

Party: Second Applicant
Witness: Michael John Andrew Jervis
Statement No: 1
Exhibit: "MJAJ1"
Date: 14 June 2013

Nos. 7942 and 7945 of 2008 and No. 429 of 2009

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

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

IN THE MATTER OF LEHMAN BROTHERS LIMITED (IN
ADMINISTRATION)

IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN
ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986
BETWEEN

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

(2) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS
LIMITED (IN ADMINISTRATION)

(3) THE JOINT ADMINISTRATORS OF LB HOLDINGS
INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)

Applicants

- and -

(1) LEHMAN BROTHERS HOLDINGS, INC

(2) LYDIAN OVERSEAS PARTNERS MASTER FUND LIMITED

Respondents

WITNESS STATEMENT OF

MICHAEL JOHN ANDREW JERVIS

I, **MICHAEL JOHN ANDREW JERVIS** 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 of Lehman Brothers Limited (In Administration) ("**LBL**", and "**the LBL Joint Administrators**").
2. There is now produced and shown to me marked "**MJAJ1**" 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.
3. Save where otherwise stated this witness statement is made from facts and matters that are within my own knowledge. I am duly authorised to make this statement on LBL's behalf.
4. I make this statement in relation to the joint application for directions issued on 14 February 2013, as amended on 27 March 2013 ("**Joint Application**"). Save where otherwise indicated, this witness statement adopts the definitions in the Joint Application.
5. The background to the Joint Application, and to the administrations more generally, is set out in the witness statement of Anthony Victor Lomas dated 14 February 2013 in support of the Joint Application ("**Mr Lomas' Witness Statement**"). I do not repeat in this witness statement the matters already set out in Mr Lomas' Witness Statement.
6. While I understand that the matters raised by the Joint Application are largely questions of law, I make this witness statement in order to assist the Court in determining the issues raised by the Joint Application.

The Acquisition by LBL of a single ordinary share in LBIE

7. LBL was incorporated on 27 April 1965 as H. Hentz & Co Limited. After several changes of name it became Lehman Brothers Limited on 1 August 1990. A copy of a document from Companies House showing its previous names is at **page 1 of "MJAJ1"**.
8. Lehman Brothers International ("**LBIE**") was incorporated as Lehman Brothers International (Europe) Limited on or shortly before 10 September 1990. According to Companies House LBIE was re-registered as an unlimited

company on 21 December 1992. A copy of the Certificate of Incorporation on Change of Name and Re-Registration of a Limited Company as Unlimited is at **page 2 of "MJAJ1"**. Copies of LBIE's Memorandum of Association and Articles of Association at the time of re-registration, and LBIE's application for re-registration are at **pages 3 to 40 of "MJAJ1"**.

9. Immediately after its incorporation, LBIE's shareholders were:

9.1 Martin William Cornish holding one ordinary \$1 share; and

9.2 Shearson Lehman Brothers Holdings Plc (now Lehman Brothers Holdings Plc) ("**Holdings**") holding 59,999,999 ordinary \$1 shares.

A copy of LBIE's first Companies House annual return ("**Annual Return**") certified on 26 April 1991 is at **pages 41 to 50 of "MJAJ1"**.

10. According to LBIE's Annual Return certified on 27 April 1992 ("**1992 Annual Return**"), Mr Cornish remained a shareholder in LBIE until 2 October 1991. Mr Cornish was LBL's Company Secretary from 14 April 1991 to 2 October 1991. I understand from investigations that Mr Cornish was employed as a solicitor within the Lehman Group. Copies of the relevant Annual Return and a list of LBL's officers from Companies House are at **pages 51 to 61 and 62 to 70 respectively of "MJAJ1"**.

11. The 1992 Annual Return shows that on the same day that Mr Cornish resigned as Company Secretary of LBL, his share in LBIE appears to have been transferred to Peter Robert Sherratt. Additionally, according to the list of LBL's officers, on the same day Mr Sherratt was appointed as Company Secretary of LBL and remained in that position until 5 January 2000. Mr Sherratt was employed within Lehman Group from 1986 to 2008 becoming the Chief Legal Officer for Lehman Brothers in Europe and Asia.

