HARDIE JAMES INDUSTRIES NV
Form 20-F
September 29, 2006

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 20-F

(Mark One)

o **REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934**

OR

þ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended March 31, 2006

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

OR

o **SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of event requiring this shell company report For the transition period from to
Commission file number 1-15240

JAMES HARDIE INDUSTRIES N.V.
(Exact name of Registrant as specified in its charter)
N/ A
(Translation of Registrant s name into English)

The Netherlands
(Jurisdiction of incorporation or organization)

Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
(Address of principal executive offices)

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of each class:	Name of each exchange on which registered:
Common stock, represented by CHESS Units of Foreign Securities	New York Stock Exchange*
CHESS Units of Foreign Securities	New York Stock Exchange*
	New York Stock Exchange

American Depositary Shares, each representing five units of
CHESS Units of Foreign Securities

* Listed, not for trading, but only in connection with the registered American Depositary Shares, pursuant to the requirements of the Securities and Exchange Commission

Securities registered or to be registered pursuant to Section 12(g) of the Act. None.

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act. None.

Indicate the number of outstanding shares of each of the issuer s classes of capital or common stock as of the close of the period covered by the annual report: 463,306,511 shares of common stock at March 31, 2006.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. þ Yes o No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. o Yes þ No

Note Checking the box will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. þ Yes o No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer þ Accelerated filer o Non-accelerated filer o

Indicate by check mark which financial statement item the registrant has elected to follow. o Item 17 þ Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). o Yes þ No

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EXHIBIT 99.5

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PART I

Item 1. ***Identity of Directors, Senior Management and Advisers***

Not Required.

Item 2. ***Offer Statistics and Expected Timetable***

Not Applicable.

Item 3. ***Key Information***

In this annual report, unless the context otherwise indicates, James Hardie Industries N.V., a naamloze vennootschap, or a Dutch public limited liability company incorporated and existing under the laws of The Netherlands, is referred to as JHI NV. JHI NV together with its direct and indirect wholly owned subsidiaries as of the time relevant to the applicable reference, are collectively referred to as the James Hardie Group. JHI NV and its current direct and indirect wholly owned subsidiaries are collectively referred to as we, us, our, JHI NV and its wholly owned subsidiaries, or the Company.

The term fiscal year refers to our fiscal year ended March 31 of such year; the term dollars or $ refers to U.S. dollars; the term A$ refers to Australian dollars; the term NZ$ refers to New Zealand dollars; the term PHP refers to Philippine pesos; and the term CLP refers to Chilean pesos. The term msf or thousand square feet refers to thousands of square feet, where a square foot is defined as a standard square foot of 5/16 thickness and the term mmsf or million square feet refers to millions of square feet, where a square foot is defined as a standard square foot of 5/16 thickness.

As a company incorporated under the laws of The Netherlands, we have listed our securities for trading on the Australian Stock Exchange, or ASX, through the use of the Clearing House Electronic Subregister System, or CHESS, Units of Foreign Securities, or CUFS. CUFS are a form of depositary security that represents a beneficial ownership interest in the securities of a non-Australian corporation. Each of our CUFS represents the beneficial ownership of one share of common stock of JHI NV, the legal ownership of which is held by CHESS Depositary Nominees Pty Ltd. The CUFS are listed and traded on the ASX under the symbol JHX.

We have also listed our securities for trading on the New York Stock Exchange, or NYSE. We sponsor a program, whereby beneficial ownership of five CUFS is represented by one American Depositary Share, or ADS, which is issued by The Bank of New York. These ADSs trade on the NYSE in the form of American Depositary Receipts, or ADRs, under the symbol JHX. Unless the context indicates otherwise, when we refer to ADRs, we are referring to ADRs or ADSs and when we refer to our common stock we are referring to the shares of our common stock that are represented by CUFS.

