

## James Hardie Asbestos Victims Compensation Background Facts

### Key Dates

Event	DATE
Hardies establishes MRCF with \$293 million.	February 2001
Jackson Inquiry Commences	February 2004
Jackson Inquiry Reports	September 2004
Heads of Agreement signed with James Hardie	21 December 2004
Final Funding Agreement signed with James Hardie	December 2005
Amended Final Funding Agreement signed	21 November 2006
Date of Commencement of new funding agreement	About February 2007

### Summary of key data

Findings of Latest KPMG Report (Sept 06)	
Total future expected JH mesothelioma claims (Australia wide)	4,660 (2006 Onwards)
Peak year expected for JH mesothelioma claims	2010-2011 (at about 250 claims per year)
Total all JH claims (past & future)	12,513 (8,103; 2006 onwards)
Estimate of JH compensation costs (after insurance & other recoveries)	\$1,554.8 million
Nominal value of JH compensation costs (after insurance & other recoveries)	\$3,168.9 million
First Payment by James Hardie to new fund	Approx. \$211 million (less net assets in MRCF at start date)

### Asbestos use in Australia

- The mining and manufacture of asbestos and asbestos related products took place in Australia for most of the 20<sup>th</sup> Century and was widespread until the 1980's.
- From 1950's to 1970's Australia was the highest per capita user of asbestos in the world.
- Every third domestic dwelling built before 1982 is thought to contain asbestos.
- Asbestos was used in asbestos cement sheet or 'fibro' until the mid 1980's.
- Asbestos was only finally banned in Australian workplaces in January 2004.

### Asbestos related diseases in Australia

- Mesothelioma. Cancer caused by exposure to asbestos commonly occurring in the lining of the lung. Causes extreme pain and breathlessness as the lung is crushed by tumour. Inevitably fatal within about 9 – 12 months of diagnosis. Time of first exposure to the onset of mesothelioma averages 37 years. There are currently no cures for the disease.
- Asbestosis and Asbestos Related Pleural Disease. Severely disabling respiratory diseases for which there are currently no effective treatments or cure.
- Lung cancer and other malignancies. Also implicated in asbestos exposure.
- The first reported case of mesothelioma in Australia occurred in 1962 and the incidents of the disease have been increasing ever since.
- In June 2003 there were 7,515 reported incidents of mesothelioma in Australia<sup>1</sup>. It is estimated about 18,000 Australians will die from mesothelioma by 2020<sup>2</sup>. Asbestos-related lung cancers are currently estimated to occur at a ratio of 2:1 to mesothelioma. It is expected that 30,000 – 40,000 Australians will have contracted an asbestos related cancer by 2020.<sup>3</sup>
- However, not all asbestos victims are the result of James Hardie products. In September 2006, KPMG has estimated James Hardie asbestos compensation claims as follows;
  - Total future expected mesothelioma claims (Australia wide) - 4,660 (2006 onwards)
  - Peak year expected for mesothelioma claims is 2010/2011 at about 250 claims per year
  - Total for all James Hardie asbestos claims (past & future) is 12,513 (8,103; 2006 onwards)
  - The estimated nominal value of compensation costs (after insurance & other recoveries) is \$3,168.9 million.

### James Hardie asbestos manufacturing in Australia

- James Hardie was Australia's largest manufacturer of asbestos containing products throughout the 20<sup>th</sup> century including asbestos containing insulation products, asbestos cement sheet or 'fibro', pipes and friction materials particularly brake and clutch linings.
- Throughout this period James Hardie had a dominant market position, particularly in fibro and in SA and WA was effectively the only commercial supplier of fibro.
- Evidence presented at the Jackson Inquiry suggests James Hardie had knowledge of the dangers of asbestos as early as the 1930's.

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<sup>1</sup> James Leigh, MBBS, MA, MSC, MD, PHD & Tim Driscoll, MBBS, MOHS; Malignant Mesothelioma in Australia, 1945 - 2002

<sup>2</sup> ibid

<sup>3</sup> ibid

- No warnings or directions were placed on Hardie fibro until 1978 and the company continued to use asbestos in the manufacture of cement sheet until the mid 1980's.

