

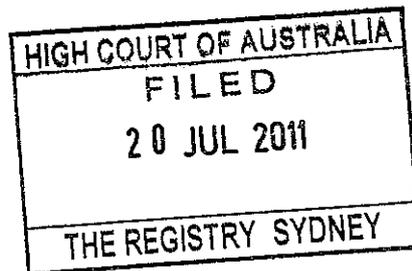
**IN THE HIGH COURT OF AUSTRALIA**  
**SYDNEY REGISTRY**

On appeal from a decision of the New South Wales Court of Appeal

No. s176 of 2011 <b>AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION</b> Appellant <b>MEREDITH HELLICAR</b> Respondent	No. s177 of 2011 <b>AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION</b> Appellant <b>MICHAEL ROBERT BROWN</b> Respondent
No. s178 of 2011 <b>AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION</b> Appellant <b>MICHAEL JOHN GILLFILLAN</b> Respondent	No. s179 of 2011 <b>AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION</b> Appellant <b>MARTIN KOFFEL</b> Respondent

**AIDES MEMOIR**

- 10
1. Board Minutes Aide Memoir (see [39] of Respondents' submissions)
  2. ASX Announcement Aide Memoir (see [48] of Respondents' submissions)
  3. ASX Announcement Comparison Aide Memoir (see [48] of Respondents' submissions)
  4. Witnesses Not Called Aide Memoir (see [133] Respondents' submissions)



**BOARD MINUTES AIDE MEMOIR**

No	Date	Description of event	Appeal Book references
1.	31 January 2001	Blanchard asks Shafron whether he (Shafron) or Allens should " <i>do a first draft of the various minutes of meeting</i> ".	ABWhi94, CA [471] ABBlu4/1742
2.	2 February 2001	Shafron asks Blanchard to get started on some draft resolutions.	ABWhi94, CA [471] ABBlu4/1742
3.	5 February 2001	Email from Shafron to Robb and others referring to Blanchard " <i>doing some JHIL resolutions</i> ".	ABBlu4/1797
4.	7 February 2001	Blanchard emails Shafron (copy to Robb) draft JHIL Board minutes. This is the first draft of the minutes.	ABRed2/720, LJ [1192] ABWhi94, CA [472] ABBlu4/1824 ABBlu4/1825-1829
5.	8 February 2001	Email from Shafron to Blanchard (copy to Robb) advising that he " <i>will make some small changes to reflect house style and the state of the documents</i> ".	ABWhi94, LJ [473] ABBlu4/1838-1839
6.	9 February 2001	Draft JHIL minutes. This is the second draft of the minutes.	ABRed2/720, LJ [1192] ABWhi94, CA [474] ABBlu5/1876-1881
7.	13 February 2001	Draft JHIL minutes (with handwritten annotations). This is the third draft of the minutes.	ABRed2/720, LJ [1192] ABWhi94, CA [474]

No	Date	Description of event	Appeal Book references
			ABBlu5/1912-1918
8.	14 February 2001	Email from Robb to Shafron attaching draft JHIL minutes. This is the fourth draft of the minutes.	ABRed2/720, LJ [1192] ABWhi94, CA [475] ABBlu5/1928 ABBlu5/1929-1935]
9.	15 February 2001 (8.05am)	Email from Robb to Shafron: " <i>Revised minutes for your review</i> ". This is the fifth draft of the minutes.	ABRed2/720, LJ [1192] ABWhi94, CA [477] ABBlu5/2102 ABBlu5/2103-2111
10.	21 March 2001	Email from Shafron to Macdonald attaching " <i>Draft Feb 00 Minutes</i> ". This is the sixth draft of the minutes.	ABWhi94, CA [479] ABBlu6/2671 ABBlu6/2672-2679
11.	27 March 2001	April 2001 Board Papers containing Agenda and draft February 2001 JHIL Board minutes.	ABRed2/720-721, LJ [1193] ABWhi95, CA [482] ABBlu6/2543-2545 ABBlu6/2580-2587 See ABBlu6/2686
12.	30 March 2001	Email from Shafron to Robb attaching JHIL minutes in draft.	ABRed2/722, LJ [1201]

