IN THE COURT OF APPEAL **A2/2015/3763**

ON APPEAL FROM

No 7942 of 2008

THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

Before: Mr Justice David Richards

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

(1) WENTWORTH SONS SUB-DEBT S.A.R.L.

Appellant

- and -

(1) ANTONY VICTOR LOMAS
(2) STEVEN ANTHONY PEARSON
(3) PAUL DAVID COPLEY
(4) RUSSELL DOWNS
(5) JULIAN GUY PARR
(as the joint administrators of Lehman Brothers International (Europe))
(6) BURLINGTON LOAN MANAGEMENT LIMITED
(7) CVI GVF (LUX) MASTER S.A.R.L.
(8) HUTCHINSON INVESTORS, LLC

Respondents

SENIOR CREDITOR GROUP'S SKELETON ARGUMENT IN RESPONSE TO WENTWORTH'S PART A APPEAL

A. INTRODUCTION

1. This Skeleton Argument is filed on behalf of the 6th to 8th Respondents (the "Senior Creditor Group") in response to the appeal by Wentworth against three of the declarations granted by David Richards J reflecting the conclusions in his judgment in *Waterfall IIA* [2015] EWHC 2269 (Ch) (the "Judgment").

2. The three issues concern the nature and extent of creditors' rights to payment of post-insolvency interest out of the surplus, either pursuant to rule 2.88(7) to (9) of the Insolvency Rules 1986 (the "Rules") or as a non-provable claim, prior to any distribution of any balance ultimately to shareholders of LBIE.

3. At first instance David Richards J held, amongst other things, that:

   (1) If and to the extent that a creditor has a non-provable claim (including but not limited to a currency conversion claim) in respect of a sum on which interest is payable apart from the administration at any time during the period after the Date of Administration, the creditor has a non-provable claim in respect of such interest (if any) as may have accrued on that non-provable claim in that period (Declaration (vi)).

   (2) Statutory Interest is payable in respect of an admitted provable debt which was a contingent debt as at the Date of Administration, from the Date of Administration (Declaration (xiv)).

   (3) The calculation of a non-provable claim (excluding any non-provable claims to interest (as to which no declaration is made) but including, although not limited to, a currency conversion claim) should not take into account (nor, therefore, be reduced by) the Statutory Interest paid to a relevant creditor (Declaration (xvii)).

4. Wentworth seeks to appeal those declarations. The Senior Creditor Group seeks to uphold them for the reasons that the Judge gave and for the further reasons set out in its Respondents' Notice and developed in this Skeleton Argument.

B. DECLARATION (vi) – INTEREST ON NON-PROVABLE CLAIMS

5. The issue raised by Declaration (vi) is whether and if so in what circumstances, in the event of a surplus, a creditor with a non-provable claim which has not been paid in full is entitled to payment of interest in respect of that claim before any distributions are made to shareholders, where he has a right to such interest apart from the administration.

6. David Richards J held, as recorded in Declaration (vi), that, if and to the extent that a creditor has a non-provable claim (including but not limited to a currency conversion claim) in respect of a sum on which interest is payable apart from the administration at any time during the period after the Date of Administration, the creditor has a non-provable claim in respect of such interest (if any) as may have accrued on that non-provable claim in that period. The Administrators have recently estimated that creditors are entitled to interest of at least £400 million on their non-provable currency conversion claims.

7. The Senior Creditor Group contends that Declaration (vi) is correct for the reasons given by the Judge. These submissions are also without prejudice to the submissions in its main Skeleton on the appeal in respect of the Waterfall IIA judgment (see further paragraphs 18 - 20 below).

(1) The Judge's reasoning

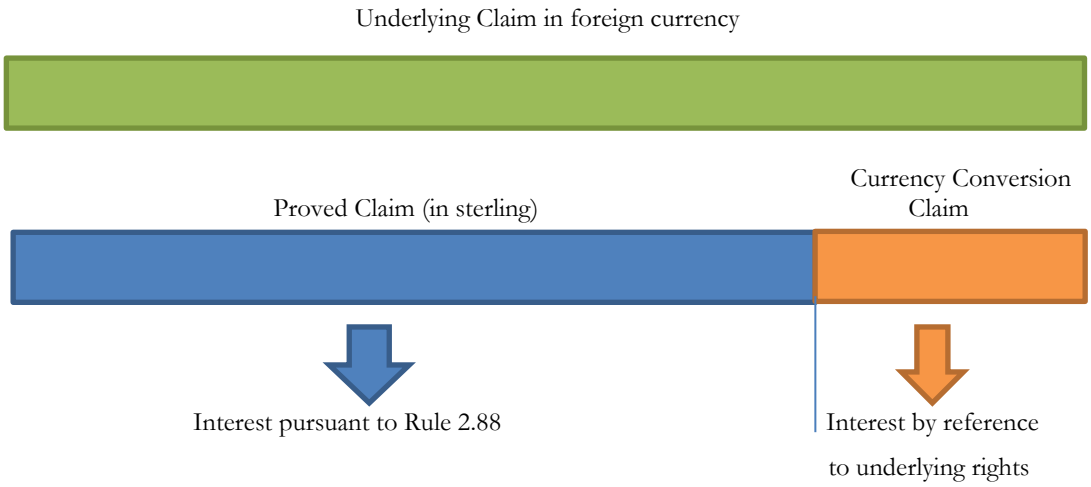
8. David Richard J's reasoning is set out in his Judgment at [168]-[170]. There are essentially three parts to it:

   (1) First, the Judge stated that, in accordance with the judgment of the Court of Appeal in *Waterfall I*, a creditor with a claim denominated in a foreign currency who receives, by way of dividend, less than the full amount that he is owed, as a result of his claim having been converted into sterling by reference to the exchange rate as at the date of administration and the subsequent depreciation of sterling, will have a non-provable claim for the balance. That balance is payable, in the event of a surplus, in priority to any distribution to shareholders. As the Judge said, "*It is a case where the creditor is remitted to his contractual rights. His claim is for the unpaid portion of the debt due to him*" (Judgment [168]). This is often referred to as a "currency conversion claim" although, as the Judge correctly stated, it simply reflects the unpaid balance of the underlying claim which has not been discharged by the payment of sterling dividends and which must be satisfied in full before any distributions are made to shareholders.

