

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION** **No: NSD2492/2007**

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/08/2010.

DETAILS OF FILING

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File Title: Wingecarribee Shire Council v Lehman Brothers Australia Limited
District Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



★ **Date:** 10/08/2010

Registrar

Warwick Soden

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



BETWEEN

WINGECARRIBEE SHIRE COUNCIL
First Applicant

CITY OF SWAN
Second Applicant

PARKES SHIRE COUNCIL
Third Applicant

- and -

LEHMAN BROTHERS AUSTRALIA LIMITED
(in Liquidation) (ACN 066 797 760)
Respondent

SECOND FURTHER AMENDED STATEMENT OF CLAIM

THE APPLICANTS

1. The first applicant, Wingecarribee Shire Council (**'Wingecarribee'**) at all material times was:
 - 1.1 a local government authority (**'LGA'**) under the *Local Government Act 1993* (NSW) (**'LGA NSW'**); and
 - 1.2 a corporation able to sue and be sued.
2. The second applicant, the City of Swan (**'Swan'**) at all material times was:
 - 2.1 a local government authority under the *Local Government Act 1995* (WA) (**'LGA WA'**); and
 - 2.2 a corporation able to sue and be sued.

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3. The third applicant, Parkes Shire Council (**'Parkes'**) at all material times was:
 - 3.1 a local government authority under the LGA NSW; and
 - 3.2 a corporation able to sue and be sued.
4. The first, second and third applicants (the **'Applicants'**) bring these proceedings as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (**'FCA Act'**).
5. The group members to whom these proceedings relate are persons who:
 - 5.1 during the period between March 2003 and May 2008 (the **'Claim Period'**) acquired interests in one or more synthetic collateralised debt obligations (**'Claim SCDOs'**) identified in Schedule 1;
 - 5.2 acquired the interests pleaded in paragraph 5.1 above from, or in reliance upon representations from, the Respondent (**'Lehman'**);
 - 5.3 by reason of the matters pleaded in paragraphs 5.1 and 5.2 above, suffered loss and or damage; and
 - 5.4 have, prior to the commencement of these proceedings, entered into a litigation funding agreement with IMF (Australia) Limited in respect of their purchase of SCDOs in the circumstances pleaded in 5.2 above.(the **'Group Members'**).

The Claimants' Investment Characteristics

6. Each of the Applicants and Group Members (together and severally the **'Claimants'**):
 - 6.1 had, and prior to their investment in Claim SCDOs held portfolios consistent with:
 - (a) a preference for investments featuring high levels of capital security;
 - (b) little, if any need for capital gains;
 - (c) a requirement that investments be readily tradeable and able to be liquidated for cash at short notice; and

- 6.2 in relation to investments in debt instruments, had, and prior to their investment in Claim SCDOs held portfolios consistent with, a preference for debt instruments that were:
- (a) short term (with a maturity of less than one year) or, in the event they were long term (with a maturity of greater than one year), had high levels of capital security rather than high rates of return;
 - (b) easily tradable on established markets;
 - (c) readily able to be liquidated for cash at short notice;
 - (d) “income defensive”, being products that had:
 - (i) a secure income stream;
 - (ii) little need for capital growth on investments; and
 - (e) products with capital protections, to the extent that this was possible;
 - (f) not “derivative” or “synthetic” financial products; and
 - (g) transparent as to the underlying asset backing and risk exposures in terms of their effect on return of capital to the investor;
- (such preferences being referred to hereafter, together and severally, as “**Conservative Strategies**”); and

PARTICULARS

The Applicants’ investment histories reflected a preference for non-synthetic financial products, in particular floating rate notes and term deposits with large institutional banks. Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

- 6.3 in the case of Claimants who were local government authorities (“**LGA Claimants**”) or public authorities – were investing public money pending its expenditure in providing public services or public works.

7. In addition to the general investment characteristics maintained by the Applicants pleaded in paragraph 6 above, each of the LGA Claimants was required to make financial investments:

7.1 in the case of the NSW LGAs - in accordance with the LGA NSW and:

- (a) prior to about 15 July 2005 - "Investment Guidelines" circulated by the NSW Department of Local Government attached to a Ministerial order dated 16 November 2000 and gazetted 24 November 2000;
- (b) from about July 2005 – a Ministerial order dated 15 July 2005 and gazetted 29 July 2005;
- (c) at all material times, pursuant to the Ministerial Orders referred to in (a) or (b) – the *Trustee (Discretionary Investments) Act 1997* ('**Trustee Act NSW**'); or

7.2 in the case of the WA LGAs - in accordance with the LGA WA and the *Trustees Act 1962* (WA) ('**Trustees Act WA**');

(together or severally as applicable to each LGA Claimant, the '**Investment Protocols**').

PARTICULARS

(a) NSW Investment Protocol

Section 625 of the LGA NSW prescribed that money could only be invested in accordance with orders of the Minister published in the NSW Gazette. The Applicants will rely at trial upon the terms of the Orders referred to above for their full force and effect.

(b) WA Investment Protocol

Section 6.14 of the LGA WA prescribed that money could only be invested in accordance with Part III of the *Trustees Act WA*. The Applicants will rely at trial upon the full terms of Part III of the *Trustees Act WA*, including without limitation, section 18 thereof.

8. In the premises pleaded in paragraph 6 further or alternatively in paragraph 7 above, each of the Claimants prior to the conduct of Lehman alleged below:

- 8.1 was likely to have had; and
- 8.2 in fact had,
- little or no experience in investing in SCDOs.

THE RESPONDENT

9. Lehman, at all material times:
- 9.1 was and is a corporation registered pursuant to the *Corporations Act 2001* (Cth) ('**CA**') and capable of being sued in its own name;
- 9.2 had, and has, as its ultimate holding company, Lehman Brothers Holdings Inc. ('**Lehman Inc**'), a global investment bank headquartered in New York, USA;
- 9.3 was a provider of financial services or financial products within the meaning of:
- (a) ss 1041E and 1041H of the CA; further or alternatively
 - (b) s 12BAB of the *Australian Securities and Investments Commission Act 2001* (Cth) ('**ASIC Act**');
- 9.4 carried on business as *inter alia* a provider of investment advisory and portfolio management services (the '**Lehman Business**');
- 9.5 carried on the Lehman Business in trade or commerce:
- (a) in relation to financial products or financial services, within the meaning of the CA;
 - (b) in relation to financial services within the meaning of the ASIC Act;
 - (c) within the meaning of the *Fair Trading Act 1987 (NSW)* ('**FTA NSW**'); and
 - (d) within the meaning of the *Fair Trading Act 1987 (WA)* ('**FTA WA**');
- 9.6 was and is regulated by the Australian and Securities and Investments Commission ('**ASIC**') under the provisions of the ASIC Act and CA; and
- 9.7 prior to about March 2007, was named Grange Securities Limited ('**Grange**').

Lehman's Financial Services and Specialised Knowledge

10. At all material times, Lehman:
- 10.1 carried on a financial services business within the meaning of section 761A of the CA;
 - 10.2 offered as part of its business:
 - (a) the provision of financial product advice within the meaning of section 766B of the CA; and
 - (b) services of dealing in financial products within the meaning of section 766C of the CA;
 - 10.3 held an Australian Financial Services Licence ('**AFS Licence**') granted by ASIC pursuant to section 913B of the CA;

PARTICULARS

Lehman's AFS Licence provided to the effect that Lehman was authorised to deal in and provide financial product advice on derivatives with no limitations.

- 10.4 had specialised experience in providing investment advice and portfolio management services to conservative investors including charities and LGAs; further or alternatively

PARTICULARS

So far as the Applicants are able to say, prior to the completion of discovery, Lehman had or held itself out as having:

- (a) been actively involved in developing and managing investment portfolios for 11 years including prior to October 2006, *inter alia*, developing internal investment policies, coordinating and reviewing investment strategies, and, developing of risk and return profiles; and
- (b) handled large investments for very conservative investors such as charities and LGAs.

- 10.5 had specialised experience in providing investment advice and portfolio management services to LGAs in NSW and WA.

PARTICULARS

By June 2005, 110 LGAs Australia wide including 55 NSW LGAs with a total of \$640 million in funds were in an advisory relationship with Lehman.

The services Lehman provided included:

- (a) an 'Individually Managed Portfolio' ('IMP') service developed by Lehman specifically for LGAs in which Lehman provided, *inter alia*, investment stewardship, developing investment guidelines, research, making investment decisions, settlement, safe custody services, portfolio reporting, and portfolio administration; and
- (b) an investment advisory service involving the recommendation of investments it considered 'suitable' for its clients, which included Lehman providing financial product advice and engaging in dealing in financial products ('Non IMP Service').

Lehman's Duties

11. At all material times, Lehman was obligated under section 912A of the CA and by the conditions of its AFS Licence to, *inter alia*:
- 11.1 do all things necessary to ensure that the financial services covered by the licence were provided efficiently, honestly and fairly;
 - 11.2 have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by Lehman or a representative of Lehman in the provision of financial services as part of the financial services business of Lehman or the representative;
 - 11.3 comply with the financial services laws;
 - 11.4 take reasonable steps to ensure that its representatives complied with the financial services laws; and
 - 11.5 ensure that its representatives were adequately trained, and were competent, to provide those financial services,

(the 'section 912A Obligations').

12. Further, Lehman knew or ought reasonably to have known:

12.1 of the Claimants' respective investment characteristics as pleaded in paragraphs 6 to 8 above;

PARTICULARS

Lehman ought to have known of each of the matters pleaded in 6 to 8 above by reason of:

- (a) its section 912A Obligations;
- (b) its experience in providing IMP and Non IMP Services pleaded in paragraph 10.5 above; and
- (c) with respect to LGAs only:
 - (i) Lehman's knowledge of the LGA Investment Protocols;
 - (ii) the fact that Lehman knew of the income defensive investments characteristics of at least some of the LGAs as set out in a draft "Investment Policy" statement sent by Lehman to Armidale Dumaresq Council dated May 2004, and that it had no basis for assuming other LGAs had materially different characteristics.

