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# Hughes Hubbard & Reed

## Hughes Hubbard's Lehman Team Achieves Mission Impossible

### News & Events

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**September 2018** – By Friday, Sept. 12, 2008, following months of gathering storm clouds, Lehman Brothers was on the verge of collapse. Hughes Hubbard received a call from Washington that day to prepare for the possibility of liquidating the country's fourth-largest investment bank with some 25,000 employees worldwide.

The firm was no stranger to major bankruptcies. Indeed, Hughes Hubbard had worked closely with the Securities Investor Protection Corp. (SIPC), a federally mandated nonprofit that protects investors from the bankruptcy of a broker dealer, since it was created in 1970. But when SIPC called James W. Giddens that Friday with the news that Lehman would likely go bankrupt, the first reaction was, "This can't happen."

Over the next chaotic 48 hours, however, it became clear that it would happen. "As Ernest Hemingway famously said, 'How do you go bankrupt? Slow and then fast,'" said Chris Kiplok, chair of Hughes Hubbard's Corporate Reorganization & Bankruptcy practice. "The weekend was a rollercoaster. We roared into the heart of the financial crisis with little notice, but we had the right team and we deployed immediately and got to work."

Ten years ago on Sept. 15, Lehman filed for bankruptcy protection, sending shockwaves around the world and inflaming a financial crisis that engulfed economies across the globe. Four days later, Giddens, founder of HHR's bankruptcy practice, was appointed trustee for the liquidation of Lehman's business under the Securities Investor Protection Act. Since that time, Giddens and the HHR team he assembled have returned \$115 billion to customers and general creditors of the brokerage, an outcome described by the bankruptcy judge overseeing the case as "extraordinary and far from certain when the liquidation began."

Within a week following Giddens' appointment, over \$92.3 billion was being returned to 110,000 individual retail customers of Lehman's brokerage. "This swift return of customer property was critical to restoring stability to the financial system during a time of great doubt and avoiding the potential for further financial collapse," Giddens said.

But the journey toward winding down Lehman's estate was just beginning and continues today. As the 10th anniversary passes, not a single one of the more than 140,000 claims remains before the bankruptcy court for resolution. HHR is now focused on the remaining claims before appellate courts.

"As trustee, it is extremely satisfying to see how much progress has been made toward closing out the liquidation," Giddens said. "We have overcome enormous complexities and unprecedented legal challenges to meet our goals and only a handful of issues await resolution."

It was a much different scene at the start of the liquidation. Despite no money in the bank and limited access to information, Kiplok and Jim Kobak, lead counsel to the trustee, were able to quickly assemble a team that grew to more than 700 people – including 120 lawyers from Hughes Hubbard, outside financial consultants and other technical experts – working across the globe, from New York to Los Angeles to Mumbai, India. They obtained transfers of funds and access to records and other information through court orders and negotiations when necessary.

Kobak recalled during the first few months how he and other group leaders were locked in a conference room from dawn till dusk, meeting with different teams reporting on the latest developments. "There was so much going on at the beginning that we had to have people stationed outside this war room to say, 'No, you can't come in now until we handle this issue first and then that issue.'"

Kobak said there were so many uncertainties that sometimes they weren't sure how they would complete their mission. "There were weeks when none of us would get any sleep," he said. "I mean even if we could get home at a reasonable hour, we would be so wound up because there were so many moving pieces and we needed so many of them to fall in place in order to get funds to customers and creditors."

Anson Frelinghuysen, counsel in CRG, was a first-year associate when he was assigned to oversee account transfers at Lehman's operations center in Jersey City after Barclays bought the U.S. brokerage. Part of his job was dealing with claimants calling about their frozen accounts. "The most memorable to me was a desperate grandfather who had his grandson's college funds locked up in a Lehman account, and it was time to pay tuition," he recalled. "One of the more satisfying calls I made was to this grandfather and I remember saying, 'Listen, the account's transferring tomorrow. You can fund your kid's college education.'"

Months after the liquidation began, Giddens enlisted litigator Bill Maguire to mobilize a litigation team. "My initial instructions were that the fate of the western world hinged on what was about to transpire in court," Maguire said. "So it was sold to me as a pretty big undertaking. Having said that, every day confirmed that the stakes were pretty high."

"Everything about Lehman was big," Maguire said. "The numbers were big, the dollars were huge, and there was a tremendous sense of urgency coming from many constituencies, primarily from the clients. One of the most striking aspects of Lehman from beginning to end was just the sheer scale, and there was a sense of excitement because this was a big collaborative team and everybody was motivated."

Meaghan Gragg, a partner in the firm's litigation department, began working on the Lehman liquidation right after she joined the firm in November 2008 after completing a federal clerkship. Her tasks evolved over the years until she managed a team handling more than 14,000 general creditor claims asserting more than \$127 billion in claims against the estate. "It was a colossal thing to handle," she said. "The most important lesson I learned on this case is that you can start off with something that seems so big and unapproachable, but if you step back and figure out a plan, it becomes manageable."

While Maguire handled the Barclays litigation, scores of litigators reporting to Kobak worked on several matters of first impression totaling tens of billions of dollars that established key precedents for future SIPC liquidations, including claims for securities related to repurchase agreements; claims related to settled-on-delivery versus payment “to be announced” contracts; and claims based on commission credits held in soft-dollar accounts.

“All the HHR lawyers who contributed to Lehman’s success over the years are too numerous to name,” Kobak said. “In addition to the litigators who handled major cases in bankruptcy court, district court and the Second Circuit, the team included lawyers from the corporate, tax, real estate and employment areas – a full array of the firm’s talent and resources.”

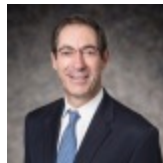
The team began repaying creditors in July 2014 after making the brokerage’s customers whole with more than \$106 billion. Creditors have received six payouts, raising their total recovery to 39.75 percent of what is owed.

“At the end of the day, Lehman was about solving one of the biggest problems in history,” Kiplok said. “My team has the confidence that, if you can solve Lehman, you can solve anything, and that’s the lesson we bring to our clients every single day.”

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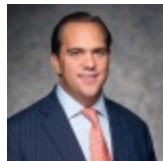
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