



No. 7942 of 2008 / CR-2008-000012
CR-2008-000012

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

THIRTEENTH WITNESS STATEMENT
OF
RUSSELL DOWNS

I, Russell Downs, of PricewaterhouseCoopers LLP ("**PwC**"), 7 More London Riverside,
London, SE1 2RT say as follows:

A. INTRODUCTION

1 I am a licensed insolvency practitioner and a partner in PwC, a professional services
firm at the above address. I am one of the administrators (the "**Administrators**") of
Lehman Brothers International (Europe) (in administration) ("**LBIE**").

- 2** My partners, Anthony Victor Lomas, Steven Anthony Pearson and Julian Guy Parr are the other Administrators of LBIE. We were appointed as such by orders of the High Court of England and Wales dated 15 September 2008, 2 November 2011 and 22 March 2013. I am duly authorised to make this witness statement on behalf of LBIE and the Administrators.
- 3** This witness statement is intended to provide further factual background to the Court for the purposes of determining the application for directions (the "**Application**") issued by the Administrators on 5 September 2016 pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 to resolve a number of issues which arise in relation to claims Barclays Capital Inc. ("**Barclays**") has against LBIE and/or the Client Money Pool held by LBIE, having acquired such claims from LBI shortly after the collapse of the Lehman Group.
- 4** In particular, this witness statement provides further factual background supplementary to that provided in:

 - 4.1** my tenth witness statement filed and served on 5 September 2016 in support of the Application ("**Downs 10**"); and
 - 4.2** my twelfth witness statement filed and served on 11 August 2017 ("**Downs 12**"), and in response to the witness statement of Todd Thomas filed and served on 11 August 2017 on behalf of Barclays (the "**Thomas Witness Statement**").
- 5** Save where otherwise provided, capitalised terms have the meanings ascribed to them in the Application and in Downs 10.
- 6** I am giving this witness statement in my capacity as an Administrator of LBIE. The facts and matters stated in this witness statement have either been learned by me as a result of the work I have undertaken as one of the Administrators, or they have been provided to me by my partners and colleagues at PwC or employees of LBIE involved with the Administration, or by the Administrators' legal advisers, Linklaters LLP.

7 Nothing that I say in this witness statement is intended to be a waiver of any privilege to which LBIE and/or the Administrators are entitled and no such privilege is waived.

8 I structure the remainder of this witness statement as follows:

8.1 **Section (B)** addresses LBIE's involvement in the LBI/Barclays Settlement in response to statements made in paragraphs 8(e), 42 and 48 of the Thomas Witness Statement; and

8.2 **Section (C)** deals with procedural matters relating to this witness statement.

B. LBIE'S INVOLVEMENT IN THE LBI/BARCLAYS SETTLEMENT

9 I refer to the following paragraphs of the Thomas Witness Statement:

9.1 paragraph 8(e), which states that "*the [Administrators] now seek to argue – against the clear words of the settlement between Barclays and LBI, which LBIE expressly agreed and consented to, and the understanding of the parties at the time – that Barclays is not entitled to pursue its claim for statutory interest on the amount of US\$777 million*"; and

9.2 paragraph 48, which states that as far as Todd Thomas, his colleagues and Barclays are aware, "*at no point in the LBI/Barclays Settlement negotiations did the [Administrators] or the LBI Trustee, nor any of their representatives, state or reference any belief or position that the entry into the LBI/Barclays Settlement (including the terms thereof and the payment of the US\$777 million provided for therein) would preclude or reduce Barclays' claim against LBIE for statutory interest on the US\$777 million*".

10 As noted in paragraph 55 of Downs 12, LBIE was provided with a draft of the LBI/Barclays Settlement on 5 June 2015, immediately before it was filed by the LBI Trustee with the US Bankruptcy Court. It is agreed that LBIE subsequently engaged in discussions with both Hughes Hubbard & Reed LLP and Boies Schiller Flexner

(UK) LLP about the language to be included in paragraphs 5, 6 and 16 of the LBI/Barclays Settlement, as outlined in paragraphs 57 to 66 of Downs 12.

- 11 The parties ultimately agreed to include the following language in paragraph 5 of the LBI/Barclays Settlement: *“For the avoidance of doubt, nothing herein affects, waives, releases or reduces Barclays’ claim against LBIE to interest relating to the \$777,000,000 referenced in this Paragraph (or LBIE’s defenses thereto)...”*. As I explained in Downs 12, the words in parentheses were inserted at the request of LBIE.
- 12 The Administrators have always understood that the purpose of paragraph 5 is to clarify that Barclays and the Administrators were both reserving their position as regards whether receipt by Barclays of the LBI Payment affected Barclays’ entitlement to Statutory Interest in respect of that payment.
- 13 The parties did not agree that Barclays’ entitlement to receive Statutory Interest would be unaffected by its receipt of the LBI Payment, if this was the consequence of such receipt under the general English law of insolvency. On the contrary, the purpose of paragraph 5 was to ensure that Barclays’ entitlement to receive Statutory Interest would be calculated in accordance with the general law.
- 14 I note in this regard that Mr Thomas confirms, in paragraphs 31 and 33 of his Witness Statement, that LBI and Barclays agreed from the outset that the LBI Payment was to be paid from the Dedicated Reserve i.e. directly by LBI to Barclays. LBIE was not party to that decision.
- 15 Further, as far as I am aware, prior to the execution of the LBI/Barclays Settlement, there were no discussions involving the Administrators and/or LBIE regarding the legal effect of Barclays’ receipt of the LBI Payment on the amount of Statutory Interest which Barclays would be entitled to receive. The Administrators were never asked to comment on the legal effect of Barclays’ receipt of the LBI Payment, and never made any representations in relation to the same. It was never suggested, by

anyone, that paragraph 5 would somehow operate to contract out of the normal legal consequences of the LBI Payment.

- 16 I note that in paragraph 42 of his Witness Statement, Mr Thomas states that “[i]n the process of agreeing to [the modifications made to, amongst other things, the language of paragraph 5 of the LBI/Barclays Settlement], Barclays reasonably relied on certain representations made by, or on behalf of, the LBIE Administrators to Barclays, and their legal representative”. Mr Thomas does not identify the alleged representations. As far as I am aware, no relevant representations were made by or on behalf of the Administrators and/or LBIE to Barclays.

C. PROCEDURAL MATTERS

- 17 A copy of my witness statement will be served on Barclays and Wentworth via their solicitors.
- 18 A copy of my witness statement will also be provided to the Financial Conduct Authority.
- 19 The Administrators also intend to give notice of this witness statement to LBIE’s other creditors via the PwC LBIE website, the website through which the Administrators regularly update LBIE’s creditors on matters relating to the Administration.
- 20 The Administrators will, if appropriate, file further evidence in advance of the hearing of the Application in order to update the Court on any further developments in relation to the matters dealt with in this witness statement.

Party: Applicant
Witness: R. Downs
Statement No: 13
Date: 15 September 2017

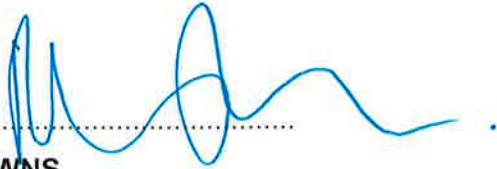
STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Dated 15 September 2017

Signed:.....

RUSSELL DOWNS

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned over a dotted line.

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RUSSELL DOWNS**

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