversion Claims.

10. At the Case Management Conference on 21 November 2014, directions were given in relation to the filing of further evidence by the Joint Administrators and I make this witness statement in accordance with paragraph 4 of that Order.

11. I structure the remainder of this witness statement as follows:

(B) **Background**: In section B, I describe my role from the early stages of the Administration through to my subsequent involvement in Project Canada and the development of the CDDs;

(C) **Currency Conversion Claims**: In section C, I explain my recollection of how the issue of Currency Conversion Claims first arose and the Joint Administrators' response to this issue as it evolved, including:

(i) the rationale for my decision not to amend the CDD templates in the summer of 2013;

(ii) why amendments were ultimately made to the CDD templates expressly to preserve Currency Conversion Claims and the process of finalising the CCC Language (as set out in paragraph 78 of Lomas 10); and

(iii) what I recall having been communicated to creditors at the time in this regard; and

(D) **Zambelli 1**: In section D, I comment upon Zambelli 1, in so far as such matters are not already addressed in the remainder of this witness statement.

(B) BACKGROUND

12. As noted in paragraph 6 of Lomas 10, the Joint Administrators have, as a result of the size and complexity of the Administration, allocated amongst themselves the day-to-day management of the various areas of the Administration. The allocation of responsibilities among the Joint Administrators has evolved throughout the duration of the Administration, with primary responsibility for different activities being allocated to individual Joint Administrators. In turn, the Joint Administrators have delegated certain activities to members of the PwC and LBIE teams engaged on the Administration. These activities are performed for and on behalf of the Joint Administrators and are carried out under the Joint Administrators' oversight. Whilst substantive policy decisions would be matters for determination by the Joint Administrators acting collectively or by Mr Lomas, as the lead Joint Administrator with oversight of all workstreams, the delegation of responsibility, both to individual Joint Administrators and to members of the PwC and LBIE teams, facilitated the day-to-day management of the Administration.

13. I worked full time on the Administration from the Date of Administration until August 2014. From the Date of Administration, my responsibilities progressively increased such that, for the majority of the period up until the end of December 2013, I was responsible for workstreams relating to the management and winding down of LBIE's securities portfolio and the negotiation of settlements with debtors across LBIE's portfolios of derivatives, repo financing and stock lending transactions, prime brokerage positions and failed securities trades, initially reporting to Steven Pearson and later directly to Mr Lomas.

14. I became a partner in PwC in July 2009 and, from June 2010, I was charged with managing the development and implementation of Project Canada, reporting directly to Mr Lomas. I was appointed as a Joint Administrator of LBIE on 2 November 2011 and, from that date until 31 December 2013, had primary Joint Administrator responsibility for, *inter alia*, the agreement of creditors' claims, including under Project Canada.

15. From January 2014 onwards, my role in the Administration has been focused on negotiations (but not the current Court proceedings) with creditors regarding the allocation of the surplus, the wind down of LBIE's securities portfolio, the resolution of issues relating to certain debtors and creditors, the wind-down of LBIE's Seoul Branch and, alongside other Joint Administrators, the oversight of various administration reporting processes.

(C) CURRENCY CONVERSION CLAIMS

16. The issue that has arisen regarding Currency Conversion Claims and how such claims have since been addressed in the context of the CDDs is summarised in Section F of Lomas 10. I do not, therefore, repeat in this witness statement all of the relevant background to this issue.

Currency Conversion Claims and my initial response thereto

17. Most creditors' claims are in currencies other than sterling and, since the Date of Administration, most of those other currencies have at various times strengthened against sterling. Unsecured claims are admitted in LBIE's estate in sterling using the exchange rate as at the Date of Administration. Creditors often argued for an exchange rate that would be more favourable to them, i.e. one that was more recent than the rate as at the Date of Administration. So far as I am aware, whenever this was raised by creditors, they were told that such conversion was a requirement of the UK statutory administration regime.

18. It was not until 12 April 2013, with the publication of the Joint Administrators' ninth Progress Report, for the period from 15 September

2012 to 14 March 2013, a copy of which is at pages 1 to 48 of PDC1, that the Joint Administrators provided illustrative outcome estimates indicating a potential surplus (see page 11 of PDC1). However, my recollection is that, prior to that date, creditors had been speculating for some time that there was likely to be a surplus in the Administration.

19. The Waterfall I Application (as defined in paragraph 74 of Lomas 10) was issued on 14 February 2013. I was first aware of the concept of a non-provable claim existing in respect of exchange rate losses after it was raised by Elliott Management Corporation ("**Elliott**"), which I understand was in early March 2013. To the best of my knowledge, prior to the issue being raised by Elliott, the concept of such a non-provable claim had neither been considered by the Joint Administrators, nor had it been raised by creditors. Although I was not a Joint Administrator at the time the CDDs were initially developed, I was intimately involved in their development, reporting directly to Mr Lomas. Whilst the Joint Administrators were aware (as I have explained above) of the potential for exchange rate losses after the point in time when an unsecured creditor's claim would be converted into sterling for the purpose of proving (namely the Date of Administration), the notion that a non-provable claim could exist for such loss was simply not considered by the Joint Administrators. Neither, to the best of my knowledge, was it raised by any creditor as a possibility before the existence of a surplus was considered likely (and had not been contemplated by the Joint Administrators, nor by me, at the time that the CDDs were originally drafted in late 2010).