12. LBIE's Annual Returns filed at Companies House show that:

12.1 Mr Sherratt remained a shareholder in LBIE until 22 September 1992, shortly before LBIE re-registered as an unlimited company (on 21 December 1992); and

12.2 Between 22 September 1992 and 23 November 1994 Holdings was the sole shareholder of LBIE.

Copies of the relevant Annual Returns are at **pages 71 to 92 of "MJAJ1"**.

13. According to LBIE's Annual Return certified on 9 May 1995, LBL acquired one ordinary \$1 share in LBIE on 23 November 1994. A copy of the relevant Annual Return is at **pages 93 to 104 of "MJAJ1"**. It is apparent from Annual Returns available at Companies House that LBL has only ever held one ordinary share in LBIE. Copies of LBIE's Annual Returns from incorporation to 2008 are at **pages 41 to 275 of "MJAJ1"**.
 14. LBIE's Annual Return declared on 9 May 2007 shows that on 1 November 2006, Holdings transferred 4,098,113,999 US\$1 ordinary shares via LB Holdings Intermediate 1 Limited to LB Holdings Intermediate 2 Limited ("**LBHI2**"). A copy of LBIE's relevant Annual Return is at **pages 249 to 260 of "MJAJ1"**. By 15 September 2008, LBHI2 had a total shareholding in LBIE as follows:
 - 14.1 6,273,113,999 ordinary shares of \$1 each;
 - 14.2 2,000,000 5% redeemable Class A preference shares of \$1000 each; and
 - 14.3 5,100,000 5% redeemable Class B shares of \$1,000 each.
- A copy of LBIE's Annual Return certified on 19 May 2008 is at **pages 261 to 275 of "MJAJ1"**.
15. There is presently a disclosure exercise being undertaken by the Joint Administrators of LBIE which it is anticipated might give rise to documents evidencing why LBIE re-registered as an unlimited company in 1992, and why LBL became a shareholder in LBIE in 1994.
 16. Additionally it is anticipated that interviews will take place shortly with relevant individuals who were involved in these decisions.
 17. According to LBIE's statement of affairs, the issued and called up capital of LBIE on the date it entered administration was \$13.373bn. A copy of the statement of affairs is at **pages 276 to 293 of "MJAJ1"**.
 18. LBIE's Annual Statutory Accounts from 1991 to 2007, show that:
 - 18.1 LBIE had allotted the following fully paid up ordinary \$1 shares:

- 18.1.1 590,000,000 shares by the financial year ending November 1997;
- 18.1.2 830,000,000 shares by the financial years ending November 1998, 1999 and 2000;
- 18.2 During this period LBIE paid the following dividends:
 - 18.2.1 \$130,000,000 in 1997;
 - 18.2.2 \$140,000,000 in 1998;
 - 18.2.3 \$170,000,000 in 1999; and
 - 18.2.4 \$85,000,000 in 2000.
- 18.3 As LBL held only one ordinary \$1 share in LBIE out of a total of 590 million to 830 million \$1 ordinary shares in issue between 1997 and 2000, on any view any dividends paid to LBL would have been very small.

Copies of LBIE's relevant statutory accounts are at **pages 294 to 575 of "MJAJ1"**.

LBL's Role in the Lehman Group

- 19. As set out in Mr Lomas' Witness Statement, LBL was the service company for operations of the global Lehman Brothers Group ("**Lehman Group**") in the UK, Europe and Middle East, holding most of the service contracts and employee contracts for UK companies within the Lehman Group. LBL also maintained IT systems and provided infrastructure support to the UK-regulated group of Lehman Brothers companies ("**UK Regulated Group**"). Furthermore, it was the head lessee for the UK Regulated Group's headquarters at 25 Bank Street London amongst other premises, as well as the Group Paying Agent for UK corporation tax, the Representative Member for the Lehman Group VAT registration, and the "Principal Employer" under the Lehman Brothers Pension Scheme ("**Pension Scheme**").
- 20. LBL was the main employer of staff in the UK, and both:

