



**13 May 2016**

**Lehman Brothers Limited – in Administration (“LBL”)**

**Update on the application to the Court for the appointment of Z Hussain as a Joint Administrator and for permission that D Schwarzmann, AV Lomas, SA Pearson and JG Parr may resign.**

On 15 March 2016, the Court granted the Administrators’ application for an order that Zelf Hussain of PricewaterhouseCoopers LLP be appointed as Joint Administrator of LBL and that Dan Schwarzmann, Anthony Lomas, Steven Pearson and Guy Parr (the “Resigning Administrators”) be permitted to resign. A copy of the Court Order and Judgment can be found below.

The appointment of Zelf Hussain and the resignation of the Resigning Administrators will be effective immediately upon the filing of notices of resignation with the Court and copies of the same being sent to the registrar of companies and creditors’ committee. This will take place in the coming weeks.

If creditors have any queries regarding the application, they should email [LBL.enquiries@uk.pwc.com](mailto:LBL.enquiries@uk.pwc.com) or contact James Bolt on +44 (0)20 7213 5485.

*MJA Jervis, AV Lomas, SA Pearson, DY Schwarzmann and JG Parr were appointed as Joint Administrators of Lehman Brothers Limited to manage its affairs, business and property as agents without personal liability. MJA Jervis, AV Lomas, SA Pearson, DY Schwarzmann and JG Parr are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales. The joint administrators are bound by the Insolvency Code of Ethics which can be found at: <https://www.gov.uk/government/publications/insolvency-practitioner-code-of-ethics>.*

*The Joint Administrators are Data Controllers of personal data as defined by the Data Protection Act 1998. PricewaterhouseCoopers LLP will act as Data Processor on their instructions. Personal data will be kept secure and processed only for matters relating to the Administration.*

Before The Honourable Mr Justice Hildyard

On Tuesday the 15<sup>th</sup> day of March 2016

IN THE MATTER OF LEHMAN BROTHERS LIMITED  
(in administration)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986



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ORDER

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UPON THE APPLICATION of Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Daniel Yoram Schwarzmann and Julian Guy Parr of PricewaterhouseCoopers LLP, 7 More London Riverside, London, SE1 2RT, the current joint administrators (the "**Current Administrators**") of Lehman Brothers Limited ("**LBL**")

AND UPON HEARING Daniel Bayfield QC for the Current Administrators

AND UPON READING the first witness statement of Michael John Andrew Jervis dated 12 February 2016 together with exhibit "MJAJ1"

**IT IS ORDERED THAT:**

1. Dan Yoram Schwarzmann, Anthony Victor Lomas, Steven Anthony Pearson and Julian Guy Parr do have permission to resign as joint administrators of LBL pursuant to rule 2.119(2) of the Insolvency Rules 1986 (the "**Rules**"), such resignations to take effect immediately upon the filing with the Court of a notice of resignation in Form 2.38B and sending a copy of the same to the registrar of companies and LBL's creditors' committee.
2. Pursuant to paragraph 98(2)(c) of Schedule B1 to the Insolvency Act 1986 (the "**Act**"), and subject to the limitations provided for in paragraph 98(4) of Schedule B1 to the Act, each of Anthony Victor Lomas, Dan Yoram Schwarzmann, Steven Anthony

Pearson and Julian Guy Parr shall be discharged from liability under paragraph 98(1) of Schedule B1 to the Act in respect of any action (or inaction) of theirs as administrators of LBL with effect from the date falling 42 days after LBL's creditors are sent the next progress report, save in respect of claims notified to the then current joint administrators of LBL before that date.

3. Zelf Hussain of PricewaterhouseCoopers LLP, 7 More London Riverside, London, SE1 2RT be appointed, under paragraphs 91(1)(e) and 95(b) of Schedule B1 to the Act, as a replacement for Dan Yoram Schwarzmans as a joint administrator of LBL, such appointment:
  - a. to take effect immediately upon the coming into effect of the resignation of Dan Yoram Schwarzmans as a joint administrator of LBL, pursuant to rule 2.121(2) of the Rules; and
  - b. to run for the same term as the appointment of Michael John Andrew Jervis as an administrator of LBL (including any extensions made by the Court to such term).
4. The next progress report shall notify the creditors of LBL of the making of this Order, including the Order for the discharge from liability of Anthony Victor Lomas, Dan Yoram Schwarzmans, Steven Anthony Pearson and Julian Guy Parr, and provide an explanation of the effect of the Order.
5. The costs of this application be paid as an expense of the administration of LBL.

