
Hughes Hubbard & Reed

Hughes Hubbard Wins Appeal in Developing Area of Bankruptcy

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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Hughes Hubbard & Reed's Lehman Brothers Inc. (LBI) team won affirmation from a federal district court upholding Bankruptcy Judge James Peck's rulings regarding when a claim against a bankrupt company should be subordinated to other claims because the claim arises from a transaction in the securities of an affiliate of the debtor.

On Sept. 5, U.S. District Judge Shira Scheindlin issued an opinion affirming two bankruptcy orders that granted a motion and sustained an objection filed by Lehman Trustee Jim Giddens seeking to subordinate certain claims pursuant to section 510(b) of the Bankruptcy Code.

Appellant Claren Road, a prime brokerage customer of LBI seeking damages due to LBI's failure to complete an agreement to buy Lehman Brothers Holdings Inc. (LBHI) bonds on the last trading day before LBHI went bankrupt, argued on appeal that its claim should not be subordinated because it did not "arise from the purchase or sale" of the LBHI bonds within the meaning of section 510(b).

Claren Road and other appellants, junior underwriters asking LBI for reimbursement and contribution with respect to more than \$300 million in settlements and legal fees they incurred in defending claims brought against them by investors in LBHI bonds, also argued that section 510(b) was inapplicable because there are no claims or interests "represented by" LBHI securities in LBI's Securities Investor Protection Act (SIPA) proceeding.

Judge Scheindlin rejected these arguments and agreed with Judge Peck and Giddens that subordination of the claims to the claims of general unsecured creditors was mandated under the plain language of section 510(b). She further held that, in cases involving affiliate securities, the type of security dictates the level of subordination whether or not that security represents an actual claim in the debtor's case.

The victory furthers Giddens' goal of preserving distributable funds for the rightful creditors of the Lehman estate.

Giddens is represented by Jim Kobak and Chris Kiplok and a large team within the firm. Michael Salzman led the

Claren Road appeal with assistance from Ramsey Chamie and Dina Hoffer. Robert Funkhouser led the underwriters' appeal with assistance from Jordan Pace and Jason Zakai.

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James W. Giddens



James B. Kobak, Jr.



Christopher K. Kiplok



Michael E. Salzman



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