(2) Secondly, the Judge stated that there is no provision in the Rules "*for the payment of interest on such non-provable claims*" (Judgment [169]). That is because rule 2.88(7) deals with interest on "*the debts proved*", not with interest on non-provable debts. Where an underlying claim is denominated in a foreign currency, the proved debt will be the sterling equivalent of the foreign currency claim converted at the official exchange rate prevailing on the date when the company went into administration (rule 2.86(1)). Statutory Interest under rule 2.88(7) and (9) will be calculated by reference to that sterling sum, not by reference to the underlying foreign currency claim or any part of it which remains unpaid after receipt of dividends.

(3) Thirdly, "*if the contract between the company and the creditor provides for interest on any unpaid part of the debt, the creditor is in my judgment entitled to include such interest as part of his non-provable claim*" (Judgment [169]). The position of rule 2.88 as a complete code for the payment of interest on proved debts does not affect this as "*neither explicitly nor implicitly does it interfere with a creditor's contractual right to interest on a non-provable debt*"; see also *Wight v Eckhardt Marine GmbH* [2004] 1 AC 147 at [26]-[27]. Accordingly, a creditor who is remitted to his underlying contractual or other rights in the event of a surplus, and who has a non-provable currency conversion claim for any unpaid balance, is also entitled to any interest to which he was entitled on that unpaid balance.

9. The effect of the Judge's conclusion on this issue can be illustrated diagrammatically as follows:



(2) Why the Judge was right

10. The Judge's conclusion follows directly from the treatment of the underlying non-provable claim:

    (1) The effect of the insolvency regime is that a creditor with a claim denominated in a foreign currency is entitled to payment of that sum in full before any distributions are made to shareholders. If therefore any sterling dividends that he receives, when converted into the foreign currency on the date of receipt, do not discharge his foreign currency claim in full, he is, as David Richards J held, "*remitted to his contractual rights*" and has a non-provable currency conversion claim "*for the unpaid portion of the debt due to him*" (Judgment [169]).

    (2) The same reasoning applies to any *interest* to which the creditor is entitled in respect of the unpaid portion of his foreign currency claim. If he has a contractual right to interest on his foreign currency claim, he is also remitted to his underlying right to payment of such interest on the unpaid balance of that claim in the event of a surplus, before any distributions are made to shareholders.

    (3) The justification for this, as a matter of policy, is the same in respect of interest as it is for principal. As Moore-Bick LJ stated in *Waterfall I* at [252] "*the justice of the case*" lies in allowing "*a foreign currency creditor to recover the true value of his debt* …" and as Briggs LJ commented at [154] the contrary conclusion "*would merely cause a wholly unnecessary injustice, unsupported by the need to fulfil any policy requirement*".

11. A creditor with a claim denominated in a foreign currency is therefore entitled to receive: (a) dividends in sterling equal to the value of his claim as converted into sterling at the date of administration, together with Statutory Interest on that sterling sum calculated in accordance with rule 2.88(7) and (9); and (b) payment of any unpaid balance of his foreign currency claim, together with any interest to which he is otherwise entitled on that unpaid amount; before any distributions are made to shareholders.

(3) Wentworth's arguments on appeal

12. Wentworth contends that the Judge was wrong to make Declaration (vi) and says that a creditor is not entitled to be paid any interest that it is otherwise entitled to on the unpaid principal amount of its claim. It has two arguments.

13. Wentworth's first argument is that, contrary to the Judge, the provisions for Statutory Interest on proved debts in rule 2.88 exclude any such entitlement to interest. It makes four points in support of this argument:

(1) The Judge "*failed to take into account the fact that a currency conversion claim is not a separate claim independent from the process of proof, but is merely part of the creditor's underlying contractual claim submitted to proof which remains unpaid (in the foreign currency) following payment in full of dividends in respect of that claim*" (Wentworth's Skeleton Argument at [8]).

(2) The proved debt is to be regarded as the full foreign currency debt of a creditor, such that payment of interest under rule 2.88 is payment of interest on the whole sum (Wentworth's Skeleton Argument at [8(4)]).

(3) As rule 2.88 constitutes, on the Judge's reasoning, a complete code for the payment of post-administration interest on proved debts, there is no scope for any claim to interest based on pre-existing contractual rights and the unsatisfied part of the creditor's underlying claim (Wentworth's Skeleton [8(5)] and [8(6)]).

(4) It is unprincipled that a foreign currency creditor should retain a contractual entitlement to interest sitting outside rule 2.88 when a sterling creditor does not. Rule 2.86 does not require this conclusion, which is contrary to rule 2.88.

14. This argument is wrong:

(1) Wentworth's first point is that the Judge failed to take into account the fact that a currency conversion claim is not a separate claim independent from the process of proof, but merely part of the creditor's underlying contractual claim. This does not reflect the Judge's judgment, which accepted this analysis. Indeed, it was the analysis that the Judge had adopted in his judgment in *Waterfall I*; see for example at [98]. It was an analysis that he also had well in mind at this stage of his judgment in *Waterfall IIA*, as indicated by his comment that "*His claim is for the unpaid portion of the debt due to him*" (Judgment [168]).

(2) Wentworth's second point is that the proved debt in sterling is to be regarded as the full foreign currency debt of a creditor, such that payment of interest under rule 2.88 is payment of interest on the whole sum. This is the critical step in its argument. It is also wrong. The proved debt cannot be regarded as the full foreign currency debt

for these purposes. This follows from the fact that payment of the full amount of the proved debt in sterling is not necessarily regarded as payment of the full foreign currency debt. The fact that, despite having received 100p in the £ on his sterling proved debt, a creditor may still have a currency conversion claim for any unpaid balance of his foreign currency claim, demonstrates that the proved debt is not regarded as the same as the full foreign currency debt. As the Judge himself said elsewhere in his Judgment, the proved debt and the underlying claim are not the same thing "*as clearly illustrated by the examples of … the admission to proof of a sterling sum in place of a debt otherwise due in a foreign currency*" (Judgment [206]). Wentworth's second point is inconsistent with the recognition of currency conversion claims by the Court of Appeal in *Waterfall I*. Nor, equally, does it follow that payment of interest under rule 2.88 on the sterling amount of the proved debt, will result in payment of the full amount of interest due on the underlying foreign currency debt.

(3) Wentworth's third point is that rule 2.88 constitutes a complete code for payment of post-administration interest on proved debts. It is correct that this is what the Judge held. But, as the Judge also held, the mere fact that rule 2.88 contains a complete code for interest on the sterling sum admitted to proof, is irrelevant to whether a creditor is also entitled to interest on any unpaid balance of his foreign currency claim that is not admitted to proof. As the Judge said of rule 2.88, "*neither explicitly nor implicitly does it interfere with a creditor's contractual right to interest on a non-provable debt*" (Judgment [169]).