20. As explained in paragraph 74 of Lomas 10, Lydian Overseas Partners Master Fund Limited ("**Lydian**") (a fund controlled by Elliott) was joined to the Waterfall I Application on 27 March 2013 and argued for the existence of Currency Conversion Claims and their priority ranking behind Statutory Interest and ahead of the subordinated debt, it being an issue that Elliott had raised with the Joint Administrators and which, having been raised, seemed to the Joint Administrators appropriate to be determined in that application. The Waterfall I Application was therefore

amended to include this issue as one for determination by the Court. At that point in time, CDDs did not contain any express reference to Currency Conversion Claims.

21. Following the joinder of Lydian, certain creditors began to raise queries, when speaking with me and other members of my team who were dealing with creditor claims, as to the possible existence of Currency Conversion Claims and, latterly, the impact, if any, of the Release Clause thereon. It was in the context of such discussions that, from mid-2013, certain creditors first enquired as to whether the Joint Administrators would be willing expressly to preserve creditors' rights in respect of Currency Conversion Claims in the CDDs. My overriding preference, at that time, was to resist any change to the then standard form CDDs being used in the Administration specifically to reference such claims, in light of the fact that the Joint Administrators wanted to deal with creditors on as consistent a basis as possible and a significant number of CDDs had already been executed. Were Currency Conversion Claims to be valid, permitting such an amendment to the CDDs could potentially create two different groups of creditors, namely those creditors who had signed a CDD with the Release Clause in its original form and those whose CDD contained an express reservation in respect of Currency Conversion Claims. Accordingly, I initially refused to make any such amendments to the CDDs. However, I had no ability to compel a creditor to sign a CDD without such amendment and stated this to creditors when asked, noting that creditors should take their own legal advice as to the effect (if any) of the Release Clause on such claims.

22. During the course of the Administration, I have met regularly and spoken on the telephone with representatives from a number of significant creditors, including CarVal, Baupost, Elliott, King Street, DK and York (each of which is defined in either paragraphs 16 or 21 of Lomas 9), to answer their questions regarding the progress of the Administration, where it was appropriate to do so. By July 2013, creditors were very focused on the potential size of the surplus and on the status and value of the subordinated debt, which remained subject to the outcome of the

Waterfall I Application. I discussed a wide range of issues with creditors in these meetings, including the issue of Currency Conversion Claims.

23. I did not take notes at such meetings as they were generally informal updates but, where I was asked my view, I remember informing creditors that I did not know whether or not Currency Conversion Claims existed and, if they did exist (which I initially doubted), whether they were waived by virtue of the Release Clause contained in the CDD (not at that stage having taken legal advice on this issue) and that no changes would be made to the CDDs in this regard so as to avoid creating different classes of CDDs.

24. The suggestion that the Release Clause waived Currency Conversion Claims was specifically made on 11 October 2013, at the Pre-Trial Review of the Waterfall I Application (the "**PTR**") by leading counsel for LBHI2. Notwithstanding my initial resistance to the introduction of language to deal with Currency Conversion Claims, following the PTR, given the prominence of the point (and, in particular, the assertion in Court by LBHI2 that Currency Conversion Claims may have been waived by the Release Clause), I took the view that creditors would likely no longer be prepared to sign Admitted Claim CDDs in their existing form until the issue had been resolved. Accordingly, on or shortly after the date of the PTR, I decided to stop signing Admitted Claims CDDs unless there was an express preservation of Currency Conversion Claims (which I instructed our lawyers to draft). I am aware, however, of a limited number of isolated examples where (for specific reasons) Admitted Claims CDDs were signed after the PTR without such preservation language.

25. Shortly after the PTR, I mentioned to various creditors, including CarVal and Baupost, that (subject to obtaining legal advice that supported this course of action), my preference would be to make a publicly-available statement on the section of the PwC website dedicated to the Administration to the effect that it was the Joint Administrators' view that CDDs did not have the effect of releasing Currency Conversion Claims

and that it had not been the intention of the Joint Administrators that creditors waive their right to Currency Conversion Claims. I recall making this comment to a small number of significant creditors on calls and in meetings. In making these comments relating to the Joint Administrators' intentions, I was acknowledging that there could not have been a positive intention, at the time the Release Clause in the template CDDs was originally drafted, specifically to release creditors' rights in relation to Currency Conversion Claims, in circumstances where, so far as I was aware, prior to 2013, the possibility of Currency Conversion Claims being made (or, indeed, existing) had not been considered by the Joint Administrators.

