

## **ANNEXURE K**

**This is a copy of Exhibit 80, Tab 6**



JAMES HARDIE INDUSTRIES LIMITED  
BOARD PAPER  
PROJECT GREEN BOARD PAPER  
PRIVILEGED & CONFIDENTIAL

**Summary**

We have developed a comprehensive solution to critical issues that James Hardie has been facing for over five years. The solution should be implemented now to maximize potential improvements in shareholder value. Although the plan is not risk free, it is recommended as providing the best outcome from the alternatives that are possible.

The objective is to position James Hardie for future growth and to eliminate legacy issues that would otherwise continue to detract from value creation. Once fully implemented, a focused fiber cement growth company, with an appropriate financial structure, will be in place and legacy issues will have been removed.

**Background**

James Hardie has two ongoing businesses with significantly different investment characteristics leading to differing value perceptions by investors. James Hardie also has significant legacy issues surrounding asbestos product manufacturing activities of some subsidiary companies. To date, the company has not succeeded in implementing a combined solution to these issues. The component parts of a combined solution are:

1. **Separation from legacy issues.** James Hardie Industries Limited (JHIL) does not have legal liability for the obligations of its former asbestos producing subsidiaries. In particular, James Hardie and Coy Pty Ltd and Jsekarb Pty Ltd, two subsidiaries which formerly produced asbestos bearing products and are currently subject to plaintiffs actions on account of injuries caused by asbestos, have current and potential liabilities that have the potential to exceed their net worth. This does not create an obligation for JHIL to meet any shortfall. It is recommended that the shares of these two companies be vested to a Foundation to manage the companies' assets in the interests of current and future creditors. It is also proposed that an additional sum be paid over time (NPV \$70M) to JH & Coy in return for an indemnity and covenant not to sue JHIL and an agreement to take JHIL if it is put to it in the future with no subsidiary companies. Upon the vesting of the shares and additional sums, the vesting of an additional \$3M to support the Foundation in ongoing research into asbestos related diseases, and other establishment costs, JHIL will recognize an extraordinary write off of around \$256M. We are also recommending that JHIL make a direct \$1M once off commitment to support a proposed Asbestos Diseases Research Institute. The gross assets in the companies amount to around \$284M before asbestos related liabilities. The creation of a Foundation as recommended will largely remove asbestos related issues from JHIL and the ongoing James Hardie Group. A separate paper detailing the separation process is included as Attachment A. Communications strategies have been well developed and a paper on communications is included as Attachment B.
2. **Portfolio.** James Hardie has been rationalizing its business portfolio over the past 7 years. It has recently announced its intention to exit an Australian window business, leaving it with just two business streams.

**Fiber Cement.** James Hardie's core business is fiber cement. Previous portfolio efforts have been focused on finding compatible businesses that could be combined with the existing fiber cement or gypsum businesses to fuel higher growth and increased shareholder value. These efforts have been unsuccessful. During the past year, significant gains have been made in fiber cement Research and Development. These have significantly increased our confidence in the ability of the fiber cement business to grow strongly in many markets around the world and to achieve sustainable competitive advantage through offering proprietary products derived from its

technology leadership. Combined, these factors mean that a stand-alone fiber cement business can be successful. Additionally, significant value can be created for shareholders because it will be possible to position fiber cement as a high growth business. The ongoing business can potentially have the following performance over the next few years (assuming gypsum is sold in mid '02 for US\$485M and US\$100M tax is paid by James Hardie) :

(AUD M)	FY '02	FY '03	FY '04
Sales	1100	1320	1580
EBIT	176	189	252
Interest	29	9	5
PBT	147	180	247
Tax	45	29	43
PAT	102	151	204

PAT based on implementation of the restructure and separation

Longer term potential, beyond FY '04 is also very attractive. Fiber cement business models are currently being updated to reflect the latest developments. Detailed models and assumptions will be presented at the April Board strategic review meeting.

**Gypsum.** James Hardie's gypsum business is a comparatively good performer in a relatively low growth USA gypsum industry. However, the gypsum industry has recently entered a significant down cycle which has confirmed in investors minds the cyclical and commodity nature of the industry. As this view has been reinforced, share prices have declined. Additionally, James Hardie Gypsum has been unable to grow via acquisition as prices required have exceeded justifiable levels. Given the attraction of a focused, high growth fiber cement business, the negative perceptions attached to the gypsum business, our inability to describe a strategy to significantly increase Gypsum's value beyond current levels and the fact that timing for an exit seems good (the industry is starting to recover from the recent decline and there is a high level of interest in the James Hardie assets from 3 existing players that wish to expand), it is recommended that an exit from the gypsum business be examined. A detailed paper on Gypsum and a proposed exit process is included in Attachment C.

3. **Financial Restructuring.** An increasing proportion of James Hardie's profit is being earned in the USA (around 80-90% over the past 2 financial years). Profits in the USA are taxed at 38-39% and are currently subject to withholding tax of 30% when remitted to Australia. This results in a highly inefficient tax structure which is expected to impose high tax burdens in the future – the worst effects have been avoided to-date through the use of temporary arrangements. A scheme of arrangement can be used to restructure James Hardie to resolve this issue. A Dutch company owning all the ongoing operations of James Hardie, would be listed on the ASX as its primary listing and the NYSE (using ADRs as the security instrument). Its Dutch finance subsidiary would lend to the operating companies around the world, including the USA subsidiaries, all necessary funding. This would produce an interest deduction in the USA, saving tax at 38-39%. The interest income to the Dutch financial subsidiary would be taxed at 15%, producing an interest derived tax saving of AUD18M pa. This saving is a relatively stable annual amount that will last a minimum of 10 years and can likely be extended well past this point. There is an additional saving available to the extent that Dutch finance company profits are reinvested in capital projects in the USA or elsewhere. Given a consistently large capital program in USA fiber cement, it is reasonable to assume annual tax savings of a further AUD\$1-2M, giving a total annual tax saving of AUD\$19-20M. Following implementation of the restructuring, dividends paid from the Netherlands to shareholders in Australia would be subject to 15% withholding tax, but this would be creditable against Australian tax liability on such income. The same applies to prospective US shareholders in James Hardie. An NYSE listing (initially ADRs, but potentially transitioning to common shares) is required to obtain the tax benefits and would provide a more acceptable currency with which to pursue growth options. Without such a restructure, the punitive 30% withholding tax on dividends from the USA up the corporate chain to JHIL (a real cost to the company) will result in very significant value destruction for JHIL shareholders. In summary, this financial restructuring of James Hardie puts in place a sound financial structure for the company as it exists today. It also



creates a solid footing for future growth. A more detailed explanation of the restructuring is included in Attachment D.

4. **Recommended Solution and Timing.** It is recommended that James Hardie implement all three components of its strategic alignment project as follows:

i. **Implement Separation by creating a Foundation now.** Attachments A & B detail the proposal to separate JHIL from JH & Coy and Jsekarb. Providing that the prospective Foundation directors agree to take up director positions at a final review meeting on Tuesday 13 February, it is recommended that the JHIL Board agree to the creation of the Foundation at its Thursday 15 February meeting for announcement, together with JHIL's Q3 results, on Friday 16 February.

ii. **Seek a sale of Gypsum immediately.** Management should commence a sale process for James Hardie Gypsum immediately with the aim of being able to recommend a sale or other exit strategy (a joint venture has been under development with Lafarge) to the JHIL Board within 3 months, provided proceeds are acceptable. The 3 month timetable would enable the outcome to be announced on or before JHIL's full year results announcement in mid-May. See Attachment C.

iii. **Commence Financial Restructuring before or at year end results announcement.** Implement the recommended financial restructuring which will create JHINV as the dual (ASX/NYSE) listed holding company for James Hardie's operating assets. Post restructure, JHIL will be a wholly owned, non operating subsidiary of JHINV. The restructuring should be announced at the same time a Gypsum sale or JV is announced or, if this was not possible, at the mid-May full year result presentation. We have confirmed that funding is not an issue for JHINV if Gypsum is sold. Without a Gypsum sale gearing of JHINV would be higher than desirable, but there would be no substantial adverse funding risk. A range of alternative funding options are available should operating performance fall below plan levels. See Attachment D for further details and cash flow modeling.

iv. **Overall Timescale.** The complete project should, under this recommendation, be able to be announced by the financial year end announcements and be implemented by August 2001. The August implementation date is achievable, but there are several potential delay points:

- **Gypsum Review.** A Gypsum sale or joint venture could well cause a second request from the FTC, to review competitive implications in the USA gypsum industry. Our advisors are confident of ultimate approval for a sale or joint venture to each of the 3 target acquirers, but completion of the second request process can add 6 months to the timescale. Absent a second request, a Gypsum sale could be completed by July 2001
- **Stakeholder Reaction.** A significantly worse than expected reaction to the creation of the Foundation may require us to re-think the timing and some details of the remainder of the program. It is likely that an exit from Gypsum would enable us to maintain the planned timetable, even in the face of significant "noise" about separation. It is more likely we would consider deferring restructuring on a stand alone basis, as without a Gypsum sale, the commercial rationale for the restructure is less compelling – although still strong. Because the Foundation would already be in place, the opportunity cost of delaying the restructure is around \$1-2M a month in tax savings.

**Alternatives Considered and Rejected.** There are many options that have been considered, developed, and rejected over the lives of Projects Chelsea and Green. Detailed analysis (see Attachment E) shows the next best alternative that could be developed and demonstrates that, for a combination of legal and commercial issues, it is inferior to the recommended proposal. Allens comments on this option (combining separation and restructure) compared to the preferred option are set out in Attachment F.

**Combined separation and restructure with delayed NYSE listing.** The most significant element of the next best proposal is that it seeks to place together the separation and financial restructuring elements in one transaction that is approved by the courts and shareholders under a scheme of arrangement. Its major merit is that, having survived the court process, this option would more rapidly lead to a full asbestos separation (including JHIL) so that risks of

"break through" actions will disappear more quickly than the recommended option (this is less important with a JH & Coy indemnity in place). In contrast, the recommended option initially transfers out of the ongoing structure only JH & Coy and Jsekarb, leaving JHIL in the ongoing "new world". It could take some months for this issue to be addressed – so there is increased exposure. However, because of 20-F/FAS 5 disclosure issues (FAS 5 would necessitate a full long term undiscounted estimate of the likely asbestos liability for all companies in the James Hardie group), we would, under this option, need to delay public filing of documents for an NYSE listing of ADRs until completion of the scheme of arrangement. Combining separation and restructure with a delayed NYSE listing has several increased risks:

- a. **Complexity is multiplied** with the attempt to complete two major transactions at once. This increases risk of error and difficulty in obtaining clear understanding from investors and other stakeholders.
- b. **Execution risk is increased** as a forum is created in the courts and shareholder meetings that enables separation to be fully explored by all stakeholders ahead of execution.
- c. **Delayed NYSE listing would reduce returns** as a listing is required for the Dutch FRR to be effective. Timing for listing would be delayed by 4-6 months. We would be unable to complete a 20-F filing until approval had been granted for separation and restructure – so that audited accounts could be used from which JH & Coy had been deconsolidated. We would then need to obtain SEC approval for the 20-F. Justification for the restructuring would be much more difficult due to delay and uncertainty about future tax benefits of the restructuring. Implementation costs of the restructuring are not small (AUD9M including Dutch capital duties) and the AUD19-20M pa tax savings from gaining access to the FRR are a necessary justification for this expenditure. The combination of creation of a forum for review and debate, and delayed and less certain financial returns, is regarded as increasing execution risk to a materially higher, and unacceptable, level compared to the recommended option.

## Conclusion

The immediate establishment of a Foundation, with further review before the completion of any sale of Gypsum and/or implementation of financial restructuring, is considered the most attractive/lowest risk option and is recommended.

**James Hardie needs to act now.** Delaying creation of a Foundation past financial year end significantly increases the risk of ED 88 complications. Latest intelligence is that ED 88 will be promulgated before the end of this financial year and that CSR will significantly increase its asbestos provisioning by early adopting ED 88 and disclosing details at its full year results announcement in May. While it is possible to delay exploration of a Gypsum exit, this is not recommended. The proposed timing is suitable and a Gypsum exit would provide a compelling commercial justification for a financial restructuring as a significant portion of James Hardie's assets would be being sold and debt would need to be re-financed.

Peter Macdonald  
5 February 2001

## ATTACHMENT A

### SEPARATION ISSUES

#### Summary

This paper covers the creation of a Foundation to hold the shares in JH & Coy and Jsekarb, manage compensation payments to creditors of JH & Coy and Jsekarb, and to manage a separate fund for medical research.

#### Payment to JH & Coy/Jsekarb and Obtaining Indemnity

It is recommended as a first step that JHIL agrees to pay over time \$100M to JH & Coy and Jsekarb (\$70M NPV). In return, JHIL will receive an indemnity from JH & Coy and Jsekarb protecting JHIL from liability associated with:

asbestos product manufacture and sale by JH & Coy and Jsekarb (post 1937); and  
the corporate relationship - i.e. the provision of services and the receipt of dividends and fees.

Also in return, JH & Coy would give a commitment to accept shares in JHIL if JHIL is put to it as a non operating subsidiary without subsidiary companies or operational obligations. At that time, any operational obligations of JHIL (e.g. guarantees, subsidiaries) would transfer to the operational (JHINV) side of the business and JHIL's main interest would be as the former holding company of JH & Coy and Jsekarb. JH & Coy would already be responsible for any JHIL asbestos liability and merely acquiring JHIL shares would not impose any additional liability, beyond management responsibility for its affairs.

From the JHIL perspective, the additional equity is supported by:

the desire to ensure JH & Coy/Jsekarb are better able to meet claims;  
Foundation director requirements for a substantial life from date of establishment;  
a JH & Coy/Jsekarb indemnity and waiver; and  
a JH & Coy commitment to acquire shares in JHIL if it is put to it under the terms of the agreement.

From the JH & Coy perspective, the indemnity (and commitment to acquire JHIL) is supported by:

a very large sum of money;  
continuing access to insurance monies; and  
the weakness of JH & Coy's and any third party's case against JHIL.

The decision would be made by the existing Coy/Jsekarb directors before creation of the Foundation (Phillip Morley and Don Cameron).

The possible validity of an indemnity and waiver has been confirmed by external counsel James Allsop. The main issue raised was consideration or value to JH & Coy, based on arms' length terms and on advice. On the proposal, given the strength of JHIL defences, the existence of excellent insurance reserves available to JH & Coy in the period when JHIL is most vulnerable (1978-1987), and the size of the capital injection, existing JH & Coy directors have a sound basis to be comfortable with the decision.

#### JHIL Board Resolutions

JHIL is required to resolve the following matters:

1. establish a trust (on terms outlined below);
2. settle \$3M on the trust for research purposes;
3. agree payments to JH & Coy;
4. allow the allotment of shares in JH & Coy and Jsekarb to the trust for nil consideration and reduce capital in JH & Coy for nil consideration (the transfer mechanism).

## Director Duties

Director duty issues are set out in an Allsop advice. Copies will be available at the Board meeting. In short, a number of benefits support the directors' decision to create the Foundation (as set out in the January Board paper). In reaching a view, the Board must consider the relative merits of the alternatives available.

### 1. Clarify JHIL's position in regard to asbestos liabilities

The creation of the Foundation will clarify the liability of James Hardie relating to asbestos liabilities to the market (i.e. that the JHIL Group's liability is for practical purposes limited to the net assets of JH & Coy and Jsekarb). This should provide greater certainty to investors in JHIL, significantly mitigating if not entirely removing the 'uncertainty discount' relating to the unknown quantum of future liabilities that JHIL may incur.

### 2. Eliminate management distraction

The management of asbestos related claims would be conducted by an outsourced litigation team supervised by the General Manager of JH & Coy and Jsekarb and ultimately supervised by an independent Board of Directors. This would eliminate the considerable distraction currently experienced by James Hardie management and Board regarding asbestos related claims, allowing further focus on the continued growth initiatives of the core fibre cement businesses. There might still be some minor distraction related to defending attempts to breach the legal separation between JHIL and JH & Coy / Jsekarb, but this will be minimized by the indemnity and covenants provided.

### 3. Provide greater transparency - eliminate asbestos related reporting in James Hardie's earnings and balance sheet

Costs associated with asbestos would no longer affect James Hardie's earnings, since JH & Coy and Jsekarb would no longer be consolidated by JHIL. A result of this deconsolidation would be an extraordinary charge of approximately \$210 million that would be recognised on establishment of the Foundation, primarily being the amount of the net assets of JH & Coy and Jsekarb that would no longer be controlled by JHIL. Deconsolidation would also remove the potentially significant distortion in James Hardie's future earnings, after the introduction of ED88, that would flow from either changes in interest rates affecting the size of the provision or changes in estimates of future claims. Narrative disclosure in the notes to the accounts of JHIL will be required.

### 4. Increase the potential for corporate activity and future capital raisings

The creation of the Foundation would remove the negative implications associated with James Hardie's exposure to asbestos liabilities. This would enhance the prospects of future corporate activity involving JHIL, including takeovers, occurring. Further, it should also enhance the ability to raise new equity or undertake debt issues on more favourable terms in order to fund accelerated growth of the fibre cement business or other business opportunities.

## Director Risk and Protections

The decision to create the Foundation is not harmful to existing or future creditors' interests – in fact, it is beneficial. This is because of:

- additional capital being injected;
- funds committed to medical research;
- the entrenchment of Coy assets for the benefit of future claimants; and
- no change to the JHIL capital structure.

As a result, there is no valid basis for attack on directors from claimants.

The decision to create the Foundation does involve writing down a substantial JHIL investment, and the incurring of an additional liability to JH & Coy. These decisions require careful consideration of shareholder

interests - discussed above. In addition, the balance sheet and cash flow impact on JHIL of creating the Foundation will not prejudice the interests of JHIL's creditors.

It follows that individual directors need not feel dependent on the protective mechanisms available to them. However for completeness, those protections include:

- deeds of indemnity from JHIL (recently revised and reissued);
- D & O insurance that protect directors against such issues if decisions are made in good faith; and
- Legal advice.

The Australian advice consists primarily of the Allsop opinion. US advice (David Beers and Betsy Geise from Shea and Gardner in Washington DC) has also been received to the effect that:

The Foundation concept is a good one.

JHIL is being generous, by the standards of the law.

With a potential life of at least around 15 years, JHIL should have no reason for concern.

There are no issues for US based directors.

Because JHIL is being generous, it should give more thought to getting a private contractual undertaking from JH & Coy not to sue and to indemnify JHIL (done).

The main problems with US trusts have been that plaintiffs control the creditors committee, and pay out way too much, too soon - not the position here.

Other kinds of US "solutions" invariably involve rump companies being left with insufficient assets even to cover the filed claims (e.g. GAF) - not the position here.

North American companies, that pay creditors for a long time, then go into liquidation quietly, often do not cause a ripple (e.g. Cassiar).

What JH is proposing is "much safer" than the approach taken by US companies seeking to separate from their asbestos liabilities.

If JH & Coy runs out of money one day, and there are unsatisfied US claims, then suits against the US subsidiaries are possible. There is no need for concern however (except for legal costs) because such claims would have no basis in law.

## Foundation Description

### 1. Structure of the trustee company

Medical Research Compensation Foundation (MRCF) would be established as a company limited by guarantee by its members, initially comprising those persons who are to be Directors on establishment. MRCF will act as Trustee of the Foundation referred to below.

Each member of the company would guarantee a nominal amount - \$10. The members would have no liability beyond the amount guaranteed and membership could be surrendered at any time with members' potential liabilities being limited to the amount guaranteed.

