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# Hughes Hubbard & Reed

## Lehman Team Secures Trustee's Position in \$71M Dispute

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**May 5, 2017** — In a win for Hughes Hubbard's Lehman team, the bankruptcy court overseeing the liquidation of Lehman Brothers Inc. (LBI) disallowed \$71 million of claims related to account transfers that were in progress when LBI entered liquidation.

On April 19, U.S. Bankruptcy Judge Shelley C. Chapman granted LBI Trustee Jim Giddens' objection to five claims filed by a group of related entities and individuals who had requested transfer of their accounts out of LBI in the days immediately preceding LBI's liquidation. The transfers were not completed as requested due to the intervening liquidation.

Instead, the trustee exercised his power under the Securities Investor Protection Act of 1970 (SIPA) to transfer the claimants' accounts to Barclays, in a move approved by the bankruptcy court that permitted tens of thousands of LBI customers to quickly resume trading in their accounts with minimal disruption. The claimants received the full net equity of their respective accounts in the transfer to Barclays, but still filed claims for alleged market value depreciation that they claim was caused by the delay in getting their securities to the original destination brokers.

In 2014, the trustee filed an objection to the claims, arguing principally that, because SIPA empowered the trustee to transfer customer accounts in his discretion and without customer consent, the claims were inconsistent with SIPA. In enacting SIPA, Congress expressly provided that claims and other features of bankruptcy law would only apply in a SIPA liquidation to the extent consistent with SIPA. Judge Chapman agreed with this argument in granting the trustee's objection.

Judge Chapman also agreed with the trustee's argument that LBI owed the claimants neither a fiduciary duty nor a duty under the Uniform Commercial Code (UCC) once it entered liquidation. As the trustee argued, SIPA supplanted the UCC at the start of the liquidation.

The Securities Investor Protection Corporation supported the trustee's position by filing a brief with the bankruptcy court.

The trustee's successful objection, which was litigated over the course of two years, erases \$71 million of claims against the LBI estate. The claimants are expected to appeal.

Jim Kobak and Chris Kiplok lead the team representing Giddens, which for this matter included Jason Benton, Jeff Margolin, Jordan Pace and former associate Melissa Saldana. Pace argued the objection in February 2015.

## **Related People**



**James W. Giddens**



**James B. Kobak, Jr.**



**Christopher K. Kiplok**



**Jeffrey S. Margolin**

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