

Cladding supplier fights to keep class action from accessing sales figures



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The Australian supplier of alleged combustible cladding is opposing a class action applicant's bid for information ahead of settlement talks on the quantity of cladding sold in the country between 2009 and 2019.

In a case management hearing before Federal Court Justice Michael Wigney on Monday, counsel for the class action, Jerome Entwisle, said the applicant wanted the figures from distributor Halifax Vogel Group to get a "ballpark sense" of the square-metre quantity of Alucobond polyethylene cladding supplied in Australia before the parties enter mediation in March.

“They hold data about the unregistered group members in a sense, because they know how much Alucabond was supplied to them....it at the very least provides a ballpark estimate about what the claim for damages may be,” he said.

Counsel for Halifax Vogel Group, Sam Adair, said the data, if it were capable of being produced, “would be positively misleading if it was sought to be used in the way [the applicant] foreshadows” because not all the cladding supplied in Australia was used by purchasers.

“It’s positively misleading to use a global figure as some kind of integer to quantify group members’ claims, when it’s known that some portion of the cladding was not used,” he said.

“It leads to a highball figure that’s entirely out of the range.”

Justice Wigney scheduled an interlocutory hearing on the issue for a later date.

Also on Monday, the judge tentatively fixed August 26 next year as the start date for a two-month trial in the case.

William Roberts Lawyers filed two class actions in 2019 after major fires broke out in buildings that used polyethylene core cladding, most notably, the 23 storey Lacrosse tower in Melbourne in 2014 and the Grenfell tower in London in 2017.

The case against Halifax Vogel Group and German manufacturer 3A Composites centres on Alucobond polyethylene cladding, which is installed in countless buildings across Australia. The second case against failed Fairview Architectural alleges the company misrepresented the quality of its popular but alleged highly flammable Vitrabond polyethylene cladding.

The Alucobond class action is seeking damages and compensation for buildings fitted with the cladding between February 2009 and February 2019, as well as interest and costs. Primary losses include the cost of replacing the cladding with suitable material and any other costs required to make a building fire safe.

The applicant in the class against Fairview, which entered voluntary administration in July 2020, seeks to join the cladding maker’s insurer, AAI Limited, as a respondent, alleging a \$190 million policy responds to the claims of loss and damage in that case.

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

In May, ASX-listed funder Omni Bridgeway sold a 30 per cent stake in the two class actions for \$19.5 million to Gerchen Capital Partners.

According to a statement to the market, the sale wiped out \$7 million in legal costs for Omni Bridgeway, which retains the remaining 70 per cent interest in the cases. The costs risk of a court judgment against the applicants in the cases has been split by the same proportions, said the funder, which holds an insurance policy for its share of the potential adverse costs.

The class action against Halifax and 3A Composites is represented by Jerome Entwisle, instructed by William Roberts. The defendants are represented by King & Wood Mallesons and Wotton & Kearney. The Fairview class action is represented by William Edwards and Jerome Entwisle, instructed by William Roberts Lawyers. Vero is represented by Julian Sexton SC, instructed by Moray & Agnew.

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 ACN 111 935 963](#).