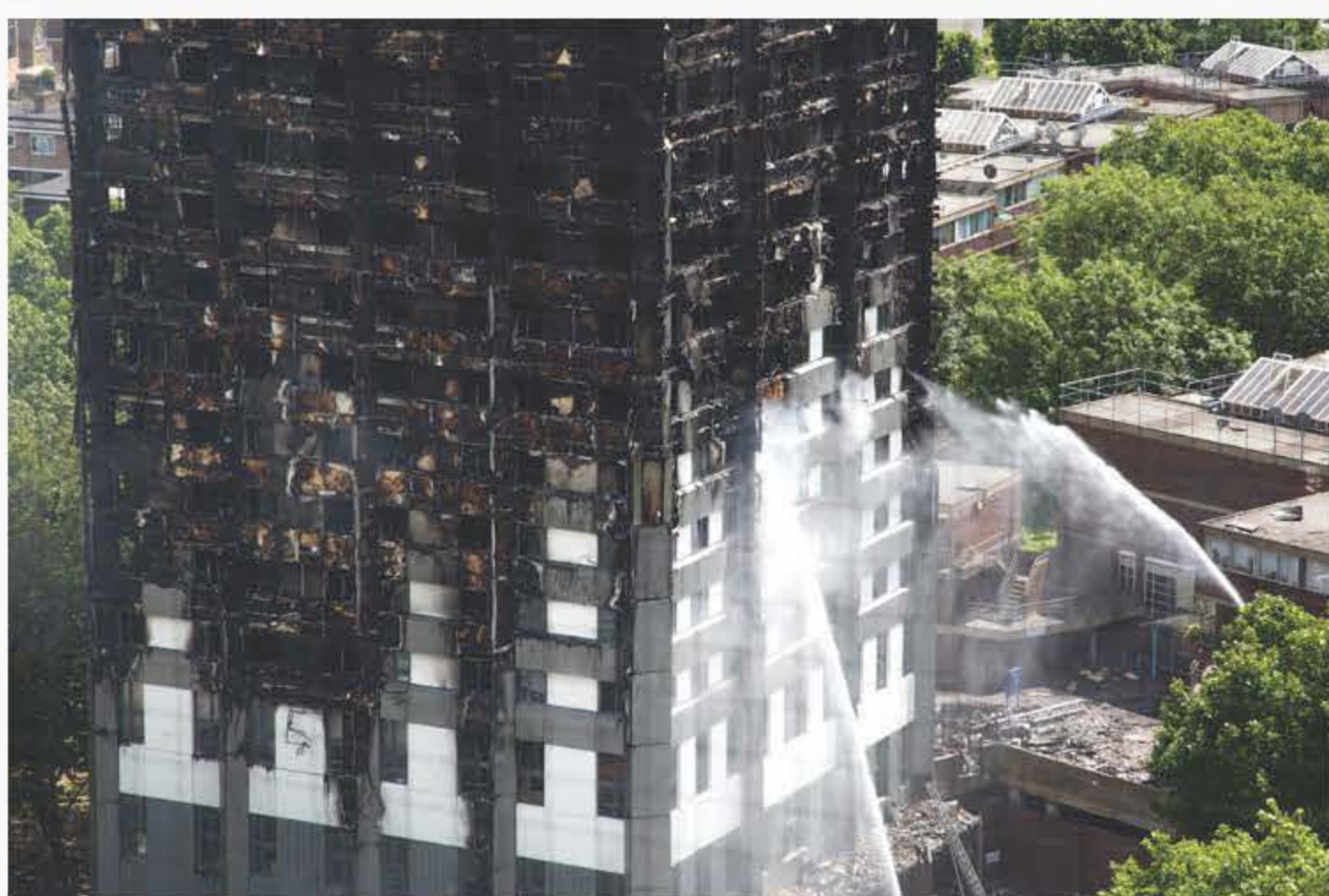


‘No material risk’ of fire: PE cladding importer hits back at class action



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Australian distribution firm Halifax Vogel Group has struck back at a class action alleging it violated consumer laws with its representations regarding the quality of Alucobond cladding, denying that the cladding puts buildings and their occupants at risk of harm or death from fire.

