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# Hughes Hubbard & Reed

## Lehman Team Defends Appeal By Underwriter Claimants

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Hughes Hubbard & Reed's Lehman team successfully defended an appeal in the Second Circuit Court of Appeals by a group of junior underwriters seeking contribution or reimbursement from Lehman Brothers, Inc. (LBI) as the lead underwriter for securities issued by Lehman Brothers Holdings Inc. (LBHI).

On Dec. 14, 2015, a three-judge panel issued an opinion affirming a federal district court decision that subordinated the contribution claims pursuant to section 510(b) of the Bankruptcy Code because they arose from the purchase or sale of the debtor's affiliate's securities. Appellants, consisting of ANZ Securities Inc. and nine other investment banks, brought claims asserting that they had incurred approximately \$78 million in settlements and legal fees in defending investors' claims and should be reimbursed by LBI under the underwriting agreements.

In 2014, Bankruptcy Judge James Peck granted an objection filed by the Lehman Trustee Jim Giddens to subordinate these claims pursuant to section 510(b) as arising from the purchase of securities of LBI's parent, LBHI. The district court, in an opinion by District Judge Shira Scheindlin, affirmed.

The underwriters appealed to the Second Circuit, arguing, as they had in the lower courts, that section 510(b) did not apply because the LBHI securities do not represent any claims or interests in the LBI Securities Investor Protection Act proceeding.

The Second Circuit rejected the underwriters' narrow construction of the statute, finding that section 510(b) should be construed broadly and that subordination was mandated under the plain language of the statute. The court held that "claims arising from securities of a debtor's affiliate should be subordinated in the debtor's bankruptcy proceeding to all claims or interests senior or equal to claims in the bankruptcy proceeding that are of the same type as the underlying securities (generally, secured debt, unsecured debt, common stock, etc.; and in some circumstances potentially a narrower sub-category)." The court also recognized that bankruptcy courts, with their equitable powers, are well-situated to make determinations as to the priority levels of claims.

Giddens is represented by Jim Kobak, Chris Kiplok and a large team within the firm. Jim Fitzpatrick argued the appeal before the Second Circuit, with assistance from Robert Funkhouser, Jordan Pace, Jason Zakai and Hannah Miller on the brief.

## **Related People**



**James W. Giddens**



**Christopher K. Kiplok**



**James C. Fitzpatrick**



**Hannah Miller**

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