

Judge wants to avoid ‘behemoth’ trial in \$500M combustible cladding class action

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A judge overseeing two class actions over allegedly flammable combustible cladding used in buildings throughout Australia says he will likely keep the trials separate to avoid a ‘behemoth’ hearing.

In a case management hearing Monday, Federal Court Justice Michael Wigney said he was inclined to have separate trials over the Alcobond and Vitrabond PE cladding products, after William Edwards, barrister for embattled cladding manufacturer Fairview Architectural, flagged the possibility of the judge considering “common allegations” relating to overlapping features of the cladding products in both class actions.

“My present inclination would be to have separate trials...it would become a behemoth otherwise,” Justice Wigney said.

Justice Wigney said there would be no trial until 2022.

The lawsuits, filed after major fires around the world in buildings that used polyethylene core cladding, have both been filed by law firm William Roberts. The Alucobond proceedings was launched in June last year against German manufacturer 3A Composites and distributor Halifax Vogel Group. The Vitrabond class action was filed later in June against Fairview Architectural, a move which put the firm into administration due to the costs of defending the proceedings.

In November, the funder backing the class actions, Omni Bridgeway, revealed that more than 1,000 buildings were likely to be the subject of the class actions, with the estimated total claim amount likely to exceed \$500 million.

‘What’s the magic of 15 weeks?’

During Monday's hearing, Justice Wigney asked Edwards why he needed an "extremely lengthy" 15 weeks to put on evidence after discovery in March next year.

"What's the magic of 15 weeks, what do you envisage to be the nature of the evidence?" Justice Wigney asked.

Edwards said while there was nothing "magical" about the time request, he said there would be expert and lay evidence in relation to the cladding products, which may involve testing "various things".

But Wigney was not satisfied, and asked why Edwards could not simply retain an expert and "get moving now" with evidence.

"You keep saying things are conventional, but I'm not sure what that means," Justice Wigney said.

"There's nothing conventional about this case, I'm not aware of any other class action concerning panels.

"You commenced these proceedings — tell me why you need so much time. You have to persuade me, I'm calling a spade a spade."

Edwards said he was simply seeking to submit that "some amount of time" after discovery was provided was "prudent and reasonable", but whether that would be the full 15 weeks or not was a matter for Justice Wigney to determine, noting William Roberts was pursuing the same timeframe to put on evidence in both class actions.

Justice Wigney set March 15 next year down for a hearing on discovery, and gave the parties until May 31 to put on evidence, with mediation "hopefully" to take place in the second half of next year.

"I don't want this case to drift on in a state of largesse," the judge said.

Dual class actions

Both class actions seek damages for the replacement of the combustible cladding and any drop in property value, and accuse the respondents of misrepresenting the quality and safety of the cladding products.

HVF has denied the material itself was unsafe, instead claiming that its suitability for use in certain buildings would depend on an assessment by a builder,

architect or certifier.

In November, both Victoria and Queensland filed a notice of consent to become group members in the proceeding, a move which William Roberts' principal Bill Petrovski told Lawyerly would increase the size of the total claims.

Group members in the two class actions include owners' corporations, commercial building owners and public bodies in all Australian states and territories.

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.

The class actions are represented by Justin Gleeson SC, William Edwards, and Jerome Entwisle, instructed by William Roberts Lawyers. 3A Composites is represented by Matthew Darke SC and Amelia Smith, instructed by King & Wood Mallesons. Halifax Vogel Group is represented by Nicholas Owens SC and Sam Adair, instructed by Sparke Helmore. Fairview was previously represented by Colin Biggers & Paisley and then Henry William Lawyers. It is now represented by Mills Oakley.

The Halifax Vogel and 3A Composites 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](#).

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](#).