

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (SCC) SIPA

**STIPULATION AND ORDER REGARDING PROOFS OF CLAIM OF
BROCKTON CONTRIBUTORY RETIREMENT SYSTEM, ET AL. (NO. 5765, AS
AMENDED BY NO. 6802, AND 5762) AND LIMITED RELATED STAY RELIEF**

This Stipulation and Order (the “Stipulation”) is entered into on the date hereof by and between James W. Giddens (the “Trustee”), as trustee for the liquidation of Lehman Brothers Inc. (“LBI”) under the Securities Investor Protection Act of 1970, as amended (“SIPA”), and Brockton Contributory Retirement System (“Brockton” or “Claimant”), on behalf of itself and as a certified class representative in the class action entitled *In Re Washington Mutual Securities Litigation*, Case No. 2:08-md-1919 (MJP) (W.D. Wash) (the “Class Action”).

RECITALS

A. WHEREAS, on September 19, 2008 (the “Filing Date”), a proceeding was commenced under SIPA with respect to LBI, pursuant to order of the United States District Court for the Southern District of New York (the “LBI Liquidation Order”), and the Trustee was appointed (Case No. 08-01420, such proceeding, the “SIPA Proceeding”);

B. WHEREAS, on November 7, 2008, the Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) entered the Order Approving Form and Manner of Publication and Mailing of Notice of Commencement; Specifying Procedures and Forms for Filing, Determination, and Adjudication of Claims; Fixing a Meeting of Customers and Other

Creditors; and Fixing Interim Reporting Pursuant to SIPA (the “Claims Process Order,” ECF No. 241);

C. WHEREAS, pursuant to SIPA section 78fff-2(a)(3) and the Claims Process Order, all general creditor claims must have been received by the Trustee by June 1, 2009;

D. WHEREAS, in accordance with the Claims Process Order, on or about May 29, 2009, three general creditor claims were timely filed: (1) claim no. 5765 filed by Ontario Teachers’ Pension Plan Board (“Ontario”) on behalf of itself and as a lead plaintiff in the Class Action (“Original Class Claim”); and (2) the individual claims on behalf of (a) Brockton (Claim No. 5762), and (b) Ontario (Claim No. 5764). The Original Class Claim has since been amended by Claim No. 6802 (the “Class Claim”). Claim No. 5764 has since been withdrawn with prejudice. (The Class Claim and Claim No. 5762 are collectively referred to herein as the “Claims”);

E. WHEREAS, on March 11, 2013, the Bankruptcy Court entered the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) for Approval of General Creditor Claim Settlement Procedures (the “General Creditor Settlement Procedures Order,” ECF No. 5847);

F. WHEREAS, on July 30, 2014, the Bankruptcy Court entered the Order Pursuant to Sections 105(a), 502(a), 502(c) and 726 of the Bankruptcy Code and Bankruptcy Rule 3009 (I) Capping the Maximum Allowable Amounts, and Establishing an Interim Distribution Fund, for Unsecured Claims, (II) Allowing Certain Unsecured Claims, (III) Authorizing the Trustee to Make a First Interim Distribution to Allowed Unsecured Creditors with a Record Date of July 15, 2014, and Related Relief (the “Unsecured Claims Reserve Order,” (ECF No. 9520);

G. WHEREAS, pursuant to the Unsecured Claims Reserve Order, the Original Class Claim was capped at a maximum potentially allowable unsecured amount of \$33,055,555.00 (as listed on Schedule C thereto) and Claim No. 5762 was capped at a maximum potentially allowable unsecured amount of \$5,111,082.00 (as listed on Schedule C thereto); and

H. WHEREAS, after good faith, arm's length negotiations, the Trustee and Claimant (each, a "Party," and together, the "Parties"), have agreed to resolve all issues regarding the Class Claim and Claim No. 5762 pursuant to the terms and conditions set forth in this Stipulation.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES HERETO THAT:

STIPULATION

1. The Recitals set forth above form an integral part of this Stipulation and are incorporated fully herein.
2. This Stipulation shall not become effective unless and until all of the following have occurred: (1) the Stipulation has been executed by the Parties or their respective counsel; (2) the Stipulation has been approved by Final Order¹ of the Bankruptcy Court ("Bankruptcy Court Approval"); and (3) the United States District Court for the Western District of Washington (the "District Court") enters an order approving the settlement of the Class Claim on the terms and conditions set forth herein (the "District Court Approval") and such order has