12.2 that investments by a LGA in NSW or WA should:

- (a) be extremely secure;
- (b) be highly liquid; and
- (c) comply with the relevant State's legislative requirements.

PARTICULARS

Letter from Lehman to Mr Downing of Swan dated 6 June 2006 titled "*Individually Managed Portfolio Service*", pages 4 and 6.

Lehman's Conflicted Role

13. During the Claim Period, in respect of the Claim SCDOs, Lehman:

13.1 either:

- (a) acted as sole underwriter to the issuer of the SCDO; or
- (b) was a related body corporate of the arranger of the SCDO; or
- (c) was a related body corporate of the entity that was the protection buyer;

PARTICULARS

A protection buyer receives payment under a credit default swap agreement if defined credit events occur affecting specified reference entities in relation to the SCDO. Lehman's role in respect of each of the Claim SCDOs is identified in Schedule 1.

13.2 earned:

- (a) substantial fees and commissions in relation to the structuring and sale of the Claim SCDOs;
- (b) fees from dealing in the Claims SCDOs that were substantially greater than the fees and commissions it earned, or could have earned, from dealing in term deposits and traditional floating rate notes ('FRNs').

PARTICULARS

Lehman earned commissions of approximately 2-3% of the face value of the SCDOs, which commissions substantially exceeded the fees and commissions earned in relation to the sale of term deposits and FRNs. Further particulars may be provided following the completion of discovery and prior to trial.

13.3 where it was an underwriter of an issue of Claim SCDOs:

- (a) had a contractual obligation to retain for its own account any SCDOs not distributed; and consequently
- (b) had a commercial incentive to ensure maximum sales of the SCDOs in order to maximise its fees and commissions and/or minimise the risks associated with holding the SCDOs on its own balance sheet;

13.4 at all material times was:

- (a) aware of the terms of each of the Claims SCDOs; and
 - (b) in possession of all documents recording the terms of each of the Claim SCDOs; and
- 13.5 by reason of the matters in paragraphs 13.1 to 13.4 above, had a significant commercial interest in the sale of Claim SCDOs to the Claimants;
- (the '**Conflicted Role**').

SYNTHETIC COLLATERALISED DEBT OBLIGATIONS

14. The Claim SCDOs:

- 14.1 were instruments operating to transfer to noteholders of the Claim SCDOs, the risk that defined events would occur in respect of specified entities (each a '**Reference Entity**') in a portfolio ('**Reference Portfolio**') and defined obligations of those Reference Entities.

PARTICULARS

The risk transfer is governed by the terms and conditions of the instruments issued by the SCDO issuer to noteholders. The SCDO issuer acquires the defined risk under a separate agreement ('credit default swap agreement') entered into by the SCDO issuer with another party ('credit default swap counterparty'). The defined risk ('customised risk') is the risk that certain events defined in the credit default swap agreement will occur ('credit events') after risk linked to a specified level of loss has been reached ('threshold loss level'). Credit events are typically defined as bankruptcy of any Reference Entity or a failure to pay or restructuring with respect to any of the defined obligations of any Reference Entity comprised in the Reference Portfolio. The customised risk is transferred from the credit default swap counterparty ('seller' of risk) to the SCDO issuer (intermediate 'buyer' of risk), which is then transferred to the noteholders of the Claims SCDOs (ultimate 'buyers' of risk).

- 14.2 Issued noteholders a single tranche of 'customised risk' ('single tranche SCDOs');
- 14.3 were 'synthetic', in that the issuers of the SCDOs did not themselves have any interest in or rights under the Reference Entity's specified obligations in respect of which 'credit events' might occur;

PARTICULARS

The Reference Entities operate as notional benchmarks for identifying credit events and for crystallising obligations between the credit default swap counterparty and the SCDO issuer and also the SCDO issuer and the noteholders of the Claim SCDOs. The funds received by the SCDO issuer from the noteholders are not used to purchase the defined obligations of the Reference Entities but are held separately by the SCDO issuer in defined collateral ('**SCDO Collateral**'), pursuant to the terms and conditions of the notes. The SCDO Collateral is secured to cover the SCDO issuer's liability to the secured creditors, which include, among others, the credit default swap counterparty and the noteholders.

- 14.4 provide for deductions ('liquidations') from the SCDO Collateral after losses attributable to credit events exceed a threshold loss level, thereby reducing the principal amount of the notes (representing the initial investment of the noteholders);

PARTICULARS

Following the occurrence of each credit event, a loss amount is calculated in accordance with the terms of the credit default swap agreement. If the loss amount exceeds a threshold loss level (the 'attachment point' of the Claim SCDO tranche of notes), the SCDO issuer will make payment of an amount ('settlement amount') to the credit default swap counterparty. The settlement amount in the Claim SCDOs is typically an assumed percentage of loss of the notional amount of the Reference Entity as defined in the credit default swap agreement. The SCDO issuer will fund the settlement amount paid to the credit default swap counterparty by liquidating a proportion of the SCDO Collateral equivalent to the settlement amount. The reduction in the SCDO Collateral requires the principal amount of the notes of the Claim SCDOs to be reduced by the settlement amount, pursuant to the terms and conditions of the notes. Sufficient numbers of credit events can result in partial or total loss of the original principal amount of the notes of the Claim SCDOs and, in addition, loss of interest which would have accrued on the original principal amount of the notes but for the reduction. Once settlement losses exceed a certain threshold (the 'detachment point' of the Claim SCDO tranche of notes), the principal amount of the notes is written off completely and has no remaining value.

- 14.5 provide for interest to be paid on the notes of the Claim SCDOs, funded out of the amounts paid to the SCDO issuer under the credit default swap agreement ('swap premium') and the yield earned on the investments comprising the SCDO Collateral.

- 14.6 were not transparent, in terms of how the risks of the Claims SCDOs referred to in this paragraph 14 affect the return of capital to the noteholders;
- 14.7 were highly leveraged to the performance of the Reference Entities (**'Leverage Risk'**);

PARTICULARS

Leverage means that loss of a given proportion of the total notional amount outstanding of the credit default swap as a result of credit events will give rise to loss of a greater proportion of the total principal amount outstanding of the notes of the Claim SCDOs.

- 14.8 were 'thin' tranches, making them extremely sensitive to losses as a result of credit events above the threshold or 'attachment point' of the Claim SCDO notes and more likely to be either unimpaired or completely written off (**'Binary Recovery'**);

PARTICULARS

'Thin' tranches are tranches whose principal amount is comparatively much smaller than the total notional amount of the Reference Portfolio. 'Thin' tranches tend to have 'binary' characteristics, meaning that they tend to be either unimpaired or completely written off (**'Binary Recovery Rate Risk'**).

- 14.9 were not associated with an active market for secondary exchange, but instead depended on buy-back by Lehman or placement via Lehman with secondary buyers;

PARTICULARS

(a) The Claim SCDOs were not public notes listed on a recognised investment exchange but were privately placed notes;

(b) the information about the Claim SCDOs was not listed on market information systems widely used for the dissemination of information such as Bloomberg or required to be published in the public domain and would therefore not be in the public domain to enable other potential investors to carry out analysis regarding the Claims SCDOs to generate liquidity; and

(c) the buy-back was at the discretion of one placement agent in terms of timing and the price offered for the buy-back.

- 14.10 contained a limited recourse debt obligation of the SCDO issuer alone, such recourse being limited to the secured assets of the SCDO (including rights under the credit default swap agreement, the SCDO Issuer Collateral and any other charged assets of the SCDO issuer), so that any shortfall is borne by the SCDO noteholders and the other secured creditors of the SCDO;
- 14.11 were *'buy-to-hold until maturity'* assets because the Claim SCDOs imposed limitations on the redemption of a noteholders' capital prior to the maturity date of the SCDO, including no option on the part of noteholders to exercise a redemption right;
- 14.12 were a kind of financial product which had not, prior to the events described herein, been exposed significantly to adverse market conditions;
- 14.13 were risk rated and assigned a rating not equivalent, as regards risk profile, to other types of financial products carrying the same ratings;

PARTICULARS

Ratings are only an indicator of credit risk in terms of the expectation of the first dollar of loss and provide no information about the expectation of the amount of loss given default ('**LGD**') (for example, a security with a 1% chance of losing 5% and a security with a 1% of losing 100% would be given identical ratings).

- 14.14 were exposed to unusual risks including:
- (a) *liquidity risk* – the risk that no active secondary market would develop in respect of the Claim SCDOs or, if any artificial intervention provided some limited liquidity, it would be dependent upon the actions of one placement agent Lehman's, and subject to Lehman's discretion in timing and price and not large enough to permit liquidation or would not continue for the life of the investments;
 - (b) *market price volatility* - the risk that the market price would be more volatile, being dependent on the buy-back offer of Lehman's should the investor choose to liquidate before the maturity of the Claims SCDOs;

- (c) *rating migration risk* – the risk that rating downgrades in the reference entities may negatively affect the market value of the Claim SCDOs and the ability to sell the Claim SCDOs;
- (d) *correlation risk* – the risk that several reference entities in any Reference Portfolio could suffer credit events at the same time or in close temporal succession by reason of some direct or indirect connecting factor and such increases in correlation would likely lead to an increase in expected loss and decrease in market value of the Claim SCDOs;
- (e) *limited reference entities risk* - the risk that the same Reference Entity may appear in more than one Reference Portfolio underlying two or more SCDOs and therefore a credit event with respect to one Reference Entity may cause a credit event in respect of more than one SCDO;
- (f) *credit event risk* – the risk that credit events in the Reference Portfolio might occur in sufficient volume to reduce or eliminate the proceeds held by the issuer as SCDO Collateral for payments under the credit default swap agreement and so result in partial or total loss of invested capital and in addition, loss of the interest which would have accrued on the invested capital;
- (g) *principal and coupon risk* – the risk that if credit losses on the Reference Portfolio exceed the threshold loss level specified in the terms and conditions of the notes, the notes may be redeemed for less than the amount initially invested and the coupon will be paid on the reduced amount;
- (h) *collateral risk* – the risk that the obligors of the SCDO charged assets including the issuers of any assets comprising the SCDO Collateral might default, reducing or eliminating noteholders' capital or income returns independently of any credit events;
- (i) *counterparty risk* - the risk that the Credit Default Swap Counterparty and their guarantor (if any) might default, reducing or eliminating noteholders' capital or income returns independently of any credit events;

- (j) *modelling risk* – the risk arising from the fact that SCDOs prior to and during the Claim Period were subject to more complicated financial modelling and assumptions for the purpose of such modelling as compared to traditional FRNs and small deviations from modelling assumption could result in significant changes in the value of SCDOs.

