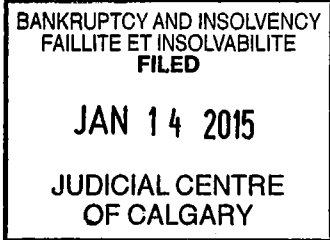


# Deloitte.



**COURT FILE NUMBER** 25-1395703

**COURT** COURT OF QUEEN'S BENCH OF ALBERTA, IN  
BANKRUPTCY

**JUDICIAL CENTRE** CALGARY

**IN THE MATTER OF THE BANKRUPTCY OF  
CHOCOLATERIE BERNARD CALLEBAUT PARTNERSHIP**

**DOCUMENT** **THIRD REPORT OF THE TRUSTEE OF CHOCOLATERIE  
BERNARD CALLEBAUT PARTNERSHIP**

**DATED** January 13, 2015

**PREPARED BY DELOITTE RESTRUCTURING INC.**

**ADDRESS FOR SERVICE AND  
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## APPENDICES

Appendix 1	Analysis of Various Scenarios with respect to the Estimated Dividends Payable to the Ordinary Unsecured Creditors of the Callebaut Partnership
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# Introduction and Background

## Introduction

1. Pursuant to a Consent Order of the Court of Queen's Bench of Alberta (the "Court") granted on August 3, 2010 (the "Receivership Order"), Deloitte & Touche Inc., now Deloitte Restructuring Inc. ("Deloitte") was appointed as receiver and manager (the "Receiver") of Chocolaterie Bernard Callebaut Partnership (the "Callebaut Partnership"), 1013988 Alberta Ltd. ("101"), Chocolaterie Bernard Callebaut Ltd. ("CBCL") and 1054796 Alberta Ltd. ("105") (collectively "Callebaut"). Subsequently, on August 18, 2010, the Callebaut Partnership, CBCL and 105 made assignments in bankruptcy and Deloitte was appointed as trustee of the estates of the bankrupts (the "Trustee"). None of 101, CBCL or 105 had independent operations outside of the Callebaut Partnership.

## Notice to Reader

2. The Trustee assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this report.
3. All amounts are in Canadian dollars, unless otherwise indicated.

## Background

4. The Receiver prepared four reports, dated October 14, 2010, October 15, 2010, February 3, 2011 and January 27, 2012 (the "Receiver's Reports"). The Receiver also prepared three supplements to the February 3, 2011 report dated February 18, 2011, February 22, 2011 and March 18, 2011 (the "Receiver's Supplements"). In addition, two confidential reports were provided to the Court on October 19, 2010 and October 20, 2010.
5. We highlight the following with respect to the administration of the Receivership:
  - 5.1. On March 24, 2011, the Court granted an Order (the "Contempt Order") declaring Bernard Callebaut ("B Callebaut") and Francesca Callebaut (together with B Callebaut, "B&F Callebaut") in contempt of the Receivership Order and ordering them to pay costs of \$99,650 (the "Fines") plus an additional \$50,000 (the "Damages") for the benefit of the ordinary unsecured creditors within six months of the Contempt Order having been granted (collectively the "Contempt Costs").

- 5.2. As outlined in the Receiver's Reports, the Receiver realized on all of the assets of Callebaut and the administration of the receivership is complete. Pursuant to the Order granted by the Court on March 8, 2012, Deloitte was discharged as Receiver of Callebaut. At the time of the Receiver's discharge, the Contempt Costs remained outstanding.
6. The First Report of the Trustee was filed on January 30, 2012 (the "Trustee's First Report") in support of the Trustee's application on February 6, 2012. Following that application, which was ultimately heard on March 8, 2012, together with an application by Cococo Chocolatiers Inc. ("Cococo"), and an application by Invesco Mortgage Inc. ("Invesco"), the Court granted the following three Orders between March 8, 2012 and April 13, 2012:
  - 6.1. Pursuant to a general security agreement granted to Invesco by B Callebaut and after hearing from B Callebaut that he had assigned his ordinary unsecured claim in the bankrupt estate of the Callebaut Partnership (the "BC Claim") to Invesco, the Court ordered that any dividend payable to B Callebaut shall be paid to Invesco (Order granted on March 8, 2012);
  - 6.2. Cococo and any participating creditor, at their own risk and expense, were authorized to be substituted for the Trustee with all of the rights, powers and entitlements of the Trustee, to disallow, wholly or partially, the BC Claim or to apply to the Court for an Order expunging or reducing the BC Claim (the "S. 38 Action") and a creditor disallowance process (the "Disallowance Process") was formalized (Order granted on April 13, 2012); and
  - 6.3. The Trustee was directed to postpone payment of any dividend or further dividends payable to B Callebaut or Invesco pending the outcome of the S. 38 Action and payment of the Damages. In addition, the Trustee was directed that it could set off the Fines against any dividend payable to B Callebaut or Invesco but that it could not similarly set off the Damages. This Order was granted on April 13, 2012 (the "Set-Off Order").
7. The second report of the Trustee was filed on March 1, 2013 (the "Trustee's Second Report") in order to provide additional information related to Invesco's application on March 5, 2013 (the "March 2013 Application"). At the March 2013 Application, Invesco sought approval of a proposal whereby the balance of the funds held in the estate of the Callebaut Partnership would be distributed on the following basis (the "S. 38 Settlement Proposal"):
  - 7.1. Those creditors who elected to participate in the S. 38 Action and had registered their intention to participate in the S. 38 Action, as required by the Disallowance Process (the "Participating Creditors"), whose claims total \$351,962, would be paid the full amount of their claims, less the levy payable to the Office of the Superintendent of Bankruptcy (the "OSB");
  - 7.2. There would be no further disallowance of the BC Claim, which was admitted by the Trustee in the amount of \$3,894,441;
  - 7.3. Invesco would agree to forfeit a portion of the dividend that it would be eligible to receive pursuant to the BC Claim such that those creditors who had not elected to participate in the S.

