1 HIGHLY CONFIDENTIAL - S. BERKENFELD
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 ----------x
5 In Re:
6 Chapter 11
7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al., (Jointly Administered)
9
Debtors.
10
----------x
11
12 * * *HIGHLY CONFIDENTIAL* * *
13 DEPOSITION OF STEVEN BERKENFELD
14 New York, New York
15 August 6, 2009
16
17
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20
21
22
23 Reported by:
24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR
25 JOB NO. 24035

1 HIGHLY CONFIDENTIAL - S. BERKENFELD
2 August 6, 2009
3 9:30 a.m.
4
5 HIGHLY CONFIDENTIAL deposition
6 of STEVEN BERKENFELD, held at Jones
7 Day, LLP, 222 East 41st Street, LLP,
8 New York, New York, before Kathy S.
9 Klepfer, a Registered Professional
10 Reporter, Registered Merit Reporter,
11 Certified Realtime Reporter, Certified
12 Livenote Reporter, and Notary Public
13 of the State of New York.
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1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 [redacted]

4 [redacted]

5 [redacted]

6 [redacted]

7 Q. What's your title at Barclays Capital?

8 A. Managing director.

9 Q. And what's your area of

10 responsibility?

11 A. I'm in the Investment Banking

12 Division.

13 Q. What's your job there? What do you

14 do?

15 A. I chair a few committees to approve

16 equity transactions, fairness opinions, and I'm

17 involved in various different capacities in

18 investment banking transaction development.

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]

1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 [redacted]

4 [redacted]

5 [redacted]

6 [redacted]

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9 [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]

[redacted]

1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 [redacted]

4 [redacted]

5 [redacted]

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7 [redacted]

8 [redacted]

9 [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]

1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 [redacted]

4 [redacted].

5 [redacted]

6 [redacted]

7 [redacted]

8 t[redacted].

9 Q. Now, you started -- we talked about

10 the exact date, and I don't care -- you started

11 sometime in September of 2008, correct?

12 A. The agreement actually says the

13 employment commences on or before October 31.

14 Q. Okay. A date -- so we haven't hit

15 your first anniversary yet?

16 A. That's correct.

17 Q. [redacted]

18 [redacted]

19 [redacted]

20 A. [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]

1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 [redacted]

4 [redacted]

5 [redacted]

6 [redacted]

7 [redacted]

8 [redacted]

9 [redacted]

10 [redacted]

11 A [redacted].

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]

1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 [redacted]

4 [redacted]

5 [redacted]

6 [redacted]

7 [redacted]

8 [redacted]

9 [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 Q. Anyone else you think would have

15 knowledge of that fact, whether the business

16 terms included a $5 billion discount to

17 Barclays?

18 A. I would ask the principal negotiators

19 of the deal.

20 Q. And that would be Dave Shafir and

21 McGee?

22 MR. STERN: Objection to the form.

23 A. That's probably where I would start.

24 Q. Who would you ask on the Barclays side

25 of the table?

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2 A. I would ask Rich Ricci.

3 Q. Anyone else?

4 A. I would ask Gerard LaRocco, I would

5 ask Archie Cox, and I would ask Michael Klein,

6 who was not a Barclays employee, but who was

7 acting as an advisor.

8 Q. Now, are Mr. Ricci, LaRocco, Cox and

9 Klein, would you describe them as the chief

10 negotiators for Barclays?

11 A. I would describe the chief negotiators

12 as Ricci, Cox and Klein.

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]

1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 Q. So when you add those comp and cure
4 assumed liabilities on top of the elements I
5 just gave you, there's certainly no gain on
6 acquisition for Barclays, if those numbers are
7 real?
8 MR. STERN: Objection to the form.
9 A. Well, again, no one was actually --
10 I'm repeating my answer a little bit. No one
11 was saying this schedule, Exhibit 19, is the
12 deal and see how all these numbers add up. The
13 deal was the Asset Purchase Agreement. This was
14 meant as some guidance for that as what we meant
15 as 70 billion of assets. For instance, 70
16 billion of assets could have been 69 billion of
17 governments --
18 Q. Okay.
19 A. -- and 1 billion of other stuff, or it
20 could have been 69 billion of corporate equity
21 and 1 billion of governments, right? So we
22 needed to -- because we didn't specify any of
23 that in the text. It was just 70 billion of all
24 this stuff. And this gives you a little bit
25 better sense of what that stuff is.

1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 [redacted]

4 [redacted]

5 [redacted]

6 [redacted]

7 [redacted]

8 [redacted]

9 [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 Q. And nobody looking at that agreement,
18 at least from the point of view of the man who
19 signed it, would read that to say there was a
20 discount being given to Barclays for what it was
21 buying?
22 MR. STERN: Objection to the form.
23 A. I didn't believe at the time when I
24 signed this agreement that the intent of the
25 agreement was to deliver assets with a material

embedded gain to them, to Barclays.

[redacted]

1 HIGHLY CONFIDENTIAL - S. BERKENFELD

2 [redacted]

3 [redacted]

4 [redacted]

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7 [redacted]

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9 [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 Q. You know, with respect to both the --

22 actually, all three of the Asset Purchase

23 Agreement, the First Amendment, which we marked

24 as Exhibit 24, and the clarification letter,

25 which is marked as Exhibit 25, why did you sign

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2 them? Why are you the guy who signs them?

3 A. I signed the Asset Purchase Agreement

4 because at the time there was nobody else who

5 was an authorized officer of Lehman Brothers

6 Holdings available to sign it there present who

7 could sign it, and to some extent, I think the

8 amendments and the clarification letter were

9 brought to me by the counsel just for

10 consistency after that.

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]

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2 [redacted]

3 [redacted]

4 [redacted]

5 [redacted]

6 [redacted]

7 The negotiators included Mr. McDade.

8 Was he not authorized to sign on behalf of LBHI?

9 A. He was.

10 Q. Was he not present?

11 A. He wasn't present at the time the

12 document was ready to be signed.

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]