

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

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In the Matter of:

LEHMAN BROTHERS INC.

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

April 7, 2009

10:02 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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HEARING re Case Conference; Report on the Status of the  
Proposed International Case Protocol

HEARING re Motion to Expand the Scope of Retention of Simpson  
Thacher & Bartlett LLP

HEARING re Motion of US Bank, National Association for Relief  
from the Automatic Stay

HEARING re Motion of Charise Carroll for Relief from the  
Automatic Stay

HEARING re LBSF Inc. v. Ballyrock Abs CDO 2007-1 Limited and  
Wells Fargo Bank, N.A., Trustee; Pre-Trial Conference

HEARING re Maximilian Coreth v. Barclays Capital Inc.;  
Pre-Trial Conference

HEARING re First Application of Hughes Hubbard & Reed LLP for  
Allowance of Interim Compensation for Services Rendered and  
Reimbursement of Actual and Necessary Expenses Incurred from  
September 13, 2008 Through January 31, 2009

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HEARING re Notice of Hearing Regarding Joint Motion of the  
Trustee and the Securities Investor Protection Corporation for  
an Order Authorizing Employment of Counsel Utilized in  
the Ordinary Course

Transcribed by: Lisa Bar-Leib

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## P R O C E E D I N G S

1  
2 THE COURT: Please be seated. Let's proceed. Good  
3 morning.

4 MR. KRASNOW: Good morning, Your Honor. Richard  
5 Krasnow, Weil, Gotshal & Manges on behalf of the Chapter 11  
6 debtors. Your Honor, I believe it was late yesterday  
7 afternoon, an amended agenda was filed with the Court and we  
8 would propose to just follow that agenda in terms of today's  
9 hearing if that's acceptable to the Court.

10 THE COURT: That's perfectly fine.

11 MR. KRASNOW: Your Honor, the first item on the  
12 agenda is a follow-up to the presentations that were made to  
13 the Court on February 12th and March 11th with respect to the  
14 debtors' efforts to engage with the various administrators and  
15 liquidators overseas who are overseeing the liquidation and  
16 proceedings of various Lehman entities in foreign proceedings  
17 in an attempt to persuade them to change their focus, if you  
18 will from that which one would typically see in foreign  
19 proceedings which would be more inward in direction and  
20 potential bilateral discussions to a more international  
21 approach which would be more consistent with not only Lehman's  
22 operations but would be also reflective of the various  
23 interrelationships that exist, not on a bilateral basis but  
24 more on a multilateral basis with respect to all the Lehman  
25 entities.

1           Before I begin in updating the last report that we  
2 provided to the Court, I'd like to introduce to the Court  
3 someone who, in fact, presented the initial report to the  
4 Court, Mr. Daniel Ehrmann, who is with Alvarez & Marsal. Mr.  
5 Ehrmann has been leading the debtors' efforts on the  
6 international multilateral protocol that I just described. He  
7 has indeed traveled the world meeting with various  
8 administrators in Asia and in Europe in an attempt, a  
9 successful attempt for the most part, to persuade the  
10 administrators and liquidators to approach this global case in,  
11 indeed, a global manner. Mr. Ehrmann is here both to correct  
12 any errors that I may make in my presentation as to the status  
13 of our efforts and also to answer any questions the Court may  
14 have.

15           Your Honor, I have a report to make which is positive  
16 in most respects and I hesitate to use the word negative, but I  
17 do want to bring to the Court's attention certain issues which  
18 have been -- I hesitate to use the word "showstoppers" but  
19 problematical in terms of our global efforts here.

20           The good news, Your Honor, is that we've been  
21 extraordinarily successful in persuading most of the  
22 administrators to sign on if you will. While we, as late as  
23 this morning, have received comments with respect to yet the  
24 revised form of protocol, the comments we received this morning  
25 have been combined with very strong sentiment by administrators

1 that they want to sign on to the protocol particularly with  
2 respect to an aspect of the protocol which is a major goal that  
3 we are seeking to achieve here and that relates to the  
4 intercompany claims. As one would expect with an international  
5 operation, there are a variety of significant intercompany  
6 claims that are multilateral in nature. And one often sees  
7 intercompany claims being a major point of discussion and  
8 debate in any Chapter 11 case with a corporation that has  
9 numerous subsidiaries. When you combine the fact that we've  
10 got these entities that are global in nature subject to these  
11 various foreign proceedings, one could well envision that the  
12 resolution of those intercompany claims would be both  
13 protracted and costly to deal with. And a major thrust of the  
14 protocol is to try to, if you will, get everybody in the room  
15 and see whether or not the appropriate compromises can be made  
16 both as to methodology and ultimate resolution amongst the  
17 various parties to short-circuit a process that could otherwise  
18 perhaps take decades.

19 Recognizing the admirable goal that we had in mind, I  
20 am pleased to advise the Court that subject again to certain  
21 parties saying that they still have some further refinements to  
22 make to the protocol, we have been advised by the  
23 administrators in Hong Kong, in Singapore, in Australia, in  
24 Germany, in Holland and Japan with one note, and even  
25 Switzerland with some issues, that they are very enthusiastic

1 and are ready, willing, again, subject to some minor  
2 modifications to the protocol, and very desirous to sign on the  
3 dotted line. They have, for the most part, overcome some of  
4 the initial concerns they had about potential liabilities when  
5 an administrator signs a document, again, recognizing that it's  
6 very important to harmonize the process so that we can move  
7 forward not quite in lock step but at least get beyond  
8 negotiating the shape of the table and actually getting into  
9 the room.

10 The one significant issue, however, that we have  
11 faced, one that can, in fact, be a showstopper with respect to  
12 certain of these administrators is -- I guess the right words  
13 to characterize it is either reluctance or refusal on the part  
14 of the PWC as administrators of LBIE to sign on to this  
15 multilateral approach. That is particularly problematical from  
16 the perspective of many of the Asian and the European --  
17 Central European administrators because of the key role that  
18 LBIE played in the Lehman global system both in terms of  
19 transactions itself, but, particularly, with respect to  
20 information and data sharing. That was a major focal point.  
21 And we have heard extreme frustration on the part of various  
22 administrators in respect of the approach that PWC has decided  
23 to take and I believe it was on February 12th, if memory serves  
24 me, when representatives of PWC were in the courtroom and  
25 stated rather firmly and clearly and unequivocally that from

1 their perspective they though a bilateral approach was more  
2 appropriate than a multilateral approach. And that hasn't  
3 stopped everything but it has been a significant problem, both  
4 in terms of their refusal to sit down and talk with everybody  
5 about common issues, but even where there has been a bilateral  
6 approach adopted by particular parties, such as LBHI in  
7 connection with an agreement, the TSA that we have entered into  
8 with LBIE which contemplated some data sharing, we've ran into  
9 some difficulties. They have not appeared to us, in any event,  
10 to take an approach of expedition as we have. It's been a very  
11 slow process. The administrators are engaged in discussion as  
12 to how best to deal with that. It's not clear to us how we can  
13 move LBIE from a unilateral/bilateral approach to a  
14 multilateral approach. We're not quite sure who best to appeal  
15 to in that regard but it is something which is the subject of  
16 constant discussion, dialogue and thinking in terms of what we  
17 can best to move the process --

18 THE COURT: Let me ask as just a point of  
19 clarification, Mr. Krasnow. As of today, is there a bilateral  
20 protocol in place for the administrators of LBIE? And if not,  
21 what, if anything, is in place as it relates to that case?