No	Date	Description of event	Appeal Book references
			ABWhi95, CA [480] ABBlu7/2830 ABBlu7/2831-2838
13.	3-4 April 2001	April 2001 JHIL Board Meeting. February 2001 Board minutes confirmed as correct record.	ABRed2/412, LJ [53] ABWhi93, CA [467] ABBlu7/2839-2841
14.	At or following the April Board meeting	McGregor signs minutes of 15 February 2001 JHIL Board meeting.	ABRed2/412 , LJ [53] ABWhi93, CA [467] ABBlu5/2118-2125 ABBlu7/2865
15.	5– 7 April 2001	Email exchanges between Shafron and Kneeshaw re JHIL minute book.	ABRed2/413-414, LJ [56] ABBlu7/2865-2866

**ASX ANNOUNCEMENT AIDE MEMOIR**

	<b>Date/Time</b>	<b>Relevant document(s)</b>	<b>Description of event</b>	<b>Appeal Book references</b>
1	14 February 7:28PM	Email from Jane Rotsey to Greg Baxter and Steve Ashe and copied to Brian Tyson, Emma Burlington and Tony Park	Attaches a number of documents including a draft announcement. This version is referred to in the LJ as the 7:28pm Draft Announcement.	ABRed2/427-428, 443; LJ [103], [107], [127]-[128]  ABWhi/40-42, 45, 47 and 66; CA [189]-[191], [200]-[202], [210], [309]  ABBlu5/2006; ABBlu5/2017 – 2018 (draft announcement)
2	15 February 6:57AM	Email from Greg Baxter to Jane Rotsey and copied to Steve Ashe	Attaches changes to other documents but no changes to 7:28pm Draft Announcement.	ABRed2/430-431; LJ [109]. Note: 7.57am version referred to in LJ is at ABBlu5/2088  ABWhi/45, 75; CA [204], [363]-[364]  ABBlu5/2071; ABBlu5/2083-2084 (draft announcement)
3	15 February 7:24AM	Email from Greg Baxter to Jane Rotsey	Attaches changes to the 7:28pm Draft Announcement with amendments by Baxter in mark up with deletions in text boxes. This version is referred to in the LJ as the 7:24am Draft Announcement.	ABRed2/431-433, 443, 445, 460-463, 465-467; LJ [110] – [111], [129], [135],

	Date/Time	Relevant document(s)	Description of event	Appeal Book references
			<p>According to Baxter’s affidavit evidence, this is version that he took to the Board meeting on 15 February 2001 without the text boxes or the mark-up: ABBlu10/4615, Baxter affidavit, [113] and ABBlu12/5311, Baxter 2<sup>nd</sup> affidavit, [2]. The Draft ASX Announcement is in the same form as the 7:24am Draft Announcement except it has the changes accepted.</p> <p>The following amendments were made (with the deleted text below appearing in boxes on the right hand side of the actual draft announcement):</p> <p>...</p> <p><del>The Foundation’s purpose is to will have sufficient funds to meet all legitimate compensation claims from people injured by asbestos products manufactured in the past by manage all future litigation arising from the past manufacturing of asbestos containing products by two former subsidiaries of JHIL, and fund legitimate compensation claims.</del></p> <p>JHIL CEO, Mr Peter MacdDonald said that the establishment of a fully-funded Foundation provided the best resolution for all stakeholders.</p> <p>“The establishment of the Medical Research and Compensation Foundation provides certainty for people with a legitimate claim against the former James Hardie companies which manufactured asbestos products,” Mr MacdDonald said.</p> <p><del>“It also resolves</del>The Foundation will concentrate solely on asbestos for</p>	<p>[194]-[195], [197], [200]-[201], [213], [219]-[220]</p> <p>ABWhi/45-47, 54, 66, 73-75, 77-78; CA [203], [207]- [210], [241]-[242], [308]-[309], [359]-[360], [363], [377], [381]</p> <p>ABBlu5/2085; ABBlu5/ 2086-2087 (draft announcement)</p> <p>ABBlu10/4615, Baxter [113] ABBlu12/5311, Baxter 2nd affidavit [2]</p>