¹ "Final Order" shall mean an order or judgment of the Bankruptcy Court, the District Court, or other court of competent jurisdiction, as entered on the docket of such court, the operation or effect of which has not been stayed, reversed, or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, no longer remains pending, *provided, however*, that no order shall fail to be a final order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure, Bankruptcy Rule 9024, any similar local federal court rule or any similar state statute or rule may be filed with respect to such order.

become a Final Order (the “Effective Date”). However, in the event that the Effective Date does not occur, this Stipulation will be deemed null and void and the Parties will be placed in the same position they were in immediately prior to the execution of this Stipulation with all Parties reserving their rights to object to, defend, and prosecute the Claims, including to contest or seek class status for the Class Claim in the Bankruptcy Court, as the case may be.

3. As of the Effective Date, Claimant represents and warrants that it is and will be the holder of the claims and has not transferred, assigned, pledged or otherwise encumbered its interest in the Claims.

4. Claimant represents and warrants, to the best of its knowledge, that it does not have any indebtedness to LBI and does not hold any deposits, refunds, payments or other funds, escrowed or otherwise, due and owing to or for the benefit of LBI.

5. Upon Bankruptcy Court Approval, the automatic stay pursuant to section 362(a) of the Bankruptcy Code and the LBI Liquidation Order shall be modified solely to the extent necessary to permit Claimant to seek and obtain District Court Approval of the settlement of the Class Claim as set forth herein.

6. Except as expressly provided in paragraph 5, the provisions of section 362(a) of the Bankruptcy Code and the LBI Liquidation Order, including, without limitation, those provisions prohibiting any act to collect, assess, or recover a claim that arose prior to the commencement of the SIPA Proceeding from LBI’s estate and/or assets or property of LBI’s estate (as defined in section 541 of the Bankruptcy Code) shall remain in full force and effect, as applicable.

7. Upon the Effective Date, Claimant will be deemed to withdraw Claim No. 5762 and authorizes the Trustee's claims agent EPIQ Bankruptcy Solutions LLC to reflect the withdrawal of Claim No. 5762 on the official claims register in the SIPA Proceeding.

8. Pending the occurrence of the Effective Date, the Trustee's Two Hundred Sixty-Fifth Omnibus Claims Objection (the "Claims Objection") as it relates to Claim No. 5762 shall be adjourned without date. Upon the occurrence of the Effective Date, the Claims Objection shall be deemed withdrawn with prejudice. If the Effective Date does not occur (i.e., the District Court Approval or Bankruptcy Court Approval of the Stipulation is not obtained and the appeals period has run, or if an appeal was taken, the appeals process has been completed and order(s) denying approval of the Stipulation and the Settlement contemplated thereby have become Final), the Claims Objection shall be scheduled for hearing no sooner than thirty days thereafter and the response deadline shall be set for one week prior to the rescheduled hearing date.

9. Within forty-five (45) days from Bankruptcy Court Approval, the Claimant shall file the appropriate motion or application seeking District Court Approval. In the event Claimant fails to file such motion or application within that time, unless the Parties otherwise agree, this Stipulation shall be deemed null and void and the Claims Objection shall be scheduled for hearing as set forth in paragraph 8 above.

10. On the Effective Date, the Claimant, on behalf of itself and as a certified class representative on behalf of the Class in the Class Action, will have an allowed, general unsecured creditor claim against the LBI general estate in the amount of \$16,500,000.00 (the "Allowed Class Claim") in respect of the Class Claim and this Allowed Class Claim shall constitute the full and final settlement of any and all claims the Claimants has asserted against

the LBI estate under or in connection with the matters, transactions, and accounts that are the subject of the Class Claim. Claimant, on behalf of itself, and as a certified class representative on behalf of the Class in the Class Action, will receive proportionately the same in payments or distributions (including with respect to the timing and type of payments or distributions) in respect of the Allowed Class Claim as is generally received by holders of allowed, general unsecured claims against the LBI estate. Promptly after receiving notice of the District Court Approval, the Trustee shall promptly cause the LBI general creditor claims register to be updated to reflect the Allowed Class Claim.

