

3A Composites wins push for detailed claims in cladding class action



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A judge has ordered that the lead applicant in a class action against German cladding manufacturer 3A Composites give further details on how its allegedly combustible cladding caused losses for property owners.

In a case management hearing on Tuesday, Federal Court Justice Michael Wigney ordered that property owners respond to a request by 3A Composites and Australian distributor Halifax Vogel Group for further particulars concerning how the polyethylene cladding caused their alleged losses.

Lawyer for 3A Composites, James Nagle, said the company had sent correspondence in early 2020 asking for further particulars on how the combustible cladding allegedly caused loss for property owners.

“Then again on receipt of the proposed further amended statement of claim we have requested particulars of causation and the applicant’s position there has been this is a matter for evidence, which we do not agree with,” said Nagle.

“We need adequate particulars...in order to properly respond to the pleading and give evidence.”

Counsel for the class action, Jerome Entwisle, said the 2020 correspondence was sent “a long time ago with respect to earlier pleadings” but agreed to respond to 3A Composites’ request for further information within 14 days.

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

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.

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.

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.

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

According to a statement to the market, 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.

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 Jerome Entwisle, instructed 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](#).