	Date/Time	Relevant document(s)	Description of event	Appeal Book references
			<p><u>the benefit of claimants allowing James Hardie's asbestos liability and allows it to pursue its very exciting growth prospects for the benefit of shareholders."</u></p> <p>A separate fund of \$3 million has also been set aside <u>for scientific and medical research aimed at finding treatments and cures for asbestos diseases.</u></p> <p>...</p> <p><u>In establishing the Foundation, James Hardie sought expert advice from a number of firms, including actuaries Trowbridge, Access Economics and PricewaterhouseCoopers. This advice supplemented the company's long experience in the area of asbestos and formed the basis of determining the level of funding required to meet all claims.</u> <del>information from a range of specialist advisors. It also has many years of experience in managing this issue and has formed a very well rounded view of the funding required to meet current and future claims.</del></p> <p>"The directors of James Hardie are satisfied that the Foundation will have sufficient funds to meet all future claims," Mr MacdDonald said.</p> <p>...</p> <p>Mr MacdDonald said, Sir Llewellyn Edwards, who had resigned as a director of James Hardie Industries Limited to take up his new appointment as chairman of the Foundation has enjoyed a long and distinguished career in medicine, politics and business. He is a director of a number of organizations including Westpac Banking Corporation</p>	

	Date/Time	Relevant document(s)	Description of event	Appeal Book references
			and is also Chancellor of the University of Queensland.	
4	15 February	Draft announcement	The BIL version of the announcement is the 7:24am Draft Announcement with all the mark up (underlined text and boxes) accepted. This version is the Draft ASX Announcement.	ABRed2/461-463, 465, 466; LJ [196], [198], [201], [215], [219]  ABWhi/76, 78; CA [371]-[375], [382], [384]  ABBlu5/2051-2052
5	15 February	Draft announcement	This ALNS version of the announcement is in the same form as the 7:24am Draft Announcement with all mark up accepted.  The handwritten notations in this version to the 3 <sup>rd</sup> and 10 <sup>th</sup> paragraphs are as follows:  <u>On the basis of detailed actuarial analysis</u> The Foundation will <del>is expected to</del> <sup>1</sup> have sufficient funds to meet all legitimate compensation claims from people injured by asbestos products manufactured in the past by two former subsidiaries of JHIL.  ...  In establishing the Foundation, James Hardie sought expert advice from	ABRed2/461-462, 465-466; LJ [197]-[198], [214] [217]-[219]  ABWhi/72-73, 76, 78; CA [348]- [349], [350]-[353], [376], [382] -[384]  ABBlu5/2185-2186

<sup>1</sup> These words had been added in handwriting but may have a line through them.

	Date/Time	Relevant document(s)	Description of event	Appeal Book references
			<p>a number of firms, including actuaries Trowbridge, Access Economics and PricewaterhouseCoopers. This advice supplemented the company's long experience in the area of asbestos and formed the basis of determining the level of funding required to meet all future claims.</p> <p>The 7:42pm Draft Announcement (as set out at item 13 below) deleted the word "all" in the 10<sup>th</sup> paragraph (the words "to meet all future claims" are replaced by the words "by the Foundation") and in the 11<sup>th</sup> paragraph.</p>	
6	15 February	Draft announcement	<p>This ALNS version of the announcement is in the same form as the 7:24am Draft Announcement with all mark up accepted.</p> <p>The handwritten notations in this version to the 3<sup>rd</sup> paragraph are as follows:</p> <p><u>On the basis of detailed analysis from actuaries</u> The Foundation <del>will have</del> <u>[is expected]</u><sup>2</sup> has sufficient funds to meet all legitimate compensation claims from people injured by asbestos products manufactured in the past by two former subsidiaries of JHIL.</p> <p>The 7:42pm Draft Announcement (as set out at item 13 below) deleted the words "will have" and added the word "has" to the 3<sup>rd</sup> paragraph.</p>	<p>ABRed2/461-462, 465-466; LJ [197]-[198], [214], [217]-[219]</p> <p>ABWhi/71-73, 76, 78; CA [346]-[347], [350]-[353], [376], [382]-[384]</p> <p>ABBlu5/2187-2188</p>
7	15	Email from Jane	Attaches a revised draft announcement. This is referred to in the LJ as	ABRed2/433-435, 442,

<sup>2</sup> These words had been added in handwriting but have a heavier line through them.

