
Omni Bridgeway to chase Fairview's insurers in cladding action

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Litigation funder Omni Bridgeway is going after the insurers of cladding supplier Fairview Architectural, after the maker and supplier of Vitrabond combustible cladding said the legal costs of defending itself in a class action suit put the company at risk and put itself into administration.

Omni Bridgeway – formerly IMF Bentham – which last year launched the class action against Fairview, the country's second-largest supplier of combustible panels, shrugged off the move, saying it was used to respondents going into administration or liquidation and was seeking to continue the case against Fairview's insurers.



Residents of the Solis Apartments in western Sydney's Warwick Farm are lead applicants in the class action against cladding supplier Fairview. **Supplied**

But the appointment of Grant Thornton last week as administrator of Fairview Architectural Pty Ltd automatically stays proceedings and forces the claimants to seek court permission to continue

the case – which could lead to hundreds of millions of dollars in claims – against the panel supplier's insurers.

"The changing circumstances have caused us to pause," Omni Bridgeway investment manager Gavin Beardsell told *The Australian Financial Review* on Monday.

"On the back of seeking leave to proceed, we have asked the court to make an order that Fairview produce all its insurance policies so we can look at what insurance it's got."

The claimants want documents showing Fairview's insurance coverage not just for claims under Australian consumer law but also over claims for false or misleading representations and misleading conduct, [after they widened the scope of their case against Fairview](#) in March.

In deciding whether to allow the case to continue or not, however, Federal Court Justice Michael Wigney will need to form a view as to whether the policies of Fairview's insurers indemnify the company over these claims.

Mr Beardsell said the claimants had requested the relevant insurance documents from Grant Thornton administrators Said Jahani and John McInerney. Grant Thornton declined to comment on Monday.

Almost \$1.5 million spent on defence

Fairview, the supplier of combustible 100 per cent polyethylene-core Vitrabond panels, as well as other products such as Vitracore G2, last week cited the legal costs of defending the class action when it said it had gone into voluntary administration.

"The firm has recently spent almost \$1.5 million defending a class action claim brought against it and the cost of continual legal defence threatened the company in the long term," Fairview said.

"While Fairview Architectural Pty Ltd believes there was no legal liability on it, the firm has engaged good faith settlement negotiations."

A Fairview spokesman on Monday said the company's 52 staff and product warranties had been transferred to a new entity.

"As part of efforts to help the business and its 52 jobs survive, another interest – FVA Group – which holds licences to sell and supply facade products, has indicated willingness to honour specific product sureties," the spokesman said.

Fairview's action raises the prospect the country's other class action against Alucobond supplier HVG and German manufacturer 3A Composites could also be halted by the respondents putting themselves into administration.

HVG declined to comment on Monday. Mr Beardsell said he thought HVG was unlikely to take the same step.

"In essence it is the same type of business – supplying cladding – but it has different personnel and their attitude to proceedings has been significantly different to Fairview," he said.

"Fairview's attitude of late has been more conciliatory – lay down – and we haven't had to have the interlocutory skirmishes with Fairview as with 3A and HVG. HVG has aligned with 3A and is more robustly defending the Alucobond proceeding."