

Ailing Banton's claim quickly se

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BERNIE BANTON'S barrister, Jack Rush, QC, had just finished examining thoracic specialist Christopher Clarke shortly before lunch yesterday when he was passed a note.

Mr Banton's wife, Karen, and the former ACTU secretary, Greg Combet, were sitting near the bar table, waiting to be called to the witness box.

Staff of the Dust Diseases Tribunal had spread the word mid-morning that Judge John O'Meally would sit until 10pm yesterday and today, in an effort to finish Mr Banton's compensation case against a former subsidiary of James Hardie before the asbestos disease mesothelioma kills him.

Mr Rush scanned the note and asked Judge O'Meally for a five-minute adjournment. When the judge reconvened, Mr Rush told a crowded courtroom that the suit had been settled.

Outside the court Mrs Banton said her husband would be feeling satisfied and relieved, but "certainly not happy".

Holding back tears, she said her only conversation with him since leaving Concord Hospital yesterday morning had been to confirm his instruction to settle.

"It was really a one-way conversation because Bernie can barely speak audibly," she said.

On Wednesday the oncologist Stephen Clarke, Christopher Clarke's brother, had told the



Bernie Banton ... days to live.

court Mr Banton's life expectancy was "measurable in days to a week or so".

Mr Banton's lawyer, Turner Freeman partner Tanya Segelov, said the settlement would give her client "some peace of mind".

"It was very important to finish this case in Bernie's lifetime for him to be fully compensated," Ms Segelov said.

Mr Banton filed the suit on August 20, three days after being diagnosed with malignant mesothelioma. The defendant was Amaca Pty Ltd, a subsidiary of James Hardie when Mr Banton worked in its factory at Camellia, near Parramatta, from 1968 to 1974.

Mr Banton, who received \$800,000 in a settlement from Amaca in 2000 for a less serious asbestos disease, took advantage of a 1995 change to the law allowing a second claim to be made. Ms Segelov said that "remarkably" Mr Banton was the

first plaintiff to claim such further damages.

Amaca, now part of the Asbestos Injuries Compensation Fund set up by James Hardie after a public scandal over its underfunding of a 2001 trust by \$1.5 billion, challenged Mr Banton's right to include exemplary, or punitive, damages in his claim.

On Tuesday, the NSW Court of Appeal ruled that he could pursue some exemplary damages, including for the events of 2001.

The fund's chief executive, Dallas Booth, said Mr Banton's case was "very rare".

"I think given our role as managers of the affairs of Amaca and as trustees of the fund, that where we need guidance from the courts as to what the law is, it's entirely appropriate that we be able to seek that guidance," he said.

Ms Segelov said it was difficult running a case with no precedent "and I am just pleased that the tribunal could hear it so quickly".

Mr Booth said settlement discussions began before Mr Banton gave evidence on Wednesday. "There were settlement offers being made and counter-offers being made all week," he said.

Mr Combet, who like Mr Banton was a negotiator to set up the fund, said this type of settlement had been envisaged during the 2004 talks with James Hardie. "It would not be appropriate to interpret it as something that pushes out the envelope of the settlement that was concluded," he said.



Result ... Karen Banton said her husband would be satisfied and relieved, but "certainly not happy" after th