In a defence filed on Friday, HVG, which purchases and imports the cladding in Australia, said there was “no material risk” its Alucobond PE and Alucobond Plus products could “cause or contribute to the rapid spread of a fire” or that it would increase the loss of life or risk of building damage, as claimed in the William Roberts Lawyers-led class action.

The class action was filed in February this year and accuses German firm 3A Composites, which manufactures the cladding and owns the Alucobond trade marks, and HVG of breaching the guarantee as to acceptable quality in the Australian Consumer Law and the merchantable quality provisions of the Trade Practices Act.

HVG denied the material itself was unsafe, instead saying that its suitability for use in certain buildings would depend on an assessment by a builder, architect, or certifier.

“[The] suitable use of Alucobond PE or Alucobond Plus on a building must be determined by appropriately qualified professionals, responsible for the construction and certification of the relevant building, having regard to the particular characteristics and features of that building ... and the standards, codes and regulations applicable to the particular building at the relevant time,” the company said in its defence.

It was reasonable to expect that a qualified professional would consider various aspects and decide whether the cladding was suitable for its intended use, HVG said.

Alucobond cladding, which is made of two aluminium cover sheets and a core of polyethylene (PE) or other materials, is used as part of or attached to an external wall in residential, commercial, public or government buildings.

In its statement of claim, the class alleges that the PE cladding “is and was combustible due to its PE core,” pointing to an interim report by the Senate Economics References Committee Non-Conforming Building Products, released in May 2016. The report said the 2014 Lacrosse apartment fire in Melbourne’s Docklands and the 2017 London Grenfell Tower fire suggested “serious implications” for the fire safety of PE cladding and said a test by the CSIRO on the combustibility of the material had shown a “clear fail”.

3A and HVG breached the ACL and TPA by representing that the cladding was suitable for use in buildings, was compliant with the relevant building codes, and had passed the relevant fire safety tests, the class claims.

Group members are those who own or who have previously owned a building or a leasehold in a building within Australia that was fitted with Alucobond cladding, have suffered loss or damage due to the cladding’s failure to meet the applicable requirements, and had the cladding supplied between February 18, 2009 and February 18, 2019.

The lead applicant is the owners corporation of an apartment in Dolls Point, a suburb in Sydney’s southeast.

The class is seeking damages, compensation, interest and costs. Primary losses include the cost taken to replace the PE cladding with suitable material and any other further costs to make a building fire safe.

IMF Bentham, which is funding the class action, is currently looking at potential representative proceedings against other PE cladding manufacturers.

Law firm Adley Burstynier is also mulling class actions to compensate property owners for the cost of removing highly combustible aluminium cladding. Maurice Blackburn, which conducted its own investigation into the matter, has decided not to pursue a class action of its own in this area.

The NSW government issued a retroactive ban on the use of certain aluminium cladding which took effect on August 15, 2018, and applies to cladding where the core is more than 30 percent polyethylene (PE). In Victoria, orders to remove and replace flammable cladding have been issued to owners of several buildings.

The Grenfell tower fire killed 72 people in June 2017 and was blamed on flammable cladding. Three years earlier, a fire at the 23-storey Lacrosse tower in the Docklands in November 2014 was also blamed on dangerous cladding. The fires set off a wave of legislative responses in states throughout Australia seeking to curb the use of PE core aluminium siding.

The matter is set for its next case management hearing in front of Justice Michael Wigney on May 23.

The class is represented by Ian Roberts, SC, instructed by William Roberts Lawyers. Halifax Vogel Group is represented by Nicholas Owens, SC, and Nuala Simpson, instructed by Quinn Emanuel Urquhart & Sullivan. 3A Composites has yet to file a defence or engage legal representation in the case.

The case is [The Owners – Strata Plan 87231 v 3A Composites GmbH & Anor](#).