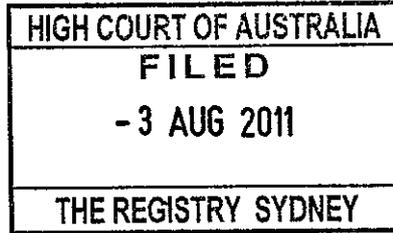


# ANNOTATED

IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

No.S173 of 2011

BETWEEN:



PETER JAMES SHAFRON  
Appellant

and

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  
Respondent

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## AMENDED APPELLANT'S CHRONOLOGY

### Part I:

The Appellant certifies that this chronology is in a form suitable for publication on the Internet.

### Part II:

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Date	Description of event	Appeal Book References
approx October 1996	Trowbridge Report titled 'James Hardie Industries Limited Review of Potential Liability for Asbestos-Related Diseases in Australia as at 31 March 1996	JHAB.099.005.0141
approx <del>May</del> March 1997	Shafron was appointed General Counsel for JHIL and the James Hardie Group	ABBlue1/400
2.08.98	Shafron and James Hardie entered into an employment agreement which states Shafron's duties in the position of General Counsel and Company Secretary	ABBlue1/299
28.08.98	Shafron accepted secondment to James Hardie (USA) Inc in the United States of America (and subsequently moved there in March 1999) From this date Shafron was domiciled in the USA.	ABBlue1/304; ABBlue1/317  CA[53]; ABWhi1/15.24
approx September 1998	Trowbridge Report titled 'James Hardie Industries Limited Review of Potential Exposure to Asbestos-Related Claims as at 31 March 1998'	JHAB.043.001.0001
13.11.98	Shafron was appointed Company Secretary of JHIL	ABBlue9/4138-G

Date: 2 August 24 June 2011  
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17.11.99	Don Cameron, a resident of Australia, was re-appointed joint Company Secretary of JHIL with Shafron	ABBlue12/5229S and 5231K  ABBlue9/4138J  CA[882]; ABWhi1/171.41
15.03.00	Letter of instruction from Shafron to Allens asking Allens to advise on the "requirements / impediments" involved in the proposal to form a trust over JHIL shares or JHIL assets, and to advise on any other matter thought by Allens to be relevant or appropriate.	ABBlue2/673  CA[1024]; ABWhi1/199.21
05.04.00	Allens provides advice entitled "Project Green: Advice on Structure and Separation Issues", including advice on continuous disclosure	ABBlue2/577  CA[1025]; ABWhi1/199.26
13 & 14.04.00	<p>JHIL Board meeting.</p> <p>The Board papers raised the possibility of separation of the current company structure containing asbestos liabilities (known as Oldco) from the operating businesses (known as Newco). These separation proposals were known internally as Project Green.</p> <p>The Board papers included a paper entitled "Project Green Advice on Structure and Separation Issues" produced by Allens and dated 5 April 2000. There were various options put to the board to achieve the Project Green objectives and various options for funding. One option included adding a buffer to the actuarial estimate of James Hardie's asbestos liabilities.</p> <p>There was a PowerPoint presentation under the heading "Asbestos Resolution".</p> <p>The Board recommended to management that they explore the various options presented.</p>	ABBlue2/499  ABBlue2/577  ABBlue2/569  ABBlue2/680
approx June 2000	Trowbridge Report titled 'Review of Potential Exposure to Asbestos-Related Claims as at 31 March 2001 James Hardie Industries Limited'	ABBlue2/912

<p>18.08.00</p>	<p>JHIL Board meeting at which the separation proposal contained in the Board papers was discussed.</p> <p>Shafron gave a PowerPoint presentation under the heading "Project Green board presentation – Structuring options" in relation to asbestos related issues concerning Project Green, which included speaking to the slides entitled "Major Assumptions" which highlighted the major assumptions used in the Trowbridge estimate.</p> <p>The Board asked management to continue to investigate the restructure and re-domicile of the James Hardie Group with no separation.</p>	<p>ABBlue3/1079</p> <p>ABBlue3/1043</p> <p>ABBlue3/1082</p>
<p>15.11.00</p>	<p>JHIL Board meeting at which a Revised Restructure was proposed.</p> <p>The minutes record Shafron and Peter Cameron (Allens) discussed "legal issues" in respect of Project Green.</p>	<p>ABBlue3/1122</p> <p>ABBlue3/1126</p> <p>CA[68]-[70]; ABWhi1/18.35-19.5</p>
<p>11.01.01</p>	<p>Shafron emailed Peter Cameron, Robb and copied Baxter, Morley and Stephen Harman entitled "1. Dan O'Brien Issues 2. Session this Friday". This email raised further questions on the structure and separation proposals</p>	<p>ABBlue3/1329</p>
<p>17.01.01</p>	<p>JHIL Board meeting attended by McGregor, Macdonald, Hellicar, Willcox, Koffel, Gillfillan, Terry, Brown, O'Brien, Morley, Shafron, Baxter, Wilson, Sweetman, Peter Cameron and Robb.</p> <p>At the Board meeting the separation proposal contained in the Board papers entitled "<i>Proposed Trust Structure Update</i>" was discussed. A PowerPoint presentation headed "<i>Board Presentation Asbestos Trust Structure Discussion</i>" was given which discussed these topics. Shafron, Peter Cameron and Robb discussed legal issues and risks associated with the trust concept. The Net Assets Model was rejected by the Board and the Chairman requested "<i>management to continue developing the concept and to report progress, particularly in relation to funding, at the February meeting</i>".</p>	<p>ABBlue3/1333</p> <p>ABBlue3/1369</p> <p>ABBlue3/1365</p> <p>CA[74]-[79]; ABWhi1/19.33-21.32</p> <p>LJ[86]-[89]; ABRed2/422B-423L</p> <p>LJ[793];ABRed2/617T-618C</p> <p>LJ[796]-[799]; ABRed2/618P-619R</p>