	Date/Time	Relevant document(s)	Description of event	Appeal Book references
	February 9:35AM	Rotsey to Greg Baxter and Melissa Wheeler	<p>the 9:35am Draft Announcement.</p> <p>All boxes (except for one in the 3<sup>rd</sup> paragraph) were deleted in this version and the following change was made to the text (6<sup>th</sup> paragraph):</p> <p>“The Foundation will concentrate solely <u>meeting the needs of and on</u> <del>asbestos for the benefit of claimants</del> allowing James Hardie to pursue its very exciting growth prospects for the benefit of shareholders.”</p>	<p>460-463; LJ [112], [125], [195], [201]</p> <p>ABWhi/47-48, 68-70, 73-76; CA [211]-[213], [321], [327], [337], [360], [364]-[369]</p> <p>ABBlu5/2126; ABBlu5/ 2127-2128 (draft announcement)</p>
8	15 February 1:11PM	Email from Melissa Wheeler to Steve Ashe	Attaches 9:35am Draft Announcement.	<p>ABRed2/435; LJ [113]</p> <p>ABBlu5/2134; ABBlu5/2135-2136 (draft announcement)</p>
9	15 February 2:46PM	Facsimile from Stephen Harman to David Brett (PWC)	<p>Seeking confirmation that acceptable to use PWC name in announcement.</p> <p>Attaches draft announcement, which has removed the box from the 3<sup>rd</sup> paragraph of the 9:35am Draft Announcement. Brett asked Harman to change the wording of the second sentence of the 10<sup>th</sup> paragraph to emphasise that the directors themselves determined the level of funding required by the Foundation and Harman said that “we will makes those changes”: ABBlu10/4522, Brett [57]. Harman relayed Brett’s comments</p>	<p>ABRed2/436; LJ [114]</p> <p>ABWhi/70; CA [337]</p> <p>ABBlu5/2142; ABBlu5/2143 – 2144; ABBlu5/2145</p> <p>ABBlu10/4522, Brett [57]</p>

	<b>Date/Time</b>	<b>Relevant document(s)</b>	<b>Description of event</b>	<b>Appeal Book references</b>
			to Baxter who had carriage of the document: ABBlu11/4922; Harman [170].	ABBlu11/4922, Harman [170]
10	15 February 3:40PM (AUS TIME)	Email from David Brett to Stephen Harman	Confirmation from PWC that references to it in the draft announcement are acceptable.	ABBlu5/2129
11	15 February 4:15PM	Email from Melissa Wheeler to Greg Baxter	Attaches 9:35am Draft Announcement.	ABBlu5/2148; ABBlu5/2160 – 2161 (draft announcement)
12	15 February 4:58PM (AUS TIME)  15 February 5:07PM	Email from Melissa Wheeler to Peter Shafron  Email from Peter Shafron to Melissa Wheeler	In an email at 4:58pm Wheeler acknowledges a request by Shafron for a soft copy of the media release, but says that “Greg is currently working on it so once final will send it through”.  Shafron responds in an email at 5:07pm: “whatever you have now please” so that he can obtain approval from Trowbridge to cite them.	ABWhi/70; CA [337]  ABBlu5/2162
13	15 February 7:42PM	Email from Greg Baxter to Melissa Wheeler	Attaches a revised draft announcement. This is referred to in the LJ as the 7:42pm Final Draft Announcement.	ABRed2/436-439, 469; LJ [115], [121], [229]-[230]

