

other side of the debate, the World Bank maintains a continuing stream of beautifully produced, neoclassically inspired, accounts of the virtuous cycle linking health and economics: investing in health improves productivity which leads to improved population health outcomes. It is as if the industrial revolution never happened.

The project of building a stronger political economy of health is an important challenge for public health and for political economists. Waitzkin is a beacon to guide this project.

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## Matt Peacock

### **Killer Company: James Hardie Exposed**

ABC Books, Sydney, 2012, 416pp, \$25.

### **Reviewed by David Legge**

Under globalisation the threats to population health are increasingly international; not just influenza and SARS but also tobacco, junk food and asbestos.

Since 2004 the Russian Federation, on behalf of its asbestos industry and with the assistance of Kazakhstan, Canada and a handful of other countries, has fought to prevent chrysotile (one of the main minerals containing asbestos; also known as white asbestos) from being listed in Annex III of the Rotterdam Convention.

The Rotterdam Convention (1998) provides that for certain hazardous chemicals (those listed on Annex III) 'prior informed consent' (PIC) must

be obtained from the importing country before those chemicals can be traded. While blue asbestos (crocidolite) and brown asbestos (amosite) are listed and are being progressively replaced in production, the Russian industry is mounting a rearguard action to prevent chrysotile from being listed.

The WHO-sponsored International Agency for Research on Cancer (IARC) advises (IARC 2013) that chrysotile is a human carcinogen but that the expected cancer burden from chrysotile will be mainly lung cancer rather than mesothelioma. It appears that while crocidolite is a powerful cause of both lung cancer and mesothelioma, the cancer burden from chrysotile tilts much more towards lung cancer than mesothelioma.

WHO and IARC have concluded that all forms of asbestos are carcinogenic; that no safe threshold has been identified; and that it is extremely difficult to control asbestos exposure in the workplace (Fukuda 2013). However, Russia and Kazakhstan (supported until recently by Canada) argue that the mining and processing of white asbestos can be made safe (Ustinov and Karagulova 2013). Even if this contention were supported by the evidence, which it is not, it has no bearing on the logic of Annex III of Rotterdam which is that countries, to which Russia and Kazakhstan hope to export their chrysotile, should have the right to give or refrain from giving prior informed consent.

In a previous round in this debate, a delegation from importing countries lobbied the Canadians over the export of chrysotile asbestos, arguing that many Asian countries have poor or non-existent asbestos regulations in workplaces, and those that exist are poorly enforced (Kirby 2010). More recently (May 2013) a WHO representative warned the 6th Conference of the Parties to the Rotterdam Convention that: ‘...owing to the widespread use of chrysotile in building materials and other asbestos products it was not possible to prevent the exposure of workers and the general public. Furthermore, the chemical could not be used safely owing to the way in which products containing it were produced and handled and degraded in situ, as well as the challenges that they presented in decommissioning and subsequent waste management. She added that WHO and IARC had conducted an evaluation of fibrous chrysotile asbestos substitutes and had concluded that safer alternatives were available’. Nonetheless the chrysotile exporters were able to prevent listing of chrysotile yet again (COP6 2013).

Matt Peacock's devastating chronology of the greed, cynicism and dishonesty of so many business people, lawyers, doctors, politicians and spin doctors associated with James Hardie in Australia provides useful insight into the continuing struggle to control asbestos exposure globally.

Much of this story is generally known, at least in outline, owing in part to Peacock's record of radio and TV coverage as well as the broader media coverage and the persistent lobbying of unionists such as the late Bernie Banton. Some of the key elements of this background include the following:

- By the 1920s it was known that occupational exposure to asbestos led to fibrous scarring of the lungs (asbestosis) and a high death rate. By the 1950s it was known that occupational exposure was associated with a much higher rate of lung cancer deaths than would otherwise be expected. By the 1960s it was known that occupational exposure led to mesothelioma, a cancer of the lining of the chest wall or abdominal wall. By the 1960s it was also clear that public exposure to asbestos dust (dumped tailings, working with building materials, washing family members work clothes, etc) was associated with asbestosis and probably lung cancer, mesothelioma and other cancers.
- Despite the science, James Hardie directors and executives, supported by lawyers, spin doctors, occupational physicians, government officials and pliant politicians, continued to deny, diminish and obfuscate the hazards of asbestos. However, in 2004 Meredith Hellicar, then board chair, explained to Peacock that it was just a 'big mistake'.
- The exposure of the reality was due to the courage and commitment of (some) unionists and officials (let Bernie Banton stand for these); the integrity of (some) scientists (let Irving Selikoff or Barry Castleman stand for these); the persistence and competence of (some) litigation lawyers; and the professionalism of journalists such as Peacock and before him Paul Brodeur (1974).
- Ultimately it was the pressure of litigation and compensation which forced asbestos out of the manufacturing supply chain in Australia, rather than effective statutory regulation.