<p>1.02.01</p>	<p>Shafron emailed Robb, Peter Cameron and copied Macdonald, Morley, Sweetman and Wilson entitled <i>Indemnity/Release from Coy and Jsekarb</i>. The email raised the issue of disclosure. The email included the following statement:</p> <p><i>"I want to revisit this.</i></p> <p><i>If we are being generous with Coy (and arguably we are, particularly if we hand across the 57) then that should support a waiver/indemnity in respect of Coy manufacture. If its a private document, then I wonder about disclosure - initially anyway."</i></p>	<p>CA[1002]-[1004]; ABWhi1/195.388-196.18</p> <p>ABBlue4/1437</p> <p>LJ[519]-[522]; ABRed2/545N - 546K-and</p> <p>LJ[561]; ABRed2/557I</p>
<p>February 2001</p>	<p>The Board papers for the February 2001 Board meeting were sent to the directors in early February 2001.</p> <p>The Board papers included a paper entitled "<i>Project Green Board Paper</i>" dated 5 February 2001. The separation proposal contained in the January 2001 Board papers was refined and the recommendation by management to the Board was that:</p> <p>the shares held by JHIL in Coy and Jsekarb be vested to a foundation to be known as the Medical Research and Compensation Foundation (the Foundation), which would manage the companies' assets; and</p> <p>an additional sum of NPV \$70M be paid over time to Coy in return for an indemnity and covenant not to sue JHIL and agreement to take JHIL if it was put to the Foundation in the future with no subsidiary companies (known as the Deed of Covenant and Indemnity or DOCI).</p>	<p>ABBlue4/1440</p> <p>ABBlue4/1595</p> <p>CA[103]; ABWhi1/26.11</p> <p>LJ[90]; ABRed2/423M-424I</p>
<p>2.02.01</p>	<p>Robb made a diary note of a meeting with Morley, Shafron, Harman, Seddon and McClintock. It included:</p> <p><i>"S.Mc – query disclosure of indemnity"</i></p>	<p>CA[1028] ABWhi1/200</p> <p>ALNS.002.002.0100</p> <p>LJ[523]-[525]; ABRed2/546L-547E</p>
<p>4 or 5.02.01</p>	<p>Shafron emailed Macdonald, Robb, Peter Cameron, Blanchard and copied Sweetman, Baxter, Macdonald, Cowper, Morley, McCuthceon, Wilson and Harman entitled <i>Board Paper: Legal/Structural Issues</i> attaching a 'rough draft' of the board paper. The email included the following statement:</p>	<p>CA[1006]-[1011]; ABWhi1/196.25-197.30</p> <p>ABBlue4/1797-1798</p> <p>LJ[526]-[528];</p>

	<p><i>"Here is a rough draft covering legal and structural issues for the February Board paper (Attachment C, I think). David/Peter, you will notice a query for Allens near the beginning."</i></p> <p>The query being referred to appears in the first full paragraph of the draft paper, as follows: <i>"There has been one major structural change since the January Board discussion. In return for a substantial capital injection (\$57M), JHIL will now obtain a waiver and indemnity from Coy and Jsekarb. These elements address in large part concerns about JHIL vulnerability post separation. [Coy will also commit to acquire the JHIL shares should JHIL become a non operating subsidiary at some time in the future; query whether this can be structured as a <u>non disclosable</u> commitment in relation to JHIL shares – Allens to advise]."</i></p>	<p>ABRed2/547G-548D and  LJ[561]; ABRed2/557I  CA[101]; ABWhi1/25.49-26.7</p>
<p>5.02.01</p>	<p>On 5 February 2001 Cowper emailed Robb, Peter Cameron, Frangeskides, Blanchard, Shafron, Baxter and Macdonald among others entitled <i>"RE Project Green Conference Call"</i> arranging a conference call to discuss among other things <i>"ASX and other outstanding restructuring issues"</i></p>	<p>ALNS.084.002.0195  LJ[529]; ABRed2/548E-G</p>
<p>6.02.01</p>	<p>Telephone conference between Robb, Frangeskides, Blanchard, Shafron, Baxter, Cowper, Seddon, Sheppard, Harman and Morley.</p> <p>Robb's note of conference included:</p> <p><i>"To do – Query disclosure + relevant interest on the Put. Put shares to Coy"</i></p> <p>Frangeskides' note of conference included:</p> <p><i>"-Option granted for benefit of NL1 -will be disclosing creation of # -if JHIL grants an option/give right over share – ASX disclosure?"</i></p> <p>Blanchard's note of conference included:</p> <p><i>"Option – granted for benefit of future benefit of JHINV Will disclose creation of Trust"</i></p>	<p>ABBlue4/1822  ABBlue4/1819  ABBlue4/1815  CA[1008]-[1009] and [1011]; ABWhi1/196.45-197.16 and 197.21  LJ[529]-[532]; ABRed2/548E</p>

