

# Hardie verdict raises compo queries

Peter Taylor

JAMES Hardie has lost its appeal against a \$368 million bill for back taxes, intensifying the prospect of a taxpayer bailout for its asbestos compensation scheme.

The Federal Court yesterday dismissed an appeal by a wholly owned subsidiary of the building products group, which now has 20 days to make a further appeal to the Full Federal Court.

Lawyers representing victims of asbestos-related diseases said the Federal Court's decision was



"undoubtedly a blow" to the bottom line of James Hardie, which makes annual payments to the compensation scheme based on its performance.

Trading in the group's shares was suspended yesterday afternoon,

## 'THE UNCERTAINTY ABOUT JAMES HARDIE'S FINANCIAL POSITION RAISES CONCERNS FOR VICTIMS OF ASBESTOS-RELATED DISEASE'

— Andrew Dimsey, of Maurice Blackburn Lawyers

minutes before the decision was handed down.

When trading resumed shortly before the market closed, James Hardie shares abruptly fell almost 4 per cent to end the day at \$5.25 — down 8¢, or 1.5 per cent, on the

previous day's close in a broadly buoyant marketplace.

In a statement, James Hardie management said the company would likely have to take a charge as a consequence of the court decision, but the subsidiary would "remain in compliance with its debt covenants should a charge be taken".

Had the charge been required at June 30 — the last day of its first quarter — it would have been about \$387.7 million, by management estimates.

That sum is more than tenfold James Hardie's operating cashflow of \$38 million in the first quarter.

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## Hardie compo queries

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Under the deal it struck in 2004, James Hardie pays about 35 per cent of its operating cashflow into the Asbestos Injury Compensation Fund.

The fund is reportedly running low, with only about \$130 million in the bank on July 1 — enough to cover claims for about a year.

It's believed the fund will start to draw on \$320 million in loans from the NSW and federal governments if the contributions from James Hardie are insufficient to cover claims.

Maurice Blackburn Lawyers principal Andrew Dimsey said about half the likely cases of people who would die from lung diseases linked to asbestos exposure were yet to be diagnosed.

He said claims were due to peak in the seven years from 2014.

"The ongoing uncertainty about James Hardie's financial position

raises concerns for the future victims of asbestos-related disease," Mr Dimsey said.

Nomura analyst Simon Thackray said that if James Hardie ultimately took the charge for the tax bill it would effectively "fall into the operating cashflow".

"A way to think about it is it (the tax bill) would come straight out of the pocket of the AICF (Asbestos Injury Compensation Fund)," Mr Thackray said.

The Tax Office issued subsidiary RCI with the amended bill more than four years ago.

The amendments were linked to an "internal corporate restructure" by the group in the late 1990s.

Over the course of the appeal process, the group paid half the bill — \$184 million — along with interest charges on the unpaid portion and gave the Tax Office a guarantee on the remaining half pending the outcome of the appeal.

Herald Sun,

Business Daily, page 67.

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