There is much more to it than this. Peacock's book also documents the withholding of information from workers; failure to implement the most basic occupational protections; the widespread dumping of tailings; the

role of hessian bags in exposing both workers and public; deliberate court delays so that litigants would die before settlement; and much more.

There are important threads in this story which deserve to be more widely understood. Outstanding among these is the mechanism through which Hardies sought to cap its obligations to the Medical Research and Compensation Foundation when it moved its headquarters to the Netherlands.

From 1989 Hardies had built what became a highly profitable subsidiary in the USA (not involving asbestos containing products) and was therefore less dependent on asbestos based products in Australia. However, the tsunami of compensation claims was approaching (from occupational and public exposure) and the board adopted a devious plan to cap its exposure to such claims. This plan involved:

- moving the parent company to Holland partly because of its low taxes and partly because Australia did not have a treaty with Holland for the reciprocal enforcement of legal judgements;
- setting up the Medical Research and Compensation Foundation with the public promise that it would be ‘fully funded’;
- hiding and minimising the actuarial predictions of likely successful claims into the future against Hardies;
- locating the rump of Hardie’s assets in Australia as a subsidiary to the foundation and selling shares in the Australian shell to the Dutch parent, but not fully paying for the shares;
- partially funding the foundation up front but promising that in the event of a shortfall the shares would be fully paid for entailing a substantial reinfusion of money to the foundation; and
- finally and secretly cancelling the shares.

The plan sort of worked. The foundation was established in 2001 but the directors of the foundation discovered sooner than expected that they were seriously underfunded and relations with Hardies deteriorated. So, instead of locating the Australian shell in the foundation, a new company was formed for this purpose with the partly paid shares vested in the new company (‘ABN60’). This enabled the board of Hardies to cancel the shares (in 2003) without the knowledge or cooperation of the foundation.

In the years following the establishment of the foundation the directors of the foundation complained increasingly about underfunding. Hardies

argued that the problem was laxity in the statutory compensation arrangements in NSW and argued for legislation to curb compensation payments. By 2004 the rat was smelling worse and the NSW government set up a special commission, the Jackson Commission, to investigate how a fully funded foundation had run out of money and whether the problem was skulduggery or overly generous compensation payments.

The bomb exploded when the Commission was told about the cancellation of the shares and that the Supreme Court had not been told of the share cancellation when it sanctioned the transfer to the Netherlands. The Commission's report (2004) was not kind to Hardie's directors, executives nor Allens, its lawyers. However, it did not recommend criminal prosecution.

A long period of brutal negotiation over Hardies funding obligation followed the Jackson Commission. Hardies refused to make good its promises of full funding but the Carr government stood firm and progressively upped the pressure on Hardies: the findings of the Commission were shared with the US Securities and Exchange Commission; legislation was passed to allow all the documents collected by the Jackson Commission to be shared with the Australian Securities and Investment Commission (ASIC) and the Australian Consumer and Competition Commission (ACCC); legislation was foreshadowed to unwind the transfer to the Netherlands. Finally (February 2007) a deal was done and Hardies agreed to further funds for the foundation. However, a year later the sub-prime mortgage crisis hit the housing market in the USA and Hardie's US profits plummeted. Finally, the Commonwealth and NSW governments were forced to step in to support the foundation.

On the 15<sup>th</sup> February 2007, one week after Hardies and the NSW government signed their truce and one day before the statute of limitations would expire regarding the setting up of the foundation, ASIC launched civil proceedings against a number of directors, executives and advisors. The proceedings turned on the promise of a fully funded foundation which was clearly a lie. The ruling of the NSW Supreme Court (April 2009), ultimately supported by the High Court (in 2012), was extremely critical of the Hardies team. However, no-one has gone to gaol and the liars and cheats continue to protest their integrity and enjoy their wealth.