22 MR. KRASNOW: There is a TSA that LBHI, the Chapter  
23 11 debtors, LBIE are parties to. That is an agreement which  
24 contemplates and provides for information sharing. There are  
25 discussions -- beyond that, I'm not aware of -- I don't believe

1 there are any other agreements, certainly, between the Chapter  
2 11 debtors and LBIE. Mr. Kobak could certainly address this  
3 better than I but we understand that there are discussions and  
4 negotiations that have taken place between the LBI trustee and  
5 LBIE with respect to a bilateral protocol that, as I understand  
6 it, is much more specific than what we have in mind with  
7 respect to our protocol because we -- the idea of the protocol  
8 from our perspective was -- it's almost a mission statement. A  
9 commitment by parties to sit down, establish a form within  
10 which we can have discussions about the intercompany claims,  
11 for example, and sharing of information. And because it was  
12 multilateral in nature, because it crosses over so many  
13 jurisdictions, it was felt and is felt that it would be  
14 inappropriate to get bogged down in the details, for example,  
15 of how we'll set up a committee, if you will, to deal with the  
16 intercompany claims, what the methodology would be. Better to  
17 get everybody in a room than to engage in years of negotiations  
18 about how to insert that, if you will, in the protocol. Let us  
19 bond first on the broad protocol and then talk about the  
20 specifics.

21 In terms of the other administrators in LBIE,  
22 certainly from what we understand with respect to PWC  
23 Switzerland and FINMA, there has been extreme frustration about  
24 the lack of information that has been forthcoming. It is our  
25 understanding that from FINMA's perspective -- which, Your

1 Honor, just to take a step back, the Swiss proceedings are  
2 overseen by the Swiss regulatory authority. The acronym is  
3 FINMA. And the PWC reports to them. The Courts only get  
4 involved in that proceeding when there are claims disputes. We  
5 were advised this morning that while initially there have been  
6 various conditions attendant to FINMA signing the protocol, two  
7 of those conditions they are prepared to drop but one they are  
8 not and that is LBIE signing up to the protocol. So that would  
9 suggest that they're having problems. The Japanese  
10 administrator, who previously had not indicated any willingness  
11 to sign up, if you will, to the protocol has now recognized  
12 that there are benefits to be gained but they, too, have  
13 conditioned their signing up to the protocol to LBIE signing up  
14 to a protocol. I can't validate that this is in fact the case  
15 but we understand that the initial administrator in Luxembourg  
16 may have been displaced which was, I understand, an affiliate  
17 of PWC, because of the frustration by the court there on the  
18 approach that LBIE is taking.

19 I can't speak to the reasons and rationale as to why  
20 PWC in the UK is taking this approach. We understand that they  
21 have the same concerns that many of the other administrators  
22 have expressed in terms of liability issues that exist in these  
23 foreign venues that don't necessarily exist here in terms of  
24 how much discretion a debtor-in-possession or a trustee may  
25 have. And we understand that. But many of the other, if not

1 most of the other, administrators have overcome that. We've  
2 taken their concerns into account in terms of revisions to the  
3 protocol. But it's been difficulty, Your Honor.

4 So while we are very optimistic as to the reactions  
5 that we have received from other administrators, more than  
6 simply reactions, but willingness to sign on the dotted line  
7 such that we're beginning to think about the next steps, no  
8 longer the size of the table but more getting people around the  
9 table itself. We share their frustration, Your Honor.

10 THE COURT: Well, before hearing from Mr. Ehrmann  
11 concerning some of his efforts, I'd like to talk with counsel  
12 for the administrator of LBIE who I believe is in the  
13 courtroom.

14 You seem to represent the problem. Can you explain  
15 yourself?

16 MS. WARREN: Your Honor, Mary Warren of Linklaters  
17 for the joint administrators of LBIE. Your Honor, as Mr. Flics  
18 told you at length at the last hearing on this topic, joint  
19 administrators are very interested in bilateral agreements.  
20 They've entered into a TSA with LBHI. LBHI is a member of the  
21 joint administrators creditors' committee for LBIE so the  
22 quality of information that they're getting is better than  
23 anyone else's.

24 THE COURT: Well, that's not the point. The point is  
25 that, as I've just heard for the first time, the position

1 that's being taken by your clients appears to be getting in the  
2 way of a global initiative of significance to all the cases.  
3 What's the reason for that? Is it simply an arbitrary position  
4 or is it a reasoned position? And if it's a reasoned position,  
5 what's the reason?

6 MS. WARREN: Of course it's not arbitrary, Your  
7 Honor.

8 THE COURT: Well, it could be.

9 MS. WARREN: It's not. The joint administrators have  
10 looked at the global protocol and this is something that's  
11 constantly under discussion among themselves and, I believe,  
12 it's been discussed at length with Mr. Ehrmann. And the joint  
13 administrators' position is that because, as Mr. Krasnow  
14 mentioned, so many of the non-U.S. Lehman entities operated  
15 through LBIE that the protocol would obligate LBIE to provide  
16 support and other services to a number of non-U.S. Lehman  
17 entities --

18 THE COURT: That's not how I read it.

19 MS. WARREN: -- at the expense --

20 THE COURT: Have you read the same protocol that I've  
21 read?

22 MS. WARREN: The joint administrators --

23 THE COURT: It doesn't obligate anybody to do  
24 anything. It allows a mechanism for cooperation. And it seems  
25 to me that the position you've just expressed is lacking in

1 support in the document unless there's some other document that  
2 I'm not aware of.

3 MS. WARREN: Your Honor, the joint administrators  
4 respectfully don't read it the same way. They have certain  
5 duties under UK law --

6 THE COURT: Maybe they're making a mistake. Maybe  
7 they're not being well advised. Maybe I need to have court to  
8 court communication with the judge who's responsible for the  
9 LBIE case. Maybe we need to set up a telephone conference in  
10 which I can understand directly from them why they take this  
11 position so I can make a better judgment as to what to do here.  
12 Can you arrange that?

13 MS. WARREN: Your Honor, I'm happy to talk to them  
14 about it.

15 THE COURT: Why don't you do that? And I'd like to  
16 have a status conference with you in which you advise me as to  
17 their position within the next five days.

18 MS. WARREN: Your Honor, I will talk to my clients  
19 about that.

20 THE COURT: And because the holidays are involved,  
21 let's do it a week from today.

22 MS. WARREN: I will talk to my clients about that,  
23 Your Honor.

24 THE COURT: And I'll ask Mr. Krasnow to act as the  
25 coordinator of the telephone conference to include your, your

1 counterparts in the UK and other necessary parties so I can  
2 better understand why the LBIE administrators appear to be a  
3 roadblock. This gives them an opportunity to explain  
4 themselves and perhaps reconsider their position.

5 MS. WARREN: Your Honor, I will speak to my clients  
6 about that. I think that we have been, in prior hearings, very  
7 forthcoming with Your Honor about the reasons why the joint  
8 administrators don't wish to sign up to this protocol.

