

MONDAY 2ND AUGUST 2010

IN THE COURT OF APPEAL order no 018947

ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BANKRUPTCY

NO7942 OF 2008

Her Majesty's
Court of Appeal
6 - OCT 2010

BEFORE THE MASTER OF THE ROLLS
LADY JUSTICE ARDEN
And SIR M WALLER

B E T W E E N

COURT 71
Appeal No.

A2/2010/0113
A2/2010/0114
A2/2010/0119
A2/2010/0121

- (1) CRC CREDIT FUND LIMITED
- (2) LEHMAN BROTHERS INC
- (3) LEHMAN BROTHERS FINANCE AG
- (4) LEHMAN BROTHERS HOLDINGS INC

APPELLANTS

- and -

- (1) GLG INVESTMENTS PLC SUB-FUND: EUROPEAN EQUITY FUND
- (2) HONG LEONG BANK BERHAD

ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)

RESPONDENTS



UPON READING the Notice of Appeal dated 15 January 2010 filed on behalf of CRC, the Notice of Appeal dated 15 January 2010 filed on behalf of LBI, the Notice of Appeal dated 15 January 2010 filed on behalf of LBF and the Notice of Appeal dated 15 January 2010 filed on behalf of LBHI on appeal from the Orders of Mr Justice Briggs made on 15 December 2009 and 20 January 2010

AND UPON READING the Statement of Assumed Facts

AND UPON HEARING Counsel for LBHI, CRC, LBI, LBF, the FSA, GLG, HLBB and the Administrators of LBIE

AND UPON READING the written submissions filed on behalf of LBHI, CRC, LBI, LBF, the FSA, GLG, HLBB and the Administrators of LBIE

AND UPON THE APPLICATIONS for permission to appeal to the Supreme Court of the United Kingdom made by LBHI, GLG and the Administrators of LBIE and the contingent application for permission to appeal made by LBI

IT IS ORDERED that:

1. For the purposes of this Order, the following defined terms shall bear the following meanings:

Administrators	Steven Anthony Pearson, Anthony Victor Lomas, Michael John Andrew Jarvis, Dan Yoram Schwarzmann and Derek Anthony Howell, each of PricewaterhouseCoopers LLP
CASS	Client Assets sourcebook of the FSA
CMP	The notional pool of client money constituted, by CASS 7.9.6R, on the occurrence of a Primary Pooling Event
CRC	CRC Credit Fund, Limited (formerly known as CRC Global Structured Fund, Ltd)
FSA	Financial Services Authority
GLG	GLG Investments plc: sub-fund GLG European Equity Fund
HLBB	Hong Leong Bank Berhad
Issue 1	Is client money held on the statutory trust imposed by CASS 7.7 from the moment of receipt by the firm or only when it is paid into segregated accounts?
Issue 2	Do the primary pooling and distribution provisions in CASS 7.9.6R extend to identifiable client money not in segregated accounts?
Issue 3	Is the basis for sharing in the CMP the amount which ought to have been segregated for each client or the amount which was in fact segregated for each client?
Issue 4	When does money which the firm owes to a client become "client money"?
Judgment	The judgment of Mr Justice Briggs handed down on 15 December 2009
LBF	Lehman Brothers Finance AG
LBHI	Lehman Brothers Holdings Inc.
LBI	Lehman Brothers Inc.
LBIE	Lehman Brothers International (Europe) (in administration)
Order	The order made by Mr Justice Briggs on 15 December 2009
Primary Pooling Event or PPE	7.56am on 15.09.08
Supplemental Judgment	The judgment of Mr Justice Briggs handed down on 20 January 2010
Supplemental Order	The order made by Mr Justice Briggs on 20 January 2010



AND IT IS ORDERED DIRECTED AND DECLARED that:

2. The appeal of LBHI in relation to Issue 1 and the appeal of LBI in relation to Issue 4 be dismissed so that:
 - (i) client money is held on the statutory trust imposed by CASS 7.7 from the moment of receipt by a firm; and
 - (ii) client money does not include sums due and payable by the firm to its clients but not yet appropriated for that purpose.
3. The appeals of CRC, LBF and the appeal of LBI insofar as it relates to Issue 2 and Issue 3 be allowed.
4. Paragraphs 5 to 8 inclusive of the Order and the Supplementary Order be set aside.
5. The CMP includes all client money identifiable in any account (including money market deposits) of LBIE into which client money has been received and is not limited to client money in the firm's segregated client accounts.
6. The CMP should be distributed to clients in accordance with their contractual entitlements in respect of client money.
7. To the extent that the Administrators consider it necessary, the questions adumbrated in the schedules to the Order and the Supplementary Order be remitted to Briggs J to be answered afresh.
8. The parties do seek to agree directions in relation to the renewed hearing of the Application and in default of such agreement application for such directions be made to the Judge hearing Interim Applications.



AND IT IS ORDERED THAT:

Service of this Order

9. The Administrators do make a copy of this Order available on the Lehman section of the PricewaterhouseCoopers LLP website (http://www.pwc.co.uk/eng/issues/lehman_updates.html) within 48 hours of receiving a sealed order from the Court of Appeal.

Costs

10. The Administrators' costs, fees and expenses of and occasioned by the Appeals are to be paid:-
- a. as to 50% from the CMP in priority to client money claims; and
 - b. as to 50% as an expense of the administration.
11. The costs of each of GLG and HLBB of and occasioned by the Appeals (as agreed or assessed on the indemnity basis) are to be paid:-
- a. as to 50% from the CMP in priority to client money claims; and
 - b. as to 50% as an expense of the administration.
12. The costs of CRC of and occasioned by the Appeals (as agreed or assessed on the indemnity basis) are to be paid:-
- a. as to 25% from the CMP in priority to client money claims; and
 - b. as to 75% as an expense of the administration.
13. There be no order as to the costs incurred by LBI, LBF, LBHI and the FSA.

Permission to appeal

14. Permission to appeal is refused.

By the Court



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ADMINISTRATORS OF LEHMAN BROTHERS
INTERNATIONAL (EUROPE)

ORDER

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* This order was drawn by Mr P Wilkins (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Mr P Wilkins, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is 020 7947 7381