### 2. Structure of the Foundation

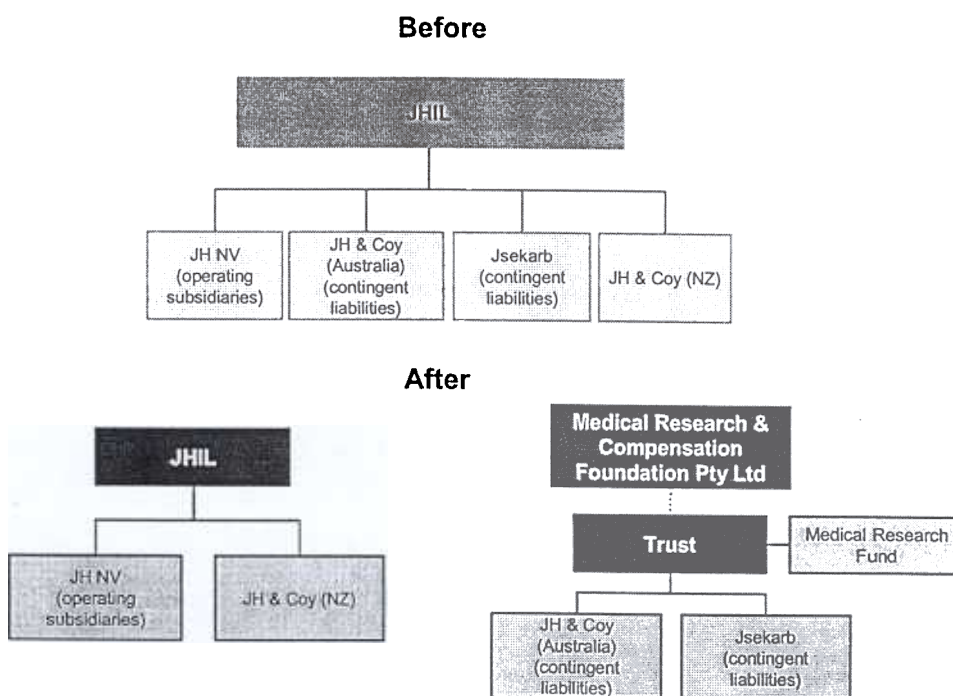
JHIL would initially settle a nominal amount on the Foundation. The Foundation's objectives will be to fund medical and scientific research into asbestos related lung diseases. Immediately following settlement, JHIL will make further gifts to the Foundation, comprising the shares in JH & Coy and Jsekarb, and cash of \$3 million. The latter should allow for approximately 10 – 15 years of donations for research at current levels. The Foundation would also be subject to ongoing administrative costs which are expected to be low and mostly met by JH & Coy.

Although the shares in JH & Coy and Jsekarb would be part of the Foundation's assets, the underlying assets of JH & Coy and Jsekarb would not initially be available for research. In order for additional cash to be realised in the Foundation for research, it would first be necessary for the directors of JH & Coy and Jsekarb to pay a dividend or for the companies to be wound up. The JH & Coy and Jsekarb constitutions will prevent payment of dividends or return of capital prior to satisfaction of (or demonstrated ability to satisfy) all existing and future claims on each company.

JHIL would not control the affairs or activities of MRCF, the Foundation, JH & Coy or Jsekarb and would not have an economic interest in any of them. It would have no right to dividends or capital distributions, nor would it benefit in the event that there was ultimately a surplus of funds following satisfaction of all asbestos related and other liabilities. The loss of control of JH & Coy and Jsekarb means that these entities would no longer meet the definition of subsidiaries of JHIL and therefore would no longer form part of the JHIL Group. All assets contributed to the Foundation that remain following satisfaction of all asbestos related expenses are irrevocably committed to the Foundation to be used for the defined 'charitable purposes'.

As seen below this structure effects a separation of JH & Coy and Jsekarb from the remainder of the JHIL Group.

JHIL pre and post Foundation establishment



### 3. MRCF Board of Directors

The MRCF Board will likely comprise the following persons on establishment:

The Hon Sir Llewellyn R Edwards (Chairman)  
 Mr Michael Gill (Non-executive Director)  
 Mr Peter Jollie (Non-executive Director); and  
 Mr Dennis Cooper (General Manager and Executive Director)

All MRCF Directors would also serve as Directors on the boards of JH & Coy and Jsekarb. Future additions or removals of Directors would be by majority vote of the MRCF members.

Directors' liabilities would be as for directors of any company but are practically expected to be limited to any unpaid debts incurred whilst the company was insolvent during their time as Directors. As explained below, directors and officers insurance would be taken out and Directors would be indemnified to the

maximum extent permitted by law. The Board will be informed about the position of these individuals at the meeting; all are expected to consent to be directors.

#### 4. Litigation management, funds investment/management and accounting functions

Litigation management will be outsourced to the current James Hardie litigation team, led by Mr Wayne Attrill. This existing litigation team would resign as employees of JHIL, and become employed by a new management company to be established by Mr Attrill. The litigation team would be contracted by JH & Coy and Jsekarb and would report to the General Manager, in his capacity as such, for each respective company for instructions, and through him to the respective JH & Coy and Jsekarb Boards. Mr Attrill would also be contracted to provide asbestos litigation services to JHIL as needed. However, the establishment of an indemnity and covenant not to sue between JH & Coy/Jsekarb and JHIL will minimize the need for such services. If a conflict between JH & Coy, Jsekarb and/or JHIL were to arise, the litigation management company would be conflicted from acting for any party and separate firms would need to be retained.

Funds investment/management and accounting functions will also be outsourced, being paid for by and reporting to JH & Coy, Jsekarb and the Foundation, with costs being shared appropriately. Though all three will require assistance, the most significant role will be required by JH & Coy, which hence will fund all or the majority of the costs. JHIL will put in place interim arrangements following settlement, with the MRCF Board renewing contracts from that point. Interim measures would be unlikely to exceed 3 months, with the possible appointment of an investment manager on a 12 month contract prior to settlement.

#### 5. Foundation Deed: key terms

The Foundation Deed under which MRCF will hold the shares in JH & Coy and Jsekarb is a relatively simple document establishing the charitable Foundation. The key element to the Foundation Deed are that the assets of the Foundation are available for the purpose of medical research in connection with asbestos related diseases.

JHIL would be the settlor of the Foundation with MRCF acting as trustee. MRCF would receive no fees in connection with its role as trustee but would be entitled to recover its expenses out of the Foundation property. MRCT will be prevented from:

- bringing any asbestos related action against JHIL;
- selling or otherwise disposing of Coy or Jsekarb; and
- liquidating Coy or Jsekarb – other than as a result of insolvency.

MRCT directors will be indemnified, other than for fraud or negligence. The Foundation may only be wound up when Coy and Jsekarb have themselves been wound up on account of insolvency.

#### 6. MRCF Constitution: key terms

MRCF will be constituted as a company limited by guarantee. Special features of its constitution would be that the members would have no right to dividends and would be able to resign their membership without having to find a new member. To help ensure that on the resignation of one member a new member is appointed, the constitution would provide that all Directors would also be members. This would avoid the issue of having all members resign (which would happen over time) and the company then ceasing to exist. The appointment of new members would be determined by the MRCF Board which would be able to accept or reject members without giving reasons.

#### 7. Subsidiary company constitutions: key terms

JH & Coy and Jsekarb are able to use their current constitutions with only minor amendments.

Under the amended constitutions, the JH & Coy or Jsekarb directors will have the right to declare dividends for their respective company, but only if there are profits (current legal position) and if the board properly concludes that there are likely to be a surplus of funds following payment of all future creditors and

claimants. Any such dividends could only be used for the charitable purposes. A similar rule will apply for returns of capital however effected. These provisions will be entrenched by limiting the right of the members to modify them unless approved:

by a special resolution of the members; and  
the company receives actuarial analysis confirming that there is no reasonable prospect that the company will become liable to pay any claims in connection with asbestos related injuries beyond the level of remaining funds.

## **JHIL/JH & Coy and Jsekarb Relationship Issues**

### **1. Ongoing Support and Transitional Arrangement**

Normal to any transfer of ownership, JHIL personnel will continue to assist MRCF, JH & Coy and Jsekarb personnel with any questions or issues that may arise following the transfer of control.

On transitional basis, Steve Ashe will be available to assist in relation to PR and medical research issues; Phillip Morley and his finance team in relation to finance and accounting issues; Matthias Fuchs in relation to insurance issues; and Peter Shafron in relation to legal or litigation issues. In all cases, the Foundation and subsidiary directors would make their own decisions and JHIL personnel would not seek to influence those decisions in any way.

The General Manager and the Litigation team will continue to have use of the York Street offices until 31 March 2002 (but expect to be in new premises well before this time; the Foundation itself will have a registered office not connected to James Hardie). The Litigation team will acquire all existing computers, furniture and fittings from JHIL at written down value.

### **2. JHIL/JH & Coy Loan**

A loan will be in place between JHIL and JH & Coy in the amount of about \$75M and between JHIL and Jsekarb in the amount of \$TBA. The loan terms will be first repayment \$15M in 18 months, then \$15M per annum until extinguished (2007).

The current JH & Coy directors will resolve to enter into this loan.

### **3. Extra Funding & Hold Harmless**

The JHIL Board will have approved payment terms for a covenant not to sue with JH & Coy & Jsekarb so that they are better able to meet claims that may be made against them. In return, JH & Coy and Jsekarb will agree to hold harmless and indemnify JHIL against claims that may be made against it in relation to the manufacture of asbestos containing products post 1937 by JH & Coy. JHIL would remain at risk and unindemnified for the manufacture of asbestos containing products prior to 1937.

In addition, and also in consideration of the additional funding, JH & Coy will agree to acquire all the outstanding shares in JHIL, should JHIL ever cease to hold any business operations and become delisted and otherwise non operational.

The consideration for this agreement will be \$100M over time at \$12.5M per annum (NPV \$70M)

The current JH & Coy and Jsekarb directors will resolve to enter into these arrangements.



#### 4. Lease Agreements

The existing property lease agreements for the James Hardie manufacturing sites will remain in place between JH & Coy & James Hardie Australia – subject to the parties' rights under those leases. A normal relationship of lessor and lessee will obtain.

#### 5. Dispute Resolution

It is proposed that in light of the nature of the arrangements between JHIL and the Foundation, and the preparedness of claimants to take advantage of information disclosures that may be caused by public disputation, JHIL, the Foundation and the subsidiaries enter into a dispute resolution agreement that makes alternative dispute resolution a precondition for the filing of any claim by one party against the other.

#### Risk

The main risks to the creation of the Foundation are political and legislative.

The exposure to JHIL post separation, e.g. break through suits, or nuisance suits by JH & Coy or third parties, is substantially reduced by the JH & Coy covenant not to sue and the indemnity. A further discussion of political and legislative risk and the communication strategy is set out in Attachment A & B.

While the creation of the Foundation does not trigger any positive requirement for Trowbridge disclosure in the accounts or elsewhere nor create any issues for the directors of the impact on JHIL's creditors, pressure to disclose may arise as a result of political/market pressure and both issues will be of concern in the Court scheme meeting if and when stage 2 progresses.

#### Financial and Accounting

Financial and accounting issues are set out in Attachment D.

Revised insurance proposals have now been received through JLT – a summary is attached. The proposals do not seem attractive either in combination with the Foundation, or in place of it.

## **ASBESTOS INSURANCE PROPOSALS**

Following feedback by the Company to JLT, two further asbestos long tail insurance proposals were received – from XL Insurance Ltd and AIG. A short summary of the proposals follows. In view of management's recommendation in relation to the Foundation, it is not proposed that either option be pursued. The relevant papers can, however, be passed on to the Foundation directors for their consideration.

### **XL Proposal (USD)**

<b>Premium:</b>	\$100M
<b>Policy Limit:</b>	\$375M
<b>Retained Limit:</b>	\$72.5M -
<b>Experience Account:</b>	Premium less \$2M is lodged in a notional account and earns between 5% and 12% - depending on XL Fund earnings (Bermuda domiciled, 18% assumed). The remaining balance is payable to JH on commutation at any time.
<b>Coinurance:</b> earnings)	JH to pay up to 35% of each claim after 2010 (less, depending on XL fund
<b>Waiting Period:</b>	No XL payment for first 5 years
<b>Guarantee:</b>	JH could pay\$ 80M of the premium over 10 years, supported by an XL (AA rated) guarantee. Cost 0.75% (should this be 7.5%?)
<b>Comment:</b>	USD/AUD Currency risk and total cost would make this program unattractive; currency hedge likely to be expensive and possibly unobtainable for 20-30 years out. Not recommended at this time.

### **AIG Proposal (AUD)**

<b>Option 1:</b>	<b>Premium:</b>	\$250M
	<b>Policy Limit:</b>	\$650M
	<b>Retained Limit:</b>	\$350M
	<b>Waiting Period:</b>	7 years
<b>Option 2:</b>	<b>Premium:</b>	\$340M
	<b>Policy Limit:</b>	\$520M
	<b>Retained Limit:</b>	\$80M
	<b>Waiting Period:</b>	3 years
<b>Option 3:</b>	<b>Premium:</b>	\$340M
	<b>Policy Limit:</b>	\$650M
	<b>Retained Limit:</b>	0
	<b>Waiting Period:</b>	5 years
<b>Option 4:</b>	<b>Premium:</b>	\$200M
	<b>Policy Limit:</b>	\$650M
	<b>Retained Limit:</b>	\$350M
	<b>Waiting Period:</b>	7 years, with 20% co-insurance

**Comment:** All options seek to provide \$1 BN of coverage plus the retained limit. All options require around \$400M – 450M in today's dollars. Not recommended at this time.

## ATTACHMENT B

### LEGALLY PRIVILEGED AND CONFIDENTIAL – FOR LEGAL ADVICE ONLY

#### COMMUNICATION STRATEGY

##### Recommendation

We believe that our communication strategy will deal effectively with the numerous risks involved in executing the separation proposal and that therefore the separation proposal can be implemented as recommended. We have formed this view because:

- there is a strong legal and business case for separation
- there are clear benefits for shareholders
- the position of creditors is significantly enhanced
- there is no valid basis for government intervention
- we have identified and understand the major stakeholder risks
- we have developed a comprehensive plan to neutralize those risks

Our analysis of risk includes 'worst case' scenarios. We have strategies to deal with them and believe these strategies will be effective.

This paper includes:

- a description of the key working assumptions which underpin the strategy
- an analysis of the key risks to successful separation
- the proposed communication strategy
- an update on work still in progress which forms part of this plan
- the key messages which will support our case
- questions and answers

Our central communications conundrum is that we will not be able to provide key external stakeholders with any certainty that the funds set aside to compensate victims of asbestos diseases will be sufficient to meet all future claims.

We have analysed how key external stakeholders are likely to react to this uncertainty. From this point, we have developed our strategy.

In short, we believe opposition from stakeholders could be significant and that their major questions will be:

- will the funds set aside be sufficient to meet all future claims?
- what will JHIL do if those funds are insufficient?
- what will be the fate of victims if the funds are insufficient?

#### 1. KEY WORKING ASSUMPTIONS

A detailed description of the proposed separation model is contained elsewhere in these Board papers.

The basic facts used for preparing the communication strategy are:

a standalone, not-for-profit Foundation is established to manage James Hardie's asbestos liabilities and related litigation, compensate victims of asbestos diseases and fund scientific and medical research aimed at finding treatments for these diseases

JHIL will cede shares in two JH group companies (JH & Coy and Jsekarb – to be renamed ACM and BM) to be held in trust by the Foundation – this will give the Foundation sole access to the assets of these companies

James Hardie and JH & Coy Pty Ltd and Jsekarb Pty Ltd previously manufactured asbestos containing products but many years ago sold or closed their manufacturing operations

as a result of past manufacturing of asbestos containing products, JH & Coy and Jsekarb have been found legally responsible for asbestos related diseases in certain cases and been required to pay compensation to sufferers of diseases in these cases

the assets of ACM and BM can only be used by the Foundation for the purpose of compensating people injured by their exposure to products containing asbestos which were manufactured by ACM and or BM, and meeting expenses directly related to compensation such as legal fees

no dividends or capital returns may be made out of the two companies to the Foundation unless all future claims have been, or will be, met.

a separate fund of \$3 million has been vested into the Foundation by JH so that it can begin immediate funding of scientific and medical research into asbestos related diseases – initially, this funding will enable existing projects previously funded by ACM to continue and the Foundation has already begun to review new, additional projects

the Foundation will be completely independent of JHIL and will be governed by a separate Board – JHIL will have no future economic interest in or future claim to the assets of ACM or BM or any future right to dividends or capital distributions from these companies or from the Foundation

the transfer of assets in ACM and BM by JHIL to the Foundation means that JHIL will lose control of these entities

consequently, JHIL will be required to de-consolidate ACM and BM from its financial accounts and will also be required to make an extraordinary write-off of \$210M which represents the book value of the shares in ACM and BM

for all practical purposes, asbestos liabilities for the JH group reside in ACM and BM – JHIL has never been found liable and it is not expected it will be found liable in the future, although it is possible that claimants may still attempt to join JHIL in legal actions unsuccessfully as occurs today

The legal liabilities of JH & Coy are limited to claims filed and claims unfilled but able to be filed. It is possible that a holding company would dividend up or return as capital the excess of the JH & Coy funds over and above those liabilities. Current legal liabilities may be around \$60M or so and substantially less than the net assets of JH & Coy.

The JHIL directors have determined that in all the circumstances it is not appropriate to draw funds out of JH & Coy by way of dividend or capital return. Instead, they have secured the net assets of JH & Coy such that no dividends or capital returns can be paid out of JH & Coy until all claims occurring any time in the future have been met. In addition, they have contested an additional \$70M (net present value) to JH & Coy and Jsekarb. The amount available to claimants, present and future, is approximately \$312M, substantially in excess of the legal liabilities of JH & Coy & Jsekarb.

as the shares in ACM and BM have been ceded to the Foundation, the future costs of compensating people for asbestos injuries will no longer be charged to JHIL's income statement and JHIL will no longer carry a provision for contingent liabilities related to asbestos in its balance sheet

this will effectively, if not completely terminate JHIL's future exposure to asbestos liabilities; JHIL is not liable for asbestos liabilities of ACM or BM and the risk of JHIL or its other subsidiaries being materially affected by asbestos liability in the future is remote

ACM and BM, whose shares are held in trust by the Foundation, have assets of about \$284M - these assets comprise an investment portfolio, property with long-term rental leases, commercial paper and a substantial cash reserve

An Investment Consultant, Towers Perrin, has been appointed to develop an investment strategy with the aim of generating income and capital growth which will be used to meet the costs of compensating people injured by asbestos which bring claims against ACM and BM

the Investment strategy will be similar to that of a superannuation fund, with the objective of earning good returns over the long term, such that the total amount available to meet the cost of compensation will represent a substantial increase on the initial amount invested

ACM and BM also have insurance policies that cover certain types of claims – for example, all workers compensation claims against ACM or BM will be covered by insurance policies

if, after all claims have been met, ACM and BM have surplus assets, these assets will be used by the Foundation to fund further scientific and medical research into lung and related diseases – any surplus will not be returned to JHIL

2. RISK ANALYSIS

The key legal risks are summarised below.

there could be political or legislative intercession which has the effect of making JHIL or other NSW registered subsidiaries of JHIL, liable for the asbestos related liabilities of current or former subsidiaries (such as ACM and BM) – while this risk is considered low it is constitutionally feasible

it is possible that separation could prompt an increase in the number of claims brought against JHIL, either as sole or joint defendant, in an attempt to have the corporate veil issue relitigated – while unlikely to be successful such actions, without an indemnity from ACM and BM, could force JHIL to bear legal costs to defend these claims even after separation. Such action could keep alive the prospect of legislative intervention to reverse *Putt*

separation could also prompt an increase in the number of claims brought against ACM and BM because plaintiff law firms may urge potential claimants to come forward to collect their compensation before the available pool of funds is depleted – the potential for a class action to be launched is included in this scenario – this could have the effect of prompting legislators to revisit the question of legislative intercession

We have assessed the risk of government intervention as low from a legal perspective; JHIL will be significantly exceeding its legal obligation to creditors, the position of creditors will be enhanced and JHIL will be demonstrably acting in the best interests of shareholders. Creditors' rights are secured and substantial assets are available to the Foundation to meet claims for compensation.