9 THE COURT: Fine. I'd like to hear from them  
10 directly. And I'd like you to arrange that.

11 MS. WARREN: Your Honor, I will speak to them about  
12 it.

13 MR. KRASNOW: Does Your Honor have a particular time  
14 in mind for next week then?

15 THE COURT: Whenever it works for an international  
16 telephone conference.

17 MR. KRASNOW: We'll advise chambers after we consult  
18 with counsel. Thank you.

19 THE COURT: Mr. Ehrmann, I now have a question for  
20 you. And I'm not trying to put people on the spot. Do you  
21 believe that what I have just proposed is potentially a useful  
22 way to proceed based upon your participation in negotiations  
23 with others leading to a possible multilateral protocol.

24 MR. EHRMANN: I most definitely do. What was  
25 interesting in interacting with most of the continental

1 European administrators was the receptivity to this protocol as  
2 a direct result of their interaction with LBIE as  
3 administrators and the frustration that was coming out of this.  
4 I agree with Your Honor's view on the protocol that there's no  
5 binding requirement on LBIE to actually provide information or  
6 assistance to the other administrators. But I do think that  
7 that approach is the concern that the LBIE administrators do  
8 have, i.e., the willingness to be open and cooperative is felt  
9 as a burden to them. Unfortunately, I had hoped that by living  
10 through a transition services agreement with LBIE -- between  
11 LBIE and LBHI, LBIE would recognize that there's merit to  
12 entering into these kinds of agreements. But unfortunately, I  
13 have not succeeded to date.

14 As to the explanations from the administrators to me,  
15 those having limited to e-mails, in which it was explained to  
16 me that they are fearful that the protocol has obligations on  
17 them beyond what's required under their local proceedings, but  
18 then, more importantly, that they believe that it's more  
19 effective and efficient to deal with matters on a bilateral  
20 basis as they arise. As Your Honor knows, there are a number  
21 of issues, however, that require a multilateral approach and  
22 the most important is, obviously, the resolution of the  
23 intercompany claims.

24 I am still hopeful that while there's a very strong  
25 opposition to entering into a protocol that LBIE may be willing

1 to enter into multilateral conversations regarding the  
2 intercompany claims resolution process. So far, no objection  
3 has been framed with that respect.

4 Also of note is that the LBIE committee members, the  
5 other committee members other than LBHI, are also becoming  
6 somewhat concerned about LBIE's approach with respect to the  
7 other administrators. As Mr. Krasnow pointed out, a number of  
8 the continental European administrators are trying to raise the  
9 visibility regarding the lack of ability to enter into  
10 constructive cooperative agreements with LBIE to their local  
11 jurisdictions and courts. And so, what I'm hopeful of is that  
12 the conference call that you're organizing, the dialogue  
13 between the administrators and their committee members and then  
14 the meeting that I have with them on April 16th and then the  
15 added pressure by the continental European administrators will  
16 help have the administrators appreciate how much this  
17 multilateral dialogue is needed in this case.

18 THE COURT: What's the meeting that you're having on  
19 April 16th?

20 MR. EHRMANN: So on April 16th we have -- the UK  
21 administrators are focused on what's called a scheme of  
22 arrangement which is a mechanism allowing them to return assets  
23 to their clients, trust clients. And the administrators have  
24 set up a working committee which is comprised of the actual  
25 unsecured creditor committee. And so we have a committee

1 meeting on April 16th to discuss the scheme. And after that  
2 meeting, I have a separate meeting with the administrators to  
3 discuss other matters such as this international protocol.

4 THE COURT: And that meeting will be in the UK?

5 MR. EHRMANN: In the UK.

6 THE COURT: All right. I'm not trying to design the  
7 telephone conference and I don't know who should be a party to  
8 the conference, but it seems to me that you're probably a  
9 necessary participant. There may be some others that you can  
10 identify who would be useful to have included. Just so it's  
11 clear what I have in mind, this is not a mandate on my part. I  
12 recognize that the jurisdiction of this Court extends to those  
13 parties who appear before me. The LBIE administrators have  
14 been appearing in this proceeding since the very first days of  
15 the case and are represented by experienced counsel who  
16 regularly appear in the Southern District of New York  
17 bankruptcy court. Counsel for the LBIE administrators, I  
18 recognize, was put on the spot by me and as a result, answered  
19 my questions with caution and I understand the reason for that.  
20 She said that she would simply speak with her clients and made  
21 no commitments. I will be extremely unhappy if the conference  
22 call that I have in mind doesn't take place. But I recognize  
23 that parties need to be taking care of their own interests some  
24 of which may be parochial.

25 Nonetheless, I think it is extraordinarily important

1 for the development of a workable international multilateral  
2 protocol that the position of LBIE be better expressed to me  
3 than it has been expressed to date and that I have a deeper  
4 understanding of the rationale for the position that's being  
5 expressed publicly here. That's the reason that I'm interested  
6 in arranging such a telephone conference. It is not for  
7 purposes of putting pressure on any party to reach an agreement  
8 that such party does not consider to be in its best interest.  
9 Nonetheless, it seems to me to be almost a point beyond  
10 reasonable controversy that international cooperation is a  
11 value to be pursued with vigor and in good faith. And to the  
12 extent that there are parochial interests that are serving to  
13 block progress in this important area, I need to understand  
14 what those interests are. And to the extent that it's possible  
15 for me to be helpful in moving past those obstacles, I'd like  
16 to try to be helpful in that regard.

17 MR. EHRMANN: Thank you, Your Honor. Thank you.

18 THE COURT: Thank you.

19 MR. KRASNOW: Thank you, Your Honor. Just one  
20 observation, Your Honor. We listed this status report under  
21 uncontested matters and we are hopeful that that's where this  
22 ultimately lie, as an uncontested matter because at the end of  
23 the day, Your Honor, it's not so much someone signing a piece  
24 of paper. It's really the parties being dedicated to achieve  
25 the goals that are outlined in the protocol itself.

1           Your Honor, now if we can truly move on to the  
2           uncontested matters?

3           THE COURT:   Okay.

4           MR. KRASNOW:   The next matter on the docket is the  
5           expanded -- the motion expanding the scope of the debtors'  
6           retention of the Simpson Thacher firm.   Your Honor, there was  
7           not only no objections filed but, indeed, specifically the U.S.  
8           trustee's office did file a piece of paper titled "No  
9           Objection".   No other parties filed any pleadings.   There has  
10          been a modification, Your Honor, with respect to the proposed  
11          expansion of Simpson Thacher's scope of engagement.   The motion  
12          itself referred to two matters.   It's subsequently been  
13          determined to narrow the two matters to one.   And if Your Honor  
14          is inclined to grant the motion as to that one matter, we would  
15          propose to submit an order to the Court later today reflecting  
16          that.

17          THE COURT:   That's fine.   You may submit an order.

18          MR. KRASNOW:   Thank you, Your Honor.   The next  
19          matter, Your Honor, is the motion of U.S. Bank, National  
20          Association, for relief from the automatic stay.   Your Honor,  
21          that matter has been resolved as reflected in the agenda.   And  
22          we would, at the conclusion of the hearing, propose to submit a  
23          proposed stipulation for Your Honor's approval if Your Honor is  
24          so inclined.

