

## **Hardie lesson for Murdochs in investor relations**

By Alan Kohler  
*SMH*

October 2, 2004

It's time for Rupert and Lachlan Murdoch to prepare Plan B, assuming there is one. Maybe it's just Plan C, for crash or crash through.

Our other business school case study on corporate governance, James Hardie, is currently implementing its own humiliating Plan B — having given up the “no more money to asbestos victims” Plan A.

Now they're in the negotiating room opposite Greg Combet and Jack Rush, feeling the saddlebags of perspiration spread around their armpits as “more money” turns into “more and more” before their hollowed eyes.

With Hardie, the nature and inevitability of Plan B has been obvious for months, although implementing it is going to be torture. With News Corp, though, it's not very clear what it is or whether there is one at all.

The News Corp Plan A is about as dead as the James Hardie one, a possibility that seems never to have entered a Murdoch head.

The corporate governance movement against News Corp's reincorporation now has considerable momentum; as one investor said this week, it's a bit like the civil rights movement — “it's not something you want to be on the wrong side of”.

And being seen as an “I don't care about corporate governance” is very much on the wrong side in funds management these days.

The Murdoch family could keep the family business — Cruden/Queensland Press — or sell it to someone else, so they can vote on the reincorporation and thereby force it through.

But there are a few problems with that: a \$300 million capital gains tax liability would be crystallised, which the current deal structure avoids, and the information memorandum as it now stands has cost a fortune and has been approved by the Australian Securities and Investments Commission and the courts, so starting again would be a nightmare.

Then again, holding the meeting on October 26 and going down in flames would also be a nightmare. Pick your nightmare.

But most importantly, if the family used its own vote to force through a deal that is widely seen as weakening shareholder protections, to the family's benefit, News Corp would become a global corporate governance pariah.

You might say it already is, or that the Murdochs couldn't care less, and you may be right. But surely someone in the place who is not a total yes person — perhaps, God forbid, on the board — would point out that, ahem, it might be a “courageous” decision, Rupert, to, um, you know, press on with this.

Murdoch is setting himself up to be made an example of by the world's pension funds. They don't care where News Corp is incorporated — they might even think moving to the US is sensible and inevitable — but his Rupertship needs to understand that a line has been drawn here and he is going to lose. His only hope of success with the

venture is to leave shareholder protections as they are, but the trouble is that might remove the whole point of the exercise.

The common thread between James Hardie and News Corp is the role of directors.

News Corp has four “independent” directors: Geoff Bible, Tom Perkins, Viet Dinh and Peter Barnes. They appear not to have played any role in negotiating an improvement in the deal on behalf of minority shareholders. They don’t seem to be angry and they must be at least slightly embarrassed that pension funds and proxy advisory firms are now doing their job for them.

With Hardie, superficially, it is about the conflict between the directors’ fiduciary duty to shareholders and a moral duty to other stakeholders, namely asbestos victims. In fact, it’s really about the short-term and long-term interests of shareholders because while the attempt in 2001 to limit the funds available to victims might have looked in shareholders’ interests then, it wasn’t really. It was short-sighted and ultimately destructive.

In a way, their failure to sack CEO Peter Macdonald and CFO John Shafron, in favour of demoting them on full pay this week, is admission of complicity.

Clearly, the board was misled by Macdonald and Shafron in 2001 when the Medical Research and Compensation Foundation was set up.

In saying the MRCF was “fully funded” Macdonald and Shafron were relying on a Trowbridge report that had answered the wrong question: Trowbridge had estimated Hardie’s likely future compensation liability, not what sum would need to go into a foundation to “fully fund” all liabilities — which would need to include a significant buffer to deal with claims escalations.

David Jackson, QC, found that Macdonald and Shafron had deliberately framed the question in this way, but that Trowbridge owed a duty of care to the incoming directors of the MRCF to explain the difference, which they failed to fulfil.

And what were the directors of Hardie doing? They didn’t want to know and knew what it was they didn’t know.

How do we know this? Because they are not angry.

Alan Kohler also presents finance on the ABC. [mail@alankohler.com](mailto:mail@alankohler.com)