



## **PRESS CONFERENCE**

4.45 pm  
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IMF (Australia) Ltd.  
Level 10, 39 Martin Place, Sydney

## **MEDIA CONTACTS**

Adam Bell (IMF) 0448 302 533  
abell@sefiani.com.au

Melissa Gunnsmith 0412 080 378  
mgunnsmith@piperalderman.com.au

## **MEDIA RELEASE**

### **Federal Court ruling in Lehman Bros class action**

#### **Court paves way for massive damages award for councils, charities and church groups**

**Sydney, 21 September 2012** – Piper Alderman and litigation funder IMF (Australia) Ltd today welcomed the Federal Court’s decision in a class action brought against Lehman Brothers Australia (now in liquidation).

The Court’s finding in favour of the lead claimants - the three councils - paves the way for damages awards of more than \$200 million for 72 councils and community organisations in a class action brought against Lehman Brothers Australia.

The Federal Court action was taken by Wingecarribee and Parkes Shire Councils (NSW) and City of Swan (WA), representing 69 other councils, charities, not-for-profit and church groups. The councils were represented by national law firm Piper Alderman and the action was funded by IMF (Australia) Ltd.

The councils, charities, not-for profit and church groups collectively lost over \$200 million following investments in complex financial derivatives known as collateralised debt obligations, or CDOs, - purchased from Lehman’s Australian subsidiary prior to 2007.

The synthetic derivative investments plummeted in value during the global financial crisis of 2007 and 2008. The councils and other claimants alleged misleading conduct, breach of contract, breach of fiduciary duty and negligence on the part of Lehman Australia in its marketing of the CDOs.

Piper Alderman Partner Amanda Banton said: “Our clients would not have purchased these investments had they been aware of the substantial risks of the products, including the exposure to a complete loss of capital. They were conservative investors and the products which were sold to them by Lehman were simply not suitable.”

In his judgment, Justice Steven Rares found for the claimants and agreed that Lehman’s had engaged in misleading conduct, had breached fiduciary duties, had breached their contract and were negligent.

IMF (Australia) executive director, John Walker, said the ruling will pave the way for significant recoveries from the estate of Lehman Australia. That recovery should deliver financial relief to scores of community-based organisations whose work had suffered because of losses incurred following the Lehman investments.

“Our clients, a group of councils, charities and church groups, should never have been approached to buy these investments in the first place, as they were not in a position to understand the significant risks involved,” Mr Walker said.

“Today’s Court ruling will enable the councils and claimants to recover a significant proportion of their losses from Lehman to put toward funding services they provide for the community.”

“It is welcome news and a relief for the hundreds of thousands of Australians who rely on these community services.”

“The claimants deserve credit for their determination in pursuing this claim despite the many obstacles placed in their way, a claim that would not have been possible without funding from IMF.”

The judgment in favour of the three lead applicants include findings of fact and law common to all 72 councils, charities and church groups whose claims may now proceed by either settlement or a simple claims resolution process.

Mr Walker said the ruling is the first judgment following a trial examining the conduct of an investment bank concerning the manufacture and distribution of CDOs globally.

“The creation and sale of CDOs and similar synthetic derivatives around 2005-06, together with the securitisation of subprime mortgages in the US, was a material cause of the global financial crisis,” he said.

“Today’s ruling will be carefully examined by investors and regulatory authorities around the world.”

Prior to the GFC, about \$5bn worth of CDOs were sold to Australian churches, councils, charities, colleges, and other not for profit public institutions ahead of expenditure on public works. Approximately \$1bn of these instruments came through Lehman Brothers Australia.

One Lehman Brothers victim represented in the claim was MontroseAccess, a registered charity in Queensland which provides support to hundreds of disabled children and young adults.

MontroseAccess CEO, Darrel Bourke, said: “This decision comes as a massive relief to the hundreds of disabled children and their families who rely on our services. The losses from the Lehman investments in 2008 were significant. They affected our ability to employ support staff and extend core services to our clients and families. We can now plan ahead with more certainty.”

City of Swan Mayor, Charlie Zannino, said: “This is a great outcome for our ratepayers and those of many other councils that were led into these investments. It vindicates our hard work and patience over the duration of the proceedings, and the principled stand we took against the earlier scheme promoted by the liquidators.”

The Court decision in favour of the claimants follows the High Court’s rejection in 2010 of a controversial earlier arrangement obtained by liquidators for Lehman, PPB Advisory, on behalf of related Lehman Bros creditors.