	<p><i>If JHIL grants option over its shares no consideration</i></p> <p><i>Not absolutely essential</i></p> <p><i>Does it need disclosure</i></p> <p><i>By deed poll</i></p> <p><i>If it gets shares, will Put them"</i></p>	
6.02.01	<p><del>Frangeskides note of conference believes JHIL representatives and Allens refer to discussion of "ASX disclosure".</del></p>	<p>ABBlue4/1819</p> <p>CA[1008] [1009]; ABWhi1/196-197</p> <p>LJ[530] [532]; ABRed2/548</p>
7.02.01	<p>Shafron emailed Robb and copied to Blanchard and Frangeskides entitled "<i>Coy committing to take JHIL shares.</i>" The email included the following statement:</p> <p><i>"Coy committing to take JHIL shares" in which Shafron asked "Any roadblocks in having this feature? I need to know quick"</i></p>	<p>ABBlue4/1823</p> <p>CA[1016]-[1017]; ABWhi1/198.5</p>
8.02.01	<p>Robb emailed Shafron and Seddon and copied Carrigan, Williams, Harman, Frangeskides and Peter Cameron entitled "<i>Deed of Covenant James Hardie Industries Limited</i>" attaching a draft of the DOCI.</p>	<p>ABBlue4/1845</p> <p>ABBlue4/1847</p>
14.02.01	<p>JHIL Audit Committee.</p> <p>The Minutes record that Morley and Harman explained the Financial model underpinning the funding of the Foundation. The Directors asked questions in relation to the assumptions used in the model.</p>	<p>ABBlue5/1923</p>
15.02.01	<p>JHIL Board meeting ("15/2/01 Meeting").</p> <p>The board of JHIL approved a proposal to create a trust (the Foundation) which was to be vested with JHIL's shares in Coy and Jsekarb, along with \$3 million.</p> <p>Allens are present at this meeting</p>	<p>ABBlue5/2118</p> <p>CA[13]; ABWhi1/9.23</p> <p>CA [1030]; ABWhi1/200.15</p>
15.02.01	<p>The board also decided to enter into an agreement (DOCI) with Coy and Jsekarb.</p> <p>One of the sources of information presented to the board was an updated advanced estimate by</p>	<p>CA[13]; ABWhi1/9.23</p> <p>CA[137]; ABWhi1/32.2</p>

	Trowbridge of Coy and Jsekarb's future liability in relation to asbestos claims (February 2001 Trowbridge Report and 50 Year Estimate). The report did not make an allowance for "superimposed inflation".	<p>ABBlue6/2343</p> <p>LJ[10]; ABRed2/396U-397G</p> <p>CA[137]; ABWhi1/32.2</p> <p>CA[1062]; ABWhi1/206.15</p> <p>CA[1068] ABWhi1/206.49</p>
16.02.01	Trust deed and DOCI were executed the shares and \$3 million were invested in the Foundation and an announcement of the establishment of the Foundation was sent to the ASX under cover of letter by Don Cameron (together with JHIL's Third Quarter financial results and the Third Quarter Results Presentation)	<p>CA[15]; ABWhi1/9.41</p> <p>ABBlue6/2386</p>
3-4.04.01	JHIL Board meeting attended by McGregor, Macdonald, Hellicar, Brown, Gillfillan, Koffel, Terry, O'Brien, Morley and Shafron.	ABBlue7/2839
14.02.07	ASIC commenced proceedings against various directors and managers of James Hardie, including Peter Shafron	ABRed1/1
29.09.08	Trial in the Supreme Court of New South Wales before Gzell J commenced.	CA[654]; ABWhi1/123.11
23.04.09	Judgment of Gzell J (liability judgment)	ABRed2/394
20.08.09	Judgment of Gzell J (penalty judgment)	ABRed3/745
27.08.09	Orders of the Supreme Court of New South Wales made	ABRed3/902
24.09.09	Notice of Appeal to the Court of Appeal filed by Shafron	ABRed3/962
17.12.10	Judgment of the Court of Appeal (liability)	ABWhi1/1
6.05.11	Judgment of the Court of Appeal (penalty)	ABWhi1/228
25.02.11	Orders of the Supreme Court of New South Wales Court of Appeal made	ABGre1/1
13.05.11	High Court of Australia grants special leave to appeal	ABGre1/21
25.05.11	Shafron files Notice of Appeal in High Court of Australia	ABGre1/29

Dated 2 August 2011 ~~24 June 2011~~



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