	Date/Time	Relevant document(s)	Description of event	Appeal Book references
			<p>Baxter agreed in XX that the changes in paragraphs 1, 3, 4, 6, 9, 10, 11 and 13 of this version were significant: ABBla1/403 – 408/ T:795 at 1 – T:800 at 38.</p> <p>The following amendments were made to the 9:35am Draft Announcement:</p> <p><del>Draft 2 news release</del> <u>Final</u></p> <p>...</p> <p>James Hardie Industries Limited (JHIL) announced today that it has established a foundation to compensate sufferers of asbestos-related diseases with claims against <u>two former James Hardie subsidiaries</u> <del>the company</del> and fund medical research aimed at finding cures for these diseases.</p> <p>The Medical Research and Compensation Foundation (Foundation), to be chaired by Sir Llewellyn Edwards, will be completely independent of JHIL and will commence operation with assets of \$284-<u>285</u> million.</p> <p>The Foundation <del>has</del><u>will have</u> sufficient funds to meet all legitimate compensation claims <u>anticipated</u> from people injured by asbestos products <u>that were</u> manufactured in the past by two former subsidiaries of JHIL.</p> <p>JHIL CEO, Mr Peter Macdonald said that the establishment of a fully-funded Foundation provided <u>certainty</u> <del>the best resolution</del> for all <u>both claimants and stakeholders</u> <del>shareholders</del>.</p>	<p>ABWhi/48-49, 68-69, 72; CA [215]-[216], [218], [321]-[336], [350], [352]</p> <p>ABBlu5/2166; ABBlu5/2167 – 2168 (draft announcement)</p> <p>ABBla1/403-408</p>

	Date/Time	Relevant document(s)	Description of event	Appeal Book references
			<p>...</p> <p><u>“The Foundation will concentrate on managing its substantial assets for the benefit of claimants. Its establishment has effectively resolved James Hardie’s asbestos liability and this will allow management to focus entirely on growing the company -solely meeting the needs of and allowing James Hardie to pursue its very exciting growth prospects for the benefit of all shareholders.”</u></p> <p>A separate fund of \$3 million has also been <u>granted to the Foundation set aside</u> for scientific and medical research aimed at finding treatments and cures for asbestos diseases.</p> <p>The \$284-285 million <u>assets of vested into</u> the Foundation includes a portfolios of <u>commonly traded shares long term securities</u>, a substantial cash reserve, properties which earn rent and insurance policies which cover <u>various types of claims, including all workers compensation claims</u>.</p> <p><del>Fund manager,</del> Towers Perrin has been appointed to <u>manage advise</u> the Foundation’s <u>on its investments</u>, which will generate investment income and capital growth.</p> <p>In establishing the Foundation, James Hardie sought expert advice from a number of firms, including <u>PricewaterhouseCoopers, Access Economics and the actuarial firm, Trowbridgeactuaries Trowbridge, Access Economics and PricewaterhouseCoopers. With This this</u> advice, <u>supplemented supplementing</u> the company’s long experience in the area</p>	

	Date/Time	Relevant document(s)	Description of event	Appeal Book references
			<p>of asbestos, <u>the directors of JHIL</u> and formed the basis of determining <u>determined</u> the level of funding required to <del>meet all future claims</del> <u>by the Foundation</u>.</p> <p><del>The directors of James Hardie</del> <u>is</u> satisfied that the Foundation <del>will have</del> <u>has</u> sufficient funds to meet all <u>anticipated</u> future claims,” Mr Macdonald said.</p> <p>...</p> <p>When all future claims have been concluded, <del>the Foundation will convert any remaining assets to cash and these surplus funds will be used to support further scientific and medical research</del> <u>donated to a reputable medical and or scientific research organisation involved in work on lung diseases.</u></p> <p>Mr Macdonald said, Sir Llewellyn Edwards, who <del>had</del> <u>has</u> resigned as a director of James Hardie Industries Limited to take up his new appointment as chairman of the Foundation, has enjoyed a long and distinguished career in medicine, politics and business.</p> <p><u>His experience with James Hardie will assist the Foundation to rapidly acquire the knowledge it needs to perform effectively. He</u> <del>Sir Llew</del> is a director of a number of organizations including Westpac Banking Corporation and is also Chancellor of the University of Queensland.</p> <p>The other Foundation directors <del>include</del> <u>are</u> Mr Michael Gill, Mr Peter Jollie and Mr Dennis Cooper.</p>	
14	15	Email from Peter	Informing David Minty that the JHIL Board approved the deal and that	ABRed2/445; LJ [136]

