

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**COMPANIES COURT**

Mr Justice Hildyard  
Friday 24 June 2016



**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL  
(EUROPE) (IN ADMINISTRATION)  
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**B E T W E E N :**

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

Applicants

**-and-**

- (1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS  
LIMITED (IN ADMINISTRATION)**
- (2) THE JOINT ADMINISTRATORS OF LB HOLDINGS  
INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)**
- (3) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS  
EUROPE LIMITED (IN ADMINISTRATION)**

Respondents

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**ORDER**

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**UPON THE APPLICATION** of the Applicants (the “**LBIE Administrators**”) by Application Notice dated 22 April 2016 (the “**Waterfall III Application**”)

**AND UPON THE APPLICATION** of the First Respondents (the “**LBL Administrators**”) by Application Notice dated 27 May 2016 (the “**LBL Stay Application**”)

**AND UPON THE APPLICATION** of Lehman Brothers Holdings Inc. (“**LBHI**”) by Application Notice dated 7 June 2016 (the “**LBHI Joinder Application**”)

**AND UPON READING** the evidence

**AND UPON HEARING** William Trower QC, Daniel Bayfield QC and Stephen Robins for the LBIE Administrators, Philip Marshall QC and Ruth den Besten for the LBL

Administrators, Louise Hutton and Rosanna Foskett for the Second Respondents (the “**LBHI2 Administrators**”), Felicity Toubé QC and Georgina Peters for the Third Respondents (the “**LBEL Administrators**”) and Barry Isaacs QC for LBHI

**IT IS ORDERED** that:

Position papers

1. The LBL Administrators shall, by 4.00pm on 30 September 2016, file and serve on the other parties a position paper setting out in detail their position in respect of each of the issues identified in the Waterfall III Application (the “**Waterfall III Issues**”) and the basis upon which they adopt such positions, including references to the principal authorities which they anticipate, at that stage, relying upon at trial.
2. The LBIE Administrators, the LBHI2 Administrators and the LBEL Administrators shall, by 4.00pm on 10 November 2016, file and serve on LBL and each other position papers setting out in detail their respective positions (insofar as they take any position) in respect of each of the Waterfall III Issues and the basis upon which they adopt such positions, including references to the principal authorities which they anticipate, at that stage, relying upon at trial.
3. The LBL Administrators shall, by 4.00pm on 2 December 2016, file and serve on the other parties a position paper in reply to the position papers filed pursuant to paragraph 2 above.

Disclosure

4. Defined terms used in paragraphs 5 to 9 below are taken from the third witness statement of Michael Jervis dated 27 May 2016.
5. There shall be no obligation on any party to make a search for disclosable documents.
6. The LBL Administrators shall provide to the other parties to these proceedings:

- a) access to the Lehman Archive documents that have been searched by LBL as part of the First and Second Level Reviews, which have been assigned unique document reference numbers (“UDRNs”) and are represented in their entirety by;
    - (i) several Nuix Databases containing the electronic documentation received by LBL from the Lehman Archive (“**Nuix Databases**”); and
    - (ii) a separate electronic database representing the physical documents scanned from the Lehman Archive (“**Hard Copy Archive**”)(together with the Nuix Databases “**LBL Lehman Review Documents**”).
  - b) lists of UDRNs of the LBL Lehman Review Documents identified as relevant by the First Level Review within 14 days and, for any documents not yet reviewed in the First Level Review, within 14 days of completion of that review, and in any event by 30 September 2016; and (separately);
  - c) lists of UDRNs of the LBL Lehman Review Documents identified as relevant by the Second Level Review within 14 days and, for any documents not yet reviewed in the Second Level Review, within 14 days of completion of that review, and in any event by 30 September 2016.
7. Subject to paragraph 5 above, the parties shall provide electronic copies in native format of any documents in their control which do not form part of the Lehman Archive and which they have identified as satisfying the test for disclosure in CPR 31.6 by 14 October 2016, with an ongoing obligation thereafter to disclose any further such document within 14 days of it having been so identified.
8. If, for the purpose of these proceedings, any of the parties carries out any further search and/or review of the Lehman Archive (whether in the LBL Lehman Review Documents or otherwise) which produces documents other than those referred to in paragraph 6 above then that party shall provide to the other parties electronic copies in native format of any such documents identified as satisfying the test for disclosure in CPR 31.6, within 14 days of such documents being identified, save that no party shall be required to provide such documents prior to 10 November 2016.

9. Documents shall be disclosed in their original native format. In the case of email data the term “native” will refer to a format in which all of the associated metadata, email header information and email structure is preserved within the electronic file. Extracted text or OCR shall be provided for all documents and should be in the form of one text file per document. A “data exchange file” (or “load file”) containing metadata relating to the documents should accompany the disclosure.

#### Witness statements

10. The parties shall file and serve any witness statements on which they intend to rely at trial of any of the Waterfall III Issues (and any notices of intention to rely on hearsay evidence) by 4.00pm on 16 December 2016.
11. Each of the parties has liberty to file and serve witness statements in reply to the witness statements of the other parties by 4.00pm on 9 January 2017.

#### Pre-trial review

12. A pre-trial review (the “PTR”) shall take place before Mr Justice Hildyard on 16 January 2017 with a time estimate of one day.

#### Trial

13. The trial of the Waterfall III Issues shall take place before Mr Justice Hildyard commencing on 30 January 2017 with a time estimate of 20 days.

#### Trial preparation

14. The parties’ solicitors shall discuss and agree the index for the trial bundle by 4.00pm on 23 December 2016.

15. The LBIE Administrators shall be responsible for preparing the trial bundle and shall file a copy of the trial bundle for the use of the Judge with the Chancery Listing Office by 4.00pm on 12 January 2017. The trial bundle shall be used as the PTR bundle.
16. Skeleton arguments shall be filed and exchanged by 4.30pm on 20 January 2017, and copies of all authorities mentioned in the skeleton arguments shall be provided to the LBIE Administrators' solicitors at the same time. The LBIE Administrators' solicitors shall then prepare a composite bundle of authorities, which shall be lodged at court and served on the other parties by 4.30pm on 24 January 2017.

#### LBL Stay Application

17. There be no order in respect of the LBL Stay Application.

#### LBHI Joinder Application

18. The LBHI Joinder Application is dismissed, such dismissal to be without prejudice to the right of LBHI to make a further application to be joined to the Waterfall III Application after the service of the position papers by the other parties, if there is some particular point of view (not put forward by any other party) which it wishes to put forward.

#### Costs

19. a) The parties' costs be reserved.  
b) There shall be no Order as to the costs of the LBHI Joinder Application.

#### Liberty to Apply

20. The parties shall have liberty to apply in respect of paragraphs 1 to 3 of this Order.

#### **Service of this Order**

The Court has provided a sealed copy of this Order to the serving party:

Linklaters LLP, One Silk Street, London EC2Y 8HQ (ref: Frank Tao; David Bufton)