However, while the risk of government intervention is low on legal and commercial grounds, it cannot be ruled out on political grounds. , Government intervention to make JH ultimately liable for future liabilities would have the most significant negative impact on the JH group, and therefore we have analysed the nature and likely sources of this risk in detail in the following section.

We have also analysed risks from the perspective of the other key stakeholder groups in the next section. Later on, we describe the strategies which will be used to manage these risks.

2.1 Risk Perspectives

Individually, none of the risks analysed below, represent a threat to separation. A combination of risk factors, could however, when accumulated, increase the only possible risk to separation, that being direct intervention by government.

Our strategy, which is described in detail further on is designed to 'divide and conquer' the individual risks to avoid the prospect of these risks accumulating to a point where government intervention would be warranted.

**2.1.1. Shareholders and the wider Investment Community**

Investors are likely to welcome:

the effective termination of a significant future asbestos exposure for JHIL  
the removal of asbestos expenses from JHIL's income statement  
the consequent increase in JHIL earnings in subsequent years  
the removal of contingent liabilities from JHIL's balance sheet  
the removal of the asbestos "poison pill" and increase in JHIL's takeover appeal  
the removal of a significant management distraction  
the removal of asbestos as an increasing distraction for investors generally

Investors are likely to be concerned about:

- the liability cost, which is significantly higher than has been implicitly assumed
- residual uncertainty arising from the potential for more claims against JHIL
- parallels with US examples where similar 'solutions' have proved unsuccessful
- the significant increase in gearing and reduction in interest cover (if disclosed)
- whether separation costs will inhibit JHIL's ability to fund growth of fibre cement
- whether the above risk might lead to a 'forced' sale of gypsum
- negative investor sentiment arising from bad publicity
- any risk of government intervention (if this is raised)
- any unrelated but coincident bad news such as lower than expected earnings etc

On balance, we believe the pros outweigh the cons and that investor reaction should initially be neutral to positive. The high degree of certainty and finality provided by separation, while not absolute, will be the major plus and it should outweigh the negatives, the largest of which, initially, will be the cost.

If other stakeholders mount noticeable public campaigns against separation, investors could become concerned about the level of certainty and finality that our separation model will ultimately provide. This means it is possible that we could bear the cost of separation without initially being able to remove the asbestos taint from our investment case.

Similarly, while the prospect of government intervention is low, were investors to perceive this prospect as serious, this could result in significantly negative investor sentiment in the short term.

We will ensure that investors are properly educated about the merits of separation and, if necessary, we will provide investors with detailed responses to any spurious attacks from other stakeholders, to ensure that the confidence of investors is maintained.

Our detailed strategy is described further on.

## 2.1.2. Media

Media coverage of asbestos issues has increased markedly in the past year in most states. In the past several months, all major metropolitan newspapers and many radio and television networks have carried stories with increasing frequency about:

- court cases resulting in large settlements
- defendants, including JH, hiding behind confidentiality clauses
- potentially large new sources of claims (e.g. wharf cases, South Australia)
- the increase in the number of claims and settlement amounts (e.g. Trowbridge)
- renewed calls for medical research (e.g. in NSW)
- the increase in claims for exemplary damages (e.g. in Victoria)
- recent or pending legislative reform, notably to end 'death bed' hearings (e.g. in Victoria, Western Australia and South Australia)
- particularly tragic cases (e.g. Kerri-Anne Mueller, who died of mesothelioma shortly after giving birth)

We assume the general media environment in which we announce will be hostile. This is because:

most parties which seek publicity on asbestos represent claimants  
plaintiff lawyers retain media advisors to raise awareness of claimants rights -  
JH does not seek publicity and its position is therefore not well understood  
asbestos manufacturers are portrayed negatively in most stories  
these stories remain on media files for years and are used as the basis of each new story  
most journalists assigned to cover asbestos stories are inexperienced generally and have little background knowledge on asbestos in particular

there is a high turnover of these journalists and consequently it is not possible to form productive relationships with them

JH is typically portrayed as having known of the dangers of asbestos and done too little to reduce the risk to victims – JH is therefore typically positioned as owing a debt to victims  
as the largest manufacturer in its day, JH attracts more claims than other defendants and has the highest profile among defendants – JH is therefore often the 'lightning rod' for public opinion on asbestos

Given the above, it is likely that any journalist assigned to cover the separation story will initially bring to it a negative disposition to JH.

Additionally, on issues like asbestos, the media usually decides it will become a 'court of public opinion' with journalists freely adopting the roles of crusader, critic and ombudsman.

If this occurs, journalists will be receptive to criticism of us from our opponents who will represent a broad church of interests, spanning unions, lawyers, victims and others, all of whom will provide 'good copy'.

We will provide media with comprehensive information which strongly supports our case and we will demonstrate openness, transparency and conviction in support of our position. There are a range of options open to us if media coverage is not fair and balanced and we will pursue these if necessary.

Our detailed strategy is described further on.

### **2.1.3. Government/Political**

The NSW dust diseases compensation regime, and its accommodation of the majority of Australian asbestos related claims, means that the NSW Government will have a special interest in separation.

Other state governments will also have an interest and are expected to closely monitor NSW developments.

However, as most of James Hardie's Australian assets reside in NSW registered companies, so too does the major government risk. For this reason, our government stakeholder management strategy is principally focused on the NSW Government.

We have primarily used the services of Hawker Britton to assist with the development of our government relations strategy. Hawker Britton is a specialist government relations and issues management consultancy with close relationships and an intimate understanding of the key figures and policy positions of the NSW Government. The principals of Hawker Britton previously worked for the Premier and senior ministers of the Carr Government and some former Hawker Britton staff now work for the Carr Government.

The NSW Government is likely to welcome:

- the establishment of an independent entity focused only on compensating asbestos diseases sufferers and funding medical research

- the setting aside of funds for important medical research seeking cures and treatments to asbestos related diseases

- the provision of additional JHIL funds to assist the Government with its plan to establish an asbestos diseases research institute

- the increased certainty provided to asbestos diseases sufferers through the ceding of shares in ACM and BM to the Foundation



the potential for any surplus assets in ACM and BM to fund other lung diseases research – and not be returned to JHIL

The government is likely to be concerned with:

the risk of financial exposure should the Foundation have insufficient assets to meet future liabilities

any perception of a hidden agenda behind the establishment of the Foundation

negative union sentiment, adverse media and public opinion etc which leads to a loss of political support among specific, influential constituencies, such as unions, or among voters generally

The key Government stakeholders and their likely concerns and interests are:

Government stakeholder	Concerns/Interests
Bob Carr Premier of NSW	<ul style="list-style-type: none"> <li>• is pro-business and would not be influenced by plaintiff law firms, but would be influenced by unions, public outrage etc if it created a political exposure or risk to his government</li> <li>• would need a lot of convincing that legislative intervention was necessary</li> </ul>
John Della Bosca Minister for Industrial Relations	<ul style="list-style-type: none"> <li>• concerns focused on lack of guarantee that there will be sufficient funds available to compensate future claimants</li> <li>• would want separation to be viewed at least neutrally by the NSW Labor Council – a key link between the government and unions</li> <li>• if there is strong opposition from the AMWU – a key constituent of the Minister – it would be politically difficult for the Minister not to side with the union</li> <li>• will like the Foundation's support of asbestos diseases research</li> </ul>
Roger Wilkins Office of Cabinet	<ul style="list-style-type: none"> <li>• will the government be financially exposed if the Foundation's assets are insufficient?</li> <li>• generally does not favour retrospective legislation</li> <li>• would not welcome debate about corporate veil issues</li> </ul>
Graeme Wedderburn Premier's Chief of Staff	<ul style="list-style-type: none"> <li>• major concern is political exposure for the government</li> <li>• doesn't want this issue to become a 'cause' for tabloid media</li> </ul>
Bob Debus – Attorney General	<ul style="list-style-type: none"> <li>• aligned to the more militant factions of the governing party and is the most likely of his colleagues to suspect JH's motives</li> <li>• his predecessor, Jeff Shaw introduced the dust diseases reforms in 1998, is very close to the unions and the plaintiff lawyers and now works as a barrister prosecuting cases for lawyers against JH</li> </ul>

The NSW Government will be sensitive to stakeholder opposition but will also be quite pragmatic in assessing separation. The risk of legislative intervention is regarded as low.

However, if a political issue develops or there is political mileage to be gained, the government could readily criticize JH or take other action, if it believed it was necessary to retain favour with key constituents and or voters generally.

The easiest practical option for the NSW Government would be to 'flick-pass' the issue to the Federal Government and ask that they deal with it as an issue of Corporations Law.

Other options are available which would enable the NSW Government to 'show' it was doing something even though these options might be relatively meaningless. A government enquiry might fall into this category. It would take the political heat out of the issue but remain of concern to investors however.

The balance of power in the upper house in NSW rests with 13 independents. One or a group of them could introduce a private members bill into NSW Parliament with the aim of derailing separation. This would put the government in a difficult position publicly if it did not support such a bill.

The independents voted unanimously with the government in 1998 to introduce the dust diseases reforms. At that time, the independents expressed little interest in JH's position and indeed, we were not even able to secure meetings with all of the independents to discuss our concerns. The independents are generally volatile and extreme on public policy issues and represent varied interests, such as those of shooters, nudists, religious groups, greens, and today's equivalent of a white Australia movement.

It would also be difficult for the NSW Opposition to support JH publicly if there was a groundswell of public opposition to separation. This was also the case during the debate over legislative reforms in 1998.

Our strategy includes a comprehensive program of briefings and briefing material for senior government and opposition figures at both state and federal levels. Our team includes advisors which are recognized as being able to provide access to and influence with government.

Our detailed strategy is described further on.

#### 2.1.4. Other Stakeholders

Strong relationships exist between unions, plaintiff law firms and asbestos disease representative groups. While these stakeholders will probably recognise the positives, it is expected they will:

- claim that the Foundation will have insufficient funds to compensate all future victims

- use various 'experts' or adopt the position of 'experts' to claim that the incidence of asbestos diseases is rising sharply and that history is not a good guide to assess future incidence and costs

- claim that JH is abdicating its responsibilities and demand that JH provide a guarantee

- draw parallels between separation and recent high profile cases about employee/creditor entitlements, such as those involving Patricks, the Oakdale miners and National Textiles – these were long running disputes which remained 'front-page' news for several months

- try to mount a public and political campaign against JH either individually or most likely, collectively.

We believe there is a medium to high risk that various stakeholders acting in concert will try to orchestrate a campaign against separation.

If intense, well organized and well funded, such a campaign would increase the risk of separation becoming a political issue which prompted some kind of government response.

We have a strong case against the arguments which are likely to be put forward and we will prosecute our case aggressively with these stakeholders and with the people they would seek to influence.

Our most recent information suggests that JH is an even smaller part of the asbestos issue (Circa 20%) in Australia than previously thought. We will be using this to argue that JH is doing more than it is obligated to do to address its share of the problem.

### 2.1.5. Unions

A number of major unions have been active on asbestos related matters and there is at least a medium risk that unions will mount a vocal and negative response. Unions are skeptical of JH in relation to asbestos; when we organized a briefing on medical research last year key union figures acknowledged the benefits of our involvement (and funding) but remained suspicious of a "hidden agenda".

A union campaign to oppose separation could include areas of attack such as:

public protests

picketing of JH facilities

union bans on the use of JH products (on job sites for example)

the enlistment of US unions to attack JH's US operations

calls for institutional investors to either not invest in JH or to sell their shares in JH

Individually, we assess each of these risks as low. An analysis of the JH share register also indicates that union super funds do not directly own sufficient JH shares (less than 1%) to directly intervene in company affairs.

We believe the following union figures will be key stakeholders.

Union stakeholder	Concerns/Interests
<b>Michael Costa</b> Secretary, NSW Labor Council - will be consulted by Della Bosca about separation - routinely provides Della Bosca with a 'read' on the unions and is his defacto advisor on industrial relations - helped set up the Premier's Advisory Council to enhance dialogue between the government and unions on policy	<ul style="list-style-type: none"> <li>primary concern will be ensuring that those yet to be diagnosed with an asbestos related disease will not be left without adequate compensation</li> </ul>
<b>Greg Combet</b> Secretary, ACTU - has a background in mesothelioma campaigns through a previous role as a director of a worker's health centre - is known not to trust JH and just recently told Hawker Britton "I always keep an eye on JH"	<ul style="list-style-type: none"> <li>will be interested in and should support medical research</li> <li>will be concerned about whether there will be sufficient funds for compensation</li> <li>will not like the idea that the assets available for compensation are finite</li> </ul>
<b>Paul Bastian</b> State Secretary, AMWU - has previously threatened international union action where workers rights were threatened - AMWU provides office space to the Asbestos Diseases Foundation and worked on the 1998 legislative changes - a former national president of the union died from mesothelioma in office.	<ul style="list-style-type: none"> <li>has a particular interest in asbestos matters and is very keen to have the NSW Government establish the Asbestos Diseases Research Institute</li> <li>the union believes Della Bosca has not done enough for them in office and is looking for redress</li> </ul>
<b>CFMEU</b> - a large, powerful and militant union - active on asbestos issues - has led protests on asbestos issues - active in day of action against Rio	<ul style="list-style-type: none"> <li>has general interest and is almost certain to oppose separation</li> <li>industrial action most likely to be coordinated by this union</li> </ul>

Other unions that are active on asbestos issues and are likely to be involved in any coordinated campaign against JH include:

The Maritime Union of Australia (MUA) – Barry Robson, Assistant State Secretary  
This union has become active in supporting claims for waterside workers exposed to asbestos. Several of Robson's close friends have died of mesothelioma in the past 2 years. He is an advocate of the principal that "someone is to blame and that someone has to pay". Slater & Gordon has represented MUA members in a number of cases resulting in large payouts. The MUA believes the "floodgates are about to open" on cases involving waterside workers.

Australian Workers Union (AWU) – Russ Collison, State Secretary  
The AWU was a party to the submission to the NSW Government calling for the establishment of an asbestos diseases research Foundation. Russ Collison has a good relationship with Michael Costa of the Labor Council.

Electrical Trades Union (ETU) – Bernie Riordan, State Secretary  
The ETU was also a party to the submission to the NSW Government calling for the establishment of an asbestos diseases research Foundation.

#### **2.1.6. Plaintiff law firms**

Slater and Gordon and Turner Freeman account for the majority of the asbestos litigation market. They are aggressive marketers, skilled at using media to advance their causes. They have a high media profile but a recent straw poll shows that not all journalists are well disposed towards them.

Both firms will seek or create opportunities to make separation a public and political issue and to 'scare' claimants to come forward. They will aggressively put forward estimates that the incidence of asbestos disease is rising quickly and that an epidemic is looming which will result in claims which will far exceed the assets of the Foundation.

Other risks include:

- that the number of claims brought against ACM and BM substantially increase
- an acceleration of suits against JHIL relitigating the corporate veil - although JHIL has successfully defended these suits in the past
- coordinated use of asbestos 'experts' to attack separation
- the launch of meretricious class action against JHIL, ACM and or BM – this would only require the issue of a press release by a law firm; recently this same tactic was used by Slater & Gordon to launch a class action against airlines on deep vein thrombosis
- coordination of other stakeholders including the unions and asbestos diseases groups to mount a high profile public campaign and a political lobbying campaign
- offers to work with government (pro bono) to draft legislative reforms or other actions aimed at derailing separation - Turner Freeman provides services to unions, drafted the union submission for more funding for asbestos diseases and has long standing relationships with key figures in the NSW Government and the NSW ALP – it also helped draft the 1998 legislative amendments

The risk is high that plaintiff law firms will publicly oppose separation. The risk that they will take more tangible legal action is low, as there would be little valid basis for such actions. If attacked by plaintiff lawyers, we will continue to articulate our key messages. We have a cascading series of messages so that should the need arise, we can adopt a more aggressive stance towards plaintiff lawyers if necessary.

We will attempt to break any nexus between lawyers and others such as unions, by explaining that the interests of future claimants and lawyers are not properly aligned and that an aggressive litigation environment which would be good for lawyers, would not be in the best interests of creditors. We can do this by referencing the US experience; this avoids the need to attack Australian lawyers directly.

#### **2.1.7. NSW Dust Diseases Board**

The DDB is likely to welcome the securing of creditors' rights and the increased certainty provided by establishment of the Foundation. It will also welcome additional funds for research (for which it is the only other significant supporter).

However, the DDB and, possibly WorkCover, will be concerned about whether the assets of ACM and BM will be sufficient to meet all future liabilities.

The DDB's views on separation will, initially, be a primary influence on the views formed by the NSW Government.

#### **2.1.8. Insurance companies and other defendants**

Their sole interest would be whether separation could result in an increase in their costs. Separation may prompt plaintiff law firms to target other defendants more aggressively as in the event that Foundation's assets are depleted, other defendants will become the next source of compensation.

If insurance companies and cross claimants are sufficiently concerned about this prospect they may join in other, or undertake their own, media and political strategies

### 3. THE COMMUNICATION STRATEGY

This section includes general comments on our overall approach, timing, and positioning and then describes specific communication strategies and tactics which are targeted at specific stakeholder groups.

Our strategy development has involved extensive consultations with JH's Green Team management and advisors and with two specialist public affairs and government relations consultancies, Gavin Anderson & Co and Hawker Britton.

Hawker Britton's credentials are detailed elsewhere; Gavin Anderson & Co provides expert counsel on a range of issues management projects for large Australian companies and routinely works on large, complex projects such as corporate restructurings, takeovers and environmental issues which involve large numbers of potentially hostile stakeholders.

In announcing the establishment of the Foundation, our high level objectives are to:

- attract as little public attention as possible beyond the financial markets
- optimize support for the move from shareholders and the investment community
- position the initiative as a business news story, not a general news issue
- neutralize opposition from hostile stakeholders
- minimize the potential for government intervention

We will position separation as a win:win for shareholders and creditors. We have reviewed our previous recommendations about presenting a 'hard' sell to the investment community and 'soft' sell to others and made some adjustments. The 'win:win' approach will allow us to use one set of key messages for all audiences.

The most positive message from an investors perspective is that separation will effectively, if not completely, terminate JH's future asbestos liability. However, this message is also likely to create the most concern among other stakeholders, such as unions, plaintiff lawyers and government.

To manage this trade-off we will work hard to sell the benefits to creditors, which include the security that a large pool of assets has been set aside for the sole purpose of compensating them.

The Foundation should have a higher profile at announcement time than we previously planned. We will aim to focus attention on its support for medical research and its commitment to find effective treatments for the diseases as well as the fairest means of compensating victims. Its genuine independence of JH will be a key selling point.

We will hard sell the message that the value of the assets vested to the Foundation far exceeds that which the JH directors were obligated to provide and explain that the Foundation has a far greater chance of success than other schemes, particularly US based schemes. We will do this by pointing out the fundamental differences between what we propose and the US environment.

Our core messages will be the same to all audiences but the emphasis will be different depending on the audience.

For example, the cost of separation may concern investors because it is substantial so we will focus on the benefits it confers to shareholders. At the same time, we will position the substantial size of the assets being ceded to the Foundation as of significant benefit to creditors.

We will try to turn the question of uncertainty to our advantage. For shareholders and creditors, separation means there will be greater certainty than has ever before. For example, we can argue that it is uncertain that JH will exist in 5, 10 or 20 years but that separation provides much greater certainty that funds will be available to compensate victims past these time periods than if JH was merged into another company.

We will stress that no current or future creditor's right to sue either ACM, BM or JHIL or any of its subsidiaries is diminished in any way by separation. And we will stress that if JHIL or any of its subsidiaries has a legal obligation to address a claim, it will continue to do so.