14.15 were and are materially different from traditional FRN's in that traditional FRNs:

- (a) are publicly listed on a stock exchange;
- (b) have information disseminated by market information systems (for instance, Bloomberg);
- (c) are linked to the credit worthiness of one particular company or institution, which provides detailed information to the public domain through publication of its financial accounts;
- (d) are issued by a company or institution which is likely to want to engage in repeat issues in the capital markets;
- (e) contain an unqualified promise by the issuer of the FRN to repay the capital invested in the traditional FRN at the maturity date;
- (f) are risk rated and assigned a rating which is dependent upon less complicated financial modelling than the Claim SCDOs;
- (g) are not leveraged in terms of their exposure to the credit worthiness of the particular company or institution;
- (h) are less susceptible than SCDOs to Binary Recovery and typically have a non-zero recovery;
- (i) are less susceptible than SCDOs to volatility in the international credit markets;
- (j) are subject to two primary risks, being:
 - (i) credit (default) risk, determined by the credit worthiness of the issuer of the FRN or the guarantor; and

- (ii) interest rate risk, determined by the volatility of the benchmark or reference rate for the FRN (such as the bank bill swap rate);
- (k) are marketed to a broader investor base thereby enhancing liquidity;
- (l) if highly-rated – have liquid secondary markets;

PARTICULARS

Highly-rated traditional FRNs are typically issued by governments, major banks and other financial institutions and major corporations.

15. By reason of the matters set out in paragraph 14 above, the Claim SCDOs were suitable:

15.1 only for portfolios intending high-risk, long-term investment; and

15.2 only for investors with:

- (a) an above-average tolerance for market price volatility;
- (b) an ability to tolerate some risk of total loss; and
- (c) investment authorisations permitting investment in high risk, illiquid securities.

PARTICULARS

Grove Research and Advisory, "The Green Book", dated August 2006, pages 44 and 45.

16. By reason of the matters pleaded in paragraphs 14 and 15 above, the Claim SCDOs are not, and were not at any time during the Claim Period, suitable investments for:

16.1 investors other than investors who have the knowledge and expertise to evaluate the merits and risks of a SCDO investment; or

16.2 investors requiring the Conservative Strategies, including the Claimants; or

16.3 LGAs.

17. At all material times Lehman knew or ought reasonably to have known of each of the matters pleaded in paragraphs 14 to 16 above.

PARTICULARS

Lehman ought reasonably to have known by reason of the matters set out in paragraphs 9 to 13 above.

NEGLIGENCE

18. At all material times Lehman:
- 18.1 offered to provide and did in fact provide investment advisory services to the Claimants; further or alternatively
 - 18.2 offered to facilitate and did in fact facilitate the Claimants to invest in SCDOs, being one or more of the Claim SCDOs;

PARTICULARS

Wingecarribee

- (a) Between about November 2005 and January 2007, Lehman repeatedly offered to provide an IMP service to Wingecarribee and on 15 January 2007 Wingecarribee entered into an agreement with Lehman for the provision of that service ('**Wingecarribee IMP**') (which is in writing and can be inspected at the offices of the Applicants' solicitors).
- (b) At all material times thereafter, Lehman purported to provide the Service defined in the Wingecarribee IMP and in ostensible performance of the Wingecarribee IMP, Lehman:
 - (i) established a cash management account ('**CMA**') for Wingecarribee;
 - (ii) applied funds from the CMA to the purchase of investments including the Claim SCDOs on behalf of Wingecarribee;
 - (iii) made recommendations during the Claim Period to the Financial Services Manager and other finance staff of Wingecarribee in relation to the purchase of Claim SCDOs by Lehman on behalf of Wingecarribee, or the purchase of Claim SCDOs by Wingecarribee from Lehman, and thereafter caused Wingecarribee's funds to be applied to the purchases as approved by Wingecarribee's staff;

Swan

- (c) Between June 2006 and December 2006, Lehman offered to provide an IMP service to Swan and on 9 February 2007, Swan entered into an agreement with Lehman for the provision of that service ('Swan IMP') (which is in writing and can be inspected at the offices of the Applicants' solicitors).
- (d) At all material times thereafter Lehman purported to provide the Service defined in the Swan IMP and in ostensible performance of the Swan IMP, Lehman:
 - (i) established a CMA for Swan;
 - (ii) applied funds from the CMA to the purchase of investments including the Claim SCDOs on behalf of Swan;
 - (iii) made recommendations during the Claim Period to the Chief Financial Officer and other finance department staff of Swan in relation to the purchase of Claim SCDOs by Lehman on behalf of Swan or the purchase of Claim SCDOs by Swan from Lehman, and thereafter caused Swan's funds to be applied to the purchases as approved by Swan's staff.

Parkes

- (e) During the Claim Period, Lehman:
 - (i) contacted, met with and had telephone conversations with financial services staff of Parkes including Bob Bokeyar, Brian Mathews and Kathleen Pizzi;
 - (ii) during the meetings and conversations particularised in paragraph (i) above, Lehman recommended financial products, including SCDOs and the Claim SCDOs, in which Parkes should invest;
 - (iii) placed purchase orders on behalf of Parkes for the investment products, including the Claim SCDOs;
 - (iv) made arrangements for Parkes to deposit funds into a Lehman account to pay for the purchases of the Claim SCDOs, and applied those funds to the acquisition of the Claim SCDOs on behalf of Parkes and or applied the proceeds from sales of earlier investments made by Parkes through Lehman to the purchase of the Claim SCDOs.

Particulars relating to individual Group Members will be provided following the trial of common questions or otherwise as the Court may direct.

19. In the premises pleaded in paragraphs 6 to 13 and 18 above, Lehman at all material times owed a duty of care to the Claimants to ensure that it provided the standard of financial services advice that could reasonably be expected of a financial services

adviser holding itself out as having specialised skill and expertise in providing those financial advisory services (the '**Advisor Duties**').

PARTICULARS

The Applicants refer to and repeat the particulars to the matters pleaded in paragraphs 6 to 13 and 18 above.

The Adviser Duties included duties to:

- (a) ensure that any investments acquired for or recommended to Claimants were:
 - (i) consistent with the Conservative Strategies;
 - (ii) in respect of LGAs – compliant with the Investment Protocols;
 - (iii) transparent in terms of how the risks below affect the return of capital to the investor:
 - (a) the Reference Entities and Leverage Risk;
 - (b) the underlying credit event risk exposure;
 - (c) the underlying credit spread risk exposure;
 - (iv) liquid, or not materially less liquid than traditional FRNs;
 - (b) ensure that financial products recommended by Lehman carried ratings that were equivalent, as to risk, to investment-grade ratings applied to other financial products;
 - (c) monitor the Claimants' investments on a regular basis and promptly advise the Claimants whether or not to liquidate their respective holdings;
 - (d) conceal nothing that might reasonably be regarded as relevant to the making of a decision whether to invest in a product recommended by Lehman;
 - (e) exercise the standard of skill and care which a reasonable person would expect from a professional investment adviser specialising in providing investment advice.
20. At all material times, Lehman was aware or ought to have been aware that each Claimant would or was likely to rely on the financial services advice provided to them by Lehman.

PARTICULARS

The Applicants refer to and repeat the particulars under paragraph 19 above.

21. At all material times it was reasonably foreseeable that a failure by Lehman to provide financial services advice in accordance with the Adviser Duties would or may result in losses to each Claimant.
 22. In breach of the Adviser Duties, Lehman:
 - 22.1 did not adequately disclose to the Claimants, any of the matters pleaded in paragraphs 14 to 16 above;
 - 22.2 caused the Claimants' funds to be invested in investments that were:
 - (a) not consistent with the Conservative Strategies;
 - (b) in respect of LGAs – not compliant with the Investment Protocols;
 - (c) illiquid in that there was no active secondary market in the investments or were materially less liquid than FRNs of equivalent rating;
 - (d) not transparent in terms of how:
 - (i) the leverage risk;
 - (ii) the credit event risk exposures,;
 - (iii) the credit spread risk exposures;
- might affect the return of capital to the investor, or not as transparent as investors in the positions of the Claimants might reasonably have expected;

PARTICULARS

The Applicants refer to and repeat the particulars under paragraphs 14 to 16 above.

- 22.3 did not advise the Claimants that SCDOs were not equivalent, as regards risk, to other types of financial products carrying the same ratings;

PARTICULARS

The Reference Entities operate as notional benchmarks for identifying credit events and for crystallising obligations between the credit default swap counterparty and the SCDO issuer and also the SCDO issuer and the noteholders of the Claim SCDOs. The funds received by the SCDO issuer from the noteholders are not used to purchase the defined obligations of the Reference Entities but are held separately by the SCDO issuer in defined collateral (SCDO Collateral), pursuant to the terms and conditions of the notes. The SCDO Collateral is secured to cover the SCDO issuer's liability to the secured creditors, which include, among others, the credit default swap counterparty and the noteholders

- 22.4 did not advise the Claimants that modelling used to assess risk attaching to SCDOs was limited by the:
- (a) relatively short period during which SCDOs had been available as investment products; and
 - (b) circumstance that market conditions had been favourable to SCDOs since their inception and the risk modelling for SCDOs had not been tested by adverse market conditions;

PARTICULARS

The models were subject to the shortcomings of the data used to construct them, including *inter alia* that:

- (a) historical data was used to predict future behaviour, where the performance history upon which the ratings agencies relied occurred under very benign conditions including consistent high economic growth, interest rates at historic lows, very low volatility in interest rates and a period where housing prices increased consistently year over year;
- (b) ratings agencies were inherently conflicted in the rating of

SCDOs in that they were commissioned by the issuers of the SCDOs for the provision of a rating on a success fee basis and had a conflicted interest in ensuring repeated commission and other fees; and

- (c) the ratings did not reflect the potential impact of all the risks related to the structure, market and other factors that might affect the value of the notes and in particular the level of correlation between credit events.