**Service of the order:**

The Court has sent a sealed copy of this order to:  
Linklaters LLP, One Silk Street, London EC2Y 8HQ

Case No: 7945 of 2008

[2016] EWHC 1054 (CH)  
**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Tuesday, 15 March 2016

BEFORE:

**MR JUSTICE HILDYARD**

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

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**MR DANIEL BAYFIELD QC** (instructed by Linklaters LLP appeared on behalf of Lehman Brothers Limited)

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**JUDGMENT**  
(As Approved)

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8th Floor, 165 Fleet Street, London, EC4A 2DY  
Tel No: 020 7404 1400 Fax No: 020 7404 1424  
Web: [www.DTIGLOBAL.com](http://www.DTIGLOBAL.com) Email: [TTP@dtiglobal.eu](mailto:TTP@dtiglobal.eu)  
(Official Shorthand Writers to the Court)

No of Words: 1,799  
No of Folios: 25

1. MR JUSTICE HILDYARD: This is an application by the current administrators of a company in the Lehman Group called Lehman Brothers Limited, which I shall call LBL. The relevant persons, each partners in PricewaterhouseCoopers LLP, are Mr Lomas, Mr Pearson, Mr Jervis, Mr Schwarzmman and Mr Parr.
2. The essence of the application is that four of them, that is to say Mr Schwarzmman, Mr Lomas, Mr Pearson and Mr Parr, should have permission to resign as joint administrators of LBL by application to this court pursuant to Rule 2.119(2) of the Insolvency Rules. Mr Jervis, who has in fact been the lead administrator of LBL for some time whilst the others have taken a relative back seat, will remain in office and it is proposed that he be joined by another experienced partner in the same firm, PricewaterhouseCoopers LLP, namely Mr Zelf Hussain.
3. Mr Zelf Hussain has had previous involvement in the early days in the administration of the Lehman Group which commenced in 2008, but that involvement was only limited.
4. The basis of the application has been fully and helpfully explained to me by Mr Bayfield QC and in a detailed witness statement by Mr Jervis, the lead administrator of LBL.
5. The grounds for it can, I think, be summarised as these: first, given that it is now some eight years since they took up the office, time has moved on and the four persons who seek to retire have other commitments which as a matter of fact make it more difficult, and possibly in certain cases impossible, for them to discharge their statutory obligations as administrators in the full and complete way in which they would wish to do so and which the court would expect of them.
6. Secondly, and as a corollary of that also, LBL in the immediate future faces a considerable number of issues which will have to be addressed, including complex litigation, both in the context of an application which has come to be known as Waterfall 1 which is to proceed to the Supreme Court in October 2016, and a further landlord and tenant action, if I can call it that, by LBL's landlords who are appealing the rejection of their proof and in a set of proceedings already commenced which is to be adjudicated some time in 2017. In addition, the complexities attendant on such a complex general administration continue to need considerable attention, including the intergroup liabilities and arrangements. These have not been eradicated in any sense by the process of litigation in Waterfall 1 and, for example, LBL still remains, at least theoretically, on the line for any liabilities which cannot be met out of the surplus out of LBIE because LBIE is an unlimited company and LBL is one of its corporators and contributories.
7. Accordingly, and in those circumstances, not only is a considerable workload awaiting the administrators, whoever they may be from now on and in the immediate future, but the issues arising will also involve matters of contention between companies within the group where the interests of the various companies may be in conflict one with the other. An advantage of what is proposed is that Mr Hussain, whose involvement has been only as I explained earlier at the beginning, together with Mr Jervis will be in a position to focus more entirely on the interests of LBL and there should be an additional comfort of greater apparent independence, though I do not doubt that in

every case the administrators will even up to this moment have done their best to focus entirely on the interests of the company of which they are from time to time taking decisions.

