

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.

- - - - -x

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

1
2 HEARING re Case Conference; Report on the Status of the
3 Proposed International Case Protocol
4

5 HEARING re Motion to Expand the Scope of Retention of Simpson
6 Thacher & Bartlett LLP
7

8 HEARING re Motion of US Bank, National Association for Relief
9 from the Automatic Stay
10

11 HEARING re Motion of Charise Carroll for Relief from the
12 Automatic Stay
13

14 HEARING re LBSF Inc. v. Ballyrock Abs CDO 2007-1 Limited and
15 Wells Fargo Bank, N.A., Trustee; Pre-Trial Conference
16

17 HEARING re Maximilian Coreth v. Barclays Capital Inc.;
18 Pre-Trial Conference
19

20 HEARING re First Application of Hughes Hubbard & Reed LLP for
21 Allowance of Interim Compensation for Services Rendered and
22 Reimbursement of Actual and Necessary Expenses Incurred from
23 September 13, 2008 Through January 31, 2009
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2 HEARING re Notice of Hearing Regarding Joint Motion of the
3 Trustee and the Securities Investor Protection Corporation for
4 an Order Authorizing Employment of Counsel Utilized in
5 the Ordinary Course
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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 thought 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 run 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. EH RMANN: 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. EHLMANN: 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. EHRLMANN: 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. KOBAC: 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.

MR. KRASNOW: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 11:29 a.m.)

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I N D E X

R U L I N G S

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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

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

LISA BAR-LEIB

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Date: April 8, 2009