

Babcock and Brown Limited

Insolvency case information

Details

Appointment type: Voluntary administration / Liquidation

Appointment date: 13 March 2009

ACN: 108 614 955

Appointee(s): David Lombe

Office: Sydney

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Related Links

ASIC [↗](#)

Insolvency information sheets

Help for workers who have recently lost their jobs [↗](#)

Job Services Australia publication

Taking care of yourself after retrenchment or financial loss [↗](#)

Beyond Blue publication

Background Information

Babcock & Brown Limited ("BBL") is the ultimate holding company of the Babcock & Brown Group. BBL is a shareholder of Babcock & Brown International Pty Limited ("BBIPL"), the intermediate holding company. All assets of the Group are held by BBIPL and its subsidiaries.

Deloitte Partners David Lombe and Simon Cathro were appointed Voluntary Administrators of Babcock & Brown Limited on 13 March 2009.

BBL's Second Meeting of Creditors was held on 24 August 2009 and creditors resolved for BBL to be wound up. David Lombe and Simon Cathro were appointed the Joint Liquidators pursuant to Section 446A of the Corporations Act 2001. Mr Cathro resigned as liquidator of BBL on 9 August 2011, and David Lombe is the sole Liquidator of BBL.

Summary Update(September 2023)

High Court appeal of the Masters, Broome and Wilhelm proceedings

Creditors will recall that three (3) separate groups of shareholders (all funded by Bookarelli) commenced proceedings against the rejection of proofs of debt lodged by them in the liquidation of Babcock & Brown Limited (In Liquidation) (BBL). Those proceedings (known as the Broome, Wilhelm and Masters Proceedings) were heard by the late Justice Foster in October 2016. His Honour delivered judgment in October 2019 in which he dismissed the Broome, Wilhelm and Masters Proceedings with costs finding that BBL did not breach the continuous disclosure regime in the Corporations Act 2001. In doing so, His Honour found that none of the shareholder suffered any loss.

The shareholders expectedly appealed to the Full Court of the Federal Court (the Appeal). The Appeal was heard by three (3) Judges of the Federal Court in November 2020. The Full Court delivered judgment in 2021 and dismissed the Appeal with costs. The Full Court found that, on the most part, BBL did not breach the continuous disclosure regime save in respect of two (2) instances. However the Full Court concluded that the shareholders suffered no loss from those two (2) breaches. Critically, the shareholders had also appealed on the grounds that the late Justice Foster took an inordinate period of time to deliver judgment, and thus his reasons and decision were infected by delay. The Full Court considered this factor and dismissed it.

The shareholders then sort special leave to appeal to the High Court of Australia. In that regard, creditors will note that there is no automatic right to appeal to the High Court. Instead, applicants must establish that there is something special about the matter to warrant the High Court's consideration. The shareholders' application for special leave to appeal was heard by the High Court on Friday 8 April 2022. The High Court dismissed the applications with costs. The High Court was satisfied that the shareholders had not disclosed a proper case to enliven the High Court's special leave jurisdiction, that it didn't even require our Counsel team to respond.

The effect is that those shareholder claims against BBL are now entirely eliminated. Moreover, BBL has a right to recover costs from the shareholders. Prior to the hearing of the High Court special leave application, we had instructed our solicitor to commence assessing the costs of the hearing before the late Justice Foster and the Full Court in anticipation that (based on advice received) the shareholder would not obtain special leave to appeal. We expect that we would recover approximately \$1million is costs from the shareholders subject to the outcome of the cost application.

Remaining legal proceedings – Pain proceedings

One further shareholder action (commenced by Mr Pain and approximately 313 other shareholders) seeks similar claims to those that was heard in the Broome, Wilhelm and Masters Proceedings (Pain Proceedings). The Pain Proceedings have been largely in abeyance pending the result of the High Court. We have caused to be issued, various examination summons against the promotors of the Pain Proceedings to determine if those proceedings could be dismissed without a final hearing. We will update creditors with that matter as it progresses.

Tax declaration to noteholders

Any future return to noteholders is contingent upon the outcome of the legal proceedings. Therefore, the Liquidator is unable to issue a notice declaring that BBL subordinated notes have no value. It is recommended that noteholders obtain their own professional tax advice in respect to their BBL note holdings.

Annual Administration Return

Separately, pursuant to section 70-5(6)(b) of the Insolvency Practice Schedule (Corporations) 2016, we provide notice that we have lodged our Annual Administration Return (Form 5602) with the Australian Securities & Investments Commission for the period ended 23 August 2022.

Queries

If you have any queries please do not hesitate to contact Alexander Shields of the Liquidator's office on the details above.

Reports

[Section 508\(3\) annual report to creditors – 2018](#)
27 September 2018

[Section 508\(3\) annual report to creditors – 2017](#)
10 November 2017

[Section 508\(3\) annual report to creditors - 2016](#)
31 October 2016

[Section 508\(3\) annual report to creditors – 2015](#)
10 November 2015

[Section 508\(3\) annual report to creditors – 2014](#)
17 November 2014

[Section 508\(3\) annual report to creditors – 2013](#)
22 November 2013

[Section 508\(3\) annual report to creditors – 2012](#)
22 November 2012

[Form 535 – Formal proof of debt](#)
26 June 2012

[Section 508\(3\) annual report to creditors – 2011](#)
26 October 2011

[S439A report](#)
24 August 2009

[Frequently asked questions](#)

[Creditors and noteholders Babcock & Brown Limited funding proposal](#)
12 August 2009

Circulars

Update to creditors and noteholders

9 June 2023

Update to creditors and noteholders [↗](#)

4 May 2015

Update to creditors and noteholders [↗](#)

4 August 2014

Update to creditors - contributing creditors [↗](#)

5 April 2013

Update to creditors - dividend delayed [↗](#)

23 August 2012

Update to creditors - dividend to unsecured creditors [↗](#)

26 June 2012

Update to creditors [↗](#)

20 March 2012

Circular to creditors [↗](#)

18 July 2011

Circular to creditors [↗](#)

22 November 2010

Circular to creditors

23 August 2010

Circular to creditors [↗](#)

9 June 2010

Notice to creditors [↗](#)

23 November 2009

Circular to creditors [↗](#)

2 November 2009

Circular to creditors [↗](#)

18 September 2009

Declaration to shareholders [↗](#)

11 June 2009

Update to creditors and noteholders [↗](#)

9 April 2009