(4) Wentworth's fourth point is that it is unprincipled that a foreign currency creditor should retain a contractual entitlement to interest sitting outside rule 2.88 when a sterling creditor does not. This is also wrong. A creditor with a claim of £100 and interest at 10% per annum, who receives dividends of £100 and interest under rule 2.88(7) and (9) at the rate of 10% on £100, will have been paid in full. In contrast a creditor with a claim of USD100 and interest at 10% who has a currency conversion claim will, by definition, not have received dividends equivalent to USD100. Unless sterling appreciates sufficiently against the dollar prior to the payment of Statutory Interest, nor will he have received interest under rules 2.88(7) and (9) equivalent to 10% on that USD100. As the Court of Appeal held in *Waterfall I*, there is nothing unprincipled, in such circumstances, in the foreign currency creditor retaining his contractual right to payment of the unpaid balance of his foreign currency claim. Nor, equally, is there anything unprincipled in him also retaining his contractual right to interest on that unpaid balance. To the contrary, what would be unprincipled in

such circumstances would be to permit the money to be distributed instead to shareholders. As Briggs LJ commented at [154], this "*would merely cause a wholly unnecessary injustice, unsupported by the need to fulfil any policy requirement*".

15. Wentworth's second argument seeks to challenge the Judge's conclusion that interest on any currency conversion claim runs from the date of administration, contending in the alternative that interest should only run from the date of payment of the final dividend in respect of the proved debt (Wentworth's Skeleton Argument [10] *et seq.*).

16. In support of its second argument, Wentworth says that the nature of a currency conversion claim is such that "*one can never know whether there is, in fact, a shortfall until all sterling payments have been made in respect of dividends*" (Wentworth's Skeleton Argument [12]) and that the exchange rate may vary dramatically between the dates of payment of dividends (paragraphs [13]-[15]), such that any other approach might result in the creditor "*being substantially over-compensated, because until the date of the final dividend it had received a sterling sum (and statutory interest on that sterling sum) which was greater in its original currency, than the proportion of proved debts received by sterling creditors*" (paragraph [16]).

17. Wentworth's second argument is also wrong. The argument was correctly rejected by the Judge in his decision of 9 October 2015 dealing with the various consequential issues arising out of his judgment in *Waterfall IIA* (at pages 17-19).In particular:

    (1) It is correct that "*one cannot know whether there is, in fact, a shortfall until all sterling payments have been made in respect of dividends*" and that exchange rates may vary between the dates of payment of dividends. This, however, is irrelevant. A creditor with a claim in a foreign currency is entitled to payment of the foreign currency amount in full before any distributions are made to shareholders. Obviously, if at any stage the amount of the dividends received, when exchanged into the foreign currency at the date of receipt, is equal to the amount of the creditor's foreign currency claim, no currency conversion claim will arise. However, where a currency conversion claim does arise, it simply represents the unpaid part of the proven foreign currency debt remaining after all dividend payments have been made. This amount has been outstanding from the point at which the provable foreign currency claim came into existence, not from the point of the last dividend payment.

    (2) Nor does it assist Wentworth to say that, unless interest is only paid from the date of payment of the final dividend, a creditor might be "*substantially over-compensated, because*

until the date of the final dividend it had received a sterling sum (and statutory interest on that sterling sum) which was greater in its original currency, than the proportion of proved debts received by sterling creditors" (emphasis added). It is important to note the nature of the alleged over-compensation. The argument is that, given the possible effect of exchange rate movements, the payment of any dividend might result in a foreign currency creditor receiving a greater *proportion* of his foreign currency claim than a creditor with a claim denominated in sterling before the final dividend is paid. But this is no more than a consequence of the fact that the Rules require, for the purposes of proof, all claims to be converted into sterling, and for dividends to be paid *pari passu* in respect of such proved claims. The fact that creditors might receive a different *proportion* of their underlying claims, as a result of dividends being calculated by reference to the sterling amount of their proved claims, is inherent in the statutory scheme for *pari passu* distribution. That scheme leaves foreign currency creditors exposed "*to currency risk during the potentially long period between conversion and payment, contrary to contract*", as Briggs LJ commented in *Waterfall I* at [137]. The possibility that a foreign currency creditor might at one point in that scheme receive a higher proportion of his underlying claim than a sterling creditor does not justify depriving that creditor of his right to interest on an unpaid debt which has been outstanding since the debt first came into existence.

(3) In any event, the fact that creditors may receive a different proportion of their underlying claims would not be avoided by holding that interest on any non-provable claim was only paid after payment of any final dividend. The feature of the scheme, about which Wentworth complains, would not be avoided by its solution.

(4) The Senior Creditor Group's further argument

18. The above submissions in respect of Declaration (vi) are without prejudice to the Senior Creditor Group's submissions in its main Skeleton Argument in respect of its appeal relating to the *Waterfall IIA* judgment.

19. The Senior Creditor Group's main Skeleton Argument deals in the first instance with the effect of rule 2.88(7) and (9) (see, in particular, Sections C to I). It contends that the Judge was wrong in his construction of those rules, when he concluded that they did not continue to give effect to the rule in *Bower v Marris*. In Section M, however, it also contends, further or in the alternative, that creditors have a non-provable claim for any interest to which they are otherwise entitled and which has not been paid in full as a result

of the receipt of dividends and the payment of Statutory Interest under rule 2.88(7) to (9). This includes, but is not limited to, any interest that they are otherwise entitled to as a result of the operation of the rule in *Bower v Marris*. In short, the Senior Creditor Group contends that creditors are entitled to have their underlying claims in respect of principal and interest satisfied in full before any distributions are made to shareholders. To the extent that this is not achieved by the statutory regime of dividends and Statutory Interest in respect of proved debts , creditors have a non-provable claim for any unpaid balance, whether of principal or interest, which is payable in priority to any distributions to shareholders. The creditor has bargained for payment of principal and interest in a foreign currency and, to the extent that he does not receive the amount that he is owed, has a non-provable claim for the outstanding balance. In the event of a surplus, the debtor is not entitled to impose the foreign exchange risk on a creditor who has bargained for payment of interest in a foreign currency, any more than he is entitled to do so in respect of principal. Although a creditor with a claim in a foreign currency bears the foreign exchange risk of such conversion in the majority of administrations where there are insufficient funds to pay non-provable claims given the requirement of *pari passu* distribution, but he does not do so in the event of a surplus.

