

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

No. 7942 of 2008

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL
(EUROPE) (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

B E T W E E N

- (1) ANTONY VICTOR LOMAS**
- (2) STEVEN ANTHONY PEARSON**
- (3) PAUL DAVID COPLEY**
- (4) RUSSELL DOWNS**
- (5) JULIAN GUY PARR**

**(THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS
INTERNATIONAL (EUROPE) (IN ADMINISTRATION))**

Applicants

- and -

- (1) BURLINGTON LOAN MANAGEMENT LIMITED**
- (2) CVI GVF (LUX) MASTER S.A.R.L.**
- (3) HUTCHINSON INVESTORS, LLC**
- (4) WENTWORTH SONS SUB-DEBT S.A.R.L.**
- (5) YORK GLOBAL FINANCE BDH, LLC**
- (6) GOLDMAN SACHS INTERNATIONAL**

Respondents

SUPPLEMENTAL ISSUE 5
SENIOR CREDITOR GROUP'S REPLY SUBMISSIONS

1. Supplemental Issue 5 is concerned with whether, to the extent that a creditor has a non-provable claim for interest on a Currency Conversion Claim, such non-provable claim has been released under the terms of the CRA and / or CDD and if so, whether the Administrators would be directed not to enforce such releases.
2. In its Supplemental Written Submissions, Wentworth appears to contend that any such right to interest has been lost where a creditor enters into a CRA or a CDD. That is wrong, for the reasons set out in the Senior Creditor Group's Supplemental Submissions.
3. The Senior Creditor Group further notes that CDDs executed from mid-February 2014 onwards have generally contained language expressly preserving creditors' rights to Currency Conversion Claims (see, for example [**Tranche B/4B/650**]). Such CDDs define Currency Conversion Claims in the following terms:

“a non-provable claim, if any, that may be asserted by the Creditor where:

(i) the Admitted Claim Amount is paid in full by the Company by way of distributions in the Administration or following a Liquidation Event; and

*(ii) the Creditor has a contractual right to be paid part or all of the Admitted Claims which are agreed in accordance with this Deed in a Contractual Currency (the sum arising from such right, the “**Original Foreign Currency Amount**”); and*

(iii) the total amount received by the Creditor in distributions of principal in respect of such part (or all) of the Admitted Claims relating to the Original Foreign Currency Amount, when converted into the relevant Contractual Currency upon the dates of distribution, is less than the Original Foreign Currency Amount.

When calculating its claim under (ii) and (iii) above, the Creditor may take into account the difference between any interest accrued on the Original Foreign Currency Amount, and any interest received in relation to such part (or all) of the Admitted Claims relating to the Original Foreign Currency Amount pursuant to Rule 2.88 of the Insolvency Rules, when converted into the relevant Contractual Currency upon the dates of distribution”

4. As to this:

- (1) The definition of Currency Conversion Claims expressly seeks to preserve any accrued right to interest on the Original Foreign Currency Amount (since it entitles a creditor to take account of such interest when calculating its Currency Conversion Claim) and is inconsistent with any intention to release or waive any right to interest in respect of any claim or part of a claim, denominated in a foreign currency. Accordingly, it is beyond doubt that a creditor who has entered into such a CDD retains a non-provable claim for interest of the type envisaged at [169] of *Waterfall IIA*.
- (2) Further, the fact that such CDDs expressly seek to preserve rights to interest on Currency Conversion Claims further illustrates that any release of a right to claim interest on a foreign currency claim, including interest in respect of the unpaid part of such a claim, would have been entirely irrelevant to the purposes for which the CRA and CDDs were proposed and would have been an entirely unintended effect of those agreements.

ROBIN DICKER QC

RICHARD FISHER

HENRY PHILLIPS

South Square

20 January 2015

Gray's Inn

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WATERFALL II DIRECTIONS APPLICATION

SENIOR CREDITOR GROUP'S SKELETON
ARGUMENT
FOR TRIAL (PART C)

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