22.5 failed adequately to:

- (a) monitor each Claimant's holdings;
- (b) advise each Claimant to liquidate their holdings of SCDOs in time to avoid substantial losses when conditions for investing in SCDOs began to cease to be favourable in or after January 2007;

PARTICULARS

From or in about late 2006, Lehman was or ought to have been aware that:

- (a) there had been an increase in the number of defaults in the 'sub-prime' mortgage market in the United States and an increase in the number of credit events in residential mortgage backed CDOs;
- (b) there had been an increase in the number of defaults in the 'sub-prime' mortgage market in the United States and an increase in the number of credit events in residential mortgage backed CDOs;
- (c) the increase in credit events in SCDOs backed by residential mortgages had, or was likely to have, an adverse effect on SCDOs referenced to corporate entities, with the result that there was likely to be an increase in the number of credit events in both of these types of SCDOs;
- (d) an increase in the number of credit events in relation to mortgage backed CDOs was likely adversely to affect the value of CDOs generally, including the Claim SCDOs; and
- (e) there had been an increase in credit spreads of the reference entities included in the Claim SCDOs, resulting or likely to result in a decrease in the value of the Claim SCDOs.

Lehman did not provide timely reports as to the performance or changing risk profiles of SCDO investments made on behalf of Wingecarribee or

Swan, and any reports it did provide did not adequately disclose the risks attaching to those investments.

Lehman did not provide timely, or appropriately specific reports to Parkes regarding the performance or changing risk profiles of SCDO investments made on its behalf.

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- 22.6 failed to exercise the standard of skilled care which a reasonable person would expect from a professional investment adviser specialising in providing investment advice;

PARTICULARS

Lehman did not properly advise the Applicants about:

- (a) the matters set out in paragraphs 14 to 16 above;
- (c) the existence of Lehman's Conflicted Role.

Lehman caused the Applicants to invest in the Claim SCDOs, or a higher proportion of the Claim SCDOs than was prudent.

Lehman did not take into account adequately or at all the Applicants' Conservative Strategies or, in the case of LGAs, the Investment Protocols.

Particulars relating to the individual Group Members will be provided after the trial of common issues or otherwise as the Court directs.

23. In reliance upon the recommendations made to them by Lehman, each of the Claimants:

23.1 acquired Claim SCDOs during the Claim Period; further

23.2 in acquiring the Claim SCDOs, paid prices higher than the prices would have been if the matters which were not disclosed, as alleged in paragraph 22, had been disclosed;

PARTICULARS

So far as the Applicants are able to say prior to the completion of discovery, if the matters not disclosed had been known to the market of potential investors in the Claim SCDOs, the SCDOs would not have been likely to be saleable without significantly greater discounts

to par than the discounts actually reflected in the purchase prices paid by the Claimants. In particular if the entities comprising the reference entities for the Claims SCDOs had been identified, market assessments of the risks attaching to those entities would have been incorporated into assessments of the risk in, and required rate of return from, the Claim SCDOs and would have resulted in a higher discount to par and/or higher coupon rate (rate of return) being required by potential investors.

Further particulars may be provided following the completion of discovery and prior to trial.

24. Further, by reason of:

24.1 the investment of their assets in the Claim SCDOs; further or alternatively

24.2 Lehman's continuing non-disclosure to them of the matters alleged in paragraphs 22 and 23 above;

the Claimants and each of them were and remained:

- (a) unable, or materially less likely to be able to promptly liquidate the investments and recover their funds;
- (b) unable, or materially less likely to be able adequately to monitor, risks associated with their investments; and
- (c) exposed to a material risk that:
 - (i) increasing credit events would impact the tranches of SCDOs held by them;
 - (ii) increasing credit spreads would impact the tranches of SCDOs held by them;
 - (iii) deteriorating conditions in global financial markets would impact on the value of the tranches of SCDOs held by them; and
 - (iv) they would be unable to trade, redeem or otherwise liquidate the SCDOs to maintain liquidity, or reduce or avoid the risk of capital losses.

25. From in or about mid 2007, the values of the Claim SCDOs deteriorated significantly.

PARTICULARS

From about mid 2007 following the announcement of losses by US home finance lenders HSBC Finance and New Century at the beginning of February 2007, the risks inherent in SCDOs crystallised resulting in the value of Claim SCDOs deteriorating significantly. Further particulars may be provided following the completion of discovery.

26. In breach of the Adviser Duties, Lehman took no, or no adequate, steps to advise the Claimants of the matters set out in paragraphs 22 and 25 above.
27. By reason of the matters identified in paragraphs 22 to 25, above, the Applicants and Group Members suffered loss and damage.

PARTICULARS OF LOSS

The Claimants would not have acquired the Claim SCDOs, or any SCDOs, if Lehman had not breached its Advisor Duties as alleged herein. The Claimants suffered:

- (a) loss of the difference between the price paid to acquire the Claim SCDOs and:
 - (i) the price recovered on sale of the SCDOs, or the true value of any SCDOs retained at the date of trial; alternatively
 - (ii) the true value or market clearing price that would have been applied to the Claim SCDOs at the time they were acquired if the matters not disclosed as alleged in paragraph 23 had been disclosed; plus
- (b) transaction costs including advisor fees; plus
- (c) consequential losses including costs of borrowing alternative funds.

Particulars relating to loss and damage suffered by the individual Group Members will be provided following the trial of common questions or otherwise as the Court may direct.

MISLEADING AND DECEPTIVE CONDUCT

28. Further and in the alternative, at all material times Lehman represented to the Claimants and each of them that, or to the effect that:

- 28.1 the investments Lehman recommended to or made on behalf of each Claimant, including the Claim SCDOs, were:
- (a) suitable for investors with Conservative Strategies; and
 - (b) in respect of LGAs – compliant with the Investment Protocols;
- 28.2 Lehman monitored the investments recommended to and made on behalf of each Claimant, including the Claim SCDOs, to ensure they continued to satisfy the conditions described in paragraph 28.1;
- 28.3 when investing on behalf of LGAs or investors having Conservative Strategies, Lehman observed prudent, conservative, income defensive, capital-protective and pro-liquidity investment practices;
- 28.4 the Claim SCDOs:
- (a) were, or had risk profiles equivalent to, traditional FRNs;
 - (b) were equivalent, as regards risk profile, to other types of financial products carrying the same ratings;
 - (c) were, or had risk profiles equivalent to or better than the four major Australian banks;
 - (d) offered excellent liquidity;
 - (e) were as liquid as traditional FRNs;
 - (f) were and would be able readily to be redeemed in a secondary market;
 - (g) had maturity dates that were suitable to each investor's needs and were compliant with each investor's investment policies;
- 28.5 Lehman was active in the secondary market for SCDOs and was obligated to buy back the Claim SCDOs if requested to do so, for the purpose of providing liquidity in products that were illiquid; and
- 28.6 investments made by Lehman would be fully transparent as to the underlying risk exposures in terms of their effect on return of capital to the investor,

('the Assurances').

PARTICULARS

Wingecarribee

- (a) The Assurances as made to Wingecarribee were partly in writing, partly oral and partly to be implied.
- (b) In so far as they were in writing they were contained in, *inter alia*:
 - (i) a written "Expression of Interest" delivered by Lehman (then named Grange) to Wingecarribee on or about 16 October 2006;
 - (ii) a package of presentation materials provided by Lehman to Wingecarribee during a meeting at Wingecarribee's offices on 18 December 2006;
 - (iii) the Wingecarribee IMP; and
 - (iv) contract notes delivered by Lehman to Wingecarribee from time to time during the Claim Period;

copies of which may be inspected by appointment at the offices of the Applicants' solicitors.
- (c) In so far as the Assurances were oral they were communicated *inter alia*:
 - (i) from David Rosenbaum and/or Stewart Calderwood of Lehman to Douglas Neville, Peter Dunn and Michael Hyde of Wingecarribee at the meeting on 18 December 2006 referred to above;
 - (ii) during a meeting between Mr Calderwood and Messrs Neville and Dunn at Wingecarribee's offices on or about 16 February 2007 (in response to an email dated 12 February 2007 from Mr Neville to Mr Rosenbaum);
 - (iii) during a presentation by Messrs Rosenbaum and Calderwood to the Wingecarribee Finance Committee on 21 February 2007;
 - (iv) during telephone conversations between Mr Neville and Mr Calderwood during July and August 2007.
- (d) In so far as the Assurances are to be implied they are to be implied from:
 - (i) the communications particularised in paragraphs (a), (b) and (c) above;
 - (ii) Lehman's conduct in recommending and facilitating

Wingecarribee's investment in the Claim SCDOs;

- (iii) Lehman's failure, in its communications with and dealings for Wingecarribee, to take any or any adequate step to refute, withdraw or correct any of the matters pleaded in paragraphs 28.1 to 28.6 above.

Swan

- (e) The Assurances as made to Swan were partly in writing, partly oral and partly to be implied.
 - (i) In so far as they were in writing they were contained in, *inter alia*:
 - (ii) product presentations delivered by Lehman in the promotion of SCDO products from time to time at various meetings with Swan between 2003 and 2006; and
 - (iii) contract notes delivered by Lehman to Swan from time to time during the Claim Period.
- (f) In so far as the Assurances were oral they were communicated from Rod O'Dea and/or Ben Kay to Rajah Senathirajah and or Stuart Downing of Swan at various meetings during the Claim Period.
- (g) In so far as the Assurances are to be implied they are to be implied from:
 - (i) the communications particularised in paragraphs (d), (e)(i) - (e)(iii) and (f) above;
 - (ii) Lehman's conduct in recommending and facilitating Swan's investment in the Claim SCDOs;
 - (iii) Lehman's failure, in its communications with and dealings for Swan, to take any or any adequate step to refute, withdraw or correct any of the matters pleaded in paragraphs 28.1 to 28.6 above.