25          THE COURT:   Fine.   I'll approve that.

1 MR. KRASNOW: Your Honor, the next matter, item 4, is  
2 also a motion for modifying the automatic stay that was filed  
3 by a Charise Carroll. That, too, has been resolved and at the  
4 conclusion of the hearing, we would propose to submit a  
5 stipulation and proposed order.

6 THE COURT: Okay.

7 MR. KRASNOW: Your Honor, that concludes that portion  
8 of the agenda relating to uncontested matters. We now turn to  
9 adversary proceedings. And as to that, I would propose to turn  
10 the podium over to my partner, Mr. Slack.

11 THE COURT: Good morning.

12 MR. SLACK: Good morning, Your Honor. Richard Slack  
13 from Weil, Gotshal and I'm here dealing with the adversary  
14 proceeding entitled Lehman Brothers Special Financing v.  
15 Ballyrock CDO. It's adversary proceeding number 09-01032. I'd  
16 like to take a moment just to tell you a little bit about what  
17 this adversary proceeding is about. It involves a credit  
18 default swap that raises issues that are similar to a number of  
19 other cases that you'll find that may very well be brought and  
20 that have to do with derivatives in Lehman's portfolio.

21 These cases -- this case, in particular, has 137  
22 million at issue. But the other cases that are similar and  
23 that the Court may find follow this are worth billions of  
24 dollars to the estate. And the issues in this case, although  
25 there are some factual differences, are issues that are very,

1 very important to the value of the estate and maximizing the  
2 value of the estate.

3 THE COURT: Let me ask you just a question --

4 MR. SLACK: Yeah.

5 THE COURT: -- in reference to the point you just  
6 made. Does that make the Ballyrock litigation, in effect, a  
7 paradigm or is it a one-off case that's limited to its facts  
8 and if, for example, the motion to dismiss which is pending is  
9 granted in favor of the defendants, does that adversely affect  
10 billions of dollars of credit default swap in the money  
11 positions of Lehman or is it simply limited to its facts?

12 MR. SLACK: There are factual differences between the  
13 various derivatives. What you'll find is that the issues that  
14 are presented are many of the same issues. And I think Your  
15 Honor is going to find some of the issues very interesting.  
16 And the way Your Honor --

17 THE COURT: I already have.

18 MR. SLACK: The way Your Honor decides them, whether  
19 on the particular facts are not made very well affect these  
20 other cases -- and may not depending on the facts. So you're  
21 going to find similar issues. The facts are different and the  
22 facts may make a difference in some of these different  
23 derivatives.

24 THE COURT: Okay.

25 MR. SLACK: Your Honor, the reason that this case was

1 brought initially was because the trustee was preparing to  
2 distribute 137 million dollars out to noteholders that the  
3 estate believed belonged to it. It filed the lawsuit and what  
4 followed on the heels of that was an interpleader motion by the  
5 trustee, essentially a counterclaim to our complaint that says  
6 that there are issues that the trustee does not believe it can  
7 resolve that it wants the Court to resolve. And it is willing  
8 to put the money aside into a fund which will earn interest and  
9 therefore there will be no harm either to the estate or to the  
10 noteholders and have the case proceed as an interpleader.  
11 There is an order that was filed by the trustee presented to  
12 Your Honor to treat this case as an interpleader. Essentially,  
13 what that would do is it would provide a certain amount of time  
14 to give notice out to effective noteholders. It would allow  
15 time for the noteholders to come in so we'd have all parties  
16 here before the Court who have an interest. And then we would  
17 be able to proceed as a normal interpleader, as a normal case,  
18 decide preliminary motions and, if needed, have discovery and  
19 summary judgment motions.

20 We believe that the interpleader order that's  
21 presented is the right way to go, in other words, to have an  
22 interpleader. We support the Court signing the interpleader  
23 order. There has been an objection that was filed yesterday to  
24 the interpleader by the issuer, that's Ballyrock. And there  
25 were essentially five objections that were raised to that

1 order. And the first objection, Your Honor, which I'd like to  
2 address which is the first one they raise is that they say  
3 because they think they're going to win the case that we  
4 shouldn't have an interpleader. And obviously, that is not a  
5 valid reason not to have an interpleader because everybody  
6 thinks they're going to win the case and then we wouldn't have  
7 any interpleaders whatsoever.

8 The second objection, Your Honor, really a subpart of  
9 that objection, is that they ask to include a sentence that  
10 would, essentially, presuppose the merits, that if they win,  
11 they file the motion to dismiss the main complaint. And if  
12 they win that motion, they want to put in the interpleader  
13 order what happens. I would suggest that that's premature,  
14 that this is just simply an initial interpleader order and it  
15 is unnecessary to have the Court decide what's going to happen  
16 down the road if certain things occur. We would just say that  
17 that is just not an appropriate type of a provision for an  
18 interpleader order.

19 The third objection, Your Honor, and the fourth  
20 objection, I believe, have been resolved by discussions  
21 between the trustee and the issuer. The third objection was  
22 they wanted notice published on a website. I believe that  
23 notice to the action has already been published on the website  
24 so there's no problem either making a representation, as I  
25 understand it from the trustee's counsel who's here, that

1 that's been done or it can be added to the order if it needs to  
2 be.

3 The fourth objection was that they wanted the fees  
4 that are typical in an interpleader order by the trustee, the  
5 person who's putting the money in. It's typical that they get  
6 their fees paid for the limited purpose of filing the  
7 interpleader. We don't object to that. The objection that was  
8 filed, I think, said that they don't object in principle but  
9 they want the opportunity to have those substantiated. I  
10 believe that that has been agreed to that they'll get some  
11 amount of substantiation before that and I think that's been  
12 resolved but we'll have to hear from the trustee's counsel.

13 And the last point, Your Honor, is that the issuers  
14 asked for its own fees to be paid as part of the interpleader  
15 order. And I would just suggest that, again, that is premature  
16 is that the interpleader order, as is again typical, has fees  
17 for the person who's filing the interpleader. The Court has  
18 discretion to order those fees as part of that. It is not  
19 appropriate, however, for that initial interpleader order to  
20 decide whether the issuer is entitled under separate documents  
21 to have their fees paid. I would point out that the objection  
22 doesn't have a basis for getting their fees paid. We are happy  
23 to talk to the issuer about is there a basis for it. We  
24 haven't taken a position because we haven't seen a basis. But  
25 we would suggest that it's not appropriate for the interpleader

1 order to have that kind of a provision.

2 So with that, Your Honor, I would suggest again that  
3 the case proceed as an interpleader. The issues are important.  
4 We would suggest a scheduling that would very quickly after  
5 people were put in after we give how ever many days, we need to  
6 get people in whether it's thirty or forty-five days to get  
7 people into the case that we then have a schedule for any  
8 preliminary motions and then have the Court hear those motions  
9 and have them done at one time instead of in a piecemeal  
10 fashion.

11 THE COURT: Okay. There are other people here that I  
12 need to hear from. I just want to be clear on something. In  
13 reviewing the objection to the interpleader order, which I did  
14 not read and which is not listed as one of the relevant  
15 documents on the agenda, I am not fully prepared for this  
16 aspect of today's pretrial conference. I want to be clear on  
17 something. To the extent that there is a contested matter  
18 relating to the form of order in connection with the Wells  
19 Fargo interpleader request, this is probably not the day to  
20 resolve all aspects of that unless the parties want to give me  
21 a little time to at least take a break and take a look at the  
22 state of the pleadings in connection with that. But it's  
23 actually not separately listed on the agenda as an item for  
24 resolution today. So my first question is what is the  
25 procedure for resolving the interpleader disputes in terms of

1 the form of order? Is that something the parties want to have  
2 resolved today? If not, when do you want to have it resolved?

