

# 3A Composites issues ultimatum in combustible cladding class action



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German-based 3A Composites has issued an ultimatum in the high-stakes combustible cladding class action against it, saying it will try to shut down the matter as a representative proceeding if group member registration and opt out are not initiated.

Cladding manufacturer 3A is seeking a court order that the proceeding no longer continue as a class action unless the court approve a timetable for group members to opt out or register for the proceeding. 3A and Australian distributor Halifax Vogel Group have been accused of misrepresenting the quality of the allegedly highly flammable Alucobond cladding.

“In the alternative [to the registration and opt out orders] pursuant to s 33N(1) (d) of the FCA, [3A seeks] an order that the proceeding no longer continue as a representative proceeding under Part IVA of the FCA,” 3A said in its interlocutory application.

Barrister for 3A, Matthew Darke SC, [foreshadowed a declassing request at a case management hearing in August](#), saying that it was a “possibility” that the proceeding should not move forwards as a class action at all.

3A wants group members to opt out or register in the proceedings within six weeks from the date the court approves its proposed orders. The William Roberts-led class action, which is being funded by IMF Bentham, would be given 14 days after the registration deadline to provide a complete list of registered group members to 3A and HVG.

Under the proposed hard class closure, notices would be distributed to group members via William Robert and IMF’s websites as well as ten different newspapers, with the class initially socked with the costs of distribution.

William Roberts launched the case in February this year with lead applicant, the owners corporation for Shore Dolls Point Apartments, seeking compensation for replacing the allegedly dangerous cladding as well as additional expenses required to make the building safe.

A two-day interlocutory hearing in front of Justice Michael Wigney has been scheduled for November 4 and 5. During this hearing, arguments over registration, opt out and declassing will be heard as well as disputes over other matters in the case, such as a proposed amendment application by the class and the determination of common questions in the case.

3A will also fight for various documents from Shore’s parent company, including contracts, retainers and communications with builders, architects, fire safety engineers and other consultants, as well as contracts for the supply, design, manufacture, or fitting of Alucobond products and third party cladding products.

The 3A class action is being case managed alongside a [second class action filed by William Roberts Lawyers last month](#) against Fairview Architectural over its representations regarding the quality of its Vitrabond polyethylene cladding.

William Roberts and IMF Bentham are continuing to investigate possible class actions against other polyethylene (PE) core cladding manufacturers, but have confirmed they are not pursuing claims against any other third parties that might have been involved.

The Australian class actions were filed after major fires around the world in buildings that used PE 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.

In 2016, the owners corporation and unit holders of the Lacrosse tower launched proceedings against construction firm LU Simon Builders, surveyor Gardner Group, architect Elenberg Fraser and fire engineer Thomas Nicolas. In February this year, Judge Ted Woodward of the Victorian Civil and Administrative Tribunal delivered a \$5.7 million judgment in favour of the owners corporation and apartment owners. An appeal of this decision was launched by Gardner Group, Elenberg Fraser and Thomas Nicholas on Wednesday in the Victorian Court of Appeal.

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.

William Roberts and IMF declined to provide comment for this story.

The class is represented by Ian Roberts SC instructed by William Roberts Lawyers. 3A Composites is represented by Matthew Darke SC and Amelia Smith, instructed by King & Wood Mallesons. HVG is represented by Nuala Simpson, instructed by Sparke Helmore with Quinn Emanuel retained as strategic counsel. Fairview is represented by Pat Zappia QC, Tony Thomas and 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](#).

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