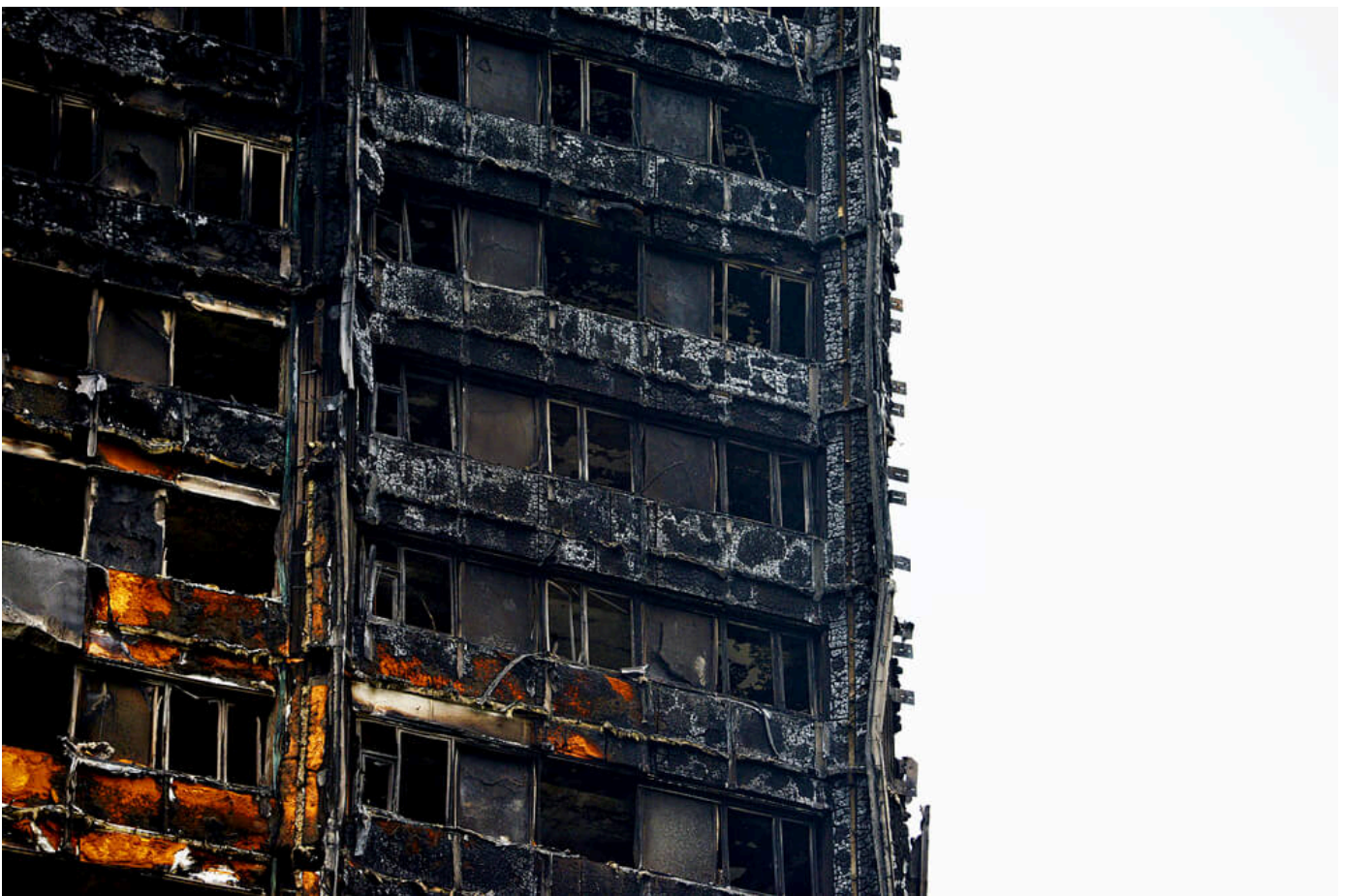


LAWYERLY

3A cladding class action wins spat over issues to be canvassed at two-month trial



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By [Cindy Cameronne](#) | Sydney

Building materials manufacturer 3A Composites has lost a challenge to questions for a judge at an initial trial of a class action over combustible cladding, with a judge finding the issue of whether the company's Alucobond panels were of acceptable quality was common to all group members.

In a judgment handed down on Friday, Federal Court Justice Michael Wigney cleared the three questions for the trial against 3A and supplier Halifax Vogel Group, set to begin next month. The questions centre on whether the panels breached section 74 of the previous Trade Practices Act and section 54 of the Australian Consumer Law, including whether the cladding was safe to use on building facades.

“I am not at this point persuaded that the answers to the disputed questions will, or are likely to, depend on any facts and circumstances concerning individual group members, as opposed to facts and circumstances which are relevant and common to the applicant and all group members,” the judge said.

The William Roberts Lawyers-led class action against the Germany-based 3A and Australia’s Halifax centres on aluminium composite panels, known as Alucobond, installed in countless buildings across Australia. Lead applicant The Owners – Strata Plan No 87231 argues the flammable properties inherent in Alucobond increased the risk of fire, damage and loss of life.

The class action seeks damages for buildings fitted with the cladding between February 2009 and February 2019. Damages include the cost of replacing the cladding with suitable material and any other costs required to make each building fire safe.

In pushing for the disputed questions, the Owners Corporation argued that several class actions concerning the supply of alleged defective goods addressed similar common questions at an initial trial, including the pelvic mesh class action against Johnson & Johnson and Ethicon, and class actions against Ford and Toyota.

The individual circumstances of group members would have no bearing on whether the alucobond panels were of merchantable or acceptable quality, the applicant argued.

3A and Halifax argued that the disputed questions could not be answered without considering the individual circumstances of the group members and said they would suffer “irremediable prejudice” if the questions were allowed at the hearing.

Justice Wigney rejected 3A’s contention that because its defence included a “generic claim” that alucobond panels were to be used in accordance with approved design, it was necessary to consider the particular designs of each group member’s building.

“The difficulty with 3A’s submissions in that regard is that 3A’s defence based on the involvement of qualified professionals is that it is essentially a global or generic defence which on its face appears to apply in respect of the supply of all alucobond panels. It does not depend on the particular circumstances of actual supplies to individual group members,” he said.

“Nor does it depend on whether the panels were in fact fit for purpose in the case of individual group member buildings having regard to the designs, plans or specifications relating to individual group member buildings.

“If 3A’s defence in this respect is made out at the initial trial, it would defeat the claim of all group members because the panels could not be said to be of unmerchantable or unacceptable quality generally.”

The initial trial is set to go for two months beginning 26 August.

A second class action targets the defunct Fairview Architectural, alleging the company misrepresented the quality of its popular but alleged highly flammable Vitrabond polyethylene cladding.

Both cases were filed 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 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.

The class action against Halifax and 3A Composites is represented by William Edwards KC and Jerome Entwisle, instructed by William Roberts. Halifax is represented by Sam Adair, instructed by King & Wood Mallesons. 3A Composites is represented by Lucas Shipway and Amelia Smith, instructed by Wotton + Kearney.

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