20. It is important to understand, in this context, that, depending on the facts, the Judge's conclusion, as reflected in Declaration (vi), does not result in a foreign currency creditor receiving the *full* amount of contractual interest to which he is entitled and to his underlying claim being satisfied in full, before any distributions are made to shareholders. It therefore does not entirely remove the "*unnecessary injustice*" referred to by Briggs LJ so far as any creditor with a claim denominated in a foreign currency is concerned. The submissions made by the Senior Creditor Group in Section M of its main Skeleton Argument, if accepted, would entirely, rather than merely potentially only partially, remove that injustice.

C. DECLARATION (xiv)

21. The issue raised by Declaration (xiv) is whether interest on an admitted provable debt which was a contingent debt as at the date of administration is payable under rule 2.88(7) from the date of administration or only from some later date. David Richards J held, as recorded in Declaration (xiv) that Statutory Interest is payable in respect of such a debt from the Date of Administration. His reasoning is set out in his Judgment at [184]-[225].

22. Declaration (xiv) is correct for the reasons given by the Judge, alternatively for the reasons set out the Senior Creditor Group's Respondents' Notice.

23. The issue, like the other issues on the appeal, is of considerable financial importance to the parties. If Statutory Interest is not payable on contingent claims from the date of administration, it has been estimated that it will deprive creditors of approximately £0.5 billion and result in a corresponding windfall for subordinated creditors and shareholders (Judgment [187]).

(1) The Judge's reasoning

24. The issue is one of construction of rule 2.88(7) which provides that "*any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company entered administration*".

25. The parties agree that the issue must be approached in the context of the scheme established by the legislation (Judgment [189]). The Judge dealt with that context at [190]-[203]. He referred to the following aspects of the statutory scheme:

(1) Rule 2.69 provides that all proved debts, other than preferential debts, rank *pari passu* for the purposes of dividends, and thus require to be treated equally by reference to the amounts for which they have been admitted to proof (Judgment [193]).

(2) A single date for the ascertainment of claims is essential for a *pari passu* distribution and the date chosen by the legislation is the commencement of the administration; i.e. the date of administration (Judgment [201]).

(3) The definition of "*debt*" for the purposes of proof includes contingent debts. As the Judge said, rule 13.12 "*makes clear that future and contingent debts are "debts" for the purposes of proof and distribution*" (Judgment [192]-[193]).

(4) The quantification of contingent debts for the purposes of proof is governed by rule 2.81. This requires an administrator to estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value (Judgment [194]). Estimating the value of a contingent debt necessarily involves matters of opinion and judgment. In the case of an uncertain

future debt, as a result of the *pari passu* rule, this process will include an element of discount to give it a present value as at the date of administration. Using an example given by the Judge, "… *if the contingent debt cannot fall due for a period of, say, 5 years, the estimate of the liability must include an element of discount for that period*" (Judgment [198]).

26. The Judge dealt with the effect of the rules in relation to post-administration interest at [204]-[225]. He identified the issue as "*whether in providing that interest is to be paid 'on those debts' in respect of the periods during which they have been 'outstanding' since the company entered administration, the sub-rule is referring to the underlying debts giving rise to the admitted proofs or whether it is referring to the debts as admitted to proof*". The Judge correctly concluded that interest was to be paid on the amount of the debts as admitted to proof. Thus:

(1) Dividends are paid to creditors *pari passu* in discharge of their proved debts, not their underlying claims (Judgment [206]). The two things are not the same, as illustrated by the existence of currency conversion claims. When rule 2.88(7) requires the surplus to be " … *applied in paying interest on those debts in respect of the periods during which they have been outstanding*", the reference to "*those debts*" is to the proved debts, which must be paid in full before there is a surplus (Judgment [208]).

(2) Rule 2.88(7) compensates creditors for the delay since the commencement of the administration in the payment of their admitted "*debts*" as ascertained or estimated in accordance with the legislation (i.e. their proved debts), and not in the payment of their underlying debts (Judgment [207]).

(3) This construction is consistent with the underlying principles of insolvency law and with the previous statutory regime (Judgment [211]-212])[1].

27. The Judge also considered the position in relation to post-administration interest in the special situation of a contingent claim where the debt was no longer contingent by the time that any dividend was declared (Judgment [219]-[224]):

(1) In these circumstances, rule 2.81 permits an administrator to use hindsight and revise the estimate of the value of the claim (Judgment [200]). The question which arises is how the value of the previously uncertain future claim, which is no longer uncertain,

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1 Although the Judge said at [211] that he was cautious about referring to equivalent provisions under previous law, such matters are relevant and can be taken into account when construing the Rules; see *R v Carrick DC* [1999] QB 1119 at 1130D, *Goodes v East Sussex County Council* [2000] 1 WLR 1356 at 1360H and *Re MF Global* [2015] EWHC 2319 at [23].

is now to be estimated; in particular, whether it still requires to be discounted for any remaining element of futurity.

(2) The Judge held that rule 2.81 no longer applied as the debt was no longer a contingent debt, and the cases do not support continuing to discount it (Judgment [218]-[224]). To similar effect, although rule 2.105, which specifically deals with discounting future debts, generally requires future debts to be discounted back to the date of administration, it does not require them to be discounted where the future debt has fallen due for payment before the date when the dividend is declared. In effect, he concluded, if the Rules provide that a future debt which fell due for payment prior to the declaration of any dividend no longer requires to be discounted back to the date of the administration, nor does a contingent claim which had ceased to be contingent by the same date (Judgment [213]-[215] and [220]-[221]).

(3) The Judge held that, if and to the extent that this may produce an advantageous result for the creditor in certain circumstances, this is explicable, amongst other reasons, on the basis that "*it is difficult to construct a scheme which can produce a perfect solution in all circumstances* ..." (Judgment [215]).

(2) Wentworth's arguments

28. Wentworth contends that the Judge was wrong. There are two main strands to its argument on this issue. The first argument focusses on the reference in rule 2.88(7) to interest being payable in respect of the periods for which the proved debt was "*outstanding*" and the second deals with the special situation in which the debt has ceased to be contingent before the dividend has been declared.

(a) The meaning of "outstanding"

29. First, Wentworth contends that a contingent debt which is admitted to proof is not "*outstanding*" within the meaning of rule 2.88(7) unless and until the contingency occurs (Wentworth's Skeleton Argument [26] and [28]-[35]) (Judgment [204]).

30. This is incorrect. A contingent debt, having been ascertained and given a present value as at the date of administration for the purposes of proof, is properly to be regarded as "*outstanding*" from that date for the purposes of the statutory scheme, equally with all other proved debts. The Judge was right in his analysis:

(1) It is a fundamental principle of insolvency law that all proved debts are treated *pari passu*. This is expressly reflected in rule 2.69. Such *pari passu* treatment requires all proved debts to be ascertained and valued by reference to a common date. That date is the date of administration.