Parkes

- (h) The Assurances as made to Parkes were partly in writing, partly oral and partly to be implied.
- (i) In so far as they were in writing they were contained in, *inter alia*:
 - (i) product presentations delivered by Lehman in promotion of SCDO products from time to time at various meetings with Parkes during the Claim Period and or sent by email if a meeting did not occur; and
 - (ii) contract notes delivered by Lehman to Parkes from time to time during the Claim Period.

- (j) In so far as the Assurances were oral they were communicated from Jill May and or Hayley Moffiet to Bob Bokeyar, Brian Mathews and or Kathleen Pizzi of Parkes at various meetings during the Claim Period.
- (k) In so far as the Assurances are to be implied they are to be implied from:
 - (i) the communications particularised in paragraphs (h), (i) and (j) above;
 - (ii) Lehman's conduct in recommending and facilitating Parkes' investment in the Claim SCDOs;
 - (iii) Lehman's failure, in its communications with and dealings for Parkes, to take any or any adequate step to refute, withdraw or correct any of the matters pleaded in paragraph 28.1 to 28.6 above.

The Group Members

- (l) Particulars relating to the individual Group Members will be provided after the trial of common issues or otherwise as the Court directs.

29. By making the Assurances, Lehman engaged in conduct in trade or commerce:

29.1 in relation to a financial product or a financial service within the meaning of s1041H of the CA;

29.2 in relation to financial services within the meaning of s12DA of the ASIC Act; further or alternatively

29.3 within the meaning of the FTA NSW or the FTA WA as the case may be.

30. During the Claim Period, in reliance upon some or all of the Assurances, each Applicant and each Group Member:

30.1 forwarded funds to Lehman for investment; further or alternatively

30.2 refrained from demanding the return of funds forwarded to Lehman for investment.

PARTICULARS

The Applicants relied upon the Assurances in deciding to authorise Lehman to deal with their funds and in refraining from directing Lehman to rescind, redeem or otherwise correct prior investments in Claim SCDOs.

Particulars relating to individual Group Members will be provided following the trial of common questions or otherwise as the Court may direct.

31. Contrary to the Assurances:

31.1 the Claim SCDOs:

- (a) were not suitable for investors with Conservative Strategies;
- (b) did not have maturity dates that were suitable for the investor's needs or compliant with each investor's investment policies;
- (c) did not offer liquidity suitable for the investor's needs or compliant with each investor's investment policies; and
- (d) in respect of LGAs, were not compliant with the Investment Protocols;

PARTICULARS

The Applicants refer to and repeat the matters pleaded in paragraphs 14 to 16 above.

- 31.2 Lehman was not adequately monitoring the Claim SCDOs to ensure they continued to satisfy the conditions described in paragraph 28.1 above;

PARTICULARS

The Applicants refer to and repeat the matters particularised in paragraphs 22.2 to 22.5 and 25 above.

Particulars relating to individual LGA and Non LGA Claimants may be provided following the trial of common questions or otherwise as the Court may direct.

- 31.3 Lehman was not observing and did not observe prudent, conservative, defensive, capital-protective and pro-liquidity investment practices for LGAs or investors following Conservative Strategies, namely the Claimants;

PARTICULARS

Lehman acquired the Claim SCDOs on behalf of the Applicants such that their investment portfolios contained an excessive quantity of

SCDOs in circumstances where those investment portfolios should not have contained any SCDOs at all.

Particulars relating to the individual Group Members will be provided after the trial of common issues or otherwise as the Court may direct.

31.4 the Claim SCDOs:

- (a) were not equivalent, as regards risk profile, to other types of financial products carrying the same ratings; and
- (b) had a significantly higher risk profile than other types of financial products carrying the same ratings;

31.5 the Claim SCDOs were not, and did not have risk profiles equivalent to traditional FRNs;

PARTICULARS

The Applicants refer to and repeat the matters pleaded in paragraphs 14 to 16.

31.6 the Claim SCDOs did not offer excellent liquidity, but were materially illiquid;

PARTICULARS

- (a) The Claim SCDOs had no active secondary market.
- (b) If and to the extent that any secondary market did develop for SCDOs, it did not offer liquidity.
- (c) The Claimants were unable to sell their Claim SCDOs easily or at prices that provided them with a yield comparable to similar investments that had a developed secondary market.
- (d) Particulars relating to individual Group Members will be provided after the trial of common issues or otherwise as the Court directs.

31.7 the Claimants could not, or there was a substantial risk that they might cease to be able to, readily redeem their holdings in a secondary market at all or without incurring significant capital losses;

PARTICULARS

The Applicants refer to and repeat the matters set out in paragraph 14 above.

- 31.8 Lehman was not obligated to buy the Claim SCDOs back from the Claimants;
and
- 31.9 investments in the Claim SCDOs were not transparent as to their underlying risks in terms of their effect on return of capital to the investor.

PARTICULARS

The Applicants refer to and repeat the matters set out in paragraph 14 above.

- 31A. In so far as the Assurances referred to in paragraphs 28.2, 28.3, 28.4(d) to (g), 28.5 and 28.6 were representations as to future matters, Lehman did not have reasonable grounds for the representations at the time they were made.
- 32. By reason of the matters in paragraphs 28 to 31A above, in making the Assurances, Lehman engaged in conduct in contravention of:
 - 32.1 section 1041H of the CA;
 - 32.2 section 12DA of the ASIC Act; further or alternatively
 - 32.3 sections 42 and 10 of the FTA NSW and FTA WA, respectively.
- 33. By reason of Lehman's misleading and deceptive conduct pleaded in paragraphs 28 to 31A, the Claimants suffered loss and damage.

PARTICULARS OF LOSS

The Applicants refer to and repeat the particulars of loss set out under paragraph 27 above.

IMP CLAIMANTS

Wingecarribee Subgroup

34. Further and in the alternative, further to paragraph 4 above, Wingecarribee claims as subgroup representative of the:

34.1 LGA Group Members ('**NSW LGA IMP Claimants**') who entered into an IMP agreement with Lehman ('**NSW IMP**'); and

34.2 Non-LGA Group Members ('**Non-LGA IMP Claimants**') who entered into an IMP agreement with Lehman ('**Non-LGA IMP**');

(together and severally, including Wingecarribee, "**Wingecarribee subgroup claimants**").

35. By agreements made during the Claim Period, each of the Wingecarribee subgroup claimants agreed with Lehman that Lehman would provide investment advisory and portfolio management services to them for reward.

PARTICULARS

The NSW IMPs and the Non LGA IMPs were in writing and to be implied as set out in the next paragraph.

36. There were terms in each of the NSW IMPs and the Non-LGA IMPs that or to the effect that:

36.1 Lehman was appointed with all powers necessary to provide Services as defined therein ('**Services**') to the Claimant (clause 2.1);

PARTICULARS

'Services' is defined to mean the services which Lehman might provide in connection with the management of the Claimant's portfolio, including investment research, analysis and advice, securities execution and settlement services, safe custody and reporting and administration services.

36.2 Lehman obtained authority to deal with all or any part of the Claimant's investment portfolio (including acquiring or selling assets within the Portfolio) (clause 2.2(a));

- 36.3 unless the Claimant agreed otherwise, Lehman was required to provide the Services in accordance with Guidelines set out in Schedule 2 of the IMP Agreement (clause 2.3(a)) ("**Guidelines**"), as may be varied in writing by the [client] (clause 2.3(b));
- 36.4 the Claimant may request the removal of any asset from the Portfolio by a written request following which Lehman is required to remove the asset at the prevailing market price within 30 days (clause 2.3(c));
- 36.5 the Claimant consented to Lehman entering into transactions as principal on the account of Lehman (or a representative of Lehman) and consented to Lehman knowingly or unknowingly, either as principal or on behalf of another person, taking the opposite side of a transaction from the Claimant on the basis Lehman must notify the Claimant of such transactions as required by the CA and the Market Rules of ASX Limited (clause 2.5);
- 36.6 Lehman was required to give the Claimant monthly transaction, exposure and performance reports (clause 5.1);
- 36.7 each party had the right to terminate on giving not less than 30 days written notice (clause 7(c)), but termination for any reason permitted by clause 7 did not affect the accrued rights and liabilities which had accrued to the time of termination (clause 7(d));
- 36.8 Lehman would provide investment research, analysis and advice to the Claimant in respect of its investment and management of the Claimant's portfolio;
- 36.9 in providing investment research, analysis and advice Lehman would exercise the standard of skill and care which a reasonable person would expect from a professional investment adviser specialising in providing investment advice and portfolio management services to, *inter alia*:
- (a) NSW LGAs; further or alternatively
 - (b) investors with Conservative Strategies.

PARTICULARS

The terms set out in paragraph 36.1 to 36.7 were in writing in the

NSW IMPs and the Non-LGA IMPs.

The term in paragraph 36.8 is to be implied by custom, or alternatively, to give business efficacy to the NSW IMPs and the Non-LGA IMPs and the relationship between the parties.

The term in paragraph 36.9 above, is implied by law, or alternatively, to give business efficacy to the NSW IMPs and the Non-LGA IMPs and the relationship between the parties.

37. The Guidelines in each NSW IMP and each Non-LGA IMP provided that or to the effect that:
- 37.1 all securities in the Claimant's portfolio must have an active secondary market;
 - 37.2 up to a specified proportion of the portfolios could be invested in interest-bearing securities issued by non-Approved Deposit Taking Institutions, as authorised by the Australian Prudential and Regulatory Authority ('**ADI Securities**');

PARTICULARS

The specified proportion was typically 75% or 80%.

- 37.3 the Claimants' funds could not be invested in Derivative Contracts (defined by clause 1.1 of the IMP Agreement to incorporate the definition of 'derivative' in the CA);
 - 37.4 Approved Instruments, for the purposes of investment, included collateralised debt obligations.
38. During the period of each Wingecarribee subgroup claimant's IMP, and in purported performance of the IMP, Lehman:
- 38.1 caused each claimant to invest in one or more of the Claim SCDOs;

PARTICULARS

Particulars of acquisitions by individual NSW LGA IMP Claimants and Non LGA IMP Claimants may be provided following the trial of common questions or otherwise as the Court may direct.