Selected Financial Data

We have included in Item 18 of this annual report the audited consolidated financial statements of JHI NV, consisting of our consolidated balance sheets as of March 31, 2006 and March 31, 2005, our consolidated statements of changes in shareholders equity as of March 31, 2006, March 31, 2005 and March 31, 2004, and our consolidated statements of operations and cash flows for the years ended March 31, 2006, 2005 and 2004, together with the related notes thereto. For periods prior to October 19, 2001, the effective date of our corporate restructuring (see Item 4, Information on the Company History and Development of the Company Corporate Restructuring), the consolidated financial statements represent the financial position, results of operations and cash flows of ABN 60 000 009 263 Pty Ltd, which we refer to as ABN 60, which was formerly known as James Hardie Industries Limited, which we refer to as JHIL, and its wholly owned subsidiaries. For periods after October 19, 2001, our consolidated financial statements represent the financial position, results of operations and cash flows of JHI NV and its wholly owned subsidiaries.

The consolidated financial statements included in this annual report have been prepared in accordance with accounting principles generally accepted in the United States, or U.S. GAAP.

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The selected consolidated financial information summarized below has been derived in part from JHI NV s financial statements. You should read the selected consolidated financial information in conjunction with JHI NV s financial statements and related notes contained in Item 18 and with the information provided in the section of this report entitled Operating and Financial Review and Prospects contained in Item 5. Historic financial data is not necessarily indicative of our future results and you should not unduly rely on it.

	Fiscal Years Ended March 31,									
		2006		2005		2004		2003		2002
	(In millions, except sales price per unit and per share data)									
Consolidated Statements of Operations Data:										
Net Sales										
USA Fiber Cement	$	1,218.4	$	939.2	$	738.6	$	599.7	$	444.8
Asia Pacific Fiber Cement(1)		241.8		236.1		219.8		174.3		141.7
Other(2)		28.3		35.1		23.5		9.6		5.2
Total net sales	$	1,488.5	$	1,210.4	$	981.9	$	783.6	$	591.7
Operating (loss) income(3)	$	(434.9)	$	196.2	$	172.2	$	128.8	$	46.8
Interest expense		(7.2)		(7.3)		(11.2)		(23.8)		(18.4)
Interest income		7.0		2.2		1.2		3.9		2.4
Other (expense) income(4)				(1.3)		3.5		0.7		(0.4)
(Loss) income from continuing operations before income taxes		(435.1)		189.8		165.7		109.6		30.4
Income tax expense		(71.6)		(61.9)		(40.4)		(26.1)		(3.1)
(Loss) income from continuing operations	$	(506.7)	$	127.9	$	125.3	$	83.5	$	27.3
Net (loss) income	$	(506.7)	$	126.9	$	129.6	$	170.5	$	30.8
(Loss) income from continuing operations per common share basic	$	(1.10)	$	0.28	$	0.27	$	0.18	$	0.06
Net (loss) income per common share basic	$	(1.10)	$	0.28	$	0.28	$	0.37	$	0.07
(Loss) income from continuing operations per common share diluted	$	(1.10)	$	0.28	$	0.27	$	0.18	$	0.06
Net (loss) income per common share diluted	$	(1.10)	$	0.28	$	0.28	$	0.37	$	0.07
Dividends paid per share	$	0.10	$	0.03	$	0.05	$	0.08	$	0.05
Return of capital per share	$		$		$	0.15	$	0.20	$	0.05
Weighted average number of common shares outstanding										
Basic		461.7		458.9		458.1		456.7		438.4

Diluted		461.7		461.0		461.4		459.4		440.4
Consolidated Cash Flow Information:										
Cash flows provided by operating activities	$	240.6	$	219.8	$	162.6	$	64.8	$	76.6
Cash flows (used in) provided by investing activities	$	(154.0)	$	(149.2)	$	(58.0)	$	237.9	$	(77.2)
Cash flows provided by (used in) financing activities	$	116.5	$	28.2	$	(87.9)	$	(279.4)	$	(40.8)
Other Data:										
Depreciation and amortization(5)	$	45.3	$	36.3	$	36.4	$	27.4	$	23.5
Adjusted EBITDA(6)	$	(389.6)	$	232.5	$	208.6	$	156.2	$	70.3
Capital expenditures(7)	$	162.8	$	153.0	$	74.1	$	90.2	$	50.8
Volume (million square feet)(8)										
USA Fiber Cement		2,182.8		1,855.1		1,519.9		1,273.6		988.5
Asia Pacific Fiber Cement(1)		368.3		376.9		362.1		349.9		320.7
Average sales price per unit (per thousand square feet)										
USA Fiber Cement	$	558	$	506	$	486	$	471	$	450
Asia Pacific Fiber Cement(1)	A $	872	A $	846	A $	862	A $	887	A $	861