We will use all opportunities to show why the general issue of asbestos and the JH asbestos issue are not the same. We have and continue to gather plenty of evidence that JH is only (a minority, Circa 20%) part of the problem in Australia, that the Australian experience is vastly different from overseas experience and so on.

A number of these ideas are expressed as key messages and these are included in a separate section of this paper further on.

### 3.1 Timing

The announcement will be made on Friday 16 February to coincide with the announcement of JHIL's Q3 results and the related management presentations to analysts and business media. This will:

- provide a ready made business forum for the announcement which provides unfiltered access to market analysts, one of the most important influencers in how the story is interpreted
- help us position the Foundation as a 'business' story
- enable us to announce separation in a pure business context and set the agenda for public debate in this context
- focus attention on the financial outcomes

We will announce the Q3 results and separation simultaneously at 10am, ahead of an 11am management presentation. We normally announce at 8.30am and conduct results presentations at 11am. By limiting the time between the announcement and the presentation, we would aim to minimize the risk that non-business media and perhaps other stakeholders would attend and 'hijack' the briefing.

We will not webcast this briefing 'live' as we usually do. In fact, we recently decided to move from live to delayed webcasts because of the unreliability of the technology. A delayed webcast would be available after our legal advisors had reviewed it. If there were legal issues, we would simply not make the webcast available or edit it as required.

However, we expect that the announcement still has potential to generate significant general news interest and could develop into a major, negative 'news and current affairs' story which will run for 1-2 weeks in the news sections of newspapers, and on news and current affairs programs on radio and television. We have strategies to deal with these scenarios which are explained later.

### 3.2 Shareholders and the Investment Community

Our most desired outcome is to have the analysts walk away from the presentation viewing the Foundation as having effectively terminated JH's long term liability for asbestos.

If this is achieved, analysts should view the proposal favourably. In this scenario, journalists who contact analysts for comment will get positive feedback and this will make it hard for the business media to attack separation, at least initially.

If the business sections of newspapers provide neutral to positive coverage initially, this means that newspapers would have to shift their editorial stance overall to attack separation either later on, or in the general news pages.

A positive reaction from the market is therefore the highest priority and we will use the management presentation to analysts, and subsequent dialogue with them, as our most important communication task.

The mechanics of our approach are as follows:

- the Q3 results news release and MD&A will include sections devoted to separation which focus on the mechanics and financial implications

the Q3 results presentation will include a section devoted to separation, which will be used to provide a comprehensive briefing to analysts, institutional shareholders and financial journalists (see below for more on media)

the asbestos briefing will be at the start of the normal results briefing – both the asbestos and results briefings and all Q&A will be conducted by Peter Macdonald

JHIL Directors may chose to be present in the audience but will not have a role in the presentation

Peter Cameron will be present to respond to legal questions from analysts if necessary

### 3.3 Business Media

The level of media interest – both business and general - will be determined partly by what other news occurs on the day. This is impossible to predict.

In aiming to confine the story to its business context, our first priority will be to business journalists. They will be invited to attend the analysts briefing (as usual) and we will make Peter Macdonald available for interviews after the briefing.

We will not proactively seek in-depth coverage from columnists and commentators but we expect the exotic nature of the story to attract them anyway. We, and our advisors, have very sound relationships with the journalists which routinely cover JH as well as the most respected columnists including:

John Durie (Chanticleer) – Australian Financial Review  
 Ivor Ries – Australian Financial Review  
 Damon Kitney – Editor, Companies Section, Australian Financial Review  
 Stephen Bartholomeuz – The Age  
 Terry McCrann - Herald Sun and Daily Telegraph  
 Bryan Frith – The Australian  
 Mark Westfield – The Australian

We will provide them with deep background if necessary and also provide a series of Fact Sheets to help guide them through the asbestos landscape. Similar Fact Sheets will be prepared for non-business media (and other stakeholders) and distributed if necessary for the same purpose.

### **3.4 General Media – News/Current Affairs, Newspapers, Radio and Television**

While aiming to confine the story to its business context, we will not back away from general news media. This will convey our openness, transparency and conviction to journalists who are otherwise likely to assume we have something to hide.

We will agree to all newspaper, radio and television interviews where possible. We will conduct detailed one on one briefings for any general news journalists writing in-depth. There will be a separate general news release from JH about the Foundation for these general news audiences and we will also have available detailed Fact Sheets for general media tailored to their needs.

We will not conduct a separate press conference for general news media. We will deal with general media one-on-one. This helps us avoid a media 'siege' and tailor messages to specific types of media, be it print, radio or television.



Peter Macdonald will handle all general news media interviews and Alan McGregor will be available if necessary. Both will be intensively media trained in the week prior to announcement, to rehearse our agreed key messages and the Q&A in simulated interview situations.

There will also be another general news release from the Foundation itself which will describe the aims of the Foundation and form the basis of discussion about its future role.

This will enable the Foundation to step forward and talk about the good works it proposes to carry out in the future. We will aim to divert general media attention to the Foundation's aim of ensuring that genuine claimants are properly compensated.

A separate communication strategy has been prepared for the Foundation and is included later in this attachment as 6.0 Communications Strategy For The Medical Research And Compensation Foundation. It assumes that the Foundation's chairman will be media trained, that he will be the Foundation's only spokesperson and that he will be available to the media.

The communication strategies of JH and the Foundation will be independent of each other, but they will be properly aligned with complementary key messages.

### 3.5 Government

In a Government context, we should be able to avoid 'questions in the house' which could lead to wider news interest or quickly turn the trust into a political football.

Federal Parliament is due to sit the week prior but not during the week of the announcement. The ACT Parliament will be sitting the week in question (13-15 February). No state parliament will be sitting that week. Parliaments in NSW and Victoria resume on February 27, 11 days after announcement and in QLD on February 29. Western Australia will have had a state election on Feb 10 and Queensland will have a state election the day after announcement, Feb 17. This means asbestos will not be an immediate political issue in those states. Clear cut majorities for the governing parties in those states is our desired outcome.

In developing our proposed strategy we have:

- analysed how the NSW Government might react
- identified and mapped the key government stakeholders and their concerns
- identified key influencers on government
- analysed worst case scenarios and contingencies which might be required if the political environment starts to deteriorate
- developed specific communication strategies about research funding

Our proposed strategy includes:

confidential pre-announcement consultation with:

- o Graeme Wedderburn, Chief of staff to the Premier, Bob Carr
- o Matthew Strassburg, Chief of staff to John Della Bosca

This should help us make sure the facts are before these key players (and their departments) before other stakeholders present their views, and should also provide us with one read on the government's views and likely response.

It will also establish a dialogue with the two key advisors to the two key politicians who will be involved in this issue.

Depending on the outcomes of our confidential briefings with the chiefs of staff we may arrange further pre-announcement briefings with the Premier, Bob Carr, the Minister for Industrial Relations, John Della Bosca and the Chair of the Dust Diseases Board, Kate McKensie.

Either way, we will be better placed to prepare for the announcement, and be in a position to fine tune or even change our strategy, if necessary.

We would also be forewarned, should we be told that the government's response will be negative.

The politicians will value the pre-warning because it will enable them to be ready for any attacks or questions of them on the day of announcement.

a briefing program including:

- o meetings the day of the announcement

John Della Bosca, Minister for Industrial Relations  
Kate McKensie, Chairperson of WorkCover and the DDB  
Roger Wilkins, Office of Cabinet  
Graeme Wedderburn, Premier's Office

- o meetings early the following week

selected briefings with key NSW cross benchers (upper house members which together hold the balance of power)  
selected briefings with key NSW Opposition figures

written communication and telephone contact:

- o on the day of the announcement

other state Premiers and Attorney's General or their advisors  
the Federal Minister for Industrial Relations and Attorney General or their advisers  
offices of key NSW Opposition spokespeople including key ministries of Industrial Relations and Attorney General

additional funding for asbestos diseases research

The concept of establishing an Asbestos Diseases Research Institute continues to be evaluated by the NSW Government. We have discussed JH's potential to be involved over the past six months since the idea was first mooted, most recently in early February.

The political landscape and the nature of such an institute continues to evolve. Recent developments include:

the NSW Minister for Industrial Relations, John Della Bosca is attracted to the idea of establishing an institute in NSW which would either be focused only on research activity NSW or be a national body

one of Della Bosca's major constituencies is the metalworkers union, the AMWU – the AMWU is not satisfied that its agenda has been adequately addressed by Della Bosca since he assumed his current portfolio – the AMWU has a significant interest in mesothelioma which it regards as a 'burning issue'

the establishment of an institute would enable Della Bosca to deliver on an important initiative for the AMWU

it is unlikely that the institute would be optimally effective if it did not bring under its wing the work being carried out by the Western Australian Institute for Medical Research, which JH supports financially and which conducts one of, if not, the leading research programs on mesothelioma

with WA work to be included, the most recent concept being discussed is for the institute to be established as a national body which would coordinate all major research on mesothelioma, including the two projects which JH funds (the WA work and the IRM project)

this national institute would then apply for a grant as a Cooperative Research Centre (CRC) and receive funding from State and Federal Governments and government agencies such as the NHMRC and the DDB, and from private industry and others

a 7 year budget for a typical CRC is \$24 million, of which industry would be asked to contribute \$3-5 million

we are recommending to the Foundation that it support the proposed institute but this will be entirely its decision and it will not be in a position to clarify its support until the institute takes shape

we think there will be additional mileage for JH if it also commits to support the institute over and above any support provided by the Foundation - \$1m would be an appropriate amount, representing 20-30% of the private industry component of funding for a 7 year CRC

this additional funding would deliver several benefits

- o demonstrate that JH was not walking away from prior commitments and was prepared to follow through even though this commitment now rightfully belonged to the Foundation
- demonstrate goodwill and good faith from JH on an important social and health issue in honouring person to person indications of support which we have made to key people in Della Bosca's office
- give JH a role in helping to plan the establishment of the institute – we envisage a seat at the table on any planning committee and this would enable us to influence the development of the institute
- such a role will help keep JH 'in the loop' and able to maintain and monitor relationships with other key stakeholders – this would enable us to continually reinforce the positives of establishing the Foundation and understand any ongoing opposition from opponents

We also need to be sensitive to concerns that the DDB has with the proposed institute. The DDB believes that such an institute could duplicate part of its role and may result in funds being diverted from the DDB to the institute.

We have indicated to Della Bosca that we favour a national focus for the institute and a structure that results in no duplication of current resources.

We will meet with James Hardie's representative on the DDB, Brian Eichorn and Sylvia Kidziac from WorkCover, to understand the DDB's issues in more detail. Our aim will be to ensure that the institute is not 'killed' by the DDB.

### 3.6 Unions, Law Firms and Other Defendants

We would initiate direct contact with this group of stakeholders on the day of the announcement. Our objectives would be to:

- explain what we are doing and why;
- provide a forum in which their concerns can be raised and addressed;
- ascertain their support or opposition to the establishment of the Foundation
- ascertain the type of evidence they might use to oppose us; and
- ascertain whether they will support medical research

The organisations in this group that we could contact and the primary James Hardie contacts include:

the major plaintiff law firms; Slater & Gordon and Turner Freeman (PJS, WJA)  
key union leaders (SA). Michael Costa (Labor Council), Greg Combet (ACTU) Paul Bastian (AMWU)  
as well as our contact at the AWU, CFMEU, AWU and ETU  
key co-defendants such as CSR (PDM, PJS,WJA); and  
the DDB (SA, PJS, WJA)

### 3.7 Employees

employees should be notified through existing information channels such as team meetings on the day of the announcement  
we will position the Foundation as a positive move by the company but explain to employees that there is a potential for the company to be attacked  
we will provide employees, particularly sales staff, with a fact sheet and Q&As that they can use if questioned on the subject  
we will ensure that any media calls or non customer enquiries are directed to Corporate Affairs without comment by any other employee

### 3.8 Work In Progress

We are continuing to receive a range of information from our in-house litigation team. This information is helping to strengthen our case.

Specifically, we sought information which would demonstrate that asbestos is not simply a JH problem in order to show that it is not only up to JH to help solve that problem. All the information we've collected to date supports this idea.

As more of this information comes to hand we will incorporate it into our key messages, Q&A and other documents such as the announcements.

We also plan to consult with two prominent figures from the Australian Labor Party (ALP), the governing party in NSW, Victoria and Queensland.

These include a former NSW state secretary of the ALP and former NSW senator, Stephen Loosley, who is now head of PWC's Legal practice in Sydney and Gary Gray, a former National Secretary of the Australian Labor Party who ran successful Federal election campaigns and remains a prominent figure in Labor politics.

Until recently, Gary was Executive Director of the Western Australian Institute for Medical Research which applied to JH for funding into mesothelioma research. Gary is soon to join PWC Legal, working for Stephen Loosley while based in WA, a key state for asbestos issues.

We believe Gray and Loosley will give us a valuable 'second opinion' on our strategy. At this stage we envisage that their role will be confined to the 'backroom' although we may define back up roles for them to contact nominated stakeholders in the event certain events occur.

#### 4.0 KEY MESSAGES

We have developed a strong set of key messages which will be used as the basis of all communication. Different messages will be emphasized with different audiences but the overriding message is that separation represents a win:win for shareholders and creditors.

The key messages are:

James Hardie has effectively resolved its asbestos liability for the benefit of shareholders and future claimants

A new Foundation has been established to manage JH's asbestos liabilities and related litigation, compensate victims of asbestos diseases and fund scientific and medical research to find treatments for these diseases

The Foundation will be completely independent of JH and will commence operation with assets of \$284 million which will be used solely for the purpose of compensating victims of asbestos diseases.

JH will have no control over these assets, and no future claim to them, or to any dividends of capital distributions from the Foundation.

The Foundation's primary aim will be to ensure that the highest possible proportion of these assets, and the substantial income they will generate, is used to compensate asbestos diseases sufferers until all claims have been met

Towers Perrin has been appointed to manage the Foundation's investments with the aim of generating investment income and capital growth, which along with the Foundation's other assets, will be used to fund claims and all expenses

A separate fund of \$3 million has been vested to the Foundation to fund important and encouraging medical research aimed at finding treatments and cures for asbestos diseases

The position of claimants is significantly improved. For example:

- The rights of claimants to sue for compensation are undiminished
- Should any company in the JH group have any future legal obligation to meet asbestos liabilities, it will do so.
- The Foundation has irrevocable rights to assets which will be deployed solely for the benefit of future claimants
- There is much greater certainty that adequate compensation will be available in the future to sufferers of asbestos diseases
- Special research funding will enable work on important and prospective medical research to be accelerated
- The Foundation's assets include insurance policies which cover certain types of claims – for example, all workers compensation claims will be covered by insurance
- The Foundation's board and management will be totally focused on their role as the custodians of assets which exist for the benefit of claimants

The position of shareholders is also significantly improved: For example:

- this will effectively, if not completely terminate JH's exposure to asbestos liabilities'- JH believes this liability resides in the companies whose assets have been transferred to the Foundation.
- JHIL, the parent holding company, is not liable and the company does not believe it will be held liable in the future for asbestos injuries caused by ACM and BM.
- Because control of the assets set aside for compensation has been transferred to the Foundation, JHIL will deconsolidate these assets. This will result in an extraordinary write down of A\$210 million.
- Furthermore, asbestos costs will no longer be charged to JH's income statement and JH will not longer carry a provision for contingent liabilities for asbestos on its balance sheet
- This will increase certainty for shareholders about the nature and extent of any future liability and enable JH management to focus entirely on the future growth of the company

The cost of implementing such a plan is outweighed by the substantial benefits to both shareholders and claimants

The creation of the Foundation recognizes that ACM and BM are two of many contributors to health problems associated with asbestos.

The Foundation presents an opportunity for government, unions and others to work together to ensure that all sufferers of asbestos diseases are properly compensated and that research into finding cures for these diseases receives greater funding and priority than it receives today.

## 5.0 DRAFT QUESTIONS AND ANSWERS

We believe it is inevitable that the Q&A will continue to be refined, especially after we have road tested our responses through the media training program. We envisage that, ultimately, we won't have a long section on Q&A but a strong set of messages, supported by an array of facts, which we will be able to deploy to address the variety of questions we are likely to encounter.

The Q&A shown below is indicative of the key questions we will get and the substance of the answers we will provide.

**How can James Hardie be confident that the Foundation has sufficient assets to meet all future claims?**

The Foundation will start with assets of \$284 million – all of which have been set aside for the sole purpose of compensating people injured by asbestos. This is almost three times the amount that the company has expended in the past 20 years to meet compensation claims.

Most of the Foundation's assets are in the form of low risk investments which will earn investment income and deliver capital growth. The income on the assets and the assets themselves will be used to pay compensation. The Foundation also has insurance policies over and above its liquid assets which will cover certain types of claims. For example, all workers compensation claims from past or current employees are covered by these policies.

While it is not possible to reliably measure what the total number or cost of claims will be, we have used our 20 year experience of asbestos compensation and a range of independent projections to form the view that there is a very real prospect that all claims can be met. Under certain scenarios, it is possible to project that there will actually be a surplus once all claims are met. This surplus would not be returned to JH but used to fund other important research into lung diseases.

### 2. What work has James Hardie undertaken to determine what future claims might be?

The company takes advice and attempts to stay abreast of developments in this area. It has learnt that there is no certainty.

It has previously stated (note 29 (ii) Accounts for Year ended 31 March 2000): "While certain Australian subsidiaries recognise that they will continue to be named as defendants in litigation in Australia as a result of past manufacturing and marketing of products containing asbestos, James Hardie cannot measure reliably its exposure with respect to future asbestos-related claims. The Directors rely on various internal and public reports and seek actuarial advice in assessing the ongoing exposure to claims. A contingent liability exists in respect of the ultimate cost of settlement of claims yet to be made which cannot be measured reliably at the present point in time."

This position has not changed – the Directors are still of the view that James Hardie cannot reliably measure the liability of ACM and BM to future asbestos-related claims.

Alternative answer:

We have extensively reviewed our 20 year experience of asbestos compensation. This tells us for example that:

ACM and BM are two of about 150 companies and organizations which have liabilities for asbestos and which have appeared as defendants in asbestos cases

ACM and BM are solely responsible for the liability in less than 20% of cases – last year it was 16%

ACM and BM are partly responsible for a liability in a further 20% of cases on average – last year that was in about 18% of cases

About 50% of the claims ACM and BM receive are for mesothelioma, while the rest are for other diseases which are typically not fatal and do not result in significant compensation claims

More than 70% of claims received by ACM and BM are fairly straightforward and don't require a court hearing.

A further 20% are settled before the need for a court judgment. Settlements before hearing and or judgment, reduce the legal cost of litigation, a major drain on the funds available for compensation.

We also compare our specific experience with the wider community experience and this shows that the JH problem is not typical of the wider problem. Using this information, we reach similar conclusions about the future.

One of the most interesting facts is that about 30% of people which contract mesothelioma have no known exposure to asbestos.

**3. What does your actuarial advice say in relation to the ongoing exposure to claims?**

We have learned that actuarial advice is not a reliable basis for assessing these kinds of liabilities. Within these limitations it can, however, provide a reference point which should be considered along with many other factors. No two companies asbestos history is the same and therefore projections about the incidence of asbestos diseases generally will not apply equally to all companies that have a liability for asbestos.

Factors which need to be considered include things like the types of asbestos used, over what periods they were used, how many people might have been exposed, whether the products carried appropriate warnings and so on. Based on all these factors, it is clear that not all asbestos problems are the same and that JH's problem does not correlate strongly to the wider problem.

**4. A recent media article in the AFR reports that a leading actuarial firm is warning that asbestos related compensation claims could more than double previous expectations. In light of this, do you think the Foundation has sufficient funds to meet all compensation claims?**

The actuarial study did not show that projections of the number of claims had doubled overnight from one day to the next. What it showed was that projections had changed since the last time a major study was done several years ago.

