Lehman Team to Distribute Final Payout of $269M to Unsecured Creditors; Offer Enhanced Recovery Option to Substantially All Unsecured Creditors

News & Events

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December 10, 2021 — Hughes Hubbard's Lehman team has received court approval to make an eighth and final incremental distribution to general unsecured creditors (GUCs) of the failed brokerage firm, bringing their total recovery to approximately 41.25 percent of what is owed. The team also received approval of a voluntary supplemental distribution available to substantially all of LBI's GUCs.

On November 29, U.S. Bankruptcy Judge Shelley Chapman granted the motion of James W. Giddens, as trustee for the liquidation of Lehman Brothers Inc. (LBI), for approval of a pay out of at least 1.1925 percent ($269 million) to general unsecured creditors. Judge Chapman also approved the Trustee's proposal for a voluntary supplemental distribution process designed to enhance distributions and provide finality for nearly all of LBI's creditors.

During the hearing on the Trustee's motion, Judge Chapman termed the final distribution and the rate being distributed to LBI's creditors "truly an extraordinary achievement," adding that the "beginning of the end" of the case is now in sight. Judge Chapman also took the opportunity to compliment the Hughes Hubbard attorneys that had worked not just on the motion but over the years to achieve this great outcome, stating that Hughes Hubbard has "the Court's gratitude for everything that you all have done and that many, many folks behind the scenes who I know have worked very hard to get us to this point." Judge Chapman also described the Trustee's in full and final satisfaction of their claims. The estate's four largest general unsecured creditors – claim purchasers that between them own 92 percent of the total allowed general unsecured claim amount – would not be part of the voluntary scheme. Under the procedures approved by the Court, all former LBI employee wage-based claims would automatically receive the voluntary distribution. Between the wage-based claimants and other eligible claimants, holders of over 1,300 claims allowed in an amount exceeding $1.8 billion have the opportunity to exit the LBI bankruptcy with an enhanced distribution.

This voluntary supplemental distribution process is an unofficial continuation of a novel process that the Trustee originated in 2018 through which holders of over 860 claims availed themselves of an early exit option. Other Lehman proceedings have implemented variations on the Trustee's procedures in the intervening years. The Trustee's November motion represented the Trustee's return to – and improvement on – his own process for the benefit of creditors.

Along with the estate's four largest creditors, any claimant that opts out of the voluntary supplemental distribution is expected to have its claim(s) converted into an interest in a post-closing liquidating trust. The post-closing liquidating trust is a familiar concept in Chapter 11 cases, and the Trustee expects to deploy that concept for the first time in the SIPA proceeding in early 2022. The trust will be funded by the LBI estate upon the SIPA liquidation's conclusion, and the estate would transfer to the trust what are referred to as the Contingent Assets. As reported in the Trustee's 25th Interim Report and Quarterly Balance Sheet, the Contingent Assets are comprised primarily of the LBI estate's claims into antitrust class action settlement cash pools totaling over $4.212 billion. The Trustee's cash realization team is working closely with these settlement administrators to secure a recovery on these assets for the benefit of LBI's creditors.

Solicitation for the voluntary supplement distribution – sending informational mailings to eligible claimants – was completed on December 7, 2021. Claimants have until February 5, 2022 to opt out of the voluntary supplemental distribution. Under normal circumstances, the Trustee would be prepared to issue both the final distribution and the voluntary supplemental distribution shortly after the opt-out period expired. However, the Trustee has committed to holding both distributions until the Second Circuit's ruling on deferred compensation claims becomes final and non-appealable. That date could be as early as January 11, 2022, if the claimants do not petition for a writ of certiorari. However, if there is an appeal to the Supreme Court, the distribution could be delayed by months.

The final distribution and voluntary supplemental distribution motion follows the September appellate victory secured by Hughes Hubbard when a three-judge panel of the Second Circuit Court of Appeals affirmed two lower court rulings – a 2019 New York district court decision and a 2020 New York bankruptcy court order – in favor of the Trustee's treatment of more than $265 million in deferred compensation claims.

The dispute relates to compensation that the appellants had deferred under the Executive and Select Employees Plan (ESEP) deferred compensation plan, 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.

Chris Kiplok heads Hughes Hubbard's Lehman team. Anson Frelinghuysen leads the distribution team, which includes Elizabeth Beitler, Hilary McDonnell, and Talia Helfrick. Jeff Margolin, Jim Fitzpatrick, Carl Mills, and Karen Chau all contributed to the final distribution and voluntary supplemental distribution strategy and preparations. John McGoey leads the Trustee's monetization efforts with respect to the Contingent Assets, working with Raquel Gonoretzky. Elizabeth Beitler leads the teams preparing the post-closing liquidating trust and managing the estate's quarterly reporting, working with Hillary McDonnell.

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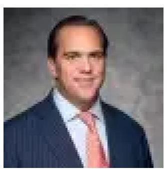

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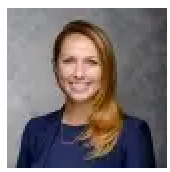

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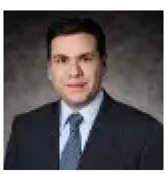

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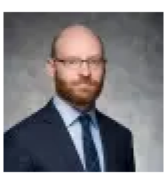

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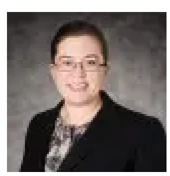

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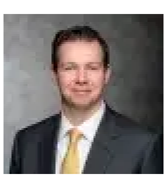

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