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# Insurer goes after builder LU Simon on another cladding tower

Another lengthy fight about liability over the use of combustible cladding is about to hit the courts, with insurer AIG claiming damages from builder LU Simon for losses incurred in the fire spread by flammable panels at the Neo 200 apartment tower in central Melbourne in February 2019.

A year and a half after Victoria's Supreme Court of Appeal upheld a judgment that the builder should not have to pay \$12 million in damages for combustible cladding it installed on the Lacrosse tower, the insurer is thought to be seeking \$6 million-plus in a new case.

As with the Lacrosse case, this will take a long time.

"It is anticipated at this stage that the proceedings will take many years," AIG's lawyer Wotton + Kearney partner Robin Shute says in a letter to Neo 200 residents.

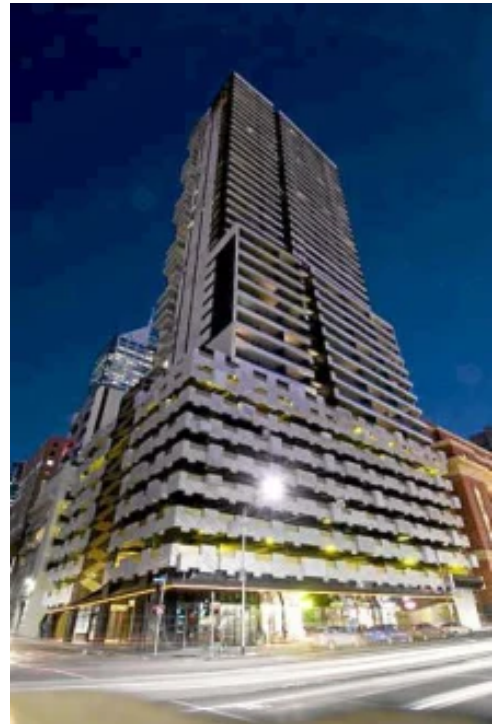
"LU Simon Builders will want to seek recovery of damages payable from its consultants, just as it did in the successful Lacrosse action...

However with the benefit of the pathfinder shown by the Lacrosse action, it may be that this claim is easier to resolve."

No-one was injured in the fire that started on a level 22 balcony and spread to level 29 before it was extinguished.

The claim over Neo 200 will likely intensify pressure on the professional indemnity insurance sector as the builder may try to lay the liability for the losses – as it successfully did in the Lacrosse case – on its consultants such as the architect, fire engineer and building surveyor.

But it is not clear whether professional indemnity policies will indemnify consultants in this case as in the years since the Lacrosse case started many



Neo 200 Apartments, at 200 Spencer St, Melbourne.

insurers have inserted exclusions over cladding-related claims into policies.

Last year the Victorian Building Authority suspended the registration of fire engineer Bruce Thomas for six months and fined him \$12,000 in a long-running disciplinary action over Mr Thomas' failure to consider the risks of the cladding on the Neo 200 building during its design.

The Neo 200 fire also laid bare the level of responsibility on owners corporations to oversee the maintenance of safety systems in large apartment buildings.

Fire investigators discovered widespread safety failures in the 41-level tower after the 2019 fire. More than 1000 smoke alarms and smoke detector units had to be replaced before residents could return to their homes.

A corridor pressurisation system that aimed to prevent the spread of fire by trapping air failed because apartment doors did not seal properly.

LU Simon said its insurers and lawyers managed its insurance matters. It declined to identify its lawyers.

The strata manager for the owners corporation referred queries to Wotton Kearney. AIG did not respond to a request for comment made through its lawyer.

Lot owners in the 372-unit building have until the end of this week to vote over the special resolution to commence legal action, which will be brought against LU Simon formally by the owners corporation, although the insurer will fund it.



The Neo 200 tower fire in February 2019. **Simone Fox Koob**