- 38 Action (the "Non-Participating Creditors") would receive the same dividend as they would have received if all of the ordinary unsecured creditors (Participating and Non-Participating) were being paid pro-rata and if there were no further disallowance of the BC Claim;
- 7.4. As set out in the Set-Off Order, Invesco would not receive any dividends until such time as the Damages were paid in full. Invesco would also not share in any distribution resulting from payment of the Damages; and
  - 7.5. The Fines would be offset against the dividend payable to Invesco. The Fines include solicitor-client costs payable to 1563181 Alberta Ltd. (now Cococo) in the amount of \$18,500 (the "156 Costs") related to the application where B&F Callebaut were found to be in contempt of the Receivership Order (the "Contempt Application"). The remaining balance of \$81,150, relates to product that had been removed from Callebaut and used by B Callebaut in advance of the Contempt Application and costs of both the Receiver and the Receiver's legal counsel related to the Contempt Application. As the costs of both the Receiver and the Receiver's legal counsel related to the Contempt Application were previously paid from the receivership estate, the entire \$81,150 would be available for distribution to all ordinary unsecured creditors of the Callebaut Partnership, including Invesco.
8. The Participating Creditors did not support the S. 38 Settlement Proposal.
  9. On July 16, 2014, the Court issued a written decision denying Invesco's application on the following basis (the "July 2014 Decision"):
    - 9.1. The Participating Creditors did not owe duties to the Non-Participating Creditors in the context of the Disallowance Process; and
    - 9.2. There is no statutory mechanism by which the Court can compel the settlement of the S. 38 Action and, in the present case, it would be inappropriate for the Court, under its auxiliary and ancillary jurisdiction, to compel a settlement of the Disallowance Process.
  10. This report represents the Third Report of the Trustee (the "Trustee's Third Report"). The Trustee's Third Report is being filed in order to provide additional information related to Cococo's application scheduled to be heard on January 19, 2015 (the "January 2015 Application") seeking the following relief:
    - 10.1. Approval of a settlement agreement between Cococo and Invesco dated December 19, 2014 (the "Settlement Agreement") and attached as Exhibit "A" to the Affidavit of Brian Beck sworn on January 6, 2015;
    - 10.2. Concluding the Disallowance Process;
    - 10.3. Directing the Trustee to pay dividends to the Participating Creditors in the full amount of their claims plus costs;

- 10.4. Declaring that Invesco is not prohibited from participating in any dividends notwithstanding the failure of B&F Callebaut to pay the Damages, providing advice and direction regarding the non-payment of the Damages or varying, as necessary, the penalty against B&F Callebaut imposed in the Contempt Order; and
  - 10.5. Giving leave to Cococo, the Trustee or any party or creditor to re-apply for advice or direction as may be necessary to carry out the terms of the Order.
11. All of the Receiver's Reports, the Receiver's Supplements, the Trustee's First Report and the Trustee's Second Report can be accessed on Deloitte's website at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca).

