

‘Hundreds of lawyers’ could overwhelm combustible cladding class action, court told



Class Actions 2021-10-06 2:05 pm By Bianca Hrovat | Sydney

“Hundreds of lawyers” could overwhelm Microsoft Teams if German cladding manufacturer 3A Composites continues adding cross-claimants in a class action over highly flammable building materials, a court has heard.

In a case management hearing before Federal Court Justice Michael Wigney on Wednesday, counsel for the class action William Edwards put a “stake in the ground”, in response to a request by the cross-respondents that they be allowed a “meaningful appearance” at the substantive hearing.

“[Your Honour] will immediately perceive the difficulty that gives rise to because the building to which the cross-claim relates is not the one brought forward for consideration in the initial trial ... So there will be a real issue for Your Honour to consider about how this all works, if in fact it works at all.

“We cannot have this class action burdened with potentially hundreds of lawyers reading every single order ... Microsoft teams, even with its technological advances, will not cope if there are hundreds and hundreds of participants.”

There were 11 legal practitioners appearing on behalf of the parties in the class action and cross-claims on Wednesday.

The class action, which was launched by William Roberts Lawyers and funder Omni Bridgeway in February 2019, accuses 3A and Australian distributor Halifax Vogal Group of misrepresenting the quality of the allegedly highly flammable Alucobond PE and Alucobond Plus cladding in buildings. Both companies have denied the cladding is unsafe, saying its suitability would be subject to assessments by builders, architects or certifiers.

[The cross-claims target companies involved in the construction of The Concourse](#), a building located in Sydney’s Willoughby City Council that was installed with 3A’s Alucobond PE cladding between February 2009 and June 2011. 3A seeks contribution or recoupment from the cross-respondents in the event it is found liable.

The cross-claims name Concourse's builder AW Edwards, architectural firms Francis-Jones Morehen Thorp and Toland, Building Code of Australia consultant Hendry Group, façade engineer Aurecon, fire engineer Arup, principal certifying authority Steve Watson and Partners, and certifiers Andrew Rys and Dr Marianne Foley.

3A contends that all these parties had a hand in the installation of the Alucobond PE cladding in The Concourse building and should be liable for any damages.

Edwards told the court that 3A seemed to be using a voluntary questionnaire sent to group members to identify potential respondents to its cross claim. He took issue with 3A's request to send correspondence to the states of Queensland and South Australia, who recently opted into the class action.

"What 3A wants to do is send a letter to [the states] asking them to fill in the questionnaire ... [The questionnaire] was by request rather than by requirement, and a number of group members have chosen to fill it out, and that's been given to 3A and assisted them to bring cross-claims, including The Concourse cross-claim," Edwards said.

"What 3A seems to want [to do now is] to have another go, in relation to these group members, the states. We're concerned about the appropriateness of that."

3A was allowed to send its letter to Queensland and NSW, with Justice Wigney noting it was a polite request, rather than the "badgering" Edwards had claimed.

Edwards described the case surrounding The Concourse as "very strange and unusual" and foreshadowed a request for a management order if 3A continued its pursuit of cross-claim respondents.

"These are cross-claims filed in respect of group member claims. That hardly ever happens. In fact, there are only a handful of occasions when it has even been attempted," Edwards said.

"What one has the potential for, if this keeps happening, is an exponential increase in the number of parties. Your Honour would be here all day hearing the appearances."

Three of the cross-respondents have filed an interlocutory application seeking dismissal of the cross-claim on statute of limitations grounds.

A directions hearing was listed for November 3, before which time 3A undertook to inform the cross-respondents whether they would continue with the cross-claim. The court heard counsel for 3A, Amelia Smith, indicated the cladding manufacturer might be "having second thoughts" and wished to consider the limitations defence further.

At an interlocutory hearing in April last year, [3A claimed there was a real risk its cross-claims would become time barred thanks to the six-year statute of limitations.](#)

Justice Wigney asked the cross respondents to "hold fire" and "park" their interlocutory applications. He suggested that, given the complexity of the issues that may arise with the limitations defence, it may be best to "have a fun day dealing with them all in one day".

The next case management hearing was scheduled for March 17.

The class actions were represented by William Edwards, and Jerome Entwisle, instructed by William Roberts Lawyers. 3A Composites was represented by Amelia Smith, instructed by King & Wood Mallesons. Halifax Vogel Group was represented by Sam Adair, instructed by Sparke Helmore. AW Edwards was represented by Brett Le Plastrier. Francis-Jones Morehen Thorp Pty Ltd was represented by Mark Attard. Toland Pty Ltd was represented by Jonathon Dooley. Hendry Group Pty Ltd was represented by N Allen. ARUP Pty Ltd and Marianne Foley were represented by James Neal. Prestige Apartments Australia Pty Ltd, Lawtow Pty Ltd and Ronnstar Pty Ltd were represented by George Goulas. Victor Robert Bryce Lake & Associates Pty Ltd were represented by Mark Sheldon.

The Halifax Vogel and 3A Composites class action is [The Owners – Strata Plan 87231 v 3A Composites GmbH & Anor.](#)