38.2 by reason of the matters in paragraph 38.1, caused investments to be made by each claimant that:

- (a) do not carry suitable risk profiles;

PARTICULARS

Wingecarribee refers to and repeats the matters regarding ratings of SCDOs set out in paragraph 31.5 above.

- (b) were not ADI Securities;
- (c) did not have an active secondary market;
- (d) were derivative contracts;

PARTICULARS

The Claim SCDOs are derivatives within the meaning of section 761D of the CA by reason of their features identified in paragraph 14 above.

- (e) were not Collateralised Debt Obligations within the meaning of the Guidelines; and

PARTICULARS

The Claim SCDOs were synthetic collateralised debt obligations as described in paragraph 14 above.

- (f) were not, so far as the NSW LGA IMP Claimants are concerned, investments consistent with the wise, cautious and judicious exercise (within the meaning of the *Trustee Act NSW*) of a power to invest public funds;

PARTICULARS

Wingecarribee refers to and repeats the matters pleaded in paragraphs 14 to 16.

38.3 by reason of the matters set out in paragraph 38.2 above, caused investments to be made by each claimant that:

- (a) were not consistent with the Guidelines; and
- (b) so far as the NSW LGA IMP Claimants were concerned – were not consistent with the LGA NSW;

38.4 did not provide adequate investment research, analysis and advice to the claimants before causing their assets to be invested in Claim SCDOs;

PARTICULARS

Wingecarribee refers to and repeats the particulars to paragraph 22.2 to 22.6.

Particulars relating to the individual NSW IMP LGA Claimants and the Non LGA IMP Claimants will be provided after the trial of common issues or otherwise as the Court directs.

38.5 did not provide any or any adequate investment research, analysis or advice to the claimants after causing their assets to be invested in SCDOs;

PARTICULARS

Lehman did not provide any or any adequate advice to Wingecarribee as to:

- (a) the matters set out in paragraphs 14 to 16 above;
- (b) the value of the SCDOs purchased, and whether at any time its holdings should be held or sold;
- (c) the developing crisis in sub-prime lending in the US following the announcement of losses by US home finance lenders HSBC Finance and New Century at the beginning of February 2007;
- (d) the likely effect of volatility in the market for all SCDOs, particularly those exposed to the US sub-prime market; or
- (e) the effect of the sub-prime crisis on the tightening of global credit markets and the effect on all reference entities, including corporate entities to be able to meet their loan repayments and therefore the ability of the issuer of the Claim SCDOs to make their coupon payments or for the Claim SCDOs to be sold for at or about the price for which they were acquired by Wingecarribee.

Particulars relating to the individual NSW IMP LGA Claimants and the individual Non LGA IMP Claimants will be provided after the trial of common issues or otherwise as the Court directs.

- 38.6 caused the claimants to enter into transactions in which Lehman or a related entity held the opposing position, without giving any or any adequate notice of that fact;

PARTICULARS

Lehman caused Wingecarribee to acquire the Claim SCDOs identified, being SCDOs in respect of which Lehman had the Conflicted Role.

Particulars relating to the individual NSW LGA IMP Claimants and the individual Non LGA IMP Claimants will be provided after the trial of common issues or otherwise as the Court directs.

- 38.7 did not exercise the standard of skill and care which a reasonable person would expect from a professional investment adviser specialising in providing investment advice and portfolio management services to, *inter alia*, NSW LGAs and other investors with Conservative Strategies;

PARTICULARS

Wingecarribee refers to and repeats the particulars to paragraph 22.6.

Particulars relating to the individual NSW IMP LGA Claimants will be provided after the trial of common issues or otherwise as the Court directs.

- 38.8 did not give the claimants any, or any adequate monthly transaction, exposure and performance reports.

PARTICULARS

Lehman did not provide any or any adequate advice to Wingecarribee as to:

- (a) the matters set out in paragraphs 14 to 16 or 22;
- (b) the value of the SCDOs purchased and whether at any time its holdings should be held or sold;
- (c) the developing crisis in sub-prime lending in the US following the announcement of losses by US home finance lenders HSBC Finance and New Century at the beginning of February 2007;
- (d) the likely effect of volatility in the market for all SCDOs,

- particularly those exposed to the US sub-prime market; or
- (e) the effect of the sub-prime crisis on the tightening of global credit markets and the effect on all reference entities, including corporate entities to be able to meet their loan repayments and therefore the ability of the issuers of the Claim SCDOs to make their coupon payments or for the Claim SCDOs to be sold for at or about the price for which they were acquired by Wingecarribee.

Particulars relating to individual sub-group members may be provided following the trial of common questions or otherwise as the Court may direct.

39. By reason of the matters identified in paragraphs 34 to 38 above, Lehman breached each of the NSW IMPs and the Non LGA IMPs.
40. By reason of the breaches alleged in the preceding paragraph, Wingecarribee and each of the Wingecarribee subgroup claimants suffered loss and damage.

PARTICULARS OF LOSS

Wingecarribee refers to and repeats the particulars of loss set out under paragraph 27 above.

WA IMP Claimants

41. Further to paragraph 4 above, Swan claims as subgroup representative of the Group Members who during the Claim Period entered IMP agreements with Lehman in substantially the same form as Swan's IMP ('**WA IMP**') (together and severally, including Swan, the '**WA IMP Claimants**').
42. By agreements made during the Claim Period, each of the WA IMP Claimants agreed with Lehman that Lehman would provide each of them with investment advisory and portfolio management services for reward ('**WA IMPs**').

PARTICULARS

The WA IMPs were in writing. A copy of Swan's WA IMP may be inspected by appointment at the offices of the Applicants' solicitors.

43. There were terms in each of the WA IMPs that or to the effect that:

- 43.1 Lehman was appointed with all powers necessary to provide Services as defined therein (**'Services'**) to the Claimant (clause 2.1));

PARTICULARS

Services is defined to mean the services which Lehman might provide in connection with the management of the Claimant's portfolio, including investment research, analysis and advice, securities execution and settlement services, safe custody and reporting and administration services.

- 43.2 Lehman obtained authority to deal with all or any part of the Claimant investment portfolio (including acquiring or selling assets within the Portfolio) (clause 2.2(a));
- 43.3 unless the Claimant agreed otherwise, Lehman was required to provide the Services in accordance with Guidelines in the WA IMPs (clause 2.3(a)) ("**WA Guidelines**"), as may be varied in writing by the [client] (clause 2.3(b));
- 43.4 each Claimant's Portfolio may, for whatever reason, depart in a way which was not material from the WA Guidelines from time to time (Clause 2.3(d));
- 43.5 the Claimant may request the removal of any asset from the Portfolio by a written request following which Lehman is required to remove the asset at the prevailing market price within 30 days (clause 2.3(c));
- 43.6 the Claimant consented to Lehman entering into transactions as principal on the account of Lehman (or a representative of Lehman) and consented to Lehman knowingly or unknowingly, either as principal or on behalf of another person, taking the opposing position of a transaction from the Claimant on the basis Lehman must notify the Claimant of such transactions as required by the Corporations Act 2001 (Cth) and the Market Rules of ASX Limited (clause 2.5);
- 43.7 Lehman was required to give the Claimant monthly transaction, exposure and performance reports (clause 5.1);
- 43.8 each party had the right to terminate on giving not less than 30 days written notice (clause 7(c)), but termination for any reason permitted by clause 7 did not affect the accrued rights and liabilities which had accrued to the time of termination (clause 7(d));

- 43.9 Lehman would provide investment research, analysis and advice to the Claimant in respect of its investment and management of the Claimant's portfolio;
- 43.10 in providing investment research, analysis and advice Lehman would exercise the standard of skill and care which a reasonable person would expect from a professional investment adviser specialising in providing investment advice and portfolio management services to, *inter alia*, WA LGAs.

PARTICULARS

The terms set out in paragraphs 43.1 to 43.8 were in writing in the WA IMPs.

The term in paragraph 43.9 is to be implied by custom, or alternatively to give business efficacy to the WA IMPs and the relationship between the parties.

The term in paragraph 43.10 is to be implied by law, or alternatively to give business efficacy to the WA IMPs and the relationship between the parties.

44. Further:
- 44.1 the WA Guidelines provided that or to the effect that each Claimant's portfolio must be invested in accordance with the Claimant's investment policy;
- 44.2 each WA Claimant's investment policy included objectives:
- (a) to achieve a high level of security using recognised ratings criteria;
 - (b) to have ready access to funds for day to day requirements, without penalty;
- 44.3 each WA IMP Claimant's investment policy required investments to be made in accordance with:
- (a) LGA WA section 6.14;
 - (b) Part III of the *Trustees Act WA*;
- 44.4 each WA IMP Claimant's investment policy described "authorised" or like investments as or including:

- (a) fixed and floating rate ADI Securities;
 - (b) State/Commonwealth Government Bonds;
 - (c) mortgage and asset-backed securities with a credit rating of "AA-" or better;
 - (d) managed funds with a credit rating of "A-" or better.
45. During the period of each WA IMP, and in purported performance of each WA IMP, Lehman:
- 45.1 caused each WA IMP Claimant's assets to be invested in Claim SCDOs;

PARTICULARS

Particulars of acquisitions by individual WA IMP Claimants may be provided following the trial of common questions or otherwise as the Court may direct.

- 45.2 by reason of the matters in paragraph 45.1, caused investments to be made by each WA IMP Claimant that:
- (a) were not, and did not have similar risk and liquidity profiles to, the authorised investments within the meaning of the WA IMP Claimant's investment policy;
 - (b) did not offer a high level of security;
 - (c) did not provide ready access to funds for day to day requirements, without penalty;
 - (d) were not in accordance with:
 - (i) LGA WA section 6.14; or
 - (ii) Part III of the *Trustees Act WA*;

PARTICULARS

Swan refers to and repeats the matters pleaded in paragraphs 14 to 16.

