

**FOR IMMEDIATE RELEASE**  
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## **Court of Appeal upholds Chancellor's decision dismissing Lehman Appeal**

The Court of Appeal in England has recently upheld a decision in the English High Court in another victory for investors in Lehman products.

Since October 2008, Johnson Winter & Slattery has represented investors in 10 CDO Series issued under the \$2 billion plus Lehman sponsored Dante Notes Programme. English lawyers Lawrence Graham have been advising on the English law aspects of the case.

A first instance decision from the Chancellor of the English High Court, Sir Andrew Morritt, was secured against Lehman Special Financing Inc (LBSF) in July 2009, upholding the investors' rights to recover securities and cash funded by their investments ahead of LBSF's claims.

Last week the Court of Appeal upheld the Chancellor's July decision and dismissed LBSF's appeal. The Court of Appeal held that LBSF's claim to strike from the product documents the subordination provisions was not sustainable because there was no infringement of the "anti-deprivation principle" underlying English insolvency legislation.

Jim Hunwick, Partner at Johnson Winter & Slattery, said that "this is a significant win for our clients who are determined to prevail against the aggressive steps Lehman entities in New York are taking to frustrate the orderly unwinding of CDOs".

Jim Hunwick brought experience in the structuring of CDOs in Australia and overseas to the preparation of the case, assisted by Partners Paul Reidy and Shelley Hemmings. Johnson Winter & Slattery worked alongside Lawrence Graham's banking and finance litigation expert Jean-Pierre Douglas-Henry to achieve this successful outcome. Richard Salter QC and Jonathan Davies-Jones of 3 Verulam Buildings appeared as Counsel.

With similar proceedings being considered later this month by the New York Bankruptcy Court, this case is likely to continue to make new law in relation to widely used financing structures and cross border insolvencies. Consequently financial markets, rating agencies, and the investment community on both sides of the Atlantic are monitoring the proceedings.

### **Johnson Winter & Slattery firm details**

JWS is a national law firm with 44 partners and offices in Sydney, Melbourne, Adelaide and Perth. The firm represents major private and public sector business organisations in a number of specialist practice areas.



The firm is resourced with a bias to senior lawyers with exceptional legal and commercial expertise, ensuring timely decision-making and the delivery of superior legal services.

JWS was named Best Australian Law Firm (revenue of \$20m - \$100m) at the BRW Client Choice Awards in 2008.

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