

B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor: David Schwartzman		Case Number: 09-16565 (MT)
NOTE: <i>This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Lehman Re Ltd.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: Lehman Re Ltd. c/o Peter C. B. Mitchell and D. Geoffrey Hunter As Joint Provisional Liquidators PricewaterhouseCoopers Advisory Limited Dorchester House 7 Church Street Hamilton, Bermuda HM11 Telephone number: 441-295-2000 peter.c.mitchell@bm.pwc.com		Court Claim Number: _____ (If known)
Email address: geoff.hunter@bm.pwc.com		Filed on: _____
Name and address where payment should be sent (if different from above): Same as above.		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Telephone Number: Same as above.		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: no less than \$ <u>49,974,056.89</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
2. Basis for Claim: <u>See attached Annex.</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507(a)(4).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: Annual Interest Rate ___% Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507(a)(5).
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507(a)(7).
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)		<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507(a)(8).
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.		<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).
If the documents are not available, please explain:		Amount entitled to priority: \$ _____
Date: <u>12/21/09</u>		* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Signature: _____ The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.		FOR COURT USE ONLY

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

3. Date and Signature: Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien

documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary, FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If due claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is the person, corporation, or other entity owed a debt by a debtor on the date of the bankruptcy filing.

Claim

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

The Claim asserted herein arises from or is related to that certain Loan Agreement (the "Loan Agreement") entered into on October 19, 2007, by and between DS Pasadena Project LLC ("DS Pasadena" or "Borrower") Delaware limited liability company, and Lehman ALI Inc. ("Lehman ALI"), a Delaware corporation. Pursuant to the Loan Agreement, Lehman ALI made a loan to DS Pasadena (the "Loan") in the original principal amount of \$45,219,440.00. Copies of the Loan Agreement and that certain Promissory Note, dated October 19, 2007 (the "Note"), evidencing the Loan are attached hereto as Exhibits B and C, respectively. As detailed in that certain first priority Deed of Trust with Absolute Assignment of Leases and Rents and Security Agreement and Fixture Financing Statement, dated as of the date of the Loan Agreement (the "Security Instrument"), as security for the Loan, Lehman ALI was granted a valid perfected lien and security interest in certain real and personal property located in Pasadena, California, commonly known as the "St Luke's/Pasadena Property". See Security Instrument at Articles I and VI; Loan Agreement at § 4.1(f)(i). A copy of the Security Instrument is attached hereto as Exhibit D.

As a result of certain intercompany transactions among Lehman ALI, Lehman Commercial Paper Inc. ("LCPI"), and Lehman Re, Lehman Re now owns the Loan and all rights thereunder. On August 27, 2009, a settlement agreement (the "Settlement Agreement") by and among Lehman Re, Lehman ALI, LCPI, and Lehman Brothers Holdings Inc. ("LBHI") was approved by the United States Bankruptcy Court for the Southern District of New York in LBHI's chapter 11 cases (Case 08-13555 (JMP) (Jointly Administered)). Pursuant to the Settlement Agreement, Lehman Re's ownership of the Loan was confirmed. As the owner of the Loan, Lehman Re may enforce all rights of the lender thereunder. A copy of the Settlement Agreement, the Bankruptcy Court's Order approving the Settlement Agreement, and the transfer documentation relating to the Loan are attached as Exhibits E, F, and G, respectively.

Without limiting the generality of the foregoing, the Claim is, without limitation, on account of the events described below:

In connection with the Loan, on or about October 19, 2007, Mr. Schwartzman executed a Guaranty of Recourse Obligations (the "Guaranty") and together with the Loan Agreement and all other documents evidencing and/or securing the Loan, the "Loan Documents"). The Guaranty provides that, in the event of a Full Recourse Event under Section 9.3 of the Loan Agreement, Mr. Schwartzman absolutely, unconditionally and irrevocably guarantees the full and prompt payment and performance of all Guaranteed Obligations, which in the event of a Full Recourse Event means all of the Obligations under the Loan Agreement (including the entire principal balance of the Debt, all accrued interest thereon, and all other amounts, costs, or expenses payable pursuant to the Loan Documents) together with all Enforcement Costs. A copy of the Guaranty is attached as Exhibit H.

Pursuant to Section 9.3 of the Loan Agreement, a Full Recourse Event includes the occurrence of "any of the events described in Section 7.1(a)(vi)." See Loan Agreement at 9.3. Section 7.1(a)(iv) includes the commencement by Borrower or any Borrower Party of a case, proceeding, or other action under any existing or future

Bankruptcy Laws. *See* Loan Agreement at 7.1(a)(iv). Moreover, “Borrower Party” is defined so as to include “any guarantor, indemnitor or surety of any of the Obligations.” *See* Loan Agreement at I-2.