45.3 by reason of the matters set out in paragraph 45.2 caused investments to be made by each WA IMP Claimant that were not consistent with the WA Guidelines;

45.4 did not provide adequate investment research, analysis and advice to WA IMP Claimants before causing their assets to be invested in Claim SCDOs;

PARTICULARS

Swan refers to and repeats the particulars to paragraphs 22.3 to 22.5.

Particulars relating to the individual WA IMP Claimants will be provided after the trial of common issues or otherwise as the Court directs.

45.5 did not provide any, or any adequate investment research, analysis, or advice, to the WA IMP Claimants after causing their assets to be invested in SCDOs;

PARTICULARS

Lehman did not provide any or any adequate advice to Swan as to:

- (a) the matters set out in paragraphs 14 to 16 above;
- (b) the value of the SCDOs purchased and whether at any time its holdings should be held or sold;
- (c) the developing crisis in sub-prime lending in the US following the announcement of losses by US home finance lenders HSBC Finance and New Century at the beginning of February 2007;
- (d) the likely effect of volatility in the market for all SCDOs, particularly those exposed to the US sub-prime market; or
- (e) the effect of the sub-prime crisis on the tightening of global credit markets and the effect on all reference entities, including corporate entities to be able to meet their loan repayments and therefore the ability of the issuers of the Claim SCDOs to make their coupon payments or for the Claim SCDOs to be sold for at or about the price for which they were acquired by Swan.

Particulars relating to individual WA IMP Claimants will be provided after the trial of common issues or otherwise as the Court directs.

- 45.6 caused each WA IMP Claimant to enter into transactions in which Lehman or a related entity held the opposing position, without giving any or any adequate notice to the Claimant;

PARTICULARS

Lehman caused Swan to acquire Claim SCDOs, in respect of which Lehman had the Conflicted Role.

Particulars relating to the individual WA IMP Claimants will be provided after the trial of common issues or otherwise as the Court directs.

- 45.7 in providing investment research, analysis and advice, did not exercise the standard of skill and care which a reasonable person would expect from a professional investment adviser specialising in providing investment advice and portfolio management services to, *inter alia*, WA LGAs;

PARTICULARS

Swan refers to and repeats the particulars under paragraph 22.6 and will refer at trial to the provisions of Part III of the *Trustees Act WA* including without limitation section 18(1)(a) thereof.

- 45.8 did not give the WA LGA IMP Claimants any, or any adequate, monthly transaction, exposure and performance reports.
46. By reason of the matters identified in paragraphs 42 to 45 above, Lehman breached each of the WA IMPs.
47. By reason of the breaches alleged in the preceding paragraph, each of the WA IMP Claimants suffered loss and damage.

PARTICULARS OF LOSS

Swan refers to and repeats the particulars set out under paragraph 27 above.

Breaches of Fiduciary Obligations

48. In the premises set out in:
- 48.1 paragraph 36 in respect of the Wingecarribee subgroup; and

48.2 paragraph 43 in respect of WA IMP claimants;

Lehman owed to each of the said Claimants fiduciary obligations:

- (a) not to act in a position of conflict between its interests or duties, and the interests of the Claimants; further or alternatively
- (b) not to profit from its position of investment advisor and portfolio manager for each Claimant, other than in accordance with the terms of the NSW IMPs or WA IMPs as the case may be;

other than with the informed consent of each Claimant.

49. During the period of its IMP agreement with each of the Wingecarribee subgroup claimants or each of the WA IMP Claimants as the case may be Lehman:

49.1 caused assets of each such Claimant to be invested in SCDOs in respect of which Lehman had the Conflicted Role; and further

PARTICULARS

Wingecarribee and Swan refer to and repeat the particulars as to the Conflicted Role set out in paragraph 13 above.

49.2 did so without the fully informed consent of the Claimant.

PARTICULARS

By reason of the non-disclosures by Lehman alleged in paragraph 22 above any authorities given by the Claimants to Lehman did not extend to, further or alternatively did not constitute informed consent to, Lehman's investment of their funds in Claim SCDOs.

50. In the premises set out in paragraph 49 above Lehman wrongfully:

50.1 acted in a position of conflict between its interests or duties and the interests of each Claimant; further or alternatively

50.2 profited from its position of investment advisor and portfolio manager for each Claimant other than in accordance with the terms of the:

- (a) NSW LGA IMPs;

(b) Non-LGA IMPs; or

(c) WA IMPs;

as the case may be.

PARTICULARS

So far as the Applicants are able to say prior to the completion of discovery Lehman:

(a) earned commissions on sales of Claim SCDOs to (or by) the claimants; further or alternatively

(b) earned commissions on dealing in the Claim SCDOs including the buy-back of Claim SCDOs from the claimants and re-sale.

The Applicants are unable to provide further particulars until following the completion of discovery.

51. In the premises set out in paragraph 50 above, Lehman breached its fiduciary obligations to each of the NSW IMP Claimants and each of the WA IMP Claimants.

52. By reason of the breaches alleged in the preceding paragraph:

52.1 each Wingecarribee subgroup claimant, and each WA IMP Claimant, suffered loss and damage; further or alternatively

PARTICULARS

Wingecarribee and Swan refer to and repeats the particulars of loss under paragraph 27 above, and claim compensation including equitable compensation.

Particulars of loss relating to individual group members, including particulars of continuing losses, may be provided following the trial of common questions or otherwise as the Court may direct.

52.2 Lehman is liable to account to the said Claimants for the profits wrongfully obtained by it as alleged in paragraph 50 above.

NON-IMP CLAIMANTS – PARKES SUBGROUP

Breach of Contract

53. Further and in the alternative, further to paragraph 4 above Parkes claims as subgroup representative of:
- 53.1 LGA Group Members ('**Non IMP LGA Claimants**') who did not enter into an IMP agreement with Lehman; and
 - 53.2 Non-LGA Group Members ('**Non-IMP Non-LGA Claimants**') who did not enter into an IMP agreement with Lehman;
- (together and severally, including Parkes, the "**Parkes subgroup claimants**").
54. During the Claim Period:
- 54.1 Lehman approached the Claimant and invited the Claimant to follow Lehman's recommendations as to investments suitable for the Claimant; and
 - 54.2 each of the Claimants made agreements with Lehman ("the **Sale Contracts**") that Lehman would sell, or cause to be sold to the claimant, the Claim SCDOs.

PARTICULARS

The Sale Contracts for were made on or about the dates of the acquisition of their respective Claim SCDO. The contracts were in writing, further or alternatively oral, and to be implied as set out in the paragraph 55 below.

55. Each of the Sale Contracts included terms that or to the effect that:
- 55.1 Lehman would arrange the purchase of the financial products identified in each Sale Contract (the '**Financial Products**') by the purchaser;
 - 55.2 the Financial Products would be:
 - (a) suitable for an investor with a Conservative Strategy;
 - (b) suitable for the individual needs of the purchaser;

PARTICULARS

- (a) In respect of Parkes and the Non-IMP LGA Claimants:
 - (i) compliant with the Investment Protocols; and
 - (ii) suitable for LGAs.
 - (b) In respect of the Non-IMP Non-LGA Claimants, suitable for:
 - (i) an investor with a Conservative Strategy; and
 - (ii) the individual needs of the Non-IMP Non-LGA Claimant.
- 55.3 Lehman would monitor the performance and risk profile of the Financial Products and provide the Claimant with timely reports and advice as to the ongoing suitability of the Financial Products;
- 55.4 Lehman would provide with all relevant knowledge which Lehman possessed relevant to the Financial Products concealing nothing that might reasonably be relevant to the making of an investment decision; and
- 55.5 Lehman would exercise reasonable skill and care in making any investment recommendations to the Claimant.

PARTICULARS

- (a) The terms in paragraphs 55.1 to 55.5 were partly in writing, partly oral and partly to be implied.
- (b) In so far as they were in writing, in relation to Parkes, they were contained in emails and product information documents sent by Lehman from time to time between 2002 and 2006 to Parkes, copies of which may be inspected by appointment at the offices of the Applicants' solicitors.
- (c) In so far as they were oral, they were communicated by Lehman representatives to Parkes's representatives during telephone conversations and meetings, typically initiated by Lehman, including but not limited to:
 - (i) meetings between 2002 and 2006 between Mr Stuart Calderwood and Mr David Rosenbaum of Lehman, and Mr Bob Bokeyar and Mr Stuart Downing of Parkes; and

- (ii) telephone conversations between 2002 and 2006 between Mr Stuart Calderwood and Mr David Rosenbaum of Lehman, and Mr Bob Bokeyar and Mr Stuart Downing of Parkes.
- (d) In so far as they were implied, the terms were to be implied:
- (i) from Lehman's conduct in making target approaches to the Parkes subgroup claimants, including Parkes, inviting and thereafter acting on instructions to place purchases for the Claim SCDOs as identified in the resulting contract notes;
 - (ii) from Lehman's conduct in failing to take any or any adequate step to warn the Parkes subgroup claimants that the obligations alleged in paragraph 55 were not acknowledged and accepted by Lehman; and
 - (iii) in relation to the terms pleaded in paragraphs 55.4 and 55.5 above, to give business efficacy to the relationship between the parties, further or alternatively by operation of law.

Particulars of the Sale Contracts relating to the individual Parkes subgroup claimants may be provided following the trial of common questions, or otherwise as the Court may direct.

56. In breach of each of the Sale Contracts:

56.1 the Financial Products, being the Claim SCDOs, were not suitable for the individual needs of the Claimant;

PARTICULARS

Parkes refers to and repeats the matters in paragraphs 14 to 16 above.

56.2 Lehman:

- (a) did not adequately monitor the performance and risk profile of the Claim SCDOs; and
- (b) failed to provide the Claimants with timely reports and advice as to the ongoing suitability of the Claim SCDOs for their individual needs.

PARTICULARS

At no material time was Parkes' attention drawn by Lehman to:

- (a) the matters which were the subject of the non-disclosures identified in paragraph 22 above; or
- (b) the matters set out in paragraph 25 and as particularised paragraph 22.5.

Further, Lehman did not provide timely reports to the Parkes subgroup claimants as to the performance or changing risk profiles of the Claim SCDOs, and any reports it did provide did not adequately disclose the risks attaching to those investments.

