

# Funder sells interest in combustible cladding class actions for \$20M



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The litigation funder backing two combustible cladding class actions has sold a third of its investment in the cases to a player in the nascent secondary market for class action financing.

ASX-listed funder Omni Bridgeway sold a 30 per cent stake in the class action against failed Fairview Architectural and the [class action](#) against Halifax Vogel Group (HVG) and German manufacturer 3A Composites for \$19.5 million to Gerchen Capital Partners.

According to a statement to the market on Monday, Gerchen has wiped out \$7 million in legal costs for Omni Bridgeway, which retains the remaining 70% interest in the cases. The costs risk of a court judgment against the applicants in the cases has been split by the same proportions, said the funder, who holds an insurance policy for its share of the potential adverse costs.

Omni Bridgeway CEO Andrew Saker said the funder would aim to use transactions in the secondary market for single and portfolio investments to “accelerate realisations and improve liquidity”.

“This transaction reflects an evolution in the litigation funding industry, where secondary market demand for mid-cycle, quality legal risk assets recognises the value created through our sourcing and underwriting processes and de-risks us from completion and duration uncertainty whilst [we retain] the majority of the upside potential,” Saker said.

“Omni Bridgeway remains highly committed to its investment in the combustible cladding claims in Australia, retaining both a majority interest in, and management of, the investment.”

GCP boss Adam Gerchen said the deal was an example of the way litigation funding had continued to evolve as an asset class over the past several years.

“GCP looks forward to continuing to be a capital partner to litigation funders and other asset managers and investors seeking liquidity,” Gerchen said.

William Roberts Lawyers filed the class actions in 2019 after major fires broke out in buildings that used polyethylene core cladding, most notably, the 23 storey Lacrosse tower in Melbourne in 2014 and the Grenfell tower in London in 2017.

The case against Fairview alleges the company misrepresented the quality of its popular but alleged highly flammable Vitrabond cladding. The case against Halifax Vogel Group (HVG) and German manufacturer 3A Composites centres on Alucobond polyethylene cladding, which is also installed in countless buildings across Australia.

The applicant in the class against Fairview, which entered voluntary administration in July 2020, seeks to join the cladding maker's insurer, AAI Limited, as a respondent, alleging a \$190 million policy responds to the claims of loss and damage in the case.

At a hearing in February, the insurer, which trades as Vero Insurance, told the court it had denied coverage to Fairview and would fight the joinder bid. Vero argues the policy does not indemnify the company for the claims in the case.

Counsel for the class, William Edwards, argued before Justice Michael Wigney that the question of whether the Vero policy responded to the claims should be answered after the insurer was joined to the case under the Civil Liability (Third Party Claims Against Insurers) Act.

Edwards said Vero would need a powerful argument to persuade the court to refuse leave to include it as a respondent if there were an arguable claim for indemnity and the insurer were the "sole source" of cover for the claim.

But a barrister for Vero, Julian Sexton SC, told the court the question of whether Fairview's policy responded to the claims should be determined before the insurer is joined.

He argued that the class action pleadings did not support the proposition that the policy was enlivened, and noted that under section 5 of the Act the court must refuse leave if the insurer could establish that it was entitled to disclaim liability.

Noting that he would be assisted by argument on how the Federal Court's jurisdiction was enlivened by the NSW Act, Justice Wigney said he would hear a contest over the joinder application.

The judge said he was not bound in the dispute with the insurer by his judgment granting leave for the class action to proceed against Fairview.

"The findings I made in the context of the leave to proceed application were obviously made in the absence of a contradictor, as it were, and in a different context," he said.

In hearing the joinder application, the court will likely determine whether any loss or damage suffered by group members meets the definition of 'property damage' in the Vero liability policy and whether this loss or damage was caused by an 'occurrence', as defined under the policy.

A hearing was set down for April 21 but has been delayed to September 26.

On its website, Fairview listed more than 50 projects that had used Vitrabond across Australia, including: the Melbourne Airport tower; Star City Casino and Royal Randwick Racecourse in Sydney; the Attorney-General's Department building in Canberra; Canberra Airport; the ABC Headquarters in Brisbane; and Metricon Stadium on the Gold Coast.

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 PE. In Victoria, orders to remove and replace flammable cladding have been issued to owners of several buildings.

The Fairview class action is represented by William Edwards and Jerome Entwisle, instructed by William Roberts Lawyers. Vero is represented by Julian Sexton SC, instructed by Moray & Agnew.

The class action against Halifax and 3A Composites is represented by William Roberts. THE defendants are represented by King & Wood Mallesons and Wotton & Kearney.

The Fairview class action is [The Owners – Strata Plan No 91086 v Fairview Architectural Pty Ltd ACN 111 935 963](#). The Halifax Vogel and 3A Composites class action is [The Owners – Strata Plan 87231 v 3A Composites GmbH & Anor](#).