We asked one actuarial firm to look at our situation and they found that the new projections did not mean that claims against JH would double. Instead, they felt that claims against JH might increase 20%. This has been more than factored into our thinking about whether the Foundation's assets will be sufficient to meet all claims.

The Foundation has very significant funding that will earn income. It also has access to insurance policies that will contribute towards meeting the costs of asbestos related expenses. The question of whether there is sufficient funding is therefore a hypothetical one. Any issues surrounding funding sufficiency will not arise for very many years, if at all.

**5. Will James Hardie provide extra funding to the Foundation should its initial funding prove to be insufficient?**

The Foundation has been set up to provide the greatest possible certainty, much greater certainty than ever before, that the funds will be sufficient. This is the main aim of the Foundation, the whole reason it has been set up.

It will not be known for very many years whether or not funding is sufficient. It is impossible to prove today whether any particular level of funding would be more or less than might be required.



JH does not expect that there will be a need for further funding – but it is not liable to, and would not provide, further funding.

**6. Is the creation of the Foundation just a blatant attempt by James Hardie to escape from its obligations to people injured by its subsidiaries?**

No. The Foundation will provide much greater certainty for claimants than in the past and secures a much greater quantum of assets for the sole purpose of meeting claims than in the past.

Claimants' rights to sue are undiminished. And, should any part of the JH group have any future obligation to address a claim or pay out on a liability, it will do so.

James Hardie is a holding company that is not responsible for the legal liabilities of ACM and BM, either before or after they were ceded to the Foundation. This issue is a fundamental principle under Company Law and has been tested and reviewed by the Courts several times over the years and James Hardie has never been found liable for the activities of ACM and BM. It does not intend to contribute further funding to the Foundation as it has no obligation to do so.

**7. Why is James Hardie doing this?**

The creation of the Foundation, and the ceding of ACM and BM to the Foundation, provides their assets \$284M in trust to meet the obligations of ACM and BM. This provides certainty to people injured by asbestos that these funds, and earnings on them, will not be used for other purposes, but will be available to them. Similarly, the creation of the Foundation, and deconsolidation of ACM and BM from James Hardie, provides certainty to investors in James Hardie as to the cost of future asbestos related claims. In addition, \$3M research funding provided to the Foundation will enable the continuation of promising research that is seeking treatments and cures for asbestos related diseases.

In this way, the Directors of James Hardie have sought to balance the legitimate interests and rights of claimants, with their legal duty to shareholders. The result is a very good one for both groups.

**Why does James Hardie need to deconsolidate the companies?**

James Hardie no longer has an economic interest in ACM or BM. It does not control them or have any recourse to their assets. Because of this, accounting rules (AGAAP) require that the companies be deconsolidated.

**9. Why does James Hardie think future claims will cost at least \$284M?**

The assets set aside reflect the net assets of the companies which previously manufactured asbestos which have been found legally liable for asbestos. The quantum of assets is not a reflection of what JH thinks the future cost will be. This is a separate question.

The ultimate cost of asbestos claims cannot be measured reliably at this time. Neither James Hardie nor anyone else knows the future extent of ACM and BM's liability, nor is there anyway to determine this with any certainty. Therefore, James Hardie cannot make a determination as to the adequacy of funding. However, to provide certainty for those injured by exposure to asbestos it is important that the maximum possible amount be made available to pay claims and the amount that is available is the entire net worth of ACM and BM. Consequently, James Hardie's Directors cannot foresee a situation where the companies could pay dividends or otherwise return capital to it – therefore they attribute no future economic value to James Hardie's shareholders from ACM or BM – and can cede the assets as they have.

**10. If the Directors attribute no future economic value to James Hardie shareholders from ACM or BM, why was the market not informed of this earlier?**

The James Hardie accounts have for many years disclosed the fact that “A contingent liability exists in respect of the ultimate cost of settlement of claims yet to be made which cannot be measured reliably at the present point in time.” The determination that ACM and BM have no future economic value to James Hardie shareholders was made at the same Board meeting at which the Foundation was created – both events were announced immediately.

**You are providing the remaining assets of the companies that are responsible for injuries to people due to asbestos exposure to the Foundation for paying compensation claims. What assets have been taken from these companies by James Hardie since it was aware of their exposure to claims?**

The companies have paid properly approved dividends (from profits) to James Hardie from time to time. No assets have ever been taken from these companies without proper compensation. Some assets have been sold at independent valuations.

- 12. How many claims does James Hardie expect the Foundation to receive, over what time period and what does it expect the cost of these claims will be?**

Neither we, nor anybody else, can reliably measure the number of, or liability for, future asbestos-related claims that may be brought against ACM or BM.

- 13. How can future plaintiffs be guaranteed there will be sufficient funds in the Foundation to meet their claims when they arise?**

The Foundation has very significant funding through the combined assets of ACM and BM. The Trustees, along with their asset manager Towers Perrin, will work to ensure these assets earn good returns, substantially increasing the amount that will be available to meet ongoing expenses. The companies also have access to insurance policies that will contribute towards meeting the costs of asbestos related expenses. The issue of there being sufficient funds should not arise for very many years, if at all.

What James Hardie has done, however, is to provide certainty to claimants by putting it beyond anyone's power to deplete the available funds prior to the settlement of all future claims. If JH had not taken the steps that it has in creating the Foundation, the available funds would have been at risk from business failure, takeover, imprudent investing, imprudent dividending, liquidation and the like. The creation of the Foundation is a proactive and very positive development for claimants and shareholders alike.

- 14. How do potential claimants know that funds will not be siphoned out of the Foundation at some time in the future for purposes other than paying compensation to claimants?**

The Foundation has been established with a Trust Deed and associated documents that require the Foundation to manage the companies' assets for the best interests of its current and future creditors and ensure that the assets cannot be used for any other purpose (such as research or for dividends) until it can be sure of satisfying all claimants.

This provides certainty for people who might suffer injury from exposure to asbestos caused by ACM and BM. The placement of the companies in the Foundation means that the assets are not at risk due to operating performance fluctuations of James Hardie. If James Hardie had been taken over or wound up prior to the establishment of the Foundation, the assets of ACM and BM could have been used to settle ordinary creditors – this is not now possible.

- 15. On what basis would the Directors of James Hardie guarantee that funds would be provided in the future to prop up the Foundation if necessary?**

There is no legal basis on which the directors could provide such a guarantee. In fact, the directors would be breaking the law if they provided such a guarantee.

**16. How much have James Hardie's asbestos liabilities cost the company?**

Since the company began experiencing significant numbers of claims and began keeping comprehensive records, it has paid out just over \$100 million. Of this, about half has been paid as compensation and about half as legal fees and costs.

**17. Why has James Hardie created a Foundation if it will not make any material difference to the numbers or costs of claims? What is the benefit for James Hardie and what is the cost for current and future claimants?**

James Hardie ceded the companies to the Foundation so that the assets could be held in trust to meet the obligations of ACM and BM. In the first instance, these obligations will primarily be to people who are injured, or become injured in the future, as a result of past manufacturing activities of these companies. In the longer term, any surplus assets will be used by the Foundation for research into asbestos and other related diseases. The benefit for current and future claimants is that there is certainty that the funds, and earnings on them, will be available for them. There will also be guaranteed funds for important medical research.

The benefit for James Hardie is that the creation of the Foundation will provide certainty for shareholders in James Hardie Industries Limited, and eliminate very significant management distraction. Future costs of compensating people for asbestos injuries will now be replaced by a once off extraordinary write off of \$256M, due to the vesting of the companies with assets of \$284M.

**18. Why does James Hardie only have a liability for asbestos through the two companies (ACM and BM)?**

ACM and BM were the companies that manufactured asbestos containing products and which, therefore, have liability for asbestos related manufacturing activities.

James Hardie is a holding company that is not responsible for the legal liabilities of ACM and BM, either before or after they were ceded to the Foundation. This issue is a fundamental principle under Company Law and has been tested and reviewed by the Courts several times over the years and James Hardie has never been found liable for the activities of ACM and BM.

**19. How will the Foundation be managed?**

A well qualified and independent Board of Directors will oversee the working of the Trust. A General Manager reporting to the Board will be responsible for the day-to-day workings of the Foundation.

The Foundation's directors are:

The Hon. Sir Llew Edwards AC. Sir Llew was a director of JH from August 1990 to February 2001. He is a director of a number of companies, including Westpac and the Office of Economic Development for Brisbane City Council, and Chancellor of the University of Queensland. He has also had long careers in medicine and politics.

Mr Michael Gill. Mr Gill has significant experience in insurance law, dispute resolution and law reform. He is a consultant to the Australian Law Reform Commission and Vice Chairman of the American Bar Association and a former President of the NSW Law Society and the Law Council of Australia, a former Chairman and Managing Partner of Phillips Fox.

Mr Peter Jollie. Mr Jollie is a director of a number of companies and organizations including the Heart Research Institute, is a former National President of the Institute of Chartered Accountants, a

former senior audit partner with Peat Marwick, and a member of the finance committee of the Sydney 2000 Olympic Games Bid.

**20. Who will be responsible for ensuring that the trustees are fulfilling their responsibilities and obligations in the interests of current and future claimants?**

The Foundation Directors' responsibilities to claimants are enshrined in their fiduciary duties as trustees and directors and also by the trust deed that ensures claimants have rights to the funds in the Foundation before other parties.

**21. What do you say to the 39 year old mother of three whose husband dies when there is no money left in the trust and James Hardie is not prepared to contribute more?**

This is a scenario that may never arise. The Foundation has very significant funding through ACM and BM's substantial asset base, associated investment returns and access to insurance policies. These should result in funding for very many years. However, neither we nor any one else knows the future extent of ACM and BM's asbestos liability.

James Hardie hopes that the professional management of the Foundation's asset base and related insurance policies will enable the Foundation to meet all genuine claims. The Foundation will manage its assets to best meet all claims going forward. It may be that the assets available prove insufficient; it is also possible that there will be a surplus.

Irrespective, James Hardie has no obligation, and the Directors have no intention, to add further assets to the Foundation in the future.

**22. In the USA claims are spiraling upwards and companies are going bankrupt under the weight of claims. Is this an attempt to prevent JH suffering the same fate?**

No. The US experience is totally different. The population is much larger, therefore the number of claims are significantly higher. Second, the legal system is very different and results in much higher payouts and significantly higher legal fees. In the US:

companies are being swamped by claims from plaintiffs that have no asbestos related injury – they merely have a fear of developing an asbestos related disease. This is not the case in Australia

as each company goes into protection, the liability transfers to those companies left standing. This means those left standing go into protection faster. This is not the case in Australia

the US system contains many incentives to sue and there is no disincentive against unmeritorious claims, because claims that are unsuccessful don't bear costs.

of all the moneys paid out for asbestos compensation, 60% is legal fees.

## **6.0 COMMUNICATIONS STRATEGY FOR THE MEDICAL RESEARCH AND COMPENSATION FOUNDATION**

Stakeholder support for the Foundation will depend largely on whether it is perceived to be genuinely independent of JHIL.

There are significant PR opportunities available to both JH and the Foundation, if the Foundation has a prominent role at the time separation is announced to establish its independence in its own right.

Similarly, it will be important for both JH and the Foundation, that the Foundation manages its PR effectively over the long term to ensure appropriate positioning for both organisations among key stakeholders.

The Foundation will start with a clean slate and will be able to take the moral high ground in ways denied to JH, when, for example, questions of compensating victims and funding medical research are raised. It is therefore appropriate that certain questions and issues at the time of the announcement, and subsequently, are handled by the Foundation and not by JH. This strategy will help the Foundation prepare for this role.

For example, the Foundation will be able to speak with full authority about its future aims in areas such as:

- ensuring most of its assets are available for victims and not lawyers
- developing a better compensation regime
- contributing to better coordinated and funded medical research
- working together more effectively with hostile stakeholders etc

This paper discusses these concepts in further detail.

### **6.1 Overall Aim**

To position the Foundation as a credible, independent organisation focussed purely on compensating asbestos disease sufferers with genuine claims and funding important medical research to find treatments and cures for the diseases.

### **6.2 Objectives**

Use the announcement to establish the Foundation's credibility and independence and explain its function and responsibilities

Ensure the Foundation and its chairman are fully prepared for and involved in the announcement and in any public discussion immediately following the announcement

Clearly distinguish the differences between the future roles of JH and the Foundation in relation to asbestos

Ensure the key messages of JH and the Foundation are different, but complementary and aligned

Ensure that JH does not speak on behalf of the Foundation and vice versa

Focus attention at the time of the announcement on the valuable future role of the Foundation, while not accentuating the decision to establish it

Establish a stakeholder management program for the Foundation to establish positive and productive relationships with media, government, unions, law firms and other defendants.

### 6.3 Announcement

On the day of the announcement, the Foundation will issue its own news release, provide a separate point of contact and have its Chairman available for media interviews. We will help coordinate and manage these activities, including:

- drafting Foundation specific news release, key messages and Q&A
- media training the Foundation's Chairman
- staffing the Foundation's point of contact for media and other enquiries

The Foundation's Chairman would not be quoted in the JHIL news release, or attend JHIL announcement functions or participate in JHIL media interviews. These issues and items will be managed as separate events.

Thereafter, enquiries of JHIL about the future role of the Foundation will be dealt with by:

- responding with agreed messages within specific parameters, then
- immediately referring the enquiry to the Foundation for further, detailed comment

The same approach will apply in reverse if the Foundation is asked to comment on JHIL. We suggest that this approach is enshrined in the agreement between JHIL and the Foundation.

### 6.4 Strategic approach

#### Immediately Post Announcement

JH and the Foundation will have the same communication strategy i.e. shut the story down as quickly and effectively as possible.

The Foundation should be prepared to make media comment to explain its independence and credibility and to 'market' the virtues of its role as a not-for-profit organisation with two focussed goals, compensation and medical research.

The key messages for the Foundation will include:

- the Foundation provides increased certainty for people injured by asbestos
- the Foundation has an investment strategy aimed at generating significant capital growth and investment income with which it will settle compensation claims
- the Foundation is a major supporter of important medical research aimed at finding treatments and cures for asbestos diseases

JH will retain an issues management firm for the first 30 days post announcement to help the Foundation manage public interest in its formation.

The need for an ongoing issues management and PR resource will be a decision for the Foundation at the end of the 30 days. Our recommendation would be that the Foundation establish such a capability, using a consultant on a modest retainer, until such time that such an arrangement is no longer required.

#### Longer Term

The Foundation will be solely responsible for managing its general public relations over the long term. The following recommendations are designed to help the Foundation's board consider relevant issues and determine its long term approach.

We recommend that the Foundation:

- position itself as open, honest, independent, transparent and accessible to its various stakeholders

develops productive relationships with its key non-legal stakeholders such as government, unions, and asbestos diseases groups

develops and maintains a capability to respond to media enquiries quickly and openly, develops relationships with senior media people, such as chiefs of staff, and works towards achieving fair and positive reporting of its activities

raises awareness of its primary role and responsibilities, namely the fair compensation of genuine victims and the funding of important medical research

seeks opportunities for media coverage of the medical research projects it funds to raise awareness of its support for these activities and of the prospects of the research projects themselves

works with the research bodies its supports to help those bodies secure funding from other sources

shortly after announcement, commence a program of introductory briefings to establish itself in its own right with government, unions and asbestos diseases groups – this should be part of the transition arrangements

shortly after announcement, determine its ongoing commitments to existing research projects with the Institute of Respiratory Medicine and Western Australian Institute for Medical Research and determine its future commitment to the asbestos diseases research institute which is currently being discussed by the NSW Government

develops a detailed communication strategy as part of its initial business plan

#### **6.5 Immediate practicalities**

To clearly separate itself from JHIL and establish its own identity, the Foundation will need to develop and implement various back office projects such as:

- stationery such as letterhead, news release paper etc.
- separate telephone and fax facilities
- a media protocol to ensure enquiries calls are handled professionally

In the first 30 days post announcement, we will help the Foundation implement these initiatives.

#### **6.6 Transitional arrangements**

Steve Ashe of JH Corporate Affairs will be available for a transitional period to provide briefings on the above matters to the Foundation and to ensure that the Chairman and General Manager of the Foundation are introduced to the key stakeholders so that there will be a smooth transition in relationship management.

## 7.0 KEY MESSAGES FOR THE FOUNDATION

The Medical Research and Compensation Foundation (MRCF) has been established for the dual purpose of compensating people with asbestos related diseases and funding medical research aimed at finding cures for these diseases.

The Foundation is a completely independent entity which has been established as a not-for-profit company. It is governed by an independent board of directors whose primary aim is to ensure that the highest possible proportion of funds available for compensation end up in the hands of people injured by asbestos.

The Foundation's directors are highly qualified, each having had distinguished careers which between them span medicine, law, business, financial management and politics.

The Foundation's board and management team is 100% committed to ensuring that genuine claims from people injured by asbestos are settled as quickly as possible without the need for drawn-out, costly and adversarial litigation

The Foundation's working philosophy is to settle all genuine claims before the need for a court hearing – in this way, it hopes that people with genuine claims seeking compensation will have their case settled with minimum delay and anxiety

The Foundation will commence operation with substantial assets of \$275 million over which it has sole and unencumbered rights.

The securing of these assets for the first time, for the sole purpose of compensating current and future creditors, provides much greater certainty for sufferers of asbestos diseases that adequate compensation will be available to them

The assets include cash, property which earns rent and insurance policies but the majority of assets are held in the form of low risk, income earning investments.

The recognized fund manager, Towers Perrin, has been appointed to manage these investments, much like a superannuation fund, so that the investments will generate regular investment income and appreciate in value over the long term.

The investment income and capital appreciation generated by the Foundation's assets means that the total pool of funds available for compensation will be well in excess of \$275 million.

Additionally, the Foundation has insurance policies which cover certain types of claims for asbestos related diseases, including workers compensation insurance which covers all forms of workers compensation claims for asbestos diseases

The Foundation has a separate fund of \$3 million which is specifically earmarked for scientific and medical research programs to find treatments for asbestos related diseases.

Initially, the Foundation will support a major project being conducted by the Institute of Respiratory Medicine in Sydney. Work to evaluate another major project, being conducted by the Western Australian Institute for Medical Research, is well advanced.

It is expected that research projects will involve a commitment of \$1 million over the next 5 years. The balance of the special research fund will be invested and the Foundation expects to support medical research projects for up to 15 years if necessary

The Foundation is also committed to working with the NSW Government to establish a new state or national asbestos diseases research institute which is currently under consideration.



The Foundation believes there is a significant opportunity to work together with government, private industry, unions, asbestos diseases groups, insurers and plaintiff law firms and others to:

further improve compensation arrangements for people with asbestos related diseases

increase funding for asbestos diseases research and improve coordination of this research within Australia and internationally

ensure the suffering and anxiety of people with asbestos related diseases is minimized

Should there be surplus assets, when the Foundation has met all claims, that surplus will be used to fund research into other types of lung diseases.

The Foundation's directors are:

The Hon. Sir Llew Edwards AC. Sir Llew was a director of JH from August 1990 to February 2001. He is a director of a number of companies, including Westpac and the Office of Economic Development for Brisbane City Council, and Chancellor of the University of Queensland. He has also had long careers in medicine and politics.

Mr Michael Gill. Mr Gill has significant experience in insurance law, dispute resolution and law reform. He is a consultant to the Australian Law Reform Commission and Vice Chairman of the American Bar Association and a former President of the NSW Law Society and the Law Council of Australia, a former Chairman and Managing Partner of Phillips Fox.

Mr Peter Jollie. Mr Jollie is a director of a number of companies and organizations including the Heart Research Institute, is a former National President of the Institute of Chartered Accountants, a former senior audit partner with Peat Marwick, and a member of the finance committee of the Sydney 2000 Olympic Games Bid.