- 20.1 seconded employees to other companies within the Lehman Group to whom they would be providing services (principally but not exclusively LBIE and Lehman Brothers Europe Limited); and
 - 20.2 retained staff to provide “central” services to the group, such as property, IT and HR.
- 21. LBL incurred the cost of the services set out in paragraphs 19-20 above, and it recovered the costs pursuant to agreements with the beneficiaries of such services. Pursuant to such agreements, prior to LBL's administration:
 - 21.1 Where the services in question were entirely for the benefit of a particular Lehman entity (for example the costs of an employee seconded to a particular Lehman entity), LBL recharged the costs of those services to the receiving entity without a mark-up; and
 - 21.2 The costs of “central” services were recharged to the benefiting entities in proportionate shares with a 10% mark-up.
- 22. The global nature of the business, with highly integrated trading and non-trading relationships across the Lehman Group, has led to a complex series of inter-company positions being outstanding as at the date of administration. From LBL's perspective, most of the inter-company balances due to or from LBL arise from its provision of services and the majority of its liabilities are claims from creditors such as suppliers of goods and services, landlords, employees, and the Pension Scheme. A small number of inter-company balances due to or from LBL relate to the Lehman Group financing arrangements.

Progress of LBL's Administration

- 23. The High Court granted an order on 2 November 2011 to further extend the period of LBL's administration to 30 November 2013.
- 24. The LBL Joint Administrators presently have net realisations of approximately £160 million, which sum is potentially available for distribution to LBL's unsecured creditors. Total realisations may ultimately be in the region of £300 million. One of the issues raised by the Joint Application is whether LBL can prove in LBIE's administration (and LBL's claims against LBIE are explained in further detail below) and receive distributions in respect of its claim in LBIE. If

it can, then this will of course significantly increase the assets available to be distributed to LBL's creditors.

25. LBL currently has no formal legal process for agreeing creditors' claims. However, as stated on the LBL Joint Administrators' website <http://www.pwc.co.uk/business-recovery/administrations/lehman/lbl-in-administration.jhtml> (pages 576 to 578 of "MJAJ1"), the LBL Joint Administrators wish to provide any creditor that wants to submit a claim against LBL with the opportunity to do so, and consequently there is a LBL Statement of Claim form which can be downloaded on the website. Claims received are held on file for future adjudication, and the LBL Joint Administrators are taking steps to ensure supporting information is held in relation to all claims in order that the adjudication may be performed quickly and efficiently at the appropriate time.
26. Current estimated unsecured claims into LBL also remain uncertain but the probable range of unsecured claims is between £480,000,000 and £790,000,000 (which does not include any sums in respect of which LBIE may seek to prove in relation to LBL's potential liability as contributory of LBIE). Preferential claims into LBL are expected to be approximately £1.9 million and the LBL Joint Administrators have commenced payment of agreed preferential claims in instances where the creditors have confirmed personal details and have provided relevant bank information for payments.
27. Creditors of LBL are updated on the progress of the LBL administration through the LBL Joint Administrators' six-monthly progress reports and via the website maintained by the LBL Joint Administrators. The LBL Joint Administrators' Ninth Progress report dated 11 April 2013 for the period 15 September 2012 to 14 March 2013 is at pages 579 to 589 of "MJAJ1". As stated in the report (*inter alia*):
 - 27.1 In the six-month period starting from 15 September 2012, the LBL Joint Administrators achieved agreement of all preferential creditor claims received to date, being 57% of the total expected;
 - 27.2 The LBL Joint Administrators will shortly commence (and indeed have commenced) payment of creditors with preferential unsecured claims (comprising claims for wages and holiday pay);

- 27.3 The LBL Joint Administrators are not in a position to give an estimate of the timing or quantum of any dividend to non-preferential unsecured creditors; and
- 27.4 Progress has been made in relation to a number of inter-company balances.
28. The LBL Joint Administrators are concerned to distribute a meaningful dividend to LBL's creditors as soon as possible but can only do so once there is certainty around what level of reserve, if any, to make for a possible claim by LBIE in relation to LBL's Potential Liability as Contributory.
29. The LBIE Joint Administrators ninth progress report dated 12 April 2013 and covering the period 15 September 2012 to 14 March 2013 ("**Ninth LBIE Report**") states that the potential range of claims that are expected to participate in any distribution is estimated to be between c.£14.2bn and c.£19.1bn, excluding Shareholders' claims and claims for the payment of interest. At 8% per annum simple on the unpaid balance of claims at any one time, from the date that LBIE went into administration (15 September 2008), the total amount of post-administration interest on LBIE's claims is likely to amount to a significant proportion of the total amount of unsecured claims. A copy of the Ninth LBIE Report is at **pages 590 to 635 of "MJAJ1"**.
30. If LBL's Potential Liability as Contributory includes liability for post-administration interest on LBIE's claims, this will result in LBL being able to pay only a very small dividend of perhaps a few pence in the £ to its creditors. If LBL's Potential Liability as Contributory extends to the LBHI2 Subordinated Debt, the dividend LBL will be able to pay to its creditors will be further reduced.
31. In contrast, if LBL is not liable to LBIE for any amount, then it may be able to pay a dividend of more than 30 pence in the £ to its creditors; and potentially more than 50 pence in the £ if its claim against LBIE is admitted and paid.

