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Hughes Hubbard's Lehman Team Wins Summary Judgment in \$300M Dispute

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July 28, 2017 — Hughes Hubbard's Lehman team secured a decision sustaining the trustee's position concerning the correct disposition of over \$300 million in claims by ex-Lehman executives and other select employees who had expressly agreed to subordinate their claims of deferred pay.

On July 13, U.S. Bankruptcy Judge Shelley Chapman granted summary judgment to Jim Giddens, the liquidating trustee for Lehman Brothers Inc. (LBI), ruling that previously signed agreements subordinated the employees' claims.

Citing a 1985 plan that specified that any benefit payments were "unsecured subordinated obligations," Judge Chapman held that Lehman's general creditors would be paid first.

"This ruling upholds fairness to all creditors, is consistent with the Bankruptcy Code and supports our efforts to wind down the estate," Giddens said in a statement.

The ruling came nine months after HHR overcame the employees' bid to force arbitration. The U.S. Court of Appeals for the Second Circuit affirmed two lower court decisions holding that arbitration was inappropriate in a core bankruptcy proceeding that would affect the rights of tens of thousands of estate creditors.

Since 2009, the former executives and other select employees have been seeking between \$250 million and \$300 million collectively for their participation in an Executive and Select Employee Deferred Compensation Plan (ESEP) from 1985 to 1988.

HHR sought summary judgment in January, arguing that the agreement between the employees and Shearson includes a provision that irrevocably subordinates their claims. But the employees countered that the provision shouldn't apply because LBI had changed its name from "Shearson" to "LBI" and gone through other corporate

events since the signing of the ESEP, and because the ESEP had allegedly been breached.

During the hearing on the summary judgment motion, in which Jim Fitzpatrick and Karen Chau argued on behalf of the trustee, Judge Chapman noted that "the trustee is doing his job to ensure correct distributions to all creditors of the estate."

In her 18-page opinion, Judge Chapman rejected the claimants' arguments, finding that there is no ambiguity in the language of the subordination provision of the ESEP. "Simply put, the subordination provisions are enforceable by LBI because LBI and Shearson are one in the same, and any alleged breach of the ESEP agreements or rejection of them by LBI is irrelevant."

The case will continue before the District Court on appeal.

The ruling made headlines in Bloomberg, Law360, the Wall Street Journal and Dow Jones.

In addition to Fitzpatrick and Chau, Daniel Nuzzaci also represented Giddens in this matter.

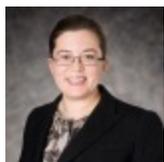
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