(2) In the case of a contingent debt which may fall due at some date in the future, estimating the present value of that debt as at the date of administration requires the administrator to discount its face value to reflect both: (a) the chance that it may never become payable; and (b) the fact that, if it does, it will become payable at some date in the future. The need to place a present value on uncertain future claims for the purposes of proof is recognised in various authorities; see, for example, *In re European Assurance Society Arbitration* (1872) 17 SJ 60, 69; *Re Danka Business Systems Plc* [2012] EWHC 579 per HHJ Pelling QC, cited without disagreement by the Court of Appeal at [2013] Ch 506 at [11]; *Re MF Global UK* [2013] EWHC 92 at [54]; and *Waterfall I* [2015] Ch 1 at [77].

(3) Having ascertained the present value of any uncertain future debt as at the date of administration and admitted it to proof, dividends are paid *pro rata* on the amount of that proved debt equally with all other proved debts. Regarding all proved debts as "*outstanding*" from the date of administration is consistent not merely with the process for ascertaining and valuing claims, but also with the "*the principle of insolvency law that the realisation of assets and the distribution of the proceeds among creditors are treated as notionally taking place simultaneously on the date of the commencement of the liquidation or administration*" (Judgment [202] citing, *inter alia*, *Re Dynamics Corporation of America* [1976] 1 WLR 757 per Oliver J at 774G-H). It is also consistent with the natural meaning of the word "*outstanding*", which is not limited to debts which are due and payable (*Re Crystal Palace FC (2000) Ltd v Peterson* [2005] EWCA Civ 180) or currently payable (*Re Videocon Global Ltd* [2016] EWA Civ 130).

(4) Statutory Interest under rule 2.88(7) is also paid *pari passu* in respect of the amount of all such proved debts "*in respect of the periods during which they have been outstanding since the company entered administration*", as compensation for the delay in payment of their proved debts since the date of administration. The Rules use the word "*outstanding*" to recognise that, where proved debts are paid by dividends in instalments, interest is paid on the "*outstanding*" balance at any time and not on the full proved debt.

31. Indeed, Wentworth expressly accepts that "*for the purposes of proof an estimated value is placed upon a contingent debt and … such amount is treated for the purpose of pari passu distribution as payable as at the Date of Administration*" (Wentworth's Skeleton Argument [34]-[35]]). It seeks to avoid this fact by contending, however, that "*the fact that an amount is provable and thus treated as payable as at the Date of Administration … does not mean that the proved debt is itself treated as being outstanding as from the Date of Administration*" (Wentworth's Skeleton Argument [35]). This attempt to distinguish between the proved debt and the amount for which it has been admitted does not make sense. Wentworth accepts that the amount for which a contingent has been admitted "*is treated as payable*" from the date of administration. It follows that, for the purposes of rule 2.88, it is also treated as "*outstanding*" from that date like every other proved debt.

32. Wentworth's case to the contrary is also inconsistent with two fundamental principles of insolvency law. Thus:

(1) The consequence of Wentworth's case is that a creditor with a contingent claim would not be treated *pari passu* with all other creditors in respect of their proved debts. His contingent claim would have been discounted to give it a present value as at the date of the administration, so as to rank *pari passu* with all other proved debts. However, unlike all other creditors, he would not be compensated for delay in the payment of his proved claim. As a result, he would not have been treated *pari passu* with all other creditors in respect of their proved debts. Whilst they would have received the value of their claims as at the date of administration together with interest for the period since that date, he would not.

(2) On Wentworth's case, distributions would also be made to shareholders even though the contingent creditor's claim had not been satisfied in full, contrary to the basic statutory regime of priority. The amount that the creditor would receive would be the discounted amount of his claim as at the date of administration, although he would receive that sum not on that date, but only at some later date when dividends were paid. The creditor has no control over this later date. In many administrations, particularly a complex administration such as the LBIE administration, it could be many years after the date of administration. A debtor cannot claim to have paid a creditor in full if, on the date that payment falls due, he pays him not the amount that was due on that date, but some lesser discounted sum representing the present value of that sum at an earlier date without interest. Wentworth's case is contrary to

the fundamental principle that creditors' claims have to be satisfied in full before any distributions can be made to shareholders and that "*members come last*".

33. The illogicality and absurdity of Wentworth's case is also illustrated by comparing its approach to contingent debts with its approach to future debts:

(1) Rule 2.105 contains a specific rule requiring future debts to be discounted back to the date of administration for the purposes of dividends (Judgment [196]-[197]). The rule contains a statutory formula which, as the Judge explained, requires that "*a creditor proves for the full amount of a future debt but for the purpose of dividend (and no other purpose) the amount of the admitted proof is reduced at a rate of 5% per annum beginning with the commencement of the administration and ending with 'the date on which the payment of the creditor's debt would otherwise be due'*". (Judgment [197]).

(2) Wentworth correctly accepts that, given that a future debt is discounted back to the date of administration, such debts are to be regarded as "*outstanding*" from the date of administration, and Statutory Interest is payable on such debts under rule 2.88(7) from that date *pari passu* with all other proved debts (Judgment [188]).

(3) Wentworth's case is therefore that an ordinary future debt *is* entitled to Statutory Interest from the date of administration, because it is discounted back to that date in accordance with rule 2.105, but that an admitted provable claim that was uncertain at the date of the administration *is not* entitled to Statutory Interest even though it is also discounted for futurity under rule 2.81. This does not make sense. If a future debt which has been admitted to proof can be regarded as "*outstanding*" for the purposes of rule 2.88(7), despite the fact that it would not in fact have become due and payable for some years, so equally can an uncertain future debt, which is also discounted for futurity. Drawing a distinction between future debts and contingent debts in the way that Wentworth does would lead to differences in outcome dependent solely on whether a future claim was subject to any uncertainty and for which there would be no justification.

34. In assessing Wentworth's argument that Statutory Interest should only be paid on contingent debts from the date that the contingency occurred, one also needs to bear in mind that debts may be contingent for a variety of reasons. They may be contingent as to existence or quantum, with contingencies that are more or less certain to occur, and which may or may not vest over a long or short period of time. Thus a debt may also be

contingent because its quantification depends on uncertain future events; see, for example, *Re Daintry* [1900] 1 QB 546. Where, as will be the case for many financial contracts, the contingency relates to quantum, not the existence of the debt, the potential unfairness of preventing Statutory Interest from running unless and until the contingency has vested and the precise amount owed has been established, is self-evident: see, for example, the evidence of Mr Zambelli on behalf of the Senior Creditor Group, demonstrating the surprising and arbitrary results which could arise as a consequence of Wentworth's position (which evidence the Court is invited to read)[2].

