



CLADDING (VITRABOND) CLASS ACTION

FURTHER IMPORTANT NOTICE

THIS IS AN IMPORTANT NOTICE APPROVED BY THE FEDERAL COURT OF AUSTRALIA TO LIKELY CLASS MEMBERS IN THIS CLASS ACTION

AS EXPLAINED BELOW, THE CLASS ACTION HAS BEEN ALLOWED TO CONTINUE AGAINST FAIRVIEW TO ACCESS ANY AVAILABLE INSURANCE PROCEEDS

BACKGROUND INFORMATION ABOUT THE CLASS ACTION

1. The class action seeks compensation (that is, money) for buildings fitted with “Vitrabond PE” and “Vitrabond FR” branded Aluminium Composite Panel cladding.
2. The class action is against the manufacturer of the cladding, Fairview Architectural Pty Ltd (ACN 111 935 963) “**Fairview**”. The claimed compensation includes the cost of removal and replacement of the cladding (whether it has occurred yet or not), the cost of rectification (to the extent replacement is not required), increases in insurance premiums, the costs of building safety assessments, and the consequent reduction of value to buildings.
3. The Court made orders on 25 May 2020 approving a notice to class members, which contains more information concerning the class action. This notice can be viewed at: www.williamroberts.com.au and <https://portal.omnibridgeway.com/claddingau>.

EXTERNAL ADMINISTRATION OF FAIRVIEW

4. On 7 July 2020, Fairview was placed by its director into voluntary administration. Mr. Said Jahani and Mr. John McInerney of Grant Thornton were appointed Administrators of Fairview.
5. The appointment of the Administrators meant that there was an automatic stay of the class action under s 440D of the *Corporations Act 2001* (Cth) (**Corps Act**). That is, the class action could not move forward unless the Court gave an order allowing it to do so.
6. Consequently, on 8 July 2020 the representative applicant in the class action filed an application with the Court to lift the automatic stay of proceeding by seeking leave to proceed against Fairview (**Application**).



The Deed of Company Arrangement (DOCA)

7. On 20 October 2020, a meeting of creditors was held and the Administrators recommended that Fairview adopt a deed of company arrangement proposed by a related company, Fairview Architectural Holdings Pty Ltd (**Fairview Holdings**). A deed substantially in the form voted for by a majority of the creditors was signed by the Administrators, Fairview and Fairview Holdings on 6 November 2020 (**DOCA**). By virtue of s 444D of the Corps Act, the terms of the DOCA bind all creditors of the company including the applicant and class members in the class action.
8. The DOCA and associated Deed Poll, together with a letter to creditors dated 9 November 2020 issued by the Administrators can be accessed here <https://tinyurl.com/FairviewDOCA>. You should carefully read the DOCA, but relevantly under the DOCA, creditors with unliquidated claims against Fairview (including the applicant and class members in this proceeding) are sought to be provided with a means to recover their losses by:
 - having their claims against Fairview preserved to the extent that Fairview holds an insurance policy that responds to such claims; and
 - allowing for claims to be made on a limited Creditors' Trust (to comprise a minimum \$1m with a potential increase to \$3m if certain conditions are met). If you make a claim on this Creditors' Trust:
 - i. provided that you do not enter into any separate deed or agreement to release or otherwise extinguish your claims against Fairview, your claims will stay preserved and can be continued to be claimed as part of the class action subject to the terms of the DOCA.
 - ii. and you have entered into a litigation funding agreement with Omni Bridgeway Limited, the litigation funder that is funding the class action, you may owe certain obligations under such funding agreement in respect of any claim and recovery from the Creditors' Trust.

THE APPLICATION - CLASS ACTION ALLOWED TO CONTINUE AGAINST FAIRVIEW

9. The Application, as amended, was heard by the Court on 27 November 2020. The evidence that was put before the Court included:
 - the existence of insurance policies (held in the period from 2009 to 2019) that are likely responsive to the claims of the applicant and class members, which likely make \$190 million available for the applicant's and class members' claims; and
 - the DOCA terms, which aimed to preserve the claims of the applicant and class members against Fairview to allow access to any available insurance proceeds.
10. The Court made orders granting leave for the applicant to proceed with the class action against Fairview. Accordingly, the class action against Fairview can now continue.