

Australia: James Hardie demands more concessions on asbestos compensation deal

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In December 2004, after months of negotiations and facing growing public outrage, building company James Hardie Industries (JHIL) signed a “Heads of Agreement” to set up a fund to meet the claims of thousands of people suffering asbestos-related diseases caused by its products.

What has transpired since reveals JHIL’s callous disregard for the terminally ill. The company’s only real concern remains, as before, to protect its assets as much as possible from legitimate compensation claims.

This was the motivation behind JHIL’s decision to close its two building products companies in Australia in 2001, and move its head office to the Netherlands. Left behind was a Medical Research and Compensation Fund (MRCF) for the alleged purpose of meeting asbestos sufferers’ claims, but which JHIL knew was grossly under-funded.

Since signing the “Heads of Agreement” the company has used every trick in the book to drag out negotiations that were supposed to quickly produce a detailed, legally enforceable document. JHIL finally signed a further agreement this week, but only after the NSW State Labor government threatened legislation allowing victims access to \$A1.9 billion of partly issued shares from James Hardie subsidiary companies.

Anxious to extricate the NSW government from any further involvement, Labor Premier Morris Iemma immediately declared that negotiations between JHIL and the government “have now essentially drawn to a close” and “we have a deal that the NSW government is happy with”.

Asbestos Diseases Foundations of Australia (ADFA) President Barry Robson, however, called the agreement a “smokescreen”. “We are not going to hold our breath because we have been down that road before,” Robson said.

Robson’s scepticism is not misplaced. Under the new deal JHIL is to provide an initial \$1.7 billion to set-up a compensation fund, topped up from its annual profits to meet estimated claims worth \$4.5 billion over the next 40 years. But the agreement is contingent on several major concessions.

These include the federal government guaranteeing that the funds JHIL provides, and the company’s legal costs, will be tax deductible, allowing it to rake in over \$500 million.

On November 30, James Hardie spokesman James Rickards made clear the company would walk away from the agreement unless it got its way. Emphasising tax concessions were central to any settlement, Rickards declared: “up until that point it (the agreement) doesn’t exist”.

Signalling further delays, even if the company’s demands are met, Rickards said the deal would be subject to shareholder approval. Even then, funds will not start flowing until well into 2006.

JHIL is making other demands to stonewall any binding agreement. Under the present deal, JHIL’s directors would be indemnified from civil action by asbestos victims, thereby walling off their personal wealth and assets from future claims. This constitutes a direct infringement on the rights of both current and future claimants.

The company also wants immunity for its officials from civil prosecution by the Australian Securities and Investments Commission for breaches of corporate law. Some of its top officials could face charges because they lied to the NSW Supreme Court and the Australian Stock Exchange when seeking permission for JHIL to relocate to the Netherlands. Officials claimed that the funds the company left behind were adequate to meet all its liabilities.

This week, Federal Treasurer Peter Costello rejected JHIL's demands, saying that because its main assets were now offshore it was probably not entitled to tax relief. He also ruled out special legislation allowing tax concessions to be made, declaring the "company's directors ought to accept responsibility to the victims".

Costello has no problem with the current corporate law, which allows companies to claim tax concessions on money paid to compensation victims and to pass on part of the liability to taxpayers. The law is just one of a range of corporate tax breaks designed to attract globally mobile investment and corporate projects to Australia. But since JHIL has flown the coop, with no chance of returning, Costello simply sees no viable return for a government investment.

Neither the Labor Party nor the unions disagree with such laws. Over the last two decades the Australian Council of Trade Unions (ACTU) and its affiliates, as well as various state union bodies, have all rallied behind government legislation allowing corporate tax breaks for Australian-based companies.

This is why, rather than opposing JHIL's outrageous demands, or even reimposing the limited bans that were placed on the company's products, ACTU secretary Greg Combet joined Iemma in imploring Costello to come to the party.

Both Labor and the ACTU are desperate to avoid any further clashes with JHIL and anxious to get the explosive issue out of the public arena. From the outset, they have worked to dampen the widespread public anger that emerged once the company's manoeuvres came to light—initially channelling opposition into limited protests and then burying the issue in protracted negotiations that were always designed to limit the company's liability.

In fact, the role played by the Labor Party and the ACTU has been crucial in resurrecting JHIL's position. Just one year ago, the company was under siege and forced to take defensive action. Now it now feels confident enough to make arrogant demands for further concessions and to snub its nose at asbestos victims.

Worse still, the JHIL case will establish a precedent for other corporate giants that they can continue to maim and kill working people with impunity. The deal negotiated with JHIL will serve as a useful corporate manual for dodging liability.



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