

Hardie on its way to settlement

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James Hardie's shareholders have been told they have no legal obligation to pay \$1.5 billion to compensate asbestos victims, but the proposed compensation plan should increase the company's share price and the likelihood of a takeover bid.

An independent expert's report to shareholders about the proposed plan also says its advantages "far outweigh" the potential disadvantages of not passing it, which include likely government legislation and consumer boycotts.

The Hardie board has recommended that shareholders vote to approve the plan on February 7, saying it is "consistent with current investor and Australian community expectations".

The explanatory memorandum sent to shareholders reveals the board did consider alternatives, including not providing any further funding and doing nothing and waiting for its asbestos liability to be resolved.

"The directors concluded that options which did not address the estimated future funding shortfall facing the former James Hardie companies were neither acceptable nor viable," the memorandum says.

"If further compensation is not provided it is highly likely that legislation will be introduced in Australia (and/or overseas) to impose liability on James Hardie in connection with Australian asbestos claims.

"In addition, James Hardie would be exposed to significant commercial risks and losses as a result of consumer boycotts, industrial action, ongoing adverse publicity, and significant financial uncertainty."

That would increase the cost of capital, divert management attention and reduce the share price.

If shareholders do not approve the deal, Hardie's corporate reputation will probably be "significantly damaged", employee morale will suffer and Hardie will lose \$US19.4 million (\$24.6 million) it has spent developing the plan, the memorandum warns.

Independent expert Lonergan Edwards & Associates said a takeover offer for Hardie was "more likely" if the proposal was approved as it resolved uncertainty over the asbestos issue and the annual liability cap improved its financial position.

The plan includes protections requiring a new parent company to assume the asbestos obligations in the event of a takeover.

”Although James Hardie may only have a moral (rather than a legal) obligation to provide funding to asbestos claimants, the risks of not doing so will in our opinion prolong investor uncertainty and continue to adversely impact the share price,“ the expert’s report says.

KEY POINTS

- * The Hardie board recommends approving the compensation plan.
- * An independent expert says the plan would help resolve uncertainty.
- * A memorandum reveals the board considered doing nothing.