57. By reason of the breaches of each of the Sale Contracts as pleaded paragraph 56 above, each of the Parkes subgroup claimants suffered loss and damage.

PARTICULARS OF LOSS

Parkes refers to and repeats the particulars of loss under paragraph 27 above.

Particulars of loss relating to individual Parkes subgroup claimants may be provided following the trial of common questions or otherwise as the Court may direct.

Breaches of Fiduciary Obligations

58. In the premises set out in paragraph 55, Lehman owed to each of the said Claimants fiduciary obligations:

- 58.1 not to act in a position of conflict between its interests or duties, and the interests of the Claimants; further or alternatively
- 58.2 not to profit from its position of investment advisor and portfolio manager for each Claimant, other than as disclosed in the Sale Contracts;

other than with the informed consent of each Claimant.

59. By completing the Sale Contracts as alleged, Lehman:

- 59.1 caused assets of each such Claimant to be invested in SCDOs in respect of which Lehman had the Conflicted Role; and further

PARTICULARS

Parkes refers to and repeats the particulars as to the Conflicted Role set out in paragraph 13 above.

59.2 did so without the informed consent of the Claimant.

PARTICULARS

By reason of the non-disclosures by Lehman alleged in paragraph 22 above, the entry by into the Sale Contract did not constitute informed consent to, Lehman's sale of SCDOs in which Lehman held an opposing interest or Lehman's deriving of profits from the Sale Contract or its use of the consideration provided by Parkes pursuant to the Sale Contract.

60. In the premises set out in the preceding paragraph Lehman wrongfully:

60.1 acted in a position of conflict between its interests or duties and the interests of the Claimants; further or alternatively

60.2 profited from its position of investment advisor and portfolio manager for each Claimant;

without the informed consent of each Parkes subgroup claimant.

PARTICULARS

Parkes refers to and repeats, in respect of itself and the Parkes subgroup claimants, the particulars set out under paragraph 50 above.

61. In the premises set out in the preceding paragraph, Lehman breached its fiduciary obligations to each of the Parkes subgroup claimants.

62. By reason of the breaches alleged in the preceding paragraph:

62.1 each of the Parkes subgroup claimants suffered loss and damage; further or alternatively.

PARTICULARS

Parkes refers to and repeats the particulars under paragraph 27

above.

Particulars of loss relating to individual group members, including particulars of continuing losses, may be provided following the trial of common questions or otherwise as the Court may direct.

- 62.2 Lehman is liable to account to the said claimants for the profits wrongfully obtained by it as alleged in paragraph 59 above.

COMMON QUESTIONS OF LAW AND FACT

63. The common questions of law or fact are:

(as to SCDOs)

- 63.1 whether the Claim SCDOs had the features alleged in paragraph 14;
- 63.2 whether the Claim SCDOs, having the features alleged in paragraph 14, were or are consistent with:
- (a) Conservatives Strategies;
 - (b) the investment requirements of:
 - (i) the LGA NSW and the *Trustee Act NSW*;
 - (ii) the LGA WA and the *Trustees Act WA*;

(as to claims in negligence)

- 63.3 whether Lehman owed the Adviser Duties to a class of persons including the Claimants;
- 63.4 if Lehman owed the Adviser Duties to the Claimants, whether Lehman by engaging in conduct alleged in paragraph 22 breached the duties;

(as to claims of misleading and deceptive conduct)

- 63.5 whether Lehman, by conduct as alleged in paragraph 28, made the Assurances;
- 63.6 whether the Assurances, if made:

- (a) were conduct in trade or commerce or in relation to a financial product or a financial service within the meaning of the *CA*, the *ASIC Act*, the *FTA NSW* or the *FTA WA* as the case may be (**'the Statutes'**);
- (b) were misleading or deceptive or likely to mislead or deceive for the purposes of the Statutes, and if so in what respects;

(as to the Wingecarribee subgroup)

63.7 in respect of the subgroup's claims in contract:

- (a) whether the Claim SCDOs were:
 - (i) derivative contracts; or
 - (ii) Collateralised Debt Obligations;
 within the meaning of the Guidelines;
- (b) whether investments in Claim SCDOs were:
 - (i) consistent with the Guidelines;
 - (ii) consistent with the *LGA NSW*;
- (c) what investigations, analysis and advice were required to discharge Lehman's obligations under the NSW IMPs referred to in paragraph 36.9 above;
- (d) what notification of conflicts of interest was required to discharge Lehman's obligations under the NSW IMPs;

63.8 in respect of the subgroup's claims in respect of fiduciary obligations – whether in circumstances alleged in paragraph 48, Lehman owed the fiduciary obligations alleged;

(as to the WA IMP subgroup)

63.9 in respect of the subgroup's claims in contract:

- (a) whether investments in Claim SCDOs were:

- (i) consistent with the WA Guidelines;
 - (ii) consistent with the LGA WA;
- (b) what investigations, analysis and advice were required to discharge Lehman's obligations under the WA IMPs;
- (c) what notification of conflicts of interest was required to discharge Lehman's obligations under the WA IMPs;

63.10 in respect of the subgroup's claims in respect of fiduciary obligations – whether, in circumstances alleged in paragraph 48, Lehman owed the fiduciary obligations alleged;

(as to the Parkes subgroup)

63.11 as to the subgroup's claims in contract – if the implied terms alleged are to be implied in the Sale Contracts:

- (a) whether by selling Claim SCDOs to the subgroup claimants Lehman breached the implied terms;
- (b) what reports and advice from Lehman were required to perform the implied terms of the SCDO Sale Contracts requiring it to monitor and advise the claimants;

63.12 as to the subgroup's claims in respect of fiduciary obligations – whether, in circumstances alleged in paragraph 58, Lehman owed the fiduciary obligations alleged;

(as to claims of breach of fiduciary obligations)

63.13 whether Lehman had the Conflicted Role (as defined in paragraph 13) in respect of any, and if so which, Claim SCDOs;

63.14 if Lehman owed fiduciary obligations to any Claimant as alleged:

- (a) whether causing Claimants to invest in Claim SCDOs in respect of which Lehman did hold the Conflicted Role;

- (i) involved a conflict of interest for the purposes of the equitable rule that a fiduciary ought not act in a position of conflict between its interests or duties and the interests of the beneficiary;
 - (ii) involved profit for the purposes of the equitable rule that a fiduciary may not profit from its fiduciary position;
- (b) what notice was required in order to obtain a Claimant's informed consent to Lehman:
- (i) acting in a position of conflict of interest; further or alternatively
 - (ii) profiting from its fiduciary position;

(as to the form of relief)

63.15 the correct principles for measuring compensable loss and damage for losses suffered as alleged herein;

63.16 what relief other than monetary relief is available to the Claimants.

Dated: 10 August 2010



.....
Piper Alderman

Solicitors for the Applicants

This Statement of Claim was drawn by Sasha Ivantsoff, and Martin del Gallego of Piper Alderman, and settled by L Armstrong and L Richards of Counsel.

Schedule 1*
Claim SCDOs

	SCDO	Issuer
1	Balmoral AA	Thunderbird Investments plc
2	Blaxland AA	CypressTree Synthetic CDO Ltd
3	Blue Gum AA	STARTS (Cayman) Ltd
4	Coolangatta AA	Zircon Finance Limited
5	Coolangatta BB	Zircon Finance Limited
6	Coolangatta Combo Note	Beryl Finance Limited
7	Endeavour AAA	Saphir Finance 2004-4
8	Esperance 2	Beryl Finance Limited
9	Esperance AA+	Helium Capital Limited
10	Federation A	Lehman Brothers Treasury Co BV
11	Federation AA	Lehman Brothers Treasury Co BV
12	Flinders AA	Magnolia Finance I PLC
13	Forum	Select Access Investments Ltd
14	Glenelg AA	Aphex Pacific Capital Ltd
15	Global Bank Note 2 AAA	Beryl Finance Limited
16	Global Bank Note AAA	Beryl Finance Limited
17	Green AA	Ethical CDO 1 Limited
18	Henley AAA	Omega Capital Investments PLC
19	Henley BBB	Omega Capital Investments PLC
20	Kakadu AA	Corsair (Cayman Islands) No.4 Ltd
21	Kakadu Restructure	Corsair (Cayman Islands) No.4 Ltd
22	Kalgoorlie AA+	BELO
23	Lawson AA	CypressTree CDO Ltd
24	Lehmans Brothers Property Note	Lehmans Brothers Treasury BV
25	Mahogany 2	Mahogany Capital Limited
26	Maple	Tribune Limited
27	Merimbula AAA	Zircon Finance Limited
28	Merimbula BBB	Zircon Finance Limited
29	Miami AAA	Zircon Finance Limited
30	Newport	Corsair (Jersey) No 2 Ltd
31	Nexus 4 Topaz	Nexus Bonds
32	Octagonal AAA	Select Access
33	Parkes (11A) AA	Managed ACES SPC
34	Parkes (1A) AAA	Managed ACES SPC
35	Quartz AA	Herald Limited
36	Scarborough AA	Helium Capital Limited
37	Tasman AA	Magnolia Finance I PLC
38	Torquay AA	Corsair (Cayman Islands) No.4 Ltd
39	Wentworth AA	Bishopsgate CDO Limited

* The above schedule has been prepared on the basis of all information available to the applicants at the time of filing. The applicants may need to amend the above schedule, should further relevant information become available to them.

Form 15B
(Order 11, rule 1B)

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

No. 2492 of 2007

BETWEEN

WINGECARRIBEE SHIRE COUNCIL
First Applicant

CITY OF SWAN
Second Applicant

PARKES SHIRE COUNCIL
Third Applicant

- and -

LEHMAN BROTHERS AUSTRALIA LIMITED
(in Liquidation) (ACN 066 797 760)
Respondent

CERTIFICATE OF LEGAL PRACTITIONER

I, Amanda Kim Banton, certify to the Court that, in relation to the pleading dated 10 August 2010 filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for:

1. each allegation in the pleading; and
2. each denial in the pleading; and
3. each non-admission in the pleading.

Date: 10 August 2010.



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Applicants

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