On June 11, 2009, Lehman Re sent DS Pasadena a Notice of Default, referencing both the Loan Agreement and the Guaranty, stating, in pertinent part, that (1) DS Pasadena had failed to pay the Debt on the maturity date, constituting an “Event of Default” under Section 7.1(a) of the Loan Agreement and (2) one or more other events or matters constituting an “Event of Default” under Section 7.1 of the Loan Agreement and/or any of the Loan Documents had occurred. The Notice of Default further stated that the foregoing items were not an exhaustive list of the defaults, covenant violations, Defaults or Events of Default existing as of the date thereof. A copy of the Notice of Default is attached as Exhibit I.

On October 5, 2009, Lehman Re sent a second Notice of Default, referencing both the Loan Agreement and the Guaranty, to, among others, DS Pasadena advising that the filing of a voluntary petition for bankruptcy by Mr. Schwartzman constituted an “Event of Default” under Section 7.1(a)(vi) of the Loan Agreement.

As set forth above, an “Event of Default” under Section 7.1(a)(vi) of the Loan Agreement constitutes a Full Recourse Event under Section 9.3 of the Loan Agreement. The Guaranty clearly provides that, in the event of a Full Recourse Event under Section 9.3 of the Loan Agreement, Mr. Schwartzman absolutely, unconditionally and irrevocably guarantees the full and prompt payment and performance of all Guaranteed Obligations. The Notice of Default further stated that the foregoing was not an exhaustive list of the defaults, covenant violations, Defaults or Events of Default existing as of the date thereof. A copy of the Notice of Default is attached hereto as Exhibit J.

Furthermore, pursuant to Section 6.1.1 of the Loan Agreement, Borrower is required to obtain and maintain certain insurance policies during all times that any sum is outstanding under the Note or the other Loan Documents. Section 6.1.1(g) states that:

If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower or any other Person to take such action as Lender deems necessary to protect Lender’s interest in the Property, including the obtaining of such insurance coverage as Lender in Lender’s sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and

keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by the Loan Documents and shall bear interest at the Default Rate.

See Loan Agreement at § 6.1.1(g). On or before October 19, 2009, Lehman Re made a protective advance (the “Protective Advance”) to obtain property and liability insurance, including earthquake and flood coverage, that Borrower had failed to obtain, for a premium cost of \$1,085,150.04. If not for Lehman Re making this protective advance, the existing insurance would have expired on October 19, 2009. As set forth above, in the event of a Full Recourse Event, Mr. Schwartzman is liable for all Obligations under the Loan Agreement. Accordingly, Mr. Schwartzman is also liable to Lehman Re on account of the Protective Advance.

On June 16, 2009, Mr. Schwartzman filed schedules of his assets and liabilities (the “Schedules”). The claim of Lehman ALI as Lender (and now Lehman Re, as explained above) under the Loan was listed by Mr. Schwartzman on the Schedules as an “unsecured nonpriority claim” in an unknown amount.

The Claim by Lehman Re against Mr. Schwartzman is for no less than \$49,974,056.89 representing (i) \$45,219,440.00 in principal amount due on the Loan; (ii) \$3,586,466.85 in interest due on the Loan from October 1, 2008 through June 1, 2009, (iii) \$1,085,150.04 for the Protective Advance and (iv) no less than \$83,000.00 in Enforcement Costs (as of the date of the filing of the Proof of Claim), plus contingent unliquidated claims not presently ascertainable.³

Without limiting any of the foregoing, Claimant reserves all of its rights to assert claims for interest (including, without limitation, at the Default Rate), fees, costs, charges, expenses, disbursements, liabilities, losses, damages, indemnification, reimbursement or contribution, and other amounts, including, without limitation, legal fees and expenses (including, without limitation, in connection with the preparation, filing and prosecution of the Proof of Claim), that exist or arise as of or after the date of the filing of the Proof of Claim, whether prior to, on or subsequent to the Petition Date, in each case to the extent or as may be permitted, provided or contemplated in the supporting documentation and under applicable law.

2. Reservation of Rights: Pursuant to their duties under Bermuda law, the JPLs have been conducting an investigation of the affairs of Lehman Re. The JPLs continue to seek access to or possession of all of Lehman Re’s business records, and as a result, their investigation of Lehman Re’s business activities is continuing. Thus, additional information relating to Lehman Re’s claims against Mr. Schwartzman may be identified in the future. Once the JPLs complete their investigation of the affairs of Lehman Re, this Proof of Claim may be amended to reflect any additional information that is identified.

³ Lehman Re hereby reserves all of its rights to amend the characterization of the Protective Advance portion of the Claim.

The Proof of Claim is filed without prejudice to any and all of the rights of Lehman Re to assert that any and all claims asserted in the Proof of Claim, including any portions thereof, are entitled to administrative priority or secured status. Further, the Proof of Claim is filed by Lehman Re without prejudice to its right to request payment of any additional administrative expense claims that it may have against Mr. Schwartzman including, without limitation, administrative expenses not described in this Proof of Claim, and Lehman Re reserves the right to request payment of such administrative expenses at a later date or when required by the Bankruptcy Court.