26. Ultimately, following consultation with our legal advisors and with other Joint Administrators, it was decided that it was not appropriate (because the CDDs might have the effect of releasing Currency Conversion Claims) to provide the update on the PwC website that I had previously suggested might be made and I informed certain creditors, including CarVal and Baupost, of that fact.

27. At paragraph 34(2)(d) of the Senior Creditor Group's Position Paper, it is asserted that: "*at no stage did the Administrators indicate that CDDs were intended to release or might have the effect of releasing non-provable claims. In fact, in some cases the Administrators expressly acknowledged to creditors that they did not intend to procure the release of non-provable claims*". To the best of my knowledge, the first assertion, namely that the Joint Administrators did not indicate that the CDDs were intended to release non-provable claims, is accurate. As to the second assertion, that the Joint Administrators at no stage indicated that the CDDs might have the effect of releasing such claims, this is incorrect. I clearly recall informing creditors (once the issue had been raised, as explained above) that it was not clear whether or not such claims were released by virtue of the Release Clause in the CDDs. As regards the assertion contained in the second sentence, although I am not one hundred per cent certain, I do not recall specifically having made such a

statement in relation to non-provable claims in general (i.e. other than Currency Conversion Claims).

28. In my discussions with creditors from mid-2013 onwards (including the discussions that followed the PTR that I have referred to above), I also stated that, had I known (which I did not) about the existence of such claims at the time the Release Clause was drafted to be included in the CDDs in 2010, I would have sought to have them carved out from the effect of the Release Clause if it were necessary to do so in order to preserve them. The reason for my making such a statement was that, had I known at the time the CDDs were drafted that a Currency Conversion Claim would be available as a non-provable claim in the event there was a surplus, I believe that my own preference at that time would have been to carve them out.

Amendment of the CDDs

29. Following the prominence given to this matter at the PTR, it became apparent that an amendment to the CDDs was likely to be necessary. As noted in paragraph 77 of Lomas 10, the ensuing negotiation of the carve-out dealing with Currency Conversion Claims proved to be difficult and lengthy with proposals being put forward for our consideration by various of the law firms acting for creditors involved in this matter. In addition, there was considerable uncertainty within the market as to how such non-provable claims should be defined and dealt with in the CDDs.

30. As a result of the extensive negotiations that took place from the end of October 2013 to February 2014, interim versions of the language dealing with Currency Conversion Claims (the "**CCC Language**") were included in CDDs from 31 October 2013 and, on certain occasions, Agreed Claims CDDs were entered into at the request of creditors (instead of using an Admitted Claims CDD which required the conversion of the creditor's claim into sterling), until the existing form of the CCC Language was approved and the CDD templates updated accordingly in February 2014. I was initially involved in these negotiations, including the

agreement of the interim versions of the CCC Language, but less so in the later stages as primary responsibility for the claims agreement process was transferred to my fellow Joint Administrator, Russell Downs, in January 2014.

(D) ZAMBELLI 1

31. I now turn to address the evidence given by Mr Zambelli, a Managing Director of CarVal, in paragraphs 5 to 8 of Zambelli 1. At paragraph 5 of Zambelli 1, Mr Zambelli cites a series of meetings and calls in August, September and October 2013 which he asserts I attended. Whilst I do not recall precisely what was said at the meetings and/or the conversations to which Mr Zambelli refers at paragraph 5 of Zambelli 1, I have checked in my diary and am able to confirm that I met or spoke with representatives of CarVal on the dates cited. These meetings would have been of the nature that I have described at paragraph 22 of this witness statement. My recollection, as I have explained above, is that Currency Conversion Claims were discussed as part of wider ongoing discussions that I was having with creditors about a range of matters relating to the progress of the Administration.

32. Mr Zambelli asserts at paragraphs 6 – 9 of Zambelli 1 that I stated that:

(i) I, as the Joint Administrator who signed CDDs on behalf of LBIE, did not intend to compromise Currency Conversion Claims;

(ii) I had communicated a similar message to other LBIE creditors, including Michael DeMichele of Baupost Group LLC and Gabriel Schwartz of Davidson Kempner Capital Management LP; and

(iii) I was willing to give evidence in court proceedings to ensure that the CDD provisions were correctly interpreted.

33. Those assertions are accurate. The statements in question were made in the context, and for the reasons, I have explained above in this witness statement.

STATEMENT OF TRUTH

34. I believe that the facts stated in this witness statement are true.

Dated 29 January 2015

Paul David Copley

Party: Applicant
Witness: Paul David Copley
Statement No: 1
Exhibit: "PDC1"
Date: 29 January 2015

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

FIRST WITNESS STATEMENT

OF

PAUL DAVID COPLEY

Linklaters LLP
One Silk Street
London EC2Y 8HQ

Tel: (44-20) 7456 2000
Fax: (44-20) 7456 2222
Solicitors for the Claimant
Ref: Tony Bugg/Euan Clarke/Jared Oyston