3 MR. SLACK: Well, from the debtors' standpoint, given  
4 what Your Honor has said, my suggestion, and I obviously  
5 haven't discussed it with any of the other parties, would be --  
6 we have an objection on file; we got it yesterday. While we  
7 think we could resolve it based on what I spoke to Your Honor  
8 about, it may make sense to have the parties file, whether it's  
9 the trustee or us, file responses to that objection and take it  
10 up at the next omnibus hearing date which I think is two weeks  
11 from today, roughly. Is that right? It's two weeks? Do we  
12 know? Yeah. I think it's two weeks. So we would suggest we  
13 do that so that Your Honor has the ability to read the order  
14 and have in writing the responses to the objection. But again,  
15 I haven't spoken to counsel for the --

16 THE COURT: Let's find out if there's any opposition  
17 to proceeding in that manner because what you've said makes  
18 sense to me but it may not make sense to others.

19 MR. FROEHLICH: Your Honor, my name is Joe Froehlich  
20 from Locke Lord Bissell and Liddell and I represent the  
21 indentured trustee, Wells Fargo.

22 From our standpoint, to be honest Your Honor, we  
23 would like this resolved sooner than later. My client is eager  
24 to put the money into an interpleader and have the issues  
25 resolved. I understand the representation by debtors' counsel

1 and although while I don't disagree, I think we would like this  
2 resolved sooner than later even if it meant, then, maybe some  
3 sort of more limited order that was submitted if the parties  
4 could agree to the issues that have been resolved. For  
5 example, we would like to give the notice as soon as possible,  
6 Your Honor, and I don't think there's much of an issue on that.

7 The other issue resolving my client's fees, I think  
8 that can be resolved too. The overall issue of whether the  
9 interpleader is proper may be one that both the issuer and  
10 Lehman have some disagreement. And maybe that is something we  
11 could brief. But the issues that we could resolve today, Your  
12 Honor, I would like to resolve today if that's possible.

13 THE COURT: Well, it's certainly possible if the  
14 parties agree to it. At the moment there's nothing on the  
15 agenda that specifically relates to this contest. I'm not  
16 opposed to having it added to the agenda. And if the parties  
17 wish to, at some point later today, have a follow-up hearing  
18 that's limited to this, if everybody's consenting to it, I can  
19 read the papers pretty quickly if there's a desire to do this  
20 as an extraordinary emergency, which I don't think it is.

21 MR. FROEHLICH: No. I don't think so, Your Honor,  
22 either. And that is why I think I suggested the issues that we  
23 can resolve; maybe we can submit an order on those issues.

24 THE COURT: If you can reach an agreement to submit  
25 an order on consent, that's fine. And you can reserve that for

1 the next omnibus hearing the matters that you can't reach  
2 agreement on but I should hear from issuer's counsel

3 MR. FROEHLICH: Thank you, Your Honor.

4 MR. FINK: Good morning, Your Honor. My name is  
5 Steve Fink I'm from the law firm Orrick Herrington and  
6 Sutcliffe and we represent Ballyrock, Abs CDO 2007-1 Limited.

7 THE COURT: You say that very well.

8 MR. FINK: Thank you, Your Honor. The issuer. And  
9 Your Honor, going to the point that you've made, we do think it  
10 would be appropriate for this to be determined at a later date.  
11 One of our objections, in fact, goes to the issue that process  
12 has not yet been served on all of the defendants in the  
13 interpleader and that we think it would be premature to have an  
14 interpleader order issued today in any event.

15 THE COURT: Okay. Let me ask a very simplistic  
16 question. What is the procedural mechanism for preserving  
17 status quo at this moment? Because it's my understanding that  
18 there's 137 million dollars, which is available for either  
19 putting into an account and holding it there pending resolution  
20 of issues in dispute or it may simply be distributed to the  
21 noteholders. What's the procedure, if any, for confidently  
22 preserving status quo in this matter?

23 MR. FINK: Your Honor, that has not been formally  
24 addressed. There was a distribution that otherwise would have  
25 been made in due course in February, which was not. And so I

1 think the status quo is being maintained right now and we would  
2 certainly agree for the status quo to be maintained pending the  
3 Court's opportunity to address these other issues that have  
4 been raised. So, in other words, there's nothing formal now  
5 but we can do that.

6 THE COURT: I think there should be something formal.  
7 I think that part of what you should all be talking about among  
8 yourselves, is a stipulation that goes beyond the procedural  
9 niceties of an interpleader and that goes to the substance of  
10 what happens to the money while this is all being considered.

11 MR. FINK: Understood, Your Honor. We're certainly  
12 amenable to do that.

13 THE COURT: I think that's a good idea. I assume  
14 that nobody has any objection to doing that because while I  
15 intend to deal expeditiously with the matters that are being  
16 presented, I don't want there to be a problem in which money is  
17 being distributed prematurely. Understood?

18 MR. FINK: Understood, Your Honor.

19 THE COURT: Great. So what happens next?

20 MR. LACY: Your Honor, could I be heard? Your Honor,  
21 I'm Robinson Lacy from Sullivan & Cromwell. I represent  
22 Barclays Bank PLC. We're the main John Doe. Barclays Bank PLC  
23 and one of its affiliates holds about ninety-three million  
24 dollars of these notes. So beneficial interest that's being  
25 dealt with in this case is largely my client.

1 I'm here simply to introduce myself. Barclays has no  
2 objection to the interpleader. It has no objection to the  
3 fees. It has no objection to keeping the money where it is.

4 THE COURT: Fine.

5 MR. LACY: We would like an opportunity to be heard  
6 before the pending motion to dismiss is heard. That is, we'd  
7 like to join and submit a brief in support of the motion to  
8 dismiss, whenever that's scheduled. I think that's the only  
9 real reason I'm here today.

10 THE COURT: Okay. Well it seems to me, and this is  
11 an important point, that one of the issues to be resolved in  
12 today's pretrial is an orderly process for briefing and for  
13 replies to such briefs, if any. And so, to the extent that the  
14 parties are going to be meeting and conferring to develop a  
15 stipulation, which among other things will address preservation  
16 of status quo and the form of an order that can be entered  
17 provisionally and perhaps in a more developed form later as it  
18 relates to the interpleader, it seems to me that it's also a  
19 desirable outcome to have the parties discuss a schedule for  
20 briefing the motion to dismiss and any other preliminary  
21 matters that may be appropriate to be heard at the same time.

22 There was a reference to the next omnibus hearing in  
23 two weeks for purposes of dealing with the interpleader issues,  
24 it may be that that's too prompt a hearing date to deal with  
25 the merits of the motion to dismiss to the extent that there's

1 going to be both supporting papers and papers in opposition to  
2 the merits of the motion to dismiss. But I'm not, by that  
3 comment, seeking to influence the timing that the parties might  
4 otherwise agree to. If you want to hear it in two weeks,  
5 that's fine. If you want to hear it in four weeks, that's  
6 fine. In other words, the omnibus hearing that's after the  
7 next one. But I do think that some order is appropriate here.  
8 This is an important issue and as counsel for Lehman has made  
9 clear, it involves more than 137 million dollars. It  
10 conceivably involves billions of dollars and value that Lehman  
11 asserts is owing to it.

