



Tuesday 21 December 2004

Unions & asbestos groups secure James Hardie compo agreement

The ACTU, Unions NSW and asbestos groups have today 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.

Speaking in Sydney earlier today ACTU Secretary Greg Combet who has led negotiations with Hardie of behalf of union, asbestos groups and the NSW Government said:

"I am pleased to announce that thanks to the support of the Australian community and the hard work and determination of asbestos groups, unions and the NSW Government – Bernie Banton and I have signed a Heads of Agreement with James Hardie Industries NV.

"The Heads of Agreement is not legally binding but it is a highly significant step in the campaign to ensure that the company funds current and future compensation liabilities to Australian victims of its asbestos products.

"This is a very significant achievement and will be welcome news to Australian asbestos victims and their families. The Heads of Agreement is designed to provide the basis for a legally binding 'Principal Agreement' to be concluded by June next year. The Heads of Agreement that has been concluded between James Hardie, the ACTU, Unions NSW, Bernie Banton and the NSW Government 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. The binding Principal Agreement that is expected to be finalised by mid 2005 will need to be voted on and accepted by James Hardie shareholders.

Mr Combet said, "While there are still some important steps to be taken before we can be sure James Hardie will fulfil all its responsibilities to the Australian community, the signing of this Heads of Agreement is an enormous achievement for everyone involved. In particular it is an important achievement for Australian unions and union members who have been so strong and committed in their support for asbestos victims.

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."

Media Contact: George Wright 0419 556 616 (HoA Summary attached – 2 pages)

Annexure 4

Summary of Heads of Agreement

Parties

The Heads of Agreement was signed by James Hardie Industries NV, the NSW Government, the ACTU, Unions NSW and Mr Bernie Banton on behalf of asbestos victim groups.

Purpose

The Heads of Agreement are non-binding but record:

- (a) the intent of the parties to negotiate and finalise a binding Principal Agreement; and
- (b) the proposed primary financial obligations of James Hardie.

Funding Arrangements

Under the binding agreement, James Hardie will agree to make annual contributions on a long term basis to a Special Purpose Fund (having a majority of directors appointed by James Hardie). The contributions will be applied in settling and paying liabilities of the former James Hardie subsidiaries to Australian personal injury claimants ("Claims").

Initially, the Fund and the former James Hardie subsidiaries will have three years' worth of funding with which to pay proven or settled Claims, including a two-year funding "buffer", based on estimated liabilities and having regard to the existing net assets of the former James Hardie subsidiaries. The buffer will be maintained by annual contributions.

The annual contributions will be determined by an annual actuarial assessment but will be subject to a cash flow cap so that they do not take more than 35% of James Hardie's free cash flow in any year.

Since anticipated contributions during the early years of the Fund are expected to exceed the cash flow cap, James Hardie will make an additional payment to the Fund on the date of commencement of the binding agreement, so as to better manage the amounts payable by James Hardie up to the year ending March 31 2008.

From 2012, the cash flow cap percentage may reduce in increments of 5% (to a floor of 10%), provided that the annual contributions are, on average, lower than the reduced cash flow cap level for the 4 years preceding the reduction, and that the cash flow cap cannot reduce by more than 5% in any four year period. There is also provision for the cash flow cap to increase in certain circumstances, although never above 35% and never by more than one increase of 5% above a previously reduced cap level.

There will be no overall cap on the liability of James Hardie and no cap on payments to individual claimants.

The initial term of the agreement will be 40 years and will be extended unless the NSW Government and James Hardie agree on a final payment.

While the parties have used best endeavours, based on actuarial advice and financial modelling, to agree a viable and robust long-term funding arrangement, ultimately the ability of the Fund to meet the claims of claimants will depend on the success of James Hardie's global business, the total number of claims made by claimants in future and the financial investments and decisions taken by the Fund's managers. The parties to the Heads of Agreement have acknowledged the uncertainty inherent in predicting the outcomes of these factors. No guarantees can be given about such future events.

Security

James Hardie's listed parent company, James Hardie Industries NV, will guarantee payment of the funding and there will be protections against restructurings or distributions which would result in the James Hardie group ceasing to be likely, assessed on a reasonable basis, to be able to meet its key obligations under the binding Principal Agreement. These restrictions will not affect James Hardie's distributions and capital management activities (such as share buy-backs) made in the ordinary course.

The NSW Government will have the right to enforce the Principal Agreement.

Costs Review Inquiry

The Principal Agreement is conditional upon the NSW Government implementing the results of its review of legal and administrative costs in dust diseases compensation claims announced on 18 November 2004 and sharing the results of that review with other Australian governments and encouraging their adoption as appropriate by other Australian governments.

James Hardie and the Fund will also be entitled to make submissions to the NSW Government from time to time to seek further procedural improvements to the claims management system.

Future of the Medical Research and Compensation Foundation (MRCF)

The future operation of the MRCF remains subject to discussion and negotiation.

James Hardie has undertaken to provide interim funding to the former James Hardie subsidiaries if their other sources of funding are exhausted prior to the earlier of the binding agreement taking effect or the 30th June 2005.

Releases from Civil Liability

The NSW Government will provide releases to the James Hardie group and to its directors, officers and employees to ensure that their civil liability is limited to the arrangements agreed in the Principal Agreement. In the case of James Hardie, the releases are conditional upon compliance with the agreement. In turn, James Hardie will release the ACTU, Unions NSW and Mr Banton from any liability in connection with any actions relating to James Hardie.

Education and Medical Research

James Hardie has agreed to contribute to the funding of an education campaign, warning of the dangers of asbestos and alerting the community to its location in the home and other environments. James Hardie has also agreed to contribute to medical research in relation to asbestos disease.

Implementation

The NSW Government and James Hardie will now proceed to negotiate detailed and binding agreements to form the Principal Agreement and Related Agreements. Legislation might be required to implement some parts of the arrangements.

It is anticipated that subject to the timing of the outcome of the NSW Government's costs review inquiry described above, the Agreements will be finalised by the end of March 2005. The Agreements will be subject to a number of conditions precedent, including that the arrangements are recommended to and approved by James Hardie's shareholders and lenders. If they are approved, the Agreements should commence in or around June 2005.

ENDS