

Ad Hoc Observation

21 August 2009

James Hardie Industries Case, No Change for Directors

Governance research and engagement agency Regnan today pointed to the significant learning to be gained from the James Hardie case concluded by Justice Gzell today.

Regnan has identified three key lessons for the business and investment community:

- **Risk** – the Hardies case makes tangible the poorly understood “social license to operate”. Losing the social license to operate can bring significant financial risk. Therefore managing stakeholders and the license to operate ought to be considered a mainstream business risk and managed with the same care and professionalism as any other business risk.
- **Remuneration** – the Hardies case reinforces Regnan’s previous calls for remuneration reform, in particular the post departure vesting of equity rewards for executives. Significant bonuses paid to executives for short term performance in 2001 and following years did nothing to create a legacy for sustained growth. The legacy of Hardies short-termism has been borne by shareowners and a new management team.
- **Non-Executive Directors** – Today more than ever, investors need competent directors from diverse backgrounds, and this case highlights the critical role non-executive directors play in overseeing and interrogating company management. While the facts of the James Hardie case are very specific and do not create additional responsibilities for directors, it does underscore the value at risk when non-executives fail to perform their role and highlights the role of independent directors to satisfy themselves through the taking of advice wholly independent of management.

“The Hardies outcome should do nothing to discourage current and prospective directors prepared to perform their roles with diligence and care. Institutional investors welcome the confirmation of the importance and value in the institution of directorship” said Regnan Managing Director, Erik Mather.

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About Regnan

Regnan – Governance Engagement & Research Pty Ltd was formed in 2007 out of the proven engagement model and resources of BT Financial Group’s Governance Advisory Service. Regnan is owned by eight major institutional investors: ARIA; BT Investment Management; Hermes UK; HESTA Super; NSW Local Government Superannuation Scheme; Vanguard; VicSuper; and VFMC. Regnan provides company engagement services to institutional investors and quantitative data on company Environmental, Social and Corporate Governance performance for mainstream funds management.