

NEWSSTAND

Lehman Brothers: Client Money Appeal

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Just as this issue of the *Insurance and Reinsurance Review* was going to press, the Court of Appeal handed down its decision in the appeal in *CRC Credit Fund Ltd & Ors v GLG Investments Plc (Sub-Fund: European Equity Fund) & Ors* (reported at [2010] EWCA Civ 917) against the decision of Mr. Justice Briggs, reported in our March 2010 issue.

The Court of Appeal agreed with Briggs J that the CASS rules created a trust over client money from the date it was received, rather than from the date it was segregated from the firm's own money. It also agreed that Lehman Brothers International (Europe) (LBIE) did not hold client money for the purposes of the CASS rules simply because LBIE owed a certain sum to its client under an agreement, for example an obligation to pay a manufactured dividend under a stock lending agreement.

However, the Court of Appeal disagreed with the first instance judgment on two key issues. First, it was held that the trust imposed by the CASS rules applied to money which was identifiably client money whether or not it had actually been segregated by LBIE. It would be unfair for the trust to apply only to those clients whose money happened to have been placed in segregated accounts. Second, the Court of Appeal held that the effect of the CASS rules was that clients would share in the client money pool according to the amount which ought to have been segregated on their behalf, rather than (as held by Briggs J) on the basis of the sum which had in fact been segregated.

This judgment is highly important, as it will significantly increase the number of creditors who may be entitled to make claims for client money held by LBIE and possibly the amount of their claims. Creditors whose client money was not segregated by LBIE, but ought to have been, may now have a claim to the pool of client money held by LBIE. It is unlikely, however, that the decision will increase the size of the pool because it does not turn the money in LBIE's house accounts into trust money (and therefore client money) except to the extent that tracing rights can be established over such funds. This would *prima facie* seem unlikely. Except to that extent, the decision will diminish the share of the client money pool of those creditors whose client money was in fact segregated.

The decision depends heavily on the meaning and interpretation of the CASS rules as they now stand (the FSA has consulted on possible changes to the regime) and should not be taken to apply to trust rights in a non-CASS context. Given the significant effects this decision could have

on the distribution of funds by the administrators of LBIE it seems likely that there will be an appeal to the Supreme Court.

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