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	Fiscal Years Ended March 31,				
	2006	2005	2004	2003	2002
	(In millions, except sales price per unit and per share data)				
Consolidated Balance Sheet Data:					
Net current assets(9)	$ 150.8	$ 180.2	$ 195.9	$ 159.4	$ 115.1
Total assets	$ 1,445.4	$ 1,088.9	$ 971.2	$ 851.8	$ 968.0
Long-term debt(10)	$ 121.7	$ 147.4	$ 165.0	$ 165.0	$ 325.0
Common stock	$ 253.2	$ 245.8	$ 245.2	$ 269.7	$ 205.4
Shareholders equity	$ 94.9	$ 624.7	$ 504.7	$ 434.7	$ 370.7

(1) Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand and Asia.

(2) Includes fiber cement manufactured and sold in Chile (for fiscal year 2002 to July 2005 only), fiber reinforced concrete pipes manufactured and sold in the United States, fiber cement operations in Europe and a roofing pilot plant in the United States. Also includes general corporate income in fiscal year 2002 comprised primarily of rental income from subleasing office space in Sydney, Australia. Our Chilean business was sold in July 2005. Our roofing pilot plant was closed and the business ceased operations in April 2006. See Item 4, Information on the Company Capital Expenditures and Divestitures, Item 4 Information on the Company Recent Developments and Note 14 to our consolidated financial statements in Item 18.

(3) For fiscal years 2006 and 2005, operating (loss) income includes Special Commission of Inquiry and other related expenses of $17.4 million and $28.1 million, respectively. In addition, operating loss in fiscal year 2006 includes $715.6 million related to the establishment of the asbestos provision and $13.4 million related to the impairment of our former roofing plant.
Operating (loss) income also includes restructuring and other operating income/expenses as follows: (i) for fiscal year 2006, an $0.8 million loss related to the disposal of our Chilean fiber cement business; (ii) for fiscal year 2005, $6.0 million consisting of a settlement loss of $5.3 million related to an employee retirement plan and a $0.7 million loss on the sale of land in Sacramento, California; (iii) for fiscal year 2004, $2.1 million expense primarily related to an increase in cost provisions for our Australian and New Zealand business; (iv) for fiscal year 2003, $1.0 million income related to the settlement of a terminated derivative contract; and (v) for fiscal year 2002, $12.6 million expense related to the roofing Class Action Settlement Agreement in the United States, $7.4 million expense associated with the corporate reorganization and $8.1 million expense related to the decrease in fair value of derivative contracts.

(4) Consists primarily of the following: (i) for fiscal year 2005, the $1.3 million expense consisted of a $2.1 million impairment charge that we recorded on an investment in a company that filed a voluntary petition for reorganization under Chapter 11 of the U.S. bankruptcy code, partly offset by a $0.8 million gain on a separate investment; (ii) for fiscal year 2004, the net gain achieved after accounting for income items, including a $4.5 million profit on the sale of our New Zealand property, was partially offset by expense items, including $3.2 million primarily due to a capital duty fee paid in conjunction with our Dutch corporate structure; (iii) for fiscal year 2003, investment income of $0.7 million; and (iv) for fiscal year 2002, investment expenses of $0.4 million.

(5) Information for depreciation and amortization is for continuing businesses only.

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(6) Adjusted EBITDA represents income from continuing operations before interest income, interest expense, income taxes, other nonoperating expenses, described in footnote four above, net, and depreciation and amortization charges as follows:

	Fiscal Years Ended March 31,				
	2006	**2005**	**2004**	**2003**	**2002**
	(In millions)				
Net cash provided by operating activities	$ 240.6	$ 219.8	$ 162.6	$ 64.8	$ 76.6
Adjustments to reconcile net (loss) income to net cash provided by operating activities, net	(791.3)	(61.2)	(51.1)	62.1	(41.1)
Change in operating assets and liabilities, net	44.0	(31.7)	18.1	43.6	(4.7)
Net (loss) income	(506.7)	126.9	129.6	170.5	30.8
Loss (income) from discontinued operations		1.0	(4.3)	(87.0)	(3.5)
Income tax expense	71.6	61.9	40.4	26.1	3.1
Interest expense	7.2	7.3	11.2	23.8	18.4
Interest income	(7.0)	(2.2)	(1.2)	(3.9)	(2.4)
Other expense (income)		1.3	(3.5)	(0.7)	0.4
Depreciation and amortization	45.3	36.3	36.4	27.4	23.5
Adjusted EBITDA	$ (389.6)	$ 232.5	$ 208.6	$ 156.2	$ 70.3

