

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**Before the Honourable Mr Justice David Richards**

**Friday the 21st day of November 2014**

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

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**BETWEEN**

**(1) ANTHONY VICTOR LOMAS**

**(2) STEVEN ANTHONY PEARSON**

**(3) PAUL DAVID COPLEY**

**(4) RUSSELL DOWNS**

**(5) JULIAN GUY PARR**

**(THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL  
(EUROPE) (IN ADMINISTRATION))**

**Applicants**

**-and-**

**(1) BURLINGTON LOAN MANAGEMENT LIMITED**

**(2) CVI GVF (LUX) MASTER S.À.R.L**

**(3) HUTCHINSON INVESTORS, LLC**

**(4) WENTWORTH SONS SUB-DEBT S.À.R.L**

**(5) YORK GLOBAL FINANCE BDH, LLC**

**Respondents**

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**ORDER**

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**UPON THE APPLICATION** of Anthony Victor Lomas, Steven Anthony Pearson,  
Paul David Copley, Russell Downs and Julian Guy Parr of

PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT ("PwC") (the "**Administrators**") dated 12 June 2014 (the "**Application**")

**AND UPON HEARING** Leading Counsel for the Administrators, Leading Counsel for Burlington Loan Management Limited, CVI GVF (Lux) Master S.A.R.L. and Hutchinson Investors, LLC, (the "**Senior Creditor Group**"), Leading Counsel for Wentworth Sons Sub-Debt S.A.R.L. ("**Wentworth**") and Leading Counsel for York Global Finance BDH, LLC, ("**York**") (the Senior Creditor Group, Wentworth and York, together the "**Respondents**")

**AND UPON READING** the evidence

**IT IS HEREBY ORDERED AND DIRECTED that:**

**PART A: Issues 1 to 8, 28 to 33, 37 and 39**

**Evidence of Fact**

1. The Senior Creditor Group do (if so advised), by 24 December 2014, file and serve on the other parties additional factual evidence in relation to Issues 7 and 8 responding to the Eleventh Witness Statement of Anthony Lomas.

**Trial**

2. The trial of the Application in respect of Issues 1 to 8, 28 to 33, 37 and 39 be fixed to take place in one of the "super courts" in the Rolls Building with a time estimate of 8 days (not including two days' pre-reading on 16 and 17 February 2015) commencing on 18 February 2015.
3. In respect of the trial provided for at paragraph 2 above, the parties shall keep the time estimate under review and inform the Court if, and as soon as, it becomes clear that the time estimate requires adjustment.

**PART B: Issues 9, 34 to 36 and 38**

## **Evidence of Fact**

4. The Administrators do, by 30 January 2015, file and serve on the Respondents additional factual evidence to address the following matters (with the sub-paragraph 4.1 topics and sub-paragraph 4.2 topics to be addressed in separate witness statements):
  - 4.1. Insofar as relevant and admissible to the issues of construction in dispute in Issues 34 and 35: (a) the circumstances surrounding the entry into the Post-Administration Contracts referred to in Issues 34 and 35 (to the extent not already addressed by the Administrators in evidence); and (b) any other matters that the Administrators consider may be relevant; and
  - 4.2. The following three topics:
    - a) The intentions (if any) that the Joint Administrators had in relation to the effect of those Post-Administration Contracts on any Currency Conversion Claim and any claim to Statutory Interest;
    - b) The statements referred to in the Respondents' evidence as having been made by or attributed to the Administrators; and
    - c) Any other matters that the Administrators consider may be relevant to the Court's consideration of Issue 36.

The evidence given pursuant to this paragraph is to include a witness statement or witness statements from Mr Copley addressing those matters referred to in sub-paragraphs 4.2(a) and (b) and, to the extent that he has any evidence to give on such matters, those matters referred to in sub-paragraphs 4.1 and 4.2(c).

5. The Respondents do (if so advised), by 27 February 2015, file and serve on the Administrators and each other any factual evidence upon which they wish to rely in reply to that served by the other parties on 31 October 2014 and/or by the Administrators pursuant to paragraph 4.1 above.

6. The Administrators do, by 30 January 2015, provide to the Respondents a draft document ("**the draft scenarios paper**") describing realistic and potentially relevant factual scenarios, with the intention of formulating a series of alternative assumed facts on the basis of which:
  - 6.1 the Senior Creditor Group and York may wish to argue as to the proper construction of the relevant releases and/or that releases of Currency Conversion Claims, Statutory Interest claims or other non-provable claims should not be enforced; and
  - 6.2 the Court will be invited to determine Issues 34 and 35 (and 36, subject to the Court's directions at the case management conference referred to at paragraph 7 below).
7. A further case management conference be fixed for the first available date after the final day of the trial referred to at paragraph 2 above, with a time estimate of half a day, in particular in respect of: (i) the further case management of Issue 34-36; and (ii) the issues identified at paragraph 12 below.

#### **Trial**

8. The trial of the Application in respect of the Issues numbered 9, 34, 35, 38 (and 36, subject to the Court's directions at the case management conference referred to at paragraph 7 above) be fixed to take place in one of the "super courts" in the Rolls Building with a time estimate of 3 to 4 days (not including one day's pre-reading) commencing with a reading day on 18 May 2015.
9. In respect of the trial provided for at paragraph 8 above, the parties shall keep the time estimate under review and inform the Court if, and as soon as, it becomes clear that the time estimate requires adjustment.

#### **PART C: Issues 10 to 27**

#### **Evidence of Fact**

10. The Senior Creditor Group do, by 15 January 2015, file and serve on the Administrators, Wentworth and York evidence explaining the basis or bases upon which they or their affiliates consider that they are entitled to advance, for payment pursuant to Rule 2.88(7) of the Insolvency Rules 1986, actual claims to interest at a rate in excess of the Judgments Act Rate, and providing sufficient particulars to substantiate such claims to interest and assist any experts instructed in due course pursuant to paragraph 12 below in preparing their expert evidence by reference to such real claims.

