

Combet's big-picture win

Fiona Buffini.

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The Hardie deal shows that companies have duties wider than those to investors, reports Fiona Buffini.

Greg Combet is taking a well-earned break. The ACTU secretary has brokered a historic \$1.5 billion deal with James Hardie that it was arguably not legally obliged to make.

The deal forces Hardie to consider the interests of people injured by its asbestos products alongside those of shareholders for the next 40 years.

It's a big win both for community action and for the union movement, which faces an uncertain future in 2005 as the federal government prepares for war on organised labour.

It's an even bigger win for Combet.

"Greg showed incredible commerciality here and a real capacity to see the big picture," says Brian Wilson, the chief of investment bank Lazard, which advised the ACTU.

The deal locks the interests of victims and investors: asbestos victims get first cut of Hardie's cash flow and protection from moves that might hurt funding.

"We've structured it so in considering shareholders' interests, claimants are automatically considered," Wilson says.

It's a timely lesson for corporate Australia, demonstrating that companies have duties wider than those to investors, no matter what the law says. "They have critical obligations to key stakeholders, employees and the community, who have a real say in their success or otherwise," says Philip Spathis of the Council of Superannuation Investors, representing non-profit funds.

Combet says the union campaign against Hardie was free of self-interest. "We are concerned to ensure that members of the Australian community have access to compensation," he says.

"I'm not sure actually if a government could have negotiated in quite the way that we did and conduct a campaign in quite the way that we did."

Ian Ramsay, director of the Centre for Corporate Law and Securities Regulation at the University of Melbourne, says it has always been "appropriate, important and legal" for directors to balance the interests of shareholders and others.

“James Hardie just got it all wrong in a profound manner, for which they’ve paid an enormous price. There’s no doubt they could have done the right thing years ago in full compliance with directors’ duties and with the law generally.”

Business Council of Australia chief Katie Lahey agrees that the community expects more from business than ever before.

“Companies are . . . realising that what’s in the best interests of shareholders is the protection of their reputation in the community.”