Adjusted EBITDA is not a measure of financial performance under U.S. GAAP and should not be considered an alternative to, or more meaningful than, income from operations, net income or cash flows as defined by U.S. GAAP or as a measure of our profitability or liquidity. Not all companies calculate Adjusted EBITDA in the same manner as we have and, accordingly, Adjusted EBITDA may not be comparable with other companies. We have included information concerning Adjusted EBITDA because we believe that this data is commonly used by investors to evaluate the ability of a company s earnings from its core business operations to satisfy its debt, capital expenditure and working capital requirements. To permit evaluation of this data on a consistent basis from period to period, Adjusted EBITDA has been adjusted for noncash charges such as goodwill and asset impairment charges, as well as nonoperating income and expense items. See our consolidated financial statements and our discussion under Operating and Financial Review and Prospects for further information to assist in identifying and evaluating trends in Adjusted EBITDA.

(7) Information for capital expenditures includes both cash and credit purchases, and is for continuing businesses only.

(8) Fiber cement volume is measured in $^{5}/16$ thick square feet, which are referred to as standard feet.

(9) Total current assets less total current liabilities.

(10) Includes current portion of long-term debt.

Risk Factors

If the conditions precedent to the Final Funding Agreement are met, our wholly owned Australian subsidiary, James Hardie 117 Pty Ltd (formerly known as LGTDD Pty Ltd), will be required to start making payments to a special purpose fund. Even if the conditions precedent to the Final Funding Agreement are not met and the Final Funding Agreement is terminated, we may negotiate an alternative settlement requiring cash settlement. Such payments will reduce funds available for capital expenditures on existing and new business opportunities, repayments of debt, payments of dividends or other distributions; may restrict our ability to access equity or debt capital markets; and will adversely affect our financial position, liquidity, results of operations and cash flows.

On December 1, 2005, we, the Government of the State of New South Wales, Australia, which we refer to as the NSW Government, and our wholly owned Australian subsidiary, James Hardie 117 Pty Ltd, which we refer to as the Performing Subsidiary, entered into a Final Funding Agreement to provide long-term funding to a special purpose fund, or SPF, that will provide compensation for Australian asbestos-related personal injury claims against certain former James Hardie companies, including ABN 60, Amaca Pty Ltd (which we refer to as Amaca) and Amaba Pty Ltd (which we refer to as Amaba), which we collectively refer to as the Former James Hardie Companies.

Our obligations to provide funding to the SPF pursuant to the Final Funding Agreement are subject to certain conditions precedent, including obtaining tax exempt status for the SPF and the approval of our lenders and shareholders. If these conditions are met, under the Final Funding Agreement as executed on December 1, 2005 we will be required to make an initial payment to the SPF on the commencement date of approximately A$154 million and to make annual payments to the SPF, the first payment of which will also be required on the commencement date. In addition, we have also agreed that for a limited period (which currently remains subject to negotiation as a result of delays in the conditions precedent to the Final Funding Agreement being satisfied), we will provide or arrange for the provision of interim funding to the Foundation if its existing funding is exhausted prior to satisfaction of the conditions precedent to the implementation of the Final Funding Agreement. However, the amount and terms of such interim funding, and the manner in which it will be provided remain to be agreed with the Foundation. Moreover, even if the conditions precedent to the Final Funding Agreement are not met and the Final Funding Agreement is terminated, the Company has determined that it is nevertheless likely that it will make payments in respect of certain claimants who were injured by asbestos products manufactured by the Former James Hardie Companies. If we are required to make these payments or if we make payments pursuant to any alternative settlement, the funds available for capital expenditure (either with respect to our existing business or new business opportunities), repayments of debt principal, or distributions to our shareholders and for other corporate purposes will be reduced by the funding paid to the SPF or the amount of such other settlement payments, as applicable, and as a result, our financial position, liquidity, results of operations, and cash flows will be reduced or materially adversely affected.

