

DUPLICATE

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV 2015-485-594

**BETWEEN T J CRIDGE and M A UNWIN
 Plaintiffs**

**AND STUDORP LIMITED
 Defendant**

CIV 2015-485-773

**BETWEEN K M FOWLER and S WOODHEAD
 Plaintiffs**

**AND STUDORP LIMITED
 Defendant**

**AND JAMES HARDIE NEW ZEALAND
 Second Defendant**

CIV-2015-404-3117

**BETWEEN BODY CORPORATE 316651 and OTHERS
 Plaintiffs**

**AND STUDORP LIMITED
 Defendant**

**AND JAMES HARDIE NEW ZEALAND
 Second Defendant**

**INTERLOCUTORY ORDERS FOR REPRESENTATIVE PROCEEDING,
OPT-IN AND OTHER ORDERS**

Dated: September 2017



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INTERLOCUTORY ORDERS FOR REPRESENTATIVE PROCEEDING, OPT-IN AND OTHER ORDERS

To: the plaintiffs, by their solicitors

And to: the defendants, by their solicitors

1. The interlocutory application made by the plaintiffs on 16 October 2015 in CIV 2015-485-584 (**the Cridge proceedings**) and CIV 2015-485-773 (**the Fowler proceedings**), and on 22 December 2015 in CIV 2015-404-3117 (**the Hub proceeding**) (collectively, **the plaintiffs**), was determined by the Honourable Justice Ellis by Judgment dated 14 October 2016 and Minutes dated 30 November and 19 December 2016 confirming the form of the Orders to be made as at 19 December 2016 (**the Orders**).
2. The determination was made following a hearing held on 7 and 8 June 2016 and a hearing by telephone conference on 30 November 2016. Messrs DJS Parker and ESK Dalzell appeared as counsel for the plaintiffs in the proceedings. Messrs JE Hodder QC, JA McKay and AJ Wicks appeared as counsel for the defendants in the proceedings.
3. By Judgment dated 30 August 2017 in CA573/2016 the Court of Appeal upheld the Orders with the amendment of the opt in period, which is extended to five calendar months from 30 August 2017 in respect of the Cridge, Fowler and Hub proceedings.
4. The following orders are now made:

Leave to bring representative proceedings

(a) The plaintiffs in each of the *Cridge*, *Fowler* and *Hub* proceedings may bring their claims as representative proceedings under High Court Rule 4.24(b) on behalf of:

- i. themselves;
- ii. those claimants who have filed separate proceedings against the defendants as listed in the schedule to this order and who are to be regarded as forming part of the class to whom the representative orders extend; and
- iii. those claimants who have not filed separate proceedings but who fall within one or more of the defined classes set out in order (b) below and who opt-in before the end of the opt-in periods in (c), below (**the representative proceedings**).



Opt-in classes

(b) The defined classes are:

- i. in relation to the *Cridge* proceedings, those persons who own or have owned a property that is or was clad using Harditex building products, approved accessories and/or the Harditex cladding system designed, manufactured and supplied by the defendants, and who have suffered loss as a result of the same or substantially similar negligence and/or breaches of sections 9 and/or 10 of the Fair Trading Act 1986, as alleged in the plaintiffs' statements of claim (as amended);
- ii. in relation to the *Fowler* proceedings, those persons who own or have owned a property that is or was clad using Harditex building products, approved accessories and/or the Harditex cladding system designed, manufactured and supplied by the defendants, and who have suffered loss as a result of the same or substantially similar negligence and/or breaches of sections 9 and/or 10 of the Fair Trading Act 1986, as alleged in the plaintiffs' statements of claim (as amended);
- iii. as to the *Hub* proceedings, those persons who own or have owned a property that is or was clad using Titan Board building products, approved accessories and/or the Titan Board cladding system designed, manufactured and supplied by the defendants, and who have suffered loss as a result of the same or substantially similar negligence and/or breaches of sections 9 and/or 10 of the Fair Trading Act 1986, as alleged in the plaintiffs' statement of claim.

(c) Anyone eligible under order (a) above wanting to opt-in to one of the classes defined in (b)(i) to (iii), above, must do so within five calendar months beginning on 30 August 2017 (being the date of the Judgment of the Court of Appeal in *Cridge v Studorp Ltd* (identified as [2017] NZCA 376)) and expiring on 31 January 2018 (**the opt in period**).

Common issues

(d) The representative proceedings shall be determinative of the following issues as between the parties and represented class members:

- i. Whether a duty of care is owed by James Hardie to the plaintiffs in the relevant classes;



- ii. If so, whether that duty was breached as alleged; and
 - iii. Whether the statements made in the pleaded technical literature were misleading and deceptive.
- (e) The determination of the remainder of the plaintiffs' claims will have no binding effect on other class members.

Representative orders backdated

- (f) The representative orders in order 3(a), above, are backdated to the date of filing of the representative statements of claim, being:
- i. in relation to the *Cridge* proceedings, the amended statement of claim dated 22 October 2015;
 - ii. in relation to the *Fowler* proceedings, the amended statement of claim dated 22 October 2015;
 - iii. as to the *Hub* proceedings, the statement of claim dated 22 December 2015.

Consolidation or joint trial

- (g) The application for consolidation or joint trials is dismissed.

Costs

- (h) By consent the defendant has paid the plaintiffs 3B costs and disbursements in the sum of \$29,103.47.



Date: this 19th day of ~~September~~ ^{December} 2016.

Signature:

M/S Stack
 Deputy Registrar
 Michaela Stack

