

Memorandum

Date: 18 September 2015

Responses to questions raised by HOBANZ

1. Can the cladding brand on my home be accurately identified?

Yes but expert assistance is sometimes required. There were at different stages similar looking fibre cement sheets on the market. There are a number of ways the cladding including the manufacturer and the brand can be identified. These include identification of the cladding on the plans and/or specifications which are located on the Council file. This is not determinative as the cladding type could have been changed during construction. The original purchase order or receipt will identify the cladding manufacturer and brand. Alternatively, if an expert has inspected the property and has issued a report often they will have been able to identify the cladding manufacturer and brand. If the back of the cladding can be accessed, such as by removing an internal lining, or if it is exposed for example in the garage, many of the cladding systems have the manufacturer and brand printed on the back of the sheet. We will be ensuring positive identification of the brand of product during the investigation process.

2. Who pays for the professional assessment of the property and ongoing production of expert evidence?

At the eligibility assessment stage standalone owners pay for an expert desktop review of up to \$500 plus GST per home and a multi-unit group pays around \$1,000 plus GST for that desktop review. This enables us to see what is already known and areas for further investigation and obtain information needed to prepare the claim documents (which will often be subject to planned further investigation).

At sign on stage standalone owners will pay \$1,750 plus GST to join the claim and associated documentation. Multi unit groups of 5 units or more will pay \$7,500 plus GST for that group plus \$200 plus GST per unit and associated documentation.

A month after signing on to join the claim, each individual claimant property and each unit in a multi-unit property participating in the claim, will be levied to contribute funds to an expert investigation pool to fund the expert evidence required for the case.

The first levy for expert funds will be of \$1,000 plus GST per unit. This will be paid at the same time as a levy of \$1,000 plus GST per unit for the legal costs and disbursements pool.

When the class action is approved by the Court there will be also be a levy of \$500 - \$1,000 per unit to go into a fund for security for costs. Over time there will be additional contributions to this fund as required building this fund from \$250,000 to possibly \$2 million by trial

In the first half of next year we expect a similar second levy of \$1,000 plus GST per unit for the expert pool and \$1,000 plus GST per unit for the legal costs and disbursements.

The amount and timing of the second and subsequent levies will depend on the number of participants in the claim and the budget required and set for expert work.

The expert funds will be used for investigation, expert analysis and evidence for the claim as required for the case. This will include work in respect of the lead representative cases and we expect most, if not all, participating properties as required as funds are levied progressively over time.

Not all properties will necessarily be investigated initially (or at all in some cases) and funds levied will not necessarily be applied to investigation of the particular property levied.

We need to have coordinated and consistent expert analysis of the properties by approved experts on our instructions. Some properties may need more analysis and some less or none at all. Multi-unit properties can benefit from sampling.

Where owners pay for investigations of their properties for the claim as first approved by us then this approved expenditure may be able to be offset against the first levy to the expert funding pool.

Owners can at any stage arrange for their own investigations at their cost but this should be coordinated through us so that is of assistance. Such expenditure will be in addition to the levies payable by group members but will generally be a claimable cost in the litigation.

3. **How much will the professional assessment and the services of that professional to provide expert evidence cost?**

As described above, the professional assessment and ongoing production of expert evidence will be funded by levies. It is difficult to estimate exactly what expert costs will be required but we are anticipating \$1M is a realistic budget – however this could be more or less depending on numbers participating and the course of the litigation.

Expert costs to investigate a multi unit property could range from \$5,000 to \$15,000 or more. Basic investigation costs for a standalone property will probably be around \$2,000 plus GST or more. These will vary. The expert costs can be most efficiently managed centrally by us.

4. **Who selects the experts and if it is out of the hands of the owners will the selected expert have the necessary competency, capability and credibility to sustain the claim?**

Our firm as solicitors to the claim selects the experts and obtains instructions and approval to their appointment and work from the claim management committee appointed by the owner participants. The owners therefore retain control while guided by us.

We consider the expert team has the necessary expertise, capability, credibility, independence and skill to enable us to prove the matters alleged and to assist the Court as independent experts.

A core team of experts has already been engaged which includes Thomas Wutzler of Helfen Limited (building surveyor and remediation expert) and other approved surveyors, Peter Lalas of Janus Facades (façade engineer), John Sutherland (façade expert), Robin Wakeling of Beagle Consultancy (bio-deterioration expert) and several others. We have worked with these experts over many years and know their capability and expertise. These experts have particular expertise in James Hardie system issues having assisted us previously on such claims.

5. **Will invasive testing have to be undertaken?**

In most cases yes as explained above.

6. **If invasive testing is undertaken what will happen if other more serious issues such as structural deficiencies are uncovered and will they be claimable?**

Issues uncovered through the testing process will be considered on a case by case basis so that appropriate remedial and recovery action can be considered and advice given. Sometimes this will be claimable and sometimes not but it is always better to know about serious issues and be able to take appropriate action.