Our obligation to make these payments could also affect or restrict our ability to access equity or debt capital markets. For example, had we not prepaid in full the outstanding amount of our US$ non-collateralized notes prior to making the decision to record the asbestos provision, we would not have been in compliance with certain restrictive covenants pertaining to those notes. If our financial position deteriorates, we may not be able to access the capital markets to replace those notes on terms as advantageous as those that were applicable to those notes and as a result our financial position and liquidity will be materially adversely affected. See Item 4, Information on the Company Legal Proceedings for additional information concerning the Final Funding Agreement.

In addition, since unexpected developments late in a fiscal year could result in material increases in the amount of the next annual payment due, we will need to be prepared to fund any such increased obligations with little or no advance notice. As a result, our cash management processes will need to take into account such contingencies and therefore may adversely affect our ability to manage our cash resources as efficiently as would be the case if the funding obligations were able to be known in advance or ascertained further in advance than is the case under the Final Funding Agreement.

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Even if the Final Funding Agreement is implemented, we may be subject to potential additional liabilities (including claims for compensation or property remediation outside the arrangements reflected in the Final Funding Agreement) because certain current and former James Hardie subsidiaries previously manufactured products that contained asbestos.

Up to 1987, two former subsidiaries of ABN 60, Amaca and Amaba, which are now owned and controlled by the Medical Research and Compensation Foundation, which we refer to as the Foundation, manufactured products in Australia that contained asbestos. In addition, prior to 1937, ABN 60, which is now owned by the ABN 60 Foundation Pty Ltd, which we refer to as the ABN 60 Foundation, manufactured products in Australia that contained asbestos. ABN 60 also held shares in companies that manufactured asbestos-containing products in Indonesia and Malaysia, and held minority shareholdings in companies that conducted asbestos-mining operations based in Canada and Southern Africa. Former ABN 60 subsidiaries also exported asbestos-containing products to various countries around the world. The SPF is designed to provide compensation only for certain claims and to meet certain related expenses and liabilities, and the legislation introduced in New South Wales in connection with the Final Funding Agreement seeks to defer all other claims against the former James Hardie subsidiaries. The funds contributed to the SPF will not be available to meet any asbestos-related claims made outside Australia, or claims made arising from exposure to asbestos occurring outside Australia, or any claim for pure property loss or pure economic loss or remediation of property. In these circumstances, it is possible that persons with such excluded claims may seek to pursue those claims directly against us. Defending any such litigation could be costly and time consuming.

Prior to 1988, a New Zealand subsidiary in the James Hardie Group manufactured products in New Zealand that contained asbestos. In New Zealand, asbestos-related disease compensation claims are managed by the state-run Accident Compensation Commission or ACC. Our New Zealand subsidiary that manufactured products that contained asbestos contributed financially to the ACC fund as required by law via payment of an annual levy. All decisions relating to the amount and allocation of payments to claimants in New Zealand are made by the ACC in accordance with New Zealand law. The Injury Prevention, Rehabilitation and Compensation Act 2001 (NZ) bars compensatory damages for claims that are covered by the legislation which may be made against the ACC Fund. However, we may be subject to potential liability if any of these claims are found not to be covered by the legislation and are later brought against us.

Apart from the funding obligations arising out of the Final Funding Agreement, it is possible that we could become subject to suits for damages for personal injury or death in connection with the former manufacture or sale of asbestos products that have been or may be filed against the Former James Hardie Companies. Although the ability of any claimants to initiate or pursue such suits is restricted by the legislation enacted by the NSW Government under the terms of the Final Funding Agreement (see Item 4, Information on the Company Legal Proceedings), we cannot predict with any certainty the outcome of any future claims or allegations that may be made, how the laws of various jurisdictions may be applied to the facts or how the laws may change in the future. If a court of competent jurisdiction relying on applicable law at the time were to find JHI NV, our New Zealand subsidiary or another James Hardie Group subsidiary liable for damages connected with existing or former subsidiaries or their past manufacture of asbestos-containing products, we may incur significant liabilities in connection with any damages that may be awarded in the legal proceedings, in addition to the costs associated with defending against such claims.