	<b>Date/Time</b>	<b>Relevant document(s)</b>	<b>Description of event</b>	<b>Appeal Book references</b>
	February 8:12PM	Shafron to David Minty, copied to Karl Marshall	“The wording we propose in the press release simply says that James Hardie got advice from Trowbridge (and Access Economics, and PWC) ... I trust that you are OK with that”.	ABBlu5/1956
15	15 February 9:27PM	Email from Melissa Wheeler to Melanie Coghlan	Attaches 7:42pm Final Draft Announcement with no changes.	ABRed2/439, LJ[118]  ABBlu5/2169; ABBlu5/2170- 2171 (draft announcement)
16	15 February 10:10PM	Email from Melanie Coghlan to Melissa Wheeler	Attaches a further revised announcement. This is the form of the Final ASX Announcement.  This version is put into final form with relevant James Hardie details and the following amendments were made to paragraphs 2 and 8 of the text:  ...  The Medical Research and Compensation Foundation ( <del>Foundation</del> <u>MRCF</u> ), to be chaired by Sir Llewellyn Edwards, will be completely independent of JHIL and will commence operation with assets of \$ <del>285-293</del> million.  ...  The \$ <del>285-293</del> million assets of the Foundation include a portfolio of long term securities, a substantial cash reserve, properties which earn	ABRed2/439; LJ [119]  ABBlu5/2172; ABBlu5/2173 – 2174 (draft announcement)

	<b>Date/Time</b>	<b>Relevant document(s)</b>	<b>Description of event</b>	<b>Appeal Book references</b>
			<p>rent and insurance policies which cover various types of claims, including all workers compensation claims.</p> <p>The draft also incorporated a rider on the second page as follows:</p> <p><u>“This document contains forward-looking statements. Forward-looking statements are subject to risks and uncertainties and, as a result, readers should not place undue reliance on such statements. The inclusion of these forward-looking statements should not be regarded as a representation that the objectives of plans described will be realised.”</u></p>	
17	16 February	Letter from Donald Cameron to ASX	Attaches the Final ASX Announcement for release to the market.	<p>ABRed2/439; LJ [120]</p> <p>ABWhi/49-50; CA [218]</p> <p>ABBlu6/2386;  ABBlu6/2387 – 2388  (final announcement)</p>

## ANNEXURE

### Comparison between "Draft ASX Announcement" and "Final ASX Release"

~~Legally privileged and confidential — for legal advice only~~

~~Draft news release~~

1614 February 2001

#### **James Hardie resolves its Asbestos Liability Favourably for Claimants and Shareholders**

James Hardie Industries Limited (JHIL) announced today that it had established a foundation to compensate sufferers of asbestos-related diseases with claims against two former James Hardie subsidiaries ~~the company~~ and fund medical research aimed at finding cures for these diseases.

The Medical Research and Compensation Foundation (~~MRCF~~ Foundation), to be chaired by Sir Llewellyn Edwards, will be completely independent of JHIL and will commence operation with assets of ~~\$293284~~ \$293.284 million.

The Foundation ~~has~~ will have sufficient funds to meet all legitimate compensation claims anticipated from people injured by asbestos products that were manufactured in the past by two former subsidiaries of JHIL.

JHIL CEO, Mr Peter Macdonald said that the establishment of a fully-funded Foundation provided certainty for both claimants and shareholders ~~the best resolution for all stakeholders~~.

"The establishment of the Medical Research and Compensation Foundation provides certainty for people with a legitimate claim against the former James Hardie companies which manufactured asbestos products," Mr Macdonald said.

"The Foundation will concentrate on managing its substantial assets for the benefit of claimants. Its establishment has effectively resolved James Hardie's asbestos liability and this will allow management to focus entirely on growing the company ~~solely on asbestos for the benefit of claimants allowing James Hardie to pursue its very exciting growth prospects for the benefit of shareholders.~~"

A separate fund of \$3 million has also been granted to the Foundation ~~set aside~~ for scientific and medical research aimed at finding treatments and cures for asbestos diseases.

The ~~\$293284~~ million assets ~~of vested into~~ the Foundation includes a portfolios of long term securities ~~commonly traded shares~~, a substantial cash reserve, properties which earn rent and insurance policies which cover various types of claims, including all workers compensation claims.

