

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

No. 7942 of 2008



**Before the Honourable Mr Justice David Richards**

**Friday the 9<sup>th</sup> day of October 2015**

**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 TRIAL** of certain of the issues (as more fully particularised below) (“**Tranche A**”) in 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, the administrators of Lehman Brothers International (Europe) (“**LBIE**”) (the “**Administrators**”), dated 12 June 2014 and amended on 13 May 2015 (the “**Application Notice**”)

**AND UPON READING** the written submissions filed on behalf of the Administrators, the First to Third Respondents (the “**Senior Creditor Group**”), the Fourth Respondent (“**Wentworth**”) and the Fifth Respondent (“**York**”)

**AND UPON HEARING** William Trower QC, Daniel Bayfield, Stephen Robins and Alexander Riddiford for the Administrators, Robin Dicker QC, Richard Fisher and Henry Phillips for the Senior Creditor Group, Antony Zacaroli QC, David Allison QC and Adam Al-Attar for Wentworth and Tom Smith QC and Robert Amey for York

**AND UPON** the Judge indicating that it would be appropriate, on the facts of the case, for the Appellants to seek an extension of time from the Court of Appeal for the filing of skeleton arguments

**IT IS HEREBY DECLARED that:**

Issue 1 (paragraph 1 of the Application Notice)

- (i) On the true construction of Rule 2.88(7) of the Insolvency Rules 1986 (the “**Rules**”), interest payable pursuant to that Rule (“**Statutory Interest**”) at the rate provided for by section 17 of the Judgments Act 1838 (the “**Judgments Act Rate**”) accrues on a simple (and not a compound) basis.
- (ii) For the purposes of calculating Statutory Interest at the Judgments Act Rate for any period that falls partly or wholly within a year (such year starting on 15 September) that includes 29 February, the daily rate to be used for calculating Statutory Interest

for that part of the period falling within that year is the Judgments Act Rate divided by 366 days.

Issue 2 (paragraph 2 of the Application Notice)

- (iii) On the true construction of Rule 2.88(7) of the Rules, Statutory Interest is to be calculated on the basis of allocating dividends first to the reduction of the principal (i.e. the proved debt) and then to the payment of accrued Statutory Interest; and is not to be calculated on the basis of notionally allocating dividends first to the payment of accrued Statutory Interest and then in reduction of the principal debt.

Issue 2A (paragraph 39 of the Application Notice)

- (iv) A creditor entitled to Statutory Interest is not entitled to any further interest or damages or any other form of compensation in respect of the time taken for Statutory Interest to be paid.
- (v) If and to the extent that Statutory Interest paid to a creditor on a proved debt under Rule 2.88(7) is less than the amount of interest to which that creditor would otherwise have been entitled in respect of that debt, the creditor does not have a non-provable claim for the difference.
- (vi) If and to the extent that a creditor has a non-provable claim (including but not limited to a Currency Conversion Claim<sup>1</sup>) in respect of a sum on which interest is payable apart from the administration at any time during the period after the Date of Administration (as defined in the Application Notice), the creditor has a non-provable claim in respect of such interest (if any) as may have accrued on that non-provable claim in that period.

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<sup>1</sup> For the purposes of this order, "Currency Conversion Claim" means a claim for an unpaid portion of a debt that arises if: (a) a creditor had a claim enforceable against the company denominated in a foreign currency; (b) that claim is converted into sterling at the prevailing rate as at the date of administration under Rule 2.86; (c) between that date and the date or dates of the dividends, sterling depreciates against the foreign currency, with the result that; (d) the dividends paid to the creditor are, when converted into the foreign currency at the respective dates of payment, in aggregate lower than the claim denominated in the foreign currency.

Issue 3 (paragraph 3 of the Application Notice)

- (vii) The words “*the rate applicable to the debt apart from the administration*” in Rule 2.88(9) of the Rules refer not only to the numerical percentage rate of interest but also to the mode of calculating the rate at which interest accrues on a debt, including the compounding of interest. Consequently, where a creditor has a right to be paid compound interest on a proved debt apart from the administration, the creditor is entitled to compound interest under Rule 2.88 as part of the “*rate applicable to the debt apart from the administration*” (if such compounding rate would give an effective rate of interest greater than the Judgments Act Rate).
- (viii) Where Statutory Interest is payable at a “*rate applicable to the debt apart from the administration*” and such rate is a compounding rate, accrued Statutory Interest does not continue to compound following the payment in full of the principal amount through dividends.
- (ix) A creditor does not have a non-provable claim in respect of interest that would have continued to compound on its proved debt apart from the administration following the payment in full of the principal amount of the proved debt.

