

Combustible cladding class action firm wants to add new owners group member rep

Class Actions 2020-12-16 9:22 pm By [Spencer Fowler Steen](#) | Melbourne

The law firm behind a class action against German manufacturer 3A Composites over allegedly combustible cladding is seeking to add a new representative group member to cover the claims of owners of property with Alucobond panels.

In a case management hearing in the Federal Court on Wednesday, counsel for the class William Edwards argued the new owners group should not be categorised as a sub group because that would have the effect of stripping away authority from the lead applicant and investing it in a sub group member representative.

Instead, Edwards suggested a sample group member could be brought forward in the class action to advance the entirety of their case alongside the lead applicant. “The formality of a sub group comes with a certain amount of complexity; that complexity is something that is probably best avoided,” he said.

“As it stands, the sub group member can represent the case and make decisions in relation to it. Once you appoint one, part of the authority rests with the sub group representative.”

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

‘Don’t mention what other courts have done’

In Wednesday’s hearing, Justice Michael Wigney questioned why complexity would arise, asking Edwards how he could determine the matter involving the new plaintiff group member without a sub group member representative.

“Wouldn’t complexity only arise if you couldn’t act for the sub group representative, and that would only arise if there was conflict, but I can’t see that,” Justice Wigney said.

“The only need I see is the need for a sub group or a sample group member because there’s different products.”

Edwards suggested it could be done in the “way it’s been run in many courts across Victoria”.

But Justice Wigney told Edwards “don’t mention what other courts have done”, and said he would need an undertaking on behalf of the applicant that any costs order referable to the sub group member be paid by the applicant.

Edwards said he would not object to such an undertaking, agreeing that the applicant would pay the sample group member’s costs order.

Lawyer for 3A Composites Amelia Smith said she did not see any prejudice in the matter given the “concession” Edwards had made, saying the decision on the group member’s categorisation should be made sooner rather than later.

Justice Wigney said his “strong inclination” was towards having the owners group appointed as a sub group representative party, but allowed Edwards more time to consider his position and reserved his decision.

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 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](#).