We have agreed to indemnify the buyer of our former Gypsum manufacturing facilities for certain asbestos-related claims.

When we sold our former United States gypsum wallboard manufacturing facilities in April 2002, we agreed to indemnify the buyer from certain future liabilities, for a period of 30 years, arising from asbestos-related claims related to injuries to persons or property arising from our former gypsum business. See Item 10, Additional Information Material Contracts.

The Final Funding Agreement imposes certain non-monetary obligations which could materially adversely affect our financial position, results of operations, cash flows and outlook.

If the Final Funding Agreement is implemented, we will become subject to certain non-monetary obligations that could prove to be onerous or to otherwise materially adversely affect our ability to undertake proposed transactions or to pay dividends. For example, the Final Funding Agreement contains certain restrictions that would generally prohibit us from undertaking transactions that would materially adversely affect the relative priority of the SPF as a creditor, or that would materially impair our legal or financial capacity and that of the Performing Subsidiary, in each case such that we and the Performing Subsidiary would cease to be likely to be able to meet the funding obligations that would have arisen under the Final Funding Agreement had the relevant transaction not occurred. Those restrictions apply to dividends and other distributions, reorganizations of or dealings in share capital which create or vest rights in such capital in third parties, or non-arm s length transactions. While the Final Funding Agreement contains certain exemptions from such restrictions (including, for example, exemptions for arm s length dealings; transactions in the ordinary course of business; certain issuances of equity securities or bonds; and certain transactions provided certain financial ratios are met and certain amounts of dividends), implementing such restrictions could materially adversely affect our financial position, results of operations, cash flows and outlook.

The Final Funding Agreement does not eliminate the risk of adverse action being taken against us.

Even if our shareholders approve the implementation of the Final Funding Agreement and the other conditions precedent are satisfied and the Final Funding Agreement is implemented, there is a possibility that, despite certain covenants agreed to by the NSW Government in that agreement, adverse action could be directed against us by one or more of the NSW Government, the government of the Commonwealth of Australia, governments of the states or territories of Australia or any other governments, unions or union representative groups, or asbestos disease groups with respect to the asbestos liabilities of Amaba, Amaca and ABN 60. Any such adverse action could materially adversely affect our financial position, results of operations, cash flows and outlook.

We have incurred substantial costs in connection with the events leading up to, and the negotiation and settlement of, the Final Funding Agreement and may in the future continue to incur substantial costs or be subject to further legal proceedings.

In February 2004, the NSW Government established a Special Commission of Inquiry, which we refer to as the SCI, to investigate, among other matters, the circumstances in which the Foundation was established. The SCI issued its report on September 21, 2004. The SCI found that there was a significant funding shortfall. In part, this was based on actuarial work commissioned by us. As of March 31, 2006, an updated actuarial study completed by KPMG Actuaries Pty Ltd, or KPMG Actuaries, estimated that the undiscounted value of the central estimate of the asbestos-related liabilities of Amaba and Amaca was approximately A$3.08 billion ($2.3 billion). See Note 12 to our consolidated financial statements in Item 18 for additional information. The SCI found that the net assets of the Foundation, Amaba, Amaca and the ABN 60 Foundation were not sufficient to meet these prospective liabilities and were likely to be exhausted in the first half of 2007. The SCI s findings are not binding and if the same issues were presented to a court, the court might come to different conclusions on one or more of the issues.

If the conditions precedent to the full implementation of the Final Funding Agreement are not met or the Final Funding Agreement is terminated, it is not possible to predict what actions the NSW Government may take. In addition, in fiscal years 2006 and 2005 we incurred $17.4 million and $28.1 million, respectively, of expenses related to the events and negotiations leading to the signing of the Final Funding Agreement, including the SCI. We expect to continue to incur material costs associated with the Final Funding Agreement and other related matters, including costs related to: discussions with the Commonwealth Treasury and Australian Taxation Office, or ATO, on the tax exempt status of the SPF; cooperating with an ongoing investigation by the Australian Securities and Investments Commission, or ASIC, into the circumstances surrounding and leading up to the establishment of the Foundation, the corporate reorganizations in 2001 and 2003, and associated matters; providing an updated actuarial assessment of the total asbestos liabilities of t