

GCC 41/13

IN THE HIGH COURT OF JUSTICE

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

CHANCERY DIVISION

COMPANIES COURT

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

**AND IN THE MATTER OF LEHMAN BROTHERS LIMITED
(IN ADMINISTRATION)**

**AND 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-

LEHMAN BROTHERS HOLDINGS, INC

Respondent

APPLICATION

TAKE NOTICE that Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell, Paul David Copley and Russell Downs, in their capacity as the joint administrators of Lehman Brothers International (Europe) (in administration) ("LBIE") (the "LBIE Joint Administrators"), Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Derek Anthony Howell and Dan Yoram Schwarzmann, in their capacity as the joint administrators of Lehman Brothers Limited (in administration) ("LBL"), and Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony

Howell, Dan Yoram Schwarzmann and Michael John Andrew Jervis, in their capacity as the joint administrators of LB Holdings Intermediate 2 Limited (in administration) (“LBHI2”), (together the “Joint Administrators”), all of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, intend to apply to the Judge on:-

Date: 1 March 2013
Time: 10:00 am
Place: TBC Court, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL

For directions pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 (the “Act”) determining as the issues set out below:

1. Are the members of LBIE (being LBHI2 and LBL) (together the “Members”) entitled to prove in LBIE’s administration in respect of sums owed by LBIE to the Members (other than in respect of sums owed to LBHI2 pursuant to three subordinated loan agreements entered into on 1 November 2006 between LBHI2 (as lender) and LBIE (as borrower) (the “LBHI2 Subordinated Debt”) notwithstanding that LBIE is an unlimited company and, in the event of LBIE being wound up, one or both of the Members may be called upon to contribute, pursuant to Section 74 of the Act, to LBIE’s assets an amount sufficient for payment of LBIE’s debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories amongst themselves (hereinafter defined in respect of each member as the “Potential Liability as Contributory”)? In particular, what (if any) is the effect of Section 74(2)(f) of the Act on each of the Members’ Potential Liability as Contributory?
2. If LBIE were wound-up, would the Members be entitled to prove in LBIE’s liquidation in respect of sums owed by LBIE to the Members (other than in respect of the LBHI2 Subordinated Debt). In particular, to what extent would the Members’ ability to prove in a winding-up of LBIE be affected by: (i) each of the Members’ Potential Liability as Contributory; and (ii) Section 74(2)(f) of the Act?
3. Is LBHI2 entitled to prove in LBIE’s administration, or would LBHI2 be entitled to prove in any subsequent liquidation of LBIE, in respect of the LBHI2 Subordinated Debt notwithstanding: (i) the terms of the LBHI2 Subordinated Debt; and (ii) LBHI2’s Potential Liability as Contributory? What (if any) is the effect of Section 74(2)(f) of the Act?

4. In the case of each of paragraphs 1 to 3 above, to the extent that there is an entitlement to prove, in so proving, is credit required to be given or is any deduction to be made in respect of each of the Members' Potential Liability as Contributory either: (i) by way of insolvency set-off (set out in rules 2.85 and 4.90 of the Insolvency Rules 1986 (the "Rules") as applicable); and/or (ii) pursuant to the rule in *Cherry v Boulton* 41 ER 171; and/or (iii) otherwise?
5. Is LBIE entitled to prove in the administrations (or would LBIE be entitled to prove in any subsequent liquidations) of the Members in respect of each of the Members' Potential Liability as Contributory?
6. If LBIE is entitled to prove in the Members' administrations (or any subsequent liquidations) as described in paragraph 5 above, what effect (if any) does:
 - 6.1 insolvency set-off have on the LBHI2 Subordinated Debt?
 - 6.2 insolvency set-off have on the Members' respective non-subordinated debt claims?
 - 6.3 the rule in *Cherry v Boulton* have on the LBHI2 Subordinated Debt?
 - 6.4 the rule in *Cherry v Boulton* have on the Members' respective non-subordinated debt claims?
 - 6.5 any other relevant form of set-off or deduction have on:
 - (a) the LBHI2 Subordinated Debt; and/or
 - (b) the Members' respective non-subordinated debt claims?
7. What (if any) is the effect of Section 149 of the Act on:
 - 7.1 any proof submitted by either of the Members in LBIE's administration or (if LBIE were wound-up) liquidation?
 - 7.2 any proof submitted by LBIE in either of the Member's respective administrations or (if either of the Members were wound-up) liquidations?
8. To the extent that LBIE is entitled to prove in respect of it, or it is required to be brought into the account on any proof which either of the Members is entitled to file in LBIE's administration or a subsequent liquidation, in circumstances in which each Member's Potential Liability as Contributory is contingent, is that Member's Potential Liability as Contributory capable of being ascertained and quantified and, if so, how should the quantum of that Member's Potential Liability as Contributory be quantified?

