

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
COMPANIES COURT (ChD)**

**CR-2008-000026 27 Jul 2018
CR-2009-000052**



**IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**BEFORE THE HONOURABLE MR JUSTICE MANN
DATED 24 JULY 2018**

BETWEEN:-

CR 2009-000052

**(1) THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2 LIMITED
(IN ADMINISTRATION)**

LBHI2 Applicants

-and-

(1) LEHMAN BROTHERS HOLDINGS SCOTTISH LP 3

**(2) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS HOLDINGS PLC
(IN ADMINISTRATION)**

LBHI2 Respondents

CR 2008-000026

**(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS HOLDINGS PLC
(IN ADMINISTRATION)**

LBH Applicants

-and-

1. LEHMAN BROTHERS HOLDINGS INC

2. THE JOINT LIQUIDATORS OF LB GP NO 1 LIMITED (IN LIQUIDATION)

3. DEUTSCHE BANK AG (LONDON BRANCH)

LBH Respondents

ORDER

UPON the following Applications:

- the LBHI2 Applicants' application dated 16 March 2018 for directions within the administration of LB Holdings Intermediate 2 Limited (the "**LBHI2 Application**")
- the LBH Applicants' application dated 16 March 2018 for directions within the administration of Lehman Brothers Holdings plc (the "**LBH Application**"; the LBHI2 Application and LBH Application together shall be the "**Directions Applications**")
- Deutsche Bank AG's application dated 27 April 2018 to be joined to the LBHI2 Application (the "**Deutsche Application**")
- Lehman Brothers Limited (In Administration)'s application dated 15 June 2018 to be joined to the LBHI2 Application (the "**LBL Application**")

AND UPON reading the evidence and the other documents marked on the Court file as having been read

AND UPON hearing Peter Arden QC and Louise Hutton for the LBHI2 Applicants, Adrian Beltrami QC and Adam Kramer for the LBH Applicants, Mark Phillips QC and William Willson for Lehman Brothers Holdings Scottish LP 3 and Lehman Brothers Holdings Inc, Lexa Hilliard QC for the Joint Liquidators of LB GP No 1 Limited (in liquidation), Sonia Tolaney QC, Richard Fisher and Tim Goldfarb for Deutsche Bank AG (London Branch), and Philip Marshall QC and Ruth den Besten for Lehman Brothers Limited (In Administration)

IT IS ORDERED THAT

1. The Directions Applications shall be case managed and tried together, with any specific directions for the manner in which such trial may be conducted to be addressed at the Pre-Trial Review.

Joinder

2. The Deutsche Application is hereby granted, and Deutsche Bank AG is hereby joined as the Third Respondent to the LBHI2 Application, on the condition that Deutsche Bank AG bears its own costs of participating in the LBHI2 Application and avoids duplicating the submissions of the Second Respondent to the LBHI2 Application.
3. The LBL Application is hereby dismissed.

Disclosure

4. By 16 November 2018, all parties shall disclose documents to each of the other parties to the Directions Applications, as follows:
 - a. The LBHI2 Applicants, the LBH Applicants, Lehman Brothers Holdings Inc and Lehman Brothers Holdings Scottish LP 3 shall disclose documents that are identified by the steps provided for in the Schedule to this Order as satisfying the test for standard disclosure (as defined in CPR 31.6), as well as documents within their possession which they are aware satisfy the test for standard disclosure. The parties may amend the Schedule by consent. The relevant awareness of the parties is confined for these purposes to: their administrators and any future appointees and their lawyers Nigel Barnett and Tessa Blank in the case of the LBHI2 Applicants, their administrators and any future appointees and their lawyers Joe Bannister and John Tillman in the case of the LBH Applicants, and Ronald Geraghty and Matthew Blake and their lawyer Mark Lawford in the case of Lehman Brothers Holdings Inc and Lehman Brothers Holdings Scottish LP 3.
 - b. All other parties shall disclose documents within their possession which they are aware satisfy the test for standard disclosure. The relevant awareness of the parties is confined for these purposes to: its Joint Liquidators and any future appointees and their lawyer James Hyne in the case of LB GP No 1 Ltd, and Michael Sutton and Jamie Liew and their lawyer Phillip Taylor in the case of Deutsche Bank AG.
5. Aside from the steps described in paragraph 4a above, none of the parties shall have an obligation to make a search for disclosable documents. However, in the event that any of the parties becomes aware that any other documents in that party's possession meet the test for standard disclosure, the relevant party shall provide electronic copies of those documents to the other parties. The relevant awareness of the parties is confined for these purposes to that set out in paragraphs 4a and b above.
6. Permission is hereby given pursuant to CPR 31.22(1)(b) for documents disclosed within the ambit of one Directions Application to be used for the purposes of the other Directions Application.
7. Documents shall be disclosed in their original native format. In the case of email data, the term "native" will refer to the 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 disclosure, the fields of metadata to be included to be agreed among the parties.