~~Fund manager,~~ Towers Perrin has been appointed to advise the Foundation on its ~~manage the~~ Foundation's investments, which will generate investment income and capital growth.

In establishing the Foundation, James Hardie sought expert advice from a number of firms, including actuaries Trowbridge, Access Economics and PricewaterhouseCoopers, Access Economics and the actuarial firm, Trowbridge. ~~With t~~ This advice, supplementing the company's long experience in the area of asbestos, the directors of JHIL ~~and formed the basis of~~ determining ing the level of funding required by the Foundation ~~to meet all future claims~~.

~~The directors of James Hardie~~ is are satisfied that the Foundation ~~has~~ will have sufficient funds to meet ~~anticipated~~ all future claims," Mr Macdonald said.

The initial \$3 million for medical research will enable the Foundation to continue work on existing programs established by James Hardie as well as launch new programs.

When all future claims have been concluded, ~~the Foundation will convert any remaining assets to cash and these surplus funds will be used to support further~~ denated to a reputable medical and or scientific and medical research ~~organisation involved in work~~ on lung diseases.

Mr Macdonald said, Sir Llewellyn Edwards, who ~~has~~ resigned as a director of James Hardie Industries Limited to take up his new appointment as chairman of the Foundation, has enjoyed a long and distinguished career in medicine, politics and business. His experience with James Hardie will assist the Foundation to rapidly acquire the knowledge it needs to perform effectively. Sir Lew He is a director of a number of organisations including Westpac Banking Corporation and is also Chancellor of the University of Queensland.

The other Foundation directors ~~are~~ include Mr Michael Gill, Mr Peter Jollie and Mr Dennis Cooper.

~~E~~ends-

For further details contact information:

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**This document is available from the Investor Relations Section of the James Hardie website - [www.jameshardie.com](http://www.jameshardie.com).**

This document contains forward-looking statements. Forward-looking statements are subject to risks and uncertainties and, as a result, readers should not place undue reliance on such statements. The inclusion of these forward looking statements should not be regarded as a representation that the objectives or plans described will be realised.

**WITNESSES NOT CALLED AIDE MEMOIR**

<b>No.</b>	<b>Date</b>	<b>Description of event</b>	<b>Appeal Book References</b>
1.	14 February 2007	Commencement of proceedings.	ABRed1/1
2.	3 March 2008	ASIC commenced serving affidavits, outlines of evidence and list of topics. The material served on 3 March 2008 included a list of topics identifying documents for Wilson of UBS.	ABWhi126, CA [675]
3.	7, 14 March 2008	ASIC served Lists of Topics for witnesses in accordance with the procedural directions for each of Robb of Allens and Sweetman of UBS.	ABRed2/463, LJ [205] ABWhi122, CA [649] ABBlu10/4662 ABBlu11/4759
4.	June – August 2008	ASIC served subpoenas on witnesses intending to call, including Robb.	ABWhi122, CA [650]
5.	2 September 2008	ASIC served the affidavit of Sweetman sworn 1 September 2008 which was intended to replace the list of topics served 14 March 2008 and advised the parties that it would seek leave to rely upon it at the hearing.	ABRed2/463, LJ [205] ABWhi126, CA [676] ABBlu11/5078
6.	8 September 2008	ASIC advised by Allens of the relaxation by JHINV and ABN60 of a duty of confidentiality said to be owed to them by the Allens witnesses.	ABBlu12/5224
7.	9 September 2008	ASIC wrote to the parties advising that it proposed to attempt to obtain affidavits or outlines of evidence for each of the Allens witnesses for whom List of Topics had previously been served, including Robb.	ABWhi122, CA [651] ABBlu12/5224
8.	15 September 2008	Atanaskovic Hartnell (solicitors for the 4th-7th defendants) requested in a letter to ASIC that it confirm that: <i>'in order to minimise the prejudice to the defendants to the proceedings, ASIC will give priority to the preparation and service of statements of those of the Allens witnesses who ASIC has asserted are 'major' witnesses'</i> .	DOC.08DEF.001.0090
9.	15 September 2008	ASIC wrote to the parties advising that it intended to serve an affidavit of Robb (amongst others) and the preparation of it was <i>"underway"</i> and that an affidavit	DOC.08DEF.001.0096