In filing the Proof of Claim, the JPLs, on behalf of Lehman Re, expressly reserve all rights and causes of action, including, without limitation, contingent or unliquidated rights that Lehman Re may have against Mr. Schwartzman. The description of claims and the classification thereof herein by Lehman Re is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of Lehman Re. Furthermore, Lehman Re, by the JPLs, expressly reserves all rights to amend, modify and/or supplement the Proof of Claim in any respect, including, without limitation, with respect to the filing of an amended proof of claim for the purpose of fixing and liquidating any contingent or unliquidated claims set forth herein, or to file additional proofs of claim for additional claims, including, without limitation, claims for interest, fees and related expenses (including, without limitation, attorneys' fees) that are not ascertainable at this time.

The Proof of Claim is filed without prejudice to the filing by Lehman Re of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of Mr. Schwartzman. Lehman Re reserves its rights to pursue the claim described herein against Mr. Schwartzman based upon alternative legal theories.

In executing and filing this Proof of Claim, neither Lehman Re nor the JPLs submit themselves to the jurisdiction of the Bankruptcy Court for any purpose other than with respect to the claims asserted in this Proof of Claim against Mr. Schwartzman and do not waive or release: (a) any rights and remedies against any other person or entity who may be liable for all or part of the claims set forth herein, whether an affiliate or subsidiary of Mr. Schwartzman, an assignee, guarantor or otherwise, (b) any obligation owed to them, or any right to any security that may be determined to be held by one of them or for their benefit, (c) any past, present or future defaults (or events of default) by Mr. Schwartzman or others, or (d) any right to the subordination, in favor of Lehman Re, of indebtedness or liens held by other creditors of Mr. Schwartzman. The filing of the Proof of Claim is not, and shall not be construed as, an election of remedies or limitation of rights or remedies.

Nothing contained in the Proof of Claim nor subsequent appearance, pleading, claim or suit is intended to be a waiver or release of: (i) the right of either the JPLs or Lehman Re to have final orders in non-core matters entered only after de novo review by a district court judge; (ii) the right of Lehman Re or the JPLs to a jury trial in any proceeding so triable herein or, in any case, any controversy or proceeding related hereto; (iii) the right of Lehman Re or the JPLs to move to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or any other proceeding which may be commenced in either the Schwartzman Proceeding against or otherwise involving Lehman Re or the JPLs, including without limitation, any adversary proceeding that was or may be commenced by any party or committee in the Schwartzman Proceeding; (iv) the right of Lehman Re or the JPLs to have any unliquidated portions of its claims determined by applicable state courts; or (v) any other rights, claims,

actions, defenses, setoffs or recoupments to which Lehman Re, by the JPLs, is or may be entitled under agreements, documents or instruments, in law or equity, all of which rights, claims, actions, defenses, setoffs and recoupments are expressly reserved.

3. Setoff or Recoupment: To the extent that Mr. Schwartzman asserts claims against Lehman Re of any kind, Lehman Re reserves its right to assert that such claims by Mr. Schwartzman are subject to the right of set-off or recoupment (the "Set-off Rights"), which rights are treated as secured claims under the Bankruptcy Code.

To the extent the Claim, whether in whole or in part, or any component thereof, arises or relates in any manner to the period on or after the Petition Date, Lehman Re asserts that the Claim (or any portions thereof) is entitled to priority pursuant to sections 503 and 507 of the Bankruptcy Code.

Solely to the extent that the value, within the meaning of section 506(a) of the Bankruptcy Code, of any property securing the Claim or the Set-off Rights, if any, is less than the allowed amount of the Claim, the Claim may be treated, in part, as a general unsecured claim under the Bankruptcy Code, and in such event, and solely to such extent, the Claim asserted herein, or the relevant part thereof, as the case may be, shall constitute an unsecured claim and this Proof of Claim shall constitute a Proof of Claim for both the secured portion of Lehman Re's Claim and for any such unsecured portion of Lehman Re's Claim. The foregoing shall not be deemed an admission regarding the amount of the Claim nor regarding the value of any property securing the Claim or the Set-off Rights.

4. Notices: All notices with respect to the Proof of Claim should be sent to:

Lehman Re Ltd.
c/o Peter C.B. Mitchell
D. Geoffrey Hunter
As Joint Provisional Liquidators
PricewaterhouseCoopers Advisory Limited
Dorchester House
7 Church Street
Hamilton, Bermuda HM11
Telephone: (441) 295-2000
Facsimile: (441) 295-1242
Email: geoff.hunter@bm.pwc.com
peter.c.mitchell@bm.pwc.com

with copies to:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Attention: Gregory Petrick
Telephone: (212) 504-6000
Facsimile: (212) 504-6666

Email: Gregory.Petrick@cwt.com

and

DLA Piper LLP (US)
550 South Hope Street, Suite 2300
Los Angeles, CA 90071-2678
Attention: Betty M. Shumener
Telephone: 213.330.7700
Facsimile: 213.330.7701
E-mail: betty.shumener@dlapiper.com

Dated: December 21, 2009