

To the victor at the negotiating table go the spoils

Fiona Buffini

Australian Financial Review

22 December 2004

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The ACTU has received most of what it initially demanded, write Marcus Priest and Fiona Buffini.

It was almost 10 o'clock on Tuesday night when ACTU boss Greg Combet called asbestosis sufferer Bernie Banton to report a breakthrough in the asbestos compensation talks.

"When Greg rang me and told me his expression was . . . well I won't use that expression," Mr Banton said with a laugh at a press conference yesterday.

"Let me just say there was pleasure in Greg's voice that a draft agreement would be signed today," he said.

"I never use bad language," Mr Combet retaliated.

The press conference followed 11 weeks of tough negotiations and nearly 30 drafts of heads of agreement. Right until the very last minute, nothing was certain, with final sticking points hammered out late into Tuesday evening in Sydney between representatives of the company and ACTU.

Last week confidence was high on both sides that they would meet a Christmas deadline. But optimism soured on Thursday after the company board equivocated on a draft heads of agreement. On Friday the ACTU gave the company an ultimatum: sign on Monday or negotiations were off.

In the end ACTU managed to strike a deal containing most of what it initially demanded: an open-ended uncapped common law scheme.

As part of the agreement a new special-purpose compensation fund will be established in the company.

One of the final sticking points in negotiations was a demand from the company that the NSW government legislate to extinguish all possible legal claims against the company for civil liability, including those by shareholders.

But months of tough negotiation are not yet over, as the broadbrush talks now give way to finalising a legally binding agreement.

The company's insistence that legal costs arising from claims by asbestos victims be

dramatically reduced which it claims constitute about 36 per cent of compensation paid to claimants became a relentless mantra during negotiations.

At times it appeared to be an insurmountable obstacle. The first draft agreement included a proposal to establish a buffer fund and an annual cap on company payments but it continued to insist on changes to the compensation system, consistent with a statutory scheme, to reduce legal costs.

Even after Mr Combet asked the NSW government in November to conduct an inquiry into ways of reducing legal costs to remove the issue from negotiations, the company returned to the issue.

The outcome of the government inquiry will be revealed in January but the company's insistence that it be able to continue to lobby NSW over legal costs means this is not over as an issue.

The company has had to ditch its insistence on a statutory scheme. However, it has secured an indemnity from future civil legal action, including claims for economic loss for remediation of property affected by asbestos.

While both sides claim having an annual cap on payments was their idea, the cap was the key reason the company agreed to the deal. It provides some financial certainty for investors, who drove the creation of the company's original compensation fund.

The other concession the company demanded relates to clause 16 of the agreement.

After announcing a profit downgrade and indicating the adverse publicity was affecting sales, the company asked the ACTU and Unions NSW to stop making public comments encouraging further boycotts of James Hardie products or any "adverse comment harmful to its sales revenue or business activities".

Mr Combet duly gave such an undertaking yesterday.

Only time will tell whether this will be sufficient for the company to mend its damaged reputation.