This arrangement sought to limit the funds available to the claimants from the estate of Lehman Australia. As a result of this judgment those parties will be entitled to a fairer share of the estate.

Ms Banton said this judgment is likely to mean significantly higher returns to the councils, charities and church groups. That is, equality with the related Lehman Bros creditors rather than under the earlier arrangement which would have seen a significant proportion of the estate distributed to related Lehman Bros creditors.

**Media contacts:**

Adam Bell Sefiani Communications Group (for IMF (Australia)) ABell@sefiani.com.au 02 8920 0700 0448 302 533	Melissa Gunnsmith Piper Alderman mgunnsmith@piperalderman.com.au 02 9253 3810 0412 080 378
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**Timeline**

- 15 Sept 2008: Lehman Brothers Holdings Inc enters Chapter 11 protection in the USA
- 26 Sept 2008: PPB Advisory appointed voluntary administrators of Lehman Brothers Australia Limited (Lehman Australia).
- June 2009: Deed of Company Arrangement (DOCA) approved by creditors of Lehman Australia.
- 2 Oct 2009: Lehman Australia placed into liquidation.
- 30 March 2010: IMF funded a challenge to the DOCA to the High Court, prosecuted by Piper Alderman, which held that DOCA of no effect. The significance of the DOCA is that PPB and Lehman Asia tried to curtail the rights of the councils and others to limit the pool of money available to meet their claims. The DOCA was declared void by the High Court and this cleared the way for the present class action.
- 9 July 2010: Proceedings commenced by Wingecarribee against Lehman Australia is ordered to proceed as a class action.
- 30 March 2011: Hearing of class action concluded.
- 21 Sept 2012: Judgment delivered by Justice Rares.

**General Information**

- The Court’s ruling in favour of the leading claimants, the three councils, paves the way for damages awards of more than \$200 million for 72 Councils and community organisations in a class action brought against Lehman Australia.
- The 72 Group Members of the class action comprise local councils from NSW and WA and charitable bodies, not-for-profit and other organisations from all other Australian states and territories with the exception of NT.
- The case relates to investments in complex financial derivatives known as collateralised debt obligations or CDOs purchased from Lehman’s Australian subsidiary prior to 2007.
- The ruling is the first judgment following a trial examining the conduct of an investment bank concerning the manufacture and distribution of CDOs globally.
- A large number of banks and financial advisers in Australia have sold CDOs to investors, including Local Government Councils. The findings in the Lehman case may well have application to these institutions and advisers. There may be a wave of further litigation in respect of the sale of CDOs. Banks and financial institutions will need to carefully review the Court’s decision and evaluate their selling practices and their level of disclosure about the risks inherent with CDOs. In addition, the findings in respect of the existence and adequacy of disclosure of conflicts may lead to a review of how banks and financial institutions operate in respect of the sale of financial products.
- Tens of billions of dollars’ worth of CDOs were sold internationally and the Court’s findings may well have implications overseas. The findings of the Court in respect of obligations on the sellers

and their necessary level of disclosure means there may be a significant increase in litigation worldwide in respect of the sale of CDOs.

- The creation and sale of CDOs and similar synthetic derivatives around 2005-06, together with the securitisation of subprime mortgages in the US, was a material cause of the global financial crisis.

### **Glossary of Terms**

- CDO: Collateralised debt obligation. A CDO is a complex financial product – a type of synthetic derivative.
- SCDO: Synthetic collateralised debt obligation, a type of synthetic derivative. The value of a SCDO is usually linked to a credit default swap.
- DOCA: Deed of Company Arrangement approved by the creditors of Lehman Australia in June 2009
- PPB Advisory: partners of this firm are the liquidators of Lehman Australia
- IMP: Individually Managed Portfolio.
- IMP Agreement: Agreement between Lehman and the client regarding management of the client's investment portfolio
- Non IMP agreement: No IMP agreement in place between the client and Lehman, but the clients allege that Lehman assumed an advisory role in relation to the sale of CDOs.
- City of Swan: One of the representative parties and an IMP client of Lehman Australia
- Parkes Shire Council: One of the representative parties. Parkes did not have an IMP agreement but alleges that Lehman Australia assumed an advisory role when selling it SCDOs.
- Wingecarribee Shire Council: One of the representative parties and an IMP client of Lehman Australia