## 8.0 FOUNDATION - QUESTIONS AND ANSWERS

### 1. How many of the Foundation's directors have a past association with James Hardie?

Sir Llewellyn Edwards is the Foundation's chairman. He resigned from the JH board to take up this appointment. Sir Lew has had a long and distinguished career in medicine, politics and business, a combination of experience that made him ideal for the role of Chairman.

Some people might argue that Sir Lew's past association with JH taints the independence of the Foundation. The independence of the Foundation is enshrined in law and JH has no current or future claim to the assets of the Foundation or to any surplus assets it may ultimately have. That aside, Sir Lew provides a longstanding and intimate knowledge of asbestos issues which it would be hard to find in another candidate with such a distinguished track record in business and public life.

The other directors do not have past associations with James Hardie other than Mr. Michael Gill's firm (Phillips Fox) having acted for the company.

### 2. Isn't the Foundation really just a James Hardie puppet?

The Foundation is completely independent of JH. It is governed by its constitution and the directors have fiduciary duties which will ensure that the Foundation manages the assets of its subsidiaries for the sole purpose of satisfying claims for compensation from current and future creditors. These assets cannot be used for any other purpose. The Foundation has a separate fund for medical research and another fund has been established to pay directors fees. This provides further protection for creditors because funds which should be used for compensation cannot be redirected to research or directors fees or to other purposes. There is no risk that the assets secured for compensation can be stripped out of the subsidiaries by the Foundation or any other party.

### 3. What kind of research has JHIL funded in the past and what chance is there of success in finding a cure?

James Hardie has been funding the two major mesothelioma research projects in Australia. For the past 10 years it has funded mesothelioma research conducted by the Western Australian Institute for Medical Research at the Sir Charles Gairdner Hospital in Perth. Further funding of this work is, coincidentally, due for review and the Foundation has taken over this review and expects to make a decision in the near future.

The other project involves the Institute of Respiratory Medicine in Sydney. This 5 year commitment commenced about a year ago and has transferred to the Foundation which will be able to review its ongoing commitment annually based on performance reviews.

### 4. \$3 million funding for asbestos research won't go very far will it? Is it really more than a gesture?

\$3m is in fact a very significant sum. It is easily the largest single commitment of its type in Australia. Research of this kind is not capital intensive. Most research units like the ones we are supporting operate on modest budgets, deploying most of their funds to the research itself, not overheads. This is true elsewhere in the world where similar research is taking place.

We estimate that our special fund of \$3 million will be enough to allow the Foundation to fund research for at least 15 years, as well as launch new research programs.

The Foundation's directors also believe there are opportunities for this research to attract funding from other sources, such as matching funds from government and private industry for example, and we will be working with the research bodies to achieve this objective.

**5. Do the directors believe that the assets vested into the trust will be sufficient to meet all future claims for asbestos related disease?**

That's our goal.

But, there is no known way of calculating this with certainty.

What we do know is that:

- we have substantial assets valued today at \$284m
- these assets are secured for the benefit of asbestos disease sufferers
- these assets will grow in value
- this means the total asset pool available for sufferers will be well in excess of \$284m
- as much of every dollar as possible will be used for compensation
- we also have insurance policies which will cover a large number of claims
- the question of whether the funds will be sufficient will not arise for many years if at all

then, if pushed

As part of our due diligence as incoming directors, the Foundation's board conducted detailed appropriate reviews and believe that even using worst case scenarios the funds will last for many, many years. Using more conservative forecasts, the Foundation would be able to meet all claims and have a surplus.

We have set ourselves up with the aim of being able to meet all genuine claims – that's our goal

**6. How far will the \$284M stretch given that the numbers of people likely to get an asbestos disease has not yet peaked and there's even a suggestion that an epidemic is looming.**

As above, plus:

No one can predict whether the incidence of asbestos disease has peaked or what that peak will be. Experts are divided on this.

The Foundation will only be responsible for compensating people injured by asbestos which was contained in products manufactured by two companies. Based on the experience of the past 20 years, these companies have been solely responsible for asbestos diseases in only about 20% of cases.

**7. Have you conducted any analysis on anticipated claims and what was the range of possible liability? Will you release it, if not why not?**

We have taken advice from independent of JH and we have reviewed independent studies. It is apparent that there are many variables which, depending on the view you take, will result in a wide range of answers.

Even using worst case scenarios the funds available for claimants will last for many, many years. Using more realistic forecasts, the Foundation would be able to meet all claims and have a surplus.

**8. Experts have estimated the total exposure at more than \$700 million haven't they?**

It is possible for people to find views to support virtually any outcome they would like to argue. No one knows the future extent of any particular company's liability with any certainty. In terms of the \$700m, the Foundation has not seen any evidence to support those numbers.

Repeat earlier points about substantial assets etc.

**9. What is the average payout for a sufferer of asbestos disease? Do you in fact have any idea of the number of claimants out there?**

The average payout is \$xxx (quote number taking average over all types of disease and all years since 1981). The average number of claims received is XX a year (again use average since 1981). There are currently xx outstanding claims.

**10. What happens when the trust runs out of money? Where will the trust get more money from? Will JHIL provide more money?**

It's our job to do our very best with the funds that we have. We will be working hard to ensure that as much of every dollar as possible ends up in the hands of sufferers.

The Foundation is confident of earning very sound returns on its investments and there's a real role for us in raising additional funds from a many sources – that's why we've been established as a Foundation.

We can't comment on JH. You will have to ask JH.

**11. If additional money doesn't come from JHIL and there are still sufferers of asbestos related disease making claims what will you tell them? Sorry you got sick too late?**

It is our job to ensure that the vast majority of available funds are used for compensation and not other costs, including overheads.

We believe there is an opportunity for us to work together with government, unions and others to find better ways of ensuring that funds available for compensation end up in the right hands. That is, in the hands of people who suffer from asbestos related diseases. I can't think of anyone with a genuine interest in this issue wanting anything else.

Australians really value a fair go. That means we might have to look at the litigation system in Australia. No one in Australia wants to end up with an out of control system like they've got in the USA.

If the vast majority of funds in the trust are used to pay compensation and not wasted on legal fees, there is actually no reason why there wouldn't be sufficient funds available and a sizeable surplus left over. Any surplus will be directed to research into other lung diseases.

If you look at the US, companies with asbestos liabilities are sinking under the weight of compensation claims – a great many of which are made by people with no disease. As each company goes broke, the liability transfers to those left standing. This means those left standing go broke faster. Sooner, or later there won't be any companies left standing.

But 60% of the money is going to lawyers as fees, bonuses and commissions, as well as to pay their costs. This more than anything else is pushing companies with liabilities towards bankruptcy.

Three such companies, big companies, have filed for bankruptcy in the past few months. What do the lawyers say to victims when the last company standing falls over: "sorry, we got most of the money, there's nothing left for you".

For this reason, we expect the Bush administration to bring a bill to congress which will ensure that victims have the highest priority claim on the funds available and that legal costs are kept down.

**12. What credentials in the area of managing funds does Sir Llewellyn bring to this trust?**

Sir Llew is one of three directors which bring a range of skills to the Board.

The Foundation's directors are:

The Hon. Sir Llew Edwards AC. Sir Llew was a director of JH from August 1990 to February 2001. He is a director of a number of companies, including Westpac and the Office of Economic Development for Brisbane City Council, and Chancellor of the University of Queensland. He has also had long careers in medicine and politics.

Mr Michael Gill. Mr Gill has significant experience in insurance law, dispute resolution and law reform. He is a consultant to the Australian Law Reform Commission and Vice Chairman of the American Bar Association and a former President of the NSW Law Society and the Law Council of Australia, a former Chairman and Managing Partner of Phillips Fox.

Mr Peter Jollie. Mr Jollie is a director of a number of companies and organizations including the Heart Research Institute, is a former National President of the Institute of Chartered Accountants, a former senior audit partner with Peat Marwick, and a member of the finance committee of the Sydney 2000 Olympic Games Bid.

**13. What will you say to the child of a future claimant when the money runs out?**

I'll tell them what I am telling them today; they are going to be much better off.

Their rights to sue for compensation are undiminished. The funds available for compensation many years into the future have been guaranteed.

This is a big improvement on the situation many people face today. Many companies and employers which were responsible for asbestos diseases have been taken over, merged, liquidated, gone broke or otherwise don't exist anymore. There is nowhere people can go if they have a problem.

What the Foundation does is provide much greater certainty than ever before.

It's our job to ensure the Foundation does the very best job it can with the assets it has. We will be working hard to ensure that as much of every dollar as possible ends up in the hands of sufferers.

The Foundation has very substantial assets which have been set aside and secured solely for the purpose of paying out compensation further into the future than anyone can predict. If these assets had been left inside JH you'd have nothing like the same certainty that these funds would be available in the future.

**14. What is to stop you getting rid of the money as soon as possible and walking away from your responsibilities – shutting up shop and ending the debate?**

The Foundation is completely independent of JH. It is governed by its constitution and the directors have fiduciary duties which will ensure that the Foundation manages the assets of its subsidiaries for the sole purpose of satisfying claims for compensation from current and future creditors. These assets cannot be used for any other purpose. The Foundation has a separate fund for medical research and another fund has been established to pay directors fees. This provides further protection for creditors because funds which should be used for compensation cannot be redirected to research or directors fees or to other purposes. There is no risk that the assets secured for compensation can be stripped out of the subsidiaries by the Foundation or any other party.

**15. Who will be responsible for ensuring that the trustees are fulfilling their responsibilities and obligations in the best interest of current and future claimants?**

As for questions 14.

**16. What is your view of how claimants will take the news that the trust has been set up?**

This is very good news for current and future claimants. For the first time, a very large pool of assets has been secured solely for the purpose of compensating people injured by asbestos. This provides greater certainty than at any time in the past that funds will be available for them if needed.

**17. Don't you think it is a disgrace that JHIL is trying to distance itself from its liabilities?**

I can't comment on behalf of JH but I do know that as a former director of JH that it was not the intention of JH to walk away from its obligations. I don't know of any JH director who would support that and I was on the Board until recently.

For me personally, I've taken on the role as a director of the Foundation because I believe it is by far the best way of ensuring that claimants will get a fair share of the compensation available to them. No one anywhere in the world has come up with a better scheme than this.

**18. You mentioned a desire to see the way claims are handled changed. What do you mean by that? Are you targeting plaintiff law firms?**

The Foundation's board and management team is 100% committed to ensuring that genuine claims from people injured by asbestos are settled as quickly as possible without the need for drawn-out, costly and adversarial litigation

Our working philosophy is to settle all genuine claims before the need for a court hearing – in this way, we hope that people with genuine claims seeking compensation will have their case settled with minimum delay and anxiety. It's not realistic to think that every claim can be dealt with in this way, but we will be aiming for 90% of genuine claims to be settled quickly and with the lowest possible legal costs.

**19. Will you recommend claimants attempt to sue James Hardie if the money in the trust runs out?**

It's pointless speculating about whether the funds will run out. We believe there is a fair chance that the funds won't run out but we are talking about a question that won't arise for many years.

We certainly won't be recommending any course of action to anyone. That will be a decision for the individual.

What we do ask people concerned to do is to think about how we can take the current system for compensating people and make it even better. Let's put our heads together and think about how we can make sure that as much of every dollar available ends up in the hands of the people injured by asbestos. This is not just a question for the Foundation but for everyone who has a genuine interest in seeing genuine claims settled properly.

**20. Have you consulted with the victims group, government, law firms or others about the formation of the trust? What consultation do you propose going forward?**

JH consulted with the NSW Government before the Foundation was established and [received a good response] because it provides much greater certainty for current and future claimants. In an environment where no one can provide a guarantee, the Foundation provides the closest thing to a guarantee that all claimants will be compensated.

Going forward, we expect to form productive working relationships with everyone involved in asbestos that is relevant to the Foundation. We certainly welcome consultation and I intend to have meetings with all the key players over the next month or so.

The Foundation believes there is a significant opportunity to work together with government, private industry, unions, asbestos diseases groups, insurers and plaintiff law firms and others to:

further improve compensation arrangements for people with asbestos related diseases

increase funding for asbestos diseases research and improve coordination of this research within Australia and internationally

ensure the suffering and anxiety of people with asbestos related diseases is minimized

## ATTACHMENT C

### JAMES HARDIE GYPSUM SALE CONSIDERATIONS

#### Introduction

- ◆ Over the last 4 years, James Hardie has grown its gypsum business ("JHG") materially by acquisition and through capacity expansion at each of its 3 plants, while also achieving very strong rates of return on investment
- ◆ James Hardie has recently pursued opportunities for further growth, including the acquisition of Western Gypsum and participating in the sale processes for Celotex and Republic. While James Hardie decided to withdraw from the Celotex process, the ultimate prices achieved by both Celotex and Republic were materially higher than expected and could not be justified by James Hardie
- ◆ The prices were also materially higher than the value attributed by equity markets to US gypsum wallboard assets. The low value attributed by equity markets to these assets was, and still is, largely due to concerns over significant oversupply as a result of new capacity being commissioned
- ◆ These concerns eventuated during Q3 and Q4 2000, with significant price declines occurring as a result of over-capacity. This has materially affected the earnings of James Hardie and other US gypsum wallboard producers, and has confirmed the commodity and cyclical nature of the product from the perspective of investors
- ◆ Following the sale of the Celotex gypsum assets and Republic, there is believed to be one major round of consolidation left in the North American gypsum wallboard industry. The most likely participants in any consolidation are Lafarge Corporation ("Lafarge"), Centex Construction Products ("Centex") and BPB, all of which have expressed strong interest in JHG
- ◆ James Hardie is unlikely to participate in any further consolidation as an acquirer given:
  - it is unlikely to be able to justify sufficiently high prices required to acquire further assets
  - funding constraints given the capital expenditure requirements of fibre cement opportunities, particularly following the establishment of the Foundation
  - increased exposure to gypsum is likely to be viewed negatively by the equity market
- ◆ Given that James Hardie is unlikely to acquire further gypsum assets, it is unlikely that JHG will grow at a material rate through the cycle in the future
- ◆ It is therefore likely that JHG is worth more to parties attempting to consolidate (eg Lafarge, Centex, BPB) than to James Hardie. Consequently James Hardie is considering either selling JHG, or using other ownership structures (eg JV's) to realise the majority of its value
- ◆ In this regard James Hardie commenced discussions with Lafarge several months ago in relation to a potential gypsum JV. James Hardie has also indicated to Centex and BPB that it would consider selling gypsum at the right price
- ◆ The sale of JHG is likely to have a number of benefits in addition to maximising value to James Hardie. These benefits include:
  - addressing funding and gearing concerns following establishment of the Foundation
  - funding the strong growth opportunities in fibre cement
  - making James Hardie a pure, high growth fibre cement company
  - a positive reaction from the equity markets



### Recommended approach / strategy

- ◆ James Hardie has been reviewing an approach from Lafarge to create a joint venture between its North American gypsum operations and JHG for several months:
  - confidentiality and standstill agreements are in place
  - up to date information on each business has been exchanged
  - modelling is at an advanced stage, including an assessment of how the businesses would be integrated and what rationalisation benefits would be (estimated to be at least US\$[10] million per annum)
  - a meeting is scheduled with Lafarge for [5-6] March to determine whether to proceed further with a JV and the terms of any such JV
- ◆ Consequently, Lafarge has all necessary information to provide a final price at which it would be necessary to buy JHG
- ◆ James Hardie has also had general discussions with the other likely buyers of JHG (Centex and BPB). During these discussion James Hardie indicated that it would consider selling JHG if the price was right
- ◆ Centex and BPB have not, however, received any recent non-public information on JHG and would require such information and sufficient time to prepare a bid for JHG
- ◆ While Centex and BPB are expected to have just as strong an interest in JHG, Lafarge is believed to be in a better position to pay a higher price:
  - Lafarge is the strongest financially, with significant funding capacity
  - following the acquisition of Republic's assets, Centex is expected to be unable to fund a 100% cash purchase until at least the end of calendar 2001
  - BPB would find it difficult to make another large acquisition in the US at the current point in the cycle given the very negative market reaction to the acquisition of Celotex's gypsum assets
- ◆ Having regard to the points outlined above, it is proposed to communicate the following to Lafarge after the Board meeting:
  - the Board is generally supportive of the JV concept if it maximises value for James Hardie
  - to ensure that a JV is superior to other alternatives the Board requires management to test the value of JHG
  - this will involve a short process involving a very select group of potential purchasers to determine the sale value of JHG
  - James Hardie will require 2-3 weeks to prepare the necessary information to provide to other parties
  - that period provides Lafarge with the opportunity to pre-empt the process with a sufficiently high price if it wishes to
  - [James Hardie would not state what that price would need to be, but may hint that its expectations of value are in excess of US\$[550] million (the intention is to provide a guide at the very top end of, or higher than, expectations)]
- ◆ The rationale for providing Lafarge with the opportunity to pre-empt the process includes:
  - Lafarge may be prepared to pay a higher price to ensure it acquires JHG
  - it has sufficient information to provide a final price that will not subsequently be reduced in due diligence (this will still need to be managed carefully)
  - the price should still be able to be tested against other potential purchasers if these parties are provided with sufficient information quickly
  - minimises potential disruption to JHG

- ◆ James Hardie would also contact BPB and Centex following the Board meeting to indicate that it was considering selling JHG and to invite them to participate in a short, select process
  - this would allow BPB and Centex to commence work in relation to funding and other matters that they may need to consider
- ◆ Information packages for BPB and Centex would be finalised, with the intention of distributing these early in March at the latest, following execution of confidentiality agreements
- ◆ Assuming that Lafarge does not provide sufficiently high a price as to gain exclusivity (say US\$[550] million, all parties would be provided with a 4 week period to:
  - conduct due diligence on materials provided in a data room
  - review detailed [survey] videos of each JHG manufacturing site
  - conduct discrete site visits, if necessary
  - interview senior JHG management (this would be limited to Robb Rugg, [insert others])
  - negotiate sale documentation
  - submit final bids with negotiated sale and purchase agreements
- ◆ Following receipt of final bids, the James Hardie Board would determine whether to accept any of the offers received having regard to:
  - net proceeds after tax
  - use of proceeds (eg debt repayment, investment in fibre cement, capital return to shareholders)
  - value implications for James Hardie
  - expected market reaction
- ◆ If no bids were acceptable, James Hardie may consider conducting JV discussions with these parties. A JV may allow James Hardie to extract a significant amount of cash while retaining upside from the combined operations
- ◆ Lafarge and Centex are considered the most likely JV partners given the geographic and operational fit of its assets
- ◆ It is not intended to conduct a wide search for potential purchasers or to conduct a 2 stage process (i.e. call for indicative bids prior to due diligence) given that there is only a small number of highly likely purchasers, all of which are well known to James Hardie

#### Indicative timetable

- ◆ Given the JV discussions with Lafarge and recent preparations, James Hardie is well placed to commence a well prepared sale process in early March
- ◆ Set out below is an indicative timetable for a sale process for JHG

Key events	Timing
Board meeting – approval to commence sale process	14 February
Inform Lafarge, Centex and BPB of sale process	23 February
Complete preparation of IM, data room materials and other preparation	9 March
Due diligence period commences	12 March
Final bids with negotiated sale documentation due	6 April
JH Board review of bids	[8] April

## **ATTACHMENT D**

### **Financial Restructuring**

This document summarizes the detail Paper that was submitted to the November 2000 Board Meeting.