12 MR. LACY: Your Honor, I want you to know that  
13 Barclays is exceedingly interested to have these matters  
14 addressed because as you will find we're the principal  
15 noteholders in a number of these other situations as well. So  
16 we share the desire to have this matter resolved. May I  
17 suggest that, as a procedural matter, it is normal to serve all  
18 the parties before entering the interpleader order? It seems  
19 to me what's needed today, and should be done today, is some  
20 order providing for service on all the other defendants and an  
21 order, if you wish, keeping the money in one place, although no  
22 one's attempting to move the money.

23 The proposed order did not contain any provision for  
24 a time to respond to a summons and complaint and, so far as I  
25 know, there is no complaint prepared yet going out to the third

1 parties. All of that needs to be done, really, before we can  
2 join issue. And, normally, in an interpleader, the first step  
3 in joining issue is getting the interpleader order entered. So  
4 it seems to me we've, sort of, gotten the procedure -- we got  
5 ahead of ourselves procedurally.

6 THE COURT: We're a little upside down here.

7 MR. LACY: But what really needs to be done today, as  
8 I understand it, is to get an order entered providing for a  
9 notice and setting a time for everyone to respond to the third  
10 party complaints so that everybody is in the interpleader  
11 action.

12 THE COURT: What you say sounds completely reasonable  
13 and I would suggest that since all the parties are ably  
14 represented by lawyers who are sitting in the courtroom right  
15 now, that we might pass this matter to the end of the calendar  
16 and second call it, give you an opportunity to meet and confer,  
17 either in the hall or if you wish the comfort of a conference  
18 room, we can give you a conference room. And you can come back  
19 and report at the end as to how you want to proceed  
20 procedurally. And if you can submit a form of order in the  
21 form that you've suggested, that's something I would enter.

22 MR. LACY: Thank you, Your Honor.

23 MR. KRASNOW: Your Honor, just for the benefit of  
24 all, the next scheduled omnibus hearing is on April 22nd.

25 THE COURT: Well, I plan to be here then.

1 MR. SLACK: Your Honor, Richard Slack again. I think  
2 it makes sense, for now, for us to meet. If we could have a  
3 conference room, given the number of counsel, that would be  
4 helpful.

5 THE COURT: Here's what I propose, I don't want to  
6 create the delay but I'm going to ask one of my law clerks to  
7 open up the conference room which is directly across the hall  
8 from my chamber's entrance. Let's take a five minute recess,  
9 only five minutes. The idea is not for people to move and  
10 mingle but they can stand up and stretch and if they're quick  
11 they can go out and come back but it's really only five  
12 minutes. So let's take a five minute break and then we'll  
13 resume with the rest of the agenda.

14 (Recess from 10:56 a.m. until 11:06 a.m.)

15 THE COURT: Be seated, please.

16 MR. KRASNOW: Your Honor, Richard Krasnow, Weil  
17 Gotshal & Manges for the Chapter 11 debtors. Although the next  
18 adversary proceeding is -- I'm not handling it in my office, my  
19 colleague, Denise Alvarez, is but this is not our adversary  
20 proceeding so I suppose the plaintiff will want the roster.

21 MR. GROSS: Good morning, Your Honor. Robert Gross  
22 of Eaton & Van Winkle representing the plaintiff Maximilian  
23 Coreth in the adversary proceeding. With me is my partner  
24 George Birnbaum. This is adversary proceeding 09-01045. And  
25 this is a Rule 16 initial scheduling and planning conference.

1           Mr. Coreth, in a nutshell, is suing Barclays for  
2 severance payments in the amount of his agreement with LBI,  
3 which the complaint alleges was an obligation assumed by  
4 Barclays under the purchase agreement approved by this Court on  
5 September 19.

6           Barclays has moved to dismiss and the parties have  
7 submitted a proposed order, which is on file, setting the  
8 hearing of that motion to dismiss for May 15. We may or may  
9 not cross-move. We have not made a determination on that --  
10 against Barclays for summary judgment. I just wanted to let  
11 Your Honor know that that's under consideration. It may or may  
12 not occur but we will oppose the motion to dismiss.

13           THE COURT: Let me just say that if you are going to  
14 cross-move for summary judgment, under the local rules, I would  
15 expect that you would call for a conference with the Court to  
16 determine whether or not such a motion is feasible and  
17 appropriate. Ordinarily, the judges of our court act as  
18 gatekeepers of summary judgment motions to minimize unnecessary  
19 motion practice. Given that it's in response to a motion to  
20 dismiss and there's going to be a dispositive motion heard at  
21 the same time, assuming there are grounds for it, I suppose you  
22 can make a pretty persuasive case that it would be efficient to  
23 hear both at the same time. But I'm not prejudging anything.

24           MR. GROSS: Understood, Your Honor. We are also --  
25 we intend to be submitting shortly stipulations scheduling also

1 for May 15, the same return date, two motions that have been  
2 made, one by LBHI and one by LBI in the adversary proceeding.  
3 Both the debtors have moved to dismiss the case as to them  
4 notwithstanding the case names only Barclays as a defendant.  
5 So I'll probably be submitting something very short in response  
6 to that.

7 We're here, either way, pursuant to the planning and  
8 scheduling purposes of Rule 16 to advise the Court that in the  
9 event that Your Honor wishes to set tentative dates going out  
10 beyond the dispositive motion, we would agree to do so. And  
11 that's part of the planning purposes. We don't know whether  
12 the Court would like to table those -- the discussion of such  
13 dates until after dispositive motions are heard -- the first  
14 dispositive motion is heard or not. And that's why we're here.

15 THE COURT: I'll hear from other counsel but my  
16 immediate reaction to the setting of dates that are entirely  
17 provisional is that it's probably not a good use of time and  
18 resources. And that it may be a good idea to await the  
19 disposition of the pending motion to dismiss. If the motion to  
20 dismiss is granted, that pretty much ends the litigation here.  
21 If it's tabled or if it's not granted, there'll be the need to  
22 move forward with discovery and other dates.

23 So my sense is that we can wait until after the May  
24 15th argument unless there's a desire for dates to be developed  
25 now and I'll hear what people have to say on that.

1 MR. GROSS: We actually, Your Honor, wanted to find  
2 out your preference and we're amenable to doing it that way.

3 THE COURT: Okay. What do other counsel think?

4 MR. ROGERS: Theodore Rogers of Sullivan & Cromwell  
5 for Defendant Barclays Capital, Inc. First of all, I believe  
6 Mr. Gross misspoke, of course unintentionally. The hearing  
7 date is May 13, 2009 that we've agreed, I believe.

8 THE COURT: If that's in fact when the next --

9 MR. ROGERS: Yes, that's when the next --

10 THE COURT: -- May date is and everybody shows up  
11 here on the 15th that would have been a neat trick on his part,  
12 wouldn't it?

