



~~CR-2008-000026~~
~~CR-2009-000052~~

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

CR-2008-000026

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

Mr Justice Hildyard

Dated 31 July 2019

B E T W E E N:

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

LBHI2 Applicants

-AND-

**(1) LEHMAN BROTHERS HOLDINGS SCOTTISH LP 3
(2) LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION)
(3) DEUTSCHE BANK A.G. (LONDON BRANCH)**

LBHI2 Respondents

---and---

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

PLC Applicants

-AND-

**(1) LEHMAN BROTHERS HOLDINGS INC.
(2) THE JOINT LIQUIDATORS OF LB GP NO 1 LIMITED (IN LIQUIDATION)
(3) DEUTSCHE BANK A.G. (LONDON BRANCH)**

PLC Respondents

ORDER

UPON the following Applications:

- the PLC Applicants' application dated 16 March 2018 for directions within the administration of Lehman Brothers Holdings plc (the “**PLC Application**”)
- the LBHI2 Applicants' application dated 16 March 2018 for directions within the administration of LB Holdings Intermediate 2 Limited (the “**LBHI2 Application**”; the PLC Application and LBHI2 Application together shall be the “**Directions Applications**”)

AND UPON the Order of Mr Justice Mann dated 24 July 2018 in respect of the Directions Applications (the “**July Order**”) directing a further case management conference (“**CMC**”)

AND UPON reading skeleton arguments filed by Adrian Beltrami QC and Adam Kramer for the PLC Applicants, Peter Arden QC, Louise Hutton and Rosanna Foskett for the LBHI2 Applicants, Mark Phillips QC, William Willson and Edoardo Lupi for Lehman Brothers Holdings Scottish LP 3 and Lehman Brothers Holdings Inc, and Sonia Tolaney QC, Richard Fisher and Tim Goldfarb for Deutsche Bank AG (London Branch)

AND UPON the Judge directing that the hearing of the CMC be vacated

AND UPON the Judge determining the direction in Paragraph 4 below on the papers

IT IS ORDERED THAT:

New York Law Expert Evidence

1. Further to paragraph 14 of the July Order granting each of the PLC Respondents 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, the questions for consideration by the US law experts shall be limited to the following:

- (1) What are the rules of contractual interpretation under New York law and the Bankruptcy Code, insofar as relevant and applicable to the interpretation of Section 8.02 of the 2011 Settlement Agreement?

- (2) As a matter of New York law and the US Bankruptcy Code, is extrinsic evidence admissible for the purpose of interpreting the scope of the Settlement Agreement, and in particular Section 8.02? If so, on what bases?
2. Paragraph 15 of the July Order requiring the US law experts to discuss and seek to narrow the issues between them before they exchange expert reports be deleted.

Cross-Examination

3. The following makers of witness statements served by the parties in the Directions Applications shall attend trial for cross-examination:
 - (1) Jacqueline Dolby;
 - (2) Ronald Geraghty;
 - (3) Thomas Grant;
 - (4) Sophie Hutcherson;
 - (5) Benjamin Katz;
 - (6) Stephen Miller;
 - (7) Raymond O'Grady;
 - (8) Christopher O'Meara; and
 - (9) Michael Sutton.

Trial

4. Each party shall file and serve on every other party any skeleton argument which that party intends to rely on at trial simultaneously at 4pm on Thursday 31 October 2019.
5. The provisional estimate for trial of 8-10 days under paragraph 21 of the July Order be extended to 10-12 days, to include 2 days of judicial pre-reading time.

Miscellaneous

6. The parties shall have liberty to apply.
7. The costs shall be in the Directions Applications.