(b) Contingent debts which are no longer contingent

35. Secondly, Wentworth relies on the treatment of contingent claims which have ceased to be contingent by the date that the relevant dividend is declared. Wentworth's argument is, in short, that:

    (1) A contingent claim which is no longer contingent at the date that the relevant dividend is declared, because the contingency has occurred, is no longer discounted for futurity for the purposes of proof.

    (2) If Statutory Interest was paid on such debts from the date of administration this would therefore result in "*significant double-counting*" or over-compensation (Wentworth's Skeleton Argument [39]).

36. Wentworth seeks to support its argument by referring to the particular facts of the LBIE administration (Wentworth's Skeleton Argument [39]) where, it says, all contingent claims have now become ascertained. However, the effect of rule 2.88(7) needs to be determined by reference to its wording and in the context of the statutory scheme, and not simply by how it happens to have operated in any particular case.

37. The first response is the one that the Judge adopted. In short, he held that it is correct that, if a contingent claim ceases to be contingent by the date that any dividend is declared,

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[2] The potential effect of Wentworth's position in relation to LBIE's administration is illustrated by the examples provided by the Senior Creditor Group in that evidence (which focusses on the position of claims arising in respect of prime brokerage agreements between LBIE and creditors, which claims are understood to represent a substantial portion of claims against LBIE, many of which were not closed out until some time after the Date of Administration: Zambelli 2 at [9]). As the worked examples at [7]-[20] demonstrate, creditors whose claims share the same economics and are valued at the same amount as at the same date, i.e. the Date of Administration, would receive different amounts of interest.

it is no longer discounted for futurity. However, he also held that, in this respect, the position is identical to that which Wentworth accepts applies in relation to future claims, which also cease to require to be discounted for futurity if they have matured by the time that any dividend is declared. The Judge dealt with the position of contingent claims which had ceased to be contingent by the date that the relevant dividend was declared at [213]-[224]). He concluded that:

(1) Rule 2.81 does not permit a contingent claim which is no longer contingent to be discounted for futurity (Judgment [219]). The reason for this is because, the Judge said, "*It would clearly be inconsistent to use the power to revise an estimate to discount the debt when such a power could not be used in the case of a contingent debt which has become an actual debt before the administrator has considered the proof*". If the legislature had envisaged that in these circumstances a discount should nonetheless be applied, express provision would be made, as had been made for future debts in rule 2.105 (Judgment [220]).

(2) It would be extraordinary if matured contingent debts were the subject of a discount but, as is clearly the case by rule 2.105, matured future debts are not subject to any such discount (Judgment [221]). The Judge explained the reason for the treatment in relation to a future debt which had matured by saying that "*He is then as much entitled to payment in full of his debt as any other creditor with a presently payable debt. If a dividend is then paid, it might well seem unjust that this creditor should not receive a dividend on the full amount of his debt*" (Judgment [215]). He also added that "*it is difficult to construct a scheme which can produce a perfect solution in all circumstances* …" particularly if one takes into account that many future debts will also carry a right to interest in the meantime.

(3) This analysis is consistent with the approach of Lord Hoffmann in *Stein v Blake* and there is no authority requiring a contrary conclusion (Judgment [222]-[224]).

38. The second and alternative response is that submitted by the Senior Creditor Group below. The Senior Creditor Group on this appeal contends that the Judge was correct for the reasons that he gave. However, it also submits that, if he was wrong, the solution to any issue raised by matured contingent claims is that they can and should also be discounted for futurity and, as such, Statutory Interest should still run on them from the date of administration. In particular:

(1) Rule 2.81 can be construed as permitting a matured contingent claim to be discounted for futurity. It requires the administrator to estimate the value of any

debt "*which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value*". Given that the process of proof is concerned with giving a claim a present value as at the date of administration, a matured contingent claim payable at a later date does not bear a certain present value as at the date of administration.

(2) It is correct that this would produce a different result for a matured contingent claim than for a matured future claim. However, there are two sources of potential conflict. The first is with rule 2.105. The second is with the rules requiring the *pari passu* treatment of proved debts and the resulting requirement to ascertain and value such debts by reference to a common date. It can be argued that, contrary to the Judge, a creditor whose proved debt was due and payable at the date of administration and a creditor whose proved debt only became due and payable five years later, would not be treated *pari passu* by each receiving an equal dividend, and that, if there is an anomaly that needs to be addressed, it is rule 2.105's treatment of matured future claims which is anomalous.

(3) The passage relied on by the Judge from Lord Hoffmann's speech in *Stein v Blake* did not deal with the present issue and did not address how a claim should be quantified once the contingency has occurred. There is authority which would support the alternative approach suggested by the Senior Creditor Group; see, for example, *Hill v Bridges* (1881) 17 Ch D 342 and *In re Law Car and General Insurance Company* [1913] 2 Ch 103 at 116, 121. Whilst the Judge rejected the relevance of these authorities on the basis that they concerned different legislative regimes (Judgment [224]), there is no reason why the underlying logic cannot apply equally to the 1986 regime.

39. Regardless, however, of which of these two responses is correct, it is important to note that Wentworth's solution to any problem caused by the treatment of crystallised contingent claims is plainly incorrect:

(1) Wentworth's solution to any risk of over-compensation in respect of matured contingent claims involves construing the legislation such that Statutory Interest runs on all contingent claims, both un-matured and matured, only from the date that they would otherwise have become due and payable.

(2) However, as set out above, the effect of this would necessarily be to *undercompensate* creditors with contingent claims which were still contingent by the date of any dividend. The holder of a contingent debt which had not matured prior to the date

of payment of the final dividend would be compelled to accept the estimated value of the contingent liability as at the date of administration, with no compensation for the delay in paying that sum. As a result, Wentworth's approach would fail to treat creditors *pari passu* and result in distributions being made to shareholders even though creditors' claims had not been satisfied in full.

(3) When contingent claims are "outstanding" as a matter of fact

40. If, contrary to the above, the Court were to conclude that Statutory Interest is not necessarily payable on all contingent debts from the date of administration and that a contingent debt may only be "*outstanding*" for the purposes of rule 2.88(7) from some later date, the Senior Creditor Group contends that, whether a contingent debt is outstanding, is ultimately a question of fact. In particular, the date on which a debt is to be regarded as "*outstanding*" for the purposes of rule 2.88(7) may depend on the terms of the relevant agreement, the facts and circumstances giving rise to the claim, the nature of the contingency and the date from which, as a matter of substance, the liability ought to be regarded as having been "*outstanding*", even if not due and payable[3].