No.	Date	Description of event	Appeal Book References
		would be provided to the defendants " <i>at the earliest opportunity</i> ".	
10.	16 September 2008	ASIC wrote to the Court advising that it intended to call a number of Allens witnesses, including Robb, and was in the process of attempting to obtain affidavits or outlines of evidence from them as soon as practicable to do so.	ABRed2/463, LJ [205] ABWhi122, CA [652] ABBlu12/5226
11.	22 September 2008	ASIC informed the Court that they " <i>had exemplary cooperation from the Allen's [sic] witnesses</i> " in endeavouring to provide statements as soon as possible. The Court directed ASIC at the directions hearing to use its best endeavours to serve on the second and ninth defendants affidavits of Robb, Williams and other Allens solicitors by no later than 10.15am on 29 September 2008.	ABWhi123, CA [653] ABBlu1/2O ABBlu1/2R ABBlu1/2W-3C
12.	29 September 2008	The trial commenced. The affidavits of the Allens solicitors had not been served.	ABWhi123, CA [654]
13.	6 October 2008	ASIC wrote to the parties advising that it would not be reading the affidavits of Sweetman and Mackay (previously served) and that it would not be calling Wilson as a witness.	ABRed2/463, LJ [205] ABWhi126, CA [677] ABBlu12/5306
14.	7 October 2008	Robb's solicitors wrote a letter to ASIC enclosing part 1 of Robb's draft statement/affidavit/outline of evidence and which stated that they anticipated providing the draft of part 2 " <i>later this week</i> ", and asked " <i>if you and your counsel would like to meet with Mr Robb tomorrow or on the weekend</i> ".	ABWhi123, CA [656] ABBlu12/5308
15.	8 October 2008	<p>ASIC informed the Court that:</p> <ul style="list-style-type: none"> <li>• ASIC still did not have an affidavit from Robb;</li> <li>• the delay in obtaining an affidavit from Robb had caused ASIC to consider whether the Allens witnesses were truly part of ASIC's case in chief;</li> <li>• the defences were being reviewed to ascertain whether any defendant raised a positive defence of reliance on Allen's advice; and</li> <li>• ASIC was considering whether or not to call Robb and other Allens' witnesses and sought the opportunity to make a decision by the close of business that day.</li> </ul>	ABWhi123-124, CA [657]-[660] ABBlu1/218

No.	Date	Description of event	Appeal Book References
		Counsel for the ninth defendant stated that Mr Willcox had denied and the other defendants had not admitted the allegation of voting in favour of a resolution to approve and issue a draft ASX announcement and accordingly, that the alleged resolution was in issue.	T:593 at 41 – T:595 at 8
16.	9 October 2008	ASIC wrote to the parties advising that it would not be serving a statement or affidavit for Robb, Blanchard or Frangeskides (of Allens), nor calling any of those people to give evidence in its case in chief and that it would be standing over subpoenas.	ABRed2/463, LJ [204] ABWhi124, CA [661] ABBlu12/5309
17.	21 October 2008	ASIC consented to all defendants having access to a draft of the first part of Robb's statement after initially claiming privilege in relation to it. That document was being sought pursuant to a notice to produce.	ABWhi124, CA [662] ABBla2/476B-F
18.	22 October 2008	<p>Robb's solicitors, HWL Ebsworth, wrote letters to the eighth and ninth defendants advising them that Robb was not prepared to meet with them or with the other parties.</p> <p>The letters both stated:</p> <p><i>"Since ASIC informed the Court that it was considering whether it would call any of the Allens witnesses in chief, Mr Robb has been approached by a number of different interests in the litigation requesting a meeting.</i></p> <p><i>We have instructed that Mr Robb is not prepared to meet with you or those other parties at this time."</i></p>	ABRed2/711, LJ [1142] ABWhi125, CA [665] ABBlu12/5409 ABBlu12/5411
19.	4 November 2008	ASIC closed its case.	