

Grenfell Tower: Class action lawsuit in US against flammable cladding manufacturer

By Paul Bond
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A class action lawsuit in the United States against Grenfell Tower cladding manufacturer Arconic underscores how culpability for the fire that killed 72 is an open secret. It also reveals the extent to which the institutions of the British ruling class are going in order to prevent any pursuit of the guilty.

The case starkly reveals capitalism's priority of profits over lives.

The suit, first filed one month after the fire of June 14, 2017 by shareholder Michael Brave, accuses Arconic of defrauding shareholders over its supply of cladding panels at Grenfell Tower. Brave is seeking to recoup "significant" shareholder losses stemming from the company's failure to disclose its use of "highly flammable" Reynobond PE cladding panels prior to the fire.

Between June 14 and June 27, 2017—when the company finally announced it would stop selling the panels for use in high-rise blocks—Arconic's share price fell 21 percent, reducing its market value by more than \$2.5 billion. Prices rallied after the company's announcement.

US shareholders commonly sue companies over unexpected stock price falls they believe could have been avoided. The suit alleges that the "precipitous decline" in share price after the fire cost them money.

Arconic was created in 2016 through a division of Alcoa Inc. into two independent companies. It makes vast profits manufacturing cladding panels, including ones that are highly combustible—showing revenues of \$13 billion (£10.3 billion) in 2017, the year of the fire. The suit encompasses the decisions and actions of parent and offspring companies—one of the claims is that an inaccurate prospectus was provided for a \$1.3 billion share issue in 2014—and alleges that there is some continuity in their boards.

Brave argued that shareholders had been deceived by inadequate disclosures over the panels. The suit's starting point was that use of the panels significantly increased the risk of property damage, injury or death in buildings containing them. Brave described Arconic's public statements as "materially false and misleading at all relevant

times."

Brave named as defendants Arconic's former Chief Executive Klaus Kleinfeld and its current Chief Financial Officer, Kenneth Giacobbe, insisting they should be held liable for the content of public statements.

The suit's scope has since expanded considerably and now includes banks alleged to have misled investors in underwriting the share issue, including the US arm of the Royal Bank of Scotland (RBS), Morgan Stanley, Credit Suisse, Citigroup, Goldman Sachs and others.

More board members have been named, including Alcoa director Ratan Tata, head of trusts holding a 66 percent stake in the multinational Tata group's holding company; Ernesto Zedillo, who as Mexican president presided over privatisations and austerity measures and has since served on the boards of multinationals like Citigroup; Stanley O'Neal, former chairman of investment bank Merrill Lynch; and Sir Martin Sorrell, former head of WPP, one of advertising's global "big four" companies.

Sorrell was Britain's highest paid FTSE 100 CEO in 2016, when he earned £48 million from WPP, and he was a non-executive director of Alcoa/Arconic from 2012 until March 2017. He told the press he was "greatly saddened by the horrific events at Grenfell. However, I left the board of the company in March 2017 and I cannot comment on the legal actions."

The lawsuit's implications are that the company's actions before the fire did make it culpable.

The suit claims the Alcoa Inc./Arconic board "made false and/or misleading statements and/or failed to disclose" and that "Arconic knowingly or recklessly supplied its highly flammable Reynobond polyethylene (PE) cladding panels for use in high-rise buildings."

The suit cites a Reuters report, published in June 2017, which revealed emails between Arconic and Harley Facades and Rydon, the contractors responsible for the refurbishment of Grenfell Tower. Between May and July 2014 Deborah French, Arconic's UK sales manager, handled inquiries on the availability of samples of different types of Reynobond

aluminium-covered (ACM) panels.

Arconic manufactures Reynobond panels in three types: one with a non-combustible core (A2), one with a fire-retardant core (FR), and one with a polyethylene core (PE). In their brochures Arconic described PE panels as suitable for buildings up to 10 metres high, and FR panels as suitable for buildings up to 30 metres. Above that height A2 panels should be used.

All five types of panel discussed in the emails were only available in combustible PE and FR versions. Grenfell Tower was over 60 metres high.

Arconic told Reuters it had known the panels were for Grenfell Tower, but said it was not the company's role to decide on whether they were compliant with local building regulations or not.

Rydon and Harley had claimed their work complied with regulations.

Arconic's own brochure warned of flammability. "[I]t is crucial to choose the adapted products in order to avoid the fire to spread to the whole building. Especially when it comes to facades and roofs, the fire can spread extremely rapidly."

In a statement that should damn all those responsible, it noted, "As soon as the building is higher than the fire fighters' ladders, it has to be conceived with an incombustible material."

Arconic declined to tell Reuters if they knew how tall the tower was. The emails do not discuss the building's height, but do refer to "Grenfell Tower" and mention other high-rise projects. Reuters pointed out that Arconic knew how many panels were being supplied, so were aware of the total coverage of the building.

A source from one company told Reuters that Arconic had "full involvement" throughout the contract bidding. Omnis Exteriors, which cut the tiles to shape for the cladding contractor, said it had "fulfilled the order as directed by the design and build team."

German and US regulators have banned some forms of plastic-filled cladding, like the Reynobond PE, on high buildings because of the fire risks.

The US "rules-based" approach to regulation requires specific legislation for each example. Advocates of the UK's "principles-based" approach argue that by placing responsibility on companies to operate safely, based on common understanding of risks, it avoids the emergence of loopholes by requiring companies to take account of new information immediately.

What Grenfell demonstrates is that both systems are implemented on behalf of corporations. When challenged on the emails, Arconic issued its "sympathies" and pledged to "fully support the authorities as they investigate."

The official inquiry has repaid their confidence. It was deliberately not intended to bring the guilty to justice. The 2005 Inquiries Act, under which it was called, states categorically, "An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability." It separated discussion of the events of that night from broader national or political issues.

Having limited the list of issues to be covered, the inquiry then deferred the bulk of the substantial material relating to the actions of companies involved in Grenfell's refurbishment to its second phase. It has now been announced that this phase will not begin until late 2019 at the earliest.

The corporations have run rings around the inquiry to the extent that Arconic felt able to make a bullishly hostile closing statement. Their counsel told the final day of Phase One of the inquiry that the spread of the fire was not due to the flammable cladding, but to the combination of materials used in the refurbishment, including the window frames and insulation.

He further claimed it was "impossible to argue that ACM PE was non-compliant" with building regulations. Arconic asserted at the beginning of the inquiry that the panels were "at most, a contributing factor."

As we noted at the closure of Phase One, "The fact that Arconic felt emboldened enough to deliver such a self-serving and unremorseful denial of responsibility for the spread of the fire, indicates that it feels safe in the knowledge that the inquiry will do nothing to bring those who are guilty to justice."

The shareholders' lawsuit demonstrates that capitalism takes more seriously the threat to investors' finance than the lives of the working class. *All* those responsible for the decisions that cost 72 lives must be arrested and charged, not allowed to hide behind who bears the lion's share of responsibility for social murder at Grenfell Tower.

The author also recommends:

Second phase of Grenfell inquiry delayed for a year
[14 December 2018]

UK: Investigation into Grenfell fire will "take years, not months," police say
[29 December 2018]

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