

Cladding class action applicant has \$5.8M claim against Fairview, court hears



[Class Actions](#) | 2020-08-20 4:08 pm | By [Alison Eveleigh](#) | Sydney

The second meeting of creditors of embattled cladding manufacturer Fairview Architectural has been pushed back to give administrators more time to work out what is in their best interests, after the lead applicant in a class action against the cladding manufacturer submitted a \$5.8 million claim.

Federal Court Justice Jacqueline Gleeson granted the extension on Thursday after Michael Henry SC, barrister for administrators Said Jahani and John McInerney of Grant Thornton, said it was necessary to allow the administrators to form a view as to whether the current deed of company arrangement, or an alternative such as liquidation, was in creditors' best interests, including the class action claimants.

The manufacturer filed for voluntary administration in July, citing challenges posed by COVID-19 and \$1.5 million spent so far defending the class action, which alleges that it misrepresented the quality of its “highly flammable” cladding.

Under the DOCA, the class action claimants are treated differently to other creditors, Henry said, with a confidential sum set aside for them in a creditors trust.

Given that the lead applicant in the class action, The Owners – Strata Plan No 91086, had lodged a proof of debt of \$5.8 million at the first creditors meeting, it was important that the administrators understood the prospects of the class action, Henry said.

“The prospects of class action claim and attempting to try and estimate or assess value of that claim...is highly material to whether or not the administrators would recommend the DOCA or at least the DOCA in its current terms,” Henry said, adding that the administrators had sought legal advice on the point.

Justice Gleeson questioned whether the claimants could vote the DOCA down, given that it was “obviously likely to be in the best interests of every other creditor”. The judge later observed that under the DOCA, all creditors apart from the class action claimants would be paid out in full.

Henry said it depends on what evidence the claimants provide in support of their proof of debt. If the claimants provide nothing to substantiate or value their claim, ordinarily they would be admitted as a \$1 vote, Henry said.

Justice Gleeson accepted that the administrators needed until September 29 to evaluate the position of the class action claimants effectively, but questioned why they were asking for an additional two weeks, until October 13, to convene the meeting.

This was to allow the sale process reach a conclusion, Henry replied, which could be to the advantage of creditors.

“If the administrators...can reach deal with either of the two conditional offerors, the amount of money available to satisfy claims may be significantly increased,” he said.

‘Company and industry challenges’

On entering voluntary administration, Fairview blamed COVID-19 and the class action.

“Following a series of company and industry challenges – which includes COVID19 – Fairview Architectural Pty Ltd has initiated a voluntary administration of its business,” Fairview said in July.

The company, whose cladding is used at major Australian airports, entertainment facilities, and government buildings, said it hopes to survive the administration process.

William Roberts Lawyers filed the class action against Fairview in June of last year, alleging it misrepresented the quality of its allegedly highly flammable Vitrabond cladding. The class action, funded by Omni Bridgeway, seeks compensation for the cost of replacing the cladding and costs associated with making any affected buildings safe.

Fairview said the costs of defending the class action have threatened its long-term viability. It said it had engaged in talks to settle the matter despite believing the claims were baseless, although no court-ordered mediation has taken place.

“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 in July.

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

Fairview’s website describes Vitrabond as an aluminium composite panel comprised of a fire resistant core, sandwiched between either two aluminium or other natural metal cover sheets. Fairview admits the core is combustible, but maintains Vitrabond has excellent large scale fire resistance.

Fairview lists more than 50 projects on its website that have 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.

Vitrabond apartment buildings promoted by Fairview include Connor Central Park, Duo Central Park, Harbour Mill, Mirage and The Monarch in Sydney; 1 McNab Avenue, Bunjil Place, George Windsor, Joulia, Jacques, Momentum and XI Apartments in Melbourne; Gasworks in Brisbane; and the Kingston Foreshore in the ACT.

William Roberts [filed its first cladding class action last year](#) against fellow market leader Halifax Vogel Group (HVG) and German manufacturer 3A Composites

over the Alucobond polyethylene cladding, which is also installed in countless buildings across Australia.

HVF has [denied the material itself was unsafe](#), instead saying that its suitability for use in certain buildings would depend on an assessment by a builder, architect or certifier.

William Roberts and IMF Bentham are continuing to investigate possible class actions against other polyethylene core cladding manufacturers.

The Australian class actions were filed after major fires around the world in buildings that used polyethylene core cladding. Most notably, the 23 storey Lacrosse tower in Melbourne caught fire on November 25, 2014 and the Grenfell tower in London caught fire on June 14, 2017, resulting in loss of lives and property.

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.

Grant Thornton is represented by Michael Henry SC. Fairview is represented by Henry William Lawyers.

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](#).

The administration is Application By John Mcinerney And Said Jahani In Their Capacity As Joint And Several Voluntary Administrators Of Fairview Architectural Pty Ltd (Administrators Appointed) (Acn 111 935 963) & Anor.