13 MR. ROGERS: Exactly. In any event, the contract in  
14 question here was entered into between the plaintiff and Lehman  
15 Brothers. It was a bonus compensation contract. It said  
16 nothing about severance. The argument is that somehow it was  
17 severance. It provided for two years worth of bonus payable  
18 and Lehman stock, for the most part, in cash in '09 and '10.  
19 The claim is under the purchase agreement. Under the purchase  
20 agreement the grounds for the motion to dismiss are that first  
21 the purchase agreement has a no third party beneficiary clause  
22 and Mr. Coreth is a third party to that contract which was  
23 between Barclays and the Lehman entities.

24 Second, that on the documentary evidence attached to  
25 the complaint and referred to thereto, the compensation that

1 was provided for in that contract is not severance. The  
2 only -- Barclays explicitly excluded any liability for any  
3 compensation employment contracts and equity compensation with  
4 the exception that if it took people on and then later laid  
5 them off before December 31, it would provide severance  
6 payments or benefits ala the Lehman policies. It did offer to  
7 Mr. Coreth 1.9 million dollars in Lehman-style severance as  
8 well as a separate payment which he rejected. And the claim on  
9 the motion to dismiss is severance under Lehman's documentary  
10 plan is a function of tenure and salary. The Lehman plan  
11 explicitly says that parties who have bonus compensation  
12 guarantees, which is what that letter had provided, are not  
13 eligible for severance. So it's fairly straightforward.

14 The only other thing, Your Honor, is there is another  
15 matter that was filed in the state Supreme Court after Mr.  
16 Coreth's complaint by a woman named Olivia Bam, B-A-M; we  
17 removed that here. Ms. Bam had a contract for about 185,000  
18 dollars, much different than the 19.6 million here in  
19 magnitude. Her claim is slightly different but fundamentally  
20 deals out of the same set of facts, namely she claims that the  
21 Barclays explicitly assumed her contract, which it didn't under  
22 Section 365 of the Bankruptcy Code. There would have had to  
23 have been a motion to assume and there wasn't. After removal  
24 we moved to dismiss that and we've entered into a stipulation  
25 and order with her counsel to have that motion heard also on

1 May 13. So both will be here in front of the Court on that  
2 date.

3 THE COURT: All right. Thank you for that report.

4 MR. ROGERS: Thank you, Your Honor.

5 MR. GROSS: Very, very briefly, Your Honor. I  
6 understand that you're not making decisions or hearing  
7 substantive -- substance. I just want to say that with respect  
8 to the two points that were made by Barclay's counsel, the  
9 first being that they intend to argue that transferred  
10 employees such as Mr. Coreth lack the standing to sue Barclays  
11 because of a provision in the agreement, I intend to put  
12 forward to the Court case law directly on point to the  
13 contrary.

14 And on their second point, with respect to their  
15 contention that the obligation to Mr. -- LBI's obligation to  
16 Mr. Coreth was not covered by the Barclay's purchase agreement  
17 because it was something other than severance, I intend to put  
18 forward both case law and documentary proof to the contrary as  
19 well.

20 THE COURT: All right. I'll see you on May 13th.

21 MR. ROGERS: Thank you, Your Honor.

22 THE COURT: Do you wish to be heard?

23 MS. ALVAREZ: Good morning, Your Honor. My name is  
24 Denise Alvarez. I'm with Weil Gotshal & Manges representing  
25 LBHI. As Mr. Gross mentioned, we have filed a motion to

1 dismiss LBHI from this adversary proceeding. While LBHI is not  
2 listed in the caption, LBHI is identified as a party in  
3 paragraph 16 of the complaint. There's no claim asserted  
4 against LBHI from what we can tell and we expect that motion to  
5 be heard April 22nd.

6 THE COURT: Okay. Is there any reason why there  
7 needs to be a hearing on that? It seems to me that either LBHI  
8 should be dropped as a party if there's no intention to pursue  
9 relief. Or, if there is intention to pursue relief, it seems  
10 to me that the motion to dismiss should be heard at the same  
11 time on the 13th of May. I don't understand why it's being  
12 separately carved out for special treatment. Let me ask  
13 plaintiff's counsel if there's an ability to just resolve this.

14 MR. GROSS: First, I spoke with someone from Weil  
15 Gotshal, it might not have been Ms. -- someone recently who  
16 agreed and is -- to adjourn the hearing from April 22 to May  
17 15. And so that's --

18 THE COURT: Maybe it's May 13?

19 MR. GROSS: May 13. Thank you so much, Your Honor.  
20 May 13. So that was my intention today, to simply -- I'll  
21 check my e-mails and get the right person at Weil to stipulate  
22 to have that on May 13.

23 But as far as being an issue, we think that there's  
24 no issue here, Your Honor. We have a single defendant in the  
25 caption, Barclays Capital, Inc.

1 THE COURT: Well, if that's true then why don't you  
2 enter into a stipulation with counsel for LBHI in which they  
3 can be satisfied that they don't have to do anything further on  
4 the case? Then you can stipulate that LBHI is not a party and  
5 you're not seeking any relief from them. And to the extent  
6 there's any implication that by naming them they're a party,  
7 that they're in fact removed as a party.

8 MR. GROSS: Okay. Thank you very much, Your Honor.

9 MR. RIVERA: Your Honor, we're in the same position  
10 so whatever you work out with LBHI, we'll be happy to join on,  
11 too.

12 MR. GROSS: That's fine with me, Your Honor.

13 THE COURT: Okay. It sounds like we're getting rid  
14 of two for the price of two. Okay. We'll see you on May 13th.  
15 We'll move on to the SIPA case.

16 MR. KOBAK: Good morning, Your Honor. James Kobak,  
17 Hughes Hubbard & Reed for the SIPA trustee. Your Honor, on our  
18 calendar today everything's been adjourned except for two  
19 matters, both of which are unopposed. The first is my firm and  
20 the trustee's first interim application for allowance of fees  
21 and the second is a motion for an expedited procedure for  
22 appointing local counsel in -- where their fees are going to be  
23 de minimis amounts. If it's all right with Your Honor, I'd do  
24 the fee applications first.

25 THE COURT: Sure.

1 MR. KOBAK: Good. Your Honor, as I said, this is our  
2 first interim fee application. In accordance with the  
3 administrative order that was entered by your order on November  
4 7th of 2008, we're to file our first application within 150  
5 days. The period covered is basically from our appointment in  
6 the middle of September to January 21st, a period of slightly  
7 over four months. We're asking for a total of 14,255,000  
8 dollars. That's after a small deduction of 6,000 dollars that  
9 SIPC asked for that I'll describe in a moment. That  
10 includes -- that's for 29,500 hours, approximately, of attorney  
11 and paralegal time. And we've included in the application the  
12 time of the trustee, Mr. Giddens, and that amounts to just over  
13 1,000 of those hours in that time period.

14 As Your Honor knows, we're subject to a fifteen  
15 percent holdback, so the amount that we're really talking about  
16 is slightly over twelve million dollars. Monthly bills have  
17 been filed with SIPC in compliance with the administrative  
18 order. They're reviewed very, very carefully, I can attest to  
19 that. Mr. Caputo is here in court and he reviews them himself.  
20 I believe the general counsel of SIPC also reviews them  
21 carefully and there may be others at SIPC who review them as  
22 well.

