

**Commerce Commission**

**Carter Holt Harvey Limited**

**Settlement Agreement**

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## Settlement Agreement

Dated 10 ~~September~~ <sup>October</sup> 2011

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### Parties

The Commerce Commission ("the Commission")

Carter Holt Harvey Limited ("CHH")

(together, "the Parties")

### Purpose of Agreement

- A. Between 1998 and November 2003 CHH produced structural timber product under the Laserframe brand ("the Laserframe timber"), which it represented had the structural characteristics of MGP10 timber, meaning that it complied with the requirements of AS/NZS Standard 1748: 1997 ("the Standard").
- B. The Commission alleges that the Laserframe timber did not comply with the requirements of the Standard. CHH says that only a portion of the Laserframe timber did not comply with the Standard. It denies that any party suffered loss as a consequence of any non-compliance.
- C. In October 2006 CHH pleaded guilty to criminal charges brought by the Commission under the Fair Trading Act 1986. Those charges related to representations made by CHH in the sale and marketing of the Laserframe timber between 2000 and 2003 (prior to the purchase of CHH by Rank Group). CHH was fined \$900,000.
- D. The Commission subsequently issued representative civil proceeding CIV-2006-404-6595 in the High Court against CHH on behalf of end-users of Laserframe Timber and producers of structural timber that competed with CHH ("the Proceeding"). The Proceeding sought to recover the losses that the Commission alleged had been suffered by competitors of CHH and end-users who had purchased or paid for Laserframe timber.
- E. The Commission and CHH have now agreed to resolve the Proceeding on the terms set out in this Agreement ("the Agreement").

## **1 Settlement of claims**

- 1.1 This Agreement is entered into by the Parties in full and final settlement of the Proceeding and all claims that the Commission might bring in its own right or on behalf of end-users and competitors against CHH, its officers, employees or agents in relation to the matters referred to in the Proceeding.
- 1.2 The Parties will take such steps as may be necessary or desirable to give full effect to this Agreement.
- 1.3 The Commission acknowledges that nothing in this Agreement constitutes an admission by CHH that any person has suffered loss or damage arising from the sale and marketing by CHH of the Laserframe timber between 1998 and 2003.

## **2 Disposal of proceedings**

### **Specified Earthquake Project**

- 2.1 CHH will make an ex gratia payment of NZ \$1.5 million ("the agreed sum") to either:-
  - (a) the restoration or rebuilding or repair of a significant building or buildings affected by the 2010/2011 Canterbury earthquakes; or
  - (b) the construction of a new building or buildings for sport and/or recreational usage by the public, to be built on land made available for sport and/or recreational usage by a public authority.("the specified project").
- 2.2 The specified project shall:
  - (a) be erected in an area affected by the 2010/2011 Canterbury earthquakes;
  - (b) have the sole purpose of providing a benefit for the community of Christchurch.
  - (c) be selected by CHH after liaising with the appropriate restoration and rebuilding authorities, which will include but need not be limited to the Canterbury Earthquake Recovery Authority (CERA) and the Christchurch City Council.

- 2.3 CHH will, within 30 days of signing this Agreement, deposit the agreed sum into a trust account of its solicitors Bell Gully. CHH will confirm to the Commission the payment of the funds into trust.
- 2.4 When the specified project has been selected, and is ready and able to receive the agreed sum, CHH will instruct Bell Gully to release the agreed sum, plus any interest accrued, to the specified project.
- 2.5 CHH will advise the Commission of the specified project, and will confirm to the Commission the subsequent release of those funds to the specified project.

#### Claimants' Inconvenience

- 2.6 CHH will within 30 days of signing the settlement agreement pay an additional amount of \$100,000 to the Commission to be divided equally amongst those claimants who have made themselves known to the Commission and who are already on the Commission's files in respect of this matter ("the claimants"), by way of ex gratia compensation for the costs and inconvenience incurred by them in submitting their claim to the Commission.
- 2.7 If by 1 November 2011 the Commission has not been able to contact any claimant or any claimant has declined to receive his or her share, that share will be retained by the Commission on account of its costs in bringing these proceedings.

#### Commission's Costs

- 2.8 CHH will pay \$50,000 to the Commission within 30 days of the date of this Agreement in respect of costs incurred by the Commission in connection with the Proceeding, being full and final payment in respect of all costs owing, including for CHH's interlocutory challenges to the Proceeding and the appeals to the Court of Appeal and Supreme Court.

#### Disclosure of Agreement

- 2.9 The parties may make public statements in relation to the settlement. Any public statement must be consistent with the matters set out in Schedule 1.
- 2.10 It is understood by the Parties that there is to be no admission by CHH that any person suffered loss or damage as a result of the marketing and sale of the Laserframe timber.

