

Insurer Vero may be dragged into combustible cladding class action



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The applicant in a class action against Fairview Architectural over allegedly combustible cladding is add insurer Vero Insurance as a respondent, after revealing the cladding manufacturer may have \$190 million in insurance to cover the class action's claims. In an interlocutory application filed December 17, the applicant seeks court permission to join AAI Insurance, trading as Vero Insurance, to the class action and to file a further amended statement of claim alleging Vero is liable to indemnify Fairview for any covered loss and damage suffered by group members.

If joinder is granted, it raises the prospects of a more sizable return for group members. In August last year, the Federal Court heard that [the lead applicant had a claim for \\$5.8 million](#).

Fairview entered voluntary administration in July 2020, citing challenges from COVID-19 and \$1.5 million it had spent defending the class action. In October, a related entity purchased Fairview however, bringing the company back to life and ensuring all creditors were paid in full.

The potential for an additional \$190 million in insurance to cover the class action's claims were revealed in a notice to group members in the William Roberts-led class action in July in advance of a two-day December mediation before former Federal Court judge Peter Jacobson QC.

"The applicant believes Fairview has insurance policies which are likely responsive to at least part of the claims of the applicant and class members and which may result in up to \$190 million in total being available to the applicant and class members in the event the class actions succeeds," the notice said.

William Roberts filed the class action against Fairview in June 2019, 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.

If Vero is joined to the class action, the court will have to determine whether any loss and damage suffered by group members meets the definition of 'property damage' in the AAI liability policies held by Fairview and whether this loss or damage was caused by an 'occurrence', as defined under the policies.

The class action applicant says the supply or affixation of the cladding constitutes the ‘occurrence’ and the ‘property damage’ is the loss or damage that followed, including the cost of removing the Vitrabond PE Core cladding and the cost of remediating any damage caused to the building by the cladding.

If the court finds the class action claims are covered under the policies held by Fairview, it will have to determine whether, under the Third Party Claims Act, any covered amount should be paid to Fairview or should go directly to the applicant and group members.

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 and Omni Bridgeway [filed their first cladding class action in February 2019](#) 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. The case against Fairview was filed a few months later in June.

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.

Justice Michael Wigney is currently overseeing both class actions.

William Roberts and Omni Bridgeway 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.

Fairview is represented by Mills Oakley. 3A Composites is represented by King & Wood Mallesons. HVF Group is represented by Sparke Helmore.

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](#).