

De-classing threat revived as 3A Composites slams ‘simply shambolic’ combustible cladding action



2017 fire at Grenfell Tower in North Kensington, West London

Product Liability

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By [Miklos Bolza](#) | Sydney

German cladding manufacturer 3A Composites has again threatened to call for the de-classing of a class action brought over allegedly combustible cladding, slamming the case against it as “simply shambolic” and the conduct of the applicant as “utterly irresponsible”.

In a case management hearing on late Friday afternoon, 3A barrister Matthew Darke SC criticised the class action, led by William Roberts Lawyers, for failing to solve an

issue of commonality between group members months after the issue was first raised.

“What [the applicant’s] done is it’s simply waddled on with this simply shambolic case brought on behalf of a very wide and very broad class,” Darke told Federal Court Justice Michael Wigney.

Darke said the delay in finalising the common questions was prejudicing his client, which was also considering bringing cross-claims against third parties in the case. Without the pleadings nailed down, time was ticking and there was a risk 3A could be time barred from bringing a claim, he said.

“It’s a very real and very serious problem. It’s brought upon by the applicant’s conduct and the applicant has had months to [identify common questions] but hasn’t,” Darke said.

“It may be that we need to consider whether we seek an order to that effect [declassing the case] because we are, as I have said, being prejudiced by this and frankly the applicant has been utterly irresponsible in the way it has conducted this proceeding.”

William Roberts launched the case in February this year with lead applicant, the owners corporation for Shore Dolls Point Apartments, accusing 3A and Australian distributor Halifax Vogel Group of misrepresenting the quality of the allegedly highly flammable Alucobond cladding. The class is seeking compensation for replacing the cladding as well as additional expenses required to make the building safe.

Darke’s criticism came in response to an emergency bid by the class applicant to postpone a two day hearing scheduled for Thursday and Friday this week for an interlocutory bid by 3A to strike out the common questions and order class closure in the matter.

The applicant wants more time to amend the common questions in the case after [Justice Anna Katzmann’s ruling last month](#) against Johnson & Johnson in the pelvic mesh class action that found the medical device giant and its unit Ethicon were liable for damages to the three lead applicants. The exact amendments were unknown at the time of writing.

Barrister for the class, William Edwards, said on Friday 3A’s complaints were “remarkable” because the company had not previously applied to declass the case. [3A mentioned that a declassing application was a “possibility”](#) in August and took the threat a step further in September, [saying it would launch a declassing bid](#) if registration and opt out were not initiated.

The class action against 3A and HVG had “courteously sought” to draw attention to the amendments as quickly as it could after the J&J judgment, Edwards said.

“We are trying to do the responsible thing here. We don’t for a minute accept the characterisation of our friends that our conduct is somehow to be criticised in the running of this case,” he said.

“The prudent course in my submission is in effect to adjourn. And let’s not always look at the glass half empty. It may be the case that Mr Darke gets the pleading with the amended common questions [and agrees to them].”

Edwards persuaded Justice Wigney to vacate the hearing dates to give the class until February to file an amended originating application and statement of claim in both the 3A class action and a separate representative proceeding being run on similar claims against cladding manufacturer Fairview Architectural.

This [second class action was filed by William Roberts Lawyers in August](#) against Fairview over its representations regarding the quality of its Vitrabond polyethylene cladding.

In agreeing to the adjournment, Justice Wigney said the move would prevent having to deal with a strike out application and then another application to amend. However, the judge ordered the class pay the costs of the vacated hearing dates and warned that this may be the last chance they get to fix up the case.

“If I find that the proposed further amended statement of claim doesn’t adequately address the issue of the common questions, that is it doesn’t raise at least one common question, given that you have been given this further opportunity to address it, the sort of order that I would make... it may have implications for that, that is you may not automatically get leave to re-plead ... and I would then be in a position to perhaps deal with Mr Darke’s submission about declassing,” the judge said.

The class now has until February 13 to serve its proposed amended pleadings on 3A, HVG and Fairview. The interlocutory hearing covering the amendments will be heard on February 27, in which Fairview may also present its reasons for opposition, if any.

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 per cent PE. In Victoria, orders to remove and replace flammable cladding have been issued to owners of several buildings.

The class is represented by William Edwards instructed by William Roberts Lawyers. 3A Composites was represented by Matthew Darke SC and Amelia Smith, instructed by King & Wood Mallesons. HVG was represented by Nicholas Owens SC and Nuala Simpson, instructed by Sparke Helmore with Quinn Emanuel retained as strategic counsel. Fairview was represented by Madeline Hall, instructed by Colin Biggers & Paisley.

The 3A Composites and HVG 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](#).