Issue 4 (paragraph 4 of the Application Notice)

- (x) The words “*the rate applicable to the debt apart from the administration*” in Rule 2.88(9) of the Rules include a foreign judgment rate of interest applicable to a foreign judgment obtained prior to the Date of Administration but do not include:
  - a. a foreign judgment rate of interest applicable to a foreign judgment obtained after the Date of Administration; or
  - b. a foreign judgment rate of interest which would have become applicable to the debt if the creditor had obtained a foreign judgment (when it did not in fact do so).

Issue 5 (paragraph 5 of the Application Notice)

- (xi) For the purposes of establishing “*whichever is the greater of the rate specified under paragraph (6) and the rate applicable to the debt apart from the administration*” (as required by Rule 2.88(9) of the Rules), the comparison required is of the total amounts of interest that would be payable under Rule 2.88(7) of the Rules based on each method of calculation (including the compounding of interest), rather than only the numerical rates themselves.
- (xii) Where two or more separate provable debts are admitted as a single amount and the “*rate applicable to the debt apart from the administration*” is different in respect of each of those provable debts (or nil in respect of at least one of them), the single admitted amount is to be disaggregated into its constituent provable debts for the purposes of establishing “*whichever is the greater of the rate specified under paragraph (6) and the rate applicable to the debt apart from the administration*” (as required by Rule 2.88(9) of the Rules and the relevant rates of interest are to be applied to each of those constituent provable debts individually.

Issue 6 (paragraph 6 of the Application Notice)

- (xiii) For the purpose of establishing “*whichever is the greater of the rate specified under paragraph (6) and the rate applicable to the debt apart from the administration*” (as required by Rule 2.88(9) of the Rules), the amount of interest to be calculated based on the latter is to be calculated from the Date of Administration.

Issue 7 (paragraph 7 of the Application Notice)

- (xiv) Statutory Interest is payable in respect of an admitted provable debt which was a contingent debt as at the Date of Administration from the Date of Administration.

Issue 8 (paragraph 8 of the Application Notice)

- (xv) Statutory Interest is payable in respect of an admitted provable debt which was a future debt as at the Date of Administration from the Date of Administration.

Issue 9 (paragraph 9 of the Application Notice)

- (xvi) The date from which Statutory Interest is payable in accordance with declarations (xiv) and (xv) above is not affected by a creditor's accession to the Claims Resolution Agreement entered into between LBIE and certain of its creditors.

Issue 10 (paragraph 28 of the Application Notice)

- (xvii) The calculation of a non-provable claim (excluding any non-provable claims to interest (as to which no declaration is made) but including, although not limited to, a Currency Conversion Claim) should not take into account (nor, therefore, be reduced by) the Statutory Interest paid to a relevant creditor.

Paragraph 29 of the Application Notice

- (xviii) Where a creditor with a claim originally denominated in a foreign currency receives Statutory Interest on a Sterling admitted claim at the Judgments Act Rate and such Statutory Interest is less than the amount of interest at the Judgments Act Rate which the creditor would have received on his claim in the original foreign currency, the creditor has no non-provable claim in respect of the difference (without prejudice to any non-provable claim to interest that such creditor may have pursuant to paragraph (vi)).

Paragraph 30 of the Application Notice

- (xix) Where a creditor with a claim originally denominated in a foreign currency receives Statutory Interest on a Sterling admitted claim at the "*rate applicable to the debt apart from the administration*" and such Statutory Interest is less than the amount of

contractual interest which the creditor would have received on his claim in the original foreign currency, the creditor has no non-provable claim for the difference (without prejudice to any non-provable claim to interest that such creditor may have pursuant to paragraph (vi)).

**AND IT IS HEREBY ORDERED that:**

**Costs**

1. The Administrators' costs of and occasioned by Tranche A be paid as an expense of the administration.
2. The Senior Creditor Group's costs of and occasioned by Tranche A be paid as an expense of the administration, such costs to be limited, with respect to solicitors, to such costs as would have been incurred had the Senior Creditor Group retained one firm of solicitors only.
3. Wentworth's costs of and occasioned by Tranche A be paid as an expense of the administration.
4. 30% of York's costs of and occasioned by Tranche A be paid as an expense of the administration.

**Permission to appeal**

5. The Senior Creditor Group has permission to appeal against the declarations recorded in paragraphs (iii), (iv), (v), (viii), (x), (xviii) and (xix) above.
6. Wentworth has permission to appeal against the declarations recorded in paragraphs (vi), (xiv) and (xvii) above.
7. York has permission to appeal against the declarations recorded in paragraphs (iii), (iv), (v), (viii), (x), (xviii) and (xix) above.

8. York may participate in any appeal only to the extent and in the manner directed or permitted by the Court of Appeal.
9. The parties are to file their appellant's notices in respect of any appeals for which permission has been given by 4pm on Friday 13<sup>th</sup> November 2015.

**Service of the order**

The court has provided a sealed copy of this order to the serving party:

Linklaters LLP, One Silk Street, London EC2Y 8HQ (ref: Euan Clarke)