41. For these reasons, although the Senior Creditor does not invite the Court of Appeal to rule definitely on the meaning of "*outstanding*" in all circumstances, it does ask, as is suggested to the Judge below, that, if the Court were to accept Wentworth's arguments, any order makes clear that, whether and to what extent any particular contingent debt was "*outstanding*" as at the date of administration and whether and when it became outstanding, may, absent any agreement with the relevant creditor, potentially require further directions.

D. DECLARATION (xvii)

42. Declaration (xvii) is concerned with whether a creditor with a currency conversion claim is required, when calculating the amount of his non-provable claim, to give credit for any Statutory Interest that he has received in respect of his proved debt pursuant to rule 2.88(7) and (9).

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3 Thus, for example, depending on the facts a liability may properly be regarded as "*outstanding*" for the purposes of rule 2.88(7) under a financial contract, which was subject to an event of default as at the date of administration, despite the fact that the contract still required to be closed out or the precise amount owed by the defaulting party still required to be determined by the non-defaulting party; see, for example, in the context of the ISDA Master Agreement, the judgment of Gloster LJ in *Videocon Global Ltd v Goldman Sachs International* [2016] EWCA Civ 130 at [49]-[50].

43. Wentworth contends that any currency conversion claim should take into account the payment of Statutory Interest and that "*the loss is calculated by comparing the aggregate of the creditor's contractual rights to both principal and interest expressed in the relevant foreign currency with the aggregate amount of such foreign currency resulting from a conversion of the sterling amounts received by it in respect of both principal and interest at the rates prevailing on the dates of payment*" (Judgment [227]).

44. David Richards J rejected this contention and held, as recorded in Declaration (xvii), that the calculation of a non-provable claim (excluding any non-provable claims to interest (as to which no declaration is made) but including, although not limited to, a currency conversion claim) should not take account (nor, therefore, be reduced by) the Statutory Interest paid to a relevant creditor.

45. The Senior Creditor Group contends that Declaration (xvii) is correct for the reasons set out in its Respondent's Notice and as developed below, alternatively for the reasons given by the Judge. The issue is, again, of huge financial significance to unsecured creditors, who stand to lose between £1.4 and £1.6 billion in the event that Wentworth's argument is successful.

(1) The basic issue

46. Given that the declaration, as expressed, is concerned solely with claims to principal and not with non-provable claims to interest, the effect of the parties' rival contentions can most easily be illustrated by comparing the effect of the statutory scheme on two claims, one denominated in sterling and one denominated in a foreign currency, neither of which carries any underlying right to interest. Thus:

    (1) The creditor whose claim is denominated in sterling receives dividends on his proved debt amounting to 100p in the £, thereby satisfying his claim in full. In the event of a surplus after payment of all proved debts, he is also entitled to Statutory Interest under rule 2.88(7) and (9) at the Judgments Act rate of 8%, despite having had no underlying right to such interest.

    (2) The creditor whose claim is denominated in a foreign currency has his claim converted into sterling for the purposes of proof. He also receives dividends on that proved debt denominated in sterling amounting to 100p in the £. However, due to the depreciation of sterling, those dividends do not satisfy his foreign currency claim in full, leaving him with a non-provable claim for the unpaid balance of principal. In

the event of a surplus after payment of all proved debts, like the sterling creditor he is also entitled to Statutory Interest under rule 2.88(7) and (9) at the Judgments Act rate of 8% on the sterling amount of his proved debt, despite also having had no underlying right to such interest. If there is a surplus after the payment of such interest, he also has a currency conversion claim representing the unpaid balance of the principal amount of his foreign currency claim; see the judgment of the Court of Appeal in *Waterfall I*.

47. On the Judge's and the Senior Creditor Group's approaches, both the sterling creditor and the foreign currency creditor receive satisfaction of their claims in full, together with the interest to which they are entitled under rule 2.88(7) and (9) as compensation for the delay caused by the administration, before any distributions are made to shareholders. This is consistent with the Rules and with fundamental principles.

48. On Wentworth's case, however, the foreign currency creditor, when calculating the unpaid amount of principal, is required to give credit for the amount of Statutory Interest that he has received. It necessarily follows, on its case, that the foreign currency creditor will not receive both the full amount of principal which he is owed and also the compensation for delay to which he is entitled under rule 2.88(7) and (9). In substance, either:

    (1) The creditor will not receive payment in full of the Statutory Interest on the sterling amount of his proved debt in accordance with rule 2.88(7) and (9) as compensation for delay, although the statutory rules expressly entitle him to payment of such interest; or

    (2) The creditor will not have been paid the full amount of principal that he is owed before any distributions are made to shareholders, contrary to the fundamental principle that creditors are entitled to have their claims satisfied in full before any distributions are made to shareholders, thereby resulting in another " … *wholly unnecessary injustice, unsupported by the need to fulfil any policy requirement*"; see Briggs LJ at [154] in *Waterfall I*.

(2) The Judge's reasoning

49. The Judge dealt with Wentworth's contentions at [227]-[231]. He rejected its case on this issue for two reasons which he expressed very shortly:

(1) First, rule 2.88 contains a complete code for the payment of post-administration interest on the admitted debt expressed in sterling which replaced all prior rights including contractual rights. A payment of Statutory Interest under rule 2.88 is not, therefore, in or towards satisfaction of any contractual right to interest, because no such rights still exist. Nor, equally, is any comparison to be made between the foreign currency equivalent of the Statutory Interest received and the foreign currency interest to which the creditor was entitled under its contract (Judgment [228]).

(2) Secondly, even if that was incorrect, a creditor does not have a single composite claim comprising principal and interest (Judgment [229]). As a result, a creditor who receives a payment of Statutory Interest pursuant to rule 2.88(7) and (9) does not receive it in or towards satisfaction of his claim to the unpaid balance of principal.

(3) The Senior Creditor Group's submissions

50. The Senior Creditor Group contends that the Judge was correct to have concluded that a creditor with a currency conversion claim in respect of principal is not obliged to give credit for the amount of any Statutory Interest that he receives under rule 2.88(7) and (9).

51. The Senior Creditor Group's reasoning differs slightly from that of the Judge. In particular, as set out in its main Skeleton Argument on this appeal at Section M, it contends that rule 2.88(7) and (9) do not amount to a complete code and, if and to the extent that they do not result in a creditor receiving payment of the full amount of interest to which he is otherwise entitled, the creditor has a non-provable claim for the balance. However, this does not affect the conclusion that the Judge reached on this issue nor, indeed, the broad reasoning in relation to the Declaration. If its submissions in this respect are not accepted, the Senior Creditor Group relies on the reasoning adopted by the Judge at [227]-[231].

