

## **Flagrant breaches end careers of directors**

Elisabeth Sexton

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“SERIOUS” and “flagrant” breaches of duty have deprived 10 former directors and executives of James Hardie of their livelihoods in the nation’s boardrooms for at least five years and cost them fines of at least \$30,000 each.

Still unresolved is whether some of the 10 will be obliged to reimburse the company for legal fees totalling tens of millions of dollars.

The NSW Supreme Court yesterday refused to excuse any of the defendants from findings in April that they breached their duties to the company in 2001 over a misleading media release about asbestos compensation. The release said a new compensation trust would be “fully funded” and offered “certainty” to claimants suffering from asbestos diseases.

Yesterday Justice Ian Gzell said the information available to the directors who approved the release did not support its emphatic wording, and they ought to have known it was misleading.

The release was a deliberate attempt to win acceptance of the trust and the removal of asbestos claims from the James Hardie group, the judge said.

“This was a serious breach of duty and a flagrant one,” he said.

James Hardie has been paying the defence bills for all defendants, with some money coming from its insurers. The company, which was also a defendant, spent \$US21 million (\$25 million) on the case. Its 2009 annual report said some of the 10 might have to reimburse money.

The Corporations Act restricts companies from paying the legal bills of directors and executives who unsuccessfully defend civil penalty suits such as this one. But this might not apply to indemnities given by overseas companies in the James Hardie group.

Justice Gzell said each party should bear its own costs because the Australian Securities and Investments Commission had won its claim on the misleading release, but had failed to prove its allegations about documentation relating to James Hardie’s shift to the Netherlands in late 2001.

The heaviest penalty, for 11 contraventions by the former chief executive Peter Macdonald, 57, was a 15-year disqualification from company management and a \$350,000 fine.

Given his leadership of the plan to establish the trust, his conduct was “a gross departure

from the requisite standard of care and diligence”, the judge said. “There was persistence in making false representations that the [trust] was fully funded.”

The former general counsel Peter Shafron, 48, and the former chief financial officer Phillip Morley, 61, were banned for seven and five years respectively and fined \$75,000 and \$35,000.

The former non-executive directors Michael Brown, 63, Michael Gillfillan, 61, Meredith Hellicar, 55, Martin Koffel, 70, Dan O’Brien, 53, Greg Terry, 64, and Peter Willcox, 64, were each banned from boardrooms for five years and fined \$30,000.

The judge referred to “glowing” testimonials, but said “considerations of general deterrence and retribution remain”.

The asbestos campaigner Karen Banton, whose late husband Bernie led the public fight against the company, said she would have liked the fines to be “a lot higher”, but was “very satisfied” with the disqualifications.