8. In those circumstances, the question arises whether the court should exercise its unfettered discretion to permit the four administrators who wish to resign to do so and to appoint Mr Hussain as an additional administrator to help Mr Jervis as lead administrator in the complex way ahead.
9. In that regard, though its discretion is unfettered, of course the court must exercise it judicially and it must be satisfied that there are good reasons for the retirements and that the person sought to be appointed is an appropriate person. In addition, of course, the insolvency rules and the relevant paragraphs within Schedule B1 of the Insolvency Act are characteristically prescriptive as to the formal steps which must be taken.
10. Having read carefully the witness statement of Mr Jervis and having had the benefit of a clear comprehensive skeleton argument and submissions from Mr Bayfield, I am satisfied that the statutory requirements in terms of notification, service and the acceptance of office by the proposed additional administrator have been satisfied. I am also satisfied that Mr Hussain, who I understand is a partner with 20 years' experience and some considerable insolvency practitioner experience also since 2006, is an entirely appropriate person to appoint.
11. There is one wrinkle on which I asked Mr Bayfield's assistance. The wrinkle has been comprehensively described and assessed in the evidence of Mr Jervis. It relates to group relief. It arises because it is plain that the contingent benefit of group relief will be lost to LBL in consequence of the fact that, the resignations having occurred, a prerequisite of LBL's future participation in group relief (i.e. a majority of its administrators also being administrators of other companies within the group which could pass up losses for group relief purposes) will no longer obtain. This wrinkle was, I understand, from Mr Jervis who attended court and was able through counsel to expressly confirm this, raised by the administrators at a Creditors' Committee meeting on 27 November 2015, when the relevant administrators advised the Creditors' Committee of their intention to make an application such as this.
12. Mr Jervis also through counsel confirmed that the joint administrators had given consideration to the group relief issue, but at that meeting one of the members of the Creditors' Committee had raised questions which the administrators understandably were not in a position to address at the meeting. I understand that there was then conversation on the telephone in December with the member of the Creditors' Committee to deal with the issues apparently to its satisfaction since no further questions have, as I am also told, been raised.
13. The loss or the disadvantages of no longer having the prospect of group relief in the case of LBL are difficult to measure. Mr Bayfield described them as highly contingent and the administrators have worked through that even if it were available, the advantage to LBL is attenuated. It is attenuated both because LBL has its own losses of some £25 million with which to offset other gains but also because the net benefit

derived from such group relief as might become available to it would be very limited to 0.005 pence in the pound.

14. The wrinkle therefore brings in train the need to strike a balance in effect between the highly contingent prospect of group relief in a limited amount on the one hand and the advantages in terms of additional efficiency and focus in a very complex administration. There also has to be borne in mind the difficulties of any other solution in circumstances where I am told as a fact that the four administrators who wish to resign having carefully considered their position seriously doubt their ability properly to discharge their duties as administrators going forward and it is not possible, so I understand, to select replacements for them who would be able to combine both majority positions in other Lehman companies (for group relief purposes) with both time and the measure of the independence that is required.
15. Mr Bayfield candidly acknowledged that consideration had been given to whether an alternative might be for the retiring administrators simply to take a very firm back seat from hereon in. However, as he submitted, and as I readily accept, that would be formalism given excessive rein and would be unlikely to be to the advantage of LBL or the proper conduct of the administration as a whole.
16. In these circumstances, I am content that the balance of advantage lies in ensuring the most efficient body of administrators and to recognise the reality that that is best served by permitting the retirement of the four professionals whom I have named and to let Mr Jervis continue in his role as lead administrator with the assistance pursuant to his appointment of Mr Hussain.
17. Mr Bayfield has taken me through a draft order which most assiduously goes in turn through the various statutory requirements. The only alteration which I required was that the discharge from the liability under paragraph 98(1) of Schedule B1 to the Insolvency Act, which is also sought in respect of the retiring administrators, should take effect 42 days after the effect of my Order is advertised in the next progress report (save in respect of claims notified to the then current administrators prior to that date), as opposed to 28 days thereafter. That is simply in recognition of the complexity and longevity of this administration. I confirm that the administrators have confirmed to me that there are no known claims and therefore that is purely a step taken out of an abundance of caution.
18. Of course, also the fact of discharge from liability does not prevent the court reviewing that matter, nor does it preclude misfeasance proceedings. I say that as a general observation and not out of any concern that there should be any grounds for any such application at all.
19. Otherwise, and with gratitude to all those concerned, I simply confirm my approval of this order which being a Companies Court matter will have to be sealed in the office. I have initialled the change from 28 to 42 days. The Creditors' Committee should be advised as soon as possible of this event. Ordinarily, in an **ex parte** matter such as this, I would not give a judgment, but it seemed to me that the various milestones along the way of this litigation should be explained.