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# Hughes Hubbard & Reed

## HHR Lehman Team Triumphs in 2nd Circuit Appeal on Compensation Claims

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**September 29, 2021** – In the final claims dispute in the liquidation of Lehman Brothers Inc., HHR secured an appellate victory when the Second Circuit affirmed two lower court rulings in favor of the trustee’s treatment of more than \$300 million in deferred compensation claims.

On Sept. 10, 2021, a three-judge panel of the Second Circuit Court of Appeals upheld a 2019 New York district court decision and a 2020 New York bankruptcy court order. Jim Fitzpatrick argued on behalf of Jim Giddens, the trustee overseeing the liquidation of LBI, before the Second Circuit.

The dispute related to compensation that the appellants had deferred under a deferred compensation plan called the Executive and Select Employees Plan (ESEP), which had been established in 1985. Under the plan, the appellants, all former Lehman executives, agreed to defer some of their compensation in exchange for tax benefits and a favorable interest rate. All of the executives agreed as part of the ESEP that any claims they might have to plan amounts would be subordinated to the claims of general creditors in the event of a liquidation.

Soon after LBI’s bankruptcy commenced in 2008, the executives filed claims seeking amounts deferred and accrued under the plan. Many of the executives asserted that they had secured claims.

Beginning in 2013, the trustee and the executives engaged in extensive litigation concerning the executives’ claims.

In September 2019, the New York district court affirmed a November 2015 ruling by a bankruptcy court granting the trustee’s motion to reclassify the executives’ claims from secured to unsecured.

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proceeding on a separate track from the secured-unsecured reclassification litigation.

In December 2019, the trustee moved to dismiss the executives' new adversary complaint. In June 2020, the bankruptcy court granted the trustee's motion to dismiss on three grounds: the complaint was time-barred by the federal four-year statute of limitations; the complaint was barred under the doctrine of laches; and the complaint failed to state a claim because Section 541 of the U.S. Bankruptcy Code does not exclude the deferred amounts from LBI's bankruptcy estate.

On appeal, the executives contended that the bankruptcy court erred on all three grounds.

The trustee successfully sought to have the appeal certified for direct appeal to the Second Circuit, skipping another potentially extended trip to the district court. The Second Circuit panel concurred with the bankruptcy court's findings that the executives had exhibited a remarkable lack of diligence in waiting until 2019 to raise their Section 541 argument for the first time, stating:

"Appellants did not make this argument when the Trustee objected to their claims from July 2013 to January 2014, nor when the Trustee sought to subordinate their claims beginning in February 2014, nor when the Trustee sought to reclassify their claims as unsecured beginning in September 2015." The panel added that the more than five-year delay in filing the complaint forced Giddens to engage in unnecessarily protracted and undoubtedly costly additional and piecemeal litigation for many years. "Moreover, the Trustee (not to mention LBI's other creditors) has been further prejudiced insofar as this case is prolonging the underlying bankruptcy." The panel also noted the Circuit's prior conclusion that the same executives' claims were subordinate to the claims of LBI's general unsecured creditors.

In addition to Fitzpatrick, the team representing the trustee included Karen Chau, Carl Mills, Chris Kiplok, Anson Frelinghuysen, Jeff Margolin, and Hilary McDonnell.

## Related People



**James C. Fitzpatrick**



**Karen M. Chau**



**Carl W. Mills**



**Christopher K. Kiplok**

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**Hilary McDonnell**



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