7. Will there be enough interested owners with valid claims for this to be an attractive proposition for the litigation funder to back this class action?

The Cladding Action does not have or require a litigation funder. The Cladding Action is owner funded and self-determining.

We are confident that there will be sufficient confirmed participation numbers to make this an attractive and economically viable option for owners. To date over 340 have registered to have eligibility assessed and interest is growing each day.

We are aiming for a group of over 500 units but even if there were 50 to 300 units in this claim it will be economically viable and managed in a way that owners can afford. The more who participate the greater the economic efficiency.

Therefore there is no threshold number for this claim needed to be attractive to a litigation funder.

8. Will I be provided with a legal opinion before the claim is filed in the court regarding the quality of my individual claim and any red flags relating to issues that might impair my claim?

Yes. This is part of the eligibility and sign on process.

9. How long will it take to get a result?

We estimate anywhere between one to four years from now. The duration and cost of litigation of this type is very difficult to estimate. We will work hard to advance the case as quickly as possible to resolution points be that mediation or hearing and to explore settlement where possible throughout. Much depends on the defendant and the timing for hearings.

10. What if the claim does not succeed; am I potentially exposed to claims made against me by the manufacturers in order to recover the costs they have incurred? If so what is the exposure in dollar terms.

If the claim did not succeed then James Hardie will obtain an award of legal costs (normally a two thirds contribution to actuals based on the High Court scale) and expert costs likely to be awarded in full.

This risk is being addressed by the establishment of a fund that would meet an award of adverse costs that is increased as the litigation progresses. All owners indemnify the lead plaintiffs for any adverse costs award.

11. If the class actions succeeds; how much of the sum awarded will be consumed by non-recoverable legal and expert fees and how will the balance be apportioned to the owners involved?

There are almost always unrecoverable legal costs even after a successful hearing which can range from one third to two thirds of actual. After hearing, assuming a \$2million legal spend, owners may recover possibly \$1 million depending on the length of hearing and a range of factors. Generally expert costs should be recoverable.

Assuming a settlement or judgment that exceeds owner contributions the amounts will be distributed as follows (in general terms and subject to some flexibility):

Security for costs fund distributed back to its contributors with any accrued interest.

Project costs contributed to legal and expert costs paid back as contributed.

The balance will generally be distributed pro rata according to owner's loss in proportion to the overall claim.

There are discretions and specific principles that will be covered separately with participants.

As this group claim is not funded by a litigation funder there will not be the need to repay the litigation funder the legal and expert fees; nor will there be the need to pay a litigation funder a success fee percentage (which can range from 20%-40% in some cases).

After payment of project costs all of the money that is obtained in the settlement will be distributed to the homeowner claimants. This is the main benefit of the self-funded claim in that a litigation funder success fee of approximately 20-40% is avoided. This leaves the homeowners with a significantly higher sum with which to repair their properties.

Also the risk of funder withdrawal is avoided.

Litigation funding is only free if you lose. We aim to win.

All legal, expert and administrative costs paid by a litigation funder are ultimately paid by owners from their successful recovery plus the funder's success fee.

12. Will any contributory negligence adjustments be made to the sums paid out to owners and how will those adjustments be quantified and by whom?

This will be a policy decision ultimately decided by the committee. An assessment of claimable amounts per unit as a proportion of the total will probably occur as the claim progresses.

13. What are the chances of the decision being appealed to a higher court and if it is, will the litigation funding be available to cover the costs of appeal(s)?

Appeals are quite possible and again will be self-funded.

14. If the class actions succeeds; how much of the sum awarded will be taken by the litigation funder?

The Cladding Action is self-funded and therefore a litigation funder will not take any percentage of the sum awarded (generally repayment of project costs and a 20%-40% cut).

15. Is the litigation funder able to pull its funding support at any stage and what are the conditions that will trigger that action?

Again, this group action is self-funded so there is no litigation funder involved. Usually a litigation funder reserves an ability to withdraw its support. This will depend on funding terms we have not yet seen in this case.

16. After the deductions; what is the likelihood of owners being left with a meaningful amount to cover the cost of the re-cladding and repair of their homes?

We consider that there is a very good prospect of owners being left with meaningful amount to contribute to the cost of recladding and repair. That is the whole point of this action. There are risks (which we explain to participants) and nothing can be guaranteed but we consider the case has merit and that we can achieve a cost effective economic recovery.

Notes

All figures exclude GST and disbursements.

The estimates above are estimates only and are subject to change from case to case and may be varied as the case progresses. The numbers ultimately participating in the claim are not yet known. The path of the litigation, its duration and costs are not able to be estimated accurately at this time.

This is not legal advice and may not be relied on as such. People should obtain legal advice on these matters.

The processes and information outlined above are subject to change.