52. The short answer to Wentworth's case is that there is no reason why a creditor, who is entitled under the rules to compensation for delay in the payment of his proved debt, should have to give credit for that sum when claiming any unpaid principal on his claim. The two things are, as the Judge held, entirely separate, and the creditor is entitled to both (Judgment [229]-[230]).

53. Wentworth describes the insolvency process from a creditor's perspective as giving rise to "*a package of both benefits and burdens*" (Wentworth's Skeleton Argument [54]). However, in

considering its arguments, it is also important to bear in mind that there are three separate stages in the operation of the statutory regime with respect to the entitlements of general unsecured creditors, which are ranked in order of priority and which operate sequentially. Each stage is distinct and, if it comes into operation, gives rise to particular rights to which creditors are entitled. It is wrong to treat them in a way which ignores the fact that they operate sequentially and that all three stages may not all operate in any particular case.

54. The first stage deals with provable debts. Provable debts are limited to debts or liabilities existing as at the commencement of the administration within rule 13.12. They include principal and interest, except insofar as the interest is payable in respect of any period after the date of administration. To enable the company's assets to be distributed *pari passu* in satisfaction of its provable debts, such debts need to be ascertained and valued by reference to a common date and currency of account, which is the date of administration; *Re Dynamics Corporation of America* [1976] 1 WLR 757 at 761D; *Waterfall I* [2015] Ch 1 at [88]-[89].

55. The effect of converting foreign currency claims into sterling and paying dividends in sterling is that, pursuant to the first stage, a foreign currency creditor who receives 100p in the £ on his proved debt may, as a result of exchange rate movements, receive less or more than the full amount of his foreign currency claim. If he receives less, he will have a non-provable claim to the balance which is only payable in the event that there is a surplus after payment in full of all proved debts and Statutory Interest (i.e. as part of the third stage – considered below), and, if he receives more, there is no question of him having to repay the balance; *Waterfall I*. In short, he is entitled to 100p in the £ on his proved debt, just like every other creditor. This is the necessary effect of the statutory scheme for ensuring *pari passu* distribution. Wentworth accepts this (Wentworth's Skeleton Argument [59]).

56. The second stage deals with Statutory Interest under rule 2.88(7) and (9). In the event of a surplus after payment of all proved debts in full, that surplus is required to be applied, before being applied for any other purpose, in paying interest on such debts in respect of the periods for which they have been outstanding since the relevant date. Rule 2.88(7) and (9) confer a substantive statutory right on all creditors to receive interest on any debt proved out of the surplus in accordance with those rules. That right is intended to compensate all creditors for the delay caused by the insolvency process, whether or not they are otherwise entitled to interest; *Waterfall I* [86].

57. A foreign currency creditor is also entitled to Statutory Interest on his proved claim, denominated in sterling, in accordance with rule 2.88(7) and (9), equally with all other creditors. This again reflects the underlying principle of *pari passu* treatment of creditors. The foreign currency creditor is not required, at this second stage, to give credit for some part of the dividends that he has received on his proved debt in respect of principal as part of the first stage, when calculating the amount of Statutory Interest to which he is entitled under the second stage. He is no more required to do so than is a sterling creditor. They are both entitled to Statutory Interest in accordance with the rules, in addition to the 100p on the £ that they have received in respect of their proved debts, regardless, in the case of the foreign currency creditor, of whether the 100p in the £ that he received as part of the first stage was less than or more than the amount of his underlying foreign currency claim. Wentworth also appears to accept this.

58. Wentworth contends that the right to obtain Statutory Interest is in some way dependent on or inextricably linked to the conversion of the claim to sterling for the purposes of proof (Wentworth's Skeleton Argument [55]). This is incorrect. Statutory Interest, whether at the Judgments Act rate or not, is not some *quid pro quo* for the conversion of a foreign currency creditor's claim into sterling. It is a minimum level of compensation provided to all creditors in respect of their proved debts denominated in sterling, irrespective of the currency of their underlying entitlement or jurisdiction in which they might otherwise have obtained judgment.

59. The third stage of the process deals with non-provable claims. In the event of a surplus after payment of all proved debts and Statutory Interest in full, creditors are entitled to any payment required to satisfy their underlying rights in full, before any distributions are made to shareholders. This is because "*it would be contrary to principle and justice that the debtor, or the shareholders receiving the surplus, should be able to deny the foreign currency claimants their full contractual rights*"; *Waterfall I* [2015] Ch 1 at [110]. If, as a result of stage one, a foreign currency creditor has not received the full principal amount to which he is entitled, there is no reason why he should have to give credit for any Statutory Interest that he has received at stage two as compensation for delay in payment[4].

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4 If, as Wentworth accepts, one does not have to give credit at the second stage (i.e. when calculating Statutory Interest, you do not have to give credit for principal received), nor should you have to give credit at the third stage (i.e. when calculating the amount of principal still unpaid, you do not have to give credit for Statutory Interest received).

60. Any other conclusion would, as already submitted, mean that the creditor is deprived of the full benefit of one or other of his rights against the debtor. That is to say, if such a creditor has to give credit for interest received under rule 2.88 when calculating the amount of his non-provable currency conversion claim in respect of unpaid principal, then in substance either: (a) he will not have received Statutory Interest at the Judgments Act rate to which he was entitled under rule 2.88(7) and (9); or (b) his contractual entitlement to payment of the full principal sum to which he was entitled will not have been satisfied in full.

61. Declaration (xvii) as expressed is concerned solely with claims to principal and not with non-provable claims to interest[5]. The Senior Creditor Group accepted below that, where a creditor has a non-provable claim for interest, the calculation of that claim for interest at the third stage *does* need to give credit for any Statutory Interest received. But this is because the two claims would be in respect of the same thing; namely, interest as compensation for delay after the date of the administration. This, however, is not something which needs to be addressed by the Court of Appeal on this appeal.

ROBIN DICKER Q.C.
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20 May 2016

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5 It does not, therefore, seek to deal, for example, with a situation like that addressed in Declaration (vi) where a foreign currency creditor may be entitled to contractual interest on the non-provable unpaid balance of his underlying claim.

A2/2015/3763

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT
CHANCERY DIVISION
DAVID RICHARDS J
[2015] EWHC 2269 (Ch)

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

WATERFALL II DIRECTIONS APPLICATION

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