

Lehman Update

UK proceedings

Supreme Court decision: Belmont Park Investments PTY Limited -v- BNY Corporate Trustee Services Limited and LBSF: On 27 July, the Supreme Court handed down its long awaited judgment in the case Belmont Park Investments PTY Limited -v- BNY Corporate Trustee Services Limited and Lehman Brothers Special Financing Inc (LBSF). Although there were no surprises – the decision essentially follows the Court of Appeal's view that "flip provisions" reversing a counterparty's priority in the payment waterfall are not contrary to the anti-deprivation principle, and did not deprive LBSF's insolvent estate of an asset – it does, however, provide some much needed clarity for those operating in the financial markets on the limits of the anti-deprivation principle. To see a copy of our briefing note on the case please [click here](#).

LBIE

Action by the Pensions' Regulator being challenged: Last week, the Court of Appeal considered the priority ranking of a Financial Support Direction (FSD) which is likely to be issued by the Pensions' Regulator in respect of the deficit arising from Lehman Brothers' defined pension scheme. The court at first instance held that an FSD would constitute an administration expense and therefore payable before all creditors except those with a fixed charge and also ahead of the administrators' own fees. Judgment from the Court of Appeal is awaited.

Claims against affiliates: Appeals are being pursued in Germany in respect of the LBIE \$1bn claim for the return of client money held by Lehman Brothers Bankhaus AG. In June, the appeal court referred the matter back to the Regional Court of Frankfurt am Main for a consideration of the substantive issues. The next hearing is not anticipated to take place before September 2011. To see a link to the LBIE administrators' report on the June appeal court hearing please [click here](#).

LBIE continues its dialogue with LBI in relation to its Omnibus claim and is trying to reconcile balances and pending trades. LBIE received a revised determination of the Omnibus claim previously valued at \$6.2 billion which has now been increased to \$8.3 billion and includes for the first time a cash component in addition to a longer list of defined securities. LBIE must file any formal objection to the revised determination amount before 31 October 2011. To see a full copy of the LBIE administrators' update on this issue please [click here](#).

US proceedings

The Lehman chapter 11 debtors recently filed the Second Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors (the "**Second Amended Plan**") and the Disclosure Statement in connection therewith.

Key Issues

UK proceedings

- Supreme Court decision on flip clauses
- Court of appeal considers LBIE pension liabilities
- LBIE Claims against affiliates continue

US proceedings

- Second amended Chapter 11 plan filed

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The Second Amended Plan is said to result from negotiations with various constituents including certain of the Ad Hoc plan proponents and Non-Consolidation plan proponents. Several of these constituents have entered into plan support agreements and have agreed to support the Second Amended Plan. As a result, only the Second Amended Plan will proceed at this time. The Motion to Approve the Disclosure Statement (the "**Motion**") is scheduled to be heard by the court on August 30, 2011 and objections to the Motion are due on August 11, 2011. Copies of the Plan, Disclosure Statement and Motion are available from the US Court docket - please [click here](#).

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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