# The Damages

12. The Trustee's Second Report details the Trustee's efforts to collect the Damages from B&F Callebaut (the "Collection Efforts"). The Trustee notes the following with respect to the Collection Efforts:
  - 12.1. To date, only \$960 has been paid by B&F Callebaut with respect to the Contempt Costs;
  - 12.2. B. Callebaut was examined under oath by the Trustee's legal counsel on June 6, 2012 (the "Examination"). The results of the Examination suggested that B. Callebaut did not, at the time, have any significant unencumbered assets or income which could be used to pay the Damages;
  - 12.3. At the March 2013 Application, the Trustee requested that, should the S. 38 Settlement Proposal not be approved by the Court, the Court provide further advice and direction with respect to collecting the Damages and the Fines from B&F Callebaut, including whether any further sanctions should be imposed against them. This matter was not addressed in the July 2014 Decision;
  - 12.4. There were originally three inspectors appointed for the Callebaut Partnership. One of the inspectors resigned on April 20, 2012 and, one of the Inspectors, Bill Hagel of Invesco, was precluded from attending and voting at those inspectors' meetings related to the S. 38 Action and the payment of the Contempt Costs due to a conflict of interest. The remaining inspector has expressed reluctance to use additional resources within the bankrupt estate to further pursue the Collection Efforts; and
  - 12.5. Based on the above and subject to any further direction of the Court, the Trustee does not intend to further pursue the Collection Efforts and believes that it may be appropriate to vary the penalty against B&F Callebaut imposed in the Contempt Order.

# The Settlement Agreement

14. Pursuant to the Disallowance Process, Cococo notified the other proven creditors in the bankrupt estate of their ability to participate in the S. 38 Action. The Trustee understands that creditors with claims totalling approximately \$351,962 elected to participate in the S. 38 Action (defined above as the "Participating Creditors"). The Trustee further understands that the Participating Creditors have incurred costs of approximately \$73,608 in pursuing the S. 38 Action (the "S. 38 Costs").
15. The following are the claims which have currently been admitted by the Trustee in the bankrupt estate, which do not include the S. 38 Costs:

Description of Claim	Estimated amount of Claim	% of Total Proven Claims
Bernard Callebaut/ Invesco	\$3,894,441	76%
Participating Creditors	\$351,962	7%
Non-Participating Creditors	\$891,322	17%

16. The Trustee has reviewed the Settlement Agreement and notes the following.
- 16.1. The Participating Creditors will be paid the full amount of their claims and the S. 38 Costs, less the levy payable to the OSB;
- 16.2. The Trustee understands that it is the intention of the Settlement Agreement that the remaining funds in the bankrupt estate, after payment of the Participating Creditors' claims and the S. 38 Costs, will be distributed evenly between Invesco and the Non-Participating Creditors, after taking into account permissible set-offs;
- 16.3. As previously reported, the Fines include the 156 Costs. The Set-Off Order, specifies that the Trustee may set off the Fines, including the 156 Costs, against any dividend payable to B. Callebaut or Invesco. The Settlement Agreement, however, contemplates that the 156 Costs will remain outstanding and, as such, the Trustee has not factored any set-off for the 156 Costs into the estimated distributions discussed below; and



- 16.4. The Settlement Agreement does not address payment of the Damages. Based on the Set-Off Order, Invesco will not receive any dividends until such time as the Damages have been paid in full. As such, should the Settlement Agreement be approved, Invesco will continue to be ineligible to receive any dividend until such time as the Damages are paid or the Set-Off Order is varied.
17. The Trustee does not take any position on the Settlement Agreement, but notes the following:
- 17.1. The Trustee is satisfied that if the Settlement Agreement is approved by the Court, the Non-Participating Creditors will receive a greater distribution than they would have had the S. 38 Action not been commenced or if the S. 38 Action is discontinued (without any further disallowance of the BC Claim) or is unsuccessful;
- 17.2. No funds will be distributed to Invesco pursuant to the Settlement Agreement unless the Damages are paid or the Set-Off Order is varied; and
- 17.3. Should the Settlement Agreement not be approved, it will further extend the administration of the bankruptcy and delay further dividend payments to the ordinary unsecured creditors. Additional professional fees will need to be incurred related to the ongoing administration of the bankruptcy.