### **James Hardie and its asbestos liabilities**

- From 1937 the Hardies Group structured its operations so that the manufacture and supply of asbestos products was undertaken by subsidiary companies, most importantly James Hardie & Coy Pty Limited (Coy) and Hardie-Ferodo (later Jsekarb).
- Coy was the principle source of income for James Hardie Industries until the mid 1990s.
- Between 1995 and 2000 the James Hardie parent company undertook a process of stripping assets from Coy but leaving it with the bulk of the Hardie groups' asbestos liabilities.
- In February 2001 James Hardie established the Medical Research and Compensation Foundation (MRCF) with \$293 million in assets including what was left of the asbestos manufacturing subsidiaries Coy and Jsekarb.
- As part of this move Coy and Jsekarb indemnified the James Hardie parent company for any asbestos liabilities.
- Hardie CEO Peter Macdonald tells the ASX and Australian public the trust was fully funded and would be able to meet all legitimate asbestos compensation claims into the future.
- In October 2001 the NSW Supreme Court approve an application from James Hardie to move to the Netherlands and set up as a Dutch company taking with it \$1.9 billion in assets from its former Australian companies. The court is assured these assets would be available if needed to meet the claims of Australian creditors including asbestos victims.
- The Netherlands is one of only two countries with which Australia does not have a treaty for the enforcement of civil court judgements.
- In March 2003 the Dutch based James Hardie severed its final links with its former Australian asbestos producing entities and cancelled the capacity for them to call on the \$1.9 billion to pay asbestos victims should this be required.
- James Hardie did not advise the NSW Supreme Court, the NSW Government or the ASX of the cancellation of the \$1.9 billion lifeline.

### **The Jackson Inquiry, union bans and public outrage - 2004**

- Following campaigning by unions and asbestos groups in NSW, on the 27<sup>th</sup> of February 2004 NSW Premier authorise Mr David Jackson to conduct a Special Commission of Inquiry into MRCF, the adequacy of its funding, and the circumstances of its separation from the James Hardie Group.
- Public outrage grows as asbestos groups and union campaigning intensifies and the extent of James Hardie deception becomes understood by the public.
- On July 14 2004 having previously steadfastly maintained it had no obligation legal or otherwise to make payments to asbestos victims James Hardie indicated may be prepared to recommend to shareholders that additional funds be contributed on the basis of the introduction of a new statutory asbestos compensation scheme.
- On July 21, 2004 in an interview with Tony Jones on the ABC's Late line program ACTU Secretary Greg Combet describes James Hardies behaviour an '*appalling, disgusting state of affairs*' signalling a stepping up in the intensity of ACTU and union campaigning.
- August 2004, construction unions and some local council authorities announce their intention to ban the use of James Hardie products.

- Having maintained throughout the Jackson Inquiry it has no responsibility to provide further funding to compensate asbestos victims, on August 12 Counsel for James Hardie submits to in Inquiry that it is willing to provide further funding to the MRCF on the condition that a statutory compensation scheme is established which would limit the legal rights of claimants and cap compensation payouts.
- At the request of the ACTU, throughout August and September State and Territory Governments reject James Hardie proposal to establish a statutory compensation scheme for asbestos victims.
- During August unions lobby institutional investors in James Hardie to vote against the acceptance of the company's accounts on the basis that they make no provision for the future funding of the company's asbestos liabilities.
- In September 2004 James Hardie announces that it will withdraw resolutions asking shareholders to approve the company accounts at its September 17 shareholders meeting.
- September 14, US unions rally in support of Australian asbestos victims outside James Hardie US headquarters in California taking union protests into the US market where James Hardie earns more than 80% of its income.
- On September 15 tens of thousands of Australian unionists hold rallies in capital cities around Australian to coincide with the company's Australian shareholder briefing meeting in Sydney. Unions rally under the banner – Make James Hardie Pay.
- James Hardie chair woman Meredith Hellicar uses her address at the 2004 Sydney shareholders meeting to apologies to asbestos victims
- On September 17, international and Australian unionists protest outside the James Hardie annual general meeting in the Netherlands.

### **Jackson Inquiry finding**

- On September 21 2004 the Report of the Jackson Inquiry is released finding:
  - James Hardie's Australian asbestos liabilities to be between \$1.5 and \$2.24 billion and that the company had under-funded the MRCF by about \$2 billion.
  - That having pocketed the profits made from dealing in asbestos James Hardie had the capacity and moral obligation to provide funding to compensate current and future asbestos victims.
  - James Hardie made misleading and deceptive statement in relation to the establishment of the MRCF.
  - Commonwealth authorities including ASIC should investigate the conduct of the company and in particular its CEO Peter Macdonald and CFO Peter Shafron.
  - Serious questions about the conduct of several professional services and law firms in relation to the establishment of James Hardie's asbestos compensation arrangements.
- ACTU Secretary Greg Combet calls on Peter Macdonald and Peter Shafron to immediately resign or be sacked by James Hardie.
- On receipt of the Jackson Report NSW Premier Bob Carr calls on James Hardie to negotiate a settlement to their asbestos compensation liabilities with unions and asbestos groups lead by ACTU Secretary Greg Combet and ADFA Vice President Bernie Banton.