11. Except for the obligations under this Stipulation, on the Effective Date, Claimant, on behalf of itself, its successors and assigns, and on behalf of any other party, person, or entity claiming by, through, or under it (the "Claimant Releasing Parties"), forever waives and releases (i) the Claims, and (ii) any and all claims, liabilities, causes of action, demands, and damages (of whatever kind or nature and whether known or unknown or asserted or unasserted) that the Claimant Releasing Parties may prior to the Effective Date have ever had, may at the Effective Date have, or at any time after the Effective Date can, could, shall, or may have, against LBI, its estate, the Trustee, and the Trustee's agents or attorneys, related to or arising out of any of the matters, transactions, and accounts that are the subject of the Claims ((i) and (ii), collectively, the "Released Claims").

12. The Trustee agrees to promptly seek, and the Claimant agrees to support, approval of this Stipulation in the Bankruptcy Court pursuant to paragraph (iv) of the General Creditor Settlement Procedures Order. If approval is not obtained in the Bankruptcy Court, the Stipulation shall be null and void and the Parties will retain all their respective rights and claims.

13. The Trustee shall reasonably cooperate with Claimant in its efforts to seek District Court Approval.

14. The Class Claim is hereby determined to be a timely filed general creditor claim superseding and relating back to the filing of the Original Class Claim, and subject to the same \$33,055,555.00 maximum potentially allowed unsecured amount as the Original Class Claim. Upon execution of this Stipulation by the Parties or their respective counsel, the Original Class Claim is withdrawn with prejudice. The Trustee shall promptly cause the LBI general creditor claims register to be updated to reflect the same.

15. This Stipulation shall be binding upon and inure solely to the benefit of the Parties hereto and their respective successors and assigns.

16. No amendment, waiver or modification of any provision of this Stipulation shall be effective unless the same shall be in writing and signed by the Parties.

17. Neither this Stipulation, nor any negotiations or proceedings in connection herewith, may be used and shall not be admissible in any proceeding against any Party to this Stipulation for any purpose, except to enforce the terms of this Stipulation.

18. This Stipulation may be signed in counterparts which, when taken as a whole, shall constitute one and the same document; and faxed or electronic signatures shall be deemed originals.

19. Each individual signing this Stipulation on behalf of any party hereto acknowledges and, with respect to his or her own signature below, warrants and represents that he or she is authorized to execute this Stipulation in his or her representative capacity with binding effect, as reflected below and on behalf of the Party indicated.

20. This Stipulation shall be governed by and shall be interpreted in accordance with the laws of the State of New York, except to the extent that the Bankruptcy Code or SIPA applies, without regard to New York's rules governing conflicts of laws.

21. The Bankruptcy Court shall have jurisdiction to interpret and enforce this Stipulation and the Parties consent to the jurisdiction of the Bankruptcy Court with respect to the interpretation and enforcement of this Stipulation except as it may relate to the District Court Approval as required in paragraph 2 above.

Dated: New York, New York

March 20, 2015

*Signature Page To Stipulation Regarding Proofs of Claim of
Brockton Contributory Retirement System et al. (Claim No. 5765,
as amended by Claim No. 6802, and 5762)*

HUGHES HUBBARD & REED LLP

LOWENSTEIN SANDLER LLP

By: /s/ Robert B. Funkhouser
James B. Kobak, Jr.
Christopher K. Kiplok
Robert B. Funkhouser
Jason E. Zakai
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726

Attorneys for James W. Giddens,
Trustee for the SIPA Liquidation of
Lehman Brothers Inc.

By: /s/ Michael S. Etkin
Michael S. Etkin
Ira M. Levee
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 262-6700
Facsimile: (212) 262-7402

Bankruptcy Counsel for
Ontario Teachers' Pension Plan Board
and Brockton Contributory Retirement
System, on behalf of themselves and as
Lead Plaintiffs in the Class Action

SO ORDERED this 7th day of April, 2015

/S/ Shelley C. Chapman
UNITED STATES BANKRUPTCY JUDGE