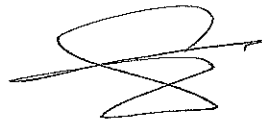
9. Whether, and in what circumstances each of the Member's Potential Liability as Contributory extends to contributing to LBIE's assets an amount sufficient for payment of:
- (a) interest provable and/or payable pursuant to Rule 2.88 of the Rules on the principal of the debts and liabilities owed to LBIE's creditors by LBIE; and/or
 - (b) the LBHI2 Subordinated Debt.
10. In the event that the Members are obliged to contribute to the assets of LBIE pursuant to Section 74 of the Act, and in light of the fact that LBL owns one ordinary share of \$1 in LBIE, and LBHI2 owns 2 million 5% redeemable Class A preference shares of \$1000 each, 5.1 million 5% redeemable Class B shares of \$1000 each and 6,273,113,999 ordinary shares of \$1 each in LBIE:
- (a) whether their obligations are joint, several or otherwise as against LBIE;
 - (b) whether they are entitled to seek a contribution or indemnity from one another in respect of any payments made pursuant to any such obligation and, if so, the nature and extent of such right of contribution or indemnity;
 - (c) to what extent any right to contribution or indemnity as referred to in sub-paragraph (b) above is affected by any other claims which LBHI2 and LBL have against one another.
11. In the event that there are sufficient funds in LBIE's administration to permit the LBIE Joint Administrators to make payment in full to LBIE's general, unsecured creditors in respect of the principal of the debts and liabilities owed to them by LBIE, in what order would the LBIE Joint Administrators be required to apply any surplus in discharging the following:
- (a) interest payable on such debts and liabilities in respect of the periods during which they have been outstanding since LBIE entered administration pursuant to Rule 2.88(7) of the Rules;
 - (b) to the extent that the Members have been unable to prove in respect of them, debts owed by LBIE to the Members (other than in respect of the LBHI2 Subordinated Debt); and
 - (c) to the extent that LBHI2 has been unable to prove in respect of it, the LBHI2 Subordinated Debt.

And for an Order that the Joint Administrators' costs of this Application be paid as an expense of their respective administrations;

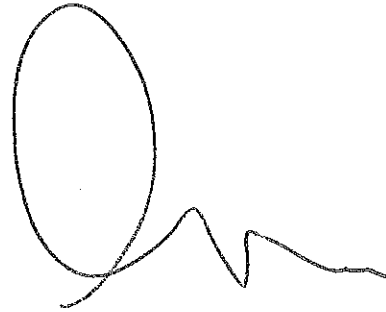
And for such further or other directions as the Court considers appropriate.


The grounds upon which the Joint Administrators seek such an Order are set out in the witness statement of Anthony Victor Lomas dated 14 February 2013 filed herewith.

Dated this ^{14th} day of February 2013



DWA PIPER.



Signed: 
LBIE's Joint Administrators'
solicitors: Linklaters LLP

Position held: Partner
LBIE's Joint Administrators'
address for service is:

Linklaters LLP
One Silk Street
London EC2Y 8HQ

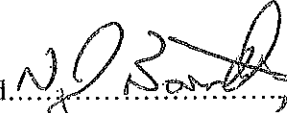
Reference: Tony Bugg / Euan
Clarke / Jared Oyston

Signed.....
LBL's Joint Administrators'
solicitors: DLA Piper UK LLP

Position held: Partner
LBL's Joint Administrators'
address for service is:

DLA Piper UK LLP
3 Noble Street
London EC2V 7EE

Reference: Simon Neilson-Clark
/ Chris Parker

Signed:  SNR
DENTON
LBHI2's Joint Administrators'
solicitors: SNR Denton

Position held: Partner
LBHI2's Joint Administrators'
address for service is:

SNR Denton
One Fleet Place
London EC4M 7WS

Reference: Nigel Barnett / Ben
Olushola

It is intended to serve this Application on:

Lehman Brothers Holdings, Inc, c/o Weil Gotshal

Notice of this Application will be given to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

IF YOU DO NOT ATTEND, THE COURT MAY MAKE SUCH ORDER AS IT THINKS FIT.

APPLICATION

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
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