John Della Bosca, Carr's industrial relations minister, described to Peacock an interview he had with then CEO of Hardies, Peter Macdonald, in February 2004, just before the Jackson Commission was announced:

He wasn't angry, he wasn't rude, he just very calmly said to me: 'You can't do this to us. You're a pissy little provincial government. You can't stop us. We're now a global company and we have done what we think was in our shareholders' interests. That's my job and that's what I have done. And if you have a different view, well, you go get yourself a multi-billion-dollar company, become its chief executive and you can have a different view (247).

So, what kind of light does the Hardies saga throw upon the defence, by the Russians, Canadians and Kazakhstanis, of their right to continue to export asbestos products to developing countries with weak regulatory structures without 'prior informed consent'?

The tactics are remarkably similar: lies and spin, drawing on tame professionals to obfuscate and delay, and leaning on government officials and diplomats to front the play. The stakes are also comparable. Peacock ends his book with a reference to 20,000 Australian families which have been affected by Hardie's products. We do not have an estimate of the numbers of families who have been and will be affected by the export of Canadian, Russian and Kazakhstani asbestos but it likely to be many orders of magnitude greater.

Is there something about asbestos (or tobacco or banking) which poisons the morality of businesspeople, lawyers, consultants and officials? Or do these cases simply reveal more clearly how the disciplines of capitalism work because of the longer lag times, the higher profits, and the more appalling consequences.

And what are the omens for effective regulation or honourable business practices under neoliberal globalisation? The power of money and spin to corrupt democratic process is not new but globalisation has given new powers to the corporate sector: the race to the bottom, or competitive deregulation. To this is now added the pressure to incorporate investor state dispute settlement into trade agreements (such as the Trans Pacific Partnership Agreement), threatening governments (particularly small governments) with hugely expensive litigation from transnational corporations with very deep pockets and close friends on the tribunals.

In the halls and corridors of global health governance the new jargon is multi-stakeholder forums, collaboration with the private sector, and win-win outcomes. Indeed it is regarded as poor form to even mention regulation. What are the implications of the asbestos case study for the regulation of pharmaceutical marketing or for junk food?

Aggressive marketing by big pharma drives the over use and misuse of pharmaceuticals with consequences for health care expenditure and corporate profits. In the case of antibiotics it is driving antimicrobial resistance and the obsolescence of most of our antibiotics. Getting big pharma to accept effective regulation of pharmaceutical marketing is less likely than Russia and Kazakhstan accepting the Rotterdam Convention.

Rich countries and poor countries alike are facing an epidemic of non-communicable disease (NCDs): obesity, diabetes, high blood pressure, heart disease, tobacco related cancers. In the Pacific this epidemic is referred to as a tsunami. While these conditions present a marvellous marketing opportunity for big pharma they also represent a significant burden on governments and families and a terrible toll in terms of sickness, disability and premature death.

One of the major factors driving the NCD epidemic are the changes in our food environment driven in part by changes in price relativities as energy dense products gain price and marketing advantages over fresh vegetables. The statement which emerged from the UN high level meeting on NCDs in September 2011 (UN General Assembly 2011) says nothing about international regulation to promote more healthy food environments. Clause 44, calls upon the private sector to 'strengthen its contribution to non-communicable disease prevention and control' by: taking measures to implement WHO recommendations on the marketing of unhealthy foods and beverages to children; by considering producing and promoting more food products consistent with a healthy diet; and working towards reducing the use of salt in the food industry. Not surprisingly there was widespread concern expressed (Third World Network, Young Professionals Chronic Disease Network *et al.* 2011) about the influence exerted on the final text by the corporate sector.

The asbestos example does not bode well for more effective regulation. As more countries get locked into investor state dispute settlement provisions through trade agreements meaningful regulation at either national or global levels will become much more difficult.

Effective regulation of the corporate sector at the national level is difficult; at the international level, so much more difficult (Braithwaite and Drahos 2000). Understanding the political economy of particular industries and of the wider economy within which they are embedded is a basic prerequisite. However, building a constituency across sectors and countries that can overcome the threats, spin, and bribes of the corporate sector, at both the national and international levels, is where the deep challenge lies. There is much to learn from Bernie Banton.

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