#### **Restructuring Proposal:**

- Corporate restructuring and redomiciling with a Dutch ultimate holding company

- No change in ownership of James Hardie, no IPO risk

- Implemented by a Court approved scheme of arrangement in Australia

- ASX primary listing and NYSE secondary listing of ADRs

- Scrip for scrip acquisition by JHI NV of shareholders' JHIL shares

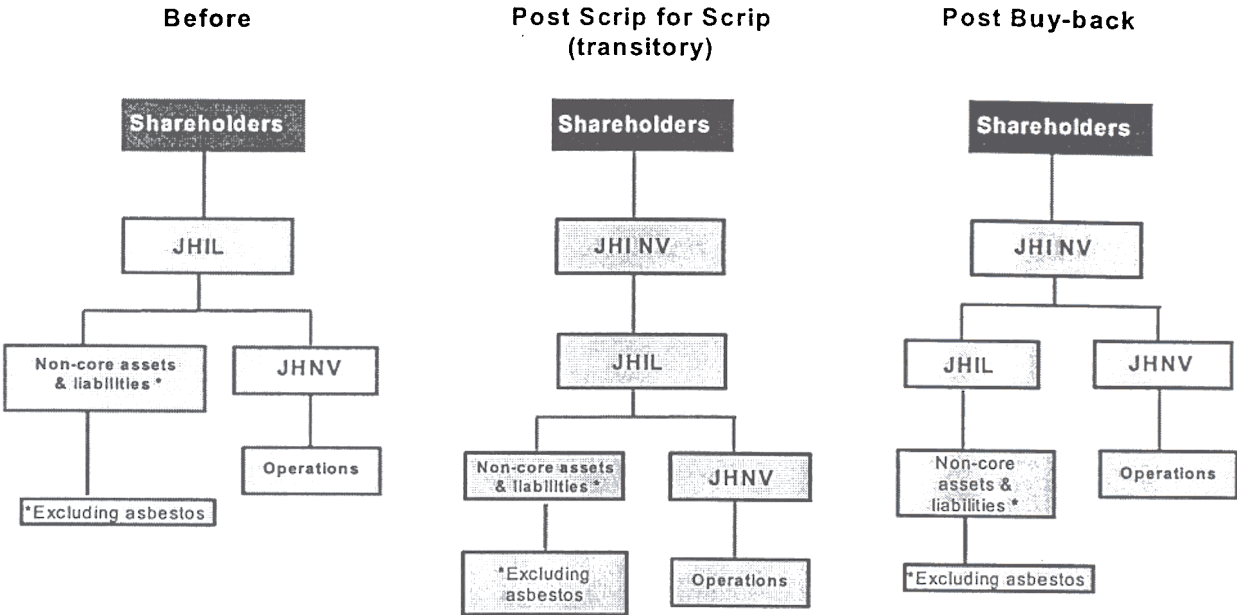
#### **Redomicile to Netherlands achieved by:**

- JHI NV issues shares to existing shareholders in exchange for their shares in JHIL

- Subsequent selective share buy-back by JHIL from JHI NV with transfer of JHNV to JHI NV in consideration

- Re-establishment of Dutch financing company

**Outline of restructure:**



**Financial Benefits of Restructure:**

Base case, as recommended. Foundation in place February 2001 and financial restructure completed October 2001

Dutch financing company structure reduces US corporate taxes by \$US11m (A\$20m) per annum

Year end 31 March	Pre Green (JHIL)			Post Green (JHI NV)		
	2002	2003	2004	2002	2003	2004
EBIT	197.8	285.2	344.6	197.8	285.2	344.6
Interest	(47.6)	(52.0)	(52.6)	(47.6)	(52.0)	(52.6)
PBT	150.2	233.2	292.0	150.2	233.2	292.0
Tax	(51.6)	(68.6)	(84.5)	(41.6)	(48.6)	(64.5)
PAT	98.6	164.6	207.5	108.6	184.6	227.5
EPS (cents)	23.7 c	39.6 c	49.9 c	26.1 c	44.4 c	54.7 c
EPS enhancement				10.1%	12.1%	9.6%
Average tax rate	34.4%	29.4%	28.9%	27.6%	20.8%	22.1%

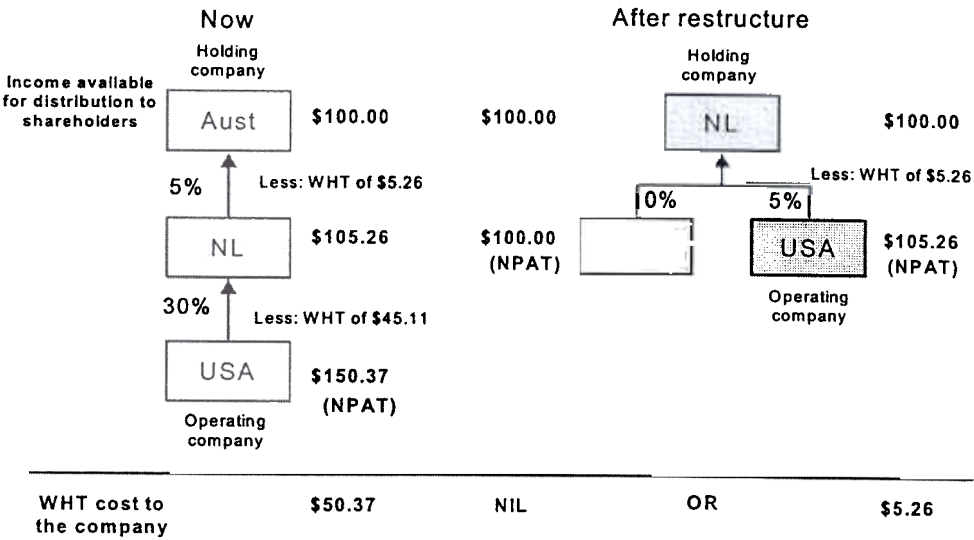
**Assumptions:**

- 1 Foundation established February 2001
- 2 Project Green takes place October 2001
- 3 FRR regime commences on that date
- 4 FRR based on US\$636m at 7.25% interest at 37.5% US tax rate & 15% JHFBV tax rate

Worst case. Foundation only put in place February 2001, no other changes. (See funding considerations). The outcome is acceptable although tight. Therefore financially it is sound to recommend the Foundation now as a first step.

Increased efficiency of earnings distribution:

- ◆ Dividend withholding tax on distributions from US to shareholders is reduced from 30% to 5%
- ◆ Withholding tax cost to distribute \$100 to shareholders



**Scheme of arrangement is recommended path to implement transaction:**

- Court approval required
  - 2 Court appearances
  - First to convene the shareholders meeting
  - Second to confirm the Scheme
- Shareholder approval required in general meeting
  - 50% by number of shareholders and 75% by value from those attending and voting at the meeting

**JHI NV description:**

Domiciled in the Netherlands, but designed to be as similar to JHIL as possible

Primary listing on the ASX

- CHESS issues to be resolved to list ordinary shares

Secondary listing of ADRs on the NYSE

- US listing required to benefit from Dutch-US tax treaty
- NYSE is stock exchange of other US industry participants

AUD trading on the ASX, USD on the NYSE

No change proposed to external funding structure

Required to keep an important office in the Netherlands

**Board and management structure:**

Directors of JHIL to become directors of JHI NV

- Majority of non Australian residents required

Directors to resign from JHIL Board, replaced with JHIL executive directors (continuity and knowledge of history)

Dutch law requires three tiered board structure to include both executive and non-executive directors:

- Supervisory Board (non-executive directors)
- Managing Board (executive directors)
- Joint Board (non-executive and executive directors)
- Board of Directors (Joint Board) will comprise all Supervisory Board, and Chairman of Managing Board (Mr. Macdonald)

Continuation of 3 year directorship terms (staggered)

### **Board and management structure:**

#### Proposed Board Committees:

- Audit
- Compensation
- Nominating/corporate governance
- Executive

#### 6 meetings per year

- Minimum two in the Netherlands with full Joint Board, one to coincide with the AGM
- Three Managing Board meetings in the Netherlands (including above)
- Two meetings in the US

No change to Board compensation, retirement benefits, etc.

Policies/procedures as per JHIL

### **JHI NV Constitution:**

Generally, as per Project Chelsea

Share buy-backs and resale permitted (treasury stock)

Takeover provision to mirror Chapter 6 Corporations Law

- 20% threshold
- Also include substantial shareholder provisions

CEO or any two members of Managing Board have full authority

Authority to indemnify directors and officers for good faith conduct:

- Appropriate indemnities to be provided to Board members

AGM to be held in the Netherlands:

- Prior informational shareholder meeting in Sydney attended by Chairman/CEO/CFO with lodging of proxies for actual AGM
- Joint Board meeting prior to AGM in the Netherlands (with quorum of Directors present)
- AGM held immediately following Joint Board meeting
- Shareholder voting at AGM by proxy or attendance in Netherlands



### Jurisdictional issues:

JHI NV subject to:

- Dutch corporate and securities law
- ASX Listing Rules
- NYSE Listing Rules
- US securities law
- JHI NV not subject to most Australian Corporations Law provisions, is exempt from certain US securities law provisions

JHI NV, a registered foreign company in Australia, not subject to Australian:

- Takeover law
- Related parties provisions
- Director's duties

JHI NV is a foreign private issuer in the US and as such is not subject to certain US securities laws:

- Quarterly reporting and filing of current reports on Form 8-K
- Proxy rules
- Regulation FD - fair disclosure rules
- s16 reporting obligations and prohibition on short swing trading

May consider future voluntary compliance with foreign private issuer ("FPI") exempt requirements at a later stage

### Financial Reporting by JHI NV:

US GAAP will be used as primary accounting standards

- Australian GAAP not acceptable because of internally generated goodwill issues

JHI NV, as a registered foreign company in Australia, must file its "home country" (Dutch GAAP) accounts with ASIC

As with JHNV, we will not prepare Dutch GAAP consolidated accounts - will use US GAAP

Will require confirmation from ASIC that US GAAP consolidated accounts will be acceptable

Potential risk that ASIC may insist on AUS GAAP accounts (see over for major differences). ASIC may argue that shareholder base is Australian and insist on AUS GAAP

Initial no-names contact by PwC indicates that ASIC will not have an issue with US GAAP lodgement

### Other considerations:

#### **Dividend Policy**

JHI NV could retain the same dividend policy as JHIL

Dividends declared in AUD and paid in AUD on ordinary shares, USD on ADR's

All other things being equal, higher after tax earnings may provide directors with ability to increase dividend pay out ratio

CGT changes however, may make dividends less attractive than capital returns to investors

**Employee contracts**

Does not trigger any change of control provisions in employee contracts

**Employee share plan**

Transfer from shadow stock plan to issue of JHI NV shares

**Transaction costs:**

Estimated to be:

Dutch capital duty \$8.5m

Advisory and other costs: \$5.0m - \$7.0m

## Funding Considerations

Post the establishment of the Foundation, JHIL's gearing will be higher than desirable as outlined in the table below but is manageable.

JHNV will also comply with its borrowing covenants under this scenario

A\$ millions	FY 01	FY 02	FY 03	FY 04
Net debt	736.1	800.4	834.4	723.4
Equity	453.9	470.2	523.2	624.0
Interest cover		4.2x	5.5x	6.6x
Net debt / (net debt & equity)	61.9%	63.0%	61.5%	53.7%

### Notes:

- (1) Foundation created before 31 March 2001
- (2) JHIL remains the listed vehicle
- (3) Dividends of \$0.19 per share are paid each year

Note that in order to maintain dividends, if the restructuring does not proceed it would be necessary to borrow at the JHIL level to avoid withholding tax on repatriation of dividends from the US.

If JHG is sold, all funding issues are comfortably addressed

A\$ millions	FY 01	FY 02	FY 03	FY 04
Net debt	736.1	101.3	104.3	(54.9)
Equity	453.9	771.5	879.3	1048.9
Interest cover		6.6x	25.5x	72.0x
Net debt / (net debt & equity)	61.9%	11.6%	10.6%	N/A

### Notes:

- (1) Foundation created before 31 March 2001
- (2) Gypsum sold during FY02 for cash proceeds of US\$485m, realising an abnormal gain of US\$225m and incurring a tax expense of US\$100m
- (3) Restructuring is completed and effective by 1 September 2001
- (4) Dividends of \$0.19 per share each year cease after the payment accrued at March 2001, paid June 2001.

In the event that the sale of JHG does not proceed, JHIL has a number of alternatives to reduce gearing further, if necessary including:

- refinancing the gypsum business, potentially as part of a JV with another party
- reducing dividend payments
- introducing a dividend reinvestment plan ("DRP")
- managing the business for cash (e.g. delaying capital and development expenditure in areas that will show returns in the short term)
- a capital raising (e.g. a placement and/or a rights issue)
- a combination of the above alternatives

If necessary, a capital raising is expected to be feasible subject to:

- no materially adverse stakeholder reaction to the Foundation (e.g. the NSW government changing the law)
- no material change in the performance of the businesses
- no material deterioration in equity market conditions
- BIL supporting the capital raising

## ATTACHMENT E

### ALTERNATIVES CONSIDERED

#### Introduction

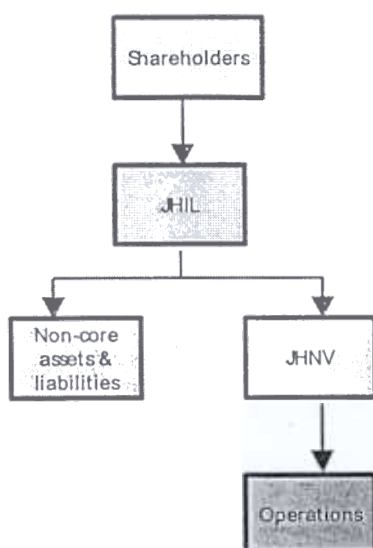
JHIL has a number of issues it has been considering over a number of years, including:

- structural inefficiencies
- asbestos related liabilities
- portfolio initiatives, the latest being the ongoing relevance of James Hardie Gypsum
- ◆ Numerous alternatives to address these issues have been investigated in detail but no alternative has provided an ideal solution with an acceptably low level of execution risk
- ◆ The recommended solution, which is detailed in the Board paper to which this discussion paper is attached includes:
  - achieving separation from asbestos liabilities through the creation of the Foundation which would hold JH & Coy and Jsekarb for the benefit of asbestos related claimants;
  - testing the value implications of the sale of James Hardie Gypsum
  - restructuring, subsequent to the separation, to achieve a more efficient corporate structure, involving a Dutch ultimate holding company that would be ASX and NYSE listed
- ◆ The next best alternative is considered to be combining separation and the restructure. This alternative is considered in detail in this paper but has a number of issues. While each of these issues can be addressed separately by different implementation methods and features, all variables have unattractive aspects
  - the most attractive variable is to implement the separation and restructure by a scheme of arrangement but delaying the NYSE listing of the new holding company
- ◆ Other alternatives that have been considered in the past and have been revisited briefly in this paper for completeness are:
  - business as usual (“BAU”)
  - restructure but no separation
  - other alternatives to separation
  - sale of James Hardie through a takeover by a third party or an LBO / MBO
- ◆ The purpose of this paper is to review these alternatives prior to making a decision whether to proceed with the preferred alternative (separation only initially)

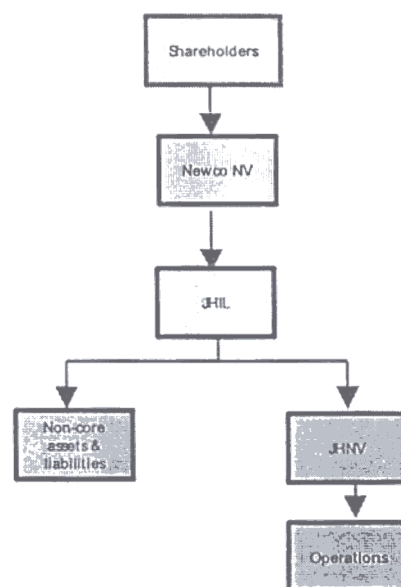
## 1. Combined Restructure and Separation

- ◆ The combined restructure and separation may involve numerous variations
- ◆ The preferred variation would include the following features:
  - JHIL is acquired, by Newco NV for an issue for Newco NV shares to JHIL shareholders (Diagram 2)
  - JHIL undertakes a selective buy-back of the vast majority of its shares held by Newco NV. Consideration is JHNV shares, resulting in JHNV being held directly by Newco NV (Diagram 3)
  - JHIL and its remaining subsidiaries (JH & Coy and Jsekarb) are contributed to a Trust / Foundation (per the preferred alternative of establishing the Foundation only initially) resulting in no ongoing direct or indirect interest for shareholders (Diagram 4)
  - The above steps would be implemented by a Court approved scheme of arrangement
  - Newco NV would initially be listed on the ASX only, with a subsequent secondary NYSE listing

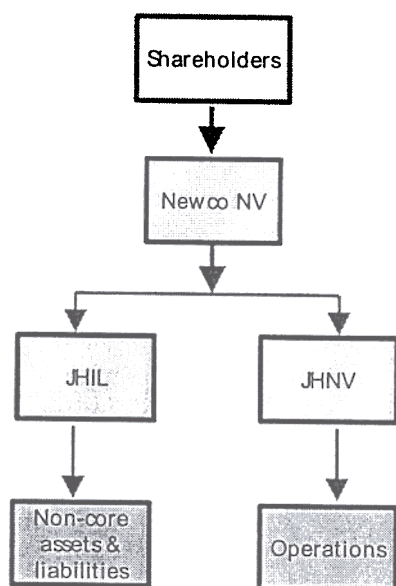
### 1 Before



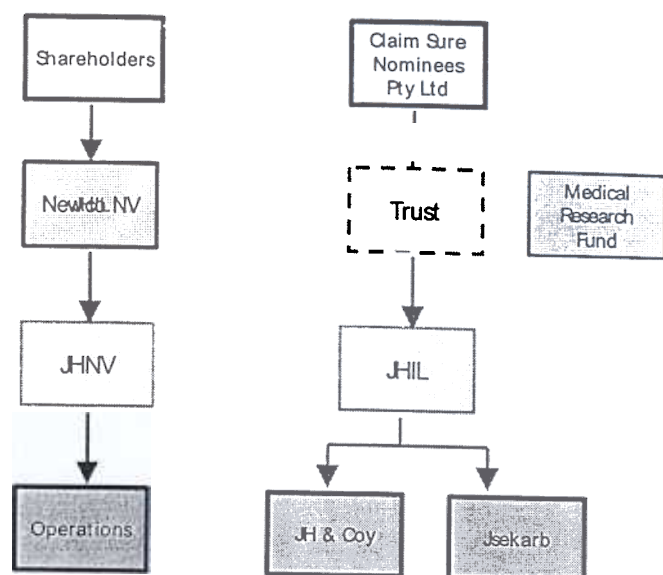
### 2. Post Newco NV scrip acquisition



### 3. Post selective buy-back



### 4. Post Foundation



#### Rationale and advantages

- ◆ Potentially the quickest alternative to achieve complete and final separation of all asbestos related liabilities and restructuring if able to be implemented
- ◆ Completes the restructuring commenced in 1998
- ◆ Improves financial efficiency if the subsequent NYSE listing is achieved
  - increased after tax returns to shareholders
- ◆ Increased attractiveness to foreign, and particularly US, investors if the subsequent NYSE listing is achieved
- ◆ Delaying the NYSE listing until post the separation and restructuring is necessary to avoid FAS 5 disclosure of the JHIL group's asbestos liabilities (undiscounted estimate of total future payments)
  - given that a combined restructuring and separation is not achievable by 31 March 2001, documentation for the NYSE listing of Newco NV (Form 20-F Registration Statement) would require FAS 5 type disclosures and provisioning of asbestos liabilities including companies that would be owned by the Foundation unless the NYSE listing is obtained post the scheme
- ◆ Positions JH for continuing international growth
- ◆ Positions JH with a US listing, and US acquisition currency
- ◆ Increases JH's ability to participate in corporate activity (removes asbestos poison pill)
- ◆ Court sanction if successfully implemented through a scheme of arrangement