### **Negotiations begin and the pressure increases – late 2004**

- On September 22 2004 ASIC announces its intention to investigate James Hardie over its asbestos funding arrangements.
- On September 28 2004 Hardie announces that CEO Peter Macdonald and CFO Peter Shafron will stand aside and the NSW Government announce that they intend to introduce Special Legislation to provide all documents from the Jackson Inquiry to ASIC and remove any legal privilege.
- Negotiations between James Hardie and the union/asbestos group negotiating team commence on October 1 in Sydney.
- In mid October all State and Territory Governments have confirmed they will consider banning the use of James Hardie products should the company fail to reach agreement with unions and asbestos groups.
- October 22 James Hardie announces the resignation of CEO Peter Macdonald and CFO Peter Shafron. Macdonald receives a \$10 million severance package and is kept on by James Hardie as a consultant.
- October 28, NSW Premier Bob Carr announces that should James Hardie fail to reach a settlement with union and asbestos group negotiators, the NSW Government would introduce special legislation to unravel James Hardie's restructuring and make the Dutch James Hardie company responsible for Hardie's asbestos compensation liabilities.
- On November 18, at the request of the ACTU, NSW Premier announces that the NSW Government will conduct an independent review of the operation of the NSW Dust Diseases Tribunal to see if efficiencies can be achieved in its operation without negatively impacting on the legal rights or compensation payment of asbestos victims. This takes the issue of the compensation system out of negotiations between unions and James Hardie and undermines James Hardie's insistence to that point that the provision of further funding for asbestos victims be conditional on changes to the compensation system that would diminish victims' rights.
- On November 23, James Hardie announces a 25% profit down grade due to legal costs associated with the Jackson Inquiry and reduced sales as a result of bans and consumer boycotts in Australia. The company also announces that it will pay disgraced CEO Peter \$7,000 a month for the next two years in a consultancy arrangement.
- On November 30, Federal Treasurer Peter Costello announces the Federal Government's intention to introduce legislation giving ASIC and the Department of Public Prosecutions full access to all materials from the Jackson Inquiry including those which would normally have been protected by legal privilege.
- On December 2 James Hardie agree to pay interim funding of \$88 million to the MRCF to avert a Federal Court application that day that could have seen the fund go into liquidation and asbestos victims not be paid.
- On December 6 the ACCC announces its intention to launch an investigation against James Hardie should the company fail to reach an agreement with the ACTU.

### **Heads of Agreement – 21 December 2004**

- Under pressure from all sides, JH soon agrees to settle.
- The ACTU, Unions NSW, asbestos groups represented by Bernie Banton, and the NSW Government signed a Heads of Agreement with former asbestos products manufacturer James Hardie for what is believed to be the largest personal injury settlement in Australia's history on 21 December 2004.
- The Heads of Agreement is designed to provide the basis for a legally binding 'Principal Agreement' to be concluded at a later date.
- The Heads of Agreement provides for:
  - An open ended funding commitment – i.e. no cap on the overall funding;
  - No cap on payments to victims;
  - The creation of a Special Purpose Fund, which may be the MRCF, which will receive funding from James Hardie and make payments to claimants;
  - The payment of an up-front cash 'buffer' equivalent to two years of claims plus the payment of a further year of claims in advance – this buffer will be approximately \$250 million;
  - Additional annual payments from James Hardie based on an annual actuarial assessment of the liability for asbestos claims;
  - A maximum amount, or cap, on the annual James Hardie payment will be set at 35% of the company's free cash flow. In the first year of the agreement this cap is equivalent to over \$70 million;
  - A minimum term of the funding arrangement of 40 years. The term of the agreement will be extended indefinitely if this is required; and
  - Funding from James Hardie for asbestos education and medical research.
- The Heads of Agreement also deals with other important details such as how funding for asbestos compensation will be secured, how the arrangements entered into will be made legally binding on the company and how the company can ensure, that with this episode behind it, it can get on with business.
- Work commences on a binding Principal Agreement based on the Heads of Agreement which will then need to be voted on and accepted by James Hardie shareholders.
- ACTU Secretary Greg Combet signals that union action against James Hardie will cease: 'While James Hardie performs its obligations towards a binding agreement the ACTU does not wish to see any further conduct that would be harmful to the business of James Hardie.'

### **The waiting game and taxation rulings Dec. 2004 to Nov. 2006**

- Throughout 2005 and much of 2006, asbestos victims and unions waited for completion of the final compensation package and on critical taxation rulings. The first related to payments by James Hardie Corporation to the compensation body. The second to the operation of the compensation body itself.
- The first ruling by the Australian Taxation Office (ATO) made on 29 June 2006, under so called 'Black Hole' legislation, permits James Hardie to get a tax deduction (over a several years) for payments made into the compensation fund.

- The second ruling by the ATO, made on 9 November 2006 means that neither contributions to the fund, nor the income generated by fund investments, are subject to federal income tax.

### **The significance of today, Tuesday 21 November 2006**

- James Hardie and the NSW Government are signing an Amended Final Funding Agreement.
- The FFA has been amended to make changes to the structure of the compensation body necessary because of the ATO's final tax rulings.
- The NSW Govt will then introduce legislation into Parliament to give effect to the Amended FFA.
- The first payment into the new Fund will take place following the approval of James Hardie shareholders.
- The final condition precedent before the money flows is shareholder approval. This will be sought at an extraordinary general meeting, which is likely to occur in February 2007. JHX will distribute an Information Memorandum before that meeting. That document is already in preparation. Money will be paid shortly after shareholders approve the deal.

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