#### **Expert Evidence: Cost of Funding**

11. The Senior Creditor Group, Wentworth and the Administrators shall use their best endeavours to agree, by 6 February 2015, the areas of expertise in respect of which permission to adduce expert evidence will be sought, the questions to be addressed by the expert witnesses in relation to Issues 11, 12 and 13, and each of the Senior Creditor Group, Wentworth and the Administrators shall (if possible) identify the expert witnesses on whose evidence they seek to rely.
12. At the further case management conference referred to at paragraph 7 above the Court shall consider whether the parties should be permitted to adduce expert evidence and, if so, then (inter alia) in relation to which area or areas of expertise and addressing which questions.

#### **Expert Evidence: Foreign Law**

13. The Senior Creditor Group and Wentworth have permission to adduce and rely upon expert evidence in relation to the applicable principles of:
  - 13.1 New York law for the purposes of Issue 19;
  - 13.2 German law for the purposes of Issues 20 and 21; and
  - 13.3 French law for the purposes of Issues 22 to 26,(each being limited to one expert each per foreign law).

14. The Senior Creditor Group, Wentworth and the Administrators shall use their best endeavours to agree, by 30 January 2015, the questions to be addressed by the experts in relation to Issues 19 to 26.
15. The Senior Creditor Group and Wentworth do, by 30 April 2015, file and serve on the Administrators, York and each other such expert evidence as they have permission under paragraph 13 above, and wish, to rely upon.
16. The Senior Creditor Group, Wentworth and the Administrators do (if so advised), by 25 June 2015, file and serve on York and each other such expert evidence as they wish to rely upon in reply to the expert evidence filed and served under paragraph 15 above.
17. The Senior Creditor Group, Wentworth and (if the Administrators have filed expert evidence pursuant to paragraph 16 above) the Administrators do arrange, meetings, to be held by 2 July 2015, between the expert witnesses referred to at paragraph 13 above, with a view to their producing joint statements of agreed points to be filed and served on the Administrators (if the Administrators have not filed expert evidence pursuant to paragraph 16 above) and York by 23 July 2015.

#### **PART D: Directions for Trial**

##### **Pre-Trial Review**

18. A Pre-Trial Review ("PTR") be listed in respect of the trial provided for at paragraph 2 above on 20 January 2015 with a time estimate of half a day, and a further PTR be listed in respect of the trial provided for at paragraph 8 above on a date falling not less than 4 weeks prior to the commencement of that trial, to be fixed between counsel's clerks and the Listing Office with a time estimate of half a day.
19. Unless the Court orders otherwise, either of the PTRs listed pursuant to paragraph 18 above may be vacated upon receipt of a certificate from all of the parties' solicitors, not less than three days before the PTR, stating that

the parties have agreed an indicative trial timetable and that no further directions are required.

### **Trial Bundles**

20. In respect of each of the trials provided for at paragraphs 2 and 8 above, the parties shall agree the contents of the trial bundles no later than 10 business days prior to the PTR and Linklaters LLP shall produce trial bundles in accordance with the agreed contents to be lodged at Court and sent to all other parties to the Application no later than 5 business days prior to the PTR, so as to be available for use at the PTR.

### **Skeleton Arguments and Authorities**

21. In respect of each of the trials provided for at paragraphs 2 and 8 above:
- 21.1 by 4pm on Monday 2 February 2015 (as regards Part A) and by 4pm on Friday 24 April 2015 (as regards Part B), the Respondents do lodge at Court, and serve on the Administrators and each other, their skeleton arguments;
  - 21.2 by 4pm on Monday 9 February 2015 and by 4pm on Friday 1 May 2015 (as regards Part B), the Administrators do lodge at Court, and serve on the Respondents their skeleton argument;
  - 21.3 by 4pm on Friday 13 February 2015 and by 4pm on Monday 11 May 2015 (as regards Part B), the Respondents shall have liberty to (if so advised) lodge at Court and serve on the other parties any supplemental skeleton arguments. The contents of any such supplemental skeleton arguments shall be limited to arguments in reply to the arguments set out in the skeleton arguments served by the other parties; and
  - 21.4 the parties do use their best endeavours to agree and file, by 4pm on the Thursday before the commencement of the trial, an agreed bundle of authorities and a reading list.

22. The Administrators do provide the administrators of Lehman Brothers Limited ("**LBL**") (the "**LBL Administrators**") with a copy of each skeleton argument within 24 hours of service.
23. Save to the extent necessary for the purposes of making any joinder application as provided for at paragraph 24 below, and save that the LBL Administrators may disclose the skeleton arguments to their solicitors and/or counsel for the purposes of receiving advice, the LBL Administrators do, until such time as they become public documents, treat and keep the skeleton arguments as confidential and do not, without the Parties' written prior consent or the Court's permission:
  - 23.1 disclose or permit the disclosure of any of the skeleton arguments to any other person; or
  - 23.2 copy or permit the copying of any of the skeleton arguments,save and to the extent that disclosure is required by the LBL Administrators by legal duty or to any other third party where this is required by law or regulation.

#### **PART E: General Matters**

##### **LBL Administrators Permission to Apply**

24. The LBL Administrators be given permission to apply to be joined to the Application if, following receipt of the skeleton arguments, they consider that further submissions are required in order to protect the position of the creditors of LBL.

##### **Liberty to apply**

25. Each Party shall have liberty to apply for further directions.



## **Costs**

26. The Administrators' costs of the Application be paid as an expense of LBIE's administration.
27. Save as aforesaid, the parties' costs be costs in the Application.

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