### Why not recommended

- ◆ Increased complexity
  - combining the restructuring and separation materially increases complexity due to the number of different aspects to each
  - potential for an adverse market reaction attributable to mixed messages
- ◆ Increased profile and scrutiny of the transaction by all stakeholders relative to the separation only and subsequent restructuring
- ◆ Higher execution risk
  - given the disclosure issues, concerns over the judicial review and Court approval process, particularly in relation to the selective JHIL buy-back, if implemented by a scheme of arrangement
  - the Court approval process also provides a forum for stakeholders to oppose the scheme
  - these concerns with a scheme may be addressed by using a takeover offer to implement the transaction. This would, however, also increase execution risk given the 90% shareholder acceptance required for a takeover offer
- ◆ The benefits of the restructuring are not available until the NYSE listing is achieved (US / Dutch tax treaty requirements)
  - consequently JH would incur significant upfront implementation costs (\$8.5 million capital duty, \$4.5 million stamp duty) without being able to state that the benefits will be realised (obvious question is why was the NYSE listing not obtained at the time of the scheme?)
- ◆ Requires a Board decision as to the level of assets to be retained by JHIL following the selective buy-back
  - may require focus on potential future liabilities of JHIL, including asbestos related liabilities
  - important that the assets retained by JHIL are minimised given shareholders would have no ongoing interest in JHIL (this could be addressed by shareholders retaining an interest in “Oldco” which would hold JHIL but this has other negatives as explored on the following pages)
  - will be more difficult than any decision relating to JH & Coy and Jsekarb, which are not having net assets reduced, in the context of the Foundation

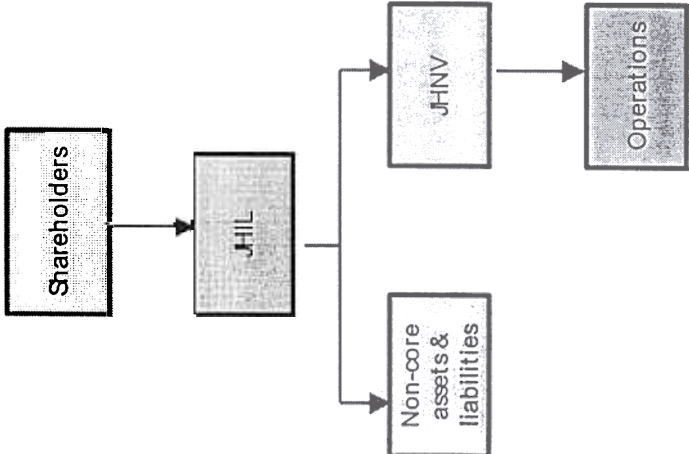
### Other issues

- ◆ Funding the separation
  - this is similar to the funding issues for separation only initially with a subsequent restructuring
  - may be addressed by JHIL receiving an interest in Newco NV in consideration for JHNV but this is less than ideal (overhang, dilutes the direct interest of JHIL shareholders as it is likely to be sold)

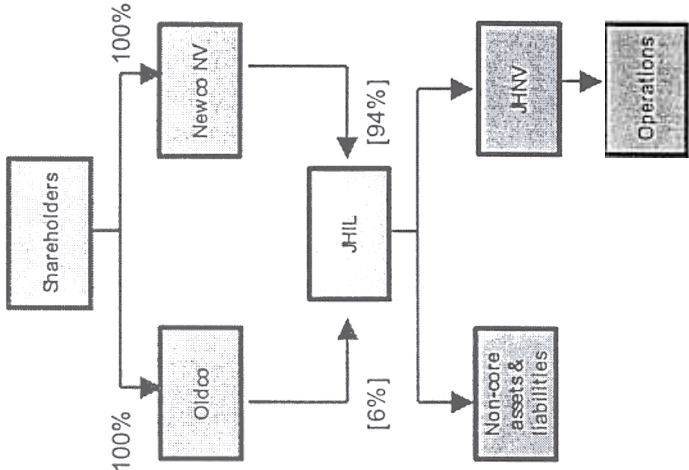


JOINT SCRIIP ACQUISITION AND JHIL SELECTIVE BUY-BACK

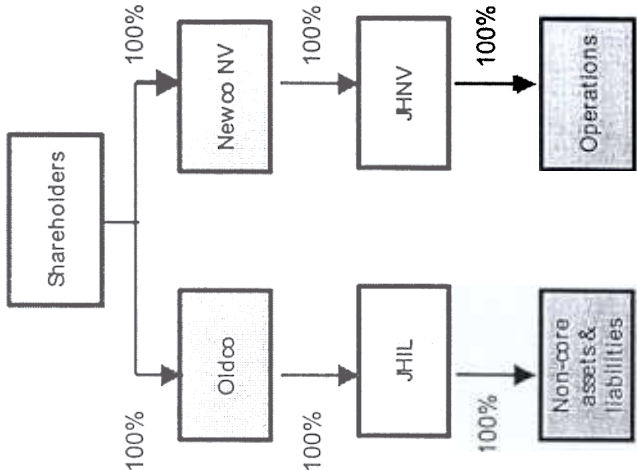
Before



Post Joint scrip acquisition



Post selective buy-back



Provides an alternative whereby shareholders retain an interest in Oldco / JHIL

Implementation steps are similar to those explained on prior pages with the exception that JHIL is acquired by Newco NV and Oldco

### **Rationale and Advantages**

- ♦ Primarily the same as the combined restructure and separation whereby JHIL is contributed to the Foundation
- ♦ Added advantage that shareholders retain an interest in any surplus assets in Oldco / JHIL
  - but these are expected to be minimal if anything; and
  - would not be realised for a very long time

### **Why not recommended**

- ♦ Primarily the same reasons as the combined restructure and separation where JHIL is contributed to the Foundation
- ♦ Additional significant disadvantage that it is likely to require detailed consideration of Oldco's prospects if shareholders are to retain an interest in that group. This is expected to require significant disclosure in relation to asbestos liabilities

## **OTHER ALTERNATIVES CONSIDERED TO ACHIEVE RESTRUCTURE AND SEPARATION**

### **A. JHNV bid for JHIL**

- ♦ JHNV or JHNV sub bids for JHIL offering majority (but not all) of JHNV shares as consideration
- ♦ JHNV undertakes distribution of the JHIL shares acquired under bid, or the shares held in JHNV sub, to all shareholders other than JHIL
- ♦ Result - separation effected, save that JHIL retains a holding in JHNV as a liquid fund, if desired.
- ♦ Dutch capital duty/tax implications / Dutch reduction of capital rules
- ♦ Issues with cross shareholding structure

### **B. Sole bid by Newco NV for JHIL**

- ♦ Newco NV offers Newco NV shares and a new, deferred issue, JHIL share, for 100% of JHIL. The number of new JHIL shares will result in 99:1 ratio or as otherwise required
- ♦ JHIL shares acquired by Newco NV under bid then bought back for JHNV shares to effect separation
- ♦ Seen as convoluted and difficult to sell to shareholders

### **C. Partial spin off of JHNV by JHIL**

- ♦ JHIL makes a pro rata distribution of JHNV to its shareholders (dividend/buy-back/reduction of capital)
- ♦ No separation but provides direct exposure to JHNV alone
- ♦ Significant tax issues on distribution of JHNV
- ♦ JHIL would become Oldco – issues with ongoing costs similar to above

D. Reverse takeover of a listed US company

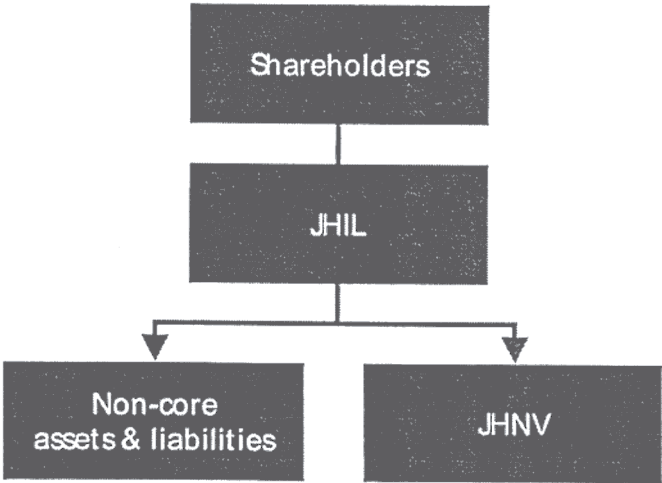
- ◆ No potential targets/merger partners identified with sufficient commercial/operating rationale
- ◆ Tax efficiencies not achieved
- ◆ Complexity and completion risk increases with dealings with a third party

2. Business As Usual

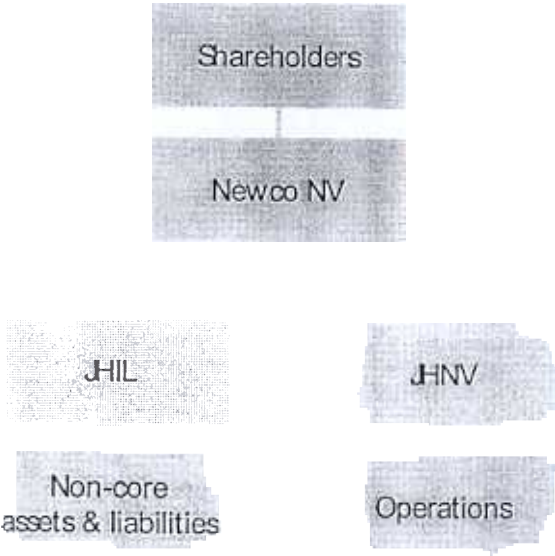
- ◆ Inefficient capital structure
  - average tax rate will continue to rise
  - significant withholding tax to maintain dividends
  - could consider cutting dividends and reinvesting earnings
- ◆ Ongoing uncertainty relating to asbestos
  - certain parties will not invest (e.g. some US funds)
  - management distraction managing and explaining to other parties (e.g. debt providers)
  - issue exacerbated by the introduction of ED88 (effective by 30 September 2002 balance date)
  - poison pill for potential corporate acquirers
  - further growth may reduce extent of the issue (unlikely should the issue grow)
- ◆ Significant ongoing management distraction
- ◆ This is not an acceptable outcome

3. Restructure But No Separation

Before



After



Redomicile with new Dutch ultimate holding company

- ◆ Newco NV would have an ASX primary listing and NYSE secondary listing
- ◆ Achieve tax benefits
  - corporate tax rate reduced
  - more efficient distribution of US earnings
- ◆ Asbestos liabilities retained under ultimate holding company
  - separate group to operating assets
- ◆ Newco subscribes for partly paid shares in JHIL – ability to call capital if required

#### **Rationale and advantages**

- ◆ Achieve more efficient structure - tax benefits and hence higher after tax earnings
- ◆ Potentially lower execution risk than restructure and separation
  - preferably implement by scheme of arrangement
  - reduced concerns re stakeholder reactions
- ◆ Minimal stockholder issues – can sound out key investors
- ◆ Potentially positions group for simpler separation in future
  - contingent liabilities held in separate subsidiary group
  - possibly “distributed” when appropriate
- ◆ Major advantage to any proposal involving separation is funding – does not require any capital raising or asset sales
- ◆ Should be considered further if separation is not feasible in the short term
- ◆ Provides future options for separation

#### **Why not recommended and disadvantages**

Does not address uncertainty of asbestos for investors but separation possible at a later stage

- ◆ Requirement to disclose asbestos liabilities under US GAAP post restructure
  - FAS5 requires undiscounted estimate of all future costs
  - may also be subject to ED88 when it is introduced
- ◆ Asbestos costs continue to appear in the financial statements
- ◆ Continue to possess asbestos “poison pill”

#### 4. Alternatives To Separation

- ◆ There are several alternatives that may be employed to address the asbestos issue other than separation:
  - aim to stop the noise
    - possible independent Board/management to reduce JHIL/NV board involvement
    - careful program to address the issues – educate investors
    - unlikely to be successful
  - insurance takeout
    - loss portfolio transfer
    - stop loss cover (e.g. Turner & Newall)
    - very expensive (with figure expected to continue to increase)
  - provision to actuarial figure
    - expected to be required by ED88 by September 2002 balance date (allows for discounting)
    - also required under US GAAP (does not allow for discounting – i.e. larger number)
    - expected negative market reaction (may not be in proportion to the figure disclosed)
  - continue to grow the business and “dilute” the issue
    - separation funds used to accelerate growth?
    - unlikely to hide the issue – investors are aware of it and paranoid given worsening US experience
- ◆ None of these solutions successfully addresses the asbestos issues, or is considered a viable alternative
  - business will continue to have to report asbestos numbers
  - investors will continue to discount the share price
  - poison pill will remain – preventing or severely hindering corporate activity

#### 5. Put JHIL Into Play

- ◆ May be formal (i.e. the process is announced) or informal (may also include a Project Green type separation)

##### Rationale and advantages

- ◆ May achieve superior value to other alternatives
- ◆ May realise full value for FC initiatives and higher price for gypsum than attributed by the market
  - would disclose all “secret” FC strategies
- ◆ May achieve a 20-40% premium to the prevailing share price
  - similar premium may be possible over the future share price once current strategies are realised
- ◆ Addresses contingent liability issues for existing shareholders
- ◆ Strong rationale for separation for other stakeholders

### Why not recommended and disadvantages

- ◆ No certainty of outcome
  - embarrassing with negative share price implications if formal process and unsuccessful
  - an informal process is likely to leak
  - may be interpreted to signal that JH is fully priced with limited prospects
- ◆ May not provide a value in excess of other alternatives
  - growth initiatives may not be fully valued
  - FC not fully understood by many parties (eg BPB discussions)
- ◆ Contingent liabilities are problematic
  - poison pill for most potential acquirers (i.e. separation would be a pre-requisite)
  - other corporates unlikely to assume any risk
  - disclosure issues
  - Would examine further if acceptable proposal put on the table
  -

## 6. Implement an MBO

### Rationale and advantages

- ◆ May achieve superior value to other alternatives
- ◆ May realise full value for FC initiatives and higher price for gypsum than attributed by the market would disclose all “secret” FC strategies

### Why not recommended and disadvantages

- ◆ Conflict of interest issues to address
  - investors will question if providing full potential value
- ◆ No certainty of outcome
  - embarrassing with negative share price implications if unsuccessful
- ◆ Contingent liabilities are problematic
  - unlikely to be undertaken unless asbestos issues separated
  - debt providers likely to be reluctant to lend to a highly geared entity with asbestos liabilities
- ◆ Will require a willing financial buyer to act with management
  - difficult industry to attract a financial buyer (historically low and cyclical returns)
  - will require an exit strategy

LAWYERS

	7 February 2001
Pages	1 of
From	Peter Cameron/David Robb
To	Peter Macdonald/Peter Shafron, James Hardie Industries Limited, California 0011 1 949 348 4534

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ATTACHMENT F

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### Board Paper Preferred Option

We set out below in short form our views from a legal perspective of the two options.

#### Advantages of Preferred Option

- Clearly the preferred option as set out in the Board Paper has real commercial benefits, namely the vast bulk of any liabilities that the JHIL Group may suffer in respect of asbestos will be removed from the Group, with relatively limited implementation risk, and with consequent facilitation of the company's capital raising ability and reduction of management distraction.
- This outcome can be achieved in a short timeframe.
- On both implementation of the preferred option and, if it is to proceed, after stage 2 of the transaction, we understand that no accounting disclosure issues beyond a narrative description in the notes should arise in respect of the potential liability outlined by Trowbridge. Both James Allsop and Tom Bathurst assumed that, in the context of the principles in *Putt* and *Wren* which they regard as the governing law, there is nothing to suggest that JHIL could be held liable for Coy's actions. If this assumption proves incorrect, the analysis will become more difficult by impacting on both this accounting disclosure question and JHIL creditor issues that will arise for the Board at stage 2.  
We query whether there will be market/claimant/government pressure to disclose.

#### Disadvantages of the Preferred Option

- JHIL is separated from Coy and with Coy goes the Group's asbestos expertise. The directors will need to be satisfied that the cost of the trust's establishment is worth the result produced, considering that the trust does not result in the removal of all asbestos exposure for the Group. In considering that cost, they can take into account questions attaching to past intercompany transactions on the basis that the proposed indemnity is cast in terms wide enough to resolve those questions. They can also take into account that Mr Attrill's services will be available to both JHIL and Coy, subject to conflict issues if they arise.

Our Ref

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While the first limb of this transaction can be effected with minimal execution risk, the subsequent financial reconstruction will involve the directors of JHIL considering the interests of creditors and is likely to involve a rigorous analysis by the Court of issues affecting creditors, with the possibility that the Court will seek to investigate the trust and related arrangements. For example, this risk may arise in the context of explaining to the Court why the transaction does not prejudice the interests of JHIL creditors, and especially if reference will be made to the indemnity.

The Court may enquire as to whether JHIL can quantify the potential asbestos exposure. It will probably do so.

While we believe the directors of JHIL & Coy may well reach a decision, after proper evaluation, that they are prepared to enter into the indemnity, a liquidator, when appointed to Coy, may challenge its validity. However, if adequate consideration is found to have passed to Coy (such that it is not an "uncommercial transaction") the arrangement will be binding on the liquidator. We note that the appointment of a liquidator can only be made once the funds are depleted and Coy is insolvent.

The trust structure involves the expenditure of a substantial sum of money without receiving shareholder approval, with the company (and its shareholders) giving up any residual interest in that sum. The other alternative may not require such a large capital injection and, if it does, shareholder approval could be sought at the scheme meetings. While the preferred option can be implemented without shareholder approval, such ratification would provide the directors with additional protection in respect of this element of the proposal.

Under the other alternative, if over time JHIL has a surplus of assets then such assets would be available to shareholders.

We believe a liquidation of JHIL post-implementation of the scheme will be difficult.



- To vest JHIL into the trust is likely to involve a reduction of capital (presumably by cancelling the partly paid shares), which will require the directors to leave behind assets within JHIL, at least to the extent that JHIL has creditors. Those creditors will include any then current claimants, including those who may be ill but who have yet to establish the veracity of their claim.
- We have a concern that the announcement of the trust and/or the reconstruction will result in an increase in the number of claims received by Coy and JHIL. If this does happen at the JHIL level then the liquidation or vesting of JHIL will become more difficult. While this may also happen under the other option, the consequences would be easier to manage by retaining some of JHNV in JHIL. The indemnity in favour of JHIL reduces the grounds for concern in relation to such suits.
- It is likely that the scheme documents will need to disclose the directors' intentions with respect to JHIL post the reconstruction. This may involve a discussion of the liquidation and vesting options, if indeed these are in contemplation. This may be regarded as at odds with arguing that post-reconstruction JHIL's creditors' interests are not materially prejudiced. Accordingly, to the extent partly paid shares are to be used the Court may not regard them as of sufficient protection for creditors.
- The preferred option will not result in a clean exit from the James Hardie Group of asbestos related claims or focus. Various parties may choose to chip away in one fashion or another after the establishment of the trust and in the lead up to and following the financial reconstruction.

#### Conclusion

In summary, we believe the preferred option can be effected lawfully. To do this, the directors of both JHIL and JH & Coy will need to properly view the transaction as being in the interests of each respective company. The two sets of directors should be considering these issues at arm's length and with the benefit of advice. You have asked us to confirm whether we support management in its approach, noting that this proposal has the support of each management team member and your financial advisers. We acknowledge the key commercial drivers against a business as usual approach and against the execution risk and the direct disclosure versus delay decision that arise under the other option. We agree that management and the board have grounds to support the view that the commercial benefits of the preferred approach, with its staggered separation and the disadvantages discussed above, outweigh the costs of delay and heightened execution risk of the second alternative. That said, as lawyers, we consider that the cleaner and more concrete legal result (and that effects both separation and restructuring) is achieved through the second option, albeit at a higher risk of achieving the Foundation alone (at stage one of the preferred option). Finally, we suggest that, for the benefit of all concerned, we seek James Allsop's views on this proposal in light of all current information.

Yours sincerely

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