



Directors and Officers Alert August 2009

15-year ban and \$350,000 fine for former James Hardie CEO

James Hardie's entire former Board and three executives have today been banned from managing corporations after a landmark decision in the NSW Supreme Court.

The penalties follow controversial findings in April that the entire Board of Directors breached their duties of care and diligence under section 180(1) of the *Corporations Act 2001* (Cth) by approving a press release in February 2001. Alongside former CEO Peter Macdonald, CFO Phillip Morley and General Counsel/ Company Secretary Peter Shafron, each Director was held responsible for the release announcing a foundation for victims of asbestos exposure as being "fully-funded". Just two years later, James Hardie revealed the fund was short by more than \$800 million.

Macdonald has been banned for 15 years and ordered to pay a \$350,000 fine, with Shafron banned for seven years and fined \$75,000. Morley was fined \$35,000 and banned for five years. Each Director has been banned from managing a corporation for five years and fined \$30,000. The company was fined \$80,000.

Macdonald and Shafron were also ordered to pay a small share of the Australian Securities and Investment Commission's (ASIC) costs.

Despite pleas from each of them (except Macdonald) to avoid the statutory penalties, Gzell J told a full courtroom today:

"I have refused to exonerate any of the Defendants."

ASIC had asked for Macdonald to be fined up to \$1.8 million with a 16-year ban, Shafron to be fined \$350,000 with a 10-year ban and Morley to be fined \$250,000 with a seven-year ban. A minimum ban of five years was sought for each Director, along with penalties of up to \$150,000.

The Directors are expected to announce appeals shortly.



Thomson Playford Cutlers is currently providing high-level intensive board training following the James Hardie decision. This training includes:

- > a complete review of your Board documents and processes;
- > formal discussion with your CEO, CFO, Secretary and General Counsel regarding your current protocols and procedures;
- > a 60 to 90-minute presentation to your Board/key management of recommendations for best practice, including training on how to best implement the recommendations; and
- > a comprehensive folder of materials containing key reporting protocols and practices and useful tools tailored for your business with two senior partners from our Corporate and Litigation & Dispute Resolution teams involved in all facets of the review and Board presentation.

For more information on training initiative please contact your client relationship partner or one of our partners below:



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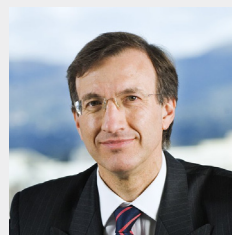
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