- 2.11 The fact that this Agreement has been entered into is not confidential. The Parties have agreed that none of the contents of this Agreement are confidential and that this Agreement may be published on the Commission's website and may be released to the public after the Commission has discontinued the Proceeding in accordance with clause 2.13 of this Agreement.
- 2.12 This Agreement may also be disclosed by the Commission if requested by its stakeholder ministries or in response to a request under the Official Information Act 1982.

#### **Disposal of the Proceeding**

- 2.13 The Commission will discontinue the proceeding once the parties have signed this Agreement and CHH has made the payments referred to at clauses 2.3, 2.6 and 2.8 of this Agreement. This discontinuance will be on the basis that neither party seeks any order for costs.
- 2.14 The Commission will not commence any new proceedings against CHH, its officers, employees or agents in respect of the subject matter of the Proceeding unless CHH fails to comply with any of the terms of this Agreement.
- 2.15 The Commission will not encourage or assist any other party to issue or pursue proceedings against CHH, its officers, employees or agents in respect of the subject matter of the Proceeding unless CHH fails to comply with any of the terms of this Agreement. In particular, it will not disclose any evidence, documents, transcripts, expert reports or other information it has obtained from its investigation to any third party, except as required by law.

### **3 Miscellaneous**

- 3.1 This Agreement may be executed by each party executing a counterpart of the Agreement, and the Parties exchanging those counterparts.
- 3.2 Any communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:
- 3.2.1 if addressed to the Commission, by hand delivery or facsimile to the following address:

Commerce Commission  
Level 6, 44-52 The Terrace

Wellington  
New Zealand

Attention: Mary-Anne Borrowdale General Counsel Competition,  
Commerce Commission.

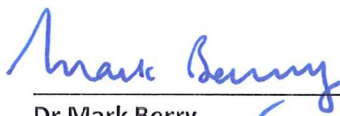
Fax: (04) 924 3700

3.2.2 if addressed to CHH, by hand delivery to the following address:

Bell Gully  
Vero Building  
48 Shortland Street  
Auckland

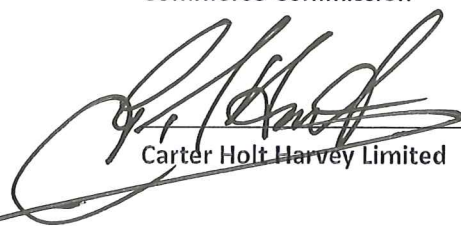
Executed by the Parties on <sup>10 October</sup> ~~September~~ 2011

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Dr Mark Berry

Commerce Commission



Carter Holt Harvey Limited

## Schedule 1 – Agreed facts for public release

1. These proceedings relate to the sale and marketing by CHH of Laserframe timber between 1998 and 2003 (prior to the purchase of CHH by Rank Group).
2. CHH pleaded guilty in October 2006 to criminal charges brought under the Fair Trading Act 1986, and was fined \$900,000.
3. These civil proceedings were initiated by the Commission in 2006 and sought to recover the losses that the Commission alleged had been suffered by competitors and customers who purchased the timber.
4. To avoid the high cost and uncertainty of outcome associated with pursuing these long-standing proceedings, CHH and the Commerce Commission have agreed to settle the civil proceedings. The Commission considers that it is in the public interest to resolve this case now in a way that will produce a tangible benefit to New Zealanders.
5. Settling this case is part of the wider effort by the Commission to resolve a number of long-standing cases, in order to focus on more current issues.
6. Under the settlement, CHH will make a voluntary ex gratia payment of \$1.5 million to a project to be determined relating to the restoration and rebuilding of Christchurch following the recent series of earthquakes. Recognising that the Commission had a reasonable basis for commencing its civil claim, CHH has also agreed to contribute \$100,000 towards the costs and inconvenience incurred by potential claimants, but makes no admission that any person suffered loss or damage from the sale and marketing of MGP10. CHH will also pay \$50,000 on account of the Commission's costs.
7. The Commission, on advice from industry experts, has no reason to believe that CHH's Laserframe timber, or any other timber supplied by CHH, poses any safety concerns. The case was simply about whether people had paid too much for the timber compared with other products available on the market at the time, and whether competitors of CHH had lost business due

to CHH's sale of misgraded Laserframe timber. It was no part of the Commission's case that the timber was dangerous or unsuitable for sale.

8. Consumers have a right to make their purchase decisions based on correct information. This is of particular importance where claims are not able to be easily verified by an ordinary consumer. When businesses provide inaccurate information to consumers it can harm not only consumers but also the business' competitors.