

Valencia Fire Renews Concerns Over Materials, Insurance

By **Eli Flesch**

Law360 (February 29, 2024, 7:04 PM EST) -- A deadly apartment fire in Valencia, Spain, is drawing renewed attention to the use of flammable materials on building exteriors, a global problem that insurance experts say implicates complicated webs of liability and a need for strong government oversight.



Insurers regularly consider the safety and flammability of building materials when underwriting or deciding whether to insure a property, according to an attorney who advises carriers on catastrophes and mass tort litigation. (AP Photo/David J. Phillip)

While hundreds of millions of dollars in insurance coverage could be brought to bear in liability issues, experts said carriers could also cover the costs associated with preemptively remediating high-risk properties, if developers don't cover it themselves.

While the cause of the Feb. 22 Valencia fire is still under investigation, early suspicions have fallen on the building's exterior cladding because it was rapidly consumed by fire in a manner similar to other fires attributed to low-quality exterior building materials. The fire in the 14-story structure in Valencia's Nou Campanar neighborhood killed 10 people.

Poor exterior cladding installed as part of a refurbishment was largely to blame for the 2017 Grenfell Tower fire in London, a disaster that resulted in the deaths of 72 people. While the tower's insurer estimated a claim in excess of \$50 million, insurance industry analysts said that factoring in other liabilities and rectifying other at-risk buildings could have cost the industry around \$1 billion, making it one of Europe's costliest fires.

Darren O. Thompson, a London-based Zelle LLP partner who counseled insurers following the Grenfell Tower fire, told Law360 that many of the insurance questions for that disaster related to liability for parties like contractors, material providers, architects, and fire safety inspectors. That was in addition to the coverage for the damage itself, which implicated the tower's owner, the Royal Borough of Kensington and Chelsea.

"There are multiple claims going on in relation to the fire, and the idea is that insurance should — or may, at least — relate to and respond to those fire issues," Thompson said in an interview. "By way of example, the bereaved survivors and relatives advanced claims against a multitude of defendants, starting off with the Royal Borough of Kensington and Chelsea, the tenant management association, and then all manner of parties involved in the refurbishment. Also against the London fire service."

Insurance could potentially pay out to any of those defendants, he said.

The materials used on the Valencia building — aluminum panels sandwiching a synthetic insulator — were very similar to the materials in the Grenfell fire, Thompson added. The building's developer, the now defunct Fbex, touted its use of the material in a promotional video for the building, according to the Spanish newspaper El País.

"If you look at that tragedy, and you see the footage of how the panels burned, it does remind one, eerily so, of the Grenfell fire," Thompson said.

The risk of flammable cladding comes from its potential to rapidly ignite and engulf properties before occupants can react. Flammable materials — variously used for their low cost, insulating properties, and design potential — are especially dangerous when affixed to high-rise structures, given that escaping such properties is more challenging. That's in addition to the difficulty of putting out fires as they rise to higher elevations.

Cladding fires are a global phenomenon, with notable conflagrations having occurred in China, the United Arab Emirates and Scotland. While understanding the full scope of the problem is difficult, it's clear to construction experts that many buildings are at risk.

Matthew Curll, who co-leads the insurance practice at the Australia-based Hall & Wilcox, told Law360 that a 2014 fire in Melbourne helped spur stronger government oversight of flammable cladding. Concerns over the risk of flammable cladding led insurers to write exclusions for both compliant and non-compliant cladding, Curll said, as well as a range of other building materials flagged over fire safety concerns.

Some insurers have chosen not to insure risky buildings altogether, he said.

"It's a global problem, and it's a long way from being fixed," Curll said. "What history has shown around the world is that the risk of fire is low, but when it does occur it can be devastating, as the Valencia fire recently showed."

In Australia, Curll said, property management associations known as owners corporations are partly responsible for auditing the cladding of buildings and reporting their findings to a register. Municipal governments can then order the owners corporations to come up with a plan to replace any cladding deemed to be dangerous.

Eventually, in an effort to help owners corporations cover the cost of repairs — which Curll said could range between \$5 million and \$20 million per building — several Australian states set up funds to provide the corporations 10-year interest-free loans.

"It's created a fantastic industry for assessing risk, assessing a solution, and rectification work," Curll said in an interview, referring to government oversight and involvement. He added that "there's a fair bit of litigation that's going on at the moment, with owners corporations, and the builders, and the consultants."

In a novel January 2024 court decision in the United Kingdom, a tribunal ordered several companies involved in developing a set of residential buildings for the 2012 Olympic Games to pay £18 million for remediation works under the country's Building Safety Act 2022, a law introduced partly in response to the Grenfell Tower disaster.

Such decisions could result in further litigation involving a "cascade of contractual relations" that could increase policyholders' and carriers' exposure even without fires occurring, Zelle's Thompson said. To

recover costs, a developer could sue an architect, who could sue a fire safety consultant, who could sue a cladding manufacturer. Whether an insurer picks up some of the costs ultimately depends on the contract, he said.

To protect themselves from costly payouts, insurers regularly consider building materials when underwriting or deciding whether to insure a property, said Thomas B. Alleman, an attorney with Dykema Gossett PLLC who advises carriers on catastrophes and mass tort litigation. Materials are often weighed during inspections for policy applications, he said, adding that insurance considerations often influence what materials are used.

"Most every insurance contract allowing for inspection of the property would also include a disclaimer of liability for the inspection process," Alleman said.

To David B. Haber, a construction attorney and founder of the Florida-based Haber Law, the Valencia fire highlighted the importance of regular inspections for structural risks. He said that in Florida, at least, there are not as many safety regulations for multi-family housing as there are for condominium buildings, like the Champlain Towers in Surfside, Florida, which collapsed in 2021 as a result of the corrosion of key structural steel components.

"The United States has some significant codes and restrictions, probably more so than any other country in the world, and those include fire safety regulations," Haber said. "If properly enforced, I believe the United States is at the forefront of building protection systems."

To that end, Haber said, it didn't surprise him that the materials implicated in the Grenfell Tower fire are largely illegal in the United States. While some states have laxer testing laws of building materials than others, and there are scores of buildings with risky cladding in the U.S., the problem by most accounts is not as prevalent in the 50 states. Still, the tragedies of Grenfell and Valencia show the devastation just one fire can bring.

"It seems to me that the gold standard would be to remove flammable cladding from buildings — from all of them," Zelle's Thompson said. "I can't see that any of us want flammable cladding on the building where they'd keep their family. That's my comment not as a lawyer but as a father."

--Editing by Nick Petruncio.