

Australia: James Hardie directors show contempt for asbestos sufferers

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Giant building products company James Hardie Industries (JHIL) continues to treat with contempt the many thousands of people suffering terminal asbestos-related diseases caused by its products.

JHIL board members have this week pushed through a shareholders' meeting in Amsterdam a proposal to award themselves a 130 percent increase in annual directors' fees, totalling an extra \$A1.1 million a year. At the same time, the company has continued to block the payment of compensation to the victims of its practices.

In December 2004, in the face of mounting public outrage, JHIL signed an in-principle agreement to set up a fund to meet asbestos compensation claims. In December 2005, after dragging out negotiations with asbestos victims' representatives and the Australian Council of Trade Unions (ACTU), it agreed to provide an initial \$1.7 billion to set up a fund—the Special Purpose Fund (SPF)—as a first step in meeting claims estimated at about \$4 billion.

Yet nearly two years after signing the 2004 agreement, the SPF has not yet been established and JHIL has not parted with a single dollar. Having moved out of the public spotlight, with the assistance of the deal struck with the ACTU, the company has continued to thumb its nose at asbestos sufferers.

Its open disdain was on display at a shareholders information meeting in Sydney on September 19. JHIL chairperson Meredith Hellicar added insult to injury when asked why the compensation fund remained in limbo.

“I’m immensely disappointed and frustrated by this, and concerned that this continues to cause uncertainty for you, our shareholders and, importantly, for those suffering from asbestos diseases and their families. My answer is simple as it is necessary: because we are

making sure it is being done properly,” she declared.

That Hellicar placed shareholders “concerns” ahead of asbestos sufferers—referring to the victims almost as an afterthought—was no accident. It is symptomatic of what has always been the real priority of JHIL and its well-heeled chairperson—the company’s profits and assets.

To firewall its assets against asbestos victims’ claims, JHIL closed down its two building products companies in Australia in 2001 and moved its head office to the Netherlands. Company directors knew that the Medical Research and Compensation Foundation (MRCF) set up supposedly to meet asbestos victims’ claims was grossly under-funded.

While the MRCF’s remaining funds are due to dry up early next year, the move to the Netherlands allowed JHIL to derive considerable foreign tax savings, amounting to date to \$A95 million.

Hellicar’s declared “frustration” over delays in establishing the SPF is hypocritical. All delays are the direct result of JHIL’s own self-seeking machinations. From the beginning the company did everything possible to circumvent any settlement while it attempted to extract every possible financial and legal concession.

For example, the SPF was put on hold in June after the Australian Tax Office ruled it would not grant the fund charity status for tax purposes and allow JHIL to save millions of dollars at public expense. As one asbestos victim aptly remarked, not only has the company attempted to avoid its responsibilities for the wrecking of lives, it wants to profit from its crimes through tax concessions.

Several legal experts have pointed out that JHIL has deliberately strung out the arrangements for the fund in order to escape massive lawsuits associated with its

under-funding of MRCF. The time limit for plaintiffs to take legal action runs out in February 2007.

This month, a senior legal source close to the MRCF (the foundation itself is considering legal action against James Hardie) stated: “I’m cynical enough to say Hardie is doing it (delaying) deliberately.” Head of the Melbourne University centre for corporate law Professor Ian Ramsey said: “Once the statute of limitations runs out, the bargaining position of the foundation is diminished dramatically.”

Hellicar arrogantly told the shareholders’ information meeting that anyone suggesting that JHIL “lacked commitment” to setting up the compensation fund was being “entirely mischievous”.

Under the directors’ fee hike, Hellicar’s annual payment will increase from \$285,000 to \$397,000. Her retirement package will rise to \$1.6 million. Other board members will enjoy similar benefits. The payments were decided despite an earlier commitment not to increase directors’ fees until arrangements for the compensation fund were completed.

Asbestos victims’ spokesman Bernie Barton declared: “This is an outrageous mob that lack morality. They’d rather pat themselves on the back than see a deal done for the victims to get their rightful compensation.” Eileen Day, the widow of asbestos sufferer Reg Day, who died of mesothelioma in 2001 at the age of 54, said: “It’s an insult, it’s like a slap in the face.”

Nonetheless, Hellicar brazenly defended the increase, declaring the current remuneration was “simply not competitive”. Higher fees were needed to “attract new board members” to “ensure the long term future of the company”. She reiterated that compensation to asbestos sufferers depended on JHIL’s continued profitability.

The linking of compensation to profitability was thanks to the ACTU and the New South Wales Labor government. Both accepted key clauses in the 2004 in-principle agreement that tied payments to the Special Purpose Fund to the company’s ongoing profitability, by capping them at 35 percent of the company’s annual free cash flow.

Anxious to ensure the company’s interests, the ACTU signed off on the agreement despite admitting that “ultimately, the ability of the Fund to meet the claims of claimants will depend on the success of James Hardie’s global business” and that “no

guarantees can be given about future events”.

Having climbed aboard, the ACTU immediately called off all bans on the company’s products, declaring the unions “did not wish to see any further conduct that would be harmful to the business of James Hardie”. True to its true word, the ACTU will not initiate any action in response to JHIL’s latest provocative steps.



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