LBL's claim against LBIE

32. Mr Lomas' Witness Statement refers at paras 19-20 to the notice of distribution issued by the LBIE Joint Administrators on 4 December 2009, and the dividend

of 25.2p in the £ declared by the LBIE Joint Administrators on 26 November 2012 (the **"First LBIE Dividend"**).

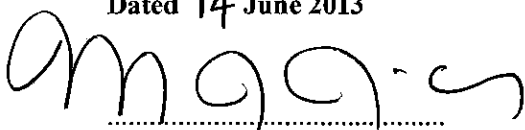
33. The Ninth LBIE Report (**pages 590 to 635 of "MJAJ1"**) says that the First LBIE Dividend amounted to a total of approximately £1.6bn paid to unsecured creditors with admitted claims, and also provides that in order to address claims admitted after 2 November 2011, the LBIE Joint Administrators announced in November 2012 a first "catch-up" dividend, paid on 28 February 2013 (based on claims admitted by 31 January 2013). The Ninth LBIE Report provides that the LBIE Joint Administrators intend to continue to pay catch-up dividends on a regular basis to enable creditors to receive payment of previous interim dividends shortly after having had their claim agreed and admitted.
34. On 8 May 2013, the LBIE Joint Administrators announced that they intend to pay a second interim dividend (and a first preferential dividend) to LBIE's creditors on or around 28 June 2013. A copy of this notice is at **page 636 to 638 of "MJAJ1"**. The LBIE Joint Administrators' update states that the rate for the second interim dividend will be determined immediately prior to its declaration.
35. As set out at para 21 of Mr Lomas' Witness Statement, on 21 December 2011, LBL lodged a proof of debt for £362,673,342.99 in LBIE's administration on the online portal operated by LBIE. A screen print of the LBL claim is at **page 639 to 640 of "MJAJ1"**.
36. The amount for which LBL has proved in LBIE's administration is the inter-company unsecured balance based upon the "Global Close". The Global Close process, which produced a global set of books and records according to the normal monthly accounting process as of the close of business on 12 September 2008, was completed in January 2009 by global finance teams
37. Whilst it is clear that LBL will be a creditor of LBIE, the Global Close balance between LBL and LBIE has not yet been agreed and may be subject to adjustment. LBL's claim against LBIE appears to relate wholly to the provision of services by LBL for LBIE's benefit.

Possible shortfall in LBIE

38. LBIE has not as yet made any claim against LBL (or, so far as I am aware, LBHI2) in respect of LBL's possible liability to LBIE pursuant to s.74 of the Insolvency Act 1986 as a contributory of LBIE.
39. The LBIE Joint Administrators Ninth LBIE Report states that the potential range of House recoveries that could eventually be available for distribution to unsecured creditors is estimated to be between c.£11.7bn and c.£16.5bn and the potential range of claims that are expected to participate in any distribution is estimated to be between c.£14.2bn and c.£19.1bn, excluding Shareholders' claims and claims for the payment of interest. This results in a range of outcomes before payment of shareholder claims and interest between a shortfall of £7.4 billion and a surplus of £2.3 billion. A copy of the latest report is at **pages 590 to 635 of "MJAJ1"**.
40. This is consistent with the current price on offer for unsecured claims in LBIE within the secondary debt trading market for unsecured claims in LBIE. Of two UK based broker/dealers contacted within the last few weeks, both were offering to purchase unsecured claims in LBIE above par, and as at 13 June one was offering to buy and sell unsecured claims in LBIE at 108 and 110 respectively. It is therefore apparent that there is an anticipation in the market that the LBIE Joint Administrators will realise sufficient assets to allow for a surplus, at least before interest and shareholder claims, in the LBIE estate.

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

Dated 14 June 2013

A handwritten signature in black ink, appearing to read 'm j a j', written over a dotted line.

MICHAEL JOHN ANDREW JERVIS