23 We did reduce our bill by approximately 6,500 dollars  
24 for some time entries in January which SIPC felt was on basic  
25 research in the SIPA statute which they felt they already had

1 material about in their archives. And we've instructed the  
2 associates and so forth who did that research to check with  
3 SIPC first so that will not happen again.

4 At this point, payments are made from the debtors'  
5 estate, not by SIPC cash advances. So the standard that's  
6 applicable for this application is that the recommendations of  
7 SIPC are entitled to great deference. SIPC has recommended  
8 that these fees be approved and Mr. Caputo is here if you wish  
9 to hear from him.

10 I should note that we agreed at the outset of this  
11 case to accommodate SIPC by granting a ten percent reduction in  
12 our normal rates, and that's reflected in our bill which works  
13 out to an aggregate rate of about just slightly over 480  
14 dollars an hour. We're also applying for approximately 213,000  
15 dollars of expenses. We've also agreed with SIPC that we do  
16 not bill for internal copies of documents, copies -- xeroxes  
17 made for our own use, for after-hour meals and for after-hour  
18 transportation, cars and so forth. And I can assure Your Honor  
19 that especially at the beginning of this case there were many,  
20 many late hours.

21 Our services are set forth -- a description of the  
22 services that we rendered in paragraphs 23 to 30 of the  
23 application, and that's broken down, as well, into thirty-one  
24 separate categories which are described and summarized in chart  
25 form at paragraph 30 -- 31.

1           As I mentioned, there's no opposition to this interim  
2 application at this time. We did receive a reservation of  
3 rights from the creditors' committee, which has reserved  
4 rights, as I understand it, for whatever standing it might have  
5 to have a right to object if they think that necessary to the  
6 final application at the end of the case. And of course, we  
7 reserve our right to oppose their standing and so forth.

8           And unless Your Honor has questions, we would ask you  
9 to approve the order.

10           THE COURT: I've reviewed the application, the  
11 recommendation of SIPC and the response of the creditors'  
12 committee. I have no questions although I do have one  
13 question, oddly, for the Office of the United States Trustee as  
14 it relates to this. And I know the U.S. trustee does not  
15 participate in a review of applications under SIPA. But I  
16 noted in the application that there was a five percent which is  
17 being made reflecting an adjustment from the twenty percent  
18 holdback to a fifteen percent holdback.

19           MR. KOBAK: That's correct, Your Honor.

20           THE COURT: And that's obviously something that's  
21 consistent with the administration of a SIPC case. A question  
22 that I have for the U.S. trustee as it relates to holdbacks  
23 generally in the LBHI case and related debtor cases is the  
24 asymmetry, potentially, between a twenty percent holdback in  
25 the LBHI cases and the fifteen percent holdback in the LBI

1 case. It seems to me that's not a rational distinction and  
2 that there's something to be said for having the same holdback  
3 apply to both. I'm simply making that comment, if you want to  
4 think about it with the Office of the United States Trustee  
5 personnel rather than make a comment now, that's fine. But I'm  
6 simply noting that it seems to me that it looks discriminatory  
7 as to lawyers who are involved in the very same kinds of  
8 activities.

9 MR. KOBAK: Understood, Your Honor.

10 THE COURT: Okay. Any comment anybody else has on  
11 that? The fee application is approved.

12 MR. KOBAK: Thank you, Your Honor. We'll submit an  
13 order at the conclusion of the hearing.

14 The second matter is a joint motion between the  
15 trustee and SIPC for an order authorizing employment of counsel  
16 utilized in the ordinary course where the fees are 10,000  
17 dollars or less. And we propose that the trustee's retention  
18 of counsel be approved without necessity of a further  
19 application to the Court unless and until it appears that the  
20 fees will exceed 10,000 dollars. The attorneys involved will  
21 file affidavits of disinterestedness with the parties in  
22 interest as well as with the Court.

23 THE COURT: That sounds fine. There's no objection;  
24 it's being retained.

25 MR. KOBAK: There's no opposition to that, Your

1 Honor.

2 THE COURT: It's approved.

3 MR. KOBAK: And we'll submit an order on that as  
4 well. And everything else on the calendar is adjourned, Your  
5 Honor. So that concludes our calendar.

6 THE COURT: Fine.

7 MR. KOBAK: Thank you, Your Honor.

8 THE COURT: Let's return to Ballyrock.

9 MR. SLACK: Your Honor, Richard Slack. We took Your  
10 Honor's suggestion and met. It was the counsel for the  
11 trustee, counsel for Ballyrock CDO, who are the parties to the  
12 initial complaint as well as counsel for Barclays and Bank of  
13 Sweden who are noteholders who have not yet appeared but would  
14 appear as part of the interpleader as soon as there's notice  
15 out.

16 And the parties have agreed, as well as the two other  
17 parties, to the following, Your Honor: that we will submit, as  
18 Your Honor suggests, an order, probably in the next couple of  
19 days after -- but there's basically agreement on the substance  
20 of what that order is going to say. It's going to maintain the  
21 status quo. It's going to provide for service, by notice and  
22 the notice should be attached -- a form of the notice will be  
23 attached to the order, to all the potential third party  
24 defendants to the interpleader. It will give some amount of  
25 time for those parties to appear. And we've suggested and will

1 suggest in the order that they merely file a notice of  
2 appearance in the first instance and that at the third omnibus  
3 hearing out from today we would -- that should give them time  
4 to come in and file their notices of appearance after  
5 publication. And also present to Your Honor an interpleader  
6 order at that time which is more fulsome after hopefully  
7 talking about it and getting approval from all the parties.

8 At that hearing, we would then have a scheduling  
9 conference because it's pretty evident that parties who have  
10 yet to come in but will come in will want to file some kind of  
11 motions and then, Your Honor, we would have the opportunity to  
12 schedule those motions at one time and an order for that. And  
13 until everybody's in and we see exactly what's going to come  
14 in, it doesn't make sense to do that. But the parties will be  
15 prepared to do that at that conference. At least that's the  
16 expectation right now, three hearings out.

17 And so, we would present that order in a couple of  
18 days. Hopefully it'll be completely uncontested.

19 THE COURT: Okay. It sounds like a reasonable  
20 consensual way to approach this. And I'll look for that order.

21 MR. SLACK: Thank you, Your Honor.

22 THE COURT: Is there anything more?

23 MR. KRASNOW: Your Honor, we have completed the  
24 agenda for today's hearing.

25 THE COURT: Good. We're adjourned.

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MR. KRASNOW: Thank you, Your Honor.  
(Whereupon these proceedings were concluded at 11:29 a.m.)

## I N D E X

## R U L I N G S

	DESCRIPTION	PAGE	LINE
5	Debtors' motion for an order to expand scope of retention of Simpson Thacher & Bartlett LLP granted as modified	24	17
8	Motion of US Bank, National Association for relief from the automatic stay granted	24	25
10	Motion of Charise Carroll for relief from the automatic stay granted	25	6
12	First application of Hughes Hubbard & Reed LLP for allowance of interim compensation for services rendered and reimbursement of expenses incurred from 9/13/08 through 1/31/09 approved	49	12
16	Joint motion between the trustee and SIPC for order authorizing employment of counsel utilized in ordinary course where fees are \$10,000 or less approved	50	3

## C E R T I F I C A T I O N

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I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

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LISA BAR-LEIB

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Date: April 8, 2009