Position Papers

8. The parties to each of the Directions Applications shall 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 relevant Directions Application application notice 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, as follows:
 - a. By 4.00pm on 11 January 2019, Lehman Brothers Holdings Scottish LP 3 shall file and serve its position paper in the LBHI2 Application and Lehman Brothers Holdings Inc shall file and serve its position paper in the LBH Application. Lehman Brothers Holdings Scottish LP 3 and Lehman Brothers Holdings Inc shall have permission to file and serve a single joint position paper.
 - b. By 4.00pm on 22 February 2019, each other party to the relevant Directions Application shall file and serve their position papers. Deutsche Bank AG shall coordinate with the Second Respondent to the LBHI2 Application to avoid duplication of the Second Respondent's submissions on that Application.
 - c. By 4.00pm on 22 March 2019, Lehman Brothers Holdings Scottish LP 3 shall file and serve any reply position paper in the LBHI2 Application, and Lehman Brothers Holdings Inc shall file and serve any reply position paper in the LBH Application. Lehman Brothers Holdings Scottish LP 3 and Lehman Brothers Holdings Inc shall have permission to file and serve a single joint reply position paper.

Witness statements

9. Each party shall serve on every other party any witness statements of the oral evidence which that party intends to rely on at trial by 4.00pm on 12 April 2019.
10. Each party has liberty to serve witness statements in reply to the witness statements of the other parties by 4.00pm on 3 May 2019, if so advised.

11. Permission is hereby given pursuant to CPR 31.12(2)(b) for witness statements served in one Directions Application to be used for the purposes of the other Directions Application.

Further case management conference and Pre-Trial Review

12. The LBH Applicants shall make an appointment for the parties to attend on the Listing Officer within 10 days of the date of this Order to fix:
 - a. a further case management conference on the first available date reasonably convenient to the parties after 10 May 2019 with a time estimate of half a day to a day, the issues for consideration at which shall include whether and to what extent permission should be given for expert evidence in relation to market practice; and
 - b. a date for a Pre-Trial Review on the first available date reasonably convenient to the parties 4-6 weeks before the date on which the trial is listed to start, or as close to that window as is reasonably convenient, with a time estimate of one day in addition to 1-2 days' pre-reading.
13. Unnecessary duplication of transactional documents shall be avoided in all future hearing bundles.

Expert evidence

14. Without prejudice to such further directions or revisions to these directions as may be given at the case management conference which takes place pursuant to paragraph 12a. above, each of the LBH Respondents has permission to adduce expert evidence in the field of US law to address issues relating to the construction of contracts which are expressed to be governed by New York law and the US Bankruptcy Code, insofar as they may be relevant to what is referred to as the "Release Issue" in paragraphs 113 to 117 of Gillian Bruce's third witness statement dated 16 March 2018 made in support of the LBH Application.
15. The experts shall, before they exchange expert reports, discuss and seek to narrow the issues between them.
16. The experts' reports shall be exchanged by 4.00pm on 7 June 2019.
17. Following exchange of reports, the experts shall hold a further discussion for the purpose of:

- a. identifying and further narrowing the issues, if any, remaining between them; and
 - b. where possible, reaching agreement on those issues.
18. The experts shall, by 4.00pm on 5 July 2019, prepare and file a statement for the Court showing:
- a. those issues on which they are agreed; and
 - b. those issues on which they disagree and a summary of their reasons for disagreeing.

Statement of Agreed Facts

19. Following service of reply witness statements, if any, the parties to each Directions Application shall consult on and shall seek to agree a Statement of Agreed Facts, a Chronology and a List of Agreed Definitions for each respective Directions Application, such documents to be agreed at least 14 days before the date of the Pre-Trial Review.

Trial

20. The trial of the Directions Applications shall take place on the first date reasonably convenient to the parties after 1 October 2019.
21. The LBH Applicant shall make an appointment for the parties to attend on the Listing Officer within 10 days of the date of this Order to fix that trial, with a provisional estimate of 8-10 days, to include 2 days of judicial pre-reading time or such other longer period of pre-reading time as the judge at the Pre-Trial Review provides.
22. The parties may, where CPR rule 2.11 applies, agree to extend any time period to which the proceedings may be subject for a period or periods of up to 28 days in total without reference to the Court, provided that this does not affect the date given for any hearing or trial. The parties shall notify the Court in writing of the expiry date of any such extension.
23. The parties shall have liberty to apply.

24. Save that there shall be no order as to the costs of Deutsche Bank AG or of Lehman Brothers Limited, all costs shall be in the Directions Applications. This shall not prevent LBGP No. 1 from seeking an order that their costs should be borne by any other party or parties in any event.

Dated: 24 July 2018

Service of the Order

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

Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London, EC1A 2FG (ref: F1JBB/D3JAT)

SCHEDULE

Part A

The LBHI2 Applicants and the LBH Applicants intend to co-operate to search for and disclose documents which otherwise satisfy the test for standard disclosure by way of the following steps. Assuming that the steps below generate proportionate results, the LBHI2 Applicants and the LBH Applicants propose to review the documents so identified for relevance prior to disclosure. However, they shall be permitted to disclose the documents identified from the steps described below without prior review to the extent that they consider that such prior review would be disproportionate by reference to the time and costs likely to be involved in such an exercise, any such disclosure without prior review to take place as soon as reasonably practicable and not later than 19 October 2018.

Email Custodians

(A) To the extent of the email data already available on Nuix for the following custodians:

1. Gareth Bowen
2. Jackie Dolby
3. Emily Upton
4. Dominic Gibb
5. Antony Rush
6. David Rushton
7. Ian Jameson
8. Sophie Hutcherson
9. Susan Ehr

(B) To the extent of the email data capable of being restored from the Lehman Archive for the following custodians:

1. Sarah McMorrow
2. Claire Edwards
3. Judy McNamara
4. Paolo Tonucci
5. Julius Goldsmith
6. Arshad Ghafur

Search Terms to be applied to those Custodians

No.	Date Range	Search Terms
1	1 January 2004 to 15 September 2008	{"Enhanced Capital Advantaged Preferred" OR "ECAP" OR "E-CAP" OR "E.C.A.P" OR "Eurocap" OR "Euro Pref" OR "Euro Fixed Rate" OR "Eurobond" OR "QEB" OR "Perpetual Preferred Securities" OR "Perpetual Preferred Security" OR "Lehman Brothers UK Capital Funding" OR "Lehman Brothers Capital Funding" OR "LB GP No1" OR "LBGP No1" OR "LBGP"}
2	1 January 2004 to 15 September 2008	{"Subordinated Note" OR "Subordinated Obligation" OR "FRN" OR "Fixed rate note" OR "Floating rate note" OR "Fixed-rate note" OR "Floating-rate note" OR "Fixed/floating rate" OR "Fixed / floating rate" OR "Offering Circular"} AND {"Lehman Brothers Holdings" OR "LBH" OR "PLC" OR "Lehman Brothers UK Capital Funding" OR "Lehman Brothers Capital Funding" OR "LB GP No.1" OR "LBGP No1" OR "LBGP"}
3	1 January 2004 to 15 September 2008	{"Subordinated Debt" OR "Subordinated Obligation" OR "Subordinated loan" OR "Subdebt" OR "Sub-debt" OR "Sub debt"} AND {"UK Holdings" OR "LBUK" OR "UKH" OR "Lehman Brothers Holdings" OR "LBH" OR "PLC"}
4	1 January 2006 to 15 September 2008	{"Subordinated Debt" OR "Subordinated Obligation" OR "Subordinated loan" OR "Subdebt" OR "Sub-debt" OR "Sub debt"} AND {"Lehman Brothers Holdings" OR "LBH" OR "PLC" OR "LBHI2" OR "Intermediate 2"}
5	1 January 2006 to 15 September 2008	{"Allen" AND "Overy"} OR {"A&O" OR "Offering Circular" OR "Floating Rate" OR "Subordinated Note" OR "Note" OR "FRN" OR "QEB" OR "Eurobond" OR "6.139"} AND

No.	Date Range	Search Terms
		{"LBHI2" OR "Intermediate 2" OR "SLP" OR "Scottish"} <i>(The choice between "Subordinated Note" and "Note" shall be the subject of further discussion and shall be agreed or else determined by the Court.)</i>

Part B

Using the same search terms set out in Part A of this Schedule above, Lehman Brothers Holdings Inc and Lehman Brothers Holdings Scottish LP 3 intend to co-operate to search for and disclose documents which otherwise satisfy the test for standard disclosure for the following custodians and date ranges:

1. Paolo Tonucci for the date ranges (i) 1 January 2004 to 31 December 2004, and (ii) 12 September 2006 to 15 September 2008
2. Darryl Steinburg for the date range 1 January 2004 to 15 September 2008

Assuming that the steps above generate proportionate results, Lehman Brothers Holdings Inc and Lehman Brothers Holdings Scottish LP 3 propose to review the documents so identified for relevance prior to disclosure. However, they shall be permitted to disclose the documents identified from the steps described above without prior review to the extent that they consider that such prior review would be disproportionate by reference to the time and costs likely to be involved in such an exercise, any such disclosure without prior review to take place as soon as practicable and not later than 19 October 2018.