# Distributions

18. At the fourth meeting of the Inspectors held on November 16, 2011, the Inspectors approved the Trustee making an interim distribution of \$1.0 million (the "Interim Distribution") of which \$801,908 was held-back, pending final determination of the BC Claim and two other unsecured claims. The remaining amount of \$198,092 was paid to the proven ordinary unsecured creditors of the estate. The Interim Distribution represented a payment of approximately 18% of the proven unsecured claims at that time. A copy of the Interim Statement of Receipts and Disbursements and the Dividend Sheet, both dated November 25, 2011, are attached as "Appendix 1" to the Trustee's Second Report.
19. Attached as "Appendix 1" to this report is an Analysis of Various Scenarios with respect to the Estimated Dividends Payable to the Ordinary Unsecured Creditors of the Callebaut Partnership. As noted therein, the Trustee estimates that, if the Settlement Agreement is approved, the Non-Participating Creditors will receive dividends of \$444,388, or approximately 50% of their proven claims; whereas, if the S. 38 Action had not been commenced, is discontinued or is unsuccessful, the Non-Participating Creditors would receive dividends of approximately \$242,098, or 27% of their proven claims.

# Conclusion

20. This report is being filed to provide additional background information related to the January 2015 Application.

**DELOITTE RESTRUCTURING INC.,**  
in its capacity as Trustee of the bankrupt estate of  
Chocolaterie Bernard Callebaut Partnership and not in  
its personal capacity



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Jeff Keeble CA•CIRP, CBV  
Senior Vice President

**Analysis of Various Scenarios with respect to the Estimated Dividends Payable to the Ordinary Unsecured Creditors of the Callebaut Partnership<sup>1</sup>**

<b>\$ Value of admitted ordinary unsecured claims</b>		<b>Claims (\$)</b>	
		<b>Scenario 1</b>	<b>Scenario 2</b>
Invesco (BC Claim)	\$ 3,894,441	<u>\$ 1,054,087</u>	<u>\$ 3,894,441</u>
Participating Creditors <sup>2</sup>	351,962	425,569	351,962
Non-Participating Creditors	<u>891,322</u>	<u>891,322</u>	<u>891,322</u>
<b>Total \$ value of ordinary unsecured claims</b>	<b>\$ 5,137,725</b>	<b>\$ 2,370,979</b>	<b>\$ 5,137,725</b>

<b>% of admitted ordinary unsecured claims</b>		<b>Claims (%)</b>	
		<b>Scenario 1</b>	<b>Scenario 2</b>
Invesco (BC Claim)	76%	<u>44%</u>	<u>76%</u>
The Participating Creditors	7%	18%	7%
The Non-Participating Creditors	<u>17%</u>	<u>38%</u>	<u>17%</u>
<b>Total % of ordinary unsecured claims</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<b>Estimated amount available for dividends<sup>3</sup></b>	
Amount held in trust as at January 13, 2015	\$ 1,174,541
Total dividends paid on November 25, 2011 (net of holdbacks)	197,325

<b>Less:</b>	
Outstanding legal fees as at December 31, 2014	(8,697)
Outstanding trustee fees as at January 13, 2015	(12,075)
Estimated legal fees to complete the administration	(15,750)
Estimated Trustee fees to complete the administration	<u>(21,000)</u>
<b>Estimated amount available for dividends</b>	<b><u>\$ 1,314,344</u></b>

<b>Scenario Analysis<sup>4</sup></b>	<b>% Claim</b>		<b>% Claim</b>	
	<b>Scenario 1</b>	<b>Paid</b>	<b>Scenario 2</b>	<b>Paid</b>
<b>Amount available for distribution to Invesco pursuant to the BC Claim<sup>5</sup></b>	\$ 444,388	42%	976,647	25%
<b>Amount available for distribution to the Participating Creditors</b>	425,569	100%	95,599	27%
<b>Amount available for distribution to the Non-Participating Creditors</b>	<u>444,388</u>	50%	<u>242,098</u>	27%
<b>Total distributions</b>	<b><u>\$ 1,314,344</u></b>		<b><u>\$ 1,314,344</u></b>	

**Scenario Description**  
**Scenario No. 1**

The Settlement Agreement is approved by the Court. The Participating Creditors are paid in full. The BC Claim is reduced such that an equal amount of money is available for distribution to Invesco pursuant to the BC Claim and to the Non-Participating Creditors, after accounting for all applicable set-offs.

**Scenario No. 2**

The S 38 Action is discontinued or is unsuccessful. The BC Claim remains as admitted with all ordinary unsecured creditors being paid pro-rata.

**Notes**

1. All defined terms have the meanings ascribed to them in the Third Report of the Trustee, dated January 13, 2015.
2. The claims of the Participating Creditors in Scenario 1 includes the S. 38 Costs.
3. Both the 156 Costs and the Damages have been excluded for the purpose of this analysis.
4. All distributions to the ordinary unsecured creditors will be paid net of the levy payable to the OSB, which is 5% of the first million and 1.25% of the amount in excess of \$1.0 million.
